

**Macy's West, Inc. and International Union of Operating Engineers, Local 428, AFL-CIO, Petitioner.**  
Case 28-RC-5422

March 31, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On June 25, 1996, the Acting Regional Director for Region 28 issued the attached Decision and Direction of Election in the above-entitled proceeding (pertinent portions are attached as an appendix). He found that a unit consisting of all maintenance engineers employed by the Employer at its six facilities located in two cities in Arizona is an appropriate unit for bargaining, and that the chief engineer is not a supervisor within the meaning of Section 2(11) of the Act.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's decision. The Employer contended that a separate maintenance unit is not an appropriate unit for bargaining. It alternatively argued that even if a separate maintenance unit is found appropriate, the unit must include all maintenance engineers assigned to each of its stores in Las Vegas, Nevada, and its store in Albuquerque, New Mexico, as well as its Arizona stores. The Employer also contended that the chief engineer is a statutory supervisor. On July 24, 1996, the Board granted the Employer's request for review. The election was held as scheduled on July 24, 1996, and the ballots were impounded pending the Board's Decision on Review. The Petitioner filed a brief on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the Petitioner's brief on review, with respect to the issues on review and has decided, for the reasons set forth in the attached Acting Regional Director's decision, and the reasons set forth below, to affirm the Acting Regional Director's conclusions that a unit consisting solely of the Employer's maintenance engineers is appropriate for bargaining. We also affirm, for the reasons set forth by the Acting Regional Director, that chief engineer Bob Smith is not a statutory supervisor.<sup>1</sup> For the reasons set forth below, we reverse the Act-

<sup>1</sup> The maintenance engineers primarily work on their own without supervision. Chief Engineer Smith, the most highly skilled maintenance engineer with respect to heating, ventilation, and air-conditioning (HVAC) equipment, asks engineers to assist him or to correct problems that he spots in the HVAC equipment. Smith provides technical direction based on his superior technical skills to engineers on nonroutine projects. Smith may also send an employee to get needed supplies and parts for projects. In general, maintenance engineers talk to Smith once or twice a week regarding the HVAC equipment. Under these circumstances, the record fails to establish that Smith's role, based on his technical expertise, in assigning and directing maintenance engineers, involves the use of independent judgment under Sec. 2(11) of the Act.

ing Regional Director's conclusion that a unit limited to the Employer's facilities in Arizona is appropriate.

The Employer is engaged in the sale and distribution of general retail merchandise and related products in a number of locations, including the western United States. The Employer's stores are divided into geographical regions. The southwest region consists of four stores in Phoenix, Arizona, two in Tucson, Arizona, four in Las Vegas, Nevada, and one in Albuquerque, New Mexico.

Dennis Hunt is the Employer's divisional maintenance manager for the southwest region, and he is responsible for the housekeeping and maintenance of the Employer's facilities located in these States.<sup>2</sup> Hunt works from an office in one of the Phoenix stores. Six to seven maintenance engineers report to him directly—two to three in Phoenix, one in Tucson, two in Las Vegas, and one in Albuquerque.

The Phoenix stores are within 20 minutes driving time of each other. The Tucson stores are located approximately 117 miles (2 hours driving time) from the Phoenix stores, the Las Vegas stores are about 290 miles from Phoenix (about 4-1/2 hours driving time) and the Albuquerque store is located about 431 miles (about 8 hours driving time) from the Phoenix stores.<sup>3</sup> The distance between Albuquerque and Las Vegas is 579 miles (about 10 hours driving time).

The Acting Regional Director found that a unit limited to the facilities in the six stores in Phoenix and Tucson is appropriate for bargaining. He noted that all of the employees in the unit sought by the Petitioner report to the same supervisor and are within relatively close proximity of one other. He found that they occasionally interchange, substitute for, and assist one another. By contrast, the Acting Regional Director found virtually no interchange of employees between the Phoenix/Tucson stores and the stores in Las Vegas and Albuquerque.

In determining whether a petitioned-for multilocation unit is appropriate for collective bargaining, the Board

See *Chevron Shipping Co.*, 317 NLRB 379 (1995). See also *Providence Hospital*, 320 NLRB 717 (1996), affd. sub nom. *Providence Alaska Medical Center v. NLRB*, 121 F.3d 548 (9th Cir. 1997).

With respect to the assignment of overtime, Divisional Maintenance Manager Dennis Hunt testified that when Smith is contacted about or is aware of a maintenance problem at a store that needs attention during off hours (weekends or evenings), Smith, without authorization from higher management, may contact a maintenance engineer and ask the engineer to handle the problem. However, Hunt testified that if another maintenance engineer besides Smith is contacted first during off hours concerning a problem, he assumes that the employee might call Smith and ask him to handle the problem, and that maintenance engineers help each other out in that regard. We further note Hunt's testimony that he has always instructed on-call maintenance engineers that they had his approval to enter the stores during off-duty hours to handle emergencies. Thus, the record fails to establish that Smith may require a maintenance engineer to work overtime, or that such an assignment requires the exercise of independent judgment. *Providence Hospital*, 320 NLRB at 732.

<sup>2</sup> The housekeeping functions are performed by a contract service.

<sup>3</sup> See Rand McNally Standard Highway Mileage Guide (1993).

examines traditional community-of-interest factors, including similarity in employee skills, duties, and working conditions; centralized control of management and supervision; functional integration, including employee interchange; geographic separation of facilities; collective-bargaining history; extent of union organization, and employee choice. See *NLRB v. Carson Cable TV*, 795 F.2d 879, 884–885 (9th Cir. 1986).

Contrary to the Acting Regional Director, we find that a unit limited to the stores located in Phoenix and Tucson is not appropriate for bargaining, and that the smallest appropriate unit must also include the stores in Las Vegas and Albuquerque. The six to seven maintenance engineers in all of the stores—Phoenix, Tucson, Las Vegas, and Albuquerque—share similar skills, duties, and working conditions. All of them work under and report directly to Hunt, the divisional maintenance manager. There is no separate supervision of employees working in Tucson and Phoenix. Most significantly, the chief engineer, Bob Smith, who constitutes one-third or one-fourth of the three to four person unit found appropriate by the Acting Regional Director,<sup>4</sup> travels to Las Vegas approximately once a month for 2 days at a time and to Albuquerque every other month to provide assistance to the engineers at these stores in technical areas involving the HVAC equipment. He, thus, has significant interaction with the other employees whose terms and conditions of employment are otherwise identical with those enjoyed by employees in Phoenix and Tucson. Under these circumstances, we conclude that a unit limited to the Phoenix/Tucson facilities is not appropriate.<sup>5</sup> Rather, the only appropriate unit also includes stores in Las Vegas and Albuquerque, notwithstanding the substantial geographic separation between these stores and the petitioned-for stores (a factor which is somewhat offset by the substantial separation between the petitioned-for Phoenix and Tucson stores).

Although we reverse the Acting Regional Director as to the scope of the unit, we affirm the Acting Regional Director's finding that a separate unit of maintenance engineers is an appropriate unit for bargaining. In doing so, we note that the maintenance engineers are separately supervised by Divisional Maintenance Manager Dennis Hunt. The maintenance engineers possess mechanical skills in electricity, plumbing, and heating, ventilation and air-conditioning (HVAC) equipment that is unique to their classification. They earn higher wages than the average wages of other hourly employees. They are as-

<sup>4</sup> Smith spends the majority of his time in the Phoenix and Tucson facilities.

<sup>5</sup> We note that this case presents the issue of whether a petitioned-for multilocation unit is an appropriate unit for bargaining or whether other locations must be included. This is not a case involving the appropriateness of a petitioned-for single facility unit or of an overall unit of the Employer's stores, in which there would be a presumption of appropriateness.

signed a portion of their work under a unique work order system. In addition, maintenance engineers do not interchange with employees in other job classifications at the stores. Also, the record contains minimal evidence of transfers in or out of the maintenance department. See *Ore-Ida Foods*, 313 NLRB 1016, 1019 fn. 3 (1994), and cases cited therein.<sup>6</sup> Contrary to our dissenting colleague's contention, the fact that the maintenance engineers and other employees perform some overlapping functions, such as lamping, is not determinative. *Id.* at 1018. Further, we note, as found by the Acting Regional Director, that the maintenance engineers' participation in special projects is generally limited to performing any electrical work necessary for the project, not the functions performed by other employees.

Based on the above, the Acting Regional Director's Decision and Direction of Election is affirmed with respect to the findings that a separate maintenance unit is appropriate for bargaining and that chief engineer Bob Smith is not a supervisor as defined in Section 2(11) of the Act. However, we find that the maintenance engineers in the Las Vegas, Nevada and Albuquerque, New Mexico facilities must be included in the unit found appropriate. Accordingly, the Acting Regional Director's Decision and Direction of Election with respect to the exclusion of the Las Vegas and Albuquerque facilities is reversed.

#### ORDER

This proceeding is remanded to the Regional Director for further appropriate action, consistent with the findings herein.

MEMBER HURTGEN, dissenting.

I find that the Employer's maintenance engineers do not constitute a separate appropriate unit.<sup>1</sup> Accordingly, I would dismiss the petition.<sup>2</sup>

To constitute a separate appropriate unit, the Board requires that the petitioned-for maintenance employees comprise a readily identifiable group whose "similarity of function and skills create a community of interest such as would warrant separate representation." *American Cyanamid Co.*, 131 NLRB 909, 910 (1961); *Harrah's Illinois Corp.*, 319 NLRB 749 (1995). Based on such factors as overlapping job functions and interaction with other hourly employees, I find that this standard has not

<sup>6</sup> Compare: *Harrah's Illinois Corp.*, 319 NLRB 749 (1995), in which the petitioned-for maintenance trade employees were *not* separately supervised and were *not* grouped administratively in a separate department, and there were frequent transfers and job interaction between the maintenance trade employees and other employees.

<sup>1</sup> I find a separate maintenance unit inappropriate regardless whether it encompasses the Phoenix and Tucson locations—sought by the Union, or additionally includes the Albuquerque and Las Vegas locations—as found by the majority.

<sup>2</sup> Because I find a separate maintenance unit inappropriate, I do not reach the issue of chief engineer Smith's alleged supervisory status.

been met.<sup>3</sup> See generally *Westin Hotel*, 277 NLRB 1506 (1986).

Although the petitioned-for employees perform certain “maintenance” functions such as lamping, electrical work, HVAC, plumbing, painting, and repairs, other hourly employees perform some of the same work. Thus, while maintenance employees spend one-third of their time on lamping work, virtually all other hourly employees also perform this work—particularly dock employees. Dockmen, like the maintenance engineers, also repair shelves and build walls. And, when maintenance engineers are unavailable, handymen perform painting and minor maintenance work. Finally, during maintenance emergencies, such as water leaks, all employees help out.

Maintenance engineers also perform nonmaintenance work. For example, when working on special projects (which—with special requests—comprise one-third of their work), the maintenance engineer often will help finish the entire project, not just the maintenance aspect. And, significantly, when working on these special projects, such as displays, seasonal decorations, and moving departments, the maintenance engineers work along side and interact with other hourly employees.

In sum, because I find that the maintenance engineers do not have a sufficiently distinct community of interest warranting their separate representation, I would dismiss the petition.<sup>4</sup>

#### APPENDIX

##### REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION

The parties stipulated that the Employer, a Delaware corporation, with its principal office and place of business in Phoenix, Arizona, is engaged in the sale and distribution of general retail merchandise and related products in a number of locations in the western United States, including Arizona, where it has a total of six stores, four in Phoenix and two in Tucson. During the past year, it derived gross revenues in excess of \$500,000 from the sale and distribution of products. During the

<sup>3</sup> The maintenance engineers also have much in common with the Employer’s other hourly employees: they use the same employee entrances, punch the same timeclock, wear the same employee identification badges, are subject to the same employee handbook, participate on the same safety committees, and are eligible for the same benefits. And, unlike skilled maintenance employees, the instant maintenance engineers are not required to have any licenses, degrees, or specific training beyond that required of other hourly employees. Indeed, the Employer has contracted out its skilled maintenance work in such areas as escalators, elevators, alarm systems, doors, telephones, and electrical systems. Although the Employer has retained its HVAC work, it appears that only chief engineer Smith is proficient in nonroutine HVAC matters.

<sup>4</sup> Contrary to the majority, I am not persuaded that the lack of transfers between maintenance engineers and other hourly employees warrants a different result, particularly given the virtual lack of maintenance engineer turnover. Nor is it determinative that maintenance engineers have a separate regional supervisor. Thus, although the supervisor evaluates the maintenance engineers, he solicits input from store managers when doing so.

same period, it shipped products valued in excess of \$50,000 in interstate commerce to points located outside the State of Arizona and received goods valued in excess of \$50,000 directly from out-of-state sources. Based on the parties’ stipulation, I find that the Employer is engaged in commerce within the meaning of the Act.

The Petitioner seeks to represent a unit consisting of all maintenance engineers employed by the Employer at its six facilities located in the State of Arizona. The Employer asserts, however, that a statewide unit comprised exclusively of engineers is not appropriate for the purposes of collective bargaining. It contends that the engineers share a community of interest with the sales and sales support employees who work in the retail stores to which the engineers are respectively assigned and that the only appropriate unit would be single store, wall-to-wall units of employees that would include the engineers assigned to that particular store. Alternatively, the Employer contends that even if a unit comprised solely of engineers is found to be appropriate, the unit must include all maintenance engineers who work within the regional purview of the divisional maintenance manager whose jurisdiction includes Phoenix and Tucson. More specifically, the Employer asserts that a unit limited to maintenance engineers must include, in addition to those engineers who work in Phoenix and Tucson, all maintenance engineers who are assigned to its four stores in Las Vegas, Nevada, and its store in Albuquerque, New Mexico. Finally, the Employer, contrary to the Petitioner, asserts that the position of chief engineer is supervisory within the meaning of Section 2(11) of the Act and, therefore, any unit found appropriate should exclude the chief engineer.

The record reflects that the Employer operates retail department stores in the southwestern part of the United States, including stores that were formerly Broadway Stores, Incorporated, but were acquired by the Employer in February 1996. In addition to a number of stores in California and Texas, the Employer has six stores in Arizona (four in Phoenix and two in Tucson), four in Las Vegas, and one in Albuquerque. It appears that engineers have performed some work at a distribution center in Tempe, Arizona. However, the record also suggests that the Employer does not operate this facility. Inasmuch as there is no record evidence that the Petitioner is seeking to represent any engineers working at the distribution center, there was no contention at the hearing that the distribution center should be included in any unit found appropriate and the Employer maintains that it is not one of its facilities, I shall not include the distribution center in the unit found appropriate herein.

The Employer’s stores are divided into geographical regions, each of which is assigned to a vice president of stores. For human resources purposes, however, the Employer groups its stores into regions based on a different geographical composition and each region has a human resources manager. Consequently, the stores within the geographical region of one vice president of stores may be under the responsibility of two or more human resources managers. Moreover, the record reflects that the jurisdictional breakdown of the engineering divisions is not coextensive with that of either the retailing or human resources operations. In this regard, Dan Hunt, the Employer’s divisional maintenance manager for the southwest region, testified that his division of responsibility encompasses Arizona, Nevada, and New Mexico. As such, the facilities in Hunt’s region fall within the scope of two vice presidents of stores as well as two human resources managers. Specifically, Hunt’s

stores in Arizona and New Mexico are in Vice President of Stores Colleen Miller's region, which also includes several stores in Texas. In contrast, Hunt's Las Vegas stores are in Vice President of Stores Jack Chestnut's region. Similarly, the Arizona and New Mexico stores are in one human resources manager's region, whereas the Las Vegas stores, together with the Employer's stores in Northern California, are in another human resources manager's region.

Each of the Employer's retail department stores is headed by a store manager who oversees all of the departments within the store. The departments are classified as either sales or sales support areas. Based on the record, it appears that the sales area is divided into approximately 18 sales "zones" which are then broken down into groups that are assigned to approximately 7 sales team managers who report directly to the store manager. The team managers, in turn, have team leaders and sales associates who work in each of the selling zones. Approximately 75 to 80 percent of the total hourly employee complement in each store, which ranges from 141 to 188, works in sales on either a commission or noncommission basis. The noncommission employees earn between \$6.50 and \$12 per hour depending on longevity and performance. The record discloses that there are no required qualifications for those who occupy sales jobs but the Employer seeks aggressive individuals who have customer service experience, some basic mathematical skills, and some adaptability to computers.

The remaining 25 percent of employees work in sales support areas such as receiving/dock/stock gift wrap, cashier, "visual," loss prevention, and engineering areas. The functions in each of these areas are coordinated by an operations or assistant manager, who reports directly to the store manager. In addition to coordinating all of the sales support functions, the operations manager is directly responsible for the receiving/dock/stock gift wrap, and cashier departments.

#### Receiving/Dock/Stock

The record suggests that receiving/dock/stock is the largest sales support department in each store. This department is staffed by approximately 15 to 20 hourly employees, who work full-time, part-time, or one of a variety of flex-time schedules; a receiving supervisor; two to three team leaders; and the receiving manager, who reports directly to the operations manager. The primary duties performed by the receiving/dock/stock employees include unloading merchandise from trucks, marking merchandise, stocking stockrooms, and moving merchandise and equipment from one area of the store to another. Additionally, the record indicates that the receiving/dock/stock employees are expected to perform other miscellaneous functions as may arise. The majority of the employees in the receiving/dock/stock department earns between \$5.50 and \$7 per hour. The receiving supervisor earns approximately \$9.50 while the team leaders make between \$8 to \$12 per hour. The record indicates that other than some weight lifting requirements, there are essentially no minimum requirements to qualify for these jobs. In performing their duties, they may utilize scanning and ticketing guns, pallet jacks, and dollies.

#### Cashiers & Gift Wrap

The cashiers use computer equipment and cash and coin counting machines. Although there are no minimum job requirements to qualify for a cashier's position, potential employees with cash handling experience are preferred. With respect

to employees in gift wrap, there are no minimum job qualifications.

#### Visuals

The record indicates that the physical presentations of merchandise in the stores are performed by "visuals" teams. These teams ensure that the merchandise is displayed in a manner that is consistent with corporate guidelines as set forth in a manual called, "The San Francisco Report." In creating their presentations, the "visuals" team members will move merchandise, request fixture moves, and paint and hang fixtures and props. Their duties often require the use of hot glue guns, hammers, bank pins, electric drills, saws, paper slicers, mat knives, and painting instruments.

The "visuals" manager has responsibility for two stores, in each of which are assigned two team leaders. Both team leaders are full-time, but one is salaried and the other is hourly. It appears from the record that there are no other "visuals" employees; however, their projects often call for them to work with or come into contact with other employees, both sales and sales support, throughout the store. Like the sales support employees described above, it appears from the record that there are no minimum job requirements for the team leader positions; however, the Employer might give hiring preference to creative individuals who have some experience handling merchandise. The salaried team leader earns the equivalent of approximately \$12.50 per hour and the hourly employee earns approximately \$8 per hour.

#### Loss Prevention

The record indicates that each store has a loss prevention or security supervisor and two detectives. These individuals earn between \$8.50 and \$16.75 per hour and operate a bank of approximately 25 cameras. In addition, they are responsible for security alarms, locks, and any security issue that might arise within the store. Additionally, the record reflects that they might be called upon to use handcuffs, so it appears that they are responsible for the apprehension and detention of persons suspected of engaging in criminal activity within the store.

#### Engineers

As noted above, Dan Hunt is the divisional maintenance manager responsible for the housekeeping and maintenance of the Employer's facilities located in Arizona, New Mexico, and Las Vegas. Although he reports to Martin Gusky, executive maintenance manager who is based in San Francisco, Hunt works from an office in one of the Phoenix stores. The housekeeping functions in Hunt's division are performed by a contract service. Hunt has six to seven maintenance engineers reporting to him directly as follows: two to three in Phoenix, one in Tucson, two in Las Vegas, and one in Albuquerque. In technical areas involving the heating, ventilation, and air-conditioning (HVAC) equipment, Hunt is assisted by chief engineer Bob Smith.

With the exception of the engineer in Albuquerque, where there is only one store, each of the engineers is assigned to two stores. One of these stores is designated the engineer's home store, which is the store that determines which human resources manager the engineer would fall under and where the engineer will pick up his paycheck. The engineer is responsible for the repair and maintenance of both assigned stores, including, but not limited to, changing light bulbs (also referred to as "lamp-ing"); repairing and installing lighting fixtures; installing, re-

moving and/or transferring electrical outlets; maintaining and troubleshooting the HVAC systems; repairing plumbing and faucets; relocating phone wires; repairing store equipment such as scanners; repairing carpet; and installing locks. Some of the engineer's tasks are part of the preventive maintenance program for the particular store involved, which is reflected on a "Weekly Maintenance Chart" that is stored in the engineering area of the building. Other assignments are special requests made of the engineer either orally, some time during his visit, or in writing on a log maintained in each store and commonly known as "the clipboard." Finally, engineers may be assigned by Hunt to work on a special project which the store or operations manager has specifically requested because of the time or cost involved. In this connection, Hunt is responsible for a budget for his division that is separate and independent of the stores' operating budgets. Thus, Hunt is consulted by the store manager or operations manager any time a store project will impact his division economically or will require the use of an engineer in a way that is outside the normal scope of the engineer's routine duties and/or will require a substantial amount of the engineer's time.

The working hours for the engineers are from 8 a.m. to 5 p.m. 5 days per week and the engineers located in the Phoenix stores rotate their days off and working Saturdays. The engineers' schedules have in the past included being on-call after work hours. The "on-call" schedule has since been eliminated; nonetheless, if there is an emergency at one of the stores outside working hours, an engineer might be called upon to respond to the emergency.

Generally, the engineer reports directly to one store each day, alternating on a daily basis between the two. Upon arrival, the engineer clocks in, which is done at any register within the store as opposed to a central timeclock. Initially, the engineer typically reviews the "clipboard" and begins his preventive maintenance routine, as outlined on the preventive maintenance chart for that particular store. If the operations manager is at the store at the time the engineer reports to work they might review the "clipboard" together in the morning. More often, however, the engineer will not see the operations manager until sometime later in the day. When they do meet, the operations manager will discuss with the engineer and prioritize any special requests on the "clipboard" as well as any special projects in which the engineer's assistance has been requested. With respect to the "clipboard," it appears that management and non-management employees can make a special request which is placed on the "clipboard." Additionally, several requests might be placed on the list in 1 day, particularly where the request is to replace burned out light bulbs; however, several months may also pass without any special request being posted on the "clipboard."

Approximately one-third of the engineer's time is spent on the lamping function, which essentially involves changing any burned out light bulbs throughout the store. This duty was formerly the responsibility of the receiving/dock/stock department. At some point, the Employer reassigned lamping to the engineering department and created the position of "lamper" to perform this function exclusively. It was expected that the lamper would spend 10 hours per week on lamping. Thus, the engineering department employed one full-time lamper for the four Phoenix stores, a part-time lamper for the two Tucson stores, and a part-time lamper in the Las Vegas stores (only two of which existed at the time). The lamper position was eventu-

ally eliminated and the duty was absorbed by the engineers. Although it appears that lamping is primarily the responsibility of the engineers, the Employer places a high priority on changing burned out light bulbs (each store has as many as 1500 lights). As a result, this function is performed to some degree by virtually all other employees, including management, but particularly receiving/dock/stock employees.

To facilitate the lamping function, each store maintains at least one lamp cart that contains a variety of light bulbs, light poles (used to remove and replace ceiling or other high-reaching burned out bulbs), and possibly a ladder or two. The engineer will push the lamp cart through the store floors and change any burned out bulbs observed and those of which he or she has previously been advised. The engineer is responsible for ordering light bulbs, which are stored wherever the particular store has space, e.g., in the dock area or stockroom.

In addition to changing light bulbs, one-third of the engineer's day is spent performing preventive maintenance duties. Each store has a list of preventive maintenance duties which the engineer is expected to perform automatically upon each visit. In performing the preventive maintenance duties, the engineer conducts a walk-through inspection of the building, i.e., tests the emergency generator; insures all fire protection valves are unobstructed and in the "on" position; tests and, if necessary, adjusts every entrance door; visually inspects the escalators and elevators, noting in writing any defects; and, records all readings on the air-conditioning units, adding chemicals as necessary. While performing the lamping and preventive maintenance functions, the engineer generally works alone, although he may come into contact with other employees in the store.

After performing the preventive maintenance duties for the particular building, the engineer spends the last third of his time working on special requests or a special project. These projects often require the engineer's interaction with employees of other departments. The projects often involve moving a point-of-sale (POS) cash register, moving an entire department from one area of the store to another, or putting up a "visuals" team display. The record reflects that the engineer's participation in these projects is generally limited to performing any electrical work necessary for the project, such as electrical connects and disconnects, moving or installing telephone lines, or locating electrical circuitry. Engineers typically do not move equipment or merchandise during these projects. Those tasks are performed by receiving/dock/stock employees. For example, Operations Manager Janet Elizabeth Nelson described that if one of the departments in her store were changing the merchandise presentation layout, the engineer might interact with employees of the visuals department. In this regard, the visuals department might design a particular display that needed a light or lights in a particular place. The engineer would be shown where the lights were needed, and he or she would then install the necessary equipment and/or wiring for that project.

In performing their duties, engineers use a number of tools commonly used by other employees, such as ladders, hammers, screw drivers, tape measures, and saws. They also use amp probes, leak detectors, thermometers, evacuator, and acetylene and oxygen torches that are unique to the functions they perform.

The record reveals that, although engineers may work with the operations manager on specific projects, much of the engineers' time is spent without constant supervision. In this connection, the engineers, on average, see the operations manager

only once a day and talk to Divisional Maintenance Manager Dan Hunt by phone at some point each day to discuss how their work day has gone. Additionally, the engineers talk to the chief engineer approximately once or twice a week regarding the HVAC equipment.

The engineers earn between \$9.68 and \$13.95 per hour. The chief engineer earns \$20.15 per hour. Although there does not appear to be any job descriptions for any of the engineers to be considered for hire, an applicant would have to be mechanically inclined, have some background in electricity, and be able to read gauges. Additionally, it appears that the individual would interview with the chief engineer who determines the applicant's capabilities working with HVAC equipment. The chief engineer then apparently would advise Hunt as to whether the applicant could handle working with HVAC equipment. Historically, there has been virtually no turnover in the engineering division. Consequently, Bob Smith, the current chief engineer, has not been involved in the hiring of any employees, although he did suggest an individual to fill a recent vacancy which had not been filled as of the date of the hearing.

The engineers use the same employee entrance as other employees. During the day, the engineer has access to the same lunchroom and bathrooms as other employees. They wear the same type of identification badge and are subject to the same employee handbook as other employees. Additionally, they are eligible for the same health, pension, and holiday benefits as other employees. In contrast, however, unlike other employees, they split their 40-hour week between two stores (except the Albuquerque engineer who has only one store). Other than changing light bulbs, a task performed at some point by virtually every employee, including management, the maintenance engineers do not perform the job duties of other employees or interchange with them to any degree. Maintenance engineers are not required to attend store meetings and, apparently, attend them only infrequently, if at all. The Phoenix engineers, however, attend quarterly maintenance meetings conducted by Hunt, which no other employees attend.

Historically, engineers are hired off the street and not transferred from other classifications. The record reflects that one former engineer had originally been hired in receiving/dock/stock and transferred to the engineering department, ultimately becoming a full-time engineer. Aside from a housekeeper becoming a lamper, there is no evidence that engineers are hired from the ranks of other employee classifications. Similarly, the record reflects only two instances where an engineer moved into another employee classification. One occurred as a result of a reduction in force and was apparently not at the request of the engineer in question. The other was not a transfer at all; an engineer retired and, thereafter, was hired part time in another department as a handyman.

All of the engineers wear brown shirts that distinguish them from other employees who may wear smocks or shirts of a different color that identify the particular department in which they work. Unlike other employees, engineers are assigned company vehicles which they drive to and from work as well as during the day. Moreover, they may be called upon to respond to an after-hours emergency call.

The Phoenix stores are within 20 minutes' drive time of one another. The Tucson stores are approximately 2 hours driving time and the Albuquerque store approximately 8 hours driving time from the Phoenix stores. The record reflects that the engineers located in the Las Vegas, Albuquerque, and Tucson stores

travel infrequently, if at all, to other stores to work. In fact, engineers in Las Vegas and Albuquerque never travel from their home cities. On the very few occasions that an engineer has traveled outside of his or her respective city, it has been an engineer from one of the Phoenix stores. In this regard, one of the Phoenix engineers was recently named the "traveling engineer." For 6 weeks, he traveled to Tucson on a regular basis. However, since the recent resignation of one of the Phoenix engineers, the "traveling" engineer has remained in Phoenix. Occasions requiring travel of a Phoenix engineer to another store in Phoenix or Tucson would be to fill in for an engineer who is ill or on vacation or to assist an engineer on a large or difficult project. There is virtually no similar interchange that involves the Las Vegas and Albuquerque facilities. The chief engineer travels more than any of the other engineers because he possesses the technical expertise of the HVAC equipment. Thus, he travels to Las Vegas approximately once a month and to Albuquerque every other month. The majority of his time, however, is spent in the Phoenix and Tucson facilities.

The chief engineer is primarily responsible for maintaining and repairing the HVAC equipment at the Employer's stores in Hunt's administrative jurisdiction. He travels among the stores where he spends 75 percent of his time inspecting and adjusting, if necessary, the HVAC equipment. He spends half of his time working alone and the other half working with the maintenance engineer assigned to that particular store. The other 25 percent of his time he assists with special projects in the stores. He had to be certified in HVAC to be hired in his position and is considered the "technical" engineer. Because of his technical expertise, which is reflected in his rate of pay of \$20.15, Smith directs the other engineers in regard to nonroutine work on the HVAC equipment. He discusses their capabilities on the HVAC equipment with Hunt, who admittedly knows very little about the equipment.

The record evidence shows that Hunt is responsible for hiring, firing, issuing disciplinary actions, writing evaluations, determining pay increases, assigning store locations, approving special projects as requested by store and operations managers, and maintaining payroll and other personnel records. In many of his decisions, Hunt apparently relies on input from store and operations managers as well as from the chief engineer. For example, to facilitate the preparation of an engineer's evaluation, Hunt solicits input from the store or operations managers in whose stores the engineer works. Additionally, Hunt seeks the chief engineer's opinion of the engineer's performance vis-a-vis the HVAC equipment. The record discloses, however, that Hunt merely accumulates reports from the store or operations managers and the chief engineer and uses this cumulative information, together with his own observations, to prepare evaluations of the engineers. In this regard, Hunt testified that Smith "has his ear" and that he "bounces" overall performance ratings of engineers off of Smith, but he did not further explain what impact the chief engineer has had in altering the overall rating Hunt had determined to give. In addition, the evidence does not establish that either the store and operations managers or the chief engineer effectively recommend personnel actions. Specifically, the record evidence establishes that on one occasion, the chief engineer recommended to Hunt that an engineer receive disciplinary action. Although Hunt prepared a disciplinary action and reviewed it with the engineer in question, he decided not to place the discipline in the engineer's file. This was the only disciplinary recommendation by the chief engi-

neer cited at the hearing and no examples of disciplinary recommendations from store or operations managers were cited.

The parties did not stipulate to Hunt's supervisory status at the hearing. Inasmuch as the record is replete with evidence that Divisional Maintenance Manager Hunt possesses multiple indicia of supervisory authority, I find him to be a supervisor within the meaning of Section 2(11) and shall, therefore, exclude him from the unit found appropriate herein.

The Board has historically found separate maintenance department units appropriate where there is no showing of a more comprehensive bargaining history, no other labor organization seeks to represent the same employees in a more comprehensive unit, and where it is established that the maintenance employees involved have a community of interest separate and distinct from other employees. *American Cyanide Co.*, 131 NLRB 909 (1961). In determining whether the requisite community of interest among maintenance employees exists, the Board looks to such factors as a common interest in wages, hours, and other working conditions; common supervision; degrees of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Franklin Mint Corp.*, 254 NLRB 714, 716 (1981). Moreover, the Board will find maintenance employees to be an appropriate unit, despite some degree of functional integration, where the employees are separately supervised, possess skills unique to their classification, receive the highest hourly wage, are assigned work under a unique work order system, and where transfers of employees are infrequent. See *Ore-Ida Foods*, 313 NLRB 1016, 1019 at fn. 3 (1994), and cases cited therein.

The record establishes that the maintenance engineers share a common supervisor in Dennis Hunt. Although they confer with the store and/or operations managers of their respective stores, this involves merely prioritizing tasks that are routine and daily or special projects that have been approved by Hunt. The store and operations managers do not instruct the engineers on how to perform their various duties, even those tasks they perform on special projects. Additionally, at least two-thirds of the work performed by the maintenance engineers involves mechanical skills, albeit unlicensed and noncertified, in electricity, plumbing, and HVAC equipment. These mechanical skills, which require the use of a number of tools used exclusively by the engineers, are reflected in their wages, which, as a group, are higher than the average wage of other hourly store employees, with some engineers earning as much or more than team leaders and department managers in other areas of the stores. With respect to the other one-third of their work, "lamping," engineers primarily perform this alone, notwithstanding that others, including management, also change light bulbs. The engineers are the only employees who wear brown uniform shirts, drive store trucks to and from work, and are assigned to multiple stores. Finally, the record is clear that the maintenance engineers interchange among themselves but never with the sales and other nonsales employees who work at the stores. Based on the foregoing and the record as a whole, I find that the maintenance engineers share a significant community of interest with one another and constitute a distinct and appropriate unit for the purposes of collective bargaining.

In reaching this conclusion I have carefully reviewed the cases relied upon by the Employer and find them distinguishable. In *Harrah's Illinois, Corp.*, 319 NLRB 749 (1995), the maintenance employees were not separate and distinct as a

group for administrative purposes. Additionally, they did not have separate supervision. To the contrary, the maintenance employees shared overall supervision as well as intermediate supervision with environment service (EVS) employees, cleaners, and heavy duty cleaners. There was also a high rate of transfers with other employee classifications as a part of what the employer recognized as progression from one employee classification to another. Finally, a significant number of the maintenance employees in *Harrah's* spent most, if not all, of their time performing tasks that did not utilize their skills. The Board stated that all of these factors weighed against finding appropriate a separate unit of maintenance employees. None of these factors exists in the instant case. *Sears Roebuck & Co.*, 194 NLRB 321 (1971), is distinguishable on its facts in that they established that the employees in the unit sought had continuous contact with other employees whose job duties were interrelated to their own and with whom they shared overall and intermediate supervision. The other cases cited by the Employer are also distinguishable on their facts. In this regard, it is noted that the Employer concludes from the facts of the instant case that the maintenance engineers share common supervision with the other employees of the store. If this were, in fact, the case, each of the maintenance engineers would have between two to four immediate supervisors. As described above, the maintenance engineers have one common supervisor in Hunt.

With respect to the scope of the unit, the Employer contends that if a unit comprised solely of engineers is found to be appropriate for purposes of collective bargaining, it must include all of the stores under the purview of Dennis Hunt and that to do otherwise would be arbitrary. However, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963). The unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). The Employer has a number of administrative breakdowns, all of which might be appropriate for the purposes of collective bargaining. However, the fact that such units might be appropriate does not render the unit sought by the Petitioner inappropriate. Here, the employees in the unit sought by the Petitioner all report to the same supervisor and are within relatively close proximity of each other. Moreover, they occasionally interchange, substitute for, and assist one another. In fact, one Phoenix engineer assisted in Tucson for a period of 6 weeks. In contrast, there is virtually no interchange of employees between the Arizona stores and the stores in Las Vegas and Albuquerque. Based on the foregoing, I find that a unit comprising the Employer's maintenance employees located at its Arizona facilities to be appropriate for the purposes of collective bargaining.

I turn next to the issue relating to the status of the chief engineer. I note that the Board has held that an individual must possess and exercise at least one indicia of supervisory authority to be a supervisor within the meaning of Section 2(11) of the Act. *Sears, Roebuck & Co.*, 292 NLRB 753 (1989). Moreover, an individual will not be found to be a supervisor within the meaning of Section 2(11) if one or more indicia exists only on a sporadic basis. *Indiana Refrigerated Lines*, 192 NLRB 1057 (1971). The record evidence does not establish that Smith has ever exercised any of the indicia of Section 2(11) supervisory status. Instead, the evidence shows that Smith is highly skilled, for which he is well paid and well respected. The only

example of his recommending a particular action vis-à-vis another maintenance engineer proved to have been an ineffective recommendation. Moreover, if Smith were a supervisor, then there would be two supervisors for three to four employees who essentially work alone and unsupervised. Based on the foregoing, I find that the chief engineer is not a supervisor within

Section 2(11) of the Act, as contended by the Employer, and I shall include him in the unit found appropriate herein.

There are approximately four maintenance engineers in the unit found to be appropriate herein.