

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTEENTH REGION**

AGI KLEARFOLD INCORPORATED, LLC

Employer

13-RC-21129

And

**GRAPHIC COMMUNICTAIONS INTERNATIONAL
UNION, CHICAGO LOCAL 458-3M**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on December 17, 18, 19, 30 & 31, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine if the unit sought by the Petitioner in its Representation Petition is an appropriate unit under Section 9(b) of the Act and whether persons classified as first pressmen, which the Petitioner seeks to represent, are supervisors within the meaning of Section 2(11) of the Act.¹

I. Issues

The parties have submitted two issues to be decided by the Acting Regional Director. The first issue is whether the unit petitioned for is an appropriate unit under Section 9(b) of the Act. The petitioner, Graphic Communications International Union, Chicago Local 458-3M, asserts that the unit petitioned for, consisting of all Press Department employees, including the first press operators, second press operator, feeders, helpers, and press room clerk is an

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. 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.

appropriate unit. There is no dispute that the Press Department clerk should be included in any unit found appropriate. There are approximately 54 employees in the unit sought by the Petitioner. The Employer, AGI Klearfold Incorporated, LLC (hereinafter referred to the Employer), a division of Mead Westvaco, contends that the only appropriate unit in this case is a wall-to-wall unit consisting of all production and maintenance employees in the hourly job classifications at its Melrose Park facility, excluding temporary employees. There are approximately 226 employees in the unit the Employer contends is appropriate.²

The second issue in this case is whether the first pressmen are statutory supervisors under Section 2(11) of the Act, as the Employer contends, and are therefore excluded from any unit found appropriate.

II. Decision

Based on the entire record in this proceeding and for the reasons set forth below, I find that the Press Department employees have a separate identity of functions, skills and supervision, and that the petitioned for unit is therefore an appropriate unit under Section 9(b) of the Act and Board precedent. Further, I find that the record fails to establish that the first pressmen exercise any of the indicia of supervisory authority under Section 2(11) and are therefore properly included in the petitioned for unit.

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

All full-time and part-time Press Department employees including the first pressmen, second pressmen, press feeders, helpers and the press room clerk employed by the Employer at the Employer's facility located at 1950 N. Ruby Street, Melrose Park, Illinois; but excluding clerical employees, professional employees, temporary employees, all other employees, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 54 employees for whom no history of collective bargaining exists.

III. Whether the petitioned for unit is appropriate under Section 9(b) of the Act

A. Facts

The Employer is engaged in the business of producing consumer packaging for clients in the media industry, cosmetic industry and tobacco industry. Although the Employer engages in

² This number excludes the first pressmen whom the Employer contends are supervisors within the meaning of Section 2(11) of the Act.

standard commercial lithographic printing, it considers itself unique from other commercial lithographic printing operations in that it produces three-dimensional packaging solutions for its clients. The Employer produces four distinct product lines: rigid box packaging; folding carton packaging; media packaging for compact disks (CDs) and digital video devices (DVDs); and print advertising inserts, sleeves and unglued cartons for tobacco products. The Employer maintains plants located throughout the United States, including two locations in Illinois: Franklin Park and Melrose Park. The Petitioner seeks to represent “all full-time pressroom employees including press operators, press feeders and helpers” at the Melrose Park facility.

The Melrose Park plant is organized into departments. The production departments, which the Employer contends comprise the only appropriate unit, are as follows:

1. The Sheeting Department is responsible for taking roll stock and cutting it into individual sheets.
2. The Pre-Press Department produces plates in the form of a unique image to be used in the press machines.
3. The Press Department uses the plates in press machines to print images onto sheets.
4. The Die-Cutting Department cuts the images into individual shapes by the use of a die vinyl in the form of the printed image.
5. The Finishing Department folds and glues the printed carton and assembles packaging including outsourced trays and inserts.
6. The Quality Assurance Department inspects product throughout the various stages of production to ensure compliance with ISO³ requirements and/or customer specifications.
7. The Rigid Box Department takes the printed sheets and applies it to a box.
8. The Maintenance Department performs maintenance and repair on the machinery located throughout the plant;
9. The CAD/CAM Department employs technology to generate die vinyls and sample products.
10. The Shipping/Receiving Department ships product to customers and receives roll stock, outsourced sheeted stock, specialty paper, trays and inserts.

Each department has a separate, physical location within the Melrose Park facility. The physical locations of departments within the plant are generally arranged according to the manner in which product moves through the production process. Beginning from the Southern end of the plant is the Office, where clerical staff, Department Supervisors, Department Managers, Plant Managers and Upper Management maintain offices. Heading North from the office area, immediately to the right, is the Sheeting Department and next to that area is a

³ The record does not indicate what ISO stands for.

storage area for roll stock. Across the main hallway that transverses the entire plant in a South – North direction is the Pre-Press Department. To the left of the Pre-Press Department at the very West border of the plant is the CAD/CAM Department. The Press Department is located on either side of the hallway and is next to the roll storage area on the right side and the Pre-Press Department on the left hand side. Next to the Press Department on the left hand side of the hallway is Gluing, an area within the Finishing Department. Directly across the Hall from gluing is the Traying Department, an area also within the Finishing Department. Immediately adjacent to Traying is the Quality Assurance Department, a break area and the Shipping/Receiving Department. Adjacent to Shipping/Receiving and physically separated by a conveyor belt that carries die cut pieces for assembly is another Press Department area where Presses numbered 9 and 11 and their respective crews are located. To the left of this Press Department area and across the main hallway is the Die Cutting Department. To the right of the Press Department area is the Rigid Box Department, which also is to the right of Traying, Quality Assurance and Shipping/Receiving. Rigid Box, Presses 9 and 11, and Die-Cutting are next to a large warehouse area. Next to the warehouse on the right hand side of the hallway are the ink room and the Maintenance Department. Finally, there is a parking lot after exiting the plant on the north end and next to the parking lot is another storage area.

Job classifications, responsibilities, supervision, wage rates, shift schedules and overtime of the employees vary from department to department. Each department determines its own work schedule, lunch breaks and rest breaks. I will describe these differences as they relate to each department.

Sheeting Department

The Sheeting Department has one machine where sheeting roll is fed into a machine and cut to the appropriate size. The size of each sheet is determined by the job ticket, which is a job order form accessible through a plant-wide oracle database system. The job ticket is also supplied to each department on a daily basis by their respective supervisors or department managers. The job ticket gives each department job relevant information about each job and customer specifications. There are two hourly job classifications within the Sheeting Department: sheeting operators and sheeting helpers. Currently, there are four sheeting operators employed in the department and no helpers. Sheeting operators are responsible for operating the sheeting machine and taking the finished sheets to their assigned press machines or the staging area for the Press Department. In addition to the sheeting machine, the sheeting operators are trained in operating fork lifts to move the stock to the appropriate press machine. There is no dedicated supervisor in the Sheeting Department. The sheeting operators report to the finishing manager. The operators work two shifts: 5:00 a.m. to 1:30 p.m. and 5:00 p.m. to 1:30 a.m. The sheeting operators earn between \$9.80 per hour and \$16.50 per hour, depending on length of time with the company and experience level. There was no evidence on overtime or weekend schedules for these employees.

Pre-press Department

The Pre-press Department produces nearly all of the plates used by the printing presses. Generally, the Pre-press Department takes digitally formatted media and/or artwork from the Employer's clients and manipulates the files into a format for use on proofs and/or printing plates. Proofs are a model of the final product. There are three separate departments within the Pre-press Department: the Image Assembly Department, the Film-stripping Department and the Plate Making Department. The Image Assembly Department employs three pre-press technicians. These employees use software to process digital media to conform to the physical shape and dimensions or "die" that the final printed image will assume. The Film-stripping Department employs three film-strippers whose job involves converting old archived film into a digital format. This department also assembles the "job bag" which contains all the tools that are necessary for the entire job as it makes its way throughout the production process. The job bag contains a digital file of the artwork; a "die vinyl," which is a flat plastic piece that has the configuration of the actual printed package prior to folding and is the cutting die to cut the flat printed sheet; and a final proof used to match color and instruct the finishing department on how the final product should appear. The job bag is presented to the Plate Making Department and will follow the product throughout the production process.

The Plate Making Department employs five plate makers and four pre-press prep technicians who place images from files on plates in the correct position. The number of plates for a job depends on the amount of color required for the job. Each plate is designed to go in a specific unit on the press with specific color ink. The plate makers make two types of plates: offset plates which distribute color, and coating or relief plates which distribute a lacquer or glossy coating over the printed product. After a plate is produced by the Pre-press Department, it is taken to a staging area where the Press Department will pick up the plates along with the job bag. The Employer out sources specialty plates for which it does not have the machinery to produce. This occurs very rarely.

The Pre-press area is physically separated from the rest of the plant by floor to ceiling walls. Pre-press employees do not have to wear any protective equipment unlike the majority of the production departments. Currently, the pre-press area supervisory structure consists of a pre-press manager and a pre-press supervisor. There are currently three temporary employees in the Pre-press Department. Two of the temporary employees are filling in for the pre-press technicians on medical leave and the remaining temporary employee has a janitorial-type role within the Pre-press Department.

There are two shifts in this department. The first shift starts at 7:00 a.m. and finishes at 5:30 p.m. The second shift begins at 5:00 p.m. and ends at 3:30 a.m. Although the employees in this department work 10 and 1/2 hours a day, they are only paid for ten, as they have opted to have a thirty-minute lunch break. The pre-press manager staggers the times when the employees take their thirty-minute lunch. The pre-press manager and supervisor try to keep one pre-press employee in the department at all times to service the Press Department when

something is needed. No pre-press employee works from 3:30 a.m. to 7:00 a.m. Often, there is no supervisor at night; therefore, one of the pre-press technicians will be left in charge. In general, the plate makers work on Saturday and Sundays. Like every department in the plant, Sunday is a voluntary workday. The pre-press manager determines the vacation schedule without consulting other departments. The pre-press manager does not allow two pre-press employees from the same shift to take vacation at the same time. The salary of the employees in this department range from \$10 an hour for a pre-press prep technician to \$26.18 for a plate maker.

Press Department

The basic function of the Press Department is to take the sheeted stock, print an image particular to a job, and coat the image as required. There are 6 printing press machines that are referred to by their designated numbers. The most recently acquired machine, Press No. 17, cost about 5.5 million dollars and is 128 feet in length. The Employer runs Press 17 seven days a week, along with other presses, if necessary. Press 11 is seldom run. The Press Department employees are assigned to “crews” that work on a specific machine on a permanent basis. Presses 9, 11 (when run), 17, and 14 have a four-person crew: a press helper, a press feeder, a second pressman and a first pressman. Press 15 has a crew consisting of a first pressman, a second pressman and a feeder. Press 16, the smallest press, which uses a different sized sheet, has a first pressman and feeder working on it. The helper, feeder, second pressman, and first pressman each have a specific function during the printing process.

The duties of a helper during the printing process include procuring ink from the ink room and filling up the ink and water vessels on the printing press to the correct levels during the “make ready” process -- the process in which the crew prepares the machine for the printing run and ensures that the prints are coming out in model quality. The helper has a checklist for stock levels, chemicals for coating, ink stock and water levels that must be completed before the printing run. The helper knows which ink colors to use, the type of ink to use, and where the ink is placed in the machine for a particular job from the job ticket. During the printing run, the helper is responsible for monitoring the ink and water levels. The helper will also pull the printed sheets off of the press and take them to the staging area where they will stay until the next production process. There are nine helpers whose wage ranges from \$10.64 per hour to \$13.48 per hour.

The feeder also has a make ready checklist that he must complete before the printing run. During the make ready stage, he is responsible for working with the helper to change the blankets (that hold ink), washing and cleaning the ink rollers. The feeder assists in hanging the plates for printing on the machine. The feeder reads the job ticket to learn which type of stock and how many sheets are necessary for the job. The feeder must check the feeding mechanism during make ready to make sure it is set up correctly for the stock being used on that job. The feeder secures stock of the correct sheet type and number of sheets for the job. The feeder monitors the feeding mechanism during the job run to make sure the stock is flowing correctly,

and the feeder is also responsible for monitoring the sheet stock and the ink levels. There are sixteen press feeders whose wage ranges from \$18.50 per hour to \$23.18 per hour.

The second pressman is primarily responsible for registration during the make ready process. Registration describes the process whereby each color is in the correct location within the image so that colors are not spilling into unintended areas. If a job requires coating, the second pressman is also being responsible for that aspect of the job. During the make ready process, the second pressman pulls sheets from the printer to make sure that the registration is correct and the coating is right. The second pressman makes manual and electronic adjustments to the machine until both are correct. The second pressman also obtains plates from the staging area or plate room and hangs plates during the make ready stage. During the job run, the second pressman and first pressman pull one sheet per one thousand to check that the registration and color are correct. The second pressman shares a make ready checklist with the first pressman. There are twelve second pressmen whose wage ranges from \$24.46 per hour to \$25.75 per hour.

The first pressman is responsible for everything that happens on his press. He is accountable for the quality of the job produced on the press. The first pressman is also responsible for a document called the "color okay." This document is a printed sheet generated during the make ready process that the first pressman deems is a perfect production to customer color specifications or proof. While a supervisor is designated to sign off on this document, the first pressmen often sign it without obtaining the supervisor's signature. The first pressman is also involved in hanging the plates on the press. Once the "color okay" sheet is signed, the printing run begins. The first pressman and the second pressman pull every thousandth sheet off of the press to perform a color check. They sign a document called the "same as color okay," which asserts that the printed sheet is the same quality color as the "color okay". The first pressman often uses a computerized scanner when conducting this test. Occasionally, the first pressman go offsite to perform a "color okay" check on a job being printed outside the plant. There are sixteen first pressmen whose wage ranges from \$27.18 per hour to \$30.32 per hour.

The Press Department has its own clerk who maintains Press Department specifications dictated by the ISO in the oracle database system as well as filling in as a helper and feeder on certain machines about once a month. The Press Department clerk orders coating and maintains the coating inventory. He works on the first shift and has an office in the foreman's office area. The Press Department clerk is qualified to drive a forklift, like the other employees in the Press Department. The parties do not dispute that this individual would be part of any unit found appropriate.

There is no formal apprenticeship program for any of the employees at the plant. There is, however, a distinct progression from press helper to first press operator as the employee gains on the job experience and training. After an employee learns the helper's job he gains

feeder operator experience by working closely with the feeder operator. The progression works the same from feeder to second pressman and from second pressman to first pressman.

The record shows that the Employer conducts department specific training for most departments. The Press Department employees receive department specific training quite frequently. Some of the training for Press Department employees is given by the manufacturer of the particular machine. Recently the employer sent all the first and second pressmen in teams of four (including supervisors and mechanics) to Connecticut for three days to receive training on the new press 17. Pressroom employees have also received training sessions on the following issues: chemical and hazardous waste of the press room; the ink performance log; calibrating densometers; combining FUJI and Press 16 fountain solution table; add lint and hickies checklist; correct mistake make ready checklist and clean static pins preventative maintenance on Press 14, to name a few.

There are three shift supervisors in the Press Department: Nat Randle, Neal Namyst and Dave Allison. George Wilson is the department manager. The Press Department employees work three shifts. The first shift is from 6:00 a.m. to 2:00 p.m. The second shift begins at 2:00 p.m. and ends at 10:00 p.m. The third shift starts at 10:00 p.m. and continues until 6:00 a.m. The press employees elected not to have a thirty-minute lunch period. Instead, they have two 15-minute breaks. They eat at their workstations. The Press Department works three six-hour shifts on Saturdays: from 6:00 a.m. to 12:00 p.m., from 12:00 p.m. to 6:00 p.m. and from 6:00 p.m. to 12:00 a.m. Recently, at a Press Department meeting, the employees voted for their current work schedule. Press Department meetings are held regularly where training, safety and scheduling issues are discussed. Saturday work is mandatory and the Press Department was the only department required to work the Saturday after the Thanksgiving holiday. When the Press Department is running and other departments are not working usually one quality assurance person, one plate maker and one maintenance person are required to work to support the Press Department. Sunday is a voluntary workday for the Press Department but the department runs on Sunday. The overtime policy changed in March of 2003 for the Press Department. The Press Department previously was unique among all departments in that it was required to work 10 hours a day to get paid overtime. Now, the Press Department along with all the other departments get paid overtime after eight hours a day.

Vacancies in the feeder, second pressman and first pressman positions, irrespective of shift, are generally filled by internal promotion within the Press Department. When there is a vacancy and several press employees qualify for a promotion, the job is awarded to the employee with the most seniority. A job opening on a particular shift is awarded to the most senior employee in the job classification who wants to change shifts. When a press employee goes on vacation, there are two options for the other press employees in that position who work on the same machine: the employees can split the absent employee's shift or the employee who refuses to cover the shift can find someone on another press to cover it. The supervisors draw up the weekly schedule for the Press Department and post it by the time clock or in the area by

Press 14. Absences in the Press Department are covered by other Press Department employees. Employees from other departments do not fill in for Press Department employees. Unlike some departments, like Die Cutting and Finishing, the Employer does not hire temporary employees into the Press Department.

While there is no specific requirement by the Employer for applicants for the helper position to have on-the-job experience in printing, the last two helpers hired by the Employer either had an associate degree in graphic arts and printing or classroom work at a community college in these subjects. The job requirements for a feeder position indicate that the applicant have an “apprenticeship in printing.” Likewise, the job requirement for a first pressman indicates that the applicant must have an apprenticeship in printing in addition to 6 years of experience in the trade. The record did not show the job requirements for the second pressman.

There are few transfers of employees from other departments into the Press Department. The record shows only five transfers into the Press Department over the last 18 years.

Die Cutting Department

In Die Cutting, the employees use machinery to cut the printed sheets into the design of the folded carton or box. The die machines, through the use of the die vinyl, cut the printed sheet into shapes and place scores along the edges to be folded. The machines also die cut cardboard under-supports for the trays in some boxed packaging. Employed in this department are: die cut feeders who feed the printed stock into the machines; make ready operators and die cutter operators who set up the machines and run the job; and six foil stampers who foil stamp sheeted stock prior to printing to give the printed product a shiny look. The foil stampers do not know how to operate die cutting machinery and die cutters do not know how to operate the foil stamping equipment. There is one supervisor in this department: Felix Vasquez. He is the day supervisor. Currently, there is a vacancy for an evening supervisor. There is no department manager for this department; instead, Vasquez reports to the Finishing Manager, John Lackner. This department does employ temporary employees to feed the machines and uncurl foil sheets that result from static build-up.

Employees in this department work two shifts: the first shift is from 6:00 a.m. to 2:30 p.m. and second shift is from 2:30 p.m. to 11:00 p.m. Recently, because of production needs, the die cutting employees have been working two ten-hour shifts. The employees in this department elected to have a half hour lunch break. The supervisor decides whether everyone works on Saturdays or which employees will work Saturday. Work on Sunday is voluntary. The die cutter feeders earn between \$7.69 to \$9.31 per hour. The die cutter makes ready operators and die cutter operators earn between \$16.24 per hour and \$ 19.09 per hour. The foil stamper operators earn between \$17.00 an hour to \$19.00 an hour.

Finishing

The Finishing Department folds the die cut product, glues the cartons and/or boxes, and insert trays and inserts into the finished packaging product. Employed in this department are gluing feeders, operators, flat cutters and catchers. The feeders feed the machines, the operators run the machines, and the catchers catch the product coming off the machine. Catchers manually remove excess strips from die cut product. Temporary employees may be employed by this department to operate the feeder and remove the excess strips from the die cut product. Traying involves taking a tray that has been manufactured elsewhere and shipped to the Employer for use in a specific product. Trays for media like CDs and DVDs are applied to the cardstock packaging in this department.

The department has a supervisor, Rodrigo Ortega, and department manager, John Lackner. The finishing department operates two shifts: the first shift is from 6:00 a.m. to 2:30 p.m. and second shift is from 2:30 p.m. to 11:00 p.m. Like Die Cutting, this department will also run two ten-hour shifts when necessary. The supervisor in the department makes this determination. The employees in this department also take an unpaid half hour lunch break, however, they work an eight-hour day on Saturdays with no lunch. There are 46 gluing catchers that earn between \$6.83 per hour and \$11.03 per hour. The three flat cutters earn between \$11.50 per hour to \$12.24 per hour. There are twenty-two make ready operators that earn from \$11.93 per hour to \$18.46 per hour. Finally, there are six run operators earning between \$ 8.67 to \$16.44 per hour.

Quality Assurance

The role of the quality assurance (QA) employee depends on which department he is assigned to support. This department is composed of inspectors and analysts. Analysts are not hourly employees and are not involved herein. There are ten inspectors and each is assigned to work for a specific department.

The quality assurance inspector in the Press Department conducts coating weight testing. Based on his reading of the coating weight, he will instruct the press employees to either apply more or less coating until the coating gloss has a level weight. The quality assurance inspector must also sign off on the “color okay” and the “same as color okay” sheets as part of the make ready process in the Press Department.

The quality assurance inspectors assigned to gluing and die cutting evaluate samples of the process and inspect it in order to make a final determination on the quality of the work. There are temporary employees employed in QA who mainly sort cartons into waste and quality piles. Inspectors will occasionally do this work.

The QA department has a supervisor, Don Zizich, and a department manager, Rick Legler. The quality assurance inspectors work different schedules depending on the department they are assigned to work. In the Press Department, the QA employees normally work three

eight-hour shifts. On Saturdays, the QA inspectors follow the same schedule as the department each is assigned to work in. There is one temporary QA inspector working in the Press Department. The inspectors earn from \$11.40 per hour to \$14.50 per hour.

Rigid Box

The Rigid Box Department takes the printed wrap produced by the Press Department and applies it to a box or chipboard. The department employs a flat cutter, rigid box catcher; make ready operator and lead operator. The department can cut the printed wrap sheet to size, or, depending on the size of the job, the cutting can be performed in die cutting. The rigid box operators are responsible for a process called the “positional okay.” They have to ensure that the printed wrap lines up correctly. The machines in rigid box have conveyor belts where trays, inserts, lids and bases come off the belt for assembly. The finished packages are then bagged and palletized for shipment to a customer. The catcher does the assembly along with temporary employees.

The Rigid Box Department follows a schedule similar to the Finishing Department. There are two shifts: the morning shift is from 6:00 a.m. to 2:30 p.m. and the afternoon shift is from 2:30 p.m. to 11:00 p.m. The rigid box employees will occasionally work Saturdays. The rigid box employees take an unpaid lunch break. Unlike most departments, the Rigid Box Department employees generally take their lunch at the same time; however, if one of the machines is running, they stagger their lunches. The lunch schedule is determined by the line leads. The line leads also direct temporary employees in their work and can make recommendations not to use a specific temporary employee.⁴ The Rigid Box department has its own lunch area where QA employees also have their lunches. The two rigid box catchers earn \$7.69 per hour and \$9.65 per hour. The 11 make ready operators and operators earn between \$8.33 per hour and \$23.63 per hour.

Maintenance

The Maintenance Department is comprised of two classifications of employees: maintenance mechanics and the janitors. The maintenance mechanics maintain and repair the Employer’s machines. For non-emergency work, each department must fill out a maintenance requisition form. The Maintenance Manager, Roger Davie, prioritizes the work to be performed and allots a set amount of time for the job. He then schedules his employees to perform this work. Currently, there is no night supervisor and as a result, Kerry Messick, the maintenance lead man has been filling in for that role. Although the mechanics can be assigned to work on any of the machines in the plant, they have developed proficiencies in performing repair work on certain machines. Six of the mechanics work nearly exclusively on repairing the

⁴ None of the parties have taken the position that these line leaders are Section 2(11) supervisors.

press machines. One of the mechanics handles electrical issues. One mechanic works exclusively in finishing and reports to the finishing manager.

The Maintenance Department works three shifts. The first shift begins at 6:00 a.m. and finishes at 4:00 p.m. The second shift begins at 2:00 p.m. and finishes at 10:00 p.m. The third shift begins at 10:00 p.m. and finishes at 6:00 a.m. The Maintenance Department is unique in that it allows the first shift to work flexible hours. There are times when the first shift needs to work overtime and on other days the first shift can take those extra hours as compensatory time off. Two maintenance employees work Saturdays on a rotating schedule. Sunday is a voluntary workday. The supervisor of the department decides the need for overtime and weekend work. The two janitors earn \$6.73 per hour and \$7.80 per hour. The eight mechanics earn from \$17.11 per hour to \$24.05 per hour.

CAD/CAM

There are two employees in this department, both are classified as programmers. One programmer solely works with plotter samples. These are samples that are intended to appear just as a finished package. The samples are generated by a computer that cuts one printed sheet in the shape of a die instead of using the die cutter. These samples are used to obtain customer approval for a product design. The programmer working with these samples works from 2:00 p.m. to 10:00 p.m.

The other employee works with the computers in generating the die vinyl's for all the jobs. He works from 7:00 a.m. to 5:00 p.m. The department also ensures that the printing that is double sided matches on both sides of the sheet. The lunch schedule and Saturday work is determined by the CAD/CAM Department Manager. The employees earn \$7.81 per hour and \$20.67 per hour.

Shipping/Receiving

This department employs material handlers who are responsible for moving product from storage areas or from one area of the plant to another area. The material handlers are trained in all types of forklifts that are used in moving product throughout the plant. They must wear safety shoes in order to operate of the forklift. This department receives trays, inserts and product that are to be used in the production of the packaging products. There are two shifts in this department: the first shift works from 6:00 a.m. to 2:30 p.m. and the second shift works from 2:30 p.m. to 11:00 p.m. The department has a day shift supervisor, Jim Keenon, and a night shift supervisor, Roland Scott. The department has seventeen material handlers that earn between \$7.69 per hour to \$15.30 per hour.

Production Departmental Interchange and Integration

The Employer's production process is, like many, sequential, and thus the work of one department is dependent on the work being accomplished timely and correctly by the preceding department in the production sequence. The Press Department has a fairly discrete and distinct production process — it prints images onto a sheet. After the printed sheet leaves the Press Department for further processing, the press employees are not likely to see it again unless there is a quality issue. The other departments in the production sequence are dependant on the Press Department, if the Press Department is behind schedule, it can push Finishing, Rigid Box, Die Cutting and Shipping/ Receiving behind schedule. Conversely, if Pre-press is behind schedule in making plates, that can push the Press Department behind schedule.

The record shows there is some contact between employees from the various production departments – typically when there is a problem in the production process. If there is a defect in the printed sheet not attributable to the Press Department, the Press Department may consult the Pre-press Department. Most often, this type of interaction occurs between a supervisor of the Press Department and the supervisor in the Pre-press Department. Pre-press may consult with the Press Department to determine if blank space on the plate can be filled with an image to prevent “ghosting.” This type of interaction is rarely addressed at the employee level as it is handled among the supervisors at the daily Art Meetings. A day shift first pressman testified that in the past 2 to 3 years, someone from the Pre-Press Department has come to him with this type of issue twice. The Die Cutting Department occasionally needs to consult with the Press Department regarding a coating issue that is preventing that department from cutting the image. A first pressman testified that the die cutting supervisor will discuss these issues with the first pressman, the Press Department manager or supervisor. The first pressman testified that he has had these conversations with die cutting supervisor approximately once a month. He further testified that die cutting employees rarely have contact with Press Department employees as all communication is done through their supervisor. The first pressman testified he consulted with the Rigid Box Department one or two times this past year because the printed sheet was not wrapping around the box correctly. Press Department employees have little contact with the Finishing Department because there is little the Press Department can do to fix the problem at that stage in the production process. The Press Department consults with the CAD/CAM department once or twice a week when they have two-sided printing jobs. The Press Department has contact with shipping when the job ticket specifies that a job is to be shipped directly after printing. In that case, someone from press will notify shipping that the job is ready to be picked up.

Employees from the various departments come into contact with one another when they are looking for stock or product. For example, the Press Department will call Shipping to see if inventory they are waiting on has arrived. A Press Department helper may go to the Sheeting Department to see if sheets he is waiting for are ready. First pressmen may occasionally go into the Die Cutting Department to talk to the supervisor or manager if they cannot find a die vinyl.

Common Elements to Employees in all Departments

Despite the differences in each department, there are common elements of employment that apply to every hourly employee. All the hourly employees punch in and out on a time clock and use an identical timecard. The hourly employees are paid every Friday. Every hourly employee is provided with an employment handbook. Each employee, except where indicated in the handbook, is subject to the rules and regulations outlined in the handbook. The decision on whether to discipline an employee for a violation of the handbook, however, rests exclusively with the department manager and/or supervisor of that particular department. There is a plant wide shift differential in pay of \$.80 for second and third shift employees. There are common break rooms, smoking areas, and a locker room for all employees to use. Every employee has the option to pay for and wear a uniform to work every day. All employees with the exception of the pre-press employees and CAD/CAM employees wear protective eye gear and hearing equipment. All employees have equal access to the parking lots as well as the opportunity to partake in the company-wide raffle of a customer's product (i.e., DVD, CD, perfume gift box set). All hourly employees have the same benefit package. Finally, all employees receive the same new employee orientation provided by Human Resources. There is also some plant wide training on issues such as the introduction of a new 401 K plan, the company code of conduct, and safety issues.

B. Analysis

The issue in this case is, as the Board's decision in *Overnite Transportation Co.*, 322 NLRB 723 (1996) makes clear, whether the unit sought by the Petitioner is an appropriate unit, regardless of its size or whether it is the most appropriate unit:

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining . . .

“[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, ‘if not final, is rarely to be disturbed.’” *South Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800, 805 (1976) (citation omitted).

When a craft or departmental unit is sought, as herein, and there exists no prior bargaining history on a more comprehensive basis, a craft or departmental group having a separate identity of functions, skills and supervision, exercising craft skills, or having a craft nucleus, will generally

be found appropriate. *E.I. Dupont & Co.*, 192 NLRB 1019 (1971). In determining whether a petitioned for craft or departmental unit is appropriate the Board examines (1) whether the employees take part in a formal training or apprenticeship program; (2) whether the work is functionally integrated with the work of the excluded employees; (3) whether the duties of the petitioned for employees overlap with the duties of the excluded employees; (4) whether the employer assigns work according to need rather than on craft or jurisdictional lines and (5) whether the petitioned-for employees share common interests with other employees, including wages, hours, working conditions, benefits, supervision, amount of interchange with other employees, and cross training. *MGM Mirage d/b/a The Mirage Casino-Hotel*, 338 NLRB No. 64, slip op. at 4 (November 20, 2002); *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679, 681 (1980). In non-construction industry cases, the Board has not limited its inquiry solely to these factors. Instead, the Board will “determine the appropriateness of the craft unit sought in light of all the factors presented in the case.” *Mirage Casino Hotel*, 338 NLRB No. 64, slip op. at 4, citing, *E.I. du Pont & Co.*, 162 NLRB 413, 417 (1966).

The Board has elaborated on the impact that certain evidence will have with respect to the elements for consideration in the craft or departmental unit analysis. With respect to the amount of functional integration of the work of excluded employees, the Board has noted that, integration of a manufacturing process while a factor to be considered in unit determinations, does not in and of itself preclude the formation of a separate craft unit unless it results in such fusion of functions, skills and working conditions so as to obliterate any meaningful lines of separate craft identity. *E.I. DuPont & Co.*, 162 NLRB 413, 419 (1966). In elaborating on whether the employer has a formal training or apprenticeship program for the petitioned for employees, the Board noted in *Mirage Casino Hotel* that the absence of a formal apprenticeship/training program may be inconsequential if the employer only hires employees with significant experience. 338 NLRB No. 64, slip op. at 3 and 5 (the lack of formal training of the carpenters and upholsterers found to comprise a craft unit was offset by the employer generally requiring 2 to 4 years of relevant experience).

Applying the foregoing analysis to the facts of the instant case, I find that the Press Department constitutes an appropriate craft unit. There is no history of collective bargaining in the instant case on a broader basis. The Press Department is a craft department with a craft nucleus centered on the first and second pressmen, and it has a separate identity of functions, skills and supervision from other departments.

Although there is no formal training or an apprenticeship program, this is of no consequence as the employer hires only employees with significant job experience and skills. *Mirage Casino Hotel*, supra, slip op. at 3 and 5. Herein, the Employer’s job requirements implicitly recognize craft skills and craft progression. The job requirements for the feeder position requires an “apprenticeship” in printing, and the job description for the first pressmen requires at least six years experience in the printing trade. Furthermore, the Employer’s policy of having employees train for the next higher job level in the Press Departments job progression

and its policy of promoting from within the department mirrors an apprenticeship or training program traditional to craft units.

Second, while the production departments are inter-dependent upon each performing their respective tasks, they are not integrated. Thus, as in any production process, each part of the process is dependent upon the completion of the preceding process, however, the work of the Press Department is distinct from the work performed in the other departments. The record herein demonstrates that each of the production departments performs tasks distinct from other departments – in other words, the work is highly compartmentalized. The record demonstrates the Press Department, like many of the other production departments, is self-contained. The Press Department is organized around teams assigned to specific presses, and the employees report only to Press Department supervisors. Thus, there is little employee interaction across departmental lines. Such interaction that occurs between departments only involves the movement of the product from one stage of production to the next stage and solving production problems that involve more than one department. The record shows that, for the most part, problem solving between the Press Department and other departments is carried on at the supervisory level. The Board has rejected the argument that interdependence between departments based on workflow from one department to another constitutes such a degree of integration of operations to deny separate representation for an otherwise appropriate separate department unit. *Paramount Press, Inc.*, 187 NLRB 586, 587 (1970)

The record shows that there is no overlap of the core duties and functions of the Press Department employees with the functions and duties performed by employees in other departments. Press Department employees do not produce plates and plate makers do not operate the printing presses. The work of the Press Department is so compartmentalized that if an employee on a particular shift is absent, such as the feeder, a feeder from Die Cutting will never fill in for that individual. Instead, the feeders on that particular machine on the other shifts will split the shift or a feeder from another press will assume the absentee's duties. With the exception of the forklift or the aerator (a machine that pumps air into the sheet which is used by feeders in die cutting and Press Department), the employees of a particular department do not handle the equipment of employees in another department. The job functions performed in the Press Department that overlap those performed in other departments are minor peripheral functions such as driving forklifts or the Press Department clerk entering data into the Oracle database. The record also demonstrates that permanent transfers of employees from other departments into the Press Department have been insignificant, only five such transfers in 18 years, and there are no temporary transfers into the Press Department.

The Press Department employees have a distinct separate community of interest from employees in other departments. They have separate supervision from other departments, have higher wage scale than other employees, have different work schedules than other employees, have different lunch and break schedules than other employees, have department specific training and meetings, and until recently were subject to a different overtime policy. The factors that they have in common with other employees, such as common benefits, access to fitness,

lunch and break room facilities do not negate their separate distinct community of interests from other employees. See *Mirage Casino Hotel*, 338 NLRB No. 64, slip op. at 3 and 4; *Burns & Roe*, 313 NLRB at 1309; *Dodge City of Wauwatosa, Inc.* 282 NLRB 459 (1986).

The Employer contends that the Board and courts have traditionally found combined Press Department and pre-Press Department units to be appropriate, citing in its brief Board and 7th Circuit cases. See, *Continental Web Press, Inc., v. N.L.R.B.*, 742 F.2d 1087, 1093 (7th Cir. 1984), and the cases cited therein. The Employer's argument is unavailing for a number of reasons. First, in *Continental Web Press*, the Seventh Circuit did not find that a press department unit was inappropriate but, rather, found that the Board failed to explain its rationale for finding a press department unit to be appropriate in light of prior decisions finding combined units of press preparatory and press department employees to be appropriate. *Id.*, 1093-94. The Court noted, in the absence of an explanation by the Board, in its view there appeared to be little difference in the community of interests between the preparatory employees and the pressmen. The Court expressed concern that excluding the preparatory employees left a fragment of only seven employees whose community of interest was closer to the pressman than the other employees. *Id.*, at 1091. Second, the issue before the Board and the Court in *Continental Web Press*, is not present in the instant case, as no party has taken a position that a combined Pre-press Department and Press Department unit is the appropriate unit in this case. The Petitioner does seek a combined Pre-Press Department and Press-Department unit and the Employer does not contend that a combined Pre-Press Department and Press Department unit is appropriate. Rather, the Employer has taken the position that the only appropriate unit consists of all the production departments. Third, given the scope of the Employer's operations, the number of departments, and the compartmentalization of both work functions and working conditions in each department, a finding that the Press Department constitutes an appropriate unit does not result in the fragmentation that concerned the Court in *Continental Web Press*. Fourth, there is a sharper distinction in the community of interest between the Press Department and other departments, including Pre-Press, herein than was found by the Court in *Continental Web Press*. The Press Department herein has separate supervision and it can determine its own work schedules, lunch breaks, and rest breaks. There is little interchange between the Press Department employees and the employees of other departments; the core Press Department employees are skilled craftsmen whereas the employees in many departments are not skilled; the pressman are the highest hourly employees at the facility; and there is a considerable difference in pay between a pressman at a high of \$30.32 per hour and employees in other departments such as janitors in the Maintenance Department at \$6.73 per hour.

My decision today comports with well-established craft and/or departmental unit principles and the traditional community of interest standards under long established Board precedent. A lack of interchange with other employees, separate supervision, and the performance of distinct craft functions are significant community of interest factors that bind the employees into a distinct group with their own interests and separate outlook regarding their

conditions of employment. Accordingly, I find the petitioned for unit to be an appropriate unit for collective bargaining. *Sufsun Co., Inc.*, 174 NLRB 977 (1969); *Metropolitan Imprinters Corporation*, 133 NLRB 1433 (1961); *Sarasota Herald Tribune and Journal*, 111 NLRB 654 (1955); *Kellogg Company*, 104 NLRB 302 (1953).

IV. Whether the First Pressmen are Section 2(11) Supervisors

A. Facts

The Employer takes the position that the first pressmen are supervisors under Section 2(11) of the Act. Conversely, the Union submits that first pressmen are not Section 2(11) supervisors and thus are properly included within the unit. There are 16 first pressmen employed in the Press Department.

The record is clear that first pressmen have no authority to suspend, layoff, recall, assign overtime, discharge, or discipline other employees. First pressmen earn an hourly wage that is commensurate with their level of experience. The top earner among the first pressman earns \$30.32 per hour whereas the top earner of the second pressmen (and remainder of the crew) earns \$ 25.75 per hour. First pressmen punch a time clock the same as the remainder of the crew. Similarly, first pressmen are entitled to the same breaks, vacations and other benefits as the remainder of the Press Department.

With regard to the first pressmen's role in the hiring process, Shift supervisor, Nat Randle, testified that first pressmen interview candidates. He stated that the first pressmen do not get involved until late in the process. First, Human Resources reviews all applications submitted for the job and pass these applications to the department manager. The department managers may or may not review the applications with the supervisors to get their input on whom to bring in for an interview. The department managers will interview those candidates they feel are qualified. Although Randle gave conflicting testimony about which persons are involved in the interviewing process, it appears that the department manager or the supervisor will first conduct the interview of the applicant and later may involve the first pressmen. The first pressmen may interview the candidate in the presence of the supervisor or on his own. Randle testified that the first pressmen's recommendations on the candidates are always taken into consideration when making the ultimate decision. Randle testified that the same four to five pressmen on the day shift, including Steve Ledvina, conduct the interviews. Randle can last recall being present at an interview with a first pressman and a job applicant about 2-3 years ago.

First pressman, Steve Ledvina, testified about the first pressmen's role in the hiring process. Although Ledvina admits he may have missed a few interviews during his absences from work, he stated he has been involved in about 12 interviews. He recalled two occasions in which he recommended against hiring the applicant who, nevertheless, was ultimately hired despite his recommendations.

First pressmen do not have authority to grant time off. Crewmembers will occasionally call the first pressman to report an absence or tardy.⁵ Although the first pressmen can take the call, he must notify the supervisor of the absence or tardy. First pressmen do not have authority to excuse absences or tardiness. In the event of a crewmember's absence or tardy, supervisors, not first pressmen, assign the work to a substitute. Similarly, when a crew member approaches a first pressman to notify him of a need to leave early, the first pressman will either speak to the supervisor himself to seek approval for the individual or will advise the employee to seek the supervisor's approval on his own.

First pressmen do not have the authority to transfer employees. In the event that a first pressman is not happy with the performance of a crewmember, he can approach the supervisor to request that that individual be removed from the crew. The supervisor may or may not grant the request. First pressman Ledvina recalled an instance in which he requested that a certain feeder be removed from his crew. The supervisor informed Ledvina that he would have to learn how to cope with the individual. The feeder was not removed from the crew until the feeder asked to be transferred. Feeders and helpers can also approach their supervisors to make requests for press changes due to personal problems with other crewmembers.

The record shows that training of a crewmember for the next position in the job progression occurs at the initiative of both the crewmember and the first pressman. This decision is not made exclusively at the first pressman level, as a feeder will also train a helper at their mutual initiative.

First pressmen do not order supplies. First pressmen can, however, sign off on a requisition form if they are running a job and need more sheets. Typically, these forms require a supervisor's signature. Usually, the first pressman will attempt to get in touch with the department manager or supervisor to get approval of the order. On the rare occasions when he cannot get in touch with anyone, the first pressman will sign off on the order himself. First pressmen can also call the Maintenance Department supervisor to request maintenance if there is an emergency with the press and the shift supervisor is not available. First pressmen can fill out maintenance requisition forms for work that does not need to be addressed immediately. Select first pressman also sign off on the color okay sheets, a document which is used to determine the quality of the final product, without obtaining the supervisor's signature, which is protocol.

There was conflicting evidence on the role of the first pressman in the performance appraisal process. The record shows that the formal written evaluation process has not been done since 2001. At that time Mead Westvaco assumed control of the Employer's operations and suspended the performance appraisal process pending implementation of a new procedure. Shift Supervisor Randle testified that the previous procedure is still in place as it relates to wage

⁵ The record demonstrated that approximately 75% of the time the crewmembers will notify the Supervisor on duty directly of their absence or tardy.

increases; only it is now done verbally. Randle testified that the first pressmen are shown a list of employees due for their annual review, and he asks them to give a verbal performance evaluation of those on the list who are on the first pressman's crew. Randle testified that he places heavy emphasis on these verbal accounts in submitting a recommendation for that employee's raise. Ledvina, however, did not recall being asked to verbally evaluate anyone in the past few years. Nor could he recall ever being shown the list that Randle described.

Assuming arguendo, that the evidence of the employer's practice regarding performance evaluations prior to 2001 was probative to these proceedings, the record demonstrated that prior to 2001, part of the first pressman's job was to write performance evaluations of employees on their crew. Identical performance evaluations were also conducted by the relevant shift supervisor. Ledvina testified that where there were numerical and narrative differences between the supervisor's account and the first pressman's account, the supervisor's ratings controlled. The documents submitted in evidence confirm this practice. In one evaluation, the first pressman rated the employee with nearly all 3.0's. The employee ended up with a final score of 2.0 based on the supervisor's ratings. Few, if any, of the first pressman's comments were incorporated into the narrative descriptions that were on the final review that was signed by the employee, supervisor and first pressman. The wage increase recommendations and final performance review went to the department manager and then to the Human Resource Department for review. The overall score on the performance review, although a factor in determining the wage increase, was not the sole factor. The record revealed that the department manager, plant manager and/or general manager often made changes to the ultimate increases that were not consistent with the performance review ratings.

First pressmen do direct the work of the press crew. However, a first pressman has no authority to direct anyone other than the members of his own crew. Shift Supervisor Randle testified that first pressmen direct the crew throughout the course of the job and are engaged in directing the press crew 95 percent more often than the supervisor. Randle cited examples in which the first pressmen will direct the employees on his crew. A first pressman will shut down his machine if he notices that the plate is defective and direct a crewmember to go to the plate room and get a new plate made. The first pressman, depending on the status of the job they are working on, can determine the break schedule for the crew.

First pressman Ledvina testified about the extent of his direction of the crew in their job duties. He explained that the crew has basic job duties that they complete on their own. The first pressman directs the crew in how the job is set up. Ledvina testified that the first pressman is responsible for making sure every crewmember does his job. He stated that he normally directs crewmembers in the duties on their respective checklist. Ledvina testified that he will sometimes assign duties to the crew members that go beyond the scope of their checklists, but these duties are not outside the scope of their routine duties. Ledvina gave examples of the types of assignments he gives to crewmembers:

1. directing the helper to wash the ink rollers when transitioning from one job to the next or when there is a color change in the job;
2. directing the second pressman, feeder or helper to wash the blanket if a job is running and something is wrong with the sheet or he will do it himself if it needs to be done faster;
3. directing the crew to change the blanket during a run or make ready;
4. directing the second pressman to go to the plate room and check if plates for the next job are ready;
5. directing the helpers to get stock ready for the next job or to call the ink room to see if the inks are ready; and
6. directing the crew to stop preparing for the next job and to focus on the current job because it has become especially difficult.

Ledvina testified that while the first pressman has responsibility for coordinating the work on the machine, he is not the only crewmember that can direct the crew in their duties. Second pressmen will frequently direct the helper to wash the blanket or fill the ink. Helpers are supposed to follow the orders of second pressmen. The feeder also directs the helper in his duties. A feeder can tell a helper to look for stock or take stock to the aerator. Ledvina testified that the first pressmen are not the only crewmembers who can shut down the press. Anyone working on the press has the authority to shut it down if they see a problem with the press. First pressmen are held accountable, however, for any down time on their machines.

In March 2003, there was a supervisory meeting with the first pressmen. At this meeting, Ledvina was shown a list of the new crew assignments due to the introduction of a new machine. Ledvina testified that he requested not to have a particular helper on his crew, which was accommodated. He testified, however, that at the same meeting another first pressman asked not to have someone on his team, but his request was not granted.

The record shows that first pressman substitute for absent second and third shift supervisors.⁶ Although first pressmen will assume the supervisor's duties on these occasions, they do not have authority to issue discipline. The record shows that a first pressman filled in for a supervisor for a three-month period when the supervisor passed away. The first pressmen do not attend supervisory meetings on a routine basis. The first pressman may be called into a meeting regarding the planning of a job, known as "Art Meetings," to discuss whether or not the creative plans for the job are feasible on that pressman's press.

B. Analysis

⁶ First pressmen do not generally substitute for the first shift supervisor because there is also a day shift department manager on duty.

The Act expressly defines the term “supervisor” in § 2(11) which provides:

“The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend lay off, recall promote, discharge, assign reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” 29 U.S.C. § 152(11).

The Supreme Court has interpreted the text of the above-quoted statute to set forth a three-part test for determining supervisory status. *N.L.R.B. v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-13 (2001), citing, *N.L.R.B. v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994). Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) their authority is held “in the interest of the employer.” *Id.* While the Board, has reasonable discretion in interpreting whether the degree of judgment exercised in one of the 12 categories falls within the “routine” or “clerical” category, once the Board has determined that the judgment exercised is independent in nature, the individual in question is deemed to be a supervisor under Section 2(11) of the Act. *Kentucky River*, 532 U.S. at 717. Finally, the burden of proving supervisor status rests solely upon the party claiming it. *Id.* at 711.

Applying the above principles to the facts of the case before me, I find that the employer has not met his burden of proving that the first pressmen are supervisors within the meaning of Section 2(11) of the Act. The record is clear and uncontradicted that first pressmen have no authority to suspend, layoff, recall, discharge, reward or discipline employees. The record is also clear that first pressmen do not have the authority to transfer employees, to excuse their absences, to grant overtime or grant time off work.

With respect to the hiring process, I find, on the record in this case, that the first pressman’s role in interviewing applicants for employment in the Press Department and making recommendations regarding the applicants does not involve the exercise of supervisory authority under Section 2(11) of the Act. At best, the record shows that the hiring recommendations by the first pressman may be considered by higher management; however, the record fails to show that the first pressman’s recommendations are effective recommendations followed by the Employer. The record shows that hiring decisions are made independent of the first pressman’s recommendation at a higher level and may be contrary to the first pressman’s recommendation. Furthermore, although it is clear from the record that at some point in time, first pressmen conducted interviews of candidates, there is no concrete evidence that the process is still in

place given Shift Supervisor Randle's testimony that he last conducted an applicant interview with a first pressman two to three years ago.

With respect to whether the first pressmen have authority to grant wage increases and promotions ("rewards") or to effectively recommend such, the exercise of such indicia rests upon the first pressman's role in the evaluation process. The record is inconclusive whether first pressman has been involved in evaluating their crewmembers since 2001 when the written evaluation process was abandoned. Shift Supervisor Randle testified that the first pressmen are still involved in evaluation process, only that it is now done verbally. First Pressman, Ledvina, on the other hand testified that he has not been asked to evaluate his crew for a number of years. *Assuming arguendo*, the first pressmen's participation in the employee appraisal process has continued, only in verbal form since 2001, I find that the first pressmen's evaluations do not constitute the exercise of any Section 2(11) supervisory indicia. The law is clear that Section 2(11) does not include "evaluate" in its enumeration of supervisory functions. *Elmhurst Extended Health Care Facilities, Inc.*, 329 NLRB 535, 536 (1999). Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor. *Id.* Such is the case, here, where the pressman's input does not constitute an effective recommendation as it can be overruled by the independent evaluation of the shift supervisor. Furthermore the record does not show any direct correlation between that the final evaluation issued by the supervisor and subsequent changes to the wage rates or job status of the reviewed employee. Accordingly, I find that the first pressmen do not make effective recommendations regarding pay raises or job status.

I find that the record does not show that the first pressmen exercise independent judgment "responsibly to direct" employees. The first pressmen's role in directing employees is limited to directing the employees on their crew in their performing their day-to-day tasks. The first pressmen do not have any authority to direct the work of Press Department employees other than their own crews, and they have no authority assign or reassign employees from their crew to other crews or assign employees from other crews to their crew. The first pressmen direct the work of their crews within the framework of "job tickets" that give the customer's specifications for each particular job; the "job bag" that contains all the tools necessary for each job, a configuration of the actual printed product, and a final proof used to match color; and each employee's checklist of functions that employee must perform to set up a job. While the record indicates that the first pressmen can direct crewmembers to perform functions outside the checklist, the record shows that such directions are within the scope of crewmembers normal duties. Further, the record indicates that other members of the crew, such as second pressmen and feeders, can direct crew members in lower classifications to perform job functions if they notice an issue or problem that needs to be resolved.

Based on the entire record, and particularly on the following, I find that the first pressmen do not exercise "independent judgment" in directing the work of their crews:

1. Each first pressman and his crew are assigned to one specific machine.
2. The tasks that a first pressman directs crew members to do such as fetching stock, filling the ink, washing blankets, and when to take breaks if they are not busy do not require the exercises of significant discretion.
3. The first pressman is only responsible for directing his crew, and he has no authority to direct employees on other crews.
4. The work of each crew is to a great extent determined by the “job tickets”, “job bags”, and “checklists”, and the crew members to a great extent know their own job functions.
5. The first pressmen lack any other indica of supervisor authority, including the lack of authority to discipline crewmembers, to backup their direction of work. Without the intervention of the supervisors or department manager.

At most, the first pressman’s direction of his crew constitutes nothing more than an experienced craftsman giving directions to less skilled and experienced employees based on the craftsman’s superior experience and knowledge. See *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995).⁷

In *Kentucky River Community Care, Inc.*, supra, the Supreme Court held that the Board could not categorically exclude professional and technical judgment from being the exercise of independent judgment in the exercise of the Section 2(11) indica of “responsibly to direct” the work of less skilled employees. To address the concerns that it’s rejection of the Board’s exclusion of professional and technical judgment from being the exercise of independent judgment the Court offered:

Perhaps the Board could offer a limiting interpretation of the supervisory function of responsible direction by distinguishing employees who direct the manner of others’ performance of discrete takes from employees who direct other employees, as Section 152(11) requires.

The Court noted that certain Board decisions have drawn such a distinction in the past, citing the Board’s decision in *Providence Hospital*, 320 NLRB 717, 729 (1996). In *Providence Hospital* at 729, the Board stated:

The common theme of these and other similar cases is that Section 2(11) supervisory authority does not include the authority of an employee to

⁷ There is no question that the first pressmen exercise independent judgment in the fulfillment of his job duties, such as signing off on the color okay. The exercise of independent judgment of skilled tradesmen in performing the duties associated with his trade does not confer Section 2(11) status on that individual unless that judgment is exercise in connection with one of Section 2(11) indica.

direct another to perform discrete tasks stemming from the directing employee's experience, skills, training, or position, such as the direction which is given by an employee with specialized skills and training which is incidental to the directing employee's ability to carry out that skill and training, and the direction which is given by an employee with specialized skills and training to coordinate the activities of other employees with similar specialized skills and training.

The foregoing analysis by the Board is particular applicable to the direction given by the first pressman to their crews. The first pressmen are the most skilled and experienced craftsmen on their crews, and their direction of the crew stems entirely from their skills, knowledge and experience. The first pressmen's direction of their crews is incidental to their ability to carry out their own duties; is discrete in being limited to running printing jobs on a specific press using the same crew; and is used to coordinate the work of less experienced employees with similar skills. Thus, under this analysis, the first pressmen do not responsibly direct the work of their crews within the meaning of Section 2(11) of the Act.

In sum, the record does not establish that the first pressmen possess any of the 12 enumerated factors of supervisory status, and it is therefore not necessary to consider any secondary indica.⁸

V. Summary

Based on the foregoing and the entire record herein, I have found that (1) the unit as petitioned for is an appropriate unit consisting of all hourly employees working in the Press Department because these employees have a separate identity of functions, skills and supervision; (2) I find that the first pressmen lack any of the requisite indicia of supervisory authority under Section 2(11) and are therefore properly included in the petitioned for unit.

VI. Direction of Election

⁸ The first pressmen sign off on supervisory forms at times, such as work requisition forms for maintenance and stock requisition forms. The record, however, revealed that the first pressmen do this only when the shift supervisor cannot be reached. The first pressmen substitute for the supervisors who are absent or away from the office. However, that an employee who substitutes for a supervisor may be deemed a supervisor only if that individual's exercise of supervisory authority is regular and substantial. *Hexacomb Corporation and Western Temporary Services, Inc.*, 313 NLRB 983, 984 (1994) The Board in *Hexacomb* found that substitution for vacation periods or other unscheduled occasions is insufficient to establish supervisory authority even if the individual exercises supervisory authority when substituting. *Id.* Just as in *Hexacomb*, the first pressmen substitute only when the supervisor is absent from the office on vacation, or unexpectedly unavailable (such as a death). Therefore, they cannot be found to be substituting in a regular and substantial manner.

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Chemical & Allied Product Workers Union, Local No. 20, AFL-CIO or no labor organization.

VII. Notices of Election

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359

(1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **February 17, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **February 24, 2004**.

DATED at Chicago, Illinois this 10th day of February 2004.

/s/Gail R. Moran

Gail R. Moran, Acting Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

440-1760-9133-0500
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177-8560-1500
CATS -UntCU

440-1760-9133-5700
440-1760-9167-7633
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440-1760-9133-4300
177-8560-1000
177-8580-2700