

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

UNITED RENTALS NORTH AMERICA

Employer

and

Case 14-RC-126113

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 513**

Petitioner

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

The Employer, United Rentals North America, is a Delaware corporation that rents, repairs, and services construction equipment. The Petitioner, International Union of Operating Engineers, Local 513, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent certain employees of the Employer. The unit sought by the Petitioner at hearing is all drivers, service technicians,¹ inside sales representatives,² and the operations manager employed at the Employer's Cape Girardeau, 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 parties raised three issues to be decided: (1) the supervisory status of the operations manager at the Employer's Cape Girardeau, Missouri, Paducah, Kentucky, Calvert City, Kentucky, and Mt. Vernon, Illinois facilities; (2) whether the single-facility unit sought by the Petitioner is appropriate; and (3) whether inside sales

¹ The Employer's mechanics are referred to as service technicians.

² The Employer's counter sales and service employees are referred to as inside sales representatives.

representatives are appropriately included in the unit.³ The parties agreed to exclude the outside sales representative⁴ if the single facility at Cape Girardeau is found to be appropriate, in addition to office clerical employees, professional employees, guards, and supervisors as defined in the Act. The outside sales representative at Cape Girardeau warrants further analysis.

The parties agree that drivers and service technicians are appropriately included in any unit found appropriate. The Employer, contrary to the Petitioner, contends that the operations managers at the four facilities are supervisors within the meaning of the Act. The Petitioner contends that the petitioned-for single facility unit at Cape Girardeau is appropriate. The Employer contends that a multi-facility unit is appropriate and should include employees working within its Paducah hub, which includes Paducah, Calvert City, and Mt. Vernon, as well as Cape Girardeau. The Petitioner, contrary to the Employer, contends that the inside sales representatives are appropriately included in any unit.

I have considered the evidence and arguments presented by the parties on the issues, and I find that operations managers are supervisors within the meaning of the Act and are appropriately excluded from the unit. I further find the Employer has failed to rebut the single-facility presumption and the petitioned-for Cape Girardeau single-facility unit is appropriate. The unit appropriately includes all drivers and service technicians, as well as inside sales representatives and the outside sales representative. There are approximately eight employees in the unit.

³ Two inside sales representatives are employed at each of the Employer's Cape Girardeau and Paducah facilities. No inside sales representatives are employed at Calvert City or Mt. Vernon.

⁴ The outside sales representative is also referred to as sales representative-commission.

I. OVERVIEW OF OPERATIONS

The Employer, who has nationwide locations, is engaged in the rental, service, and repair of construction equipment to individuals and businesses. The four facilities at issue in this case are located within the Employer's Kentucky district. A district manager oversees the Kentucky district, which includes parts of Kentucky, Missouri, and Illinois. A branch manager,⁵ who reports to the district manager, works out of the Paducah facility and oversees the Cape Girardeau, Missouri, Paducah, Kentucky, Calvert City, Kentucky, and Mt. Vernon, Illinois facilities. These four facilities are referred to as the Paducah hub.

The Employer began forming the Paducah hub in early 2013 when Mt. Vernon was converted from an existing stand-alone facility to part of the Paducah hub. Later in 2013, the Employer opened a new facility at Calvert City and placed it in the Paducah hub. When the hub was formed, the Paducah, Calvert City, and Mt. Vernon facilities had an operations manager assigned to each facility. About 6 weeks prior to the April 15, 2014 hearing in this case, the Employer converted Cape Girardeau from a stand-alone facility to part of the Paducah hub. At the time of this conversion, the then branch manager of the Cape Girardeau facility was demoted from a branch manager to an operations manager.

The Cape Girardeau facility has one operations manager, two drivers, three service technicians, two inside sales representatives, and one outside sales representative. The Paducah facility has one branch manager, one service manager, one operations manager, three drivers, one equipment associate, four service technicians, two inside sales representatives, and two outside sales representatives. The Calvert City facility has one operations manager, one driver,

⁵ The parties stipulated, and I agree, that the branch manager is a supervisor within the meaning of the Act.

and one service technician. The Mt. Vernon facility has one operations manager, one driver, one equipment associate, and two service technicians.

Drivers pick up and deliver equipment from their facility, from other facilities inside the hub, and from other Employer facilities outside the hub, or from customers. Equipment associates and service technicians service and repair equipment at the facility and in the field. Drivers, equipment associates, and service technicians are paid hourly. The inside sales representatives, who work at a facility, answer incoming calls from customers regarding the rental, service, and repair of equipment. Inside sales representatives schedule appointments for the outside sales representatives to meet with new customers and contact dormant customers in an effort to attract more business from such customers. The inside sales representatives are paid an hourly wage rate and, in addition, they are eligible for a quarterly bonus that is based on the hub's performance. The outside sales representatives meet with customers in the field in an effort to retain and generate business and are paid a salary and commission.

II. SUPERVISORY STATUS OF OPERATIONS MANAGERS

The Employer contends the operations managers should be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act. The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in, or effectively recommend, any 1 of the 12 criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The burden of proving supervisory status lies with the party asserting that such status exists. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2001).

Supervisory status must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, supra at 694. Lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). "[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia or supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). Further, job descriptions and job titles are only paper authority and are not given any controlling weight by the Board. *Avante at Wilson, Inc.*, supra; *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

The Employer contends that the operations managers are supervisors because each of them effectively recommends hiring, firing, and discipline; prepares annual evaluations which are used to determine employee wage increases; authorizes overtime; and supervises the day-to-day operations of the four facilities. Contrary to the Employer, the Petitioner contends that the operations managers do not have any indicia of supervisory status. For the reasons set forth below, I conclude the Employer has met its burden and established that the operations managers are supervisors within the meaning of Section 2(11) of the Act.

Each of the four facilities has an operations manager, who reports to the branch manager, who works out of the Paducah facility, but travels to the other three facilities. Each operations manager is responsible for the day-to-day operation of his or her facility. Prior to about March 1, 2014, the Cape Girardeau facility had a branch manager. However, when that facility became

part of the Paducah hub, the Cape Girardeau branch manager was demoted to operations manager. The most significant impact of this demotion is that the Cape Girardeau operations manager is no longer responsible for her own profit and loss statement. Rather, the Cape Girardeau facility is included in the profit and loss statement of the Paducah hub. Further, instead of having total autonomy over facility operations, the Cape Girardeau operations manager now consults with the branch manager and makes effective recommendations about operations.

All employees at Cape Girardeau, Calvert City, and Mt. Vernon report directly to the operations manager at their facility, with the exception that the outside sales representative reports directly to the branch manager in Paducah. All employees at the Paducah facility report directly to the Paducah operations manager, with the exception that the Paducah service technicians report directly to the service manager located in Paducah and the Paducah outside sales representatives reports directly to the branch manager located in Paducah.

Each operations manager conducts job interviews; effectively recommends hiring, firing, and discipline; prepares annual evaluations that are used to determine the amount of employees' wage increases; authorizes overtime; and supervises the day-to-day operations of each of the four facilities. During the Employer's busy season, which runs from spring through fall, the operations managers have complete autonomy to authorize overtime. During the slower winter season, operations managers obtain approval from the branch manager before authorizing overtime.

The operations managers prepare the annual performance reviews on the drivers and inside sales representatives at his or her facility. The performance reviews of service technicians are prepared jointly by the operations manager at their facility and the service manager.

Performance reviews are sent to the branch manager for final approval, but the operations managers make effective recommendations regarding employees' performance review ratings. Employees' merit wage increases are determined by the ratings on their performance reviews.

The Employer, by a preponderance of the evidence, has met its burden and established that the operations managers are supervisors within the meaning of Section 2(11) of the Act. *Sheraton Universal Hotel*, 350 NLRB 1114, 1115-1116 (2007). Accordingly, I shall exclude operations managers from any unit found appropriate.

III. SINGLE VERSES MULTI-FACILITY UNIT

The Petitioner contends that the petitioned-for single facility unit at the Cape Girardeau facility is appropriate. The Employer contends that a multi-facility unit is appropriate and should include certain employees at Paducah, Calvert City, and Mt. Vernon, in addition to employees at Cape Girardeau.

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 1 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), the Board returned to the application of its traditional community of interest approach to determining unit appropriateness. The Board further clarified that "in cases in which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interest is nevertheless inappropriate because it does not contain additional employees, the burden is on the party so contending to demonstrate that the excluded employees share an overwhelming community of interest with the included employees." *Id.*

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 employees was appropriate, that would not establish that the petitioned-for unit is inappropriate. “The Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.” See *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964).

“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. More must be shown.” *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 12 (2011), enfd. sub nom. “[T]hat the excluded employees share a community of interest with the included employees does not, however, mean there may be no legitimate basis upon which to exclude them.” Rather, there may be more than one appropriate unit. *Id.*, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008). The Seventh Circuit has agreed, “[I]t is not enough for the employer to suggest a more appropriate unit; it must ‘show that the Board’s unit is clearly inappropriate.’” *Id.*, citing *Dunbar Armored, Inc., v. NLRB*, 186 F.3d 844, 847 (7th Cir. 1999) (quoting *NLRB v. Aaron’s Office Furniture*, 825 F.2d 1167, 1169 (7th Cir. 1987)).

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* at 175. To determine whether the presumption has been rebutted, the Board examines such factors as centralized 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).

In support of its position, the Employer cites to common supervision, a single profit and loss statement for the Paducah hub including a bonus structure for employees and managers based on the single profit and loss statement, interchange of equipment, and employee interchange and contact.

A. Control over Daily Operations and Labor Relations, and Extent of Local Autonomy

As discussed above, each operations manager is responsible for the day-to-day operation of his or her facility. All employees at Cape Girardeau, Mt. Vernon, and Calvert City report directly to the operations manager at their facility, except for the Cape Girardeau outside sales representative who reports to the branch manager. All employees at the Paducah facility report directly to the Paducah operations manager, except for the service technicians who report

directly to the service manager and the Paducah outside sales representative who reports directly to the branch manager.

The operations manager at each of the four facilities effectively recommends hiring, firing, and discipline; prepares annual evaluations that are used to determine the employees' wage increases; independently authorizes overtime; and supervises the daily operations at his or her facility. With respect to service technicians' performance reviews, the operations manager jointly prepares those reviews with the service manager located in Paducah. The branch manager and regional human resources director approve hiring, firing, discipline, performance reviews, and merit wage increases.

Employees at the four facilities are covered by a corporate-wide health insurance plan. Those employees who are eligible for a bonus, such as inside sales representatives, the branch manager, the service manager, and operations managers, contribute more toward the premium than do employees who are not eligible for a bonus, such as drivers, equipment associates, and service technicians. The record is silent regarding the wages paid to employees at the four facilities and whether employees are covered by the same employee handbook and policies, including vacation and pension plan.

Until about March 1, 2014, the Cape Girardeau branch manager was responsible for the profit and loss statement, which includes the costs, revenues, and profits for the Cape Girardeau facility. When the Cape Girardeau facility became part of the Paducah hub, it no longer maintained its own profit and loss statement. Rather, its costs, revenues, and profits became part of the Paducah hub's profit and loss statement. Despite the single profit and loss statement for the Paducah hub, the Employer still maintains and reviews records that allow the operations managers and the branch manager to monitor the costs, revenues, and profits of each facility.

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

The Paducah and Mt. Vernon facilities each employ one employee in the equipment associate classification. Calvert City and Cape Girardeau do not employ any employees in this classification. The equipment associate classification is an entry level position. Equipment associates perform manual tasks in the rental yard and provide labor assistance to service technicians and others at their facility. The Employer introduced job descriptions for four levels of service technicians, from I through IV. A service technician I has the lowest level of skill and training and performs maintenance checks and minor repairs on equipment, while a service technician IV has the highest level of training and services and repairs all equipment. Cape Girardeau employs two service technician IIs and one service technician IV. Two of these service technicians have service trucks and service equipment in the field and the other works at the Cape Girardeau facility. Paducah employs one service technician III and three service technician IVs. Two of these service technicians have service trucks and service equipment in the field and the other two work at the Paducah facility. Calvert City employs one service technician IV who has a service truck for field work. Mt. Vernon employs one service technician II and one service technician IV, both of whom have service trucks. The equipment associates and service technicians are paid hourly, but the record is silent as to their wage rates. The job descriptions for these positions list an educational requirement of high school diploma or equivalent.

There are two drivers at the Cape Girardeau facility, three drivers at the Paducah, and one driver each at the Calvert City and Mt. Vernon facilities. The drivers all have similar skills, duties, and working conditions. All drivers, except for one in Paducah, have a class A commercial driver license that allows them to operate heavy equipment such as semi-trucks and

trailers. The drivers transport equipment to and from various facilities within and outside the Paducah hub and customer locations and operate equipment. The drivers are hourly paid, but the record is silent as to their wage rates. Their job description lists their education as high school diploma or equivalent.

The Paducah and Cape Girardeau facilities are the only two facilities that employ inside sales representatives. The job duties of the inside sales representatives include answering incoming customer calls, renting equipment and negotiating the rental price within a set range, selling merchandise maintained at the facility, dispatching drivers, managing inventory at their facility, cold calling new customers and scheduling appointments for the outside sales representatives, and calling dormant customers in an attempt to generate new business. The inside sales representatives at the Paducah and Cape Girardeau facilities have similar skills and training. The Employer has a corporate goal that 70 to 75 percent of its inside sales representatives have college degrees. The record is silent regarding whether any of the inside sales representatives at Paducah or Cape Girardeau have college degrees. The inside sales representatives are paid an hourly wage rate and are eligible for a quarterly bonus, which is based on the revenue performance of the Paducah hub, not the performance of their particular facility. The record is silent regarding the actual wages and bonuses paid to the Paducah and Cape Girardeau sales representatives.

As discussed above, with the exception of the health insurance, the record is sparse as to whether employees at the four facilities share other terms and conditions of employment, including policies and benefits. All four facilities are open weekdays from 7 a.m. to 5 p.m. The drivers at the facilities, with the exception of one driver in Cape Girardeau, begin their work day at 7 a.m. From spring through fall, each operations manager has the independent authority to

authorize overtime for employees working at their facility. The record is silent regarding whether employees at the four facilities work different or similar amounts of overtime. The record does not contain evidence regarding the work hours for service technicians and inside sales representatives at the four facilities. While the Employer's brief contends that similarly classified employees within the Paducah hub share similar pay grades, as noted, the record is silent regarding the actual wages or pay structure for any of the employees within the hub.

C. Functional Integration of Business Operations and Employee Interchange

Because of the nature of the Employer's business operations, equipment is regularly transferred from one location to another based on equipment availability and customer demand. Prior to Cape Girardeau joining the Paducah hub, equipment was transferred from the Employer's other locations, including St. Louis and Paducah. The Employer formed the hub because when each facility was responsible for its own profit and loss statement, the facility was less willing to share equipment because it might negatively impact the profit of the facility giving up the equipment. The theory behind the hub system is that if all four locations share one profit and loss statement, the facilities are more willing to transfer equipment among the facilities to maximize the profit of the hub. Further, the hub system allows the Employer to more efficiently coordinate drivers' routes among the four facilities. It also allows the Employer to move service technicians to large jobs to more effectively serve its customers.

The record contains limited evidence regarding the interchange of employees between the Cape Girardeau facility and the other facilities within the hub. The Cape Girardeau facility joined the hub about 6 weeks before the hearing. The Cape Girardeau facility is 69 to 99 miles from the other three facilities within the Paducah hub. There is evidence on the record that Paducah's service technicians and inside sales representatives are sent to work at the Calvert City

and Mt. Vernon facilities or at jobsites. However, there are only two examples regarding employee interchange of the Cape Girardeau service technicians or inside sales representatives and other employees in the Paducah hub, and both involved training. One Cape Girardeau service technician traveled in one vehicle with a service technician from Mt. Vernon and Paducah for training in Chicago. In the second case, a Cape Girardeau inside service representative was sent to the Paducah facility for dispatch training with a corporate trainer.

Within the hub, drivers report daily to their assigned facility at the beginning and end of each day. During the course of their work day, drivers pick up and deliver equipment from customers inside and outside their facility's territory as well as from other facilities within and outside the Paducah hub. Each facility has an inside sales representative or operations manager designated to handle local dispatching for their facility, although the Paducah operations manager works with the local dispatchers to coordinate the dispatching of drivers.

On two or three occasions per month, an operations manager is sent to another facility in the hub to fill in due to an absence. There is no evidence in the record that an operations manager from Paducah, Calvert City, or Mt. Vernon has been sent to Cape Girardeau or vice versa.

When a customer calls one of the four facilities, the call is generally answered by the inside sales representative or operations manager at the facility the customer called. However, if all the lines at that facility are busy, the Employer's telephone system transfers calls to one of the other facilities within the Paducah hub. An employee at the other location will then assist that customer with their order.

D. Geographic Proximity

Each facility provides equipment and services within a territory based on customer zip codes. The record establishes the following distances among the facilities based on travel time:

Cape Girardeau to Paducah	1 hour to 1 hour 15 minutes
Cape Girardeau to Calvert City	1 hour 20 minutes to 1 hour 40 minutes
Cape Girardeau to Mt. Vernon	1 hour to 1 hour 15 minutes
Paducah to Calvert City	20 to 25 minutes
Paducah to Mt. Vernon	1 hour to 1 hour 15 minutes

The record does not disclose the distance based on travel time between Calvert City and Mt. Vernon.

I take administrative notice of the Employer’s website that the facilities at issue are located at the following addresses: 2050 Southern Expressway, Cape Girardeau, MO 63703; 3237 Park Avenue, Paducah, KY 42001; 5408 Gilbertsville Highway, Calvert City, KY 42029; and 912 S. 10th Street, Mt. Vernon, IL 62864. I take administrative notice of Google maps that the distances among the facilities based on miles is as follows:

Cape Girardeau to Paducah	69 miles
Cape Girardeau to Calvert City	90 miles
Cape Girardeau to Mt. Vernon	99 miles
Paducah to Calvert City	30 miles
Paducah to Mt. Vernon	96 miles
Calvert City to Mt. Vernon	119 miles

E. Collective-Bargaining History

There is no evidence of a history of bargaining at or among the four facilities and the Petitioner or any other labor organization.

F. Analysis

I conclude that the petitioned-for single facility unit at the Cape Girardeau facility is an appropriate unit. The Employer has failed to establish that the Cape Girardeau facility has been so effectively merged or functionally integrated that it has lost its separate identity.

The Employer presented some evidence in support of a multi-facility unit. The drivers and service technicians at the four facilities have similar skills and functions. The equipment associates, who perform manual tasks at the Paducah and Mt. Vernon facilities and assist other employees in order to meet customer needs, have similar skills and functions. The inside sales representatives at Cape Girardeau and Paducah have similar skills and functions.

The Employer's implementation of a hub system has created some functional integration of business operations among the four facilities. The facilities share one profit and loss statement and the bonuses of the managers and inside sales representatives are based on that single statement. This encourages the four facilities to share equipment and send personnel to the most profitable location. While each of the four facilities has a person responsible for the local dispatching of drivers and service technicians, the Paducah operations manager and service manager coordinate with the local dispatchers so that equipment and employees are used in the most efficient manner.

Despite the evidence of some integration, the Cape Girardeau facility has not become so functionally integrated that it has lost its separate identity. *D&L Transportation*, supra. Each facility within the hub has local autonomy and separate supervision. The operations manager at each of the four facilities has control over the daily operations and labor relations. Each operations manager is responsible for managing the day-to-day operations of his or her facility. Each operations manager effectively recommends hiring, firing, and discipline for employees at his or her facility. Each operations manager prepares performance reviews for employees at his or her facility, which are used to determine the amount of employees' wage increases. Each operations manager independently authorizes overtime during the busy season. The petitioned-

for drivers, service technicians, and inside sales representatives are directly supervised by the Cape Girardeau operations manager.

The fact that the Cape Girardeau facility is located from 69 to 99 miles away from the other facilities in the Paducah hub weighs in favor of finding an appropriate single-facility unit. *Waste Management Northwest*, 331 NLRB 309 (2000) (a 42-mile geographical distance weighed in favor of a single facility). Cape Girardeau, like the other facilities within the hub, has a distinct territory that is based on the zip codes of customers. Thus, the Cape Girardeau facility constitutes a separate and distinct facility within the Employer's organizational structure. *Laboratory Corp. of America Holdings*, 341 NLRB 1079, 1082 (2004).

Employee interchange does not weigh in favor of a multi-facility unit. The only two examples on the record regarding the interchange of Cape Girardeau service technicians and inside sales representatives and other employees in the Paducah hub are one Cape Girardeau service technician was sent for a 3-day training in Chicago with service technicians from Paducah and Mt. Vernon and one Cape Girardeau inside sales representative went to Paducah for a 1-day corporate dispatch training. The record contains evidence that inside sales representatives and service technicians from the Employer's largest facility in Paducah have been sent to work in Calvert City and Mt. Vernon's territory. However, there is very little evidence of service technicians from the smaller Calvert City or Mt. Vernon facilities being sent to work in Paducah's territory. It would be speculative to find whether, or to what degree in the future, there will be a greater interchange among the Cape Girardeau's inside sales representatives or service technicians and employees in the other three facilities in the hub, which are located up to 99 miles from Cape Girardeau.

All drivers begin and end their workday at their designated facility. Since the formation of the hub, there is a greater interchange of equipment among the facilities within the hub and thus drivers more frequently travel to other facilities and territories within the hub and to customers' jobsites located outside their facility's territory. However, prior to Cape Girardeau joining the hub, drivers also picked up and delivered equipment at other facilities within and outside the hub.

Each morning the Employer conducts a safety huddle at the Cape Girardeau facility for the employees who work at that facility. During these huddles, the Employer shares information with employees regarding what is going on at the job sites and at their facility. While drivers pick up and deliver outside the territory of their facility and may come in working contact with other employees, there is no evidence that employees from the Cape Girardeau facility are either temporarily or permanently assigned to another facility.

The Employer argues that the Cape Girardeau facility will become more integrated into the hub and this future integration should serve as the basis for finding the single facility is not appropriate. In support of this argument, the Employer cites *Laboratory Corp. of America Holdings*, supra. In that case, the regional director found seven of the employer's 29 facilities in the Region constituted an appropriate multi-facility unit because the seven facilities shared a common supervisor. The Board reversed the regional director and found the unit inappropriate because the employer had approved the hire of an additional supervisor and, as had happened in the past, the supervision among the facilities would change. In contrast, in the present case, the evidence does not dispute that the Cape Girardeau operations manager, like the Paducah, Calvert City, and Mt. Vernon operations managers, will continue to function as a supervisor of the employees at his or her facility.

The Employer failed to establish that the employees at the four facilities share similar wages and working conditions. There is evidence that employees at all the four facilities participate in a corporate-wide health insurance plan, the facilities have the same hours of operation, and all the drivers daily report to work at 7 a.m., with one exception. There is no evidence, however, on the record regarding the wage rate of drivers, equipment associates, service technicians, or inside sales representatives at the four facilities. There is no evidence whether the employees at the four facilities have common benefits, or whether they are subject to the same policies or rules.

The Employer maintains that it has met its burden and established that the four facilities must be included in a multi-facility unit. The cases relied upon by the Employer are distinguishable. In *Trane*, 339 NLRB 866, 867-868 (2003), unlike the current case, all supervisory functions and dispatching for two facilities was centralized. *Budget Rent A Car Systems*, 337 NLRB 884 (2002), is also distinguishable where the union petitioned for two single facility units, neither of which had its own local supervisor and the shared branch manager had little or no input into hiring, terminations, discipline, and merit wage increases; and there was a significant amount of functional integration and employee contact among five stores. The third case, *Dattco, Inc.*, 338 NLRB 49, 50 (2002), is distinguishable from the current case because in that case one third of the employees who worked on a regular basis at the facility at issue were assigned to another facility and separately supervised. Finally, *Waste Management Northwest*, 331 NLRB 309 (2000), is distinguishable because in that case the petitioned-for single facility shared common supervision with employees at another location and lacked local autonomy. Moreover, the four cases cited by the Employer pre-date the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, *supra*, where the Board held that the burden is

on the party contending the petitioned-for unit is inappropriate to demonstrate that the excluded employees share an overwhelming community of interest. Cf. *Trane*, supra (Board has never suggested that a party must present overwhelming evidence to rebut a single-facility presumption).

Thus, the Employer has failed to rebut the single-facility presumption and show that the day-to-day interests of the employees at the Cape Girardeau facility have been effectively merged into a more comprehensive unit with employees at the Paducah, Calvert City, and Mt. Vernon facilities or is so functionally integrated as to have lost its separate identity. I find that employees at the other facilities do not share such an overwhelming community of interest with the petitioned-for Cape Girardeau employees as to compel their inclusion in the unit. *Fraser Engineering Company, Inc.*, 359 NLRB No. 80 (2013).

IV. INSIDE SALES REPRESENTATIVE

The Petitioner seeks a unit that includes the inside sales representative at the Cape Girardeau facility. The Employer contends that the inside sales representatives should be excluded from the unit because they do not share a community of interest with the drivers and service technicians at the Cape Girardeau facility. In support of its position, the Employer contends that the inside sales representatives, unlike the drivers and service technicians, are eligible for a quarterly bonus, pay a higher cost toward their health insurance premium, wear different clothing, receive different training, and have different qualifications. The Employer has a target that 70 to 75 percent of its inside sales representatives have a college degree while it does not seek degreed applicants for the driver or service technician positions.

The Board's procedure for determining unit composition 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*, supra; *Boeing Co.*, supra. In determining whether a group of employees are appropriately included in a unit, the Board typically looks at the similarity of wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Boeing Co.*, supra; *Bartlett Collins Co.*, 334 NLRB 484 (2001).

A. Wages, Hours and Working Conditions

The record is silent regarding the wages of the drivers, service technicians, and the inside sales representatives other than they are paid hourly. Inside sales representatives, unlike driver and service technicians, are eligible for a quarterly bonus that is based on the Paducah hub's performance. The inside sales representative job description shows that inside employees must complete an eLearning course to be eligible for the bonus plan, but the record is silent regarding whether the Cape Girardeau inside sales representatives have completed this training. The record is also silent regarding whether the Cape Girardeau inside sales representatives ever received such a bonus or the amount of any bonus.

The Cape Girardeau facility's working hours are from 7 a.m. to 5 p.m., Monday through Friday. The record discloses that the two drivers report to work at 7 a.m., except one driver reports to work at 8 a.m. on Tuesdays, Thursdays, and every other Friday. The record also discloses that the Employer recently changed the schedules for employees working at the Cape Girardeau facility from four or five starting times down to two. The record is unclear regarding what the work hours are for the inside sales representatives or service technicians.

The drivers, service technicians, and inside sales representatives all receive the same health insurance plan. However, because the inside sales representatives are eligible for a quarterly bonus, they contribute more toward their health insurance premium. The record is

silent regarding whether the drivers, service technicians, and inside sales representatives are subject to the same or different work rules, vacation, pension plan, holidays, and other benefits. For safety reasons, the drivers and service technicians wear company-issued reflective uniforms. Inside sales representatives do not wear these reflective uniforms, rather they wear company-issued shirts.

B. Common supervision

As discussed above, the Cape Girardeau operations manager is the direct supervisor of all the drivers, service technicians, and inside sales representatives at the Cape Girardeau facility. The Cape Girardeau operations manager effectively recommends hiring, firing, and discipline; prepares performance reviews that are used to determine employees' wage increases; has authority to authorize overtime during the busy season; and otherwise supervises the day-to-day operations of her facility.

C. Degree of Skills and Common Functions

The driver and service technician positions require a high school diploma or equivalent, although the Employer prefers trade school training for its service technicians. The Employer has a corporate target that 70 to 75 percent of its inside sales representatives have a college degree; however, the record is silent regarding whether either of the inside sales representatives at the Cape Girardeau facility has a college degree. In terms of succession planning, the Employer looks to promote the inside sales representatives to outside sales representative or management positions. The Employer generally does not look to drivers and service technicians for these types of promotions. The training, certificates, and licenses for drivers, service technicians and inside sales representatives are different. The two drivers have class A commercial driver licenses. Service technician IIs must have 1 to 2 years of experience repairing

and maintaining vehicles and equipment or be a trade school graduate. Service technician IVs must have 5-plus years experience repairing and maintaining vehicles and equipment. The Employer has specific training courses for its service technicians, which includes negotiation and sales training. Further, in order to be eligible for a quarterly bonus, inside sales representatives are required to complete an eLearning course in PeopleSoft Learning according to their job description.

Drivers, service technicians, and inside sales representatives each have distinct job functions. Generally, drivers pick up and deliver equipment, service technicians repair and service equipment, and the inside sales representatives receive and generate customer orders. However, the drivers, service technicians, and inside sales representatives also perform common and/or similar job functions. For example, inside sales representatives assist customers with loading and unloading of equipment, while drivers pick up and deliver equipment to customers and service technicians pick up and deliver equipment and parts to and from vendors and the Employer's other facilities. Inside sales representatives educate customers regarding the proper use of equipment, and drivers determine customers' abilities to use equipment in a safe manner. Inside sales representatives generate new rentals and sales by serving walk-in and call-in customers, and drivers suggest equipment and supplies to meet customers' other needs. Both the inside sales representatives and service technicians demonstrate equipment for customers and educate customers regarding the proper use of equipment.

D. Frequency of Contact with Other Employees

The inside sales representatives spend their workday inside the Cape Girardeau facility. The two drivers begin and end their day at the Cape Girardeau facility and pick up and drop off equipment at the facility throughout their workday. The Employer employs three service

technicians, one of which works at the Cape Girardeau facility. The two other service technicians have service trucks and perform some of their work in the field. The record is not clear whether these two service technicians begin and end their day at the Cape Girardeau facility. The Employer conducts a safety huddle each morning at the Cape Girardeau facility, and during these huddles the Employer shares information with employees regarding work on the job sites and at their facility.

E. Functional Integration

The drivers, service technicians, and inside sales representatives are functionally integrated. The inside sales representatives take orders from customers for the rental and service of equipment. The drivers pick up and deliver the rented equipment as well as equipment that need to be serviced or repaired. Service technicians service and repair equipment at the Employer's facility or at a customer's jobsite. The inside sales representatives coordinate with the Paducah operations manager regarding dispatching of drivers and track daily equipment pickups and returns with the Cape Girardeau and Paducah operations managers. Inside sales representatives are responsible for ordering and maintaining the Employer's inventory. The service technicians' job duties require them to communicate the need for parts and inventory as well as report on machine conditions to the inside sales representative or the service manager and provide information for customer billing. Thus, there is functional integration among the drivers, service technicians, and inside sales representatives.

F. Analysis

I find that the inside sales representatives, whom the Petitioner seeks to include, share a community of interest with the drivers and service technicians and are appropriately included in the unit. *Wheeling Island Gaming*, supra; *Boeing Co.*, supra. The drivers, service technicians,

and inside sales representatives share common supervision, their jobs are functionally integrated, and they have frequent contact with each other. While the record is sparse regarding the wages and working conditions shared by the drivers, service technicians, and inside sales representatives, these employees are all paid an hourly wage. The inside sales representatives, unlike the drivers and service technicians, are eligible to participate in a bonus which is based off the Paducah hub's performance. The record does not contain any evidence regarding how often the Cape Girardeau inside sales representatives have received such a bonus or what percentage of his or her salary the bonus represents. The drivers, service technicians, and inside sales representatives all participate in the same health insurance plan, although the inside sales representatives pay a higher premium. Although drivers, service technicians, and inside sales representatives have different skills and perform separate job functions, there are portions of their job duties which are the same or similar.

V. ELIGIBILITY OF OUTSIDE SALES REPRESENTATIVE

The parties stipulated that if the single-facility unit sought by the Petitioner is found to be appropriate, the outside sales representative is appropriately excluded from the unit. That stipulation was conclusionary and not supported by any specific facts regarding why the outside sales representative should be excluded from the unit. As developed on the record and discussed here, the single Cape Girardeau facility of drivers, service technicians, and inside sales representatives are appropriately included in the unit. The operations manager is appropriately excluded from the unit as a supervisor. Thus, the only remaining employee at the Cape Girardeau facility is one outside sales representative.

Despite a sparse record concerning the terms and conditions of employment of the outside sales representative, the Board is reluctant to leave a single unrepresented employee at a

facility where the employee could be included in the unit. *United Rentals, Inc.*, 341 NLRB 540, 542 fn. 11 (2004). Accordingly, I reject the parties' stipulation to exclude the outside sales representative. As the record discloses that the outside sales representative would be the only unrepresented employee at this facility were he excluded, I find that the outside sales representative is appropriately included in the unit.

VI. 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 drivers, service technicians, inside sales representatives, and outside sales representative employed by the Employer at its Cape Girardeau, Missouri facility, EXCLUDING office clerical employees, professional employees, guards, and supervisors as defined in the Act.

VII. 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 International Union of Operating Engineers, Local 513. 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. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (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 **May 7, 2014**. 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. This list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁶ 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.

⁶ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

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 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 notices.

VIII. 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 20570-0001. This request must be received by the Board in Washington by **May 14, 2014**.

The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

Dated April 30, 2014, at St. Louis, Missouri.

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

⁷ To file the request for review electronically, go to 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.