

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**PAYLESS SHOE SOURCE, INC.<sup>1</sup>**

**Employer**

**and**

**Case 14-RC-087469**

**UNITED FOOD AND COMMERCIAL  
WORKERS, LOCAL 655**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION  
AND DIRECTION OF ELECTION**

The Employer, Payless Shoe Source, Inc., is a Missouri corporation engaged in the retail sale of shoes. The Petitioner, United Food and Commercial Workers, Local 655 filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time sales associates employed at the Employer's Rolla, Missouri facility. A hearing officer of the Board held a hearing and the parties filed briefs with me.

As evidenced at the hearing and in the briefs, the single issue litigated was whether the petitioned-for single facility unit is appropriate or whether a multi-facility unit is appropriate. The Employer opposes the petition on the grounds that the petitioned-for single facility unit is inappropriate because of (1) the centralized control of labor relations and corporate policies; (2) the associates' similar working conditions and functions; (3) the Store Leaders' lack of autonomy; (4) the functional integration of the stores and corporate policies; (5)

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<sup>1</sup> The name of the Employer appears as amended at hearing.

the administrative organization of the Employer; and (6) the bargaining history of the parties that includes a current bargaining unit represented by the Petitioner that encompasses 24 stores across two districts of the Employer. In its brief, the Employer proposed three alternative multi-facility units encompassing two or three districts, from 28 to 55 stores, and from 130 to 244 sales associates. The Petitioner maintains that the petitioned-for single facility unit is an appropriate unit.<sup>2</sup> The parties stipulated that any bargaining unit found appropriate should include all full-time and regular part-time sales associates employed by the Employer, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.<sup>3</sup> Based on my review of the record, and for the reasons set forth below, I conclude that the petitioned-for single facility unit is appropriate in this case. There are approximately five sales associates in the single facility unit.

## I. OVERVIEW OF OPERATIONS

The Employer, a subsidiary of Collective Brands, Inc., is engaged in the retail sale of shoes throughout all 50 states in the United States, as well as in Canada, Latin America, and Asia. The Employer owns and operates approximately 4,500 stores worldwide, including approximately 3,500 stores employing about 21,000 employees in the United States. All of the Employer's North American stores are company-owned stores as opposed to franchise

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<sup>2</sup> At the hearing, the Petitioner indicated that it was unwilling to proceed to an election if the Regional Director determined that a larger unit is appropriate in this case.

<sup>3</sup> The parties stipulated, and I agree on the basis of record evidence as discussed below, that the Store Leader is appropriately excluded from the bargaining unit.

stores. The Employer's corporate headquarters is located in Topeka, Kansas, in the same building as the headquarters of Collective Brands, Inc.

The Employer's operational structure in the United States is comprised of two administrative groupings: Zone A and Zone B, covering the northern and southern United States, respectively. Zone A is comprised of six Regions, including approximately 1,900 stores employing approximately 11,000 employees. Region A3, which is located in the Midwestern United States, employs approximately 1,600 employees. Region A3 is further divided into 12 Districts, each comprised of approximately 25 stores. The petitioned-for Rolla store is in District A3E, which includes 25 stores in southern, central, and eastern Missouri, including the St. Louis area.

## II. THE FACTORS TO CONSIDER IN A MULTI-FACILITY SETTING

The Board's procedure for determining an appropriate unit under Section 9(b) is to first examine the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Wheeling Island Gaming*, 355 NLRB 637 fn. 2 (2010); *Boeing Co.*, 337 NLRB 152, 153 (2001). In making a determination as to whether a petitioned-for unit is appropriate, the Board has held that Section 9(a) of the Act only requires that the unit sought by the petitioner be an appropriate unit for collective bargaining. Nothing in the statute requires that the unit be the only appropriate unit or most appropriate unit. *Wheeling Island Gaming*, supra; *Overnite Transportation Co.*, 322 NLRB 723 (1996) (citations omitted); *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) ("There is nothing in the statute which requires that the unit for bargaining be the *only*

appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate’) (emphasis in the original). Even if the Employer demonstrates that a larger unit including all or some of its represented employees was appropriate, that would not establish that the petitioned-for unit is inappropriate. “Because a proposed unit need only be an appropriate unit and need not be the only or the most appropriate unit, it follows inescapably that demonstrating that another unit containing the employees in the proposed unit plus others is appropriate, or even that it is more appropriate, is not sufficient to demonstrate that the proposed unit is inappropriate.” *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 15 (2011) (“The employer must show that the excluded employees share an ‘overwhelming community of interest’ with the petitioned-for employees.”). See *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964) (“The Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.”)

It is well-established that a single facility unit, such as the one being sought here, is presumptively an appropriate bargaining unit unless it has been so effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. *D&L Transportation*, 324 NLRB 160 (1997). The party challenging the appropriateness of a single-facility unit has the burden of rebutting the presumption. *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Renzetti’s Market*, 238 NLRB 174 (1978). In order to rebut the presumption, the party challenging the presumption must be able to show that

the day-to-day interests of the employees at the single location have merged with those of the employees at the other locations. *Renzetti's Market*, 238 NLRB at 175. To determine whether the presumption has been rebutted, the Board examines such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990).

The Board has recognized that it is common in retail chain operations for there to be a considerable degree of integration of operations and centralized administration. *AVI Foodsystems, Inc.*, 328 NLRB 426, 430 (1999) (citation omitted). Such a circumstance is not considered a primary factor in deciding the appropriateness of a single facility unit in this industry. *Id.*

In *AVI Foodsystems, Inc.*, supra, the Board found that certain factors weighing in favor of finding the single facility presumption rebutted were afforded less weight, including the proximity of the employer's facilities, uniform wages and fringe benefits, the interdependence of facility operations, and the interchange or transfer of employees. Significantly, the Board found the separate supervision of each facility to be controlling. "In determining the appropriateness of a single-facility unit, the most significant consideration is whether the control of the day-to-day working conditions is separate and autonomous from any other facility." *AVI Foodsystems, Inc.*, 328 NLRB at 430. See *Renzetti's Market*, 238 NLRB at 176.

### **III. DISCUSSION OF THE RELEVANT FACTORS**

#### **A. Control Over Daily Operations and Labor Relations**

The record shows that the Employer's personnel and administrative functions are centralized. The Group Counsel for Litigation and Employment for Collective Brands, Inc. (General Counsel), works out of Topeka and generally oversees labor relations matters for the Employer. The General Counsel provides day-to-day consultation and advice with the Employer's corporate human resources personnel on various labor relations issues. The Employer's Human Resources (HR) Manager, also works out of the Topeka corporate headquarters and provides day-to-day employee relations support for approximately 48 District Leaders and four Directors of Retail Operations in four Regions, including Region A3. The HR Manager visits stores every 4 or 5 weeks, assists in sales associate development and investigations, and is also involved in formulating the Employer's corporate-wide labor relations, employment, and training policies. The Employer's Vice President of Retail Operations for Zone A works out of the Employer's corporate headquarters and oversees the six Directors of Retail Operations for each of the six Regions in Zone A. The Employer's Director of Retail Operations for Region A3 works out of an office in the St. Louis, Missouri area.

The Employer's District Leader for District A3E (which includes southern, central, and eastern Missouri, including the petitioned-for store in Rolla) and District A3F (which covers stores in the metropolitan East St. Louis area, southern Illinois, southern Indiana, and western Kentucky) works out of a home

office in O'Fallon, Missouri, which is approximately 80 miles from the Rolla store. The District Leader testified to currently overseeing two districts while training an individual to become the new District Leader of District A3F. This training is estimated to be completed by mid-October 2012, after which the District Leader expects to just oversee District A3E. The District Leader generally oversees the hiring practices and key performance indicators, such as sales figures, for the stores in the district. He typically visits stores in the district once every 4 or 5 weeks, though he has not been able to visit as frequently while temporarily overseeing two districts, but is in phone contact with the Store Leaders in the district two to three times each day.

The District Leader ensures associates have completed their necessary training within the first 90 days of hire and, within 6 weeks of hire, will conduct a training session with each new associate regarding the Employer's service expectations. The District Leader can adjust the staffing levels of the stores in the district. The District Leader resolves some employee grievances in consultation with the Store Leader, though on some occasions resolves grievances after consulting with the HR Manager.

Store Leaders present employee disciplinary issues to the District Leader, who then must approve any disciplinary action imposed by the Store Leader. The District Leader is involved in deciding whether to terminate an associate after getting final approval from the HR Manager. On rare occasions, the District Leader determines or adjusts the associates' hours of employment. The District Leader reviews the Store Leaders' overall performance evaluation ratings of

sales associates which, when applied in a corporate-wide formula, determines the wage increases. The District Leader approves the promotion of associates in the district based upon recommendations by Store Leaders. Sometimes the District Leader also initiates the promotion of an associate. The District Leader provides input to the corporate office regarding banking arrangements for local stores, and can adjust the expense and payroll budgets of the stores within the districts.

The record establishes that the control of the daily working conditions of the Rolla associates is separate from the other stores. Each store has its own Store Leader, or Store Manager, to whom a store's sales associates report, though some Store Leaders manage more than one store. Eighty percent of the Store Leader's job is selling shoes, just like sales associates. Store Leaders are accountable to District Leaders for their store's Key Performance Indicators, which measure a store's sales and other performance indicators, and get a bonus every quarter their store demonstrates a sales increase. The sales associates do not receive bonuses.

Store Leaders are responsible for assisting newly hired sales associates in completing the corporate-prepared training program, certifying completion, and filing the completed training checklist in the associate's personnel file. The Employer introduced its Associate Handbook into evidence. The handbook describes multiple Store Leader duties and responsibilities. With the exception of the District Leader's testimony that the District Leader must approve all disciplinary action, there is no evidence on the record that the Rolla Store Leader

does not exercise these duties and responsibilities. According to the Associate Handbook, Store Leaders direct associates to the tools used for tracking training progress, assist associates in their development, and provide feedback as the training programs are completed. Store Leaders evaluate whether associates should be dismissed during their probationary periods without going through the disciplinary procedures. They coach associates regarding proper service techniques, provide general direction to associates in the performance of their duties, and are encouraged to discuss job performance and goals with associates on an informal, day-to-day basis. Store Leaders are the ones who actually see an associate's performance and notify the District Leader of such performance before they complete an electronic evaluation of an associate every 6 months.

The District Leader over District A3E, which includes the Rolla store, testified that Store Leaders set associates' work schedules by entering or adjusting their availability and restrictions into a corporate-wide computer program. According to the Associate Handbook, only a Store Leader can authorize deviation from a work schedule. If an associate is late or absent, the associate must inform the Store Leader at least 2 hours before the start of the shift and the reason for being late or absent. A pattern of absences, or the failure to report to work on 2 consecutive scheduled workdays without adequate justification or notification to the Store Leader, will result in disciplinary action, up to and including termination. Store Leaders may decide to close a store due to inclement weather if a District Leader cannot be reached. Store Leaders review,

initial, and submit associates' time sheets for approval. Associates who fail to clock in or out must notify their Store Leader as soon as the error is noticed. Store Leaders may make appropriate documentation on an associate's time sheet entry if necessary. Store Leaders authorize and schedule overtime, though the control and distribution of overtime is also the responsibility of District Leaders. Associates are required to notify their Store Leader of their intent to take a leave of absence, and must contact their Store Leader to confirm the return to work date. Store Leaders authorize associates' sick leave and vacation. Store Leaders are responsible for finding a replacement if an associate calls in sick and must then notify the District Leader.

According to the Associate Handbook, Store Leaders discuss with associates their store transfer requests with final approval from the District Leader. Store Leaders approve associates' requests to voluntarily change their job classification status if the request is separate from the Employer's biannual process. Associates must disclose to their Store Leader their intent to engage in free-lance work or "moonlighting" to ensure that it does not create scheduling conflicts. Store Leaders answer associates' questions regarding payroll deductions. In most cases, Store Leaders answer questions and solve associates' concerns if they feel that the administration of a policy has resulted in unfair treatment. Associates are required to report all accidents or injuries to their Store Leader immediately or risk disciplinary action. Store Leaders are responsible for scheduling rest breaks and meal periods, and designate the area of the store for the storage of associates' personal property.

The Associate Handbook further states that Store Leaders may issue verbal and written warnings, and even terminate associates, though the District Leader over the Rolla store testified that he must first approve all discipline and Store Leaders lack the authority to terminate associates. Termination recommendations made by Store Leaders are reviewed with the District Leader and, in most cases, the Human Resources department. There was no record evidence that the recommendations of the Rolla Store Leader are not followed. Associates are expected to submit resignation notices to the Store Leader. Once a resignation is submitted, it can only be withdrawn with the Store Leader's approval. Store Leaders provide guidance to sales associates on interpretation of the Employer's dress code, and will notify associates if it is appropriate to deviate from the dress code. Store Leaders also conduct monthly employee meetings based on material promulgated by the corporate office.

Store Leaders decide, in partnership with District Leaders, the ratio of part-time to full-time associates in a given store. Store Leaders initially interview all prospective associates and recommend to their District Leader the hire of a part-time associate based on their interview. District Leaders also interview prospective full-time associates and Store Leaders personally, though sometimes by phone. All associate job offers must be approved by the District Leader. As far as filling job vacancies, if an associate quits, the Store Leader will notify the District Leader and recommend how to fill the vacancy, e.g., whether to hire a full-time associate or two part-time associates. After the District Leader approves the hiring recommendation, the Store Leader vets applicants on-line, conducts

interviews with a partner, and then calls the District Leader for hiring approval. There was no record evidence that the hiring recommendations of the Rolla Store Leader are not approved.

The record establishes central control over the Employer's work rules and policies and human resources functions. The Employer has its own corporate operations team that includes human resources, finance, and marketing personnel. The Employer's corporate office requires that stores have the same general layout, same products, and same prices. The corporate office also sets uniform banking, budgeting, payroll, pricing, merchandising, distribution, loss prevention, training, dress code, and store performance measurement policies on a nationwide basis with which Store Leaders are expected to conform. Advertising and marketing decisions are also made on a corporate level and are binding on Store Leaders. The corporate office formulates and promulgates job descriptions for associates that are identical for part-time and full-time associates. Payroll is also processed through the corporate office. Portions of associates' personnel files, such as disciplinary action and training documentation, are kept at local stores, while payroll records, such as W-2s, are electronically stored at the corporate headquarters. If associates want to change their W-2 forms, they contact human resources personnel at the corporate headquarters or their District Leader.

**B. Similarity of Employee Skills, Functions, and Working Conditions**

The record establishes that all associates at all of the Employer's stores are subject to the same general terms and conditions of employment. All

associates have essentially the same skills, job duties, and working conditions. The Employer's corporate office determines the policies set forth in its Associate Handbook, which applies to all non-union associates in the United States stores, including the petitioned-for store in Rolla. The pay range for associates is established at the corporate level based on a store's geographic area. The wage range for the Rolla's full-time and part-time associates is the same as that for all the non-union associates in Districts A3E and other Missouri stores.

With the exception of those associates covered by collective-bargaining agreements, or subject to variations based on the legal requirements of state or local law, the non-wage terms and conditions of employment for sales associates are essentially uniform throughout the United States. All unrepresented associates receive the same employee benefits, such as insurance and retirement plan, based on their full-time or part-time job classification and length of service. All full-time unrepresented associates receive the same holiday and vacation benefits, sick leave, jury duty leave, and bereavement leave. Other employee benefits, such as medical, personal, domestic abuse, military, and workers' compensation leave are the same for full-time and part-time unrepresented associates throughout the United States. Associates at all of the Employer's stores are subject to the same training program and dress code policies. The hours of work and schedules for associates, however, do vary by store.

**C. Employee Interchange and Contact**

There is no specific evidence of involuntary interchange between the associates at the Rolla store and the other stores. The District Leader who testified stated there would be occasions when an associate could be transferred to another store, but gave no specific examples. Occasionally, associates are allowed to transfer between stores on a voluntary basis with the District Leader's approval when an opening becomes available. One of the five Rolla sales associates formerly worked at one of the St. Louis stores, but the associate quit and relocated to Rolla, and applied and was hired at the Rolla store. Neither union nor non-union associates have bumping rights over associates with less seniority at other stores. The Employer does not hold district-wide parties for associates, but rather occasionally rewards associates of one store with a pizza party when a store performs well.

**D. Collective Bargaining History**

There is no history of collective bargaining between the Petitioner and the Employer with respect to the Rolla store. However, for at least 25 years, the Petitioner has represented associates at 24 of the Employer's stores in Districts A3E and A3F. The record is not clear whether this representation stems from voluntary recognition or Board certification. In 2009, the Petitioner proposed expanding the scope of the bargaining unit covered by the contract to include all stores within Missouri but withdrew this proposal. The Petitioner represents no facility of the Employer in a single-facility unit.

Of the 25 stores in District A3E, the Petitioner represents associates in 17 stores. The other eight stores, including the petitioned-for Rolla store, are non-union. The unionized stores in District A3E are all within the St. Louis metropolitan area in the City of St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri. In District A3E, there are a total of 69 unionized sales associates and 38 non-union sales associates. Of the 27 stores in District A3F, 20 are non-union while associates in 7 stores in the greater East St. Louis, Illinois metropolitan area are represented by the Petitioner. In District A3F, there are 92 non-union sales associates and 28 unionized sales associates. None of the Employer's stores in District A3C (western Missouri, eastern Kansas) are unionized.

Thus, a total of 24 stores in Districts A3E and A3F are covered by a single current collective-bargaining agreement between Petitioner and the Employer, though at one time this unit included approximately 36 stores. The Group Counsel for Litigation and Employment, along with District Leaders in Districts A3E and A3F, negotiated the current collective-bargaining agreement on behalf of the Employer without involvement from Store Leaders. Of the union stores covered by the collective-bargaining agreement, the two furthest stores are approximately 40 miles apart.

#### **E. Geographic Proximity**

The Rolla store is a considerable distance from the Employer's other stores. The record establishes that the nearest store to the Rolla store is in Jefferson City, Missouri, which is approximately 60 miles away.

#### IV. ANALYSIS

In the instant case, I conclude that the petitioned-for unit of full-time and regular part-time sales associates employed at the Employer's Rolla store is an appropriate unit and that the Employer has failed to rebut the presumption that a single facility unit is an appropriate unit.

There are factors that would support a finding that the single facility presumption has been rebutted, including the fact that the Employer's pay scale, work rules, and policies are established by the corporate office and human resource functions are centrally administered. The functions and skills of Rolla associates are the same as the associates throughout the Employer's United States stores. While there is no history of collective bargaining involving the petitioned-for employees, the Petitioner does represent associates in a unit covering 24 stores in Districts A3E and A3F in the greater St. Louis and East St. Louis metropolitan area.

I note that the factors weighing in favor of rebutting the single-facility presumption are not those that are given significant weight in the determination of unit scope. For instance, the fact that the Employer maintains centralized control over its personnel and labor relations policies, by itself, is insufficient to rebut the presumption of a single-facility unit where there is significant local autonomy. *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (citation omitted). While benefits may be identical for associates across the Employer's unrepresented stores, and wages are uniformly set based on a store's geographic area, "uniform wages and fringe benefits and interdependence of

facility operations are not controlling in determining the appropriateness of a single-facility unit.” *AVI Foodsystems, Inc.*, 328 NLRB at 430.

The bargaining history between the Petitioner and the Employer, where the Petitioner has for at least 25 years represented 24 of the Employer’s 3,500 United States stores in a multi-facility unit covered by a single collective-bargaining agreement, is also a factor to be considered in unit determination. *Spartan Department Stores*, 140 NLRB 608, 610-611 (1963) (where a retail chain bargained in citywide units in other cities, this fact was given weight in arriving at a multi-facility unit determination). It is uncontested that the Petitioner has never represented employees at the petitioned-for Rolla store. There is no evidence that the multi-facility bargaining in the 24-store unit was based on Board certification rather than voluntary recognition. Thus, there is no concern in this case of disturbing a certification reflecting a prior Board determination of unit appropriateness. Cf. *Coplay Cement Co.*, 288 NLRB 66, 68 (1988) (sketchy history of bargaining involving voluntarily recognized partition of three facilities into two units was insufficient evidence to rebut other evidence supporting appropriateness of three-plant unit).

While acknowledging that certain factors exist that may favor a finding that the single-facility presumption has been rebutted, I note that the control of the daily working conditions of the Rolla, Missouri store associates appears to be separate and autonomous from the other stores. As noted above, in determining whether the single facility presumption has been rebutted, it is the separate

supervision at each facility which is controlling. *AVI Foodsystems, Inc.*, 328 NLRB at 430.

Based on the record evidence, the Store Leader appears to exert the most control over the Rolla store associates' daily working conditions. The Store Leader coaches associates regarding proper service techniques, provides general direction to associates in the performance of their duties, and is encouraged to discuss job performance and goals with associates on an informal, day-to-day basis. When a vacancy arises in the Rolla store, the Store Leader works with the District Leader to determine how to fill the vacancy, e.g., with one full-time or two part-time associates, and screens, interviews, and recommends the hire of prospective associates. The Store Leader evaluates associates and recommends their promotion; sets schedules; conducts associate meetings; approves overtime, authorizes time off, and determines breaks. With the exception of a training session conducted by the District Leader at the Rolla store, the Store Leader conducts orientation.

The Employer's contention that Store Leaders lack the authority to adjust associate grievances is belied by its own associate handbook. Specifically, the handbook states in most cases Store Leaders can answer questions quickly and help solve associates' concerns that the administration of a policy has resulted in unfair treatment. Likewise, the Employer's contention that Store Leaders lack the authority to discipline or discharge employees is also belied by its own handbook. Though the District Leader testified that all discipline must be approved by him, according to the handbook Store Leaders may independently issue discipline and

even decide to terminate associates, though all termination decisions must be reviewed by the District Leader and, in most cases, the HR department. The infrequency with which District Leaders visit stores undermines the Employer's contention that the District Leader, not the Store Leader, is the supervisor for all the associates in his or her district. Whereas the Rolla Store Leader oversees associates' job performance on a day-to-day basis, the District Leader, even though in telephone contact with the store on a daily basis, visits the Rolla store only once every 4 or 5 weeks.

The evidence demonstrates that there is minimal interchange and contact between Rolla store associates and the associates of other stores. While there is evidence that one associate, who previously worked in St. Louis, applied and was hired at the Rolla store after relocating to the area, this was done voluntarily. *AVI Foodsystems, Inc.*, 328 NLRB at 429 (noting that the evidence of employee interchange did not appear to be significant, for instance, that the permanent transfers appear to have been on a voluntary basis). Rolla associates work at the same store and attend separate monthly employee meetings. Associates are not invited to the Employer's district-wide parties and instead are rewarded for good store performance with in-store pizza parties. Furthermore, the fact that the closest store to the Rolla store is about 60 miles away also weighs against a finding that a multi-facility unit is appropriate. Cf. *Globe Furniture Rentals, Inc.*, 298 NLRB 288, 290 (1990) (noting geographic proximity among employer's five stores a factor in finding multi-facility unit appropriate where the furthest distance between any two stores was 25 miles and the shortest distance was 5 miles).

The cases relied on by the Employer are distinguishable. In *Petrie Stores Corp.*, 266 NLRB 75 (1983), the petitioner sought elections in 10 separate units for stores all located in the same shopping mall. The Board concluded that the high degree of centralization of administration and control, the lack of individual store manager's autonomy, the geographic proximity of the stores, and the substantial interchange of employees made single-store units inappropriate. The Board's finding that the store managers lacked autonomy was based on the fact that, unlike the instant case, they lacked final decision making authority in issuing discipline, resolving grievances, granting leaves of absence, and scheduling employees. In *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002), the Board concluded a multi-facility unit was appropriate where, unlike the instant case, the petitioned-for stores lacked separate local management and there was a significant amount of functional integration and employee contact among the five stores. In *Orkin Exterminating Co.*, 258 NLRB 773 (1981), the Board concluded that a multi-facility unit was appropriate based on the district manager's broad authority over daily operations and labor relations, uniform working conditions and employee skills, and substantial employee interchange. Whereas the district manager in *Orkin* spent approximately 75 percent of his time at the branches, here the District Leader only visits stores in his or her district once every 4 or 5 weeks. Further, unlike the branch managers in *Orkin*, the Store Leaders in the instant case set schedules and authorize time off, including vacations. Additionally, unlike the instant case, employee interchange in *Orkin* was fairly common. Thus, unlike the cases cited by the Employer, in the instant

case there is insufficient evidence of centralized control over the associates' daily working conditions, employee interchange, and geographic proximity to rebut the single-facility presumption.

For the foregoing reasons, I find that the record evidence is insufficient to rebut the presumption favoring a single facility unit where the Employer has not shown that the day-to-day interests of the associates at the Rolla store have merged with those of associates at other stores. Further, the Employer has not demonstrated that any other associates share an overwhelming community of interest with and should be included in the petitioned-for unit. Accordingly, I conclude that the petitioned-for single facility unit as set forth above is an appropriate unit.

#### **V. CONCLUSIONS AND FINDINGS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.

5. 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.

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

All full-time and regular part-time sales associates employed by the Employer at its Rolla, Missouri facility, excluding store leaders, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for the purposes of collective bargaining by United Food and Commercial Workers, Local 655. The date, time, and place of the election will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to 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 been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less

than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters in the unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or

by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **September 20, 2012**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>4</sup> by mail, or by facsimile transmission at (314) 539-7794. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires

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<sup>4</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 27, 2012**. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov)<sup>5</sup>, but may not be filed by facsimile.

Dated September 13, 2012, at St. Louis, Missouri.



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Daniel L. Hubbel, Acting Regional Director  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63013-2829

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<sup>5</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).