

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

COX ENTERPRISES, INC. d/b/a THE
ATLANTA JOURNAL-CONSTITUTION¹

Employer

and

Case 10-RC-15421

GRAPHIC COMMUNICATIONS UNION
LOCAL 527-S

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

Cox Enterprises, Inc. d/b/a The Atlanta Journal-Constitution, the Employer herein, is a Delaware corporation with an office and place of business located at 3630 North Parkway, Cumming, Georgia (herein the Cumming facility). The Petitioner, Graphic Communications Union Local 527-S, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of the following employees at the Cumming facility: all nonmanagement, nonclerk circulation department employees, including all employees in the following job classifications: part-time district coordinators; part-time subdistributor hourly; distributor hourly; Constitution distributor part-time; per-piece distributor/part-time; per-piece general worker part-time; general worker; couriers (and distributors who

¹ The name of the Employer appears as amended at the hearing.

function as couriers); excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.² A hearing officer of the Board held a hearing and the parties submitted post-hearing briefs which were duly considered.

At the hearing the Employer argued that the unit sought is “arbitrary in nature” and is therefore inappropriate, and that the appropriate unit is a unit embracing all employees in the Employer’s Circulation Department. The Employer essentially objects to the scope of the unit sought, contending that employees in many other facilities and job classifications must be included.³ The Petitioner counters that the single facility unit is appropriate.⁴ There are approximately 69 employees in the unit sought by the Petitioner. There are about 3800 employees in the Circulation Department unit urged by the Employer. I have considered the evidence, arguments, and post-hearing briefs submitted by the parties. As discussed below, I have concluded that the single-facility unit sought by the Petitioner is appropriate, and I shall, therefore, direct an election in that unit.

To provide a context for my discussion of these issues, I will first provide a general overview of the Employer’s operations, followed by a brief description of the Employer’s operation at the Cumming facility, the unit sought by the Petitioner, and an outline of the entire Circulation Department, the broader unit urged by the Employer. Finally, the facts and reasoning that support my conclusion that the single-facility unit is appropriate will be detailed.

² The unit description is in accord with the Petitioner’s amendment of the petition at the hearing. The Petitioner does not seek the inclusion of employees in the clerk-typist position.

³ In the event the Board finds a single-facility unit to be appropriate, the Employer does not object to the composition of the unit sought by the Petitioner.

⁴ The Petitioner is unwilling to proceed to an election in any other unit.

I. GENERAL OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer is engaged in the production, printing and distribution of the Atlanta-Journal Constitution (here "the paper" or "the AJC"), a major daily newspaper. There are a number of departments involved in the enterprise, including news; production; circulation (including distribution and circulation sales); advertising and marketing. The Employer's central offices are located in downtown Atlanta. The following departments are housed in the downtown offices: news; advertising; sales, executive offices; and business offices. In addition, the Employer maintains two printing facilities, one located in downtown Atlanta, and the other located about 10 to 20 miles away in Gwinnett county.⁵

The Employer publishes and distributes several editions of the paper each day and on weekends, with daily circulation of over 400,000 and Sunday circulation of 630,000. The Employer also prints and distributes third party newspapers, including the Wall Street Journal and the New York Times. The Employer also prints and distributes "AJC Direct" (called Buyer's Edge), an advertising jacket with advertising inserts delivered solely to nonsubscribers on Thursdays in certain selected market areas in Georgia.⁶ Another product produced, printed and distributed by the Employer is Access Atlanta, a booklet detailing weekly events in Atlanta, distributed once a week on Thursdays.

The Employer distributes the AJC on a daily basis to approximately 350,000 "home delivery" customers, and to 15,000 retail customers and vending outlets, called

⁵ All mechanical inserting is also done at the Gwinnett printing facility.

⁶ The Employer also prints another advertisement-only product which is distributed throughout the total market area. The Circulation Operations Department has no responsibility for this product; it is printed at a facility near Hartsfield-Jackson International Airport, about 10 miles south of downtown Atlanta, and is distributed through regular mail by the U.S. Postal Service.

“single copy” customers (or single copy distribution).⁷ The newspaper is distributed in the 27-county greater metropolitan Atlanta area through distribution facilities leased by the Employer, from approximately 40+ “branch office” locations. These 40+ branch office locations are located within a 50 to 60-mile radius from downtown Atlanta, with the farthest facility due south in Griffin, Georgia, at least 30 miles from downtown; the farthest due north in Woodstock, Georgia, at least 35 miles from downtown; the farthest due east in Athens, Georgia, at least 60 miles from downtown; and the farthest due west in Cedartown, Georgia, at least 50 miles from downtown. Third party newspapers are also distributed through this network, as well as “AJC Direct,” albeit only from about a dozen locations in the 27-county area.

In addition to the 40+ branch locations described above, the Employer also maintains a number of distribution facilities outside this 27-county area for distribution of the paper throughout the State of Georgia.⁸ The record does not reveal how these locations are organized, and whether single copy and home delivery distribution is made out of the same branch locations. In the five-county area closest to downtown Atlanta (Fulton, Dekalb, Cobb, Clayton, and Gwinnett), single copy distribution and home delivery distribution are handled mostly in separate branch office locations. In the outer

⁷ “Single copy” distribution includes sales to large retail customers, like supermarket and drugstore chains, and to smaller retail outlets, like convenience stores, and sales through freestanding vending machines.

⁸ There are apparently over 50 branch office location addresses in the “State” distribution area outside the 27-county area, but it is not clear how many of these addresses are actual distribution facilities, and how many are “drop-off” points where papers are picked up by independent distributors. There are over 300 independent distributors who deliver newspapers in the State distribution area (see discussion *infra*). The Employer contends they should be excluded because they are independent contractors. The Petitioner took no position on this issue. In view of my determination that the single-facility unit is appropriate, I need not resolve this question.

22 counties (where the Cumming facility is located)⁹, home delivery and single copy distribution are usually handled in the same locations.

II. THE CUMMING FACILITY

As is noted above, the Petitioner seeks an election among nonmanagement, nonclerk circulation department employees employed by the Employer at the Cumming facility, which is located about 30 miles northeast of downtown Atlanta in Forsyth county. The 69 unit employees at this facility are basically responsible for all distribution of the AJC and third party newspapers in Forsyth county, one of the outer 22 counties in the greater Atlanta metropolitan area. Forsyth county is not one of the Employer's "selected market areas," and the "AJC Direct" product is therefore not distributed from the Cumming facility.¹⁰ All of the 69 unit employees at the Cumming facility work on a part-time basis (usually 25 to 29 hours per week). Of the 69 employees, there are about 17 single copy distributors and 42 home delivery distributors. There are also about 5 general workers and 5 district coordinators.

The Employer's policy throughout the system is to deliver papers no later than 6:30 AM on weekdays, and no later than 8 AM on Saturdays and Sundays. Accordingly, most of the branch office locations in the 27-county area usually open at some time between midnight and 2 AM, and close between 2 PM and 5 PM. The hours of operation at the Cumming facility are midnight to 5 PM on weekdays and Sundays, and 12:30 AM

⁹ The outer 22 counties are: Barrow; Bartow; Butts; Carroll; Cherokee; Clarke; Coweta; Douglas; Fayette; Floyd; Forsyth; Hall; Haralson; Henry; Jackson; Newton; Oconee; Paulding; Polk; Rockdale; Spaulding; and Walton.

¹⁰ About 250 to 300 employees are involved in the distribution of "AJC Direct," the advertising jacket delivered to nonsubscribers. No AJC Direct employees are based at the Cumming facility; they are based (along with AJC Direct managers and supervisors) in a dozen or so of the 40+ branch locations within the 27-county greater Atlanta metropolitan area. These employees also deliver Access Atlanta to single copy outlets and vending machines. The Employer would include the "AJC Direct" employees in the overall Circulation Department unit. See discussion *infra*.

to 6 PM on Saturdays. There are several different editions of the paper. For example, on Monday through Friday, the Cumming facility delivers papers printed at around 11:30 PM, while in other counties (like the five closest to downtown Atlanta, as well as in Cherokee, Fayette, and Rockdale counties), later editions (printed at 1 AM or 2 AM) are delivered. On Saturday, the Cumming facility delivers a later edition printed at 1 AM. Most facilities in the five counties closest to downtown Atlanta deliver several editions of the Sunday paper, including the “Bulldog” edition, which is delivered on Saturday. Most of the facilities in the outer 22 counties, including the Cumming facility, deliver only the latest edition on Sunday mornings, the “5-Star.”¹¹

On a typical day at the Cumming facility, the single copy distributors, home delivery distributors, and most of the general workers, district coordinators and local supervisory staff report to work some time around midnight. Papers are stacked in computer-generated numbers on pallets at the printing facility and are delivered most days around 11:30 PM to the Cumming facility, where they are unloaded by the drivers. On a daily basis, the Cumming facility, like all branch locations, receives electronically transferred manifests of customer names and addresses for each route (generated by the company-wide CIS or Discus system¹²), and copies are given to distributors on a daily basis. The distributors take the number of papers they need for their routes. The home delivery distributors assemble and bag their own papers; the general workers are responsible for putting together newspapers for single copy customers, which are not bagged.

¹¹ The editions differ to a certain degree in editorial content. There are also differences in advertising content in different geographic areas.

¹² The system is updated centrally on a regular basis with information pertaining to new subscribers, stopped subscribers, customer complaints, route changes, etc.

Like most single copy distributors throughout the Employer's distribution network, the 17 single copy distributors at the Cumming facility make deliveries to retail customers and vending outlets on their assigned routes with the aid of a handheld palm pilot (Newstrack)¹³, and are paid on an hourly basis. The five general workers at the Cumming facility, like most general workers throughout the system, are responsible for the cleanliness of the branch, for assembling papers for single copy distributors and for assisting in getting the newspapers out of the warehouse. Like the single copy distributors, the general workers are paid on an hourly basis.

Single copy distribution from every branch location, including the Cumming facility, is directly supervised by at least one on-site Area Manager. The one Area Manager at the Cumming facility, like most in this position throughout the system, is responsible for all aspects of the operation related to single copy distribution, including: assignment of routes; warehouse inserting operations; maintenance of warehouse safety rules; monitoring the timely departure of newspapers to the field; the ordering of an adequate number of papers for single copy routes; the auditing of invoices to customers; the collection of accounts; and the correct placement of all point of purchase material within the delivery area. According to the Employer's job description for this position, the Area Manager has "the authority to hire, transfer, reward, promote, suspend, discharge, adjust employee grievances or recommend appropriate action," and is required to use "independent judgment" in the performance of his duties.¹⁴

¹³ Handheld palm pilots are also used by "AJC Direct" distributors.

¹⁴ The parties stipulated that all Area Managers, including the Area Manager at the Cumming facility, Saed Zohorovic, are supervisors within the meaning of Section 2(11) and they are therefore excluded from the unit.

The 42 home delivery distributors at the Cumming facility, after assembling and bagging their papers, make deliveries to home delivery customers on their assigned routes. The Employer's home delivery distributors throughout the system, including those at the Cumming facility, are paid on a per piece basis, utilizing a formula based on the number of newspapers distributed. They also receive additional compensation for inserts, mileage reimbursement, and a route subsidy if necessary to maintain a predetermined compensation level equivalent to other employees who are paid at an hourly rate.

The 42 home delivery distributors are directly supervised by three District Managers. The geographic delivery area is organized by zones, and each District Manager throughout the Employer's system is responsible for home deliveries to one or more zones. The Employer's job description for this position shows that the District Managers are responsible for the following: hire, train, motivate, and evaluate performance of home delivery distributors; maintain updated and accurate route delivery lists on a daily basis; check and adjust all home delivery routes for current mileage, and circulation; review pay reports submitted by home delivery distributors; submit and enter accurate payroll reports into the computerized network system; maintain acceptable levels of customer satisfaction. The three District Managers at the Cumming facility are assisted by five district coordinators.¹⁵ Each coordinator (like most throughout the Employer's system) is generally assigned to a specific District Manager and assists the Manager in the oversight of deliveries in the assigned zone(s). The coordinators also

¹⁵ The parties stipulated that all District Managers throughout the system, including the three at the Cumming facility (Tammy Hendricks, Randy O'Dell, and Robert Smith), are supervisors within the meaning of Section 2(11) and they are therefore excluded from the unit. With respect to district coordinators, the parties stipulated and I find that all should be *included* in the unit.

from time to time deliver papers in open routes, substitute for absent distributors, and make second deliveries to customers as a result of customer-reported service errors relayed from the Employer's downtown customer service employees. See discussion *infra*. They also may assist individual distributors in bagging papers for their routes.

The overall supervisor for the entire operation at the Cumming facility is the Zone Manager.¹⁶ All lower level supervisors, including the Area Manager and the three District Managers, report to her. The Zone Manager typically works from midnight to 10 AM, but could work to 1 PM or 2 PM, if circumstances warranted her presence at the facility. The Zone Manager is the highest Employer official at the Cumming facility when the unit employees begin working and leave for delivery on their routes. There is a higher Employer official with an office at the Cumming facility, the Division Manager¹⁷, who is responsible for three branch locations: Cumming; Winder, Georgia (located at least 25 miles southeast of Cumming) and Gainesville, Georgia (located at least 25 miles northeast of Cumming). The record shows that the Division Manager usually works from 8 AM to 5 PM, and divides his time among the three branch locations for which he is responsible.

The Zone Manager is responsible for all aspects of both the single copy and home delivery operations, and payroll. Although the record does not contain the Employer's job description for this position, the evidence shows that the Zone Manager exercises more extensive authority over employees than the Area Manager and the District

¹⁶ The parties stipulated that the Zone Manager at the Cumming facility, Linda Kozlowski, as well as all other Zone Managers throughout the network, are supervisors within the meaning of Section 2(11) and they are therefore excluded from the unit.

¹⁷ The parties stipulated that the Division Manager over the Cumming facility, Roy Pennington, as well as all other Division Managers within the system, are supervisors within the meaning of Section 2(11) and they are therefore excluded from the unit.

Managers. Further, the evidence establishes that the Zone Manager regularly exercises this authority without clearance from the Division Manager or higher corporate management. See discussion *infra*.

The unit employees at the Cumming facility do not have regular contact on a daily basis with employees at any other branch. Indeed, the only evidence in the record on this point is that from time to time, the Cumming facility is “short” on newspapers, and a District Manager, district coordinator, or general worker will drive to another branch located on Shiloh Road about 10 to 20 miles away, where additional papers are left on the loading dock for pick-up. There is no evidence that distributors from the Cumming facility are ever called upon to make route deliveries out of any other branch locations, or *vice versa*.¹⁸ Further, there is no evidence that supervisors from any other branches regularly supervise Cumming facility employees, or that supervisors from the Cumming facility supervise employees at other branches.

There is also no evidence of any temporary transfers of unit employees in or out of the Cumming facility. On one occasion in February last year, an Area Manager from the North Fulton branch worked for a period at the Cumming facility, but this was evidently a voluntary temporary transfer. There is evidence regarding voluntary transfers in and out of other branches, most of which involved employees from the Dekalb single copy facility and the Central Fulton single copy facility who worked for one day at other branch locations on a handful of dates last year.¹⁹ None of this evidence, however, shows

¹⁸ Some time in August, 2003, the Employer offered bonuses to anyone who would assist in an emergency bagging operation at the Gwinnett facility for a few days; 2 supervisors from the Cumming facility volunteered, along with one other individual (who may or may not have been a unit employee).

¹⁹ The dates are August 26; September 2; September 10; September 17; September 24; September 30; and October 7. See Employer Exhibit 13. In addition, there is brief record mention that on Thanksgiving Day, 2003, “a number of folks” from the bagging operation at AJC Direct assisted in assembling papers at the North Fulton and South Fulton facilities.

any Cumming facility employees working at other branches, or *vice versa*. There is scant evidence, as well, regarding permanent transfers. Evidently, there has been one permanent transfer into the Cumming facility and one permanent voluntary transfer out of the Cumming facility within the last year or so. There is no Employer- or department-wide system for posting of unit or supervisory job openings.

III. THE CIRCULATION DEPARTMENT

As is noted above, the Employer offered extensive evidence at the hearing that the appropriate unit must include about 3800 employees in the Circulation Department. The chief official responsible for circulation administration is Jeff Beckley, Vice President for Circulation. Beckley reports directly to the top officials of the Employer, the general manager and the publisher. The record reflects that the Circulation Department performs distribution and sales functions, with eight executives reporting directly to Beckley. Beckley and the eight executives who report directly to him are located in the Employer's downtown offices. The eight "direct" reports to Vice President Beckley are: Bill Spyers, Circulation Director; Kelly Roberts, Circulation Director/Retail Sales; Gary Brockman, Circulation Director/Technology; Caroline Walker, Employee Development Manager; Mark Klein, Circulation Director/Research & Marketing; Tommie McLeod Circulation Director/Subscriber Sales; Michelle Smith, Circulation Administrative Manager; and Tarrance Coleman, Subscriber Service Department. The Employer contends that employees working under six of these executives must be included in the unit.²⁰

²⁰ The parties stipulated that all the employees working under Michelle Smith, the Circulation Administrative Manager, are supervisory, managerial or confidential employees and therefore should not be included. There was no evidence presented at the hearing regarding any of the employees who work under Mark Klein, Circulation Director/Research & Marketing, which employees the Employer would also exclude from the unit.

A. BILL SPYERS, CIRCULATION DIRECTOR

The Cumming facility performs distribution functions²¹ and falls within the purview of Bill Spyers, Circulation Director, one of the eight “direct” reports to Vice President Beckley. Spyers has general oversight responsibilities for *most* of the distribution in the 27-county area described above²², which includes the Cumming facility. He is also responsible for distribution outside this area, called “State” distribution. He also oversees the distribution of “AJC Direct,” the advertising jacket distributed to nonsubscribers, and is responsible for rack operations (equipment needed for single copy distribution), and traffic.

Moving down the corporate hierarchy, there are five executives (all of whom have offices in downtown Atlanta) who are “direct” reports to Spyers in the areas mentioned above, including Charles Beeching, the Circulation Manager for *some* of the distribution within the 27-county area described above; Tom Sheppard, State Circulation Manager for distribution within the state outside the 27-county area; Mike Sims, AJC Direct Manager; Hilda Hines, Racks Operations Manager; and Mike Gordon, Traffic Manager.

The Employer would include about 2800 to 2900 employees working under Spyers’ aegis, and within the areas of four of the five executives discussed above who are

²¹ The single copy distributors and home delivery distributors are not required to perform any direct sales functions. They are, however, required to maintain good customer relations and to avoid customer complaints, by limiting delivery errors (i.e., late delivery, or missed delivery, or delivery of damaged papers).

²² The overall responsibility for distribution in the five-county area closest to downtown Atlanta is divided between Spyers, and Kelly Roberts, Circulation Director/Retail Sales, one of the eight “direct” reports to Vice President Beckley. Roberts oversees single copy distribution in the five-county area. See discussion *infra*.

“direct” reports to him.²³ It is useful to turn first to the operations under Charles Beeching, Circulation Manager for Distribution Operations, as the Cumming facility falls within his jurisdiction. Beeching is responsible for all home delivery distribution in the 40+ branch location network of Greater Metropolitan Atlanta *and* for single copy distribution within 22 of 27 counties in the aforesaid area. The total number of employees the Employer would include in the unit in Beeching’s area is approximately 2450.

There are four executives (called Circulation Managers) under Beeching who oversee home delivery and single copy distribution in four different geographic areas: (1) 22 Counties East; (2) 22 Counties West; (3) Home Delivery North; and (4) Home Delivery South. The direct report to Beeching for 22 Counties East, the area in which the Cumming facility is located, is Circulation Manager Pat Bartik. (Bartik’s office is located at the Winder, Georgia facility.) There are eight facilities within 22 Counties East, divided into three different divisions (with three Division Managers reporting to Bartik, including the Division Manager for the Cumming facility, Roy Pennington), with a total of approximately 465 employees, all of whom work *part-time*.

Division 9 in 22 Counties East includes the Cumming facility, Winder and Gainesville (and one Zone Manager at each facility, including the Zone Manager for the Cumming facility, Linda Kozlowski), with a total of approximately 165 part-time distributors, general workers and district coordinators, including the 69 at the Cumming facility. Division 3 in 22 Counties East includes facilities in Athens (where the Division

²³ The parties stipulated that the four individuals who work in Traffic under Mike Gordon, the fifth “direct” report to Spyers, are supervisors, managerial employees or confidential employees and therefore should be excluded. Their positions are: Traffic Operations Manager; Supervisor; Data Entry; and Traffic Systems Coordinator.

Manager has an office), Monroe, Georgia and Covington, Georgia (one Zone Manager at each facility), with a total of approximately 145 part-time distributors, general workers and district coordinators. The third division in Bartik's area includes facilities in McDonough, Georgia and Conyers, Georgia (one Zone Manager at each facility), with a total of approximately 155 part-time distributors, general workers, and district coordinators.

Also under Beeching is the Circulation Manager for 22 Counties West, Deborah Adamson. There are 12 locations within this area, also divided into three different divisions (with three Division Managers reporting to Adamson), with a total of approximately 560 employees, all of whom work *part-time*. One division includes facilities at Griffin, Georgia, Jackson, Georgia, Fayetteville, Georgia and Newnan, Georgia and a Zone Manager at each facility), with a total of approximately 200 part-time distributors, general workers and district coordinators. Another division under Adamson in 22 Counties West covers facilities in Bremen, Georgia, Cedartown, Georgia, Dallas, Georgia, Douglasville, Georgia and Carrollton, Georgia, (but apparently only four Zone Managers in total for the five locations), with a total of approximately 200 part-time distributors, district coordinators, and general workers. The third division under Adamson covers three facilities at Woodstock, Georgia, Cartersville, Georgia and Rome, Georgia (a Zone Manager at each facility), with a total of approximately 155 part-time distributors, general workers and district coordinators.

Also under Beeching is the Circulation Manager for Home Delivery North, Paul Lawrence. Evidently, each of the eight locations within this area is designated as a Division, with eight Division Managers reporting to Lawrence, and eight "Lead" Zone

Managers (akin to a District Manager), for each location.²⁴ The facilities are located in Lawrenceville, Georgia, Snellville, Georgia, Duluth, Georgia, North Cobb, Georgia, South Cobb, Georgia, Alpharetta, Georgia, North Fulton, West Cobb, counties, with a total of approximately 734 employees (most of whom apparently work part-time except for 16 *full-time* district coordinators). Included are approximately 35 “service runners,” employees who redeliver newspapers to customers if the customer has complained about delivery.²⁵

Also reporting to Beeching is the Circulation Manager for Home Delivery South, Amy Orton, who is responsible for eight locations, including Mid-Fulton; South Fulton; South Dekalb; Clayton; Buckhead; Tucker; Doraville, and Druid Hills. Each location is evidently considered to be a division, and is headed by a Division Manager. Also, there is a “Lead” Zone Manager at each location, as well as a Zone Manager or several “Zone/District Managers,” as in Home Delivery North. There are a total of 693 distributors, general workers, and district coordinators, all of whom work part-time except for 12 full-time district coordinators.

There are about 350 to 400 additional employees under Spyers whom the Employer would include in the unit. Tom Sheppard is the State Circulation Manager, who is responsible for home delivery and single copy delivery in the State of Georgia *outside* the 27-county area in the greater Atlanta metropolitan area. As is noted above, it is not clear in the record how many facilities are located in this State area, though it is

²⁴ The record also reflects that there may be, at each of the eight locations a number of “Zone/District Managers.” The parties stipulated that Division Managers, Lead Zone Managers and Zone/District Managers are supervisors within the meaning of Section 2(11).

²⁵ The Employer would include service runners in the unit. There is no such classification in 22 County East (including the Cumming facility) under Circulation Manager Bartik, or 22 County West under Circulation Manager Adamson. In these facilities, the “service runner” job, redelivering newspapers, is performed by District Managers, district coordinators, or general workers.

clear Sheppard is responsible for three Divisions (Division 1, Division 4, and Division 6), each with its own Division Manager reporting to Sheppard. Further, the record shows there are seven Zone Managers reporting to the Division Manager in Division 1; six Zone Managers reporting to the Division Manager in Division 4; and six Zone Managers reporting to the Division Manager in Division 6, presumably reflecting a total of 19 actual facilities in the State area. As is noted above, there are over 300 independent distributors working in this area whom the Employer would exclude as independent contractors. However, the Employer would include the 33 district coordinators (including 3 full-time and 30 part-time) working in this State area.

Moving laterally from Sheppard in the hierarchy (as “direct” reports to Spyers) is Mike Sims, AJC Direct Manager. As previously stated, the “AJC Direct” product is the advertising jacket with advertising inserts delivered to nonsubscribers in certain select market areas. The employees who distribute “AJC Direct” work in selected facilities within the 27-county system and deliver to nonsubscribers using a handheld palm pilot (Newstrack). None work at the Cumming facility. The Employer would include in the unit approximately 351 employees working under Sims in AJC Direct, encompassing approximately 235 distributors (it is not clear whether they work full-time or part-time), 90 baggers, 24 unassigns, and 1 warehouse worker. There is one Division Manager and one “Lead” Manager who report directly to Sims, with nine “Managers” reporting to the Division Manager, and one Manager reporting to the “Lead” Manager.²⁶ Seven of the Managers reporting to the Division Manager are responsible for supervisors and employees working out of each of seven locations: Clayton; North Fulton; Conyers;

²⁶ The parties stipulated that Sims; the AJC Direct Division Manager; the AJC Direct Managers; the AJC Direct “Lead” Manager; and the AJC Direct supervisors are supervisors within the meaning of Section 2(11).

Snellville; North Cobb; Lawrenceville; and Cobb Single Copy. Another Manager reporting to the Division Manager is responsible for AJC Direct employees working at three other locations: Douglasville, Newnan, and Fayetteville. The ninth Manager who reports to the Division Manager is responsible for AJC Direct employees working at two other facilities: Dallas and South Cobb. The one Manager who reports to the “Lead” Manager is responsible for the AJC Direct operation at the Northmont facility in Duluth. There is also separate supervision for AJC Direct baggers at this facility (which also houses Duluth home delivery and Gwinnett county single copy distribution, discussed *infra*).

The last of the four “direct” reports to Spyers who oversees employees whom the Employer would include in the unit is Hilda Hines, Racks Operations Manager. The Employer would include one employee in the unit, the rack house technician, who is responsible for more complicated repairs for rack house equipment used by the branches for single copy sales.

B. KELLY ROBERTS, CIRCULATION DIRECTOR/RETAIL SALES

Kelly Roberts, Circulation Director/Retail Sales, like Bill Spyers, is a “direct” report to Vice President Beckley in the corporate hierarchy. Roberts is responsible for both the promotion of retail sales and merchandising efforts throughout the state and for distribution of some retail sales in the area closest to downtown Atlanta.²⁷ The Employer would include approximately 550 employees who work in areas he oversees, with the vast majority (approximately 520 to 530) working in single copy distribution. Roberts is responsible for single copy distribution in the five-county area closest to downtown

²⁷ According to the Employer, the distribution of single copy sales and the distribution of home delivery sales are much different operations; for this reason, these two areas are kept separate in this five-county area.

Atlanta, and two Circulation Managers report to him, Dave Patrick and Harry Murphy. There are two geographic divisions for this distribution, Single Copy North, headed by Circulation Manager Patrick; and Single Copy South, headed by Circulation Manager Murphy. Patrick and Murphy are responsible for distribution in their respective areas, as well as placement of newspapers within stores (including point-of-purchase materials). There are approximately 200 employees whom the Employer would include in Single Copy North, and approximately 320 employees whom the Employer would include in Single Copy South.

There are five locations within Single Copy South, including Dekalb; South Fulton; Hartsfield-Jackson International Airport; Central Fulton and Clayton. All but Clayton are “stand-alone” facilities for single copy distribution only. Clayton single copy shares the same facility as home delivery, separated by a divider. The Division Managers for each location report to Circulation Manager Murphy. There are two to four Area Managers at four of the five locations (excluding the Airport) who each report to their respective Division Managers. Below this level in Single Copy South, there are 7 to 14 “Route Managers”²⁸ at each of the five locations (including the Airport). There are about 320 employees in total at these five locations, including approximately 55 assistant route managers (including vacation relief), who work side-by-side with Route Managers and are involved in actual distribution; 200 part-time distributors²⁹ and hawkers (employees who sell papers at events or at major intersections to commuters); about 10 full-time general workers and jumpers; and about 55 part-time general workers.

²⁸ The Route Managers are responsible for coordinating delivery and for collection; the parties stipulated that Route Managers in Single Copy South and Single Copy North are supervisors within the meaning of Section 2(11).

²⁹ The distributors do not assemble papers; most newspapers are delivered from the Gwinnett printing facility in the form of “completes.” Any required assembly work is performed by the general workers.

At Single Copy North, there are three locations (Cobb South; Alpharetta South; and Gwinnett South³⁰), each with a Division Manager reporting directly to Circulation Manager Patrick. Below each Division Manager are two to four Area Managers at each location. Below this level, there are 6 to 17 Route Managers at each location. There are approximately 200 employees whom the Employer would include at the three locations, including approximately 130 part-time distributors; 40 assistant route managers (including vacation relief); 6 hawkers; 26 part-time and full-time general workers; and 2 part-time warehouse workers.

The remaining 20 to 25 employees the Employer would include in Roberts' group are employed in three different areas: Circulation Development; Market Development & Planning; and "News for Kids" & Operations. Each area is overseen by an executive who directly reports to Roberts: Debbie Tolman, Circulation Development Manager; Billy Kirk, "News for Kids" & Operations Manager; and Lynn Bailey, Market Development & Planning Manager.

Tolman, the Circulation Development Manager, is responsible for field sales efforts, i.e., working with individual store locations and some schools in sales and merchandising efforts throughout the 27-county greater Atlanta metropolitan area. The Employer would include 10 circulation development managers who actually visit locations to promote single copy sales; they also work with individual retail outlets to manage the presentation of the newspapers. The "News for Kids" operation is headed by Kirk at the downtown Atlanta offices and involves the promotion of sales and delivery of newspapers to schools throughout the state. The distribution to schools is usually made

³⁰ Gwinnett single copy is housed in the same facility in Duluth as Duluth home delivery, and AJC Direct central bagging.

by home delivery or single copy distributors in the branches. In Kirk's group, the Employer would include 2 curriculum developers, 7 part-time representatives and 1 full-time representative. The curriculum developers put together materials to be used as teaching aids; the representatives are field sales representatives who promote sales to schools.

The Market Development & Planning group under Bailey is responsible for promoting relationships among customers in different retail categories. The employees who work for her are responsible for meeting with corporate officials of major convenience stores, or major supermarkets, or in other categories. The Employer would include three coordinators in this group. They assist three Market Development Managers³¹ in different categories, i.e., Key Retail Accounts; Universities; and Apartments and Hospitals. The distribution to these customers is made by distributors at the branches.

C. TOMMIE MCLEOD, CIRCULATION DIRECTOR/SUBSCRIBER SALES

Tommie McLeod, Circulation Director/Subscriber Sales is also a "direct" report to Vice President Beckley. McLeod is responsible for sales efforts for subscribers. There are five executives who report directly to her: Elaine Miller, Inside Sales Manager; Larry Newman, Crew Sales Manager; Sandy Curtis, Marketing Information Systems Manager; the Promoter Sales Manager (position not filled); and Peter Caldwell, Database Marketing Manager. All of these executives work in the downtown offices. The Employer would include approximately 350 to 360 employees in this area, all of whom

³¹ The Employer would exclude (as supervisory, managerial or confidential employees) each of the 11 Market Development Managers for individual categories, i.e., food service; universities; key retail accounts, hotels, newcomers, etc. These individuals are responsible for developing sales, taking orders, and ordering fixtures and merchandising materials for customers within their assigned categories.

work under four of the five executives reporting to McLeod.³² Most of these employees work in the Employer's downtown offices, except if stated otherwise (e.g., crew employees, some promoter coordinators, see discussion *infra*).

Elaine Miller, the Inside Sales Manager, is responsible for all outbound telemarketing efforts to subscribers. The Employer would include approximately 144 employees who work in her area. There are three individuals who report to her: (1) the Retention Manager (position not filled); (2) Jenice Walters, Telemarketing & Verification Manager; and (3) Reginald Chestnutt, Telemarketing Manager. The primary responsibility of the Retention Manager is to ensure that current subscribers remain subscribers. There are 24 part-time representatives the Employer would include who work under the supervision of two supervisors in this area. Their responsibility is to telephone "recently former" subscribers and to encourage them to restart their subscriptions.³³

Also working under Miller are Jenice Walters, Telemarketing & Verification Manager, and Reginald Chestnutt, Telemarketing Manager. They are responsible for all telemarketing efforts other than retention of subscribers. Approximately 35% of total circulation sales are obtained through such efforts. The Employer would include a total of 102 part-time representatives who make telemarketing calls for new subscribers³⁴; and another 18 part-time representatives who verify that such sales have been made. The parties stipulated that the skills and duties performed by these employees and by the retention employees are dissimilar from the skills and duties of employees whom the

³² There was no evidence adduced regarding Peter Caldwell, the Database Marketing Manager or any individuals who work in his area. The parties stipulated that Caldwell should be excluded as a supervisory, managerial or confidential employee.

³³ Subscribers terminate for any number of reasons, including delivery or service errors by distributors.

³⁴ The Employer also "outsources" telemarketing calls for new subscribers.

Petitioner seeks to represent at the Cumming facility. The territory covered by these employees include the 27 counties plus state circulation.

A second executive who reports to McLeod is Larry Newman, Crew Sales Manager. The Employer would include approximately 73 employees who work in this area, including 25 representatives who work out of the Gwinnett Single Copy facility; 10 representatives who work out of the Henry facility; 27 representatives who work out of the Cobb Single Copy facility; and 10 representatives who work out of the Dekalb Single Copy facility; and the courier who works out of the downtown office. These employees work in crews soliciting single copy and home delivery subscribers door-to-door; they cover the majority of the 27-county area. The courier collects the order forms and transports the paperwork downtown. About 20% of new sales are generated by the crew operation.

Another “direct” report to McLeod is Sandy Curtis, Marketing Information Systems Manager. This area is primarily responsible for data entry of all new subscription starts. There are approximately 33 employees the Employer would include in the unit who assist in this function, including 2 system administrator employees, 3 part-time lead data entry employees; 18 part-time data entry representatives; 3 front desk employees; 1 part-time routing assistant; and 6 quality control employees. The parties stipulated that these employees bring to bear different skills and have different training and perform different and dissimilar functions from the functions and skills exercised by employees the Petitioner seeks to represent at the Cumming facility.

The Promoter Sales Manager (position not filled) also is a “direct” report to Tommie McLeod. The Manager is responsible for promoter sales of subscriptions to

retail outlets, businesses, or at events. Three individuals report to the Promoter Sales Manager: the East Promoter Manager (Barbara Burel), who works downtown; the West Promoter Manager (Josh White) who works out of the Woodstock branch; and the Operational Account Manager (Sophia Ruffin) who works out of the Clayton branch.

The Employer would include 40 employees who work under Burel, the East Promoter Manager, including 36 representatives and 4 part-time lead representatives (one of whom is based in the Athens branch). The representatives work in the field, promoting sales of subscriptions to single copy subscribers; it is not clear where they are based. The same function is performed in the west by the 46 employees the Employer would include who work under the West Promoter Manager (Josh White). These include 45 sales representatives (and one in training), most of whom are evidently based downtown. The Employer would also include the eight employees who work in Promoter Accounts, under the Operational Account Manager, Sophia Ruffin. These employees are responsible for securing sales locations in various promoter venues. Five of these employees are based in the field at branches in Fayetteville (one full-time promotional manager); Clayton (two part-time coordinators and one full-time coordinator); and Gwinnett (one full-time coordinator). The other three coordinators are evidently based downtown.

D. GARY BROCKMAN, CIRCULATION DIRECTOR/TECHNOLOGY

Gary Brockman, the Circulation Director for Technology also directly reports to Vice President Beckley. His group is based downtown and is responsible for all technology housed in the downtown offices and branch facilities, including the customer information system (CIS, also known as Discus system) and the handheld system

(Newstrack) used in single copy and in AJC Direct distribution. They are also responsible for PCs in the downtown offices and at the branches. Their responsibilities extend beyond the Circulation Department to other company departments, such as advertising. According to the Employer, many of the individuals who work in this area worked in the branch offices earlier in their careers.³⁵ The Employer would include 14 in the unit, including 5 individuals responsible for Newstrack; 6 responsible for Discus (customer information system); and 3 PC support technicians (who visit the branches from time to time). The parties stipulated that the job duties, functions, and skills of these individuals are dissimilar from the job duties, functions, and skills of the employees sought by the Petitioner at the Cumming facility.

E. CAROLINE WALKER/EMPLOYEE DEVELOPMENT MANAGER

Caroline Walker, Employee Development Manager, also reports directly to Vice President Beckley. Her group is responsible for training and development of managers, supervisors, and employees, including some front-line representatives, call center representatives and customer representatives. The Employer would include two of seven trainers employed in this area.³⁶ The parties stipulated that these two trainers exercise skills and perform job duties and functions dissimilar from the job duties and functions performed by the employees at the Cumming facility whom the Petitioner seeks to represent. This group is evidently based in the downtown offices.

³⁵ Employer Exhibit 33 shows that four individuals in this area from 2001 to 2003 were previously supervisors at branch locations (Manager Paul Kodrowski; Manager Charlene Dunn; Division Manager Jimmy Pharr; and Manager Donald Gulick). The Employer would include them in the unit.

³⁶ Both trainers whom the Employer would include report to another trainer, Judy Pennington. The parties stipulated that Pennington and the remaining four trainers (Jackson; Melvin; Lord; and Fallin) are managerial employees and should therefore be excluded.

F. TARRANCE COLEMAN/SUBSCRIBER SERVICES MANAGER

Tarrance Coleman, Subscriber Services Manager, is another “direct” report to Vice President Beckley. He is in charge of handling inbound calls pertaining to customer inquiries or complaints, usually related to subscription service. The Subscriber Services Routing Manager reports to Coleman, and has six Subscriber Services Supervisors reporting directly to him.³⁷ The Employer would include 58 employees in this group, including 3 account specialists (who handle complex billing questions); 7 full-time stop specialists (who attempt to persuade subscribers not to cancel subscriptions); 23 full-time and 21 part-time subscriber services representatives (who receive all inbound calls from subscribers); and 4 part-time FIT representatives (who call new subscribers, as a “first impression team”). These employees will input data (e.g., vacation stops; specific delivery requests; customer complaints regarding misdeliveries, etc.) into the computerized customer information system (CIS or DISCUS system), which is electronically relayed to the field, and printed out on a daily basis at the branches. This group is evidently based in the downtown offices.

IV. THE SCOPE OF THE UNIT

As is noted above, the Petitioner seeks an election among unit employees in a single distribution branch location, the Cumming, Georgia facility. The Employer objects to the single-facility unit, contending that the unit sought is “arbitrary in nature” and is therefore inappropriate, and that the appropriate unit must include all employees in the Circulation Department. At the outset, it should be noted that there is nothing in the statute which requires that the unit for bargaining sought by the Petitioner be the only

³⁷ The parties stipulated that the Routing Manager and the Supervisors are supervisory or managerial employees and should therefore be excluded.

appropriate unit, or the ultimate unit, or the most appropriate unit. The Act requires only that the unit be an appropriate one. Taylor Bros., Inc., 230 NLRB 861, 869 (1977). Thus, the question to be decided herein is whether the single facility unit sought by the Petitioner is *an* appropriate unit under the Act.

It is also well settled that in many industries, a single location unit is presumptively appropriate. See Jackson's Liquors, 208 NLRB 807, 808 (1974). This presumption may be rebutted by a showing that the day-to-day interests of the employees at the sought location have merged with those of employees at the other locations, or that the facility in question is so functionally integrated with the other facilities, as to have lost its separate identity. Courier Dispatch Group, Inc., 311 NLRB 728 (1993); J&L Plate, 310 NLRB 429 (1993); Beckett Aviation Corp., 254 NLRB 88, 89 (1981). If the single-facility presumption applied in this case, the burden of rebutting it would rest with the Employer herein, the party requesting the broader unit.

In its post-hearing brief, the Employer asserts that the single-facility unit presumption is inapplicable in this case, "because of the 'unified and coordinated effort [required] in order to produce a newspaper' that the Board has acknowledged and applied" in the newspaper industry, citing Van Nuys Publishing Co., Inc., 223 NLRB 455, 456 (1976). The Petitioner counters that the single-facility unit presumption should apply in this case, but acknowledges there is no Board precedent which speaks specifically of the applicability of the presumption in the newspaper circulation and distribution industry.

The Board has long acknowledged the special characteristics of the newspaper industry, that the end product is usually the result of close cooperation and joint efforts of

all departments. In view of these characteristics, the Board has concluded that certain types of units may be appropriate, e.g., a single-department-wide unit; or separate units of mechanical and non-mechanical employees. See The Salt Lake Tribune Publishing Co., 92 NLRB 1411 (1951); Bureau of National Affairs, Inc., 96 NLRB 673 (1951).

However, the Board has also stated that traditional community-of-interest analysis should be applied in assessing appropriate units in the newspaper industry; the composition of a requested unit in each case must be reviewed in light of the particular facts peculiar to that unit, to determine whether the employees sought share a sufficient community of interest to be included in a separate unit. See Minneapolis Star and Tribune Co., 222 NLRB 342, 343 (1976). See also Community Publications, Inc., 162 NLRB 855 (1967); and Newspaper and Mail Deliverers' Union of New York and Vicinity, 337 NLRB 1102 (2002) (employer engaged in distribution and transport of magazines and printed material); see also Atlanta Newspapers, 263 NLRB 632 (1981), an earlier case involving the Employer herein.

There is no Board case which squarely holds that the single-facility presumption applies in the newspaper industry, as the Petitioner acknowledges. However, utilizing traditional community of interest analysis, the Board has found single-facility units appropriate in this industry. See Leaf Chronicle Co., 244 NLRB 1104 (1979); and Evening News, 308 NLRB 563 (1992)³⁸. Without deciding the applicability of the single-facility presumption, I find, on the basis of traditional community of interest factors, that the Cumming facility unit sought by the Petitioner constitutes a separate appropriate unit. In reaching this conclusion, I have considered the following.

³⁸ In Evening News, the Board summarily affirmed (with little comment) the application of the single-facility unit presumption by the regional director. 308 NLRB at 563, 567.

There is no question, as the Employer argues, that the employees sought by the Petitioner at the Cumming facility share skills, and functions in common with other employees in the Circulation Department. The record establishes that the duties and functions of the 69 employees at the Cumming facility are identical to many employees in the unit urged by the Employer, including distributors, district coordinators, and general distributors in 22 Counties East; 22 Counties West; Home Delivery North; and Home Delivery South. As is noted above, a total of approximately 2450 employees work in these areas, of the 3800 employees in the Circulation Department unit sought by the Employer. Administratively, employees in these departments report to four separate Circulation Managers, who, in turn, report to Charles Beeching, Circulation Manager for Distribution Operations. About 500 to 550 of the remaining 1400 to 1500 employees in the Department-wide unit urged by the Employer are parts of different administrative subdivisions, though their skills and duties appear to be substantially similar to the Cumming employees.³⁹ It appears that the functions and/or skills of the remaining 900 to 1000 employees in the Department-wide unit may differ substantially from those of the Cumming facility employees.⁴⁰ Notwithstanding these differences, however, the record

³⁹ The State operation is overseen by a different direct report to Spyers: Tom Sheppard, State Circulation Manager. The thirty-three district coordinators whom the Employer would include in the state operation also appear to have skills and functions identical to other district coordinators who work under Beeching, though the record is not fully developed with respect to the 300 they work with in this area whom the Employer would exclude as independent contractors. Administratively, the Employer's single copy delivery operation in the 5-county area is an entirely different subdivision of the Circulation Department; this area is overseen by a different direct report to Beckley: Kelly Roberts, Circulation Director/Retail Sales. There are approximately 520 to 530 employees in this area who share the same function as Cumming facility single copy employees, although there are some different job classifications, including route managers, and hawkers.

⁴⁰ The parties stipulated that about 200 of these employees possess different skills and exercise different functions than the Cumming facility employees. See discussion *supra*. Further, the 350 employees of the AJC Direct area distribute an entirely different product (Buyer's Edge) to an entirely different group, nonsubscribers, and include just under 100 employees in different classifications (baggers and warehousemen), though their duties appear to be generally the same as Cumming facility employees. The

establishes that all 3800 employees are part of a unified and coordinated effort to accomplish the Employer's twin Circulation Department goals: (1) timely delivery of product; and (2) promotion of newspaper sales.

Further, as the Employer argues, the employees sought by the Petitioner in the Cumming facility unit share terms and conditions of employment in common with other employees in the Circulation Department, as a result of centralized control of daily operations and labor relations in the Circulation Department, and in the Employer's operation as a whole. These centrally determined terms of employment include: methods of pay, such as general hourly pay scale, per piece rates, mileage reimbursement rates; and bonus calculations (i.e., for inserts); fringe benefits, including health and pension benefits; safety policies and procedures; employee handbooks; corporate human resources department; "open door" procedure access to higher management; EEO and harassment policies; substance abuse and on-the-job injury policies; timekeeping procedures and payroll system; Monthly Service Reports (measurement of service errors at branch locations); some centralized training (i.e., for initial introduction of handheld Newstrack palm pilots); and uniform employment applications.⁴¹

However, the foregoing is outweighed, in my judgment, by several factors that militate in favor of the Cumming facility being an appropriate unit, including the evidence of significant local autonomy in connection with labor relations matters at the branch locations.⁴² The Board has repeatedly found single facility units appropriate

remaining 400 or so employees who work in Subscriber Sales; Technology; Employee Development; and Subscriber Services also perform different functions than the Cumming facility employees.

⁴¹ The human resources department maintains personnel and benefits files for all employees; the branch locations also keep separate employee files. See discussion *infra*.

⁴² See *D&L Transportation, Inc.*, 324 NLRB 160, 162 (1997), at fn. 8: ". . . the existence of centralized personnel and labor policies and procedures, or even ultimate responsibility for such matters at a centralized source, does not automatically trump the acknowledged existence of local autonomy."

despite uniform and centrally determined policies where these policies are implemented with significant autonomy by local managers or supervisors. See Red Lobster, 300 NLRB 908 (1990); J&L Plate, Inc., 310 NLRB 429 (1993); Dattco, Inc., 324 NLRB 323 (1997); Rental Uniform Service, Inc., 330 NLRB 334 (1999); New Britain Transportation Co., 330 NLRB 397 (1999). See also Beckett Aviation Corp., 254 NLRB 88 (1981). I find that the local managers at the Cumming facility exercise significant authority over day-to-day labor relations in the following areas:

Hiring: The record shows that the Zone Manager, District Managers, and the Area Manager at Cumming make all hiring decisions for employees at the facility and are authorized to do so. There appear to be only two limitations on this authority: (1) the social security numbers of all new employees are run through the Employer's database, and an employee may not be hired if he or she appears as a "do-not-rehire" in the system; and (2) local management is not permitted to hire in excess of the centrally set budget. The Cumming facility, like many of the other branches, is a separate "cost center" with a separate budget, and managers are permitted to make all hiring decisions within the stated budget. Subject to these limitations, the local managers make their own decisions to review employment applications, to interview applicants⁴³, and to determine which employees (and how many) to hire without any approval, or clearance from upper management.⁴⁴ All training for new hires is conducted at the Cumming facility under the supervision of local management.

⁴³ The Employer centrally places advertisements for distributors for open routes, and directs employee applicants to a list of the telephone numbers of the branches responsible for the routes.

⁴⁴ Local management is also permitted to hire hourly employees at any hourly rate within a prescribed range, subject to the cost center's budget. The record shows a starting pay range of \$8 to \$10 an hour for part-time single copy distributors, and a starting pay range of \$8 to \$10 per hour for part-time general workers. Annual raises are set centrally (i.e., \$.50 per hour), but local management has discretion to withhold an annual raise for performance-related reasons.

Discipline: The local managers at the Cumming facility also possess and exercise significant authority in the area of employee discipline and termination. There is no specific central policy regarding grounds for termination, such as insubordination, absenteeism, tardiness, etc. If an employee is frequently late or absent, or is insubordinate, the supervisor or manager can determine what disciplinary action is appropriate, up to and including termination. The Zone Manager, District Managers and the Area Manager have authority to issue lesser discipline, including verbal or written warnings, or suspension, without prior approval from upper management. The Employer requires two managers to “sign off” on branch terminations, but the two managers can be a District Manager (or Area Manager) and the Zone Manager. According to the Employer, employee terminations in any “non-routine” or “questionable situation” may not be effected without the approval of upper management; such situations appear to involve EEO or harassment claims, or other terminations which may subject the Employer to potential liability.⁴⁵ In any event, there is no record evidence that local management at the Cumming facility was required to seek the approval of upper management in any specific termination case.

Work Assignments: Local management at the Cumming facility possesses and exercises authority to assign distributors specific routes, to switch routes, and to add or subtract routes covered by distributors. Further, it is local management’s responsibility to ensure that open or absent routes are filled on a daily basis. Local management also has authority to add new locations (such as a new housing development) to existing routes in the same zip code area or in the same geographic area. It appears that the Zone Manager

⁴⁵ The human resources department conducts 60 to 75 investigations or consultations per year, and evidently has the authority to overrule or veto a termination decision if managers have not followed proper procedure, but the record does not disclose how often this occurs, or in what circumstances.

or Area Manager consults with higher management in the case of realignment of routes, though local management has authority to assign the realigned routes to distributors. The Zone Manager also sets the weekly schedule for district coordinators and for general workers.

Performance Evaluations: Local management conducts annual evaluations of distributors, covering items such as attendance, performance, service errors, and tardiness. It appears that these are written evaluations for hourly employees at the Cumming facility.⁴⁶ As is indicated above, an adverse evaluation can have an impact on an hourly employee's annual raise. These evaluations are kept in employee files maintained at the Cumming facility.

Adjustment of Grievances: Local management has authority to adjust employee grievances, though higher management is usually involved if an employee files a complaint against a Zone Manager, or alleges sexual harassment issues. The Zone Manager is authorized to investigate and resolve employee grievances involving lower supervision. Local management is also authorized to investigate an employee complaint regarding a customer-reported service error (records of which are kept daily in the Employer's central computer system). Based on the investigation, local management may eliminate a customer's complaint from the distributor's record. Employees may appeal local management decisions to higher management under the Employer's "Open Door" policy, though the policy encourages employees to attempt to resolve grievances with local management in the first instance.

Timekeeping and Payroll: Employees are required to fill out a uniform AJC Distribution Payroll Report on a weekly basis. This Report details on a daily basis: hours

⁴⁶ It is not clear whether per piece distributors receive annual written evaluations.

worked, overtime hours, route subsidy (if applicable), number of papers delivered, including third party papers, and mileage; the employee calculates pay based on this information and includes a “Timesheet Grand Total” of pay claimed for that week. This information is checked by the District Manager (or the Area Manager), who then inputs the data into the central payroll computer system. In the event of pay disputes (e.g., regarding mileage, or hours worked, etc.) local management at the Cumming facility has authority to resolve problems and make adjustments. If necessary, the Zone Manager has authority to distribute pay vouchers to rectify mistakes.

Promotions and Transfers: As is noted above, there is no company- or department-wide system for posting of job vacancies or promotions. Local management has authority to promote a distributor or general worker to a district coordinator position, without approval of higher management. The Zone Manager also has authority to promote a Cumming facility employee to a District Manager supervisory position, evidently without prior approval of upper management, though the Division Manager may be consulted.⁴⁷ Local management at the Cumming facility also has authority, without approval of higher management, to approve a transfer requested by an employee to another branch, so long as the transfer involves a job opening at another branch and is arranged with local management at that branch.

In addition to the foregoing evidence of significant local autonomy, another factor in favor of finding a single-facility unit to be appropriate is the virtually complete absence of any interaction or interchange between Cumming facility employees and employees at other locations. As is noted above, unit employees at the Cumming facility

⁴⁷ Promotion of a local manager at one facility to local management at another facility usually involves higher management, such as the Division Managers.

do not have regular contact on a daily basis with employees at any other branch. In fact, there is no evidence of any contact whatsoever, except for an occasional party or trips by a district coordinator, District Manager, or another employee to a nearby branch location to pick up extra newspapers. In the latter case, local supervision calls the nearby branch to request extra papers, and the papers are left for pick-up at the loading dock.⁴⁸

Further, there is no evidence that unit employees at the Cumming facility are ever called upon to make deliveries or help out at any other branch location, or *vice versa*. There is evidence of one instance in August, 2003, that the Employer offered bonuses to anyone who would assist in an emergency bagging operation at the Gwinnett facility for a few days. Even assuming that one of the three from the Cumming facility who volunteered was a unit employee (the other two were supervisors), such voluntary assistance extended during a “crunch period,” especially for extra money, is not considered to be significant interchange by the Board. See Courier Dispatch, *supra*, 311 NLRB at 728; Esco Corporation, 298 NLRB 837, 838 (1990); see also AVI Foodsystems, Inc., 328 NLRB 426 (1999).

The Employer also points to instances of voluntary temporary transfers of employees in and out of other branches, most of which involved employees from the Dekalb single copy facility and the Central Fulton single copy facility who worked for one day at other branch locations on about eight different dates last year. See discussion *supra*. However, this evidence is not probative on whether the Cumming facility employees enjoy a separate community of employment interests. That locations other than the Cumming facility may have a higher level of interchange with each other to accommodate the Employer’s operations does not negate the separate community of

⁴⁸ There is no evidence of direct contact with any employees at the nearby location at the time of pick-up.

interest shared by the Cumming facility employees, who rarely (if ever) interchange for this purpose. D&L Transportation, Inc., 342 NLRB 160 (1997).

The Employer points to instances of permanent transfers among locations other than the Cumming facility.⁴⁹ For example, about 14 employees employed in the circulation technology department at one time held positions (11 as supervisors) in branch locations. See Employer Exhibit 33. Similarly, the Employer points to permanent transfers of routes (along with distributors assigned to those routes) from one branch location to another, none of which involved the Cumming facility. The vast majority of these route transfers were due to the removal or closure of facilities. The Board generally gives little weight to permanent transfers due to removal or closure of facilities, Alamo Rent-A-Car, 330 NLRB 897, 898 (2000), or to supervisory transfers. Penn Color, Inc., 249 NLRB 1117, 1118 (1980). In any event, none of this evidence has any bearing on whether the Cumming facility employees share a separate community of interests, as it does not involve unit employees at the Cumming facility.

I am also unpersuaded by the evidence offered by the Employer regarding 6,000+ past and current employees in the Circulation Department who, at one time or another, worked in different Circulation Department cost centers.⁵⁰ The Employer argues this evidence shows a longstanding pattern in the industry of employees working in multiple branches, and therefore it must be concluded that the Cumming facility (and all of the other branches) have merged into only one appropriate 3800-employee unit. However, the evidence offered by the Employer is not sufficiently probative as to the circumstances

⁴⁹ During the past few years, there has been evidently only one permanent transfer into the Cumming facility and one permanent voluntary transfer out of the Cumming facility.

⁵⁰ This evidence appears at Employer Exs. 28 through 32, containing hundreds of pages with the names of 6000+ employees and scores (if not hundreds) of cost center and job classification codes.

surrounding such employee moves. For example, it is impossible to tell whether employee moves from branch to branch were voluntary or involuntary; whether such moves were due to plant removal or plant closures; what (if any) periods of hiatus (or breaks in service) there were between moves (many of the notations show “rehire,” suggesting a prior quit or termination⁵¹); or whether a particular “change” is simply a change in code number for a cost center (as opposed to an actual change in location). In these circumstances, I find this evidence is insufficient to establish that that the Cumming facility unit has been merged into a 3800-employee department-wide unit.

Another factor I have considered is the geographic distance among the facilities in the unit the Employer urges, though I have given this factor less weight than the other factors discussed herein. The furthest distance between facilities is close to 400 miles (Dalton to Brunswick); indeed, the 3800-employee unit urged by the Employer would span the entire State of Georgia. Even a unit limited to the 40+ facilities within greater metropolitan Atlanta, is farflung, circling downtown Atlanta in a 50 to 60 mile radius. This factor, as well, militates in favor of finding the Cumming facility to be an appropriate unit.

I also note the absence of any bargaining history for the unit sought by the Petitioner, or the more comprehensive unit urged by the Employer. Almost 15 years ago, the parties stipulated in 10-RC-14092 that a single facility unit in another location (Doraville) was an appropriate one. The record also shows that there are a number of

⁵¹ Of these 6000+ names, approximately 75 appear under the Cumming facility cost center code (4171). In its post-hearing brief, the Employer states that the documents prove that four of these employees currently work in Cumming and used to work at other locations. (See Employer Ex. 28, at pps. 102-3; they are Elizabeth Carpenter; Pamela Greeson; Steven Kimbrell; and Jason Moss.) However, each of these four is designated as a “rehire” in at least one of the previous locations worked. The Board gives little weight to the rehiring of employees after breaks in service. See O’Brien Memorial, Inc., 308 NLRB 553 (1992).

collective bargaining agreements involving a number of unions representing the Employer's printing employees. I have not given any weight to the foregoing in reaching my determination herein.

Accordingly, weighing all of the factors considered by the Board and utilizing traditional community of interest criteria, I have concluded that employees sought by the Petitioner at the Cumming facility constitute an appropriate unit. These employees share a separate and identifiable community of interest apart from other Circulation Department employees, including working side-by-side during the same hours and under the same supervision. Further, the record shows significant autonomy exercised by local Cumming management in day-to-day operations and labor relations. Moreover, the Cumming facility employees do not regularly interact with employees at other locations, nor is there any significant interchange of functions, either on a temporary or permanent basis. In these circumstances, I find that the community of interest the Cumming facility unit employees share is separate and identifiable and has not been merged into any broader unit. I shall therefore, direct an election in the single facility unit sought by the Petitioner.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer's facility located at 3630 North Parkway, Cumming, Georgia.

4. A 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.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All nonmanagement, nonclerk circulation department employees, including all employees in the following job classifications: part-time district coordinators; part-time subdistributor hourly; distributor hourly; Constitution distributor part-time; per-piece distributor/part-time; per-piece general worker part-time; general worker; couriers (and distributors who function as couriers), employed at the Employer's facility located at 3630 North Parkway, in Cumming, Georgia; excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Graphic Communications Union Local 527-S. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military Services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an

election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before January 30, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995).

Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EST) on February 6, 2004. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 23rd day of January, 2004.



/s/ Kenneth D. Meadows

Kenneth D. Meadows,
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National Labor Relations Board
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