

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Hato Rey, Puerto Rico

GTE d/b/a PUERTO RICO
TELEPHONE COMPANY,

Employer-Petitioner¹

and

HERMANDAD INDEPENDIENTE DE
EMPLEADOS TELEFONICOS,

Petitioner

Cases 25-UC-223
(formerly 24-UC-191)
25-UC-224
(formerly 24-UC-194)
Case 25-UC-225
(formerly 24-UC-206)

DECISION, ORDER CLARIFYING UNIT,
AND ORDER DISMISSING PETITIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.²

I. ISSUES

The instant proceeding involves petitions filed in three separate but related cases. The first petition, Case 25-UC-223 (formerly 24-UC-191), filed by the Petitioner-Union, Hermandad Independiente De Empleados Telefonicos, involves the position of Administrator Management

¹ The Employer is the Petitioner in Case 25-UC-225 (formerly 24-UC-206).

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Staffing.³ The Union seeks that the unit be clarified to include this position, while the Employer contends the position should continue to be excluded from the unit. The Union asserts that many of the duties and responsibilities of the position were previously performed by bargaining unit members who occupied bargaining unit positions.⁴ The Employer contends that the functions of this classification are different from those previously performed by bargaining unit members and that the position should be excluded from the unit because it is closely aligned with management, and because it is a confidential and/or supervisory position.

The second case in this proceeding, Case 25-UC-224 (formerly 24-UC-194), filed by the Union, currently concerns only the placement of the Data Integrator Officer⁵. The Union seeks to clarify the unit to include this position. The Employer moves to dismiss the petition on the basis that the petition is untimely. In the alternative, the Employer contends that the position is properly excluded from the unit because the position is a managerial and/or supervisory position.

The third case in this proceeding, Case 25-UC-225 (formerly 24-UC-206), filed by the Employer, GTE d/b/a Puerto Rico Telephone Company, concerns two job classifications: Information Network Specialist and Distributed Systems Administrator. The Employer contends that these classifications, previously included in the unit, have undergone substantial changes and thus should now be excluded from the unit on grounds that the positions are managerial, confidential, and/or that the positions are guards. The Union contends that these positions have historically been included in the unit and that neither position has undergone any recent substantial changes to cast doubt as to their continued inclusion in the unit, and that the Employer should not be allowed to disrupt the existing bargaining relationship by seeking their exclusion at this time.

II. DECISION

For the reasons discussed in detail below, including the lack of evidence that the Administrator Management Staffing position shares a community of interest with unit employees, it is concluded that the unit shall not be clarified to include the Administrator Management Staffing position, and accordingly, the petition in Case 25-UC-223 shall be

³ Although this position is called Managerial Recruiting Official in the election petition, the parties at the hearing refer to it as Administrator Management Staffing.

⁴ The Union stated its position concerning the inclusion of this job classification in the record, but did not brief this issue.

⁵ The other positions included in the amended petition have been dismissed. Four of the positions, the Internet/Data Methods and Procedures, Quality Assurance Officer; Internet Business Product Marketer; and Internet Portal Content Officer, were dismissed during the initial hearing. It was stipulated by the parties during the resumption of the hearing that the other three positions, Internet Operations Officer, Internet Business Sales Support Officer and Internet Services Officer-Web, were abolished by the Employer and the positions no longer exist.

dismissed. In respect to the petition in Case 25-UC-224, the Employer's Motion to Dismiss, for the reasons discussed in detail below, is denied. In regard to the Data Integrator Officer position, it is concluded that the position is not managerial or supervisory. It is further concluded, as more fully discussed below, that the Data Integrator Officer shares a sufficient community of interest with unit employees to warrant its inclusion within the unit. Therefore, the unit shall be clarified to include the Data Integrator Officer. It is lastly concluded, for the reasons also discussed below, that the Information Network Specialist and Distributed System Administrator positions have not undergone substantial change and are not guard, managerial or supervisory positions. Therefore, the positions shall remain in the bargaining unit and the petition in Case 25-UC-225 shall be dismissed.

III. GENERAL STATEMENT OF FACTS

The Employer is engaged in providing local and long-distance telephone service as well as data transmission services to consumers in Puerto Rico. The Petitioner-Union has represented a bargaining unit of professional and technical employees⁶ of the Employer since 1995.⁷ According to the instant petitions, this unit consists of approximately 1700 employees. In 1999 the Commonwealth of Puerto Rico privatized the Company and sold it to GTE. There is currently a collective-bargaining agreement in effect between the Employer and the Union which the parties negotiated from mid-September 1999 through mid to late October 2000. The effective dates of the collective-bargaining agreement which these negotiations produced are October 26, 1999 through October 22, 2003.

A. Case 25-UC-223 (formerly Case 24-UC-191)

1. Statement of Facts

Prior to the privatization of the Employer in 1999, its Recruitment Department consisted of four divisions: Testing, Work-Force Planning and Organization Design, and two Recruitment Divisions, one which primarily dealt with internal candidates, and the other which dealt with external applicants. Under the prior system, unit members were involved in processing and advertising job openings; receiving job bids; and evaluating candidates for unit as well as managerial and supervisory positions. Prior to the privatization of the company, as a governmental entity, the Company was required to use a merit system in the hiring, promotion and transfer of even management personnel. As a result, the hiring and promotion of management personnel was handled similar to the hiring and promotion of unit employees under the collective bargaining agreement. Additionally, all positions were filled internally first, and only after exhausting all qualified internal candidates could the Employer fill positions (both unit

⁶ Certain non-professional office employees are currently represented by Unión Independiente de Empleados Telefónicos (UIET).

⁷ The unit was originally certified by the Puerto Rico Labor Board.

and non-unit) with external candidates. Employees involved in the recruitment and evaluation process, such as persons who occupied the positions of Recruitment Officer, Evaluator, Personnel Officer, and assistants in the Testing Division were bargaining unit members. Under the system which was in place prior to privatization and prior to the reorganization which started in March 2000 and culminated in May 2002, a requisition was submitted to the Recruitment Department by the department which desired to fill a position(s). After the requisition was approved by the Planning and Organization Division, the Recruitment/Personnel Officer prepared a job posting for publication. All postings conformed to a standard format, and the Recruitment/Personnel Officer filled in blanks on the posting which provided the job description of the open position. The Recruitment/Personnel Officer caused the postings to be printed, and the postings were then distributed to over 300 sites throughout the Company.

Prior to the Company's reorganization, the general functions of the Evaluator were to evaluate internal and external candidates for positions with the Company, including candidates for managerial, supervisory, and administrative positions, plus bargaining unit positions (for both units represented by HIETEL and UIET). The Evaluator ranked each candidate pursuant to the collective bargaining agreement and/or Article 8 of the Employer's personnel regulations. The Evaluator prepared a profile of each candidate's education and experience derived from the candidate's personnel file. This information was primarily extracted from records indicating positions held, training, and certifications received, as well as academic transcripts.⁸ After the evaluation was completed the Division Manager certified and authorized the release of the results. A list containing the names of the five candidates with the highest scores was then forwarded to the department which had requisitioned hiring authority. That department continued the hiring process, including the interview of candidates. After applicants for supervisory positions were evaluated by the Evaluator, the Norms and Procedures Division⁹ of the Recruitment Department created an evaluation panel comprised of managerial employees. Those candidates passing the evaluation panel were then referred to the requisitioning department for interviews. Evaluators did not participate in the interview or selection of candidates for unit or non-unit positions.

After the requisitioning department selected a candidate for a position, an Evaluator worked with the department in which the successful candidate currently worked, in order to ensure an orderly transition of the candidate out of that department and into his/her new position. This transition work included the completion of related paperwork in a timely manner. Any employee who disagreed with the selection of a candidate under this process had the right to file a complaint pursuant to the collective bargaining agreements, or the Company's personnel regulations, or via complaints to a governmental agency. On occasions an Evaluator was questioned about the selection process or was called upon to testify at hearings about the process by which the candidates in dispute were evaluated.

⁸ Upon occasion an Evaluator met or conferred with candidates in order to verify and/or obtain additional information about qualifications, references, or documents.

⁹ The record indicates that the Personnel Officer and Personnel Assistant in the Division of Norms and Procedures were bargaining unit positions.

Following the privatization of the Employer in 1999, the Employer was no longer required to evaluate, hire and promote non-unit employees based upon a merit system. The Employer commenced a reorganization of the Recruitment Department (also referred to as "Staffing and Selection Services") in approximately March 2000. Upon completion of the reorganization, the Department presently consists of three divisions containing fewer overall employees: Staffing (internal and external), Testing, and Budget and Leadership Development and Administration. The Company also eliminated several functions formerly performed by the Recruitment Department. For example, the processing of documents related to temporary employees was transferred from the Recruitment Department to the departments which utilize temporary employees.

Following reorganization, several personnel changes were also made; some positions were eliminated while others were created. Among the positions the Employer created were that of Administrator Management Staffing, Human Resource Analyst, and Managerial Recruiting Coordinator.¹⁰ Among the positions eliminated were that of Evaluator, Recruitment Officer, and Recruitment Assistant. The Human Resource Analyst, Administrator Management Staffing and Managerial Recruiting Coordinator all appear to report to the same manager in the Recruitment Department, the Manager of Recruiting Personnel Selection. There is one Administrator Management Staffing position. The Human Resource Analyst, which remains a bargaining unit position, is paid at a current rate of pay of \$16.00 per hour.

The Human Resource Analyst continues to evaluate internal candidates for bargaining unit positions. The Human Resource Analyst participates in rating applicants based upon criteria set forth in personnel regulations and the collective bargaining agreements. As before, the division manager certifies the highest ranking candidate and forwards the candidate's application to the requisitioning department. Under the Union's current collective bargaining agreement, only one candidate at a time is sent to the requisitioning department for review. While the Human Resource Analyst continues to answer questions raised about the selection process, it is the division manager who now testifies in arbitral proceedings regarding the candidate selection process.

The Administrator of Management Staffing (herein called "Administrator") is primarily involved in the recruitment of persons for managerial, supervisory, Director and Vice President positions. In addition, the Administrator is involved in the selection and hire of external applicants for unit positions. The Administrator position was created in March 2000, and its job description was revised in November 2000. The Administrator screens candidates to determine the best qualified persons for each vacant position. S/he assesses each candidate, without reference to any tables, charts or point system. In the past, candidates were required to provide documentation regarding academic records and other qualifications which were subsequently

¹⁰ This position has also be referred to by the parties as "Coordinator Management Staffing," and although the Union initially petitioned for the inclusion of this position in Case 25-UC-223 (formerly Case 24-UC-191), the Employer's motion to dismiss this classification from the petition was granted by the undersigned's Order dated May 8, 2003.

verified by an Evaluator. Now internal candidates' academic degrees and other qualifications are not routinely verified. However, the Administrator possesses the discretion to determine if such verification is necessary. For external candidates, the Company now uses an outside vendor to perform educational and background checks. The Administrator deals with this company and also performs quality reviews of the vendor's performance to enable the Employer to determine whether it should continue to utilize the vendor's services.

The Administrator works with the manager and other members of the requisitioning department to develop a structured interview to assess the best candidate for each position. This is a new procedure and did not exist prior to reorganization. This structured interview, while based upon certain guidelines, is tailored by the Administrator and the manager of the requisitioning department, to address the unique needs of each vacant position. The Administrator has trained the Employer's departmental managers in the conduct of structured interviews since this is a new process for them. The Administrator also regularly participates in these structured interviews, sometimes as a member of a three-person panel which scores the applicants, or sometimes as a facilitator to ensure that the interview is conducted fairly and objectively. The structured interview consists of a hypothetical fact scenario followed by questions. The interviewers write down the answers and then score each answer from 1 to 5. When serving as facilitator, the Administrator reviews each interviewer's score and discusses any differences in scores among the interviewers. Before an applicant can be hired, the interviewers must reach a consensus on each applicant. It is the responsibility of the Administrator to ensure that only information from the interview is evaluated and not the interviewers' personal knowledge of the candidate. In conjunction with other changes which have occurred in the Company, the Administrator has also participated in the reorganization of other departments. For example, there was a recent reorganization in the Sales and Customer Service Department where all positions from secretary to director were treated as vacant. The Administrator evaluated all employees in the department for each position and recommended the most qualified for interviews. The Administrator participated in discussions with managers regarding the reasons certain candidates were recommended for interviews.

The Administrator's duties also include those related to salary and compensation packages for advertised positions. The Administrator performs analyses of prevailing wage and salary rates in order to achieve compensation parity for employment offers to internal and external candidates. It is the Administrator's responsibility, in conjunction with the Manager, to analyze the data and make a recommendation for an offer. This analysis includes looking at job descriptions and comparing the salaries of comparable jobs, both internally and externally. The Administrator may access the payroll system to compile salary data. The Administrator communicates offers of employment to successful applicants, including compensation packages. Another of the Administrator's functions is to perform exit interviews and, where a pattern of potential problems within the company appears as the motivating reason staff have chosen to leave the Company, the Administrator recommends corrective courses of action to alleviate the problems and improve employee retention rates.

Another newly created program in which the Administrator plays an active role is the Employer's intern and co-op program. Initially, the Administrator reviews proposals submitted by department managers concerning their desire for interns. The Administrator determines if

there is a sufficient need to justify the use of interns, and matches students with the departments in need of interns. The Administrator coordinates its needs with universities, and visits universities to recruit candidates for as many as 30 intern and co-op positions. The Administrator screens student-candidates, and in conjunction with the Manager of the Recruitment Department, jointly interviews the students and makes the final selections.

The job description of the Administrator indicates that s/he is responsible for providing assistance with the preparation of any cases before the Department of Labor or other formal boards concerning the recruitment process. Since the reorganization, however, the Company has not had any cases brought against it before any administrative or judicial forums concerning recruitment. The Administrator prepares written responses to employee complaints concerning the outcome of their applications for positions. The Administrator's job description also indicates that the Administrator substitutes for managers in their absences.

The record does not identify the salary range and fringe benefits received by the Administrator, and therefore, a comparison to unit wage and benefit levels is not possible.

2. Discussion

The unit clarification process is appropriate to resolve questions concerning the proper unit placement of individuals who occupy newly established classifications. Union Electric Co., 217 NLRB 666, 667 (1975). The Employer established the position of Administrator in March 2000 and issued an updated job description in November 2000. The Union contends that the position performs substantially the same duties as the eliminated position of Evaluator and thus should be accreted into the unit. The Employer, however argues that the position is substantially different from that of Evaluator and that it is a managerial position. Therefore, the position should be excluded from the unit.

The Board follows a restrictive policy in finding an accretion to an existing unit because employees who are accreted are not accorded an opportunity to determine their own bargaining representative. Compact Video Services, 284 NLRB 117, 119 (1987). Thus, the Board will find an accretion only where the additional employees share a community of interest with unit members and lack a separate identity, Safeway Stores, 276 NLRB 944, 948 (1985). In assessing accretion issues, the Board considers various factors, including the extent of employee interchange, common supervision, centralized control of labor relations, centralization of administrative control, the degree of operational integration, the geographic proximity of work sites, the similarity of employee skills, functions, and working conditions, collective bargaining history, and the number of employees to be accreted in comparison to the size of the existing unit. In any given case, a number of factors may favor or disfavor accretion, and the Board must balance the right of employees to select a bargaining agent against the concomitant statutory objective of maintaining stable labor relations.

In the instant case the preponderance of record evidence fails to establish that the Administrator Management Staffing position shares sufficient terms and conditions of employment in common with unit members, to create a community of interest with them. Whether the salaries/rates of pay and benefits received by unit members and the Administrator

are comparable is not known since the form and extent of the Administrator's remuneration is not known. Nor does the record reflect the working conditions and work locations of any unit employees other than the Human Resource Analyst and the three other disputed positions discussed herein. Thus, a comparison of work hours and the extent of contact between the Administrator and unit members cannot be determined. Nor does the record reflect whether interchange occurs between the Administrator and any unit members. The record also fails to reflect whether the Administrator is subject to the same work/personnel rules and policies which govern unit members.

Lastly, although the Administrator 's job functions involve the assessment of job applicant qualifications, other duties the position performs differ significantly from those of the previous Evaluator position, and those of the Human Resource Analyst position. Unlike the Evaluator position which assigned points outlined in the contract or personnel regulations to a candidate's education and experience, the Administrator appears to exercise independent judgment in determining the best qualified candidates within general guidelines. Additionally, the Administrator plays an active role in the interview process and participates in the scoring of candidates as part of a small panel of interviewers. The Administrator is also involved with the requisitioning department in the formulation of the terms of employment offers, including wages and benefits.¹¹ The Administrator, unlike the Evaluator or Human Resource Analyst, is involved in the Employer's intern and co-op programs.

The classification of Administrator also embodies some functions similar to those of managerial employees. Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." These employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. NLRB v. Yeshiva University, 444 U.S. 672 (1980). While there is no evidence that the Administrator Management Staffing position creates policies, s/he does apparently carry out existent recruitment and hiring policies. The functions of the Administrator Management Staffing position emanate from the Employer's staffing, hiring and promotion policies governing managerial positions. The Administrator plays an integral role in effectuating this policy. The Administrator initially determines the best qualified candidates for vacant positions. S/he is also actively involved in the hiring process through the development of interview techniques, and making hiring recommendations based upon an evaluation of candidates against minimum qualifications established by the Employer.

¹¹ While the Administrator can access payroll and other personnel information during the course of his/her duties, such access alone does not confer confidential status upon the position. As will be discussed in greater detail later, the "labor-nexus" test used by the Board to determine confidential status requires that such persons assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, NLRB v. Hendricks County Rural Electric Corp., 454 U.S. 170 (1981). There is no evidence that the Administrator acts in such a confidential capacity to an individual who formulates labor policy for the company.

Thus, it appears that the Administrator executes Employer policies governing the hiring and promotion of individuals to managerial and supervisory positions. It is reasonable to conclude that even if such an individual does not meet the strict definition of a "managerial" employee within the Act, s/he identifies with other individuals in management positions rather than with rank-and-file employees. Thus, even if the Administrator is not a managerial employee, his/her functions more closely align her/him with management than unit members. And although the Administrator and the Human Resource Analyst share common supervision, this one common characteristic is insufficient to overcome the other apparent discrepancies between the two positions.

Accordingly, it is concluded that the Administrator Management Staffing position lacks a community of interest with unit members, and shall not be accreted to the existing unit represented by the Petitioner-Union.

B. Case 25-UC-224 (formerly Case 24-UC-194)

1. Statement of Facts

The position of Data Integrator Officer (DIO) was initially created in November 1999 as part of the Employer's Advanced Network Solutions Department. This department, which also included the positions previously contemplated by the petition in Case 25-UC-224, ceased to exist on April 29, 2002. Since shortly before that time, the position of DIO has been a part of the Employer's Sales Department. Currently there are eight individuals employed as DIOs. The DIOs are directly supervised by the Manager of Voice and Data Services. Voice and Data Services is a division of the Employer's Sales Department. Also included in the Voice and Data Services Division are three Voice Technicians, a Voice Technician Supervisor, two Inventory Technicians, and an Inventory Technician Supervisor, a Page/Graphic Designer,¹² a Personnel Administrator, and a Secretary. In addition to the DIOs, the Manager of Voice and Data Services also directly supervises the Page/Graphic Designer, Personnel Administrator, and the Secretary. The Manager of Voice and Data Services is the second line supervisor for the Voice and Inventory Technicians. The DIOs occupy cubicle offices in the Sales Department. In addition to the positions within the Voice and Data Services Division which are discussed above, there are also five Sales Managers, three Secretaries, and an unknown number of Account Executives¹³ in the Sales Department. The Account Executives, Page/Graphic Designer, and Technicians are bargaining unit employees.

¹² The parties alternatively refer to this position as either the Page Designer or Graphic Designer.

¹³ The record does not indicate the number of Account Executives employed in the Sales Department; it does however, indicate that they are divided into three categories, Silver, Gold and Platinum.

The Voice and Data Services Division is the area of the Employer's Sales Department responsible for designing network configurations for customers' voice and data telecommunications needs. The Division also provides technical support for customers. After a customer requests that a voice and data network be designed for its use, direct customer contact most often occurs from an Account Executive who makes an initial contact and assesses the customer's needs. Account Executives are apparently sales representatives and the primary liaison between customer and Company. The DIO is the chief engineer who designs the systems necessary to achieve customers' objectives. Upon receipt of a customer request for service, the DIO assesses the technical needs of the customer based upon information provided by the Account Executive and/or the customer. The DIO designs a system of equipment, cable lines and services responsive to the customer's needs. While designing such a data and voice network, the DIO contacts manufacturers and distributors to secure price quotations for prospective network equipment. From the manufacturers and/or distributors, the DIO determines the availability of equipment, the cost of equipment, any discounts available to the Employer, and delivery terms. After the DIO has designed a voice/data system, a price quotation for the lines, equipment and services is prepared for presentation to the customer. The price quotation includes a margin of profit for the Employer. To determine the profit margin, plant engineers¹⁴ perform a study of the cost of construction, lines, network and terminal equipment. This study is requisitioned by the DIO through the Manager of the Plant Engineers. The DIO compares construction costs to the costs which the Employer will charge the customer for services after the network has been installed, to determine the profit margin and/or the viability of the project. The Employer utilizes a parameter of a rate of return not to exceed 2 ½ years in determining the profit margin and/or the viability of a project. Another component in determining the price offered to the customer is whether the customer will purchase the equipment which comprises its network, or whether the Employer will purchase it in contemplation of recouping the expenditure by performing future contracted services for the customer. The Account Executive presents the quotation to the customer for approval.

After customer approval of the project, the Account Executive who "sold" the project enters service orders on a control sheet. This information is entered into the Company's system by data entry personnel. After the project information has been entered, the DIO apparently performs a final review of the project and gives his/her approval to the project's design. At some point after customer approval of a price quotation and before work commences on the project, approval of the project must be secured from personnel of higher authority in the Company. The Sales Department's Manager of Managers can authorize projects valued to \$25,000; the General Manager to \$100,000; the Vice-President to \$500,000; and the President to \$1 million. Projects valued in excess of \$1 million must be approved by Verizon's central office. After management's approval of the project is obtained, the DIO forwards project information to various areas within the Company. Schematics of the network's configuration are sent to areas responsible for developing the software programs necessary to support the network. The DIO also forwards the project's specifications to a Coordinating Area. The specifications may include a description of the various construction stages of the project, installation priorities for lines and equipment, and the identity of the contractor(s) who will perform the work. The Coordinating

¹⁴ The plant engineers are bargaining unit employees.

Area ensures proper installation of lines and their readiness for programming of special services. It also monitors the work performed by the contractor structuring cable systems; and performs tests to assess the acceptability of the cable system and lines. The Manager of the Coordinating Area assigns a Coordinator, a bargaining unit employee, to oversee each project.

During the construction process, the DIO is apprised of the project's status by the Coordinator who is overseeing the project; by the supervisors/managers of the various work areas involved; and/or by other employees who comprise the "work group" which constructs the project. This work group may consist of management and bargaining unit employees, such as technicians, transmission engineers, and internet platform engineers. Thus, the DIO works in close contact with the Coordinator and other unit members, in addition to outside contractors, during the construction of projects. The DIO oversees project specifications and project timelines, making adjustments if necessary due to problems or unexpected exigencies which may arise during the construction of the project.

2. Discussion

a. Motion to Dismiss

As a threshold procedural issue, the Employer renews its motion to dismiss the petition in Case 25-UC-224 on grounds that it is untimely. The Employer's original motion was addressed by the undersigned in the Order Reopening Record and Notice of Supplemental Hearing issued on May 8, 2003. In that Order it was determined that the petition was timely filed and the Employer's motion was denied. The Union's petition in Case 25-UC-224 seeks to add to the unit, newly created positions, the duties and functions of which were not known to the Union until shortly before the execution of the parties' most recent collective bargaining agreement. It was concluded that the Union had not waived its right to seek the inclusion of these newly created positions through Board processes. The Employer now asserts that the Union sought to include the DIO position in the unit for the first time when it amended its petition in Case 25-UC-224 on March 20, 2002. The original petition which was filed on February 27, 2001, contained broad language describing the positions whose accretion to the unit was sought. The petition described the positions it sought to accrete, as "Internet Service employees." The amendment of March 20, 2002, however, identifies specific job titles/classifications. The amendment refers to "Internet Service employees, including the following: Internet Operations Officer; Internet Services Officer-Web; Internet Business Product Marketer; Internet Business Sales Support Officer; Internet/Data Methods and Procedures, Quality Assurance Officer; Data Integrator Officer; and Internet Portal Content Officer." It is concluded, therefore, that the amendment clarifies the positions sought to be accreted to the unit in the original petition under the rubric of "Internet Service employees." There is no evidence that the DIO was not contemplated by the original petition. To the contrary, the DIO position, although not containing the word "internet" in its job title, was a part of the Advanced Solutions Network Department at the time petition 25-UC-224 was filed, as were the other positions listed in the amended petition. Since the language of the original petition is sufficiently broad to include the DIO position, and the amendment of March 2002 merely serves to identify specific job classifications embraced within the original petition, it is concluded that the petition in Case 25-UC-224 was timely filed.

For this reason as well as the reasons stated in the Order of May 8, 2003, the Employer's motion to dismiss petition 25-UC-224 is denied.

b. The Supervisory Issue

The Union seeks to add the DIO position to its existing unit, while the Employer contends the position should continue to be excluded on two grounds: because the employees who hold these positions are supervisors within the meaning of Section 2(11) of the Act, and because they are managerial employees who, pursuant to Board policy, should be excluded from coverage of the Act.

In representation proceedings the burden of establishing an individual's supervisory status rests upon the party making such assertion. NLRB v. Kentucky River Community Care, 532 US 706, 121 S. Ct. 1861, 1866-1867 (2001). The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1980); Tucson Gas & Electric, 241 NLRB 181 (1979). Here the record evidence is insufficient to establish that the individuals who occupy the position of DIO are statutory supervisors. Thus, the overall evidence demonstrates that the DIOs supervise projects, not people.

An individual is a supervisor under Section 2(11) of the statute if s/he possesses the authority to take certain enumerated personnel action or to effectively recommend such action, if the exercise of such authority requires the use of independent judgment. In determining supervisory status, the Board closely examines the record as such a finding of supervisory status denies to the individual the rights and protection of the Act. Therefore, conclusionary statements made by witnesses in their testimony, without supporting evidence, are insufficient to establish supervisory authority. Sears Roebuck & Co., 304 NLRB 193(1991).

The Employer asserts that the DIO directs the work of employees; assigns overtime; and disciplines employees who work on the projects designed by the DIOs. The record, however, does not support these broad assertions. The Employer contends that the DIO assigns duties, tasks and deadlines to unit employees who work on projects designed by the DIO. The record indicates, however, that although the DIO may participate in the design of a data/voice system and may establish time targets for the completion of its various construction phases, s/he does not issue work assignments to individual employees. Rather, the DIO provides project specifications to the Manager or Director of the department whose employees will construct the project, and it is that Manager or Director who issues work assignments to the employees of his/her department from these specifications¹⁵. Thus, any directions authored by the DIOs are channeled through area supervisors/managers/directors. Such conduct is not an indicia of supervisory status, Aquatech, Inc., 297 NLRB 711, 717 (1990), *enfd. sub nom. NLRB v.*

¹⁵ The record contains testimony by the Manager of Voice and Data Services that the DIO gives instructions to the Page/Graphic Designer. The record, however, does not give any indication as to the nature of these instructions or how frequently this occurs. In fact, the record does not even describe the duties of the Page/Graphic Designers.

Aquatech, 926 F.2d 438 (6th Cir. 1991); Cablevision System Development Co., 251 NLRB 1319 (1980).

The Employer also contends that the DIOs possess authority to assign overtime to employees who work on their projects. However, the evidence indicates that the DIOs notify the employees' supervisor of any need for overtime and it is the supervisor who determines whether to approve such overtime. The record is devoid of evidence concerning the frequency with which the DIOs request overtime and the percentage of time supervisors subsequently approve overtime.

With respect to the issue of discipline, the record contains some general testimony that the DIOs possess authority to discipline employees who work on projects under their oversight. However, there is no record evidence that any DIO has actually issued or recommended that discipline be issued to another employee; nor is there evidence that if such a recommendation occurred, management adopted the recommendation without an independent investigation of the incident¹⁶. To the contrary, the record indicates that DIOs have been instructed to report any concerns about an employee's work performance or an employee's failure to meet deadlines, to the employee's supervisor. No specific example of such an incident was discussed at hearing, however. Merely reporting employee misconduct without recommending any particular corrective action, is not an indicia of supervisory status. Rest Haven Nursing Home, 322 NLRB 210 (1996).

The record contains evidence that one or two of the DIOs were involved in two evaluations of a student who worked in the Employer's co-op program one summer, and the ultimate recommendation was that the student's contract be renewed. This appears to be an isolated instance of a DIO's involvement in the evaluation process of special-program employee since it is the only example of DIOs performing a role in the evaluation process. Further, approval of the DIO's recommendation by the Manager of Voice and Data Services was required in order for the contract to be renewed. The role played by the DIOs in the evaluation process of other employees is even more tangential, and fails to demonstrate supervisory authority. The Manager of Voice and Data Services testified that the DIOs may report deficient work performance of an employee assigned to his/her project, and that such a report may be used by supervisors in forming their subsequent evaluation of the employee. The record fails to reveal

¹⁶ The record contains testimony that one individual in the position of DIO was involved in issuing some type of verbal warning to another DIO. However, this appears to have occurred during a time the DIO was substituting for the Manager of Voice and Data Services. Situations such as this will be discussed further below. Additionally, the evidence indicates that this "discipline" was not made a part of the other DIO's personnel file. Therefore, the actions by the DIO who substituted as a supervisor did not affect the terms or tenure of employment of the other employee, and is not conduct indicative of supervisory status.

any actual evidence that any such DIO complaint has had any impact on the ultimate evaluation of an employee, however.¹⁷

Nor does the fact that a DIO occasionally substitutes for the Manager of Voice and Data Services confer supervisory status upon DIOs. The evidence demonstrates that the Manager delegates authority to a DIO approximately twice a year, each time delegating such authority to a different DIO. The sporadic exercise of Section 2(11) powers does not confer supervisory status under the Act; the authority must be exercised regularly and substantially in order for supervisory status to be reached. Brown & Root, Inc., 314 NLRB 19, 20-21 (1994).

c. The Managerial Issue

The Employer also argues that the DIOs are managerial employees. As previously discussed, such employees are defined as employees who “formulate, determine, or effectuate employer policies by expressing and making operative the decisions of their employer.” These employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. NLRB v. Yeshiva University, *Supra*. The overall record in the instant case does not support a finding that the DIOs are managerial employees.

The Employer asserts that DIOs are managerial because they allegedly exercise broad discretion in a number of ways during the process of designing and overseeing the construction of networks for customers. The record indicates, however, that the authority exercised by DIOs is circumscribed by Company policies and is subject to approval by higher authorities. DIOs negotiate the cost of equipment with suppliers, but all project costs are ultimately subject to approval by higher levels of authority. The project cost which is presented to the customer is circumscribed by the profit-margin study conducted by engineers, and ultimately, by the requirement that one or more superiors approve the project. The fact that an employee may make purchases or commit credit on behalf of the employer does not necessarily confer managerial status upon the employee where the employee's discretion is limited by corporate policies or other parameters. Nor does the possession of some authority to quote prices and customer discounts likewise confer such managerial status. Kitsap County Automobile Dealers Association, 124 NLRB 933 (1959). The final price of each project must be approved by the Manager of Voice and Data Services or by one to four other members of management (depending upon the dollar amount involved) before construction can begin. The Sales Department's Manager of Managers may approve projects valued up to \$25,000; the General Manager, projects valued up to \$100,000; the Company's Vice-President, projects valued up to \$500,000; and the President, projects valued up to \$1 million. Projects exceeding \$1 million must be approved by Verizon's central office.

¹⁷ The Manager of Voice and Date Services also testified that she considers DIO's recommendations in her evaluation of the Page/Graphic Designer. This broad assertion, however, is not supported by any specific example of the interaction between the DIO and Page/Graphic Designer and any specific recommendation a DIO may have made concerning the Page/Graphic Designer.

In addition, the record does not support the Employer's contention that the DIO has independent authority to remove contractors from a project and to determine that a project should not be pursued due to economic infeasibility. The DIO may merely recommend that such action be taken. Any recommendation to remove a contractor from a project is submitted to the Manager of Voice and Data Services, and must be supported by documentation such as performance charts, history of performance problems, and status of certifications. For a contractor to be removed, the Manager must concur with the recommendation. Thus, the Manager does not rely solely upon the DIO's recommendation, but also upon documentation of contractor deficiencies. Additionally, the DIO reports any project s/he does not believe is economically feasible (based on his/her technical and professional knowledge) to the Manager of Voice and Data Services, who ultimately determines whether to pursue a specific project. Lastly, the totality of record evidence shows a highly centralized company containing multiple layers of management with several levels of approval required for any major undertaking. Thus, conclusory testimony by the Manager of Voice and Data Services ascribing broad discretionary authority to the Data Integrator Officer, has been rejected unless it is corroborated by other evidence.

Based upon the totality of record evidence, it is concluded that the duties of the DIOs entail considerable professional skill and judgment. However, it is the Manager of Voice and Data Services and other managers who determine, establish and execute management directives by approving or disapproving recommendations presented by a DIO. Thus, it is concluded that DIOs are not managerial employees. The Bakersfield California, 316 NLRB 1211 (1995); Case Corporation, 304 NLRB 939 (1991); Westinghouse Electric Corporation, 236 NLRB 1290 (1978); .

d. Community of Interest Considerations

The Employer does not dispute the appropriateness of adding the DIO classification to the unit, other than its assertion that the position is supervisory and/or managerial. The record evidences that several factors create a community of interest between the DIOs and unit members. DIOs work in the same area as other unit employees and share common supervision. Their work is integrally related to the work of other unit employees as they work on projects together as part of a "work group." Frequent, if not daily, contact occurs between the DIOs and unit members. There exists a centralized control of labor relations governing all employees of the Employer. Like other bargaining unit employees, the DIOs are salaried and earn between \$30,000 and \$60,000 per annum. The salary range of bargaining unit employees is contractual and based upon levels ranging from \$11,000 to \$67,000. The fact that some of the DIO benefits differ from unit members is insufficient to overcome the community of interest with unit members established by the other factors they share in common. Moreover, it appears that many of the benefits are similar; it is only the level of benefits that differs. The above factors indicate that a community of interest exists between unit members and the DIOs. Consequently, the existing unit shall be clarified to include the Data Integrator Officer position.

C. Case 25-UC-225 (formerly Case 24-UC-206)

1. Statement of Facts

This case involves two classifications within the Information Technology Solutions Department (ITS). ITS Department is a business unit shared by the Employer and its wireless component, Verizon. Its purpose is to provide information solutions to problems and to support the installation of new technology for both the Employer and Verizon. This support occurs from the desktop computer to the network to the servers to communications between companies. The ITS Department is divided into six areas, each headed by a Director. These areas include the Infrastructure and Customer Service Department and the Information Technology Operations Department. One of the classifications at issue in this case is the Information Network Specialist, which reports to the Manager of Network and Technical Support in the Infrastructure and Customer Service Department. Currently there are three to four employees who occupy this classification. The other classification at issue is Distributed Systems Administrator (System Administrator). This classification is within the Information Technology Operations Department. There are currently eight employees in this position.

a. Information Network Specialist

The Employer's information network is comprised of a series of microcomputers connected by cable. The computer center, along with servers and the network connecting the microcomputers is called the Local Area Network. The Employer's computer center is located on the fifth floor of its main office building. On each floor of this building and the other buildings which comprise the Employer's complex, computers are connected via switches which are connected to central switches located in the computer center. Employees located at other sites on the island are also part of the Employer's internal network and are connected via routers. Routers are located at each remote location and at the computer center. The network also has a "firewall" which allows internal users to access the internet and prevents access to the Employer's information by outside persons. The firewall is located at the main office building on the fifth and third floors. This firewall is a series of rules configured to permit or deny access to the internet or permit or deny access to the Employer's network by outside entities.

The Information Network Specialists are supervised by the Network and Technical Support Manager. This Manager also supervises Computer Technicians, Support Technicians, Process Analysts, and Programmer Analysts. These positions are bargaining unit positions. The most recent job description for the Information Network Specialist position was issued in November 2000.¹⁸ This was a new job description. It indicates that the functions of the job had been performed in the past, but were not included in any official job description.¹⁹ The basic

¹⁸ The Employer's motion to dismiss the Union's petition which involves this classification was denied by order of the undersigned dated May 8, 2003.

¹⁹ No party contends that the Information Network Specialist is a newly established job classification.

functions of the Information Network Specialists have been performed for approximately five years, since 1997 or 1998.

The main functions of the Information Network Specialist are to configure, install and maintain the network equipment such as routers, switches and cables. In addition, the Information Network Specialists monitor the network in order to ensure that the network is working up to its potential. The Information Network Specialist has various tools at his/her disposal in order to monitor the network system and firewall. The Employer has utilized a Local Area Network for approximately six years. Commencing in December 2000 through January 2001, the Employer updated the system by going from 10 megabytes of velocity to 1 gigabyte. With this increase in speed, the Employer, as well as the Information Network Specialist, have more advanced and powerful tools with which to monitor the network. In addition, the Employer now has the optivity tool with which the Information Network Specialists can configure switches and routers remotely.

The bulk of the Information Network Specialist's day appears to be spent installing, configuring, and performing maintenance on the equipment, mostly outside of the computer center where their work area is located. The monitoring function of the position is not necessarily performed on a daily basis and may consist of 20 percent of the Information Network Specialists weekly work. To install and configure equipment, the Information Network Specialist physically installs the switches, routers and cable. Configuration of the equipment is the technical programming of the parameters of the switches, routers and firewalls. The Information Network Specialists use laptops to configure the switches and routers and to verify that service is functioning. Each piece of equipment, including switches, routers, and the firewall, has a password so that it can be accessed for configuration. The Information Network Specialists are given the passwords by their supervisor to enable them to view and at times modify the equipment. These passwords are maintained by Data Security in the Employer's Security Department. Additionally, each piece of equipment and each personal computer has an "IP address" to and from which information is transmitted. Each IP address is unique and is recorded within the piece of equipment. These addresses may be assigned by the Information Network Specialists.

When Information Network Specialists monitor the network they use programs such as Vital Suite which sounds an alarm when a piece of equipment fails, and a "sniffer." The "sniffer" is used to view information via a monitor as the information passes through the network in order for the Information Network Specialist to determine if there is a "broadcast storm of messages" impairing the network's efficiency. In addition, these programs may enable the Information Network Specialist to determine the IP address from which a virus has infiltrated the system. Information Network Specialists do not have access to the information stored on the servers, only to view information passing through the network.

b. Distributed System Administrator

The Employer's distributed system consists of a collection of computers linked into a network and equipped with distributed system software. This system allows software and

information to be distributed among servers and allows applications and information to be shared among computers on the network. This is in contrast to a centralized system which consists of computer terminals and a mainframe which runs all applications.

The main function of the Distributed System Administrators (hereinafter called System Administrators), who are members of the unit represented by the Petitioner, is to keep the system operating at its most efficient level, available to offer the service required by users. It appears that this position has existed since approximately 1997 and the most recent job description is dated October 13, 1999 (which replaced a March 4, 1998 job description). The position of System Administrator is in the Information Technology Operations Department of the Information Technology Solutions Division. Although it is not entirely clear from the record, it appears that there are currently eight employees who occupy the Systems Administrator classification. The Employer's organizational chart suggests that some of the employees who occupy this classification report to the Distributed System Support Supervisor while others report to a Manager in the Department. The employees work on the fifth floor of the Employer's main office building which also houses the computer center.

The Employer currently has approximately 250 servers which support several different application platforms. Prior to 2000 the Employer had less than 50 servers. According to the Employer, the increase in servers resulted from various factors, including the privatization of the Company which led to an influx of capital; the use of the Employer's resources by the States; the elimination of the paper-based office; and the increased use of e-mail. According to the System Administrator's job description, its duties include installing new applications and programs; maintaining applications and programs by installing patches and upgrades; providing technical support to internal users/clients who use the system; and developing and implementing backup procedures for the system and components. Other duties of the position include research and knowledge of the products and systems used by platforms. Each System Administrator is responsible for the maintenance of a particular platform such as the e-mail platform (Lotus Notes), the billing platform, the anti-virus platform, and the windows platform. However, the Employer has plans to cross-train all System Administrators on all platforms so they can substitute in each other's absence. In order to perform these duties the System Administrators have passwords which provide access to the servers and systems. This access not only allows them to install and maintain applications and programs on the servers but it also allows them access to the data stored on each server to which they have the password. The System Administrator may connect to the server and enter any individual directory and open, delete, and/or modify the data located on the directory. Although not specified in the job description, it appears that the System Administrator spends some portion of time monitoring the system and servers to ensure that the users and applications have the appropriate amount of space to operate. In doing this, the System Administrators may review various logs which depict space utilization. In addition, they may establish an alarm to notify them of excessive space being consumed on a server. The System Administrator may also review logs depicting log-in attempts on the servers, as requested by the Security Department. In providing technical support to internal users/clients the System Administrator may access an individual's personal computer remotely through an emulator and determine the individual's problems and correct them. The System Administrator also ensures the integrity of the Company's data through the use of backup systems. The amount of time spent monitoring the system versus installing and maintaining applications, and

providing technical assistance to users/clients varies day to day and is dependent upon the particular server for which the System Administrator has responsibility. The System Administrators also answer inquiries from unit members who man the Employer's help desk as well as employees who are internal users of the Employer's computer system.

2. Discussion

Unit clarification is not appropriate for upsetting an established history of parties concerning the unit placement of classifications, Bethlehem Steel Corporation, 329 NLRB 243, 243 (1999), citing Union Electric Co., 217 NLRB 666, 667 (1975). Thus, where a position or classification has historically been included in a bargaining unit, and where there have not been recent and substantial changes what would call into question the unit placement of the classification, the Board generally will not entertain a petition to clarify the status of the position, regardless of when in the parties' bargaining cycle the unit clarification petition is filed, Bethlehem Steel Corporation, *Supra*; Plough, Inc., 203 NLRB 818, 819, n. 4 (1973).

In the case at hand, the positions of Information Network Specialist and Distributed System Administrator have existed since about 1997 and have historically been included in the bargaining unit. In order for the Board to clarify the existing unit to now exclude these positions, the evidence must show that the functions performed by these positions have undergone recent and substantial changes to such a degree that the classifications no longer share a community of interest with unit members. The Employer contends that substantial changes in technology have necessitated changes in the functions of the Information Network Specialist and Distributed System Administrator positions to such an extent that the positions must now be excluded from the unit on grounds that persons in these positions are statutory guards, and/or managerial and/or confidential employees. The record evidence fails to establish this, however.

a. Guard Status

The Employer contends that because of the technological changes which have occurred since 2000, the functions of the Information Network Specialist and Distributed System Administrator now encompass duties comparable to those of guards as defined in Section 9(b)(3) of the Act. Section 9(b)(3) prohibits a labor organization from representing guards if it also admits non-guards to its membership. Section 9(b)(3) defines a guard as “any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premise.” (emphasis added). It is clear from the record, and no party contends to the contrary, that neither the Information Network Specialists nor the System Administrators guard physical property or people. The Employer concedes that case law concerning guards is limited to employees who protect physical property, and that there is no Board law which stands for the proposition that employees who are in charge of protecting information generated and stored in computers are statutory guards. Nonetheless, the Employer urges that the Board adopt such a holding.

In the instant case, any guard-like functions performed by the Information Network Specialists and the System Administrators are merely incidental to their primary job functions. The Information Network Specialist's primary job function is to install and maintain the

equipment of the LAN so that the network runs efficiently. As a by-product of this primary function, the Information Network Specialist may possess passwords which enable him/her to access the firewalls and the Employer's entire computer system. The Information Network Specialist is also able to access the system from remote sites. Simply possessing access to information stored and generated by the Employer's computer system does not make either the Information Network Specialist or the System Administrators guards under the Act. In other contexts, the Board has found that employees whose work gives them potential access to confidential information of an employer are not guards. For example, maintenance employees who are in possession of computerized access cards which afford them entry to all parts of an employer's facility, even areas which house confidential information, are not guards. Fleming Foods, 313 NLRB 948, 950 (1994). While the Information Network Specialist may perform research regarding network security issues, the request for such research originates from the Employer's Security Department or the Employer's Security Council, created after September 11, 2001.²⁰ Any investigation into the misuse of the network, such as an investigation as to the identity or IP address from which information is being sent, are merely incidental to the Information Network Specialist's primary job functions. These investigations are not initiated by the Information Network Specialists, but are assigned most often by the Employer's Security Department. The record contains testimony about the ability of the Information Network Specialist to provide unauthorized users access to various networks and to access the Employer's system by remote sites. However, there is not one instance cited where the Employer has found this to have occurred. Nor does the record establish that the Information Network Specialist has any authority to do so. The Security Department also reviews router and firewall logs and is able to detect any unauthorized attempt to access the system from remote sites.

The System Administrator's primary function is to keep the servers and the system functioning at its most efficient level, available to offer the service required by the Company's internal users. The Employer placed into the record several examples of the System Administrator's discovery of misuse of the system by employees. This discovery, however, was incidental to the employees' duties of monitoring the space and files on the server. The System Administrator's purpose in monitoring the system is not to enforce rules or investigate any infraction of rules, but to ensure the efficiency of the system. The System Administrator only searches for unauthorized files, such as music, pictures and movies if there is an indication of space or performance problems on the server and/or system. In any case, the System Administrator has no authority to take any action upon the discovery of misuse of the system; rather, s/he reports the misuse to his/her supervisor. Ultimately, it is the Employer's Security Department which has an Information Security Division to enforce and investigate violations of the Employer's policies regarding misuse of the system. The Security Department may request the System Administrator's assistance during an investigation similar to those instances provided in the record. However, such investigations again are incidental to the System Administrator's primary function of ensuring the integrity of the system. Indeed, these "investigations" are generally requested by the Security Department or the System Administrators' supervisor as in

²⁰ Although there was some testimony which suggests that Information Network Specialists are members of this Council, the record indicates that it is actually the Network Manager who is a member of the Council.

the case of the Manager requesting that the System Administrator conduct a search of e-mails to see if there was one being sent regarding the Union and any plans by the Union to picket. Any action taken as a result of discovering unauthorized e-mails is taken by the Security Department.

The System Administrator's access to the firewalls, the anti-virus system, the e-mail system and all data stored on the servers does not necessitate a finding of guard status. Nor does the fact that System Administrators limited access to the system by unauthorized persons through the firewalls and anti-virus programs render the System Administrators guards under Section 9(b)(3). See Liberty Owners Corp., 318 NLRB 308 (1995) (doorpersons and elevator operators not found to be guards even though they ask unauthorized persons to leave the employer's premises and enforce no-loitering and no-smoking policies); Ford Motor Co., 116 NLRB 1995 (1956) (receptionist not guard even though she did not permit unauthorized employees to pass through lobby, immediately reported to supervisor any violation of company security rules, checked in and issued passes to visitors, and required clearance passes for incoming and outgoing packages). Based upon the facts above, the record evidence does not support a finding that either the Information Network Specialist or the System Administrator perform functions which would render them guards within the meaning of Section 9(b)(3) of the Act.

b. Confidential and Managerial Status

Further, the record does not support a finding that either the Information Network Specialist or the System Administrator performs duties which makes them confidential employees. The Board employs a "labor nexus test" to determine those employees upon which to confer confidential status. Under this "labor nexus test" confidential employees are only those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. NLRB v. Hendricks County Rural Electric Corp., 454 U.S. 170, 189 (1981); Crest Mark Packing Co., 283 NLRB 999 (1987); E & L Transport Company, 315 NLRB 303 (1994). In the instant case both classifications have access to personnel records and/or confidential information such as that pertaining to contract negotiations. However, accessing this information is not part of their job duties; nor is the mere ability to access such information sufficient to establish a "labor nexus". The Bakersfield Californian, 316 NLRB 1211 (1995); Rhode Island Hospital, 313 NLRB 343 (1993). There is no evidence that any Information Network Specialist or System Administrator assists or acts in a confidential capacity to persons involved in the labor relations of the Employer. The positions of Information Network Specialist and System Administrator and their access to such information is more akin to an employee who is in a position to overhear conversations relating to labor relations due to his job location. Arguments that such employees be excluded as confidential employees have uniformly been rejected. See Swift & Co., 119 NLRB 1556 (1958).

The record is devoid of any evidence that employees in these positions "formulate and effectuate management policies by expressing and making operative the decisions of their employer." Therefore, they are not managerial employees, either.

Thus, the totality of record evidence indicates that any changes in the functions performed by the Information Network Specialist and System Administrator positions have not been so substantial as to negate their community of interest with other unit members. The

evidence also fails to support the contentions that the positions are guards, confidential, or managerial employees. Accordingly, the unit shall not be clarified to remove the positions of Information Network Specialist and Distributed System Administrator from the unit, and the petition in Case 25-UC-225 shall be dismissed.

VI. ORDER

Based upon the above findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

- a. the classification of Administrator Management Staffing shall not be accreted to the existing unit represented by the Petitioner-Union, and the petition in Case 25-UC-223 is dismissed;
- b. in Case 25-UC-224 the unit represented by the Petitioner-Union shall be clarified to include the classification of Data Integrator Officer; and
- c. the unit represented by the Petitioner-Union shall not be clarified to remove the classifications of Information Network Specialist and Distributed Systems Administrator from it, and the petition in Case 25-UC-225 is dismissed.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 7, 2003.

SIGNED AT Indianapolis, Indiana, this 23rd day of September, 2003.

/s/ Roberto G. Chavarry

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