

**United Operations, Inc. and United Association of Plumbers, Pipefitters and Sprinklerfitters, Local 539.** Case 18-RC-16744

September 30, 2002

DECISION ON REVIEW AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The Petitioner seeks an election in a unit of the Employer's HVAC (heating, ventilation, and air conditioning) service technicians (HVAC techs). On December 12, 2000, the Regional Director for Region 18 issued a Decision and Order, finding that the smallest appropriate unit must include all field service employees and dismissing the petition.<sup>1</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's decision. By Order dated March 12, 2001, the Board granted the Petitioner's request for review.

The Board has carefully considered the entire record and has decided to reverse the Regional Director's Decision and Order. As explained below, we find that the HVAC techs constitute a readily identifiable and functionally distinct group of highly skilled and licensed employees, with common interests distinguishable from the Employer's other field service employees. See *Dick Ketchner Excavating Co.*, 236 NLRB 1414, 1415 (1978); *The Dahl Oil Co.*, 221 NLRB 1311 (1975); *Del-Mont Construction Co.*, 150 NLRB 85 (1964).

I. FACTS

The Employer provides general building maintenance services to commercial property owners through its field service employees. The Employer's clients contact the Employer with service requests, and the appropriate field service employee is sent to respond to each call. Sometimes, a job requires more than one person, and two or three field service employees are sent to respond to a particular job. Thus, the bulk of the field service employees' work is done away from the Employer's facility.

At the time of the petition, the Employer employed approximately 50 field service employees, including 26 building service employees (BSEs), 16 policers, and 9 HVAC techs. The BSEs are responsible for general maintenance tasks such as carpentry, general labor, light plumbing, electrical work, and painting. The policers pick up litter from the grounds of the clients' buildings. The HVAC techs repair and service the heating, ventilation, and air conditioning systems of the buildings.

<sup>1</sup> Pertinent portions of the decision are attached as an appendix.

In determining whether a unit of employees, such as the petitioned-for unit of HVAC techs, is appropriate, the Board considers whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *The Dahl Oil Co.*, 221 NLRB 1311 (1964). We review these factors below.

Separate Department

The field service employees are split into three departments: building services, HVAC, and policers, and the Employer generally assigns its work along departmental lines. Thus, the Employer organizes the HVAC techs into a separate department and treats them accordingly.

Skills and Training

The HVAC techs primarily perform HVAC work and are required to have skills particular to that field. None of the Employer's other employees are required to have HVAC skills, and the uncontested evidence shows that no one outside the HVAC department can do skilled HVAC work.

Furthermore, only HVAC techs are required to be certified by the EPA to handle refrigerants, and all of the Employer's HVAC techs actually have EPA certification (except Gregg Jevnager and Ronald Clausen, who were both transferred to the HVAC department just 2 weeks before the hearing). No other field service employee is EPA-certified. To receive EPA certification, individuals are required to pass a written test on their knowledge of refrigerants, preparation for which includes significant study and a preparatory class. In addition, most or all of the HVAC techs have a boiler license, which none of the other field service employees has.

The HVAC techs also use specialized HVAC tools, including refrigeration gauges, refrigerant leak detectors, self-contained recovery equipment, and electrical test meters. Such tools are not used by BSEs or policers.

The Employer bills its clients for work performed by the HVAC techs at a separate, higher rate based on the fact that the HVAC techs have a set of skills that the Employer sells as a separate service to its clients.

While the skill level of the HVAC techs varies, all HVAC techs are required to have HVAC-specific skills that no other field service employees are required to

have. Entry-level HVAC techs are required to have “some experience or schooling” in HVAC, evolving into “high-skilled trouble shooting of various mechanical systems.” The new HVAC techs further develop their HVAC skills on the job.

There is no evidence that any policer or BSE has the ability to do the level of HVAC work that even the least-skilled HVAC techs do. Even the least-skilled HVAC techs perform inspections and startups, clean equipment, replace faulty controls, and test refrigerant levels with refrigerant pressure gauges, which requires EPA certification. On the other hand, there is no allegation that policers have any HVAC skills whatsoever; it is undisputed that the policers’ work is entirely unskilled. Likewise, while BSEs change filters, clean condenser coils, unplug condensate lines and do plumbing work, this is not skilled HVAC work. BSEs cannot replace faulty controls or test refrigerant. Furthermore, the evidence demonstrates that HVAC-related work performed by BSEs is not only unskilled but also done in conjunction with skilled HVAC work performed by HVAC techs.

#### Job Functions and Work

The HVAC techs, policers, and BSEs perform very different types of work the vast majority of the time. The incidence of job overlap between the HVAC techs and the other field service employees is minimal, and it is clear that the primary function of the HVAC techs remains at all times the service and repair of HVAC units.

The HVAC techs spend the vast majority of their time performing HVAC-specific work, and no other field service employee spends significant time performing HVAC-related work. The Employer generally distinguishes between service calls that involve HVAC work and those that do not. Assignments are primarily made according to skill: HVAC work is assigned to HVAC techs, general maintenance work is assigned to BSEs, and outdoor litter removal is assigned to policers. Although the Employer considers skill, geography, familiarity with the building, and client preference in making assignments, the record established that skill is the priority factor. The little overlap that does occur between classifications is largely unskilled work and is primarily done out of courtesy to the client or in emergencies. There is no crosstraining.

Policers do not spend any time at all on HVAC work. Similarly, it is rare for an HVAC tech to perform policing work. The only evidence of HVAC techs doing policing work is one service call in which two HVAC techs did policing work for two and a half hours. In addition, HVAC tech Larson testified that he performed general clean up or policing for approximately 1 day in a 5-year period. HVAC tech Soberg testified that he picked up

trash one or two times in a 10-year period. Thus, the evidence shows that the job overlap between the HVAC techs and the policers is irregular, infrequent, and insignificant.

Likewise, the job overlap between the HVAC techs and the BSEs is minimal. HVAC techs do a variety of non-HVAC tasks if unusual speed is required or if the BSE department is overloaded. However, these incidents of overlap work are rare. In addition, an HVAC tech occasionally is asked by a building manager to perform “minor requests,” such as changing a lightbulb or unplugging a toilet, because the HVAC tech happens to be on the property. The HVAC tech will generally comply with such requests out of courtesy. However, if the request requires a more substantial effort, such as fixing a lock or plumbing work, or if a building has an extensive list of building maintenance work to be done, the HVAC tech will call the office and have them send a BSE to do the work.

BSEs never perform skilled HVAC work. However, BSEs occasionally perform unskilled HVAC-related work. For instance, about once a week, a BSE out on a call is asked by a building manager to adjust a thermostat or a damper. Further, when BSEs perform HVAC-related work, the work is not only unskilled, but also performed in conjunction with skilled HVAC work done by HVAC techs. For instance, the Employer’s witness testified that a BSE responded to a call about two roof leaks. The first leak he determined to be a roofing problem and called a roofer. The second leak he determined to be an HVAC leak and called an HVAC tech to pinpoint and repair the leak. The BSE later returned with the HVAC tech and “assisted” him with the repair. There is no evidence that BSEs performed any HVAC-related work without HVAC techs present.

Furthermore, even the least-skilled HVAC techs do more than the unskilled HVAC-related tasks sometimes performed by BSEs. In addition to changing filters, the least-skilled techs also perform HVAC tasks such as starting up equipment, replacing bad components, and testing refrigerant levels using refrigerant pressure gauges, which requires EPA certification. There is no evidence that BSEs can or do perform such tasks.

#### Functional Integration

There is no significant functional integration between the HVAC techs and the other field service employees. For the most part, the BSEs are sent to answer service calls requiring general maintenance skills, and the HVAC techs are sent to answer service calls pertaining to repair or service of HVAC equipment. Each service call is independent of all others. Few service calls require both an HVAC tech and a BSE. When this does occur,

approximately one time per week, the HVAC tech performs the necessary HVAC work and the BSE assists with unskilled labor.

#### Other Contact

There is no significant contact between the HVAC techs and the other field service employees. The BSEs and the HVAC techs occasionally see each other during the limited time they spend in the office or when they happen to run into each other in the field. Even then, the record reveals that contact between the HVAC techs and the BSEs is limited to pleasantries.

On the other hand, the record established that the HVAC techs have regular, work-related contact with each other.

#### Interchange

There is minimal evidence of interchange between the HVAC techs and the other field service employees. There is no evidence of temporary transfers. Nor is there any evidence of permanent transfers between the policers and the HVAC techs or from the HVAC department to the BSE department. Two BSEs, Gregg Jevnager and Ronald Clausen, transferred from the BSE department to the HVAC department just 3 weeks before the hearing.

#### Terms and Conditions of Employment

Although the HVAC techs share dispatchers, personnel policies, and fringe benefits with the other employees, there is a substantial difference in wages. The average wage for policers is \$14.69 per hour, and the average wage for BSEs is \$15.83 per hour. In contrast, the average wage for HVAC techs is \$19.78 per hour.<sup>2</sup>

Furthermore, it is uncontroverted that the HVAC techs have regular, separate meetings with their supervisor, President Paul Daily. No other employees are required to attend similar meetings.

#### Supervision

The HVAC techs and the BSEs have separate immediate supervision. The HVAC techs share common immediate supervision with the policers.

## II. ANALYSIS

After reviewing the relevant factors, we find, contrary to the Regional Director, that the HVAC techs share a separate community of interest apart from the other field service employees. Accordingly, they constitute an appropriate unit.

The HVAC techs are a readily identifiable group with common interests apart from the policers. As discussed

<sup>2</sup> If the two recent transfers into the HVAC department are excluded from the calculation, the average wage for HVAC techs is actually \$21.04 per hour.

above, the factors suggesting a community of interest between the HVAC techs and the policers are common supervision, personnel policies, and work rules. However, in light of the lack of any evidence of interchange, shared skills, crosstraining, contact, or functional integration, the miniscule amount of job overlap, and the significantly higher wages of the HVAC techs, we find that the commonalities are insufficient to negate the propriety of a unit of the HVAC techs, excluding the policers.

Likewise, the HVAC techs are a readily identifiable group with common interests apart from the BSEs. Other than the similarity in personnel policies and work rules, each of the community of interest factors supports the propriety of an HVAC-only unit: the HVAC techs are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work with little overlap; the Employer's work is not significantly functionally integrated; there is little contact between the HVAC techs and the BSEs; there is no significant interchange; the HVAC techs receive higher wages; and the HVAC techs are separately supervised from the BSEs.

That some HVAC techs may occasionally perform BSE duties not strictly within their job description or that BSEs may perform some minor HVAC tasks does not render the unit inappropriate where, as here, the HVAC techs spend a substantial majority of their time performing distinctive duties. See *Maxim's De Paris Suite Hotel*, 285 NLRB 377, 378 (1987); *Dick Kelchner Excavating Co.*, 236 NLRB 1414 (1978). Further, the Board has held that sporadic instances of employees' assisting with another department's tasks reflect "a spirit of cooperation or civility" rather than overlap of job functions. See *Ore-Ida Foods*, 313 NLRB 1016 (1994); *Maxim's De Paris Suite Hotel*, 285 NLRB at 378; *Omni International Hotel*, 283 NLRB 475 (1987).

On balance, therefore, we find that a unit of HVAC techs is appropriate. See *Bartlett Collins*, 334 NLRB 484 (2001); *Dick Kelchner Excavating*, 236 NLRB 1414, 1415 (1978); *Del-Mont Construction Co.*, 150 NLRB 85 (1964).

The cases cited by the Regional Director and the Employer are distinguishable. In none of the cases cited did the petitioned-for employees have the distinct identity and divergent interests that the HVAC techs have in this case.<sup>3</sup>

For instance, in *Brand Precision Services*, 313 NLRB 657 (1994), the petitioned-for operators did not have training, skills, supervision, or function distinct from the

<sup>3</sup> Further, none of the cases cited by the Employer or the Regional Director specifically deal with the propriety of an HVAC unit apart from other building operations employees.

laborers and leadmen the petitioner sought to exclude. All employees were required to have driver's licenses and the sole additional requirement for operators was to have and maintain a commercial driver's license. The Employer's work was highly integrated, and there was "constant" contact among the petitioned-for operators and the disputed laborers and leadmen. Laborers spent up to 10 percent of their time doing operator work. Operators' wages fell in the range between those of the leadmen and laborers.

Similarly, in *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980), cited by the Regional Director, the petitioned-for electrical employees spent at least one-half of their time working in functionally integrated teams with production employees, and a substantial amount of electrical work was performed by other employees. There was also no licensing requirement for the electrical employees, and they were recruited from the production ranks.

Finally, we find the Regional Director's reliance on *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999), to be misplaced. In *Seaboard Marine*, the union petitioned for a unit of approximately 17 employees in three classifications, excluding approximately 181 employees in 12 additional classifications. The Board found the petitioned-for unit inappropriate based on the fact that the duties and minimal skills of the employees in the petitioned-for classifications were not distinct from those of several other classifications, noting that the Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis. Here, however, as explained above, the HVAC techs are skilled employees performing tasks distinct from the other field employees.

### III. CONCLUSION

As the petitioned-for HVAC service technicians constitute a readily identifiable and functionally distinct group, with common interests distinguishable from the Employer's other field service employees, we find that the Regional Director erred in finding the unit inappropriate and dismissing the petition.

### ORDER

The Regional Director's Decision and Direction of Elections is reversed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this decision.

MEMBER BARTLETT, dissenting.

Contrary to my colleagues, I agree with the Regional Director's conclusion that the petitioned-for unit of the Employer's HVAC techs is not an appropriate unit, and that the only appropriate unit is one that includes all of

the Employer's field service employees, i.e., the building services employees, the policers, and the HVAC techs.

In my view, the Regional Director correctly found that the HVAC techs do not have a community of interest separate and apart from the other field service employees. The field service employees all go on service calls and are commonly dispatched by the Employer. They all report to the Employer's office to pick up work orders and supplies, and to complete any necessary paperwork. They have the same work rules and fringe benefits.

Further, it is undisputed that the HVAC techs and the policers have common supervision. Additionally, the wage ranges for all three classifications are quite similar; the HVAC techs earn between \$13 and \$25.25 per hour, the policers earn between \$10 and 25.88 per hour, and the building services employees earn between \$10 and \$20 per hour. Although, as my colleagues note, the average hourly wage rate of the HVAC techs is slightly higher than the average hourly wage rates of the other two classifications of field service employees, this fact may be due to certain employees' length of service, and thus is not a true indicator of whether all three classifications of employees have similar wages.

My colleagues emphasize that the HVAC techs have particular or distinct skills and that most possess an EPA certification, which requires passing a written test.<sup>1</sup> However, my colleagues do not contend, correctly, that the HVAC techs constitute a craft unit. The HVAC techs do not participate in any apprenticeship program, and the nature of their work is essentially a mechanical service rather than work typically performed by any craft. See generally *Schaus Roofing*, 323 NLRB 781 (1997). Further, some of the building service employees also have particular or distinct skills and perform work that requires special licensing or training. As found by the Regional Director, some have low-voltage electrician licenses and five have been specially trained to perform locksmith work.

Finally, I disagree with my colleagues' reliance on the limited contact between the HVAC techs and the employees in the other two classifications. As noted by the Regional Director, the HVAC techs generally work alone, and thus they also have limited contact with each other. Their limited contact with other field service employees, therefore, is not indicative of a separate community of interest from the other employees.

In sum, the HVAC techs do not have a community of interest apart from the Employer's other field service employees who also go on service calls and are com-

<sup>1</sup> As noted by my colleagues, two of the nine HVAC techs, who were recently transferred from building service positions into HVAC tech positions, do not have an EPA certification.

monly dispatched. The HVAC techs have common supervision with other field service employees, their wage ranges are similar to the other field service employees, and they have the same work rules and fringe benefits as the other field service employees. Although the HVAC techs have distinct skills and perform work that requires EPA certification, they do not constitute a craft unit, and the building service employees also have distinct skills and perform work that requires licensing or training. In these circumstances, I find, in agreement with the Regional Director, that a separate bargaining unit of HVAC techs would result in a fractured unit, without any rational basis. See generally *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999).<sup>2</sup>

## APPENDIX

### DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

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 herein.<sup>1</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. 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.
5. Petitioner seeks to represent a unit of all full-time and regular part-time HVAC service techs employed by

<sup>2</sup> My colleagues seek to distinguish *Seaboard Marine* on the ground that the HVAC techs are skilled employees performing tasks distinct from other employees. However, as indicated above, I disagree with my colleagues that the HVAC techs' particular or distinct skills are a relevant basis for distinguishing them from the other field service employees. Thus, in my view, it is also not a meaningful basis to distinguish *Seaboard Marine*.

<sup>1</sup> The Employer, United Operations, Inc., is a Minnesota corporation with an office and principal place of business in Plymouth, Minnesota, where it is engaged in the building maintenance business. During calendar year 1999, a representative period, the Employer received gross revenues in excess of \$500,000, and it purchased and received at its Plymouth, Minnesota facility goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

the Employer at its Plymouth, Minnesota facility. The Employer contends that a unit limited to HVAC service techs is inappropriate because all of its field service personnel share a community of interest. Therefore, the Employer contends that the unit should be all full-time and regular part-time field service employees, including HVAC service techs, building service employees, and policers.

The Employer provides building maintenance services to buildings managed by commercial real estate companies. Thus, its customers are the real estate concerns. The Employer services about 1300 buildings in Minneapolis, Minnesota, and an area about 40 miles in all directions from Minneapolis. The Employer provides operational management, heating and air conditioning service and repair, locksmithing, plumbing, carpentry, electrical, painting, roof repair, irrigation and sprinkler maintenance and repair, caulking and weatherproofing, storage units, and construction services for tenant improvements. The Employer does not provide janitorial services.

The Employer's president is Paul Daily. Its vice president of operations is Dan Shedlov. Paul Mallory is also in supervision/management, including apparently overseeing the Employer's administrative personnel. Daily supervises the HVAC techs and policers, while Shedlov oversees the building services employees. All employees who the Employer contends should be in the unit receive the same benefits, employee handbook, uniforms, vans and/or trucks, and attend two Employer-sponsored parties each year. The Employer bills its clients \$59 per hour for HVAC work and \$41 per hour for work normally performed by building services employees. The record does not disclose what rate is charged for policer work. HVAC techs (also referred to as mechanics in the record) are currently paid between \$13 and \$25.25 an hour, building services employees are currently paid between \$10 and \$20 an hour, and policers are currently paid between \$10 and \$25.88 an hour. The Employer employs about nine mechanics, between 20 and 25 building services employees, and about 16 policers.

The Employer learns about customer needs when calls are taken by one of two service dispatchers. They determine the type of service needed; type the service orders; and post the orders to the service board, where the calls wait to be dispatched to an appropriate field service employee. (The term *field service employee*, hereinafter "FSE," encompasses all three classifications of employees in dispute.) Service dispatchers contact the appropriate FSE by cell phone or pager. Some FSEs are also notified by fax when they have a fax machine at their home. In addition, Daily and/or Shedlov might give

FSEs work orders in person if the FSEs are in the office. Most FSEs are in the Employer's office about three days a week, for a total of two to three hours a week. They report to the office to pick up work orders, to complete paperwork, to pick up and drop off tools and equipment, and to pick up supplies. However, most of their work time is spent away from the Employer's facility at various customer locations.

In order to determine which FSE to send on a call, the following factors are considered: (1) skill required for the service call; (2) geographical location of the call; (3) priority of the service call; (4) familiarity of the FSE with a particular building; and (5) whether the customer requests a certain FSE by name. Of these factors, the most important is the skill required for the job. For example, there are certain calls that only HVAC techs can perform. They are the only FSEs with boiler licenses and EPA certifications. EPA certifications are required to purchase and transport refrigerant. Not all HVAC techs have the necessary skills to work on boilers or to perform work involving refrigerant, however. Some have the skill only to perform routine maintenance. Routine maintenance involves replacing air filters and, while doing that, visually inspecting the equipment. They can also start up and clean equipment. Another group of HVAC techs have skills to make repairs, but not to work on complicated control systems like boilers. Building service employees perform general labor, plumbing, carpentry, electrical and painting services for the Employer's customers. Some building service employees have low-voltage electrician licenses, and five of them have been specially trained to perform locksmith work. Policers pick up litter from the exterior of the building.

The Employer acknowledges that HVAC techs are recognized as a separate "department" by the Employer. However, the Employer also maintains that HVAC techs perform the work of the other two classifications on occasion, including changing light bulbs and picking up trash. The Employer also contends that some work cannot be easily categorized as HVAC tech work versus building service work. Examples of such work are tripped circuit breakers, roof leaks, and low-battery alarms on monitoring panels. The Employer further maintains that some service calls involve multiple needs, and therefore an HVAC tech might perform both mechanical and building service work on a particular call. Finally, the Employer contends that some calls involve sending out both an HVAC tech and a building service employee. The record contains quite a bit of conflicting testimony regarding the frequency of HVAC techs performing policer or building service work and how often HVAC techs work with a building service employee.

Generally, it appears that service calls are handled by one FSE; that there is minimal work-related interaction among FSEs when they are in the field; and that only HVAC techs can perform work on boilers, air conditioning systems, and other equipment involving customers' heating and cooling systems.

Paul Mallory, Dan Shedlov and Paul Daily hire field service employees. Daily evaluates the HVAC techs and policers. Shedlov evaluates the building services employees. Mallory evaluates administrative personnel. Each evaluation contains a recommendation for a wage increase. Daily decides on the amount of increase for all employees, including building services employees. Daily further testified that Mallory, Shedlov or he can discipline any employee. Current HVAC tech Gregg Jevnager was a building services employee for the Employer before he took his current position. Current HVAC tech Ronald Clausen worked part of his time as a building services employee and part of his time as an HVAC tech until he recently became a full-time HVAC tech.

Based on the foregoing, I conclude that the appropriate unit should include all of the Employer's field service employees, and therefore that the unit sought by Petitioner is inappropriate. In reaching this conclusion, I rely particularly on the Board's admonition that it will not approve fractured units; that is, combinations of employees that have no rational basis. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Petitioner cites *Overnite Transportation, Inc.*, 322 NLRB 723 (1996), for the proposition that the statute requires only that the bargaining unit be *an* appropriate unit, and does not require a union to seek *the most* appropriate unit. However, the Overnite decision also makes clear that the Board must examine the union's petition and whether the unit sought in the petition is appropriate. I conclude that in this case the unit sought by the petition is not appropriate. More specifically, I conclude that the HVAC techs do not constitute a "readily identifiable and homogenous group with a community of interest separate and apart from the other employees," as contended by Petitioner at the hearing. More specifically, I conclude that because the HVAC techs and policers are commonly supervised, because all FSEs are commonly dispatched, because all FSEs enjoy the same fringe benefits and are subject to the same work rules, and in view of the similarity in wage rates, HVAC techs do not have a distinct community of interest from other FSEs. Moreover, at least two of the current HVAC techs previously performed building services work on a regular basis as building services employees. I also note that all FSEs are engaged in the same work, insofar as all are away from the Employer's facility and at customer

locations in response to service needs. While the record presents conflicting evidence regarding the amount of contact HVAC techs have with other FSEs, I note that even the individual HVAC techs generally work alone and not with one another. Thus, I decline to conclude that HVAC techs are a distinct group because of their limited day-to-day contact with other FSEs, because it appears that HVAC techs do not have regular work-related contact with one another. Even assuming that HVAC techs perform work of a specialized nature that other FSEs cannot perform, it is clear that HVAC techs do not have an apprenticeship program. Moreover, at least some HVAC techs have not acquired the skills to work with refrigerants or on boilers, and instead spend most of their time changing air filters, which apparently building services employees can do. Finally, I note that some building services employees have also been specially trained in locksmithing. Therefore, I find no basis for establishing a separate bargaining unit of HVAC techs. *Proctor & Gamble Paper Products*, 251 NLRB 492 (1980); *Monsanto Co.*, 172 NLRB 1461 (1968).

*Burns & Roe Services Corp.*, 313 NLRB 1307 (1994), cited by Petitioner at the hearing, does not compel a contrary conclusion. In *Burns & Roe Services Corp.*, the

Board found appropriate a unit of electrical department employees. However, unlike the instant case, the electrical department employees were separately supervised, were separately assigned work, and had a distinct wage rate from other employees the employer sought to include in the unit. Moreover, the electrical department employees had a training program that included apprentices and journeymen, and they were assigned work typically performed by members of a craft. The Board also noted the lack of transfers into or out of the electrical group. None of these facts are applicable to the HVAC techs employed by the Employer. Because Petitioner stated at the hearing that it is not interested in proceeding in any unit broader than the HVAC techs, I will therefore dismiss the petition.

#### ORDER

It is hereby ordered that the petition filed herein be, and it is, dismissed.<sup>2</sup>

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<sup>2</sup> Under the provisions of Sec. 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, D.C. 20570. This request must be received by the Board in Washington by December 26, 2000.