

Acme Markets, Inc. and District 1199C National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, Petitioner. Case 4-RC-18933

August 16, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On February 21, 1997, the Regional Director for Region 4 issued a Decision and Direction of Election in the above-entitled proceeding, in which the Petitioner sought to represent all pharmacy managers, staff pharmacists, and “undistributed” pharmacists¹ employed by the Employer in all of its pharmacies in Pennsylvania, Delaware, and Maryland.² The Regional Director concluded that the petitioned-for unit is not an appropriate unit. Because the Petitioner had expressed a willingness to proceed to an election in any unit found appropriate, the Regional Director directed an election in three separate statewide units consisting of all pharmacies in Pennsylvania, Delaware, and Maryland, respectively. Additionally, the Regional Director found that the Employer’s pharmacy managers are not statutory supervisors, and he included them in the units he found appropriate for collective bargaining.

Thereafter, in accord with Section 102.67 of the Board’s Rules and Regulations, the Employer filed a timely request for review of the Regional Director’s decision, maintaining that: (1) the Regional Director erred in finding appropriate three separate statewide units, and that the only appropriate unit is an employerwide unit that would include all pharmacy employees working in the three petitioned-for States plus pharmacy employees in the Employer’s New Jersey stores; and (2) the Regional Director erred in finding that its pharmacy managers are not supervisors within the meaning of Section 2(11) of the Act. The Petitioner filed an opposition. By order dated April 4, 1997, the Board granted the Employer’s request for review.

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

The Board has considered the entire record in this case, including the Employer’s brief on review, and has decided, for the reasons set forth in the Decision and Direction of Election (pertinent portions are attached as an appendix), to affirm the Regional Director’s finding that the Employer’s pharmacy managers are not statutory

¹ “Undistributed” pharmacist is an entry-level position in which the individual is assigned to be trained in a geographical “pocket” of stores before becoming a staff pharmacist assigned to a particular store.

² Supermarket employees, including pharmacy technicians and department managers, are represented by local unions of the United Food and Commercial Workers Union (UFCW) under separate collective-bargaining agreements. Meat cutters in the four-state area are represented by a total of three UFCW locals.

supervisors.³ For the reasons set forth below, however, we reverse the Regional Director’s conclusion that statewide units of all pharmacies in each of the three states involved constitute separate appropriate units. We do, however, conclude that a four-state, employerwide unit is an appropriate unit.

The Employer operates pharmacies in approximately 36 of its 170 retail supermarkets in a four-state area—Pennsylvania, Delaware, Maryland, and New Jersey.⁴ Director of Pharmacy Mark Valesano oversees the entire pharmacy operation, and five area pharmacy managers (APMs) report to him. These APMs, in turn, oversee six to eight pharmacies each.⁵ All but four pharmacies have pharmacy managers who report directly to their respective APM, rather than to the store managers. Pharmacy operations are standardized, personnel and labor relations policies are developed and administered centrally, and evaluation and disciplinary procedures are common to all pharmacies. Pharmacy managers normally earn \$40 per week more than staff pharmacists—an amount which varies slightly depending on the length of time they have been employed. All pharmacy managers and staff pharmacists are eligible to receive an annual bonus based on prescription volume, operational standards, and generic drug sales.

Each State has different licensing policies and fees, and pharmacists must be licensed by the State in which they work. Some of the states allow reciprocity merely by the payment of a required fee. In addition, some of the states have continuing education requirements. Although the Employer does not require that its pharmacists be licensed in more than one state, many are, and the Employer’s witness testified that at least four (who are licensed in both Pennsylvania and New Jersey) have provided “fill-in” coverage at pharmacies in both of those states on a sporadic basis. There have been four permanent transfers in the past 2 years.⁶ Training seminars and participation in special trade events are open to all pharmacists, regardless of the state in which they work.

³ In affirming the Regional Director’s findings concerning the pharmacy managers’ lack of supervisory authority, Member Brame finds it unnecessary to rely on the Board’s decisions in *Providence Hospital*, 320 NLRB 717 (1996); *Ten Broeck Commons*, 320 NLRB 806 (1996); and *Altercare of Hartville*, 321 NLRB 847 (1996).

⁴ At the time of the hearing, there were 22 pharmacies in the three-state unit originally petitioned-for, and 14 pharmacies in New Jersey stores, with 3 new pharmacies expected to be opened in New Jersey by the end of the year.

⁵ APM Gilbert oversees seven pharmacies in Pennsylvania, Maryland, and Delaware; APM Rabinowitz oversees eight pharmacies in Pennsylvania; APM Laspas oversees seven pharmacies in Pennsylvania; APM Heckler oversees eight pharmacies in southern New Jersey; and APM Hackett oversees six pharmacies in central New Jersey.

⁶ Two transfers were from New Jersey stores to Pennsylvania stores, one transfer was from a Pennsylvania store to a New Jersey store, and another transfer was from a Pennsylvania store to a Delaware store.

The Petitioner, in seeking a unit consisting of pharmacy employees in only three of the four States in which the Employer operates, contended that such a unit was appropriate because: (1) there is a lack of substantial interchange or contact between pharmacists in those three states and their counterparts in New Jersey; and (2) the New Jersey pharmacies are under the control of two APMs who do not oversee pharmacies in the other three States.

The Regional Director rejected the Petitioner's contentions. In doing so, he noted that the Employer's operations are standardized, and that personnel and labor relations policies are centralized administratively. The Regional Director further found that all pharmacists possess the same skills and have the same duties and responsibilities. Also, the Regional Director noted in particular that there have been more instances in which pharmacists have transferred between Pennsylvania and New Jersey pharmacies than within pharmacies in the petitioned-for unit; that there have been more instances of temporary fill-in work between pharmacies in these two states; and that employees from New Jersey and Pennsylvania have attended meetings together. Thus, the Regional Director concluded that the three-state unit that the Petitioner sought did not constitute an appropriate unit apart from the New Jersey stores.

The Regional Director then found, however, that three separate units, consisting of all pharmacies in the respective States originally sought by the Petitioner, were appropriate for collective bargaining. In so doing, the Regional Director emphasized the importance of geographical coherence in unit determinations, as well as the existence of separate state regulation of pharmacies and separate licensing of individual pharmacists who must interact with state officials in order to comply with state laws concerning the handling of narcotics and controlled substances in the instant case. Accordingly, the Regional Director concluded that statewide units of pharmacists employed in all pharmacies in each of the States involved constituted separate appropriate units.

We agree with the Regional Director that the petitioned-for unit of all pharmacy employees employed in Pennsylvania, Delaware, and Maryland is an inappropriate unit. Contrary to the Regional Director, however, we find that separate units limited to pharmacies in each of three separate states also are not appropriate for bargaining. Inasmuch as the Petitioner has indicated a willingness to proceed to an election in any unit found appropriate, it was proper for the Regional Director to consider alternative units.⁷ However, we find that the same considerations which render the petitioned-for unit inappropriate militate against finding separate statewide units to

⁷ See, e.g., *Overnite Transportation Co.*, 322 NLRB 723 (1996); *NLRB v. Lake County Assn. for Retarded*, 128 F.3d 1181, 1185 and fn. 2 (7th Cir. 1997), enfg. 321 NLRB No. 104 (1996) (Not reported in Board volumes).

be appropriate and support the Employer's contention that an Employer-wide unit is appropriate.

As the Regional Director found, pharmacy operations are standardized and personnel and labor relations policies are administered centrally. All APMs report to Valesano who has the ultimate responsibility for the Employer's pharmacy operations, including the hiring of all pharmacists. Aside from individual state-licensing requirements, skills, training, job responsibilities, and benefits (including eligibility for annual bonuses) are identical. Further, although pharmacists in New Jersey and one Delaware store earn a higher salary, there is no indication in the record that this variation in salary is significant.

In addition, the Employer's pharmacies are administratively divided among five APMs as detailed in footnote 4, supra. None of the APMs oversees pharmacies in an area coterminous with a state, and none of the four States has separate supervision at the state level. Thus, there is no administrative structure corresponding to the three separate statewide units found appropriate by the Regional Director.

Also, there is no evidence of significant temporary or permanent transfers within the separate states to support statewide units. Indeed, the Regional Director found it significant that there were more permanent transfers between Pennsylvania and New Jersey than within the three-state unit sought by the Petitioner (three out of the four examples given), and more temporary interchanges between Pennsylvania and New Jersey (four out of the five examples given). In these circumstances, we conclude that the employees in the separate states do not constitute appropriate units.⁸

Although it is clear that the employees in the originally petitioned-for unit share a significant community of interest, the record fails to show that their community of interest is distinct from the community of interest they share with the employees of the Employer's New Jersey stores. Thus, we conclude that the Employer's proposed alternative unit, consisting of all pharmacy employees in the three originally petitioned-for States plus pharmacy employees in the Employer's New Jersey stores—an employerwide or overall unit—is appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁹

⁸ Although we note that statewide units (or other administratively or geographically coherent groupings) may be appropriate, we find no basis for such a unit here. See, e.g., *Sav-On Drugs, Inc.*, 243 NLRB 859 (1979) (statewide unit found appropriate); *See's Candy Shops*, 202 NLRB 538, 539 (1973) (countywide unit found appropriate); *Drug-Fair-Community Drug Co.*, 180 NLRB 525, 526-528 (1969) ("standard metropolitan statistical area" grouping found to be an appropriate unit).

⁹ An employerwide unit is presumptively an appropriate unit. See *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998); *Livingstone College*, 290 NLRB 304 (1988); *Montgomery County Opportunity Board, Inc.*, 249 NLRB 880, 881 (1980); *Jackson's Liquors*, 208

The Regional Director correctly noted that a union is not required to seek representation in an employerwide or other comprehensive unit merely because such a unit is appropriate. See *Overnite Transportation Co.*, supra, and cases cited therein. However, here we have found both the petitioned-for unit and the Regional Director's alternative units to be inappropriate, and no party has proposed, or made an argument for, any other alternative unit that would be smaller than an employerwide unit. Thus, an employerwide unit is the only one of the alternatives under consideration in this proceeding that is an appropriate unit.¹⁰

Accordingly, the Regional Director's decision is affirmed with respect to his finding that the Employer's pharmacy managers are not statutory supervisors as defined in Section 2(11) of the Act. However, for the reasons stated above, the decision is reversed with respect to the scope of the unit. See *Macy's West, Inc.*, 327 NLRB 1222 (1999).¹¹

ORDER

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

APPENDIX

DECISION AND DIRECTION OF ELECTION

5. The Employer, a Delaware corporation, operates pharmacies in a number of its retail supermarkets. The Employer is a subsidiary of American Drug Stores, which is also the parent corporation of Osco Pharmacies and Sav-On Drugs. The Petitioner seeks to represent a unit of the full-time and regular part-time pharmacy managers, staff pharmacists and undistributed pharmacists at the Employer's pharmacies in its supermarkets located in Bear, Dover, Hockessin and Wilmington, Delaware; Allentown, Clifton Heights, Collegeville, Dowingtown, Doylestown, Kennett Square, King of Prussia, Levittown, Morrisville, Philadelphia (three stores), Phoenixville, West Chester and West Goshen, Pennsylvania; and Elkton, Maryland.² The Employer takes the position that the unit must also include its 14 pharmacies in central and southern New Jersey. The Em-

NLRB 807, 808 (1974); and *Western Electric Co.*, 98 NLRB 1018 (1952). See also Sec. 9(b) of the Act.

¹⁰ We express no view as to whether there might exist any smaller, alternative unit that would be appropriate for bargaining. Rather, we pass only on the appropriateness of the various units that have been argued for on the record before us.

¹¹ In the event the Petitioner does not wish to proceed to an election in the unit found appropriate herein, it shall so notify the Regional Director by written notice within 7 days of the date of this decision. Moreover, as the unit found appropriate is broader than that originally requested by the Petitioner, the Regional Director shall determine whether its showing of interest is sufficient before proceeding with the election.

² The petition also includes the title "Pharmacist-In-Charge" but the record shows that this is a designation required by state statute and not by the Employer. The pharmacy managers, staff pharmacists, and undistributed pharmacists are the titles used by the Employer for its pharmacists.

ployer also contends that its pharmacy managers are supervisors within the meaning of Section 2(11) of the Act. The parties stipulated that the pharmacists are professional employees within the meaning of Section 2(12) of the Act. They further stipulated that the supermarket store managers, the area pharmacy managers (APMs), and Director of Pharmacy Mark Valesano are supervisors within the meaning of the Act. The Union is willing to proceed to an election in any unit found appropriate.

Director of Pharmacy Valesano oversees the entire pharmacy operation. In 1993, the Employer named five APMs who became part of the pharmacy organization hierarchy under Valesano. APM Harvey Gilbert oversees seven pharmacies in Pennsylvania, Maryland, and Delaware; APM Philip Heckler oversees eight pharmacies in southern New Jersey; APM Rashaun Hackett oversees six pharmacies in central New Jersey; APM Mark Rabinowitz oversees eight pharmacies in Pennsylvania; and APM Deborah Laspas oversees seven pharmacies in Pennsylvania. At one point in 1995, APM Hackett was responsible for a pharmacy in Pennsylvania and other pharmacies in New Jersey.

All but four of the current pharmacies have pharmacy managers who report to their respective APMs. All pharmacies have staff pharmacists and eight have undistributed pharmacists. An undistributed pharmacist occupies an entry level position and typically is given an assignment to be trained in a geographical pocket of stores before becoming a staff pharmacist. By the end of 1996, the Employer expected to have 34 pharmacy managers, 46 staff pharmacists and 10 undistributed pharmacists. Three new pharmacies were expected to open in southern New Jersey by the end of 1996.

Between 1994 and 1996, three pharmacists permanently transferred between New Jersey and Pennsylvania pharmacies. One of these transfers was requested by a pharmacy manager at one of the Philadelphia pharmacies when the Employer opened a pharmacy at its Willingboro, New Jersey supermarket. Another pharmacist permanently transferred from the Kennett Square, Pennsylvania pharmacy to the Hockessin, Delaware pharmacy. Pharmacists need a valid license from the state in which their pharmacy is located. The states have different licensing policies and fees. Some states require pharmacists to complete continuing legal education courses. In addition to permanent transfers, at least four pharmacists with licenses in more than one state have provided "fill in" coverage at other pharmacies on a sporadic basis. Almost all of this coverage involved pharmacists based in Pennsylvania performing work in New Jersey or vice versa. The Employer does not require pharmacists to possess a license from more than one state. Some states allow reciprocity pursuant to which a pharmacist may apply for a license merely by paying a required fee.

Manager of Training and Recruitment Tracey Cardone is responsible for training new pharmacists. Cardone has helped conduct training seminars at the Employer's Malvern, Pennsylvania headquarters and in New Jersey. Notices of these seminars were sent to all pharmacists, who were free to attend them without regard to the State in which their pharmacy was located. The Employer has sent pharmacists from all four states to participate in special trade events such as an "Age Expo" and its Pennsylvania and New Jersey pharmacists worked at a women's show in Philadelphia in May 1996.

Most of the pharmacies have a pharmacy manager and a staff pharmacist, and all but four or five have pharmacy technicians.

The pharmacy manager does not have an office. The primary responsibility of the pharmacy manager and the staff pharmacist is to fill prescriptions. The pharmacy manager is also responsible for maintaining the appropriate inventory and for the overall operation and profitability of the pharmacy. In addition, pharmacy managers are responsible for compliance with different state laws concerning possession and handling of narcotics and controlled substances and transactions involving drugs. Pharmacy technicians accept new prescriptions, assist in processing the prescriptions, and maintain the cleanliness of the pharmacy.

The pharmacy manager prepares the schedule for the staff pharmacists as well as the technicians. The pharmacy manager, like the staff pharmacist, typically works a 40-hour week. There are only 2 hours in the day when the hours of the pharmacy manager and the staff pharmacist overlap, but this can vary on days when the pharmacy is busy. The pharmacy manager and staff pharmacist rotate weekends and holidays. Vacation requests and requests for personal days for the pharmacy managers and staff pharmacists must be submitted to their APMs. The number of hours a technician is scheduled to work in the pharmacy is determined by a payroll model, which is based on the number of prescriptions filled. The Employer's "communiques" contain specific instructions regarding the scheduling of technicians and caution against "the extrapolation of hours." The communiques name the pharmacies that are incorrectly applying the payroll model, those that have exceeded their "tech hours" and the number of excessive hours. The pharmacy manager submits the technicians' schedules either to the store manager or to the head cashier. The store manager decides who will be assigned to be a pharmacy technician, although the record shows that pharmacy managers have had input in some of the assignments. The store managers are also involved in the scheduling of the technicians because many of the technicians spend most of their hours working in the supermarkets. There is a detailed procedure pharmacy technicians are required to follow when they change their department or job classification. Pharmacists are responsible for instructing.³ Both pharmacy managers and staff pharmacists check the e-mail and communicate centrally disseminated information to pharmacy employees during their shifts. Daily work assignments are posted on a "task list" which is generated by the Malvern headquarters. Some pharmacy managers supplement these assignments with additional tasks. The person completing the assignment initials the list. Headquarters also issues a "monthly planner" to all pharmacies that contains notations and reminders to check for expired drugs, return items to stock, and submit work schedules to the APMs.

Pharmacy inventory and supermarket inventory are handled separately. The pharmacies receive most of their merchandise from one of the American Drug Stores-distribution centers. All pharmacies utilize the Employer's "telxon" computer system to place orders and replenish inventory. They utilize the Employer's e-mail system to send and receive communiques and other messages affecting operations and inventory adjustment issues between pharmacies. The pharmacies use common software to set drug prices, fill prescriptions, replenish inventory, perform third party billing, and handle drug recalls.

³ The communique containing these instructions states that it is the "pharmacist" who must perform these functions. It does not refer to a pharmacy manager.

Collective-bargaining negotiations for the represented employees of the supermarkets and the hiring of new employees are handled centrally. Each of the supermarkets has a store manager and those with weekly sales exceeding \$275,000 also have a comanager and/or a night manager. The store manager oversees operations within the supermarket. The employees in the supermarkets, including the department managers and pharmacy technicians who divide their time between the supermarket and the pharmacy, are represented by local unions of the United Food and Commercial Workers Union under different collective-bargaining agreements. There are pharmacy technicians in all but four of the pharmacies. The meat cutters in Pennsylvania, New Jersey, Delaware, and Maryland are represented by UFCW Locals 27, 56, and 1245. Valesano hires all staff pharmacists. Neither the store managers nor the pharmacy managers have the authority to discharge employees.

The wages and benefits for pharmacy technicians are determined by the UFCW collective bargaining agreements. The pharmacy managers have no input concerning the compensation of the staff pharmacists or pharmacy technicians. The pharmacists' salaries are higher in New Jersey than in all other pharmacy locations except the one in Dover, Delaware. The pharmacy managers normally earn \$40 per week more than staff pharmacists, although this can vary depending on their respective lengths of service with the Employer. Both the pharmacy managers and the staff pharmacists receive an annual bonus based on prescription volume, operational standards and generic drug sales. The bonus may be 250 percent of the amount determined to be their bonus objective with a limit of \$6000 for pharmacy managers and \$3000 for staff pharmacists. There is no guarantee that a bonus will be paid. The Employer presented evidence concerning six of its 36 pharmacies which shows that the earnings of the pharmacy managers at those locations exceeded the staff pharmacists' earnings by as little as 6.92 percent and as much as 10.85 percent. These figures included their bonuses.

The pharmacy managers' job description states that they are

Responsible to redirect performance of "off track" employees (pharmacist and technician), following proper steps of disciplinary actions if performance does not meet company standards/expectations. Involved in termination process if employee's performance does not improve.

All written disciplinary actions concerning the pharmacy technicians are maintained in files held by the store manager. The files for the pharmacists are held in Valesano's office at Malvern. The record evidence concerning the pharmacy managers' involvement in the discipline of staff pharmacists and pharmacy technicians shows that either an APM, a store manager, or Valesano was directly involved. In some instances, pharmacy managers prepared notes of employee misconduct, which was given to the APMs. The Employer has "Corrective Action, Employee Review" forms to document deficient work performance by employees. The APMs have prepared and signed these forms and have been directly involved in any corrective action taken. Pharmacy managers have also documented such incidents by making notes but, with one exception, the notes did not contain recommendations.

The pharmacy managers may have input into the evaluations of pharmacy technicians, but APMs prepare and sign the performance appraisals. Pharmacy managers, staff pharmacists and undistributed pharmacists are evaluated using the same

performance appraisal form. None of the evaluations in the record contain pharmacy managers' recommendations with respect to the retention of employees or their compensation. The record contains limited information that certain pharmacy managers were asked for their opinion of candidates for pharmacy positions. In one instance, a pharmacy manager was asked his opinion of a candidate who had attended the same college of pharmacy that the pharmacy manager had attended. The record does not indicate what, if any, recommendation the pharmacy manager made, but the candidate was hired. In another instance, a pharmacy technician was hired after a pharmacy manager relayed information to his APM and Valesano that the technician was recommended by the head cashier, who was her relative, and by a pharmacist at a competitor where she was employed. One pharmacy manager requested that a supermarket cashier be trained as a pharmacy technician and the store manager agreed. Another pharmacy manager was asked to participate in recruitment efforts at academic institutions. She accompanied an APM during interviews and prepared notes, but no interviewees were hired despite the fact that the pharmacy manager felt two of the candidates were well qualified. Similarly, pharmacy managers have, in certain instances, identified "highly talented pharmacists" or were asked about the "promotability" of some individuals. The record shows that some of the pharmacists involved were subsequently promoted, but it does not show the impact of the pharmacy managers' views. The pharmacy managers are not involved in grievance handling. In one instance, a pharmacy manager informally resolved a scheduling conflict with a pharmacy technician, but not until the store manager had been consulted. One of the Employer's communications to pharmacy employees states; "your APM should be your first line of contact when addressing any questions or concerns."

In *Overnite Transportation Co.*, 322 NLRB 723, 734 (1996), the Board recently reviewed the principles underlying its determination of appropriate units. Although the issue in *Overnite* was whether mechanics should be included in a unit of drivers and dock workers, the principles discussed there apply to the unit issue presented in the instant case. The Board stated:

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988).¹ The Board, however, does not compel a petitioner to seek any particular appropriate unit. The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Mfg Co.*, 147 NLRB 825, 828 (1964). "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 required that the unit be "appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951); see *Staten Island University Hospital v. NLRB*, 24 F.3d 450, 455 (2d Cir. 1994); see also *American Hospital Assn. v. NLRB*, 499 U.S. 606, 610 (1991), interpreting the language of Section 9(a) as suggesting that "employees may seek to organize 'a unit' that is appropriate—not necessarily the single most appropriate unit." A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless "an ap-

propriate unit compatible with that requested unit does not exist." *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963); accord: *Ballentine Packing Co.*, 132 NLRB 923, 925 (1961).

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This broad delegation of authority to determine appropriate units under Section 9(b) is limited, however, by Section 9(c)(5), which provides that "in determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling." The Supreme Court has explained that the proper statutory test of this provision is that "[a]lthough extent of organization may be a factor evaluated, under section 9(c)(5) it cannot be given controlling weight." *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 442 fn. 4 (1965), quoting 28 NLRB Ann. Rep. 51 (1964). The Court found further that although Congress intended to overrule Board decisions in which the unit found appropriate could only be supported on the basis of the extent of organization, Congress did not prohibit the Board from considering extent of organization as one factor, though not the controlling factor, in unit determinations. *NLRB v. Metropolitan Life Insurance Co.*, supra at 441-442.

¹ If the petitioner's unit is not appropriate, the Board may consider an alternative proposal for an appropriate unit. *P.J. Dick*, 290 NLRB at 151.

While a single-facility unit is presumptively appropriate for collective bargaining, *Sav-On Drugs*, 243 NLRB 859 (1979); *Gray Drug Stores*, 197 NLRB 924 (1972), whether a unit consisting of two or more retail establishments in an employer's retail chain is appropriate will be determined in light of all the circumstances. *Sav-On Drugs*, 138 NLRB 1032 (1962). The Petitioner, which seeks to represent employees in pharmacies located in three of the four states in which the Employer operates, has two bases for its position that a three-state unit is appropriate: (1) the lack of substantial interchange or contact between Pennsylvania, Delaware, and Maryland pharmacists and their counterparts in New Jersey; and (2) the fact that, as currently configured, New Jersey pharmacies are under the control of two APMs who do not oversee pharmacies in the other three states.

The record shows that the Employer's personnel and labor relations policies are developed and administered centrally and all pharmacists are subject to common terms and conditions of employment. *Neodata Product/Distribution*, 312 NLRB 987 (1993). Valesano handles the hiring of all pharmacists and the same evaluation and disciplinary procedures apply to all the pharmacies. All pharmacists possess the same skills and have the same duties and responsibilities as described in detail by communiques disseminated to the pharmacies. Operations in the pharmacies are standardized and detailed procedures apply to daily tasks and scheduling.

With respect to the factor of interchange, the record shows that there have been more instances in which pharmacists have transferred between Pennsylvania and New Jersey pharmacies than between the pharmacies in the three-state unit sought by the Petitioner. Similarly, the record discloses more instances of pharmacists performing temporary "fill in" work between New Jersey and Pennsylvania pharmacies than within the three-state unit sought by the Petitioner. Employees from New Jersey and Pennsylvania have attended meetings together.

While a unit of all the Employer's pharmacies is a presumptively appropriate unit, *Montgomery County Opportunity Board*, 249 NLRB 880, 881 (1980); *Jackson's Liquors*, 208 NLRB 807, 808 (1974), a union is not required to request representation in such a comprehensive unit unless an appropriate unit "compatible" with the requested unit does not exist. *Overnite*, supra at 723. The Board has approved units based on a geographically defined area in cases involving pharmacies. *Sav-On Drugs*, supra at 859; *Walgreen Louisiana Co.*, 186 NLRB 129 (1970). The Board has long recognized that geographic coherence of a bargaining unit is an important consideration in determining whether a bargaining unit is appropriate and workable for purposes of collective bargaining, and has allowed geography and extent of organization to play an affirmative part in such determinations. *Central Power & Light Co.*, 195 NLRB 743, 746 (1972). See also *Drug-Fair-Community Drug Co.*, 180 NLRB 525, 526-528 (1969).

The pharmacies in each State are subject to regulation by the State in which the pharmacies are located and pharmacists must be licensed by the State in which they work. The States have different regulations and licensing requirements and pharmacists interact with state officials to comply with state laws concerning the handling of narcotics and controlled substances. Accordingly, I find that statewide units of all pharmacies in each of the States involved constitute separate appropriate units for purposes of collective bargaining. See *Drug-Fair*, supra at 527. Accordingly, as the Petitioner has indicated its willingness to proceed to an election in any unit found appropriate, I shall direct elections in statewide units or the pharmacies located in Pennsylvania, Delaware, and Maryland.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital*, 320 NLRB 1717, 1725 (1996); *The Door*, 297 NLRB 601 (1990); and *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries*, 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions. *Skaggs Drug Centers*, 197 NLRB 1240 (1972); *Clark Machine Corp.*, 308 NLRB 555 (1992). The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory authority on an employee. *Juniper Industries*, above. The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, D.D.S., P.C.*, 318 NLRB 70, 76 (1995), enf. 101 F.3d 107 (2d Cir.), cert. denied 519 U.S. 817 (1996); *E & L Transport Co.*, 315 NLRB 303 fn. 2 (1994); *Gaines Electric Co.*, 309 NLRB 1077, 1078 (1994); and *Ohio River Co.*, 303 NLRB 696, 714 (1991). Job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *Store Employees Local 347 v. NLRB*, 422 F.2d 685, 689-690 (D.C. Cir. 1969); *NLRB v. Security Guard Services*, 384 F.2d 143, 149 (5th Cir. 1969), enf. 154 NLRB 8 (1965); *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). The burden of establishing supervisory status is on the part, asserting such status exists. *Bennett Industries*, 313 NLRB 1363 (1994). The Board has cautioned that the supervisory

exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protection of the Act. *Northcrest Nursing Home*, 313 NLRB 491 (1993). Where the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, the Board will find that supervisory status has not been established at least with respect to that indicia. *Phelps Community Medical Center*, supra at 490; *E & L Transport Co.*, supra at 303 fn. 2.

There is no record evidence that the pharmacy managers have the authority to hire, discharge, suspend, transfer, lay off, recall, promote, or grant vacations to staff pharmacists or sufficient to establish that they possess the authority to effectively recommend applicants for employment.

In those limited instances in which a pharmacy manager was involved in the discipline of an employee, an APM was present or prepared and signed the corrective action form after an independent investigation. Pharmacy managers have consulted with their APMs on issues involving employee conduct. In some instances, the pharmacy managers documented by keeping notes of the facts concerning employee performance or conduct. However, these notes did not contain recommendations or, where recommendations were made, the record does not show the impact of the pharmacy managers' views. In these circumstances, I find that the Employer has not satisfied its burden of demonstrating that the pharmacy managers discipline, or effectively recommend discipline, of employees. *PECO Energy Co.*, 322 NLRB 1074, 1076 (1997); *Altercare of Hartville*, 321 NLRB 847 (1996); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996).

Pharmacy managers have been asked their opinions of employee applicants in a limited number of instances but the record does not show what weight, if any, their opinions carried in the Employer's decisions. There is no dispute that Valesano makes the ultimate decision to hire. Such limited involvement of the pharmacy managers in the few instances of hiring is not sufficient to establish that they possess the authority to effectively recommend applicants for employment. *The Door*, supra.

The Board has found supervisory status where an individual independently completes evaluations of other employees that lead directly to personnel actions such as merit raises, but has declined to find such status when the evaluations do not effect such actions or are completed only on a sporadic basis. *Altercare of Hartville*, supra at 847; *Ten Broeck Commons*, supra at 813; *Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995); *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995). In the instant case, the record shows that the pharmacists' evaluations are prepared by the APMs. In those instances in which pharmacy managers had input into the evaluations there was insufficient evidence to establish that their input affected the job status of the employees in question. Similarly, in instances where pharmacy managers prepared evaluations of pharmacy technicians, the record evidence failed to show that the evaluations had an impact on the terms and conditions of employment of the technicians. See *Lincoln Park Nursing Home*, 318 NLRB 1160, 1163 (1995); *Harbor City Volunteer Ambulance Squad*, supra.

The pharmacy managers do not exercise independent judgment with respect to the scheduling of employees. The pharmacy technicians are scheduled in accordance with a payroll model and the store managers or head cashiers in the supermar-

kets are also involved because the technicians spend most of their time working in the supermarkets. As to the scheduling of staff pharmacists, the record shows that pharmacy managers rotate their schedules with staff pharmacists. Requests for vacations must be submitted to the APMs for approval. With respect to the pharmacy managers' assignment of work to the staff pharmacists and pharmacy technicians, the record evidence shows that the duties of both positions are well defined and, especially with respect to the technicians, a standardized detailed task list is utilized leaving little room for the exercise of independent judgment by the pharmacy managers. *Altercare of Hartville*, supra at 847; *Providence Hospital*, supra at 732; and *Ten Broeck Commons*, supra at 810; see also *Victor's Cafe* 52, 321 NLRB 504, 512 (1996). The staff pharmacists perform the same work as the pharmacy managers, primarily filling prescriptions. Staff pharmacists also follow task lists, monthly calendar, and communiques issued by headquarters outlining special duties or events. The pharmacy managers have only a 2-hour overlap with the staff pharmacists.

The pharmacy technicians' duties are repetitive and there is little evidence that the direction given by the pharmacy managers differs from the direction given by the staff pharmacists who the parties agree are nonsupervisory. This type of direction does not involve the exercise of independent judgment necessary to establish supervisory status. *Rest Haven Nursing Home*, 322 NLRB 210 (1996); *Parkview Manor*, 321 NLRB 477 (1996); and *Ten Broeck Commons*, supra.

Pharmacy managers receive a higher salary and bonus than staff pharmacists. However, the pharmacy managers are responsible for maintaining inventory as well as complying with state requirements for handling controlled substances. See *Sav-On Drugs*, supra at 859. The staff pharmacists in some pharmacies are paid more than pharmacy managers because of their length of service. In any event, this difference in pay is a secondary indicia of supervisory authority which is not sufficient in the absence of primary indicia of supervisory authority. *Bil-*

lows Electric Supply, 311 NLRB 878 (1994). Finally, if the pharmacy managers were found to be supervisors, there would be a ratio of one supervisor to every one to three employees, an unusually high ratio of supervisors to employees. *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976). Accordingly, I find that the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

I.

All full-time and regular part-time pharmacy managers, staff pharmacists and undistributed pharmacists at Acme Supermarkets, Inc.'s pharmacies in Allentown, Clifton Heights, Collegeville, Downingtown, Doylestown, Kenneth Square, King of Prussia, Levittown, Morrisville, Philadelphia (3 stores), Phoenixville, West Chester and West Goshen, Pennsylvania; excluding all other employees, Area Pharmacy Managers, Director of Pharmacy, guards and supervisors as defined in the Act.

II.

All full-time and regular part-time pharmacy managers, staff pharmacists and undistributed pharmacists at Acme Supermarkets, Inc.'s pharmacies in Bear, Dover, Hockessin and Wilmington, Delaware, excluding all other employees, Area Pharmacy Managers, Director of Pharmacy, guards and supervisors as defined in the Act.

III.

All full-time and regular part-time pharmacy managers, staff pharmacists and undistributed pharmacists at Acme Supermarkets, Inc.'s pharmacy in Elkton, Maryland; excluding all other employees, Area Pharmacy Managers, Director of Pharmacy, guards and supervisors as defined in the Act.

[Direction of Election omitted from publication.]