UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Various locations in California)

SEARS, ROEBUCK & COMPANY[1]

Employer

and Case 32-RC-5363

MACHINISTS DISTRICT LODGE NO. 190
OF NORTHERN CALIFORNIA, AUTOMOTIVE
MACHINISTS LOCAL LODGE 1101,

Petitioner[2]

DECISION

Sears, Roebuck & Company, herein called the Employer, operates general merchandise retail stores and service/repair/parts facilities in various locations throughout the United States. Machinists District Lodge No. 190 of Northern California, Automotive Machinists Local Lodge 1101, herein called the Petitioner, seeks to represent all full-time and part-time service technicians in the Salinas, California area of the Employer's Mid-Cal Metro District (designated by the Employer as "call capacity area D"), including "A&E technicians". A hearing officer of the Board conducted a hearing in this matter on July 12, 2005. The Employer and the Petitioner participated in the hearing and they filed post hearing briefs, each of which I have duly considered.

As evidenced at the hearing and in the briefs, the parties disagree on the following two issues: (1) whether the proposed unit limited to the Salinas area (Call Capacity Area D) employees is appropriate, or (2) whether the unit must include all service technicians and support associates employed in the Mid-Cal District. The Petitioner argues that the petitioned for unit is a single facility that shares a sufficiently distinct community of interest to constitute an appropriate unit and that the Employer has failed to rebut the single

[1] The name of the Employer appears as stipulated at the hearing.
[2] The name of the Petitioner appear as modified at the hearing.

facility presumption concerning the appropriateness of the petitioned for unit. The Employer argues that the Petitioner's proposed unit is a service area, not a facility, and that the single facility presumption does not apply. The Employer also contends that the employees in the proposed unit share such a strong community of interest with the support associates and the other service technicians in the Mid-Cal District, that the smallest appropriate unit consists of all full-time and part-time service technicians *and* "support associates" in the Mid-Cal District, which includes customer relations support specialists, shipper/receivers, shuttle drivers, and parts sales associates.

I have considered the evidence and the arguments presented by the parties on each of the two issues. As discussed in detail below: I find that the Salinas area service technicians share such a strong community of interest with the other service technicians in the Mid-Cal District, and with the support associates who are employed in that district that they do not have a separate identity, and I find that the only appropriate unit consists of all full-time and regular part-time service technicians, A&E technicians, and support associates in the Mid-Cal District, excluding the timekeepers and human resource assistants,[3] guards and supervisors as defined in the Act. Accordingly, I have directed the Petitioner in the Notice section of this Decision to inform the Region whether it seeks an election in the larger unit that I have found to be appropriate in this case, and if so, to provide a sufficient showing of interest for this larger unit within 14 days of the issuance of this decision.

To provide context for my discussion of those issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

[3] The parties stipulated that the timekeepers and human resource assistants should be excluded from any unit found appropriate because they are office clerical employees and do not share a community of interests with the employees in the units proposed by the parties.

FACTS[4]

Overview of the Employer's Operations

In addition to its retails stores, the Employer also operates a separate division, Sears Product Services,[5] which is primarily engaged in the repairing and servicing of certain products that are sold at the Employer's retail stores. The repairs and servicing may be performed in the customers' homes or in the branch service facilities. Sears Product Services is national in scope and its various branches and service areas are organized into geographic districts, which are grouped together into the Employer's various regions. The Mid-Cal Metro District, herein called the Mid-Cal District, is part of the Employer's west coast region (called "Region 890"), which is comprised of eight separate districts: the Southern California district, the Los Angeles West district, the Los Angeles East district, the Northern California district, the Mountain West district, the Pacific district, the Seattle district, and the Mid-Cal District. The Mid-Cal Region is divided into various call capacity areas

The Mid-Cal District covers portions of Central and Northern California, and consists of one headquarters facility in Fresno, seven branch product service facilities throughout the district, and an outlet facility in San Leandro. The branch offices are located in Concord, San Jose, Hayward, Bakersfield, Hanford, Mountain View, and Santa Maria, California.[6] The Fresno, Concord, Bakersfield, San Jose, and Santa Maria branches service facilities are all free standing facilities, while the rest of the branch service facilities

[4] Many of the facts cited herein are based on facts cited in the Decision and Direction of Election in Case 32-RC-5087 (herein referred to as the Prior Sears Decision). Testimonial evidence was presented in the instant case establishing that certain specified facts in the Prior Sears Decision still accurately described the current operations, or that the specified facts no longer apply. There were a few instances where there was no testimony regarding the continuing applicability of certain facts in the Prior Sears Decision. In those instances, and absent any contradictory evidence, I will presume that those facts from the Prior Sears Decision continue to be accurate, and I have cited those facts where relevant.

[5] The record does not refer to Sears Product Services; however, I take administrative notice of the Decision and Direction of Election in *Sears, Roebuck & Co*., Case29-RC-10296 (dated January 31, 2005), which describes the relationship between the Employer and its division, Sears Product Services.

[6] Prior to July 2002, the Mid-Cal District was comprised of three separate service districts with "hub" branches located in Concord, San Jose and Fresno, California. Most of the routing and administrative functions for the three districts were handled in each of the hub branch offices. In July 2002, the Mid-Cal District was created when the three service districts were consolidated into a single district, and all of the human resources functions were transferred to the Concord branch (they were later moved to the Fresno facility), and most of the support functions were transferred to the Fresno branch, which became the Mid-Cal District headquarters.

are attached to an Employer's retail store.[7] At the hearing, the parties stipulated that the approximate distances between the Concord facility and some of the other district facilities are as follows: Fresno (180 miles), Santa Maria (180 miles), Mountain View (30 miles), San Bruno (25 miles), Hanford (180 miles), and Bakersfield (200 miles). The branch service facilities, including the Fresno facility, all have a sales floor, where over-the-counter parts and some refurbished and new merchandise are sold, and have an area for customers to return merchandise for repair. The type of merchandise sold at these locations depends, in part, on the size of the particular facility. Thus, large facilities, like Bakersfield, sell electronic merchandise and accessories, lawn and garden products, reconditioned appliances, hand tools and impulse items, such as batteries and detergents. The Hanford branch, a smaller branch facility, sells only some impulse items. The larger locations also have a training area, a shipping and receiving area, and/or other work and break areas for the Mid-Cal District employees.

Also included in the Mid-Cal District is the Employer's San Leandro outlet facility, which operates as an in-shop repair office and is staffed by a clerical employee. Service technicians are not assigned to that location on a permanent basis. Rather, in-home service technicians are routed to the outlet facility on an "as-needed" basis to provide repair and maintenance services.

At the time of the Prior Sears Decision, the Mid-Cal District also included an office in Salinas, California that was used by service technicians to pick up and drop off parts and supplies. It was also used by one technician manager as his office. However, the Salinas store was closed about one and a half years ago. The service technicians who had previously worked out of the Salinas branch service facility now use a Sears van, which is parked at the Sears retail store parking lot in Salinas to drop off and pick up parts and supplies. Two service technicians testified that they also use a dumpster located in the parking lot to throw out the trash accumulated during their routes. They also testified that they used the fax machine at the Sears retail store in Salinas to receive copies of their

[7] The Hanford facility is located in the parking lot of an Employer's retail store.

service orders when they were unable to get their work assignments through their portable computer unit. The record established that this was a rare occurrence.[8]

At the hearing, the parties stipulated that there is no collective bargaining history at any of the facilities in the Mid-Cal District with the exception of the Fresno and Hanford facilities. Service technicians and support associates (with different job titles than currently utilized by the Employer) were part of a multi-location unit consisting of the Fresno and Hanford facilities and a third facility in Visalia, California. The multi-location unit was represented by another labor organization for about ten years but the collective bargaining relationship ended in the early 1990's.

Management and Supervision for the Mid-Cal District

The Mid-Cal District is headed by Gary Willis, the district general manager, who is responsible for the entire operation and workforce in the district, including service technicians, support associates, and managers. Among other things, he determines the budgets and the hours of operation for each of the facilities in the district. He is responsible for approving all disciplinary action against employees in the district and for reviewing all employee performance evaluations.[9] Willis also approves how many service technicians, support associates, and/or managers to hire in the district. He oversees each of the operations with the assistance of the district operations manager (Charlie Powers), the district human resources manager (Stephanie Jaramillo), the district technician manager (Paul Petifer), and the district sales manager (Bill Rogers), each of whom report directly to him.

The district technician manager supervises 12 technician managers, who in turn supervise the approximately 360 service technicians in the district. The district operations manager is responsible for the district's profits and losses. He is also responsible for the approximately 66 support associates throughout the district, including the parts sales

[8] Since the issuance of the Prior Sears Decision, the Employer has also closed its branch offices in San Bruno and San Luis Obispo, California. Under the current system, the Employer has a van parked at the Sears retail store parking lot in San Bruno, and the service technicians pick up and drop off their parts and supplies at that van.

[9] Willis also has final authority to approve discharges of employees who have worked for the Employer ten years or fewer. However, Willis testified that he prefers to forward discharge recommendations to the regional human resources manager, if an employee has worked for the Employer for more than one year, just to make sure he has made the correct decision. In situations where Willis wants to discharge an employee who has worked for the Employer for over ten years, he must secure the approval of his immediate supervisor, the manager of the region that includes the Mid-Cal District.

associates, and he also supervises the four sales managers who are responsible for directly supervising the support associates. Finally, the human resources manager supervises two human resources assistants and two timekeepers who work with her at the Fresno location. The human resources office, which was moved to the Fresno facility sometime after the issuance of the Prior Sears Decision, handles all personnel matters arising in the Mid-Cal District, and copies of all personnel files are kept in this office.[10]

The district human resources manager visits the other branches, including areas like Salinas that do not have an office, three days per week (four to five times during the two months preceding the hearing) to make herself available to meet the branch employees, including the service technicians, and to conduct employee meetings, new employee recruitment and orientation, and/or employee training sessions. She also contacts employees by telephone and facsimile communication. The human resources manager oversees all employee recruitment, hiring, new employee orientation, leaves of absence, attendance, benefit administration, and other related personnel issues for all of the facilities in the Mid-Cal District. She is also involved in determining which of the Employer's applicable wage rates will be given to the employees in the district, and she is involved in all disciplinary, layoff, and employee evaluation decisions in the district.

The operations manager is based at the Fresno facility, but he travels to various branch offices throughout the district approximately two days per week. The district technician manager is also located at the Fresno facility, but each of the 12 technician managers under his supervision is stationed at one of the branch service facilities. There is no technician manager stationed at the Mountain View branch office. Moreover, none of the technician managers are stationed in the Salinas, San Bruno or San Luis Obispo service areas, where the Employer formerly maintained offices. The service technicians residing in these areas are assigned to work under the direction of technician managers who are available by telephone to assist the service technicians servicing those areas.[11]

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[10] The parties stipulated that each of the aforementioned managers, including the 12 technical managers and the four branch sales managers, should be excluded from any unit found appropriate as statutory supervisors. Based on this stipulation, I am finding that these managers are supervisors as defined in the Act, and I am excluding them from the unit.

[11] The San Leandro outlet facility is no longer supervised by a technical manager since in-shop service technicians no longer staff the facility. However, four or five technical managers may have interactions with the San Leandro outlet facility whenever one of the in-home service technicians whom they supervise is assigned to the outlet store.

The Employer attempts to assign approximately 20 to 25 technicians to each technician manager. These assignments are based on the area where the service technicians live and on the kind of repair work they specialize in (commonly referred to by the Employer as their "industry"). For purposes of making these assignments, the Employer divided the Mid-Cal District into nine geographic areas and, when possible, assigns all of the service technicians who reside in a particular geographic area, and who specialize in a particular industry, to report to a particular technician manager.[12] However, in order maintain the desired 20/25 to 1 service technician to technician manager ratio; the Employer has some service managers supervise employees in one industry who work in different geographic areas, and/or it has some service managers supervise employees who work in different industries. Thus, some technician managers supervise only the service technicians in one geographic area who specialize in one industry; other technician managers supervise the service technicians in two geographic areas who specialize in one industry; and the remaining technician managers supervise the service technicians in one geographic area who work in different designated industries.[13]

The sales managers are stationed at four of the branch offices, including the Fresno facility. The sales manager based in San Jose (Ron Keating) is responsible for supervising the sales floor at the Concord, Mountain View, Hayward and San Jose branches. He travels to each of the four branches on an "as needed" basis. In some branches, the sales manager and technician manager are responsible for supervising all of the employees in the branch whenever the other manager is away from the branch office.

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[12] The following list represent the nine geographic areas and some of the major cities in those areas according to the Employer: "Entire Bay Area" (San Francisco, San Jose, Oakland, Hayward, Concord, Livermore); "West Bay" (San Francisco, San Bruno, Mountain View); "East Bay" (Oakland, Hayward, Concord, Livermore, Richmond); "South Bay" (San Jose, Milpitas, Santa Cruz, Salinas, Gilroy, Green Field); "Northeast Bay" (Antioch, Concord, Pleasanton, Richmond, Oakland, Livermore); "Southeast Bay" (Fremont, Milpitas, San Jose); "South Coast" (Paso Robles, San Luis Obispo, Santa Maria, Lompoc); "Central Cal/Fresno" (Madera, Fresno, Clovis, Hanford, Visalia); and "Central Cal/Bakersfield (Bakersfield, Tehachapi, Lake Isabella, Porterville). The record did not establish why some of the geographic areas include the same cities.

[13] The Employer has been experiencing a shortage of technician managers district-wide for at least the past year and has had to reassign technician managers wherever the shortage was more acute. Due to the shortages, for approximately the past year, the service technicians residing in the Salinas area have been supervised by several different temporary technician managers who reside outside the Salinas area. The approximately 27 service technicians who live in the Salinas area now have one of four different technical managers supervising them, depending on the service technicians' respective industries. At the time of the hearing, the Employer had just hired ("accrued") two new technician managers and still had vacancies for three technician manager positions in the district.

Personnel Policies, Benefits and Wages

The Employer's personnel policies and employee wages and benefits are set by the Employer at a national level. All service technicians and support associates receive the same employee handbook and new employee orientation packet, and they are generally subject to the same policies and procedures, with some variations based on their particular job functions. Thus, the same attendance policy applies to all service technicians and support associates in the district. Support staff and service technicians are paid every two weeks on the same day, and all have the option of picking up their paychecks at their district branch office, having them mailed to their home or receiving their paycheck by direct deposit.[14] The same progressive disciplinary system applies to all district employees, and the same disciplinary form is used to discipline all employees. The same revised performance review form is used to evaluate the performance of technicians and support associates, except technicians are also evaluated by some additional factors that relate to their job functions. During the year, technicians and support associates are required to attend employee meetings in order to discuss new company policies, procedures or the district's performance. Service technicians and support associates sometimes attend these meetings together. At other times they attend separately, but all receive the same information regardless of who attends these meetings.

Openings for all support associate positions and service technician positions in the Mid-Cal District are posted at all of the district branch service facilities, and all employees in the District are eligible to apply for any of these positions. Between 1996 and approximately 2002, at least seven support associates have transferred to service technician positions and at least three service technicians transferred to support associate positions. The Employer also maintains a "light duty" program, administered by the district human resources manager, which allows support associates and service technicians who suffer on-the-job injuries to continue working in a modified support associates assignment. Since January 1, 2003, there have been approximately 145 instances in which service technicians were given light duty assignments as support associates.

[14] Service technicians throughout the district generally work 8:00 a.m. to 4:30 p.m. and they work five days per week (Monday through Sunday). Support associates generally work 9:00 a.m. to about 4:00 or 5:00 p.m. The record did not establish if support associates also work on weekends.

The record establishes that service technicians are generally paid higher wages than the support staff. For example, the "start rate" for S02 support associates in the "Mt. View/San Jose" area is $8.60 and the "start rate" for T06 technicians in the "Bay Area" is $16.00. Similarly, the "max rate" for S05 support associates in the "Mt. View/San Jose" area is $20.30 and the "max rate" for T07 technicians in the "Bay Area" is $30.90. Service technicians and parts sales associates also receive a flat commission (between 6 and 10 percent) for selling protection agreements on merchandise they sell or repair. Their annual performance evaluations are based, in part, on their rate of success in selling these protection agreements.[15] All Mid-Cal District employees, including technicians, share the same health care benefits, disability and survivor benefits, stock purchase plan, work and family benefits, and retirement benefits.

Service Technicians

The service technicians spend the vast majority of their time diagnosing problems and doing repairs at the customers' homes. While at these homes, the service technicians also attempt to sell service protection agreements to the customers.[16] With regard to the customers who bring their merchandise to one of the Employer's product service facilities for repairs, some of these repairs are performed by service technicians, who are routed to the product service facility. The remaining in-shop repair work is shipped to an Employer repair facility located outside the Mid-Cal District.[17] Almost all service technicians begin their routes from their homes each morning. Only about ten in-home service technicians throughout the Mid-Cal District begin their workday at a retail store parking lot, where they pick up their company truck to begin their service calls.[18]

Service technicians are classified as either "T06" or "T07". The "T06 tech line" indicates that the technicians specialize in laundry or lawn and garden repairs and maintenance. T07 technicians specialize in refrigeration repair and maintenance, and they

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[15] Service technicians are required to wear uniforms supplied by the Employer. Support associates are not required to wear uniforms but some chose to do so, especially the shipping/receiving associates.

[16] Service technicians spend less than one percent of the time they are out on service calls working on in-shop repairs.

[17] There is no contention that service technicians who are located outside the district, but who may occasionally perform repair services for customers inside the district, should be included in the petitioned-for unit.

[18] During the hearing, the parties described the vehicles used by the service technicians as "trucks" and occasionally described them as "vans". District general manager Willis testified that the both terms applied to the service technicians' vehicles.

must be certified to carry and recover refrigerant.[19] Each classification has three wage rates, "start rate", "mid point rate", and "max rate," and the wage rates are set based on the work experience of the technician in each of the classifications. The district human resources manager determines whether a technician qualifies for the start, mid-point or maximum wage rate. The wage rates for T07 technicians are approximately 13 percent higher than those of the T06 technicians. Wage rates also vary based on the geographic location of the technician. According to the Employer's records, wage rates are highest in the "Bay Area," next highest in the "Central Coast" and they are the lowest in the "Central Valley."[20]

Prior experience or a background in repair and technical work is not a requirement for the entry level service technician position, and the Employer has hired service technicians with no prior experience. In fact, during a few months prior to the instant hearing, the Employer hired more than 80 service technicians in the district and about 95 percent of those new hires had no service related experience**.** New service technicians in the district receive up to 12 weeks of training by riding along with one of the experienced service technician and by receiving laboratory training at the San Jose facility. The length of time they ride along with an experienced service technician depends on their prior knowledge or background in appliance repair.[21]

All in-home service technicians are issued handheld computers, commonly referred to as "SSTs", that allow communication between the service technicians and support associates and routing specialists. They are also issued cellular telephones to communicate with technician managers, support associates, vendors, and customers. The routes are

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[19] Some technicians also specialize in home electronics, but the record does not establish whether the "T06" or "T07" classifications apply to these technicians. Presumably, they must be "T06" technicians, because the "T07" category requires certification in carrying and recovering refrigerant. There are also approximately 35 "A & E technicians" who repair non-Employer-made products, like Whirlpool products. The parties stipulated that A & E technicians share the same community of interest with service technicians in the petitioned-for unit.

[20] The wage rates for support associates are also based on their respective experience and geographic location, and the Employer also uses similar classifications to delineate support associates (i.e., "S02", "S05" and "A04"). The record did not establish which classifications correspond to specific support associate job titles.

[21] Technicians are given a basic electricity examination and perhaps another examination if they are seeking a specialized position. Unlike support associates, service technicians receive training on an intermittent basis. However, all district employees are offered correspondence courses for technical and non-technical subjects, and support associates are eligible to take the technical courses because they may transfer to a technician position.

transmitted to the service technicians' SSTs by way of a satellite based link. Each morning, they can turn on their SSTs and review their routes for the day. Service technicians then proceed to their first service call. All service technicians start their workday when they get into their trucks and record the time on their SSTs, regardless of whether they park their truck at their home or at the nearest retail store.[22]

Service technicians make service calls using Employer supplied trucks, tools, and parts. Most service calls requiring new parts are done using parts that are carried in the technician's truck. Only about 15 percent of the service calls in the district require parts that are not stocked in the technicians' trucks. Technicians input the parts numbers into the SSTs for all parts they use to service a customer call, so that management will know to replenish the parts kept in their trucks. When technicians do not carry the required part in their trucks, they order it by entering the information into the SSTs, and schedule a return appointment by entering that information into the SSTs. The ordered-part is subsequently sent directly to the customer from a vendor or an Employer warehouse located outside the Mid-Cal District. Parts that are too large or contain potentially hazardous materials are first sent to the Fresno facility where they are then shuttled to the San Jose or Concord branch offices or to the vans parked in a retail store parking lot in Salinas or San Bruno. Service technicians then pick up these parts before returning to the customer's home to finish the repair.[23] In the Prior Sears Decision, it was established that approximately 13.4 percent of the parts that are ordered to finish a service call are shipped to the district facilities rather than directly to the customers' homes.

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[22] The technicians' daily routes are initiated when customers call-in to place their orders for a service call. The requested service sits on a "resident server" until the day before the promised date of service. These service orders are downloaded to a "Computer Aided Routing System" (CARS) which assigns those service calls to a particular technician. Routing assignments are based on the customers' proximity to the service technician and whether the service call requires a particular specialization by the service technician. In creating the routing assignment, CARS also takes into consideration the technician's availability, the promised service times, and the road speeds and transit times. The computer generated routes are then reviewed by "route specialists" located in Sacramento, California, who can modify the routes if they determine that a more efficient route is required. At the hearing, the parties stipulated that the route specialists should not be included in any unit found appropriate.

[23] Sometimes support associates are called upon to pick up and deliver parts or merchandise to a customer's home, but this occurs on a "very limited" basis.

Upon completing a service call, service technicians input information into their SSTs representing the amount of money received from the customer.[24] At the end of their work day, service technicians check the mileage on their truck; input that information into the SST and record "end day" on the SST which signifies the end of their work day. When they return home, they plug-in their SSTs into a phone line and all of the information that they entered into the SST throughout the day is automatically uploaded by the Employer's computer.

Service technicians do not spend time each day at their assigned district facility, or, for those who do not have a district facility, at the vans located in one of retail store parking lots. Instead, they are required to go to a district facility or to the vans only when they need to pick up or return parts and supplies or to dispose of trash they generated during their service calls.

In order to construct the service technician's daily service routes, the Employer assigns each service technician a "working seed point." The "working seed point" represents the location where the service technician's services are needed based on the density of customer calls in that technician's industry and the technician's location relative to the customer calls. The Employer uses the "working seed point" to determine the radius in which a technician will be assigned calls on a particular day. However, the "working seed point" can change throughout the technician's work day to cover customer demands in other seed points. Thus, it is not uncommon to assign a new "working seed point" to a service technician with a low call load in order to cover customer calls in a high call load area and/or to help the technician pick up additional calls. Service technicians can also have their "working seed points" temporarily moved in order to cover for another technician in the same industry who is on vacation or is otherwise unavailable to work for an extended period. For example, in 2005, on at least 12 occasions, service technicians in one of the Employer's geographical area were assigned to temporarily replace service technicians who worked in another of the Employer's geographical areas.[25]

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[24] The next day service technicians deposit an envelope containing the cash and checks they received from customers into an ATM machine. Receipts and audit material generated by the technicians during the service calls the previous day are placed in a second envelope and the service technicians keep these envelopes until they are able to give them to their respective technician managers. The record did not establish how often the technicians have occasion to meet with their respective technician managers.

[25] These temporary substitutions lasted approximately one to two weeks.

In addition to the Employer's previously mentioned nine designated geographical areas in the Mid-Cal District, the Employer also delineates the Mid-Cal District into five "call capacity areas," based on the highest concentration of where service technicians reside. Call capacity areas "A", "B" "C", "D" and "J" roughly correspond to some of the geographic designations used by the Employer to determine technician manager assignments. Thus, areas A, B, C, D, and J closely approximate the geographic boundaries of the "Central California/Fresno Area", the "Central California/Bakersfield Area", the "South Coast Area", the southern half of the "South Bay Area", and the "Entire Bay Area", respectively. These geographic designations are more fully described in footnote 15 of this decision.

The record does not establish the percentage of time that service technicians' seed points are moved outside their respective "call capacity area". Two service technicians residing in call capacity area D testified that they rarely had to provide services outside of area D. However, the record established that seed points are regularly moved across call capacity areas. According to exhibits provided by the Employer, service technicians from Area J provided services to customers located in Area D on approximately 1,383 calls between about January 13, 2004 through about February 1, 2005. Another Employer exhibit listed examples of service technicians from Area D providing services to customers located in Area J on approximately 257 calls in 2004. According to Gary Willis, these instances of seed points moving across call capacity areas were merely a "sampling" of the crossover that occurred in all five call capacity areas during the designated periods.

Service technicians generally have no in-person contact with each other unless they pass each other while driving their routes. Some technicians call each other for advice or to request assistance while on a service call, but the record did not establish how often this occurs. The record did establish, however, that experienced technicians are called upon to mentor new technicians or technicians who are being cross-trained in other types of repairs. There are approximately 30 service technicians located in call capacity areas A, B and J who act as mentors for service technicians inside and outside their respective call capacity areas. Thus, for example, mentors in the J and A call capacity areas have trained and assisted service technicians in call capacity area D by visiting the D area or by using telephonic communication. However, except for the mentoring program, it is evident that

the Employer's service operation is set up so that service technicians do not generally come into contact with each other except when they happen to visit the branch offices or area van at the same time. As one of the service technicians testified, "This is a lonely job. We don't see each other."[26]

Support Associates

As previously noted, support associates are divided into specific job classifications based on their primary job responsibility, and they all have some job responsibilities that are directly related to assisting service technicians in providing their repair services. Moreover, as described below, many of the support associates are cross-trained and they assist or substitute for one another as the workload and employees' availability dictates. Currently, the support associates are classified as "customer relations support specialists," "part sales associates," "shuttle drivers," and "shipping and receiving associates." At the time of the Prior Sears Decision, there were four additional support associate classifications (i.e., "parts pros", "truck stock specialists", "fleet coordinators", and "audit cashiers"), but those classifications were subsequently eliminated due to the Employer's decision to consolidate various job functions district-wide. Thus, many of the duties formerly performed by the eliminated positions are now performed by employees in the remaining support associate classifications.[27]

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[26] Occasionally, the Employer conducts meetings for the service technicians in call capacity area D to discuss new policies or other information management wants to pass down to the technicians. These meetings are held in a break room at the Sears retail store in Salinas or at a Denny's restaurant in Salinas. These area D meetings are conducted infrequently, perhaps four times since January 2003. The record did not disclose if similar meetings are conducted in other call capacity call areas. The Employer also conducts annual district-wide meetings attended by service technicians and support associates throughout the district. The most recent annual meeting was conducted in April 2005 and it was conducted at four locations (San Jose, Concord, Fresno and Bakersfield). The service technicians residing in call load area D attended the annual meeting conducted in San Jose. Employees from other call load areas also attended the annual meeting in San Jose.

[27] At the time of the Prior Sears Decision, the Employer employed six "parts pros" in the district. They all worked at the Fresno facility and were responsible for, among other things, helping service technicians determine what parts were needed to finish a repair and to help technicians locate difficult to obtain parts and parts that are needed on an emergency basis. The "parts pros" position was eliminated sometime after the Prior Sears Decision issued. However, two support associates based in Fresno continue to assist service technicians to find parts locally. These two support associates also perform the job functions associated with the customer service representative position. The Employer also eliminated the "audit cashier" position in the district. However, an unspecified number of support associates have now been cross trained to do limited cashiering functions, like "balancing the safe" and handling some local pays matters. These support associates also continue to perform their duties as customer relations support specialists.

Customer Relations Support Specialists[28]

There are eight "customer relations support specialists," herein referred to as customer relations specialists, in the district, and they are all stationed at the Fresno facility. These employees are responsible for handling all customer inquiries and complaints that the national call center cannot handle relating to home service calls and/or merchandise that was returned to one of the district service facilities for repair. Most calls are inquiries about when the service technicians are going to arrive at their homes. Customer relations specialists respond to these types of inquiries by sending an SST message to the service technicians requesting that they call the customer with an estimated time of arrival. If a customer calls with a complaint or concerns about a service technician or service call, the customer relations specialist is required to fill out a "customer resolution form" reflecting the nature of the concern or complaint, the identity of the technician involved, and the status of the complaint, if the customer relations specialist is unable to resolve the problem.[29]

Customer relations specialists are generally in contact with service technicians and other support associates throughout the district in the course of their regular work day. Each customer relations specialist receives about three or four telephone calls per day from service technicians. The nature of the calls varies, but some typical examples would be when a customer relations specialist is asked to check on the prior repair history of a particular appliance; to verify that there is a protection agreement still in effect for a particular appliance; or to get a "service order" for an unscheduled appliance repair that the service technician added to a service call. Customer relations specialists are generally able to answer these kinds of questions while still on the telephone with the service technicians but occasionally need to call the technicians back. The Employer recently set up a

[28] During the instant hearing, the parties acknowledged the facts in the Prior Sears Decision associated with the "Customer Relations Support Specialist" position and they seemed to concede that the facts were still accurate; however, they did not specifically stipulate the continuing accuracy of those facts. In these circumstances, I find that the facts in the Prior Sears Decision relating to the customer relations support specialist position are still accurate and I, therefore, cite them in this decision.

[29] Customer relations specialists also telephone customers the day before a scheduled service call to determine if the customer has received the previously ordered part that is necessary for the service technicians to repair the customer's appliance. If the part has not been received, the customer relations specialist reschedules the service call.

telephone line dedicated exclusively for service technicians to call customer service specialists.

Each customer relations specialist also telephones service technicians approximately 10 to 12 times per day. However, the vast majority of the communications between customer relations specialists and service technicians is done by customer relations specialists sending SST messages to service technicians. Most of these messages are prompted by customer inquiries about when the service technician is going to show up and the technician is asked to telephone the customer with a response. Customer relations specialists also send SST messages to technicians to inform them that a service call has been rescheduled or to ask the technician to telephone a customer relations specialists to clear up some issue. For example, a service technician may have placed a parts order that does not correspond to the kind of repair they were making. Therefore, the customer relations specialist would call the service technician to make sure that the correct part had been ordered.

Support Associates Responsible for Trucks and SSTs

Jim Satterfield, a support associate based in Fresno, is responsible for monitoring maintenance of the trucks, monitoring and ordering truck inventories, and keeping up with license plate renewals throughout the district. He is assisted by the other four support associates, but the record did not establish where they are based. The Employer conducts an annual inventory of the parts stocked in all of the service trucks in the district. These inventories have been conducted at the Fresno facility and perhaps at other branch offices. The record did not establish what role Satterfield or the other four support associates play in conducting the annual inventory; however, at least some of the service technicians who reside in the Salinas area have had their trucks inventoried in Fresno in the past.[30]

Jim Satterfield also has clerical duties associated with the maintenance, repair and supplying of SSTs and related accessories to the service technicians throughout the district. Two other support associates, Don Burton and Brian Oxier, are also responsible for these

[30] At the time of the Prior Sears Decision, the Employer employed at least three truck stock specialists in the Mid-Cal District, all based at the Fresno facility. They were responsible for inventorying the service technicians' service trucks once per year and for managing the truck stock inventory on a daily basis. Sometime after the issuance of the Prior Sears Decision, the "truck stock specialist" position was eliminated; however, some of the truck stock specialist's duties were assigned to the five support associates referred to above.

duties. As previously indicated, Satterfield is based at the Fresno facility, Burton is based at the Concord branch and Oxier is based in San Jose.[31]

Parts Sales Associates

There are about 50 "parts sales associates" at the eight branch offices, including the Fresno facility. Their primary responsibility is to assist customers at the front counter. In addition to ringing up sales for customers, the part sales associates also receive merchandise from customers who want the merchandise to be repaired. Parts sales associates prepare a repair tag for this merchandise with a description of the problem that needs repair. After tagging the merchandise, they take it to a back office where it may be repaired by a service technician, or they take it to the shipping/receiving area, if there is one, and prepare the merchandise for shipping to one of two Employer repair facilities located outside the Mid-Cal District.[32]

Service technicians occasionally need to return unused parts or merchandise that they are unable to repair to the district service facilities. On these occasions, the service technicians may present these items to a parts sales associate, or they may simply leave the items in a bin that is designated for items returned by service technicians. In Salinas and San Bruno service technicians may leave the items in the vans parked in the retail store parking lots. The parts sales associates prepare the returned items for shipping along with the required paperwork. They then enter information regarding the returned items into the computer. The returned merchandise is then shipped to the Employer's repair facilities outside the district and the returned parts are shipped to the Fresno facility for further processing.

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[31] At the time the Prior Sears Decision issued, the Employer employed one fleet coordinator in San Jose and another one in Concord. They were responsible for maintaining, repairing, and supplying HHTs (handheld computers that were the predecessors to the SSTs) and related accessories to the technicians as well as troubleshooting any problems that arose with the HHTs. Fleet coordinators helped technicians who called in with questions regarding the operation of their HHTs. Fleet coordinators were also responsible for replacing damaged or broken technicians' tools and cellular telephones, and they had some responsibility for setting up the servicing and repair of service trucks. The "fleet coordinator" position was eliminated sometime after the Prior Sears Decision issued, but some of the clerical duties associated with the fleet coordinator position were assigned to Jim Satterfield, Don Burton and Brian Oxier.

[32] Parts sales associates also stock merchandise on the sales floor and perform some shipping and receiving functions at each of facilities in the district. In this regard, they help receive merchandise when trucks arrive, help package merchandise that is going to be shipped out, and file paperwork.

Finally, all of the district branches take annual physical inventories of all their parts stock. The inventory process takes about two weeks to accomplish. The Employer uses any employee it can spare to help in the inventory process, including service technicians.[33]

Shuttle Drivers

One shuttle driver operates out of the Fresno facility and a second driver operates out of San Jose. They deliver and pick up parts for the Mid-Cal District's branch service facilities approximately three times per week. They also deliver supplies to the branch service facilities that are to be used by the service technicians in the area. While delivering parts and supplies to the branch service facilities, the shuttle drivers also pick up unused parts and returned merchandise for delivery to the Fresno facility.[34] The San Jose driver delivers and picks up parts and supplies for the Mountain View, Hayward and Concord facilities. He takes the return items back to the San Jose facility. The Fresno driver picks up and deliver parts and supplies for the San Jose facility, including return items that have been sent to that facility. The Fresno shuttle driver also delivers and picks up parts and supplies from the other branches in the Southern part of the district. The shuttle drivers use one large truck or one of two vans to make their deliveries.

Shuttle drivers also perform shipping and receiving functions and assist on the parts sales floor at their respective branch service facilities when they are not shuttling parts and supplies.

Shipping and Receiving Associates

There are approximately nine shipping and receiving associates in the Mid-Cal District. Approximately five are stationed at the Fresno facility and about two are at the San Jose facility. The record did not disclose where the other two shipping and receiving associates are stationed. The shipping and receiving associates at the Fresno facility receive and ship parts, supplies, and merchandise throughout the Mid-Cal District. They also receive and process parts and merchandise that service technicians have returned to the branches. The bulk of the parts and merchandise they send to the branch service

[33] Gary Willis, the district general manager, testified that he did not believe any service technicians participated in the last inventory conducted by the Employer in October 2004, unless there were any technicians who were on modified duty during the period when the inventory was conducted.

[34] Parts that are returned to the van parked at the retail stores in Salinas and San Bruno are picked up by technician managers, Willis or any other manager who happen to passing through the area. They then transport the parts to the Fresno or San Jose facilities. The record did not establish if the shuttle drivers also service the Salinas and San Bruno vans.

facilities are products to be sold on the sales floor of these facilities. As noted above, parts are sometimes shipped directly to customers' homes so that service technicians can perform service calls; however, the record establishes that these shipments account for a "minority" of the shipments from the Fresno facility.

The shipping and receiving associates at the San Jose branch receive parts, merchandise, and supplies from the Fresno facility and ship returned parts and merchandise to the Fresno facility. All the shipping and receiving associates in the district also work on the sales floor of their respective branch facility when the parts sales associates are busy and need their assistance. In addition, one of the shipping and receiving associates at the San Jose facility also performs shuttling duties at least two days per week.

ANALYSIS

The Petitioner contends that a unit consisting of only the service technicians in "call capacity area D" is the appropriate unit. In support of its contention, the Petitioner argues that call capacity area D (herein referred to as Area D) constitutes a "single facility or single area unit" and is, therefore, presumptively appropriate, and the burden is on the party opposing that unit to present evidence overcoming the presumption. As set forth above, the Employer contends that the single facility presumption does not apply and that, in any event, the unit service technicians and support associates throughout the Mid-Cal District share such a strong community of interest that they constitute the smallest possible appropriate unit.

Contrary to the Petitioner's contention, I do not agree that the presumptive appropriateness of a single facility unit applies, even by analogy, to Area D, because the territory encompassed by Area D cannot reasonably be viewed as the equivalent of a single facility. Area D is merely a geographic area; it does not denote a facility in the sense of a structure or office where the employees work together or are based for performing work outside of the facility. Instead, Area D consists of a parked van that is used by the service technicians to occasionally pick up and drop off parts and supplies.[35] In addition, Area D

[35] Two service technicians who reside in Area D testified that on rare occasion when their SSTs were not functioning they used the fax machine inside the Sears retail store to obtain a copy of some service orders. However, technicians do not actually need to obtain a service order, as they can obtain their next service call

does not have a central location where service technicians report to work or periodically assemble. In this regard, the record establishes that the service technicians in Area D begin and end their workday at their homes and they occasionally attend meetings at a Denny's restaurant or in a break room the Employer utilizes at the Sears retail store in Salinas. Thus, unlike employees who work in or out of a single facility and who have at least a some degree of interaction, the service technicians in Area D have little to no day-to-day contact with one another.[36] See *Technology Services Solutions,* a Decision On Review And Order, informally published as 1995 WL 681435 (NLRB), in which the Board relied on the many of the same factors cited above in concluding that a geographic area consisting of customer service representatives supervised by a particular supervisor could not be viewed as the equivalent of a single facility.

I will now consider whether the appropriateness of the unit proposed by the Petitioner. The resolution of unit composition issues begins with an examination of the petitioned-for unit. Only if it is inappropriate will an alternative unit be found. Bartlett-Collins Company, 334 NLRB 484 (2001). In making a determination as to whether a petitioned for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioning union be an appropriate unit for purposes of collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or the most appropriate unit. See Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950); National Cash Register Co., 166 NLRB 173, 174 (1967); Dezcon, Inc., 295 NLRB 109, 111 (1989). For the reasons set forth below, I have concluded that the Petitioner's proposed unit of the Area D service technicians is not an appropriate unit; moreover, I would not find it to be an appropriate unit even if it were considered a single facility that is entitled to the single facility presumption.

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assignment by simply calling in from their trucks. Therefore, the record establishes that the only "structure" in Area D that is used by service technicians and belongs to the Employer is the parked van.

[36] At the hearing, the Petitioner requested that the Decision and Direction of Election in Case 29-RC-10296 be considered by the Regional Director. The Decision in Case 29-RC-10296 was considered by the undersigned in reaching the instant Decision. However, that Regional Director's decision is distinguishable from this case. Among other things, the petitioned-for unit of service technicians with permanent seed points in Brooklyn, New York had a long history of being separately represented by another labor organization, the Brooklyn technicians had extensive contact among themselves, and there was an absence of contacts or interchange among the Brooklyn technicians and those with seed points elsewhere.

When an employer has more than one facility, the Board has long held that employees in a particular location will not be considered an appropriate unit if they have been so effectively merged into a more comprehensive unit, or are so functionally integrated with employees at other locations, that the employees at the individual location have lost their separate identity. See *J & J Plate, Inc.*, 310 NLRB 429 (1993); Walgreen Co., 198 NLRB 1138 (1972) *Alois Box Co., Inc.*, 326 NLRB 1177 (1998); *Washington Palm, Inc.*, 314 NLRB 1122, 1127 (1994). This approach is applicable even if the proposed single facility unit is presumptively appropriate. Dattco, Inc., 338 NLRB 49 (2002); New Britain Transportation Co., 330 NLRB 397 (1999).[37] In the above cases, the Board used some or all of the following factors in assessing whether the employees in one location have lost their separate identity: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) the degree of employee interchange; (4) the distance between the locations; and (5) bargaining history, if any exists. See also Bowie Hall Trucking, Inc., 290 NLRB 41, 42 (1988). In making this determination, the Board also considers the integration of operations along with the other community of interest factors cited above. *NLRB v. Paper Mfrs. Co.,* 786 F.2d 163 (3d Cir. 1986); *Kalamazoo Paper Box Corp.*,136 NLRB 134, 137 (1962).

Based on the foregoing and the entire record herein, I find that the service technicians in Area D share such a significant community of interest with the rest of the service technicians, and with the support associates, in the Mid-Cal District that the Area D service technicians have no separate identity as a unit and must be included in an overall Mid-Cal District unit, which includes both service technicians and support associates. I will first address the integration of the Employer's operation and then I will address the five enumerated factors listed above.

The evidence in this case, like that in the Prior Sears Decision, amply shows that the Employer's service/repair operation is highly integrated. All of the support associates,

[37] The party opposing the single facility unit has the heavy burden of rebutting its presumptive appropriateness. However, the Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence … illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the employees sought have been 'obliterated.'" *Trane, An Operating Unit of American Standard Companies,* 339 NLRB 866, 867 (2003); quoting *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983).

with varying degree, have job functions that are integrated with the job functions of the service technicians. In this regard, the record shows that some of the primary job activities of the customer relations specialists directly support the job activities of the technicians. For example, they have daily contact with technician; including locating parts in the local area that are needed by a service technician; communicating information about parts and protection agreements, and resolving customer complaints and inquiries regarding service calls. Parts sales associates, shuttle drivers, and shipping/receiving associates also engage in job functions that directly support the job activities of the technicians, including processing unused parts and merchandise returned by technicians and making parts and supplies available to the technicians.[38] The functional integration between the service technicians and support associates results in significant daily interchange and interaction between them. In fact, service technicians typically have more day to day communications with support associates than they do with their fellow service technicians. It is, therefore, evident that the service technicians could not do their jobs without the assistance of the support associates. The Board traditionally gives the degree of functional integration and interdependency of work responsibilities significant weight in determining the appropriateness of petitioned-for units. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999); *Threads-Incorporated*, 191 NLRB 667 (1971). Here the evidence of functional integration strongly supports the conclusion that the petitioned for unit has lost its separate identity and that the service technicians and support associates share a very strong community of interest. See Purolator Courier Corp., 265 NLRB 659, 662-663 (1982); American Courier Corporation, 184 NLRB 602 (1970). [39]

The evidence also shows that the Employer has a highly centralized control over daily operations and labor relations, and the evidence fails to establish that there is any significant autonomy regarding the employees' terms and conditions of employment

[38] In addition, support associates are cross-trained to perform the job functions of other support associates and some of these additional duties assist service technicians to perform their duties. For example, whenever parts sales associates assist shipping/receiving associates and/or customer relation specialists, they participate in providing parts and supplies to technicians or in relaying messages to technicians regarding customer inquiries.

[39] In those cases, the Board concluded that where an employer's operations are highly integrated as a result of its customers' demands for time-sensitive service, the employees at different locations are subject to overlapping supervision, there is frequent contact between employees, the employees have uniform duties and working conditions, and the central office exercises broad authority over daily operations and labor relations, the presumptive appropriateness of the single-facility unit is rebutted.

among the immediate supervisors of Call Capacity Area D employees sought by the Petitioner. Thus, as stated above, the service technicians and support associates in the Mid-Cal District share many common terms and conditions of employment due in part to the centralized administration of the Employer nationwide and due in part to the centralized control by Mid-Cal District managers. Employee benefits, personnel policies, employee handbooks and the general wage structure are set nationally by the Employer. The bulk of the Mid-Cal District service technicians' and support associates' other terms and conditions of employment are set by the Mid-Cal District general manager, Gary Willis, or by the managers directly supervised by him. Willis determines the budgets and the hours of operation for all of the district facilities, and he is responsible for approving all disciplinary action in the district. The district managers, who are based in the Fresno headquarter offices, oversee all employee recruitment, hiring, and new employee orientation for both the service technicians and the support associates throughout the Mid-Cal District. They are also involved in all disciplinary, layoff, and evaluation decisions, as well as in determining which of the possible Employer wage rates will be given to each of the Mid-Cal District employees. In addition, the Mid-Cal District human resources office handles all personnel matters arising in the district and copies of all personnel files are kept in this office. Although the service technicians and support associates have different managers, the evidence shows that at some branch service facilities in the Mid-Cal district, when a service technician manager is on vacation or away from the facility, a support associate manager will supervise both the service technicians and support associates, and the reverse happens when the support associate manager is on vacation or away from the facility.

The Employer's centralization of control is also demonstrated by the absence of evidence showing: that there is one supervisor who has authority over all of the employees in the petitioned for unit; the supervisor or supervisors of the employees in the proposed unit supervise only the employees in the petitioned for unit; or that the immediate supervisors of the petitioned for unit have significant local autonomy over the terms and conditions of employment of those employees. I do acknowledge that the management/supervisory structure for the service technicians in Area D has been somewhat complicated by the Mid-Cal District's efforts to shuffle assignments in order to

cope with its ongoing vacancies in the service technician manager position. Nevertheless, the evidence does show that in an effort to maintain a 20/25 to 1 ratio, service technician managers are commonly assigned to supervise service technicians in a particular industry, even though they are assigned to different call capacity areas. Indeed, the service technicians in Area D are supervised by four different technical managers based on their respective industries and these managers are located outside of Area D and also supervise service technicians outside of Area D. The degree of centralized control, particularly the amount of authority exercised by the management of the Mid-Cal District, and the lack of evidence showing significant local supervisorial autonomy for the proposed unit, strongly supports the conclusion that the employees in the proposed unit lack a separate identity and that they share a strong community of interest with the service technicians and support associates in the Mid-Cal District. See *Trane, An Operating Unit Of American Standard Companies*, 339 NLRB 866 (2003)

The next community of interest factor to consider is the similarity of employee skills functions and terms and conditions of employment. The evidence set forth above, shows that the Mid-Cal District employees share many common terms and conditions of employment and shows that there are some differences in the Mid-Cal District employees' skills and terms and conditions of employment. With regard to the skill levels and job function, all of the service technicians throughout the district have relatively similar ranges of skills and job functions, as do all of the district's support associate. The skills and job functions of the service technicians, however, are different from those who perform support associates work. The service techs also generally have higher wage rates than the support associates, receive different on-the-job training, and typically work at customers' homes rather than at a branch service facility. Moreover, the Employer also provides a type of locality pay, so that employees in the same classification receive somewhat different wages based on where they work in the Mid-Cal District. The import of these differences is diminished by the many shared terms and conditions of employment; by the evidence showing that support associates are eligible to transfer and some have transferred to the technician position; and by the fact that the Employer does not require prospective service technicians to have had any prior technician experience or technical knowledge. There is also evidence that many service technicians are required to go to the branch

service facilities to perform in-shop repairs, pick up parts and supplies, return unused parts and merchandise, dispose of trash, attend employee meetings, and talk to the technician manager. More importantly, technicians and support associates are in constant contact with each other through the use of SSTs and cellular telephones. Thus, overall, the evidence regarding this factor supports the conclusion that the proposed unit is not an appropriate unit and that the smallest appropriate unit is the Mid-Cal District.

There is also a significant degree of employee interchange among the service technicians in the five call capacity areas that are included in the Mid-Cal District. Experienced service technicians are called upon to train new technicians and to cross-train other technicians located in different call capacity areas. In addition, service technicians telephone each other for advice or information such as when technicians call their respective mentors for assistance. All service technicians are required to cover for other technicians, even if they are located in another call capacity area, when the other technicians are away from work on extended leaves, such as on vacation leave. In addition, service technicians are frequently reassigned to other call capacity areas to help cover heavy call loads for home service in their particular industry-specialty. Thus, the record established approximately 1,500 examples of service technicians crossing over between Areas D and J during an approximately one year period. There is also some evidence of permanent transfers between the support technicians and service technicians. Moreover, there have been many occasions where service technicians have been given temporary light duty assignments in which they performed exclusively or predominantly support associates work. Thus, the interchange and interaction evidence is supportive of my conclusions on the appropriateness of the units proposed by the parties.

While the distance between the respective branch service facilities and van centered service areas are considerable. However, as the Call Capacity Area D employees have no separate identity; the Employer's districts are its smallest relatively autonomous administrative units; and the employees in the Mid-Cal District share a strong community of interest and a separate identity from that of the other districts, I have concluded that the distance between the facilities and work areas in this case is not a significant factor. Cf.. Id.

With regard to bargaining history, although there is evidence that the Employer did have a bargaining unit in the Mid-Cal District that was less than district wide, that unit has not been in existence since the early 1990s. Moreover, that unit was a multiple location unit and did not involve the Petitioner. In these circumstances, I conclude that the bargaining history does not support or detract from my findings in this case.

In sum, I conclude that the strong functional integration among the service technicians and support associates in the Mid-Cal District, the common management and overlapping supervision within the Mid-Cal District, the degree of autonomy of the Mid-Cal District managers, the similarity of the employees' terms and conditions of employment, and the evidence of employee interchange and interaction within the Mid-Cal District establishes that the Petitioner's proposed unit has no separate identity and is not an appropriate unit and that the service technicians and support associates in the Mid-Cal District do constitute the smallest possible appropriate unit in this case.

CONCLUSION

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' arguments made at the hearing and in their briefs, 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 parties stipulated, and I find, that the Employer, a New York corporation, with its corporate headquarters and principal place of business located in the State of Illinois, has been engaged in the business of operating district service operations located in Northern California. During the last twelve months immediately preceding the hearing, in the course and conduct of its business operations, the Employer purchased and received, at its Mid-Cal Metro District service facility, goods and materials valued in excess of $50,000 directly from points located outside the State of California, and has had gross annual revenues in excess of $500,000. Based on the foregoing, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and 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 full-time and regular part-time service technicians, A&E technicians, and support associates, including customer relations support specialists, shipping and receiving associates, shuttle drivers, and parts sales associates employed by the Employer in its Mid-Cal Metro District; excluding all other employees, office clerical employees, timekeepers, human resources assistants, guards, and supervisors as defined in the Act.

There are approximately 426 employees in the unit found appropriate.

NOTICE

As explained above, I have concluded that the appropriate unit in this case is considerably larger than that initially sought by the Petitioner. At the hearing, Petitioner was asked whether it would also seek an election if the Region determined that the only appropriate unit was a unit larger than the petitioned-for unit. Petitioner's response was not clear, and I am now giving the Petitioner an opportunity to state its position on whether it wishes to proceed to an election in the unit I found appropriate in this case. If it does wish to proceed, it will be necessary for the Petitioner to notify the Region in writing by the close of business on Friday, August 19, 2005, that is seeking an election in the larger unit. If the Petitioner fails to provide either its written notice that it wishes to proceed to an election in the unit found appropriate in this case, or its withdrawal of the Petition, by the close of business on August 19, 2005, the Petition will be dismissed.

If the Petitioner does provide timely written notice that it wishes to proceed to an election in the larger unit, the Region will then administratively determine whether the Petitioner has an adequate showing of interest for the larger unit found appropriate in this case. To the extent that the Petitioner does not currently have a sufficient showing of interest for this larger unit of approximately 426 employees, it must submit to the Regional Office an adequate showing of interest for such unit within 14 days from the date of issuance of this Decision. If the Petitioner fails to submit the required additional showing

of interest, or its withdrawal of the Petition, within the time provided, the Petition will be dismissed. If the Petitioner does timely provide the sufficient showing of interest, I will issue a Direction of Election.

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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **August 30, 2005.** The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlrb.gov.

Dated at Oakland, California this 16th day of August, 2005.

_____

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