

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

Payless ShoeSource, Inc.,)	
)	
and)	Case No. 14-RC-087469
)	
United Food and Commercial Workers, Local 655,)	
)	
Petitioner.)	

EMPLOYER'S REQUEST FOR REVIEW

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I. REQUEST FOR REVIEW.

Pursuant to NLRB Rules and Regulations Sec. 102.67, the Employer, Payless ShoeSource, Inc. ("Payless"), requests the Board to review the Decision and Direction of Election rendered by the Acting Regional Director in this case on September 13, 2012. Payless asserts the following grounds for its request:

- (1) The Acting Regional Director's Decision on a number of substantial factual issues is clearly erroneous on the record, and these errors prejudicially affected Payless as they contributed to the Acting Regional Director's erroneous conclusion that a single store unit is appropriate for bargaining;
- (2) The Acting Regional Director's Decision finding a single store unit appropriate constitutes a departure from officially reported Board precedent; and
- (3) There are compelling reasons for reconsideration of the Board's presumption that a single store unit in a retail chain is appropriate where, as here, not only is there evidence of a lack of local store autonomy, but also evidence of bargaining between the parties with respect to a multi-store unit.

The reasons in support of the aforementioned grounds for Payless' Request for Review are discussed below. Payless respectfully requests the Board to grant this Request for Review and to stay the election scheduled for October 9, 2012 pending a decision by the Board in this case.

II. STATEMENT OF THE CASE.

Payless ShoeSource, Inc. ("Payless") owns and operates approximately 3,600 retail shoe stores and employs approximately 21,000 people throughout the United States (Tr. 17, 19, 20-21, 22). Although Payless is highly centralized in its operations and its store associates have uniform working conditions and terms of employment, the petition filed by the Union in this case seeks to isolate one store with five employees located in Rolla, Missouri by claiming that this single store is an appropriate bargaining unit. Although Payless understands that the Board currently recognizes a presumption in favor of a single location unit, as will be discussed in greater detail below, the Board also has repeatedly held that a single location unit is not appropriate where, as here, the employer's operations are highly centralized resulting in limited

managerial authority at the individual store level, and there is uniformity in the employees' working conditions and terms of employment.

Contrary to the findings of the Acting Regional Director, the evidence presented at the hearing overwhelmingly established the highly centralized nature of both Payless' operational and labor relations policies, and the resulting lack of the Rolla Store Manager's (*i.e.*, "Store Leader") authority regarding the Rolla store associates' working conditions. The Acting Regional Director's findings conflict with **uncontroverted** testimony regarding the lack of a Store Leader's authority **in actual practice** regarding the Rolla store and the other stores in its District. Instead, the Acting Regional Director selectively relied on isolated portions of Payless' Associate Handbook to try to support his erroneous factual conclusions that: "the Store Leader appears to exert the most control over the Rolla store associates' daily working conditions," and "the control of the daily working conditions of the Rolla associates appears to be separate and autonomous from the other stores" (Acting Regional Director's Decision and Direction of Election ["ARD Dec.,"] pp. 8, 17, 18). Further, the Acting Regional Director also **ignored** uncontroverted evidence directly contrary to those conclusions.

Additionally, there is bargaining history between Payless and the Union, acknowledged by the Acting Regional Director but rejected in his analysis, which indicates that a single store unit is not appropriate, as there currently are 24 stores located in two Payless administrative Districts, (*i.e.*, Districts A3E and A3F) and spread over the city of St. Louis and four Missouri counties, which are included in one bargaining unit (Tr. 40, 43-45, 48-49, 50-51, 52; Er. Exs. 5A, 6, 8, 9).¹ The inappropriateness of the Rolla store as a single unit is further demonstrated by the fact that at one time there were 36 stores in the bargaining unit and by the Union's request

¹ Payless stores are organized into administrative groupings with the smallest administrative sub-grouping being a "District" (Tr. 22-23, 30-31; Er. Exs. 1, 2, 3, 4). The Rolla store is located in District A3E which totals 25 stores, 17 of which are unionized and 8 of which are non-union (Tr. 33, 40-42; Er. Exs. 4, 5A, 6). The two Districts adjacent to Districts A3E are District A3C (comprised of 27 stores, none of which are unionized) and District A3F (comprised of 27 stores, 7 of which are unionized and 20 of which are non-union) (Tr. 39-42, 40-45; Er. Exs. 4, 5, 5A, 5B, 6). There currently is one District Leader for Districts A3E and A3F, and another District Leader for District A3C (Tr. 36-37, 108-109; Er. Ex. 4).

during contract negotiations to include the Rolla store and all other unrepresented Payless stores in Missouri in the existing bargaining unit, which would have resulted in a bargaining unit of approximately 55 stores (Tr. 52; Er. Exs. 4, 5, 5A, 5B, 6).

Payless respectfully submits that it not only is contrary to Board precedent, but also impractical and illogical to determine that a single store with virtually no local autonomy should be picked out of a highly centralized chain of stores in order to conduct bargaining on behalf of just five out of approximately 21,000 employees in the United States. Particularly in view of the high amount of turnover among store associates – about 80% of Payless’ employees are part-time with close to 120% turnover rate for those employees (Tr. 91) – it hardly leads to stability in a bargaining relationship or to economy in the utilization of resources to contemplate bargaining for just five employees. Payless further submits that there is no good reason to adhere to a presumption in favor of a single location unit where, as here, there is evidence of bargaining history on a multi-facility basis, and that, accordingly, this is an excellent case for the Board to reconsider that presumption.

III. THE ACTING REGIONAL DIRECTOR’S DECISION ON CERTAIN SUBSTANTIAL FACTUAL ISSUES IS CLEARLY ERRONEOUS AND PREJUDICIALLY AFFECTS PAYLESS’ RIGHTS.

A. The Acting Regional Director’s Finding That Control of Daily Working Conditions of the Rolla Store Associates is Separate and Autonomous From Other Stores is Clearly Erroneous Because it is Contrary to Uncontroverted Evidence.

The Acting Regional Director’s Decision makes erroneous factual conclusions regarding a critical issue in this case – the degree of local autonomy of the Rolla store. As stated by the Acting Regional Director:

“Based on the record evidence, the Store Leader appears to exert the most control over the Rolla store associates’ daily working conditions” (ARD Dec. p. 18).

“The record establishes that the control of the daily working conditions of the Rolla associates is separate from the other stores” (ARD Dec. p. 8); and

“...the control of the daily working conditions of the Rolla, Missouri store associates appears to be separate and autonomous from the other stores” (ARD Dec. p. 17).

Payless respectfully submits that based on the record in this case – and particularly uncontroverted testimony regarding the Rolla Store Leader’s lack of authority in actual practice – it is almost incomprehensible how the Acting Regional Director reached these conclusions. As discussed in greater detail below, there are numerous instances in which the Acting Regional Director made factual findings which are directly contrary to uncontroverted testimony regarding the authority of the Rolla Store Leader in actual practice.²

1. Lack of Store Leader’s authority regarding staffing levels.

The Acting Regional Director found that “Store Leaders decide, in partnership with District Leaders, the ratio of part-time to full-time associates in a given store” (ARD Dec. p. 11), and that “when a vacancy arises in the Rolla store, the Store Leader works with the District Leader to determine how to fill the vacancy, e.g., with one full-time or two part-time associates” (ARD Dec. p. 18). The record establishes, however, that Store Leaders do not have **any** authority to determine staffing levels (Tr. 86, 113, 124; Er. Ex. 14). This is because the uncontroverted evidence is that “manpower levels” are determined by the budgeting process which is dictated from the corporate office, and that only the District Leader for the Rolla store has the authority to vary those determinations:

Q: Would a store manager have the authority to make the determinations as to how many part-time, full-time sales associates he or she was hiring?

A: The number hired goes back to the payroll and the budgeting and the allotted hours. So you can have multiple part-time associates, but they would not get very many hours. So that mix and that balance is determined by the District Leader.

(Tr. 86)

* * *

Q. Can you move (payroll) dollars around among the stores in your District?

A. That’s what we do, yes.

² In other instances and as discussed in Part II B below, the Acting Regional Director completely ignored uncontroverted evidence regarding the Rolla Store Leader’s lack of authority which further contributed to his erroneous factual conclusions.

Q. Ok. Do the store managers have any authority to vary their budgets with respect to payroll?

A. No they don't. They don't even know I do that.

* * *

Q. Who was responsible for determining the manpower levels in Districts A3E and A3F?

A. Manpower or –

Q. How many people will be hired?

A. We get a recommendation. I (District Leader) can hire more or less depending on the dollars. I still have to live up to the dollars of the payroll. So the manpower can change depending on the dollar. (parenthetical material added)
...

Q. Does the Store Leader have any authority to vary those dictates (manpower levels) from corporate?

A. No.

Q. But the District Leader does?

A. Absolutely.

(parenthetical material added) (Tr. 124)

Thus, contrary to the findings of the Acting Regional Director, it is the District Leader, not the Store Leader, who has the authority to determine staffing levels for the Rolla store, as well as the other stores in the two Districts supervised by the Rolla District Leader.³

2. Lack of Store Leader's authority regarding hiring process.

Although the Acting Regional Director at one point acknowledged that District Leaders interview prospective full-time associates and that "all associate job offers must be approved by the District Leader" (ARD Dec. p. 11), he went on to find that with respect to full-time and part-time associates, the Store Leader "screens, interviews, and recommends the hire of prospective

³ The Acting Regional Director also found that, "As far as filling job vacancies, if an associate quits, the Store Leader will notify the District Leader and recommend how to fill the vacancy, e.g., whether to hire a full-time associate or two part-time associates" (ARD Dec. p. 11). A review of the record in this case fails to reveal any evidence supporting this finding. To the contrary, as discussed above, staffing levels are driven by the budgeting process and only the District Leader, and not the Store Leader, has the authority to make decisions on what type of associate (*i.e.*, full-time or part-time) and how many associates will be hired (Tr. 86, 124).

associates” (ARD Dec. p. 18). There is absolutely no record evidence indicating that the Rolla Store Leader interviews and recommends full-time applicants for hiring, and to the contrary, there was uncontroverted testimony that the District Leader directly interviews all full-time applicants without receiving any recommendation from the Store Leader (Tr. 125). Further, while Store Leaders may interview part-time associate applicants, the Acting Regional Director completely ignored the uncontroverted evidence that the Rolla Store Leader and the other Store Leaders in the two Districts supervised by the District Leader for the Rolla store do not have **any** authority to hire either a full-time or part-time applicant without clearing it through the District Leader:

A. ...I am required to approve anybody hired in the District.

Q. Regardless of whether it’s a part-time or full-time position?

A. Yes.

Q. Would a Store Leader have any authority to hire someone without clearing it through you?

A. No. I’m not saying that it has not been done, but no they don’t and it could lead to disciplinary action.

(Tr. 125)

3. Lack of Store Leader’s authority regarding scheduling/adjustment of hours.

While the Acting Regional Director recognized that scheduling largely is determined by a “corporate-wide computer program,” he found that based on the Associate Handbook, “Only a Store Leader can authorize deviation from a work schedule” (ARD Dec. p. 9). Further, on p. 18 of his Decision, the Acting Regional Director relied on the fact that the Store Leader “sets schedules” as one of the reasons for his conclusion that the Store Leader “appears to exert the most control over the Rolla store associates’ daily working conditions” (ARD Dec. p. 18).

These findings not only completely ignore that the Rolla Store Leader has virtually no discretion when it comes to scheduling because this is all controlled through a corporate computer program which sets schedules, with the Store Leader simply inputting basic data into

that system (Tr. 133); but also the uncontroverted evidence that **in practice** it is the District Leader, **not** the Store Leader, who has the authority to adjust the hours of associates:

Q. Who has the authority to determine or adjust the hours of employment for associates?

A. Well, I do.

Q. That's your authority?

A. It doesn't happen much, but yeah, I do.

(Tr. 128)

While the uncontroverted evidence is that the adjustment of hours is infrequent, to the extent it happens, the District Leader oversees this, not the Store Leader.

4. Lack of Store Leader's authority regarding orientation/training.

The Acting Regional Director erroneously found that, "With the exception of a training session conducted by the District Leader at the Rolla store, the Store Leader conducts orientation" (ARD Dec. p. 18). There is no record evidence supporting this finding and, to the contrary, it is the District Leader who conducts Payless' orientation program known as "Store Associate University": "...Actually the district leader starts off or kicks off ... They have what's called a Store Associate University, an SAU, which is district leader-led meetings which is kind of the welcome to my team collective" (Tr. 90-91). As further explained by the District Leader for the Rolla store:

A. I do the SAU, which we talked about earlier, which is the Store Associate University. I am required within the first six weeks of an associate's employment to go in and do a SAU. And what that entails is that I go in there and really step them through what service means and my expectations.

Q. And you do that with every new sales associate?

A. Uh-huh. That is the expectation from my boss, yes.

(Tr. 123)

Further, the uncontroverted evidence is that the Store Leaders exercise virtually no independent judgment regarding associates' training. The training program is completely driven by corporate specified training booklets which the Store Leader simply directs associates to (Er.

Ex. 13, p. 3), or corporate training forms which the Store Leader fills out, but which the District Leader reviews and oversees (Tr. 123; Er. Ex. 11, 14). Indeed, the uncontroverted evidence was that the District Leader for the Rolla store “oversees training” (Tr. 123) and “is ultimately responsible for the training and development of all personnel in the District” (Er. Ex. 14).

5. **Lack of Store Leader’s authority regarding adjustment of grievances.**

In support of his finding that the Rolla Store Leader has the authority to adjust associate grievances, the Acting Regional Director relies solely on the Associate Handbook, but the only provision upon which such authority conceivably could be based is one sentence stating that, “In most cases, Managers can answer questions quickly and help solve Associate concerns” (Er. Ex. 13, p. 12). While it seems axiomatic that a Store Leader would have the ability to talk to employees about their concerns and try to answer their questions, this hardly establishes authority to adjust grievances. Further, the Acting Regional Director disregarded the Handbook provisions and uncontroverted testimony to the effect that Payless has an open door policy in which associates can and do go directly to the District Leader to resolve issues (Tr. 126; Er. Ex. 13). In fact, the uncontroverted evidence was that with respect to “resolving grievances,” the District Leader is involved from the start:

Q. Are you involved in that process for resolving grievances?

A. Hopefully I am the first one that gets involved.

Q. If you could just describe what that process is and what your involvement in it is?

A. The manager calls me or – I have an open door policy and they call me, and this is my issue. Most of them are just pretty basic issues that I can determine what has to be done. And if it’s according to corporate procedures, then we can resolve it right then and there.

If it gets to be more of an issue, I take it to my HR Manager, who we talk about it and resolve it more formally, and it is resolved then. And then the last one is they call an alert Line and that goes right to Chris, the HR Manager, and then I get involved, and again that’s even more formal.

(Tr. 126)

Thus, the Regional Director found that the Rolla Store Leader has authority to adjust grievances despite the existence of uncontroverted testimony that in practice the Rolla Store Leader has an extremely limited role when it comes to resolving employee grievances, and that, instead, this responsibility lies with the District Leader and corporate HR.

6. Lack of Store Leader's authority regarding discipline and discharge.

The Acting Regional Director concluded that the Rolla Store Leader has the authority to discipline and discharge employees despite direct testimony that with respect to the Rolla store and the other stores supervised by the District Leader for the Rolla store, the Store Leader does **not** have any independent authority regarding those matters:

Q. ... Discipline and discharge, as district leader to you get involved in disciplining and discharging sales associates?

A. Every one.

Q. Does the Store Leader have any authority to discipline sales associates?

A. Not without my notification first.

Q. Do you have to approve discipline?

A. Yes.

Q. What about terminations, does the Store Leader have any authority to terminate sales associates?

A. No.

Q. So if there is to be a termination of a sales associate, who has the authority to make that determination?

A. I do in code of conduct problems. Generally even with code of conduct, I will contact my HR manager to get final approval.

(Tr. 126, 127)

The Acting Regional Director supported his finding regarding the authority to discipline and discharge based on an excerpt from the Associate Handbook despite uncontroverted evidence that with respect to the Rolla store the District Leader has the sole authority to terminate associates, and that the Store Leader does not have any authority to do so (Tr. 127). Further,

with respect to all other instances of discipline, the District Leader engages in an **independent review** of any discipline (Q: Do you do an independent review of the discipline? A: Oh yeah, I have too.) (Tr. 131). Indeed, the District Leader could not have been clearer that the Rolla Store Leader (and the other stores in his District) do not have the authority to give any discipline without his review and approval:

THE WITNESS: They come to me with the issue. Then I have to do the review of it before they can do the discipline (Tr. 132).

7. Lack of Store Leader’s authority regarding performance review/pay increases.

The Acting Regional Director concluded that “the Store Leader evaluates associates” (ARD Dec. p. 18), which is in conflict with uncontroverted evidence that it actually is the District Leader’s responsibility to conduct performance reviews. While the Store Leader fills out an electronic form developed by the corporate office relating to employee performance, the Acting Regional Director’s finding ignores the uncontroverted evidence that the Store Leader “has to call me (*i.e.*, the District Leader) while he is doing it or before he is doing it” (parenthetical material added) (Tr. 142). The Acting Regional Director’s finding also is contrary to uncontroverted evidence that the District Leader reviews and approves all performance reviews and that the “District Leader has the responsibility to complete and present performance appraisals according to Company procedures” (Tr. 128; Er. Ex. 14). Likewise, the Acting Regional Director completely ignored uncontroverted evidence that the Rolla Store Leader has no authority to grant wage increases, as this must be done by the District Leader in accordance with a matrix established by the corporate office (Tr. 128-129).

8. Lack of Store Leader’s authority regarding promotions.

The Acting Regional Director also got it wrong with respect to promotions, concluding that, “the promotion of associates in the District (is) based upon recommendations by Store Leaders” (parenthetical material added) (ARD Dec. p. 8); and that, “the Store Leader ... recommends their promotion” (ARD Dec. p. 18). The problem with these conclusions is that

there is absolutely no evidence in record indicating that a Store Leader has the authority to recommend promotions. In this regard, see the Associate Handbook (Er. Ex. 13, p. 17), which contains no indication that a store manager recommends promotions, as well as the uncontroverted testimony of the District Leader that only he, and not a Store Leader, has the authority to promote store associates (Tr. 129).

With all due respect, when the Acting Regional Director's factual findings discussed above are reviewed within the context of the evidence in this case regarding **the management of the Rolla store in actual practice**, it would appear that the Acting Regional Director manufactured factual findings designed to support conclusions – that the Store Leader exerts “the most” and “separate” control over the working conditions of the Rolla store associates – which simply are not supported by the record. All of the aforementioned erroneous factual findings are prejudicial to Payless because they all relate to the central issue in this case – the degree of local management autonomy at the Rolla store. As will be discussed in greater detail in Part IV below, particularly where, as here, there is a high degree of centralization of operational and labor relations policies and virtual uniformity in working conditions and terms of employment among employees at the Rolla store and other store associates, established Board precedent holds that a single store unit is inappropriate for bargaining where there also is evidence of lack of local managerial autonomy. Since the aforementioned erroneous factual findings were determinative of whether a single store unit was appropriate, the only issue before the Board in this case, they unquestionably were prejudicial to Payless.

B. The Acting Regional Director's Finding That Control of Daily Working Conditions of the Rolla Store Associates is Separate and Autonomous From Other Stores is Clearly Erroneous Because it Ignores Record Evidence.

In concluding that the control of daily working conditions of the Rolla associates “appears to be separate and autonomous from the other stores” and that the Store Leader “appears to exert the most control over the Rolla store associates’ daily working conditions”

(ARD Dec. p. 17, 18), not only did the Acting Regional Director make findings directly contrary to evidence in the record, but he also erroneously ignored evidence in the record which was relevant to those conclusions. While the Acting Regional Director alluded to the highly centralized nature of Payless' business and labor relations policies (ARD Dec. pp. 12-13, 16), he completely ignored a number of uncontroverted facts relating to those policies, which, contrary to the Acting Regional Director's conclusions, all tend to demonstrate the Store Leader's lack of control over the daily working conditions of the Rolla store associates and that store's resulting lack of autonomy. The following facts were completely ignored in the Acting Regional Director's analysis of local management control and store autonomy.

1. **The Store Leader's lack of control regarding banking/expense budgeting.**

The ability to make expenditures at the local store level clearly impacts everyone working at that particular store, and the uncontradicted evidence, ignored by the Acting Regional Director, is that the Rolla Store Leader has absolutely no authority to vary expense budgets, make banking arrangements, make expenditures for store repairs, or make expenditures from petty cash (Tr. 55, 110-111, 112, 118-119; Er. Ex. 14). To the contrary, while expense budgets are tightly controlled by the corporate office, to the extent there is any authority to adjust budgets or make expenditures on behalf of the store, that authority rests exclusively with the District Leader (Tr. 112; Er. Ex. 14). Indeed, the lack of autonomy of the individual store is demonstrated by the fact that the District Leader has the authority to adjust budgets for individual stores and move expense dollars from one store to another as long as the District Leader stays within the budget which has been set for his District. (*Id.*)

2. **The Store Leader's lack of control regarding payroll.**

Another fact demonstrating the lack of autonomy of the Rolla store ignored by the Acting Regional Director is that payroll budgets (*i.e.*, the overall wages paid to associates at a given store) are determined by the corporate finance department, with the only authority to adjust

payroll for the stores in his District resting with the District Leader (Tr. 56-57, 112-113). A District Leader has the authority to adjust payroll for his District by moving payroll dollars from store to store, whereas Store Leaders do not have **any** authority to vary their store payroll budgets and generally are not even aware that the District Leader moves payroll dollars from store to store (Tr. 57, 113). A further indication of a store's lack of autonomy with respect to payroll matters is demonstrated by the fact, again ignored by the Acting Regional Director, that payroll information for store associates is transmitted electronically directly to the corporate payroll department which is responsible for preparing payroll and transmitting pay to store associates via direct deposit (Tr. 58, 113-114).

3. The Store Leader's lack of control regarding product selection/pricing.

Also ignored by the Acting Regional Director in concluding that the Rolla store manager exercises the "most control" over the employees and that this store is autonomous is uncontradicted evidence that the Rolla Store Leader has absolutely no control over the mix or pricing of the merchandise in the store (Tr. 58, 116). Further, a Store Leader does not have any authority to put product on sale or change the established price of merchandise, even if the merchandise is damaged (Tr. 58, 115, 141). Thus, Store Leaders do not have any control over one of the main components of the store associates working conditions – the merchandise they are working with on a daily basis – as this is controlled by the corporate office with any authority to vary those decisions resting exclusively with the District Leader (Tr. 114-115, 141).

4. The Store Leader's lack of control regarding store layout and merchandising.

The Rolla Store Leader has no authority to vary the layout of the Rolla store or Payless' in-store marketing/merchandising program which specifies various flyers, posters and displays which the store associates utilize in their sales activities (Tr. 53, 59, 84-85, 115-116, 122). Thus, the working environment of the Rolla store associates in regard to their physical surroundings and merchandising activities are neither controlled by the Rolla store manager or

“separate and autonomous” from other Payless stores, another fact ignored by the Acting Regional Director.

5. The Store Leader’s lack of control regarding loss prevention.

Loss prevention measures relating to the control of inventory and protection of cash are extremely important aspects of any retail operation and obviously impact store associates’ day-to-day working conditions, but the Acting Regional Director also completely ignored these factors in his Decision. The uncontroverted evidence is that the Rolla Store Leader does not have the authority to vary inventory control and cash protection policies and procedures as they are uniform for all Payless store associates (Tr. 61, 119-120; Er. Ex. 15). Thus, the control of working conditions relating to loss prevention is not “separate and autonomous” from the other stores.

6. The Store Leader’s lack of control regarding tracking of store/associate performance.

Payless’ corporate office has established a variety of factors, known as Key Performance Indicators, designed to measure the performance of Payless’ stores which, in turn, directly impact the job requirements for the Rolla and other Payless store associates (Tr. 62, 120). Once again, the Rolla Store Leader has no authority to vary any of these performance measurements, as they are entirely controlled by the corporate office, and to the limited extent that any changes can be “negotiated,” that authority rests exclusively with the District Leader (Tr. 63, 120-121). Thus, this is another example of daily working conditions which are not controlled by the Store Leader and which are not separate and autonomous from the other Payless stores which was ignored by the Acting Regional Director.

7. The Store Leader’s lack of control regarding qualifications and job duties.

Likewise, the Rolla Store Leader has no authority to determine or vary from the qualifications, skills, and other job duties required of sales associates at the Rolla store, as those aspects of the Rolla store employees’ working conditions are identical to those which

apply to any other store associate employed in the United States (Tr. 85-86, 87-88; Er. Ex. 10). While the Acting Regional Director acknowledged this uniformity in qualifications and job duties, he completely ignored this factor in his analysis of managerial control and autonomy in regard to the Rolla store.

8. The Store Leader's lack of control regarding dress code.

Another example of a working condition for the Rolla store associates which is not controlled by the Rolla Store Leader and thus not separate and autonomous from other stores is the dress code applicable to all store associates. The dress code is dictated by the corporate office and cannot be varied by a Store Leader (Tr. 93; Er. Ex. 12). Once again, the Acting Regional Director ignored this fact in making his analysis of managerial control and autonomy in regard to the Rolla store.

9. The Store Leader's lack of control regarding benefits and wages.

Another important aspect of store associates' working conditions, of course, are the wages and benefits they receive. Once again, the Acting Regional Director ignored the fact that the Rolla Store Leader does not have any authority to control these aspects of the Rolla store associates' employment since wages and benefits are determined by the corporate office (Tr. 97, 99-100, 101-102). The benefits for store associates are uniform throughout the United States (Tr. 97, 101-102), and although wage rates for store associates are determined on a geographic basis, the wage rates for the store associates at the Rolla store are identical to the wage rates for all other non-union associates in the Rolla store District (A3E) and the two adjacent Districts (A3C and A3F) (Tr. 99-100).⁴

10. The Store Leader's lack of control regarding personnel records.

Another aspect of the Rolla store associates' working conditions ignored by the Acting Regional Director in his analysis of the control exercised by the Rolla Store Leader is the

⁴ The only exception to this is with respect to sales associates employed in stores in Illinois where approximately a \$1.00 per hour higher minimum wage rate is mandated (Tr. 100).

maintenance of their personnel records. The District Store Leader has the responsibility of maintaining personnel records for store associates; and most of each employee's personnel file, such as I-9s, W-2s, and counseling forms, are kept electronically in the corporate office (Tr. 78-79).

The Acting Regional Director's ignoring of the aforementioned factors in his analysis of the control over working conditions exercised by the Rolla store manager was highly prejudicial to Payless, as each of these factors evidences the Rolla store manager's lack of control over daily working conditions and that the control of these working conditions at the Rolla store is not separate and autonomous from Payless' other stores. When the cumulative impact of these factors is considered, they clearly indicate that, contrary to the Acting Regional Director's finding, the Rolla Store Leader does **not** "exert the most control over the Rolla store associates' daily working conditions" (ARD Dec. p. 18). To the contrary, when the ignored "control" factors are considered together with the erroneous factual findings made by the Acting Regional Director as discussed in Part III A above, it is evident that the Rolla Store Leader exercises relatively little control over the Rolla store associates' working conditions, and, thus, the control of the Rolla store associates' working conditions can hardly be said to be "separate and autonomous."

IV. THE ACTING REGIONAL DIRECTOR'S DECISION RAISES A SUBSTANTIAL QUESTION OF LAW DUE TO ITS DEPARTURE FROM OFFICIALLY REPORTED BOARD PRECEDENT.

A. The Acting Regional Director's Decision is not Supported by any Board Precedent.

A review of the Acting Regional Director's decision in this case reveals that he has failed to cite any Board precedent supporting his conclusions that the Rolla Store Leader exerts "the most" control over the Rolla store associates' daily working conditions and that those working conditions are "separate and autonomous" from Payless' other stores. The Acting Regional Director's initial legal discussion on pp. 3-5 of his Decision only cites Board precedent regarding

general propositions of law applicable to this case, such as the rule that the unit sought be an appropriate unit and not the only or most appropriate unit (ARD Dec. pp. 1-2); the rule presuming that a single facility unit is appropriate (ARD Dec. p. 4); the rules relating to rebutting that presumption and the factors considered by the Board in that regard (ARD Dec. pp. 4-5); recognition by the Board that the degree of integration of operations and centralized administration are not controlling in deciding the appropriateness of a single facility unit in the retail industry (ARD Dec. pp. 5, 16); and that the most significant consideration in these types of cases is whether the control of day-to-day working conditions is separate and autonomous from other facilities (ARD Dec. p. 5).

Later in his Decision the Acting Regional Director cited Board precedent in acknowledging that the bargaining history between Payless and the Union in which a bargaining unit of 24 stores has been recognized for over 25 years is a relevant factor to be considered in a multi-location unit determination (ARD Dec. p. 17), and that the geographic distance of 60 miles between the Rolla store and the closest store weighs against the finding of a multi-facility unit (ARD Dec. p. 19).⁵ The only other references to Board precedent in the Acting Regional Director's Decision are his attempts to distinguish three of the approximately 22 Board cases cited by the Employer in its Brief to the Acting Regional Director, all of which cases rejected a single facility unit (ARD Dec. p. 20).

Thus, nowhere in the Acting Regional Director's Decision is there a citation to any Board precedent supporting his conclusion that a single facility unit is appropriate under the facts of this case. With all due respect, Payless submits that this is understandable because, as will be discussed in greater detail in Part IV B below, Board precedent uniformly supports the rejection of a single facility unit under facts similar to those in evidence here. At the very least,

⁵ See Part IV D below for a discussion of the Acting Regional Director's misapplication of Board precedent regarding bargaining history and Part IV C below regarding the Acting Regional Director's citations to two Board cases relating to geographic proximity and employee interchange, neither of which supported his giving weight to those factors under the circumstances present here.

however, the Acting Regional Director's inability to cite any Board precedent in support of his conclusion that the Rolla store is separate and autonomous should raise serious doubt with the Board as to the validity of that conclusion.

B. The Acting Regional Director's Conclusion That the Management of the Rolla Store is Separate and Autonomous from Other Payless Stores Constitutes a Departure from Board Precedent.

Payless respectfully submits that the Acting Regional Director appeared to go out of his way to stretch the authority of the Rolla Store Leader so as to rule that the management of the Rolla store was autonomous from Payless' other stores. The Acting Regional Director's conclusion regarding the autonomy of the Rolla store not only was contrary to record evidence, but also contrary to a long line of Board cases involving circumstances remarkably similar to those present here, and which, in many instances, involved situations where the store manager had **more authority** than the Rolla Store Leader. *Trane*, 339 NLRB 866 (2003) (reversal of Regional Director's decision finding single unit based primarily on the lack of local autonomy, identical skills, functions and working conditions, and centralization of labor relations); *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002) (reversal of Regional Director's finding of a single store unit where branch managers have little authority over terms and conditions of employment, and skills, job functions, wages and benefits are identical from store-to-store); *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000) (reversal of Regional Director's finding of single store unit based on centralized control over labor relations policies, lack of local autonomy, common supervision, and identical skills, duties and other terms and conditions of employment); *R&D Trucking*, 327 NLRB 531 (1999) (reversal of Regional Director's finding of a single facility unit based on common supervision and lack of local autonomy, centralized control over operations and labor relations, and similarities in the terms and conditions of employment); *Globe Furniture Rentals*, 298 NLRB 288 (1990) (reversal of Regional Director and finding that a multi-facility unit of five separate warehouses appropriate because although store managers possess authority over routine day-to-day operations they lack autonomy due to the centralized

nature of operational and labor relations policies); *V.I.M. Jeans*, 271 NLRB 1408 (1984) (reversing the Regional Director's conclusion that lack of employee interchange required a single-site unit and holding that the multi-facility unit was appropriate because the "facts in the instant case establish that the Employer's nine stores similarly experience a high degree of centralization and that the store manager's authority is similarly tightly circumscribed"); *Petrie Stores Corp.*, 266 NLRB 75 (1983) (reversal of Regional Director's finding of a single store unit stating, "Not only does the lack of individual store manager's autonomy compel a finding that single-store units are inappropriate, so does the high degree of centralization of administration and control"); *White Castle*, 264 NLRB 267 (1982) (in ruling that the single-location units were inappropriate, the Board particularly noted ... the "evidence [of] lack of autonomy of the [restaurant] supervisors over the day-to-day labor relations at the individual restaurants"); *Orkin Exterminating Co.*, 258 NLRB 773 (1981) (holding that the multi-facility unit was appropriate primarily since "the daily operations and labor relations in the...district is highly centralized" even though there was significant geographic separation because "when other important factors militate against a single-branch unit, we do not give geography controlling significance"); *Super X Drugs of Illinois, Inc.*, 233 NLRB 1114 (1997) (reversal of Regional Director's finding that a single unit was appropriate and that an individual store manager has substantial autonomy even though store managers did have some authority over labor relations because his authority was circumscribed by corporate policy and oversight by the district manager); *Kirlin's, Inc.*, 277 NLRB 1220 (1977) (reversal of Regional Director's finding a single store unit was appropriate even though the store manager had the authority to recommend a number of personnel actions where they are required to "strictly adhere to the established policies and guidelines of the employer" and the store managers actions are subject to review by a district supervisor); *Petrie Stores Corporation*, 212 NLRB 130 (1974) (holding that the multi-facility unit was appropriate because "[t]here is virtually no individual store autonomy since the Employer's district supervisor supervises, directs, and controls the daily operations of all three stores"); *Gray Drug Stores*, 197

NLRB 924 (1972) (holding that a multi-facility unit of retail drug store locations appropriate because of “the lack of autonomy at the single-store level....” even though the store manager could recommend certain personnel actions); *Twenty-First Century Restaurant*, 192 NLRB 881 (1971) (holding that a multi-facility unit of 22 McDonalds restaurants in two different states was appropriate because “any meaningful decision governing labor relations matters emanates from established corporatewide policy, as implemented by the general managers and field supervisors,” even though store managers had authority to hire and recommend disciplinary action); *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549 (1965) (holding that the combination of centralized operations, lack of individual autonomy and significant bargaining history support a 20 retail store multi-facility unit).

As discussed in the authorities set forth below, the Board has repeatedly recognized that even though the individual store manager exercises some authority over employees with respect to such matters as hiring, scheduling, adjustment of grievances, discipline, and even discharge, this is not enough to establish sufficient local control and autonomy within the context of a centralized operation in which another level of supervision has final authority over these matters. Indeed, contrary to the Acting Regional Director’s Decision in this case, these Board decisions indicate that even where the local manager can recommend that certain personnel actions be taken, this is insufficient to establish local control and authority where those recommendations are independently reviewed at a higher supervisory level.

In *Twenty-First Century Restaurant*, the Board established the principle that even though a local manager may possess certain personnel responsibilities, this does not establish a sufficient degree of local control and autonomy to make a single unit appropriate where the local manager’s authority is circumscribed by the need for strict adherence to centralized corporate policies and a higher level of management is ultimately responsible for the matters over which the local manager has some authority.

The location manager is authorized to hire new employees at the state minimum wage rate (subject to veto by a supervisor), to discharge employees within the 90-day probationary period, recommend discharges after the probationary period, recommend wage increases, and discipline employees; however disciplinary action involving prolonged suspension must be approved by the field supervisor. ... While the location manager is responsible for training new employees, the training program is prescribed by corporate headquarters and is uniform throughout the chain.

* * *

In our opinion it is significant that all of the franchised food outlets of the Employer conduct business under standardized policies and procedures subject to close centralized control. It is clear that the location manager is vested only with minimal discretion with respect to labor relations matters and the method of operations. ... In sum, any meaningful decision governing labor relations matters emanates from established corporatewide policy, as implemented by the general managers and field supervisors.

Twenty-First Century Restaurant at 881-882.

In *Petrie Stores, supra*, the local “manager” was vested with some authority over personnel matters, but the Board nevertheless found an insufficient level of local control and autonomy where ultimate authority for personnel matters was retained by a “supervisor” (the next level of management over a manager):

... A supervisor can terminate an employee for any reason; a manager can only make a recommendation that an employee be terminated, except for instances involving theft or assault in which the manager may discipline the offending employee. A supervisor may alter or override a manager’s decision or recommendation regarding reprimands and merit salary increases.

* * *

... A store manager has little authority to purchase merchandise, cannot open a company bank account, and cannot mark down merchandise or transfer merchandise without prior authority. From uncontradicted testimony, it is clear that a store manager’s role is to insure that the procedures and policies contained in the Employer’s manual are followed.

Petrie Stores at 75-76.

In *Budget Rent A Car Systems, Inc.*, the Board found that there was insufficient control on a local level and that a single store unit was inappropriate, even though the local “branch managers” had a number of personnel responsibilities where they did not have the authority to terminate employees or give serious discipline:

Branch managers prepare evaluations, which are then used by the district manager to determine merit wage increases. They also set employee schedules, approve time off, and handle day-to-day operations, such as enforcing work rules or dealing with customer service issues.

Budget Rent A Car at 884.

In *Globe Furniture Rentals, supra*, the Board recognized that a local manager may retain some responsibility for personnel matters without establishing the requisite local control and autonomy to make a single store unit appropriate:

The record shows that the local store managers possess authority over routine day-to-day operations of the facilities they manage, but that they lack substantial autonomy regarding labor relations and personnel policies and procedures. All policies concerning wages, hours, and terms and conditions of employment and other personnel rules and policies are formulated by Weiss and the executive board and are uniform throughout the five stores, with Weiss possessing final authority on almost all personnel actions. Although store managers can recommend certain action be taken, i.e., discharge, promotion, or discipline, such action is not implemented without Weiss' own investigation into the matter and final approval.

Globe Furniture Rentals at 289.

To the same effect are the Board's decisions in *White Castle, supra*, and *Gray Drug Stores, supra*, where the Board found a lack of local autonomy despite the authority of the local store manager as set forth in the following excerpts:

With respect to hiring and discipline, restaurant supervisors are permitted to interview and hire new employees subject to the approval of the district supervisor and if within the staffing levels prescribed by the area manager. However, their authority to discipline employees for infractions of the Employer's rules is quite limited. Although the castle supervisors have authority to discharge an employee for serious offenses such as stealing or for a fourth specified infraction under the Employer's established progressive discipline system, the district supervisors or the assistant area manager is often asked by either the employee or the supervisor involved to investigate the incident and make a final decision.

White Castle at 268.

* * *

...The store manager has the authority to temporarily suspend or discipline an employee, but may not discharge him, and he is consulted on evaluation and promotion of employees. He is responsible for achieving a profit in the store, but has no control over his budgetary needs.

The store manager does not, except in certain circumstances, have authority to hire persons at the store level, although he may interview employees and forward his recommendation to the district manager or the regional manager....

Gray Drug Stores at 925.

The Board's position regarding the lack of autonomy of local store management despite a store manager's authority to make recommendations relating to personnel matters is further demonstrated by the *Super X Drugs* and *Kirlin's, Inc.* cases in which the Board stated:

In finding that the presumptive appropriateness of a single-store unit had not been rebutted here, the Regional Director relied primarily on his conclusions that the individual store manager has substantial autonomy in the operation of the stores, which in his opinion was evidenced by the infrequency of District Manager Mason's visits to the store. We disagree.

The Employer's operations are highly centralized and all of the stores are similarly laid out, displaying and selling the same merchandise at the same price. The district manager determines the mode of advertising and the prices.

... The store managers determine which employee will work the hours as budgeted and they also authorize employees to work the 8-16 hours of overtime allotted by the district manager.

... The district manager and store managers decide which of several applicants to interview and both may conduct reference checks.... The store manager alone may interview applicants for unskilled positions, but the final decision as to whether to hire rests with the district manager.² ...

² Although employees have been hired without being personally interviewed by the district manager, nonetheless he makes the final decision on all hires.

Store managers may reprimand or terminate an employee only after having discussed the issue with the district manager and receiving his authorization to do so. ...

* * *

District Manager mason visits every store in the district on average of once every 2 to 3 weeks.

* * *

In view of the foregoing, we find that the autonomy of the store manager with respect to personnel matters is severely circumscribed by the authority retained by the district manager. While the latter's visits to the store may be characterized as infrequent, it is clear that the *modus operandi* of store operations provides for ready telephonic communication between store managers and the district manager with respect to any problems arising at the store level.

Super X Drugs at 1114-1115.

* * *

Although the individual store managers may interview and recommend job applicants and may recommend the firing of employees, the district supervisor reviews the employment applications before hiring takes place and shares final authority to fire employees with the home office. Store managers have little, if any, authority to purchase merchandise. ... With regard to the scheduling of regular hours, the Employer admitted that scheduling is performed in the Quincy home office and that "the only thing that [the store manager] has to do is put a name next to a line Finally, it is clear that the store managers are required to strictly adhere to the

established policies and guidelines of the Employer as set forth in the operations manual. In view of these strict limitations of the individual store manager's authority, we find a lack of autonomy at the single-store level. See, e.g., *Petrie Stores Corporation*, 212 NLRB 130 (1974); *Gray Drug Stores, Inc.*, 197 NLRB 924 (1972).

Kirlin's, Inc. at 1221

Based on the aforementioned Board precedent, Payless submits that even if it is assumed that a Store Leader coaches associates regarding proper service techniques, provides general direction to associates regarding their duties, informally discusses job performance and goals with associates, works with the District Leader to determine how to fill a vacancy, screens, interviews, and recommends the hiring of associates, evaluates associates and recommends promotion, sets schedules and authorizes time off, conducts associate meetings and determines breaks (see ARD Dec. p. 18), this type of authority is not enough to establish a sufficient degree of management control and local autonomy to establish the appropriateness of the Rolla store unit given the other circumstances present in this case. In short, the Acting Regional Director's Decision is contrary to established Board precedent because it erroneously concludes that there is sufficient local control and autonomy to establish the appropriateness of a single store unit based on relatively minor instances of local managerial authority. Contrary to the Acting Regional Director's Decision, Board precedent has long recognized that the type of managerial authority relied on by the Acting Regional Director is insufficient to establish the requisite level of local control and autonomy in the face of highly centralized and operational and labor relations policies and strict oversight by a higher level of management which all tend to "circumscribe" a store manager's authority.

The Acting Regional Director's attempt to distinguish three of the case cited by Payless (*i.e.*, *Petrie Stores Corp.*, *supra*; *Budget Rent A Car Systems, Inc.*; *supra*; and *Orkin Exterminating Co.*, *supra*) are misplaced. Contrary to the Acting Regional Director's assertion regarding the *Petrie Stores* case, the 10 petitioned-for single units were **not** "all located in the same shopping mall" (ARD Dec. p. 20). As recounted by the Board:

The Petitioner seeks elections in 10 separate units, one for each store located at Paramas, Wayne (2 stores), Rockway, Woodbridge (2 stores), Eatontown, Toms River, and Lawrenceville (2 stores), New Jersey.

Petrie Stores Corp., supra at 75.

Contrary to the Regional Director in the *Petrie* case, the Board found that only a unit of the employer's 34 stores within the state of New Jersey was appropriate. Also contrary to the Acting Regional Director's finding (and as will be discussed in greater detail in Part IV C below), the Board did not rely on "the geographic proximity of the stores" in finding that the New Jersey bargaining unit was appropriate as there was a distance of 125 miles between the furthest two stores in New Jersey. Further, as discussed above, the local store managers in *Petrie* exercised more authority than the Store Leaders here since they had the right to terminate employees for theft or assault and could make a recommendation that an employee be terminated for other reasons. The store managers in *Petrie* also had the right to recommend discipline and merit salary increases. (The Acting Regional Director's assertion that, unlike *Petrie*, the store leaders here have "final decision making authority relating to such matters as issuing discipline, resolving grievances and scheduling employees" is simply incorrect as it is contrary to uncontroverted record evidence.)

The Acting Regional Director's contention that in *Budget Rent A Car Systems, Inc., supra*, "The petitioned-for stores lacked separate local management" once again is simply incorrect. There **was** local management for the five stores in that case as there were three "branch managers" who were the direct supervisors of the employees at those stores, with a "District Manager" being the next level of supervision over the branch managers. While there was some evidence of employee contact among the five stores in *Budget Rent A Car Systems*, as discussed above, that case is significant to the case at hand because it finds a lack of local autonomy despite branch managers' authority to prepare evaluations, set employee schedules, approve time off, handle day-to-day operations, and enforce work rules.

The Acting Regional Director's attempt to distinguish the *Orkin Exterminating* case also is misplaced as although there was evidence of employee interchange there, the Board found lack of local store autonomy even though branch managers (*i.e.*, store management) had the authority to train employees, authorize overtime, assign new accounts to technicians, observe the performance of technicians, and interview and recommend applicants. As will be discussed in greater detail in IV C below, the *Orkin* case also is significant because of the lack of geographic proximity among the branches in the multi-location unit found to be appropriate by the Board (*i.e.*, up to 190 miles from the single petitioned-for branch and up to 230 miles from the district office).

The Acting Regional Director's attempt to distinguish *Orkin* on the basis of the amount of time the district managers in that case spent at the branches also is misplaced because he essentially was comparing apples to oranges in that *Orkin* discussed the percentage of their work time spent by branch managers in the branches (75%), where here, no evidence was presented relating to the percentage of time which the District Leader spends in the store he supervises. However, there was evidence that he visits each store every four to five weeks and that he conducts three telephone conferences a day with his stores (with two telephone conferences on Saturdays) (Tr. 121-122).⁶

C. The Acting Regional Director's Decision is Contrary to Established Board Precedent that Lack of Geographic Proximity and Employee Interchange are not Controlling When the Other Multi-Unit Factors are Present.

The Acting Regional Director's Decision ruling that the Rolla store is an appropriate unit relies to a large extent on that store's alleged lack of geographic proximity to other stores and there being "minimal interchange and contact between the Rolla store associates and the associates of other stores" (ARD Dec. p. 19). Indeed, the only authority cited by the Acting

⁶Payless respectfully submits that given the substantial daily phone contact with the stores in his District, this is further indication that the District Leader for the Rolla store exercises tight supervisory control over the Rolla Store Leader and the other Store Leaders in his District. In that regard, it should be noted that the district manager in *Super X Drugs, supra*, visited his stores every two to three weeks, with there being no evidence of how often he was in phone contact with his stores.

Regional Director in support of his single unit determination relate to these two factors. Under established Board precedent, however, the Acting Regional Director's reliance on these two factors is misplaced where, as here, there is a high degree of centralization of operational and labor relations policies, highly similar (here, identical) working conditions and terms of employment among employees, and a lack of local managerial autonomy. *Trane, supra*; *Waste Management of Washington, Inc., supra*; *Petrie Stores Corp., supra*; *Orkin Exterminating Co., Inc., supra*.

These cases indicate that even though there are significant distances between facilities (e.g., in *Orkin*, 55 miles to 190 miles between branches and 50 to 230 miles from the district office to the branches; *Petrie Stores Corp.*, 125 miles; in *Trane*, 108 miles; and in *Waste Management of Washington, Inc.*, 42 miles) and lack of evidence of employee interchange among facilities, these factors are not enough to support a single facility unit where there is a high degree of centralization, lack of store autonomy, and similarity in working conditions and terms of employment. As originally stated by the Board in *Orkin Exterminating Co., Inc., supra* at 774.

In light of the factors discussed above ... we conclude that a bargaining unit limited to a single branch office is inappropriate. The geographical distances among branch offices favor Petitioner's unit contention. **However, when other important factors militate against a single-branch unit, we do not give geography controlling significance.** (Emphasis added.)

To the same effect is *Waste Management of Washington, Inc., supra* at 309:

Based on the Regional Director's factual findings, we reverse the Regional Director and find that the single-facility presumption favoring a unit of Port-O-Let employees at the Woodinville location has been rebutted. We find that the functional integration of the Employer's operations; centralized control over personnel and labor relations policies; lack of local autonomy and common supervision of employees at both locations; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination between these two groups outweighs two factors which would favor the single-facility presumption – the 42-mile geographical distance between the two locations and the Employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange.

Likewise, in rejecting a Regional Director's finding that a single facility unit located 108 miles from another facility was appropriate, the Board in *Trane, supra* at 866 stated:

In finding that the Employer failed to present sufficient evidence to rebut the single-facility presumption, the Regional Director relied heavily on the geographic distance between the Fenton and Cape locations and the Employer's failure to present specific evidence of employee interchange. However, in the circumstances present here we find that the Regional Director placed too much emphasis on these two factors.... [E]ven if we were to consider the geographic distance significant and the Employer's evidence of interchange wanting ... we find that the centralized control over daily operations and labor relations; lack of local autonomy; common supervision; identical skills, duties, and other terms and conditions of employment ... outweigh the geographic distance and the lack of specificity as to the level of interchange.

The Acting Regional Director, however, completely ignored this Board precedent despite Payless' pointing out these cases in its Post Hearing Brief. Instead, the Acting Regional Director made the unsupported assertion that, "The fact that the closest store to the Rolla store is about 60 miles away also weighs against a finding that a multi-facility unit is appropriate" (ARD Dec. p. 19) without citing any Board precedent actually supporting such a ruling. The Acting Regional Director referenced one decision (*Globe Furniture Rentals, Inc., supra*) in which the Board noted that geographic proximity among a relatively small unit of just five stores where the furthest distance between any two stores was 25 miles was one factor favoring a multi-facility unit. However, not only does the *Globe Furniture* case fail to indicate that a geographic distance of 60 miles between two locations weighs against a multi-facility unit, but also in that case there were numerous other factors supporting a multi-facility unit, including centralized operation and administration of the five facilities in question.

In any event, the bottom line is that the Acting Regional Director departed from officially reported Board precedent when he ruled in favor of a single store unit in part based on lack of geographic proximity and employee interchange when there was clear evidence of highly centralized control of operational and labor relations policies, uniformity between the Rolla store associates and other Payless associates regarding working conditions and terms of employment, and lack of managerial autonomy at the Rolla store regarding the working

conditions and personnel policies applicable to the Rolla store associates. Indeed, Payless submits that the evidence here regarding the highly centralized nature of its policies, the lack of individual store autonomy, and the uniformity of store associates' working conditions and terms of employment are even more compelling than those in the *Orkin*, *Waste Management*, *Trane* and *Petrie Stores* cases. In short, the Acting Regional Director should have applied the aforementioned Board precedent that, "When other important factors militate against a single branch unit, we do not give geography controlling significance." *Orkin Exterminating Co., Inc.*, *supra*.

D. The Acting Regional Director also Departed from Board Precedent When He Failed to Give Any Weight to the Parties' Bargaining History.

The Acting Regional Director acknowledged that, "The bargaining history between the Petitioner and the Employer, where the Petitioner has for at least 25 years represented 24 of the Employer's 3,500 United States stores in a multi-facility unit covered by a single collective-bargaining agreement, is also a factor to be considered in unit determination" (ARD Dec. p. 17). However, he gave no weight to this factor apparently based on the fact that there was no evidence indicating that the existing bargaining unit was a certified unit. In failing to give any weight to the parties' bargaining history, the Acting Regional Director has once again departed from Board precedent. As noted by the Acting Regional Director, the Board has specifically recognized that where a retail chain has bargained on a multi-facility basis in other locations, this is an important factor weighing in favor of a multi-facility unit in other areas. *Spartan Department Stores*, 140 NLRB 608 (1963); also see *Meijer Supermarkets, Inc.*, 142 NLRB 513 (1963).

Payless submits that the bargaining history present here is even stronger and more relevant than that present in *Spartan Department Stores* because it involves the same Union who is petitioning for the Rolla store unit and involves stores which are in the same Payless District in which the Rolla store is located. Further, the bargaining unit is comprised of 24 stores

in two Districts, some of which are over 40 miles apart, and which at one time included as many as 36 stores. Indeed, during negotiations, the Union requested an even broader bargaining unit which would have included all 55 Payless stores throughout the state of Missouri.

Further, the Acting Regional Director was unable to cite any authority supporting his proffered reason for not considering the parties' bargaining history which was an absence of any concern of "disturbing a certification reflecting a prior Board determination of unit appropriateness" (ARD Dec. p. 17). What does that mean and what does it matter whether the current 24 store bargaining unit was certified or not? What counts is that there has been a long bargaining history for a multi-store unit with the same union petitioning for the Rolla store unit, which multi-location unit includes stores in the same District as the Rolla store as well as the adjacent District. When this history is coupled with the undisputed centralized nature of Payless' operational and labor relations policies and the uniformity in working conditions and terms of employment (factors also recognized in *Spartan Department Stores*), Payless respectfully submits that it is not only contrary to Board precedent, but also impractical and illogical to establish a bargaining unit of one store and five employees.

V. THERE ARE COMPELLING REASONS FOR RECONSIDERATION OF THE BOARD'S PRESUMPTION THAT A SINGLE STORE UNIT IN A RETAIL CHAIN IS APPROPRIATE.

The functional organization of chain-retail establishments, such as Payless' retail locations, are unique. Unlike large manufacturing facilities, construction worksites, or hospitals, retail establishments tend to operate through a highly centralized corporate office which handles many of the individual stores' administrative functions. Taking into account the unique functional realities of such businesses, the Board, in 1951, adopted a rule for determining the appropriateness of multi-location units for retail chain establishments. This rule was in effect for over a decade when, without justification or explanation, the Board held that a single retail store is presumed to be an appropriate unit. As discussed in more detail below, the Board should

return to its original rule for unit determinations in the unique industry of retail chain establishments.

In the Board's earliest retail chain unit determination the Board primarily relied upon the extent of organization by the union and largely excluded other factors. See, e.g., *Koppers Stores*, 73 NLRB 504 (1947). Accordingly, it was during this period that the Board adopted as a key indicator of unit appropriateness the organizational desires of employees. *Id.* at 1280 (“...we conclude that the desires of employees themselves should be determinative.”). This “extent of organization” doctrine was quickly eradicated upon the passage of §9(c)(5) of the Act, which prohibits the Board from using extent of organization as a controlling factor in unit determinations.⁷ After passage of §9(c)(5) the Board struggled to create a uniform test to determine unit appropriateness for retail establishments. Nearly four years later, in 1951, the Board formulated its retail industry standard:

Absent unusual circumstances, the appropriate collective bargaining unit in the retail ... trade should embrace all employees with the category sought to perform their work within the employer's administrative division or [geographic] area.

Safeway Stores, Inc., 96 NLRB 998, 1000 (1951). This presumption was based upon the significant impact on the interests of employees in the remaining retail stores if a single store is certified. As stated by the Board, “the contract terms with the union selected by the employees in the single-[chain store] will undoubtedly have an impact on...all the other employees in the chain.” *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551, 557 (1964). By presuming that multi-location units are appropriate, the uniformity of interests among all the retail employees can be protected.⁸

⁷ §9(c)(5) provides that: “in determining whether a unit is appropriate...the extent to which employees have organized shall not be controlling.” 29 U.S.C. §159(c)(5) (2012).

⁸ See, *Frisch's Big Boy Ill-Mar, Inc.*, *supra* at 557 (“In other words,... although the employees in the single-restaurant unit alone are entitled to vote as to whether the Petitioner should represent them, this vote will be an effective determinant in the labor relations pattern for other employees in the chain who have had no voice in deciding whether or not they wished to be represented by the Petitioner.”).

After *Safeway*, the Board's preference for multi-store units which encompassed either administrative districts or geographic areas was continuously reaffirmed for more than a decade. See, e.g., *Paxton Wholesale Grocery Co.*, 123 NLRB 316 (1959); *Food Fair Stores, Inc.*, 114 NLRB 521 (1955); *Daw Drug Co.*, 127 NLRB 1316 (1960). During this decade the Board found the most important indicator for upholding the presumptive appropriateness of a multi-location unit was the degree of local managerial independence versus the control of district or area managers over employee relations. See, e.g., *Food Fair Stores, Inc.*, 114 NLRB 521 (1955). The greater managerial control exercised by the district or area managers over several retail chains the greater likelihood the presumption of a multi-location unit would be upheld. *Id.* The Board also paid close attention to centralization of administrative functions such as advertising and recordkeeping. See, *Quality Food Markets, Inc.*, 126 NLRB 349 (1960) (advertising); *Paxton Wholesale Grocery Co.*, 123 NLRB 316 (1959) (recordkeeping). The greater the centralization, the more like the multi-location presumption was upheld. (*Id.*)

After applying the *Safeway* rule for more than a decade, the Board, in 1961, suddenly reversed its position on the presumptive appropriateness of chain-retail bargaining units. In *Sav-on Drugs, Inc.*, 138 NLRB 1032 (1962), the Board overturned nearly a dozen years of case law and stated:

Reviewing our experience under [*Safeway*] we believe that too frequently it is operated to impede the exercise by employees in chain-retail operations the rights to self organize guaranteed in §7 of the Act.*** We have decided to modify this policy and to apply to chain-retail operations the same unit policy which we apply to multi-plant enterprises in general.

Id. at 1034.

As justification for this change from past precedent the Board indicated that it had previously "over emphasized the administrating and grouping of merchandising outlets at the expense of [other] factors." (*Id.*) Of particular concern was that "it has ignored completely as a

factor the extent to which the claiming labor organization had sought to organize the employees of the retail chain.” *Id.*

The new Board rule was strongly criticized by dissenting Member Rodgers, who stated that “no good reason is advanced for the change” and that:

[t]he sole rationale my colleagues set forth is that the rule has operated to impede the exercise by employees to the right of self organization under §7 of the Act. Significantly, my colleagues cite no authority to support their sweeping conclusion in this respect other than the magic catch-all phrase ‘*our experience*’.

Id. at 1037 (emphasis added). Furthermore, Member Rodgers was rightfully concerned with what appeared to be a reversion of the Board back to its “extent of organization” doctrine – the doctrine which was intended to be eradicated by the passage of §9(c)(5) of the Act.

Six years later in the case of *Haag Drug Co., Inc.*, 169 NLRB 877 (1968), the Board attempted to provide further justification for its *Sav-on Drugs* rule. The Board, once again, however, primarily relied on its “experience” as justification for its new rule without articulating any further basis for this rule. See, *Id.* at 888. Since the promulgation of the standard in *Sav-on Drugs* and its endorsement in *Haag Drug Co.*, the Board has adhered to this standard, without further explanation.

This case presents an excellent opportunity to reconsider the presumptive appropriateness of a single store unit within the context of a retail chain. As previously discussed, Payless operates its stores on a highly centralized and uniform basis both with respect to its operational and labor relations policies and procedures. Due to this high degree of centralization, the same concern that led to the promulgation of the *Safeway* rule, *i.e.*, the disparate effect a single unit will have on terms and conditions of employment for associates at other stores, is particularly acute.

Also of particular relevance here is the multi-store bargaining history between the parties discussed above which implicitly recognizes the inefficiency of bargaining on a store by store basis. Indeed, as previously discussed, the Union’s position in the past has been to increase

the number of stores in the bargaining unit. Further, the extremely high turnover which Payless experiences among its store associates also points to the inefficiency of bargaining on a store by store basis. Accordingly, Payless respectfully submits that reverting to the *Safeway* standard would facilitate stability and economy in the parties' bargaining relationship. To address these concerns Payless respectfully submits that the Board should return to the *Safeway* standard that, unlike the current rule, "assure[s] employees the fullest freedom in exercising" their § 7 rights.⁹ 29 U.S.C. §159(b).

VI. CONCLUSION.

Payless respectfully submits that the Acting Regional Director's Decision finding that the Rolla store is an appropriate unit for bargaining is contrary to the overwhelming evidence in the record establishing the Rolla Store Leader's lack of managerial control and lack of store autonomy. Further, the Acting Regional Director's Decision is not only unsupported by Board precedent, but also in complete derogation of established Board precedent. This is particularly true with respect to the central issue of local store autonomy in which the Board time and again has recognized that some exercise of managerial authority by a store manager over such things as day-to-day work performance, scheduling, and ability to recommend discipline and/or performance appraisals is insufficient to establish sufficient managerial control and store autonomy to make a single store unit appropriate where there is evidence of highly centralized administration of operational and labor relations policies, strict managerial oversight of the local manager, and similarity of working conditions and terms of employment among all employees.

Thus, the Acting Regional Director erred when he largely ignored, or at most considered in a vacuum, Payless' highly centralized control of operational and labor relations policies

⁹ See, dissent in *Frisch's Big Boy Ill-Mar, Inc.*, *supra* at 557: "Today a majority of the Board, under the rubric of providing employees with the "fullest freedom" in exercising the rights guaranteed by the Act, in fact prevents an overwhelming majority of employees from exercising the right which Congress has bestowed upon them. In this decision the Board withholds what it professes to give. The principle of "fullest freedom" for all employees is not well translated when the desires of a small minority are permitted to control the interest of the affected majority."

without **applying** that evidence to his analysis of managerial control by the Rolla store leader. This is completely contrary to the aforementioned Board precedent which recognizes the significance of an employer's conducting business "under standardized policies and procedures subject to close central control" when considering the degree of local managerial control. See, *Twenty-First Century Restaurant, supra* at 882. The Board authorities discussed in detail above uniformly conclude that under such circumstances a local manager's authority is deemed to be sufficiently circumscribed so as to prevent a finding of enough local store autonomy to support a single facility unit.

The Acting Regional Director also did not follow Board precedent which holds that lack of geographic proximity and employee interchange are not deemed to be significant factors in multi-facility unit cases where there is lack of store autonomy, highly centralized policies and procedures, and a high degree of similarity in working conditions and terms of employment. Further, the Acting Regional Director ignored Board precedent establishing the relevance of bargaining history on a multi-facility basis. Instead, he concluded, without any supportive Board authority, that this factor was somehow irrelevant because there was no evidence that the multi-facility bargaining unit which has existed for over 25 years between Payless and the petitioning Union was certified.

Finally, with all due respect, the Board has never articulated a detailed reason for the presumption in favor of a single store unit within the context of a retail chain. While Payless submits that it has sufficiently – indeed overwhelmingly – rebutted the presumption in favor of a single store unit here, Payless nevertheless submits that such a presumption is particularly inappropriate when it involves a very small group of employees with a high rate of turnover and there is bargaining history on a multi-facility basis. Accordingly, Payless respectfully requests the Board to reconsider its presumption in favor of a single store unit for a retail chain since there are compelling reasons to do so here based on bargaining history, stability in the bargaining relationship, and economy of resources.

Based on the foregoing, Payless respectfully submits that the Board should accept this case for review and stay the election pending a decision by the Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing *Employer's Request for Review* was sent via email, this 27th day of September, 2012 to:

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/s/ David E. Schreiner

David E. Schreiner

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

PAYLESS SHOE SOURCE, INC.¹

Employer

and

Case 14-RC-087469

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

Petitioner

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

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

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

¹ The name of the Employer appears as amended at hearing.

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

I. OVERVIEW OF OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

III. DISCUSSION OF THE RELEVANT FACTORS

A. Control Over Daily Operations and Labor Relations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Employee Interchange and Contact

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

D. Collective Bargaining History

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

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

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

E. Geographic Proximity

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

IV. ANALYSIS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. CONCLUSIONS AND FINDINGS

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

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

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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

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

VI. DIRECTION OF ELECTION

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

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less

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

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

B. Employer to Submit List of Eligible Voters

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

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

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

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

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

C. Notice of Posting Obligations

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

⁴ 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.

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

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 27, 2012**. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov⁵, but may not be filed by facsimile.

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



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

⁵ 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.

**NATIONAL LABOR RELATIONS BOARD
REGION 14**

Payless ShoeSource, Inc.,)	
)	
Employer,)	
and)	Case No. 14-RC-087469
)	
United Food and Commercial Workers,)	
Local 655,)	
)	
Petitioner.)	

BRIEF OF EMPLOYER

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I. STATEMENT OF THE CASE.

Payless ShoeSource, Inc. (“Payless”) owns and operates approximately 3,600 retail shoe stores throughout the United States. Although Payless is highly centralized in its operations and its store associates have uniform working conditions and terms of employment, the petition filed by the Union in this case seeks to isolate one store with five employees located in Rolla, Missouri by claiming that this single store is an appropriate bargaining unit. Although the Board recognizes a presumption in favor of a single location unit, the Board also has repeatedly held that a single location unit is not appropriate where, as here, the employer’s operations are highly centralized resulting in limited managerial authority at the individual store level, and there is uniformity in the employees’ working conditions and terms of employment.

Significantly, although the Union contends that a single store unit is appropriate, it presented no evidence in support of that contention. Instead, the evidence presented at the hearing overwhelmingly established the highly centralized nature of both Payless’ operational and labor relations policies, the lack of a store manager’s authority regarding these matters, the uniform nature of all store associates’ working conditions, and the identical terms and conditions of employment applicable to all store associates. While there is some distance between the Rolla store and the other stores in the administrative groupings in which that store is located or adjacent to (the store nearest to Rolla is approximately 60 miles away), the Board has ruled that the mere distance between stores, and along with it the lack of employee interchange, is insufficient to establish the appropriateness of a single store unit where there is a high degree of centralization, lack of local autonomy, and similarity of working conditions and terms of employment.

Payless respectfully submits that it not only is contrary to Board precedent, but also impractical and illogical to determine that a single store with virtually no local autonomy should be picked out of a highly centralized chain of stores in order to conduct bargaining on behalf of just five out of approximately 21,000 employees in the United States. Additionally, there is

bargaining history between Payless and the Union which recognizes that a single store unit is not appropriate, as there currently are 24 stores located in two Payless administrative Districts and spread over the city of St. Louis and four Missouri counties which are included in one bargaining unit. The inappropriateness of the Rolla store as a single unit is further demonstrated by the fact that at one time there were 36 stores in the bargaining unit and by the Union's request during contract negotiations to include the Rolla store and all other unrepresented Payless stores in Missouri in the existing bargaining unit, which would have resulted in a bargaining unit of approximately 55 stores.

While Payless believes that it is absolutely clear that a single store unit is inappropriate, it realizes that it is somewhat more problematic to determine what an appropriate bargaining unit should be. Although Payless believes that a case could be made for a Regional bargaining unit¹, as will be discussed in greater detail below, Payless submits that a bargaining unit composed of the unrepresented stores in three of its administrative Districts, *i.e.*, Districts A3C, A3E and A3F currently totaling 55 stores, or, alternatively, the unrepresented stores in two of its districts, *i.e.*, either Districts A3C and A3E totaling 35 stores, or Districts A3E and A3F totaling 28 stores would be appropriate. Payless submits that any of the aforementioned bargaining units would be appropriate in view of Payless' established administrative groupings of its stores, the highly centralized nature of Payless' labor and operational policies, the lack of local store autonomy, the similarity of working conditions and terms of employment for the sales associates employed within the aforementioned administrative groupings, and the multi-store unit bargaining history with the Union seeking to represent the Rolla store.

II. **FACTS.**

All of the facts set forth below are **uncontradicted** and supported by citations to the record in this case.

¹ The Rolla store is located in Region A3, consisting of 294 stores.

A. The Centralization of Payless' Business Operations and Labor Relations.

1. Scope of Payless' operations and the need for centralization.²

Payless, a wholly owned subsidiary of Collective Brands, Inc., owns and operates approximately 3,600 retail shoe stores and employs approximately 21,000 people throughout all 50 states in the United States (Tr. 17, 19, 20-21, 22). Although it is a large organization, Payless utilizes a business model seeking to ensure that all of its customers throughout the United States have the same shopping experience regardless of the store location (Tr. 53-54, 84-85, 91-92, 94). Further, Payless experiences a large amount of turnover among its work force – about 80% of Payless' employees are part-time with close to a 120% turnover rate for those employees (Tr. 91), and even among its store leaders Payless experiences a 50% turnover rate (Tr. 92). Because of its business model striving for uniformity in customers' experience and also in recognition of the employee turnover it experiences, Payless needs to be “extremely centralized in its operations,” and takes a “very standardized,” “very formulaic” and “consistent” approach to all of its business operations and labor relations policies throughout the United States (Tr. 53-54, 94-95).

2. Centralized control of Payless' business operations.

Payless' corporate office in Topeka, Kansas is responsible for establishing policies and procedures relating to the operation of all its stores throughout the United States (Tr. 18-19, 54-63, 110-121). More specifically, Payless' corporate team in Topeka is responsible for formulating all policies and procedures for Payless stores throughout the United States with respect to banking (Tr. 54-55, 110-111); budgeting (Tr. 55-56, 68, 111-112); payroll (Tr. 56-57, 112-113); expense control/purchase of supplies (Tr. 60-61, 118-119); loss prevention (Tr. 61, 119-120; Er. Ex. 15); measurement of store performance (Tr. 62-63, 120-121); product selection and distribution (Tr. 59-60, 66-67, 79, 116-118); pricing (Tr. 57-58, 79, 114-115); and marketing

² Payless is a worldwide company operating approximately 4,500 stores and employing approximately 25,000-28,000 employees (Tr. 20-21), but the discussion here will be limited to its operations in the United States.

and advertising (Tr. 58-59, 66, 115-116). The aforementioned operational policies and procedures are not only established at the corporate level, but these policies are applied uniformly to all of Payless' stores in the United States (*Id.*; 63-64).³

3. Centralized control of Payless' of labor relations policies.

Except for where there is an established collective bargaining relationship, Payless' labor relations policies likewise are established at the corporate level and applied uniformly to all store associates throughout the United States (Tr. 94-95). Payless' corporate human relations department has promulgated a comprehensive associate handbook which sets forth the terms and conditions of employment which apply uniformly to all of Payless' non-union store associates employed in the United States, including those employed at the Rolla store (Tr. 95-102, 105; Er. Ex. 13).

In addition to the terms and conditions of employment set forth in the associate handbook, Payless' corporate HR department is responsible for establishing all other labor relations policies applicable to all store associates, including their duties and responsibilities as set forth in the store associate job description (Tr. 87-88; Er. Ex. 10); the training program applicable to store associates (Tr. 89-91; Er. Ex. 11); and the dress code applicable to store associates (Tr. 92-93; Er. Ex. 12). These employment policies likewise apply uniformly to all store associates employed by Payless in the United States, including those at the Rolla store (Tr. 87-93, 94-95, 105).⁴

B. Administrative Groupings and Geographic Location of Payless' Stores in the Rolla Store District and Adjacent Districts.

Payless' stores in the United States are organized into administrative sub-groupings with the largest sub-grouping being a Zone, the next largest a Region, and the smallest administrative sub-grouping a District (Tr. 22-31; Er. Ex. 1). There are two Zones in the United

³ The application of these policies and the lack of local store autonomy will be discussed in Part D, pp. 8-10, *infra*.

⁴ The application of these policies and the lack of local store autonomy will be discussed in Part D, pp. 10-13, *infra*.

States: Zone A (or the Northern Zone) in which there are approximately 1,900 stores and 11,000 employees and Zone B (or the Southern Zone) in which there are approximately 1,700 stores and 10,000 employees (Tr. 22; Er. Ex. 1).

Payless has 11 Regions in the United States with approximately 300 stores and 1,600 to 2,000 employees in each Region (Tr. 24; Er. Ex. 1). The Region in which the Rolla store is located is Region A3 in which there are approximately 300 stores (*i.e.*, 294 stores to be exact) and approximately 1,600 employees, about 1,300 of whom are full-time or part-time store associates. (Tr. 24-25, 37; Er. Exs. 1, 4).

Each Region in the United States is further broken down into Districts, and Region A3 consists of 12 Districts designated as Districts A3A, A3B, A3C, A3D, A3E, A3F, A3G, A3H, A3I, A3J, A3K, and A3L (Tr. 30-31, 32-35; Er. Exs. 3, 4). Each District is made up of approximately 25 stores, but this number can vary somewhat, as illustrated by the Districts in Region 3 which vary from a low of 22 stores to a high of 27 stores (Tr. 31; Er. Exs. 3, 4).

The Rolla store is located in District A3E which generally encompasses the southeastern part of Missouri, including stores in the western part of the St. Louis area, and totals 25 stores (Tr. 33, 40-42, Er. Exs. 4, 5, 5A, 5B).⁵ District A3C is the District immediately adjacent to the west of District A3E and is made up of 27 stores, all but three of which are located in Missouri (Tr. 39-42; Er. Exs. 4, 5, 5B). District A3F is the District immediately adjacent to the east of District A3E and includes a total of 27 stores located in Eastern Missouri, Southern Illinois, Southeastern Indiana and Western Kentucky (Tr. 39-42, Er. Exs. 4, 5, 5A). The closest stores geographically to Rolla are two stores in Jefferson City, Missouri, which are located in District A3C and approximately 60 miles away from Rolla (Tr. 144, Er. Exs. 5, 5B).

⁵ There is a typographical error on p. 41 of the Transcript in which the Rolla store is stated to be in District "A3A." The Rolla store actually is in District A3E as correctly set forth on pp. 33 and 42 of the Transcript, as well as Exhibits 3, 4, 5, 5A and 5B.

C. Bargaining History and Location of Unionized Stores.

For over 25 years, the Union has represented sales associates in a multi-location unit of Payless stores which currently includes 24 stores, but has been as high as 36 stores (Tr. 40, 44, 51, 52; Er. Exs. 5A, 6, 8). The 24 Payless stores currently included in the bargaining unit are located in Payless Districts A3E and A3F and cover a geographic area which includes the City of St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri (Tr. 40, 43-45, 48-49, 50-51; Er. Exs. 5A, 6, 8, 9). There are stores located in the current bargaining unit which are more than 40 miles apart (Tr. 147). During the 2009 contract negotiations, the Union proposed to expand the scope of the bargaining unit to include all Payless stores within the entire state of Missouri, but that proposal eventually was withdrawn (Tr. 52). The bargaining unit proposed by the Union would have totaled approximately 55 stores⁶ (Er. Exs. 4, 5, 5A, 5B, 6).

Of the 24 stores currently comprising the bargaining unit and covered by the collective bargaining agreement between Payless and the Union, 17 of them are located in District A3E (the District in which the Rolla store is located) and seven of them are located in District A3F (the District to the immediate east of District A3E) (Tr. 44; Er. Exs. 5A, 6). Since there are a total of 25 stores in District A3E, there are a total of eight non-union stores (including the Rolla store) in that District (Tr. 44; Er. Exs. 4, 5A, 6). Since there are a total of 27 stores in District A3F, there are 20 non-union stores in that District, resulting in a total of 28 non-union stores in Districts A3E and A3F (Tr. 44-45; Er. Exs. 4, 5A, 6). Since none of the associates in any of the stores in District A3C are unionized and since there are 27 stores in that District, there are a total of 35 non-union stores in Districts A3C and A3E (Tr. 44, 47; Er. Ex. 4, 6, 7A). There are a total of 55 non-union stores located in Districts A3C, A3E, and A3F (Tr. 44-45; Er. Ex. 4, 6, 7A).

⁶ This figure is based on the stores in Districts A3C, A3E, and A3F, which are located in Missouri. The unit actually would be larger if it included **all** stores in Missouri as there are at least 10 additional stores in the Kansas City, MO area which are located in District A3D (Er. Exs. 3, 4).

Although the number has been higher, there currently are 97 store associates in the bargaining unit represented by the Union (Tr. 44-45, 46-48; Er. Ex. 7). Since there currently are a total of 341 store associates in Districts A3C, A3E and A3F, and since 97 of those employees are represented by the Union, there are a total of 244 non-union employees in those three Districts (Tr. 46-48; Er. Ex. 7A). With respect to Districts A3E and A3F, there are a total of 227 associates, 97 of whom are represented by the Union and 130 of whom are non-union (Tr. 45-46; Er. Ex. 7). There are a total of 221 associates in Districts A3C and A3E, 69 of whom are represented by the Union and 152 of whom are non-union (Tr. 48-49; Er. Ex. 7A).

D. Management Structure and Lack of Autonomy at the Individual Store Level.

1. Management structure.

The top operational executive for Zone A is Chris Beffort who holds the position of Vice President of Retail Operations and he is located in Payless' corporate office in Topeka, Kansas (Tr. 26; Er. Ex. 1). Each Region is headed by a Director of Retail Operations ("DRO") who reports to one of the two Vice Presidents of Retail Operations (*Id.*). The DRO for Region A3 is Janna Alford, and she reports to Chris Beffort, although she is located in St. Louis (Tr. 26-27, Er. Ex. 1, 2).

Next in the operational chain of command is the position of District Leader, who is responsible for overseeing all of the stores in his or her District or Districts and who reports to one of the Regional DROs (Tr. 30-31, 107-109). The District Leader for District A3C is Todd Grasser, who oversees 27 stores located in Western Missouri (Er. Ex. 4, 5B). The District Leader for Districts A3E and A3F is Bill Halley, who currently oversees 52 stores in Southeastern Missouri, Southern Illinois, Southeast Indiana and Western Kentucky (Tr. 36-37, 108-109; Er. Ex. 4).⁷ Mr. Halley has served as a Payless District Leader for nearly 28 years (Tr. 107).

⁷ Mr. Halley has been supervising Districts A3E and A3F since late June or early July of 2012; however, a trainee District Leader, Rhonda Richerson, has been hired and is slated to become the District Leader for

There also is a corporate human relations team which supports the operational managerial staff and provides human relations oversight to the stores in the 11 Regions in the United States (Tr. 28-30, 80-82; Er. Ex. 1). Chris Eagle is one of three corporate Human Resources Managers (“HRM”) and is the HRM assigned to the stores in Region A3, as well as the stores in Regions A1, B1 and B2 (Tr. 29-30, 81-82; Er. Ex. 1). The three Human Resource Managers are supported by four Retail Support Associates (Tr. 29-30, 82-83; Er. Ex. 1).

2. The lack of supervisory authority at the store level regarding operational matters.

Payless’ operational policies and procedures not only are determined at the corporate level, but they also are implemented through the District Leaders with virtually no authority on the part of the store leaders to influence or modify these policies (Tr. pp. 54-63, 64, 110-121). As more specifically set forth below, the District Leader, not the store leader, has the responsibility to carryout corporate operational policies, and, to the limited extent that it exists, modify these policies.

Banking. The corporate office in Topeka takes care of all banking arrangements for each store, but to the extent there is any input on a local basis for the banking arrangements, that comes from the District Leader, as the store leader does not have any authority to make banking arrangements (Tr. 55, 110-111).

Expense budgeting. Every six months the corporate finance department sets expense budgets for Zones, Regions, Districts, and individual stores which are generally based on 3% of sales (Tr. 56, 111-112). The District Leader has the authority to adjust budgets for individual stores and move expense dollars from one store to another as long as he or she stays within the budget which has been set for his or her District (Tr. 112; Er. Ex. 14). A store leader has absolutely no authority to vary the expense budgets which have been sent for his or her store

District A3F in mid-October, with Mr. Halley continuing as District Leader for A3E (Tr. 37, 109, 136; Er. Ex. 4). There is no guarantee that Ms. Richerson will take over as District Leader for District A3F, and Mr. Halley would remain District Leader for both Districts A3E and A3F if Ms. Richerson does not become the District Leader for District A3F (Tr. 37, 109).

(Tr. 55-56, 112). Store leaders do not have the authority to make any type of store expenditures, even expenditures from petty cash, and, instead, must get approval from their District Leader in order to make any such expenditures (Tr. 118-119). District Leaders have the responsibility “for identifying and ensuring repair of interior and exterior store maintenance issues” (Er. Ex. 14).

Payroll. Payroll budgets also are set by the corporate finance department in the same way that expense budgets are set, *i.e.*, a certain percentage of sales is allocated by Zone, Region, District and store (Tr. 56-57, 112-113). The District Leader has the authority to adjust payroll for his District by moving payroll dollars from store to store, as long as he or she stays within the amount of payroll budgeted for his or her District (Tr. 113). Store leaders do not have any authority to vary their store payroll budgets and generally are not even aware that the District Leader moves payroll dollars from store to store (Tr. 57, 113). Payroll information for store associates is transmitted electronically to the corporate payroll department which controls and is responsible for preparing payroll, which is made via direct deposit (Tr. 58, 113-114).

Pricing. Pricing of product is determined by the corporate buying staff based on budgets and gross margins which are set at the corporate level (Tr. 58, 114). The prices of all Payless’ products are uniform throughout the United States regardless of the location of the store in which the product is sold (Tr. 57-58, 114). A District Leader has the authority to request that a price be lowered when, for example, it is the end of a season and there is too much product inventory, but the District Leader has to receive authorization from his or her boss, a Director of Retail Operations (Tr. 114-115). A store leader does not have any authority to put product on sale or vary the price of any merchandise, even if the merchandise is damaged (Tr. 58, 115, 141).

Product selection/distribution. The product mix at each store is predetermined by the corporate buying department and then distributed from two Payless Distribution Centers which are located in Ohio and California (Tr. 116). For the Missouri market, product is transferred

from the Ohio Distribution Center to a warehouse in St. Louis and then distributed by common carriers which make deliveries on Tuesdays and Thursdays to a series of Payless stores on their routes (Tr. 116-117). Store leaders do not have the authority to dictate or vary the product mix in their stores (Tr. 60, 79, 117). Although store leaders can make suggestions to the District Leader about product, only the District Leader can make such a request to the corporate buying department, but only the corporate buying department can make the determination to change product (Tr. 117-118; Er. Ex. 14).

Marketing/advertising. All print and media advertising is done by the corporate marketing department (Tr. 58-59, 115). The corporate marketing department also determines all in-store marketing through a program known as “InfoSource” which is a detailed layout of various in-store marketing flyers and displays and is uniform throughout all Payless stores in the United States (Tr. 85, 115). A store leader does not have any authority to change any aspect of Payless’ marketing program (Tr. 59, 115-116).

Loss prevention. The corporate loss prevention department has established various corporate policies relating to loss prevention in Payless’ stores and a store leader does not have any authority to vary from these policies (Tr. 61, 119-120).

Store performance. Key Performance Indicators are established at the corporate level to measure store performance based on a variety of factors such as sales, conversion of a customer into a sale, customer satisfaction, units per transaction, and customer relations management (Tr. 62, 120). Although a District Leader has the authority to negotiate some aspects of the Key Performance Indicator requirements such as the amount of sales projected for his or her District, even a District Leader does not have the authority to vary these standards (Tr. 120-121). A store leader has absolutely no authority to vary any of these store performance measurements established by the corporate office (Tr. 63, 121).

3. **The lack of supervisory authority at the store level regarding employment matters.**

Although labor relations policies are established at the corporate level (see p. 4, above), the responsibility and authority for seeing that these policies are carried out at the store level rests with the District Leader and not the store leader (Tr. 107-108, 121-122, 123-134; Er. Ex. 14). This is because the District Leader has the responsibility both for the financial performance of the stores in his District or Districts and for the enforcement of all personnel policies applicable to the store associates in his District or Districts (Tr. 107-108; Er. Ex. 14). The District Leader visits the stores assigned to him every four to five weeks, and is in phone contact with each of the stores in his District at least every day – Bill Halley, the District Leader for Districts A3E and A3F, has three telephone conferences each day with each of the stores in his District on Monday through Friday, and two telephone conferences with each of the stores in his District on Saturday (Tr. 121-122).

Store leaders display and sell merchandise just like store associates do and spend most of their time engaging in those activities (Tr. 133). While store leaders are expected to assist store associates and coach them concerning the servicing of customers (Tr. 133), as discussed in greater detail below, they have virtually no authority regarding the application of personnel policies to store associates.

Hiring decisions. Store leaders have no authority to determine manpower levels for their stores, as corporate establishes manpower levels through the payroll budgeting process, and only a District Leader can vary the manpower/payroll budgeting levels at the stores in his or her District (Tr. 86, 113, 124; Er. Ex. 14).

Hiring process. Store leaders do not have the authority to hire sales associates as the District Leader must approve every employee hired at the stores in his or her District. All applicants to Payless apply on-line, and while a store leader will interview applicants (with a second store leader also interviewing applicants), the District Leader interviews all full-time

associate applicants and must approve any applicant before he or she is hired (Tr. 125; Er. Ex. 14).

Scheduling. Store leaders get involved in scheduling sales associates, but this is basically a computer inputting function, as there is a corporate electronic tool used by store leaders which determines store associates' schedules based on the information inputted into the system (Tr. 133-134).

Training. While store leaders do fill out the "sales associate learning tracker," it is the District Leader who "is ultimately responsible for the training and development of all personnel in the District" (Tr. 90-91, 123; Er. Ex. 14). The District Leader is directly involved in training sales associates as he conducts a training program known as the "Store Associate University" and he regularly reviews the sales associate learning tracker training form (Tr. 90-91, 123).

Grievances. The store leaders do not have the authority to adjust employee issues or complaints, as the District Leader has this responsibility and normally is "the first one that gets involved" (Tr. 125-126). The District Leader also may get assistance with employee issues/complaints from the corporate HR Manager assigned to his District, and the store associates also have the right to directly contact the corporate HR Manager through the use of the "AlertLine" (Tr. 126).

Discipline and discharge. Store leaders do not have the authority to either discipline or discharge employees, as even in the case of disciplinary actions short of discharge, a store leader must discuss the discipline with his or her District Leader, and the District Leader "has to approve it" (Tr. 131). Store leaders have absolutely no authority to terminate sales associates, as only the District Leader has the authority to terminate employees, usually in consultation with the corporate HR Manager assigned to his or her District (Tr. 127).

Performance reviews/pay increases. While a store leader provides input regarding store associate performance reviews, store leaders discuss all performance reviews with their District Leaders and the District Leader "has the responsibility to complete" and must approve

all performance reviews (Tr. 128, 142; Er. Ex. 14). Store leaders do not have the authority to grant wage increases, as only the District Leader has this authority, but even the District Leader must act in conformity with the wage matrix for sales associates established at the corporate level (Tr. 128-129).

Promotions. A store leader does not have any authority to promote sales associates, as this has to be done by the District Leader (Tr. 129).

Personnel records. District Leaders have the responsibility of maintaining personnel records for store associates, and while part of a store associate's personnel file is in his or her store, such as training forms, most of each employee's personnel file, such as I-9s, W-2s, and counseling forms, are kept electronically in the corporate office (Tr. 78-79).

E. The Similarity of Working Conditions Among Payless Store Associates.

The qualifications, skills, and job duties for store associates are uniform throughout all of Payless' stores in the United States, and apply to both full-time and part-time store associates (Tr. 85-86, 87; Er. Ex. 10). Accordingly, the qualifications, skills and duties required of a sales associate at the Rolla store are identical to those which apply to any other sales associate throughout Payless' stores in the United States (Tr. 88; Er. Ex. 10).

The layout of all Payless stores in the United States is identical, with the front part displaying accessories, and the rest of the public space taken up by racks of shoes which are organized by men's, women's, and children's shoes, all according to size (Tr. 53, 84-85, 122). Although there is some difference in the size of stores, most Payless stores are approximately 3,000 square feet (Tr. 84). The layout of the Rolla store is identical to that of all other Payless stores (Tr. 85). Not only are the working conditions for a store associate in the Rolla store the same as those applicable to any of the other store associates in the stores managed by Mr. Halley (Tr. 122), but they also are the same as those applicable to any other store associate employed in the United States (Tr. 85-86).

The store associates in the Rolla store are subject to the same dress code and the same terms and conditions of employment as are applicable to all other non-union store associates employed by Payless in the United States (Tr. 93, 95-98; Er. Exs. 12, 13). This includes all employee benefits which, without exception, are the same for the store associates at the Rolla store as all other non-union store associates employed at Payless' stores throughout the United States (Tr. 97, 101-102). Although wage rates for store associates are determined on a geographic basis, the wage rates for the store associates at the Rolla store are identical to the wage rates for all the other non-union associates in Districts A3C, A3E and A3F (except for the sales associates employed in stores located in Illinois where approximately a \$1.00 per hour higher minimum wage rate is mandated) (Tr. 99-100).

III. LEGAL DISCUSSION.

A. Introduction and Relevant Criteria for Multi-Location Unit Analysis.

This matter raises the issue of whether a single retail store in a chain of stores with highly centralized labor relations and operational policies resulting in a complete lack of autonomy at the individual store level is an appropriate unit for bargaining. While the Board has a general rule that a single store unit is presumptively appropriate, this is a rebuttable presumption which should not be decided "by any rigid yardstick," but, instead, by examining all of the relevant circumstances. *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551, 552 (1964); also see *Sav-On Drugs*, 138 NLRB 1032 (1962). The Board "has never held or suggested that to rebut the presumption a party must proffer 'overwhelming evidence ... illustrating the complete submersion of the interests of employees at the single store,' nor is it necessary to show that 'the separate interests' of the employees sought have been 'obliterated.'" *Petrie Stores Corp.*, 266 NLRB 75, 76 (1983), *citing Big Y Foods, Inc.*, 238 NLRB 860, 861, fn.4 (1978).

Instead, the Board examines a number of community of interest factors in multi-location unit cases, including: (1) central control over operational, and particularly labor relations policies; (2) lack of individual store management authority (*i.e.*, lack of local autonomy); (3)

similarity of job functions/skills and working conditions; (4) similarity of wages and benefits; (5) geographical separation and employee interchange; and (6) bargaining history. *Prince Tel-Com*, 347 NLRB 789 (2006) (finding the single site presumption rebutted and reversing the Regional Director despite the fact that “[t]here is some geographic separation among the facilities....”); *Trane*, 339 NLRB 866 (2003) (reversal of Regional Director’s decision finding single unit based primarily on the lack of local autonomy, identical skills, functions and working conditions, and centralization of labor relations); *Budget Rent A Car Systems, Inc.*, 337 NLRB 884 (2002) (reversal of Regional Director’s finding of a single store unit where branch managers have little authority over terms and conditions of employment, and skills, job functions, wages and benefits are identical from store-to-store); *Waste Management of Washington, Inc.*, 331 NLRB 309 (2000) (reversal of Regional Director’s finding of single store unit based on centralized control over labor relations policies, lack of local autonomy, common supervision, and identical skills, duties and other terms and conditions of employment); *AVI Foodsystems, Inc.*, 328 NLRB 426 (1999) (finding lack of local autonomy based on supervision and day-to-day control over operations existing above the store level); *R&D Trucking*, 327 NLRB 531 (1999) (reversal of Regional Director’s finding of a single facility unit based on common supervision and lack of local autonomy, centralized control over operations and labor relations, and similarities in the terms and conditions of employment); *Globe Furniture Rentals*, 298 NLRB 288 (1990) (holding that a multi-facility unit of five separate warehouses appropriate primarily because “all major decisions related to the operation and administration of the five Michigan stores are made by [the owner] or some other member of upper management”); *V.I.M. Jeans*, 271 NLRB 1408 (1984) (reversing the Regional Director’s conclusion that lack of employee interchange required a single-site unit and holding that the multi-facility unit was appropriate because the “facts in the instant case establish that the Employer’s nine stores similarly experience a high degree of centralization and that the store manager’s authority is similarly tightly circumscribed”); *Petrie Stores Corp.*, 266 NLRB 75 (1983) (reversal of Regional Director’s finding of a single store unit

stating, “Not only does the lack of individual store manager’s autonomy compel a finding that single-store units are inappropriate, so does the high degree of centralization of administration and control”); *White Castle*, 264 NLRB 267 (1982) (stating that “The forgoing evidence...sufficiently rebuts the presumption of the single-location units are appropriate here. We particularly note ... [the] evidence [of] lack of autonomy of the [restaurant] supervisors over the day-to-day labor relations at the individual restaurants”); *Orkin Exterminating Co.*, 258 NLRB 773 (1981) (holding that the multi-facility unit was appropriate primarily since “the daily operations and labor relations in the...district is highly centralized” even though there was significant geographic separation because “when other important factors militate against a single-branch unit, we do not give geography controlling significance”); *NCR Corp.*, 236 NLRB No. 29 (1978); *Petrie Stores Corporation*, 212 NLRB 130 (1974) (holding that the multi-facility unit was appropriate because “[t]here is virtually no individual store autonomy since the Employer’s district supervisor supervises, directs, and controls the daily operations of all three stores”); *Gray Drug Stores*, 197 NLRB 924 (1972) (holding that a multi-facility unit of retail drug store locations appropriate because “it is apparent here that the appropriateness of a single-store unit has been rebutted. Thus we note, significantly, the lack of autonomy at the single-store level....”); *Twenty-First Century Restaurant*, 192 NLRB 881 (1971) (holding that a multi-facility unit of 22 McDonalds restaurants in two different states was appropriate because “any meaningful decision governing labor relations matters emanates from established corporatwide policy, as implemented by the general managers and field supervisors”); *Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549 (1965) (holding that the combination of centralized operations, lack of individual autonomy and significant bargaining history support a 20 retail store multi-facility unit); *Spartan Department Stores*, 140 NLRB 608, 610 (1963) (holding that because the retail “stores are subject to common supervision and control [and] their employees are governed by uniform labor policies” and because the employer has multi-facility units in “other cities,” the petitioned for multi-facility unit was appropriate); and *Meijer Supermarkets*, 142 NLRB 513 (1963) (holding

that a 17 supermarket facility was appropriate primarily because “the evidence establishes that operations at all of the employer’s stores are controlled through a central office....”).⁸

B. The Centralization of Payless’ Labor Relations, Lack of Store Autonomy, and Uniformity in Working Conditions and Terms of Employment Make a Single Store Unit Inappropriate.

The Board has given significant weight, and in many instances controlling weight, to the centralization of labor relations policies, lack of local autonomy regarding the implementation of those policies, and uniformity in skills, job functions, working conditions, and terms and conditions of employment. *Trane, supra; Budget Rent A Car Systems, supra; Waste Management of Washington, Inc., supra; AVI Food Systems, Inc., supra; V.I.M. Jeans, supra, Petrie Stores Corp., 266 NLRB 75 (1983); White Castle System, supra; Orkin Exterminating Co., supra; NCR Corp., supra.*

In *Petrie Stores Corp.* (266 NLRB 75 (1983)), the Board relied heavily on the aforementioned factors, and particularly the lack of managerial autonomy at the local store level, in ruling that the only appropriate unit was all 34 of the company’s non-union stores in the State of New Jersey, despite the fact that there had been collective bargaining for a single store unit in downtown Newark, New Jersey. As stated by the Board:

In personnel matters, a manager’s autonomy is severely circumscribed by the authority retained by the supervisor and centrally determined policies. ...

Not only does the lack of individual store manager’s autonomy compel a finding that single-store units are inappropriate, so does the high degree of centralization of administration and control. There is centralized control over merchandising, purchasing, warehousing, distribution, and price tagging. All payroll functions and administration and inventory records are found at the main office. The main office establishes and the supervisors implement uniform labor relations policies. The employees have ... identical work procedures and policies calling for identical job skills from store to store

* * *

⁸ Although the Union seeks to organize only the store associates at the Rolla store, the use of the extent of organization in determining the appropriateness of a bargaining unit is specifically limited by Section 9 of the Act which provides that: “the extent to which the employees have organized shall not be controlling” for purposes of determining the appropriate bargaining unit. The Supreme Court has recognized that this provision places an affirmative burden upon the Board to show that its decision was not controlled by the extent of organization. *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438 (1965).

... In Super X, the Board found that the autonomy of the store manager with respect to personnel matters was severely circumscribed by the authority retained by the district manager. There, as in the instant case, the modus operandi of the store operations provides for ready telephonic communication between store managers and district manager or, in the instant case, supervisor.

In both Super X and this case, the store manager's limited authority is established in that the district manager or supervisor, the next level of management, have the final decisionmaking authority in hiring by the store managers and disciplinary actions, employee grievances must be discussed with their supervisor, and approval must be received from the district manager or supervisor to grant store employees leaves of absences, promotions, and pay raises. ...

...The facts in the instant case establish that the New Jersey stores experience an equal degree of centralization and that a store manager's authority is similarly tightly circumscribed.

Upon these facts, we find, in disagreement with the Regional Director, that the requested single-store units are inappropriate. ... *Petrie Stores, supra* at 75-77.

Likewise, in *Budget Rent A Car Systems, Inc., supra*, the Board relied heavily on the local managers (*i.e.*, "branch managers") lack of authority regarding employment matters and hence the lack of local store autonomy in finding that a multi-store unit was appropriate. In making that conclusion, the Board stated:

Branch managers do not have the authority to make decisions concerning hiring, merit wage increases, temporary or permanent transfers, authorization of overtime, terminations, or serious discipline. All such decisions concerning the CSCs and the service agents are made by the district manager, sometimes in consultation with the human resources regional manager....

Branch managers prepare evaluations, which are then used by the district manager to determine merit wage increases. They also set employees schedules, approve time off, and handle day-to-day operations, such as enforcing work rules

The wage scale (which applies until the employees are eligible for merit increases after 3 years of service), benefits, incentive program, and work policies are uniform....

* * *

Contrary to the Regional Director, we find that the Employer has rebutted the single-facility presumption.

...[T]he branch managers have little or no input into hiring, terminations, serious discipline, transfers, wage scales, merit wage increases, benefits, or other terms and conditions of employment. While the branch managers schedule employees, their authority to do so is limited by the fact that they cannot schedule overtime without specific authorization from the district manager. Control of labor relations is centralized under the authority of the district manager, the maintenance manager, the general manager, and corporate policy.

* * *

Moreover, job functions, required skills, starting wages, benefits, the incentive bonus program, uniforms, and all other terms and conditions of employment are identical from store to store. ...

Under these circumstances, we find that the evidence presented establishes that the Southfield and Warren stores have been so effectively merged into the other Detroit area local market stores, and are so functionally integrated with these stores, that they have lost their separate identities such that the Employer has rebutted the presumptive appropriateness of the petitioned-for units. *Budget Rent A Car Systems, Inc.* at 884, 885-886.

The facts here are remarkably similar to those relied upon by the Board in the excerpts set forth above. Indeed, it is hard to imagine a more centralized and corporate driven operation than Payless. A business philosophy which seeks to ensure that its customers will have the same shopping experience throughout the United States coupled with a high degree of turnover among its store associates and store leaders has resulted in an extremely standardized approach to Payless' operational and labor relations policies. As stated by Payless' Group Counsel for Litigation and Employment in response to a question about what drives the centralization of Payless' operating procedures, "just wanting to make sure that all our customers throughout the United States have the same shopping experience, and so it's just very, very standardized, very formulaic – and all of those decisions are driven from the corporate office" (Tr. 53-54). As a result, every conceivable operational policy (see pp. 8-10, above) and every conceivable labor relations policy (see pp. 11-13, above) are dictated by the corporate office in Topeka, Kansas.

Significantly, these policies not only are formulated by the corporate office, but the responsibility for carrying out these policies rests with Payless' District Leaders and not its store leaders. A store leader's primary function is to sell merchandise just like store associates, as approximately 80% of a store leader's time is spent selling and displaying merchandise (Tr. 133). While a store leader functions as a lead employee by assisting and coaching store associates in the performance of their job duties, store leaders have virtually no authority

regarding the actual supervision of employees, as, instead, that authority rests with the District Leader.

More specifically, as discussed at pp. 11-13 above, a store leader has absolutely no authority to decide when to hire an employee, nor does the store leader have the authority to make individual hiring decisions, as all such decisions are made by the District Leader, who is directly involved in the hiring process. Likewise, a store leader does not have the authority to adjust employee grievances as this is the responsibility of a District Leader, sometimes with the assistance of a corporate HR Manager. Store leaders do not have the authority to either discipline or discharge employees, as all discipline is discussed and must be approved by the District Leader, often in consultation with a corporate HR Manager. A store leader does not have any final authority with respect to performance reviews, as all performance reviews must be discussed with the District Leader, who has the responsibility to complete and approve all performance reviews. Store leaders have no authority to reward employees as they cannot grant wage increases or give promotions. Store leaders do not utilize any independent judgment in assigning and directing employees, as although a store leader is involved in scheduling employees, this is limited to a computer inputting function since a corporate electronic tool is utilized to schedule store associates.

Payless respectfully submits that this uncontroverted evidence clearly establishes that a District Leader, and not the store leader, is the supervisor for all the employees in his District, and that, accordingly, there is a complete lack of autonomy at the local store level. This conclusion is further bolstered by the fact that it is the District Leader's responsibility to oversee all the stores in his District (Tr. 107-108; Er. Ex. 14), and by the fact that a District Leader does not even have his own office and, instead, is expected to regularly visit all the stores in his District and to maintain daily contact with the stores he oversees (Tr. 121-122). Indeed, the District Leader for Districts A3E and A3F is in phone contact with all the stores in his Districts three times a day Monday through Friday, and twice a day on Saturdays (*Id.*).

Further, the uncontroverted evidence is that the working conditions of the store associates at the Rolla store are identical to all other store associates in Districts A3C, A3E, and A3F. This is because the qualifications, skills and duties of all store associates throughout Payless' chain of stores in the United States are identical. Likewise, the store layout, and hence, working environment, of all store associates throughout the United States is virtually identical. Further, the operational policies and procedures applicable to store associates, such as scheduling of hours, processing payroll, loss prevention and cash control, in-store promotional and marketing materials and procedures, training procedures, and dress code requirements are the same for all store associates throughout the United States. Except for the store associates employed in stores located in Illinois where there is a slightly higher state mandated minimum wage, the Rolla store employees also have wages and benefits which are identical to all other non-union store associates in Districts A3C, A3E, and A3F.

Payless submits that the uncontroverted evidence in this case establishes not only a high degree of centralization in the formulation of its labor and operational policies applicable to its stores, but also centralized control over the application of these policies at the District level and above resulting in a complete absence of local autonomy at the store level. Further, the working conditions, qualifications, skills, duties, and terms and conditions of employment applicable to the Rolla store associates without exception are identical to those of Payless' other store associates. Given these facts, Payless respectfully submits that under the established Board precedent discussed above, the appropriateness of a single store unit clearly has been rebutted.

C. The Geographical Separation of the Rolla Store is not Controlling Under the Circumstances of this Case.

While there is some distance between the Rolla store and the other stores in Districts A3C, A3E, and A3F (the closest stores to Rolla are about 60 miles away), and, thus, understandably a lack of employee interchange among the Rolla store and other stores, Board

precedent holds that a single location unit is nevertheless inappropriate given the overwhelming presence of the other relevant criteria discussed in Part III B above. *Trane, supra*; *Waste Management of Washington, Inc., supra*; *Petrie Stores Corp.*, 266 NLRB 75 (1983); *Orkin Exterminating Co., Inc., supra*.

These cases indicate that even though there are significant distances between facilities (e.g., in *Orkin*, 55 miles to 190 miles between branches and 50 to 230 miles from the district office to the branches; *Petrie Stores Corp.*, 125 miles; in *Trane*, 108 miles; and in *Waste Management of Washington, Inc.*, 42 miles) and lack of evidence of employee interchange among facilities, these factors are not enough to support a single facility unit where there is a high degree of centralization, lack of store autonomy, and similarity in working conditions and terms of employment. As originally stated by the Board in *Orkin Exterminating Co., Inc., supra* at 774.

In light of the factors discussed above ... we conclude that a bargaining unit limited to a single branch office is inappropriate. The geographical distances among branch offices favor Petitioner's unit contention. **However, when other important factors militate against a single-branch unit, we do not give geography controlling significance.** (Emphasis added.)

To the same effect is *Waste Management of Washington, Inc., supra* at 309:

Based on the Regional Director's factual findings, we reverse the Regional Director and find that the single-facility presumption favoring a unit of Port-O-Let employees at the Woodinville location has been rebutted. We find that the functional integration of the Employer's operations; centralized control over personnel and labor relations policies; lack of local autonomy and common supervision of employees at both locations; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination between these two groups outweighs two factors which would favor the single-facility presumption – the 42-mile geographical distance between the two locations and the Employer's failure to introduce relevant affirmative evidence demonstrating more than minimal interchange.

Likewise, in rejecting a Regional Director's finding that a single facility unit located 108 miles from another facility was appropriate, the Board in *Trane, supra* at 866 stated:

In finding that the Employer failed to present sufficient evidence to rebut the single-facility presumption, the Regional Director relied heavily on the geographic distance between the Fenton and Cape locations and the Employer's failure to present

specific evidence of employee interchange. However, in the circumstances present here we find that the Regional Director placed too much emphasis on these two factors.... [E]ven if we were to consider the geographic distance significant and the Employer's evidence of interchange wanting ... we find that the centralized control over daily operations and labor relations; lack of local autonomy; common supervision; identical skills, duties, and other terms and conditions of employment ... outweigh the geographic distance and the lack of specificity as to the level of interchange.

Payless submits that the evidence here regarding the highly centralized nature of its policies, the lack of individual store autonomy, and the uniformity of store associates' working conditions and terms of employment are even more compelling than those in the *Orkin, Waste Management, Trane* and *Petrie Stores* cases. Further, unlike the situations in those cases, Payless' stores are organized into administrative sub-groupings of Regions and Districts. Additionally, at least one of just five associates at the Rolla store has been employed at another Payless store in the St. Louis area.

Another significant factor not present in any of the aforementioned Board precedent is that here there is a bargaining history between Payless and the Union which encompasses multi-store bargaining. Indeed, in the *Petrie Stores Corp.* case, a single store bargaining unit was rejected by the Board even though there the employer and the union had a bargaining relationship covering only one of the employer's stores in New Jersey. Here, the parties have bargained with respect to a unit currently comprising 24 stores, some of which are over 40 miles apart, and which at one time included as many as 36 stores. The uncontroverted evidence is that during negotiations the Union requested an even broader bargaining unit which would have included all 55 Payless stores throughout the State of Missouri.

To say the least, the Union's demand for a single store bargaining unit in Rolla conflicts with the parties established bargaining history, as well as the Union's proposal to increase the scope of that bargaining unit. Even more significant, however, is that the parties' multi-store bargaining history constitutes further evidence that a single store unit is inappropriate here. See *Spartan Department Stores, supra*; and *Meijer Supermarkets, supra*.

D. Alternative Appropriate Units.

Payless submits that a single Rolla store unit clearly is inappropriate under established Board precedent, but believes there are a few alternative units which the Regional Director could find appropriate.⁹ While there obviously is a strong community of interest among the five store associates at the Rolla store and the other store associates employed in the stores included in the three alternatives set forth below based on their identical qualifications, skills, job duties, working conditions, wages, benefits, and other terms of employment, those similarities have been discussed in detail and, accordingly, will not be repeated here. Instead, Payless will briefly summarize some of the pertinent facts relating to each of these alternatives.

1. Districts A3C, A3E and A3F.

This alternative encompasses the District in which the Rolla store is located (*i.e.*, A3E), and the two Districts contiguous to that District. There is complete commonality of supervision at the Regional level, as Janna Alfred is the Director of Retail Operations and has operational responsibility for all three of these Districts. There is a large degree of commonality at the District level, as there are just two District Leaders supervising these three Districts, Todd Grasser for District A3C, and Bill Halley for Districts A3E and A3F.

Payless submits that the number of stores and employees which would be covered in this bargaining unit is not unwieldy as there are a total of only 55 non-union stores located in Districts A3C, A3E, and A3F – interestingly, the identical number of stores which the Union believed should be covered in the current bargaining unit when it made its proposal to expand the scope of that unit. There would be 244 employees covered in this bargaining unit alternative, which, although larger than the current bargaining unit of approximately 97 employees, is a relatively small number when compared with the 21,000 individuals employed by Payless throughout the United States, the 11,000 individuals it employs in Zone A, and the

⁹ The Regional Director could simply dismiss the petition in this case if he finds a single store unit to be inappropriate without making an alternative unit determination since the Union has stated that it does not desire to proceed to an election in any alternative unit (Tr. 151-152).

1,300 store associates it employs in Region A3. This number also is about the same as the number of employees which would have been employed in the bargaining unit requested by the Union during negotiations (all full-time and part-time store associates in 55 stores), and is not that much greater than the number of employees who were once employed in the existing bargaining unit (*i.e.*, all full-time and part-time store associates in 36 stores).

2. Districts A3E and A3F.

The employees in this alternative unit share common supervision as there currently is one District Leader overseeing both of these Districts. This bargaining unit would be comprised of just 28 stores and all the stores would be located in the same two Districts in which the 24 stores in the existing bargaining unit are located. The number of stores in this bargaining unit would be less than the 36 stores which were once in the bargaining unit and significantly less than the 55 stores once proposed by the Union as an appropriate bargaining unit. There would be only 130 full-time and part-time store associates in this bargaining unit, which is not that much greater than the 97 store associates currently in the existing bargaining unit.

3. Districts A3C and A3E.

Although this bargaining unit would encompass two districts, so does the existing bargaining unit. This alternative would be geographically cohesive as it essentially would encompass the entire State of Missouri (except for two stores located just over the Arkansas border and one store located just over the Kansas boarder). This unit would basically encompass the same bargaining unit proposed by the Union during negotiations. There would be 35 stores and 152 store associates included in this bargaining unit alternative.

IV. CONCLUSION.

Payless respectfully submits that a decision finding that the Rolla store is an appropriate unit for bargaining would be in complete derogation of established Board precedent. The **only** conceivable factor supporting such a conclusion is that the Rolla store is located some distance away from other Payless stores, and, as a result, there understandably is a lack of employee

interchange relating to the Rolla store. However, there is no evidence indicating that this distinguishes the Rolla store from any other Payless store, and this isolated fact is more than made up by the overwhelming community of interest which the Rolla store associates share with other Payless associates in regard to their qualifications, skills, job duties, working conditions, employment policies, operational procedures, wages and benefits. When that uniformity is coupled with the complete lack of individual store autonomy and commonality of supervision at the District level which are present here, established Board precedent requires the rejection of the single store unit petitioned for in this case.

This case is even more compelling than the Board precedent discussed above because there also is a long history of multi-store bargaining between Payless and the Union which encompasses 24 (and as high as 36) stores in two of Payless' Districts. Accordingly, a determination in favor of a single store unit would be wholly contrary to long-established bargaining practice with the same Union which is the petitioner here.

A ruling in favor of a single store unit also would be impractical, particularly given the highly centralized nature of Payless' operations, the complete lack of local store autonomy, and the high turnover rate of store associates and store leaders. The bargaining unit requested by the petition covers just five employees out of 244 unrepresented employees in Districts A3C, A3E, and A3F, 152 unrepresented employees in Districts A3C and A3E, and 130 unrepresented employees in Districts A3E and A3F. Particularly in view of the high amount of turnover among store associates, it hardly leads to stability in a bargaining relationship or to economy in the utilization of resources to force bargaining for just five employees.

Based on the foregoing, Payless respectfully submits that a single store unit should be rejected, and, given the Union's refusal to proceed to an election in an alternative unit, its petition should be dismissed.

Respectfully submitted,

/s/ David E. Schreiner

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing *Brief of Employer* was forwarded, via regular United States Mail, postage prepaid, this 11th day of September, 2012 to:

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/s/ David E. Schreiner

David E. Schreiner

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

PAYLESS SHOE SOURCE, INC.,

Employer,

and

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

Petitioner.

Case No. **14-RC-087469**

The above-entitled matter came on for hearing pursuant to notice, before **JOHN KELLY HOLDERMAN**, Hearing Officer, at **National Labor Relations Board, 1222 Spruce Street, Room 8.302, St. Louis, Missouri, on Thursday, August 30, 2012, at 10:00 a.m.**

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4					
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6					
7	Chris Eagle	80	104	--	--
8					
9	Bill Halley	107	129	147	148
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	<u>EXHIBITS</u>	<u>FOR IDENTIFICATION</u> <u>IN EVIDENCE</u>
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1 Q. I was going to get into that. If you could explain for
2 us the relationship between Collective Brands, Inc. and
3 Payless Shoe Source, Inc.?

4 A. Sure. Collective Brands, Inc. is a holding company,
5 it's a publicly traded company on the New York Stock
6 Exchange, and it has a number of different companies under
7 that including Payless Shoe Source, Inc., a Missouri
8 corporation. So, that would be a subsidiary and that would
9 be our, you know, our Payless stores, and then it has some
10 other companies such as Collective Licensing, Inc., which is
11 a shoe licensing company, and then Stride Rite.

12 Q. Just let me interrupt, excuse me. When you say it, are
13 you referring to Collective Brands?

14 A. I am.

15 Q. Go ahead. Then it has some other --

16 A. It has some other --

17 Q. Corporate entities?

18 A. -- corporate entities.

19 Q. Are those corporate entities involved in this case here
20 today as far as any of the Payless Shoe stores?

21 A. No.

22 Q. You've stated that your position is Group Counsel for
23 Litigation and Employment. To whom do you report?

24 A. I report to the Deputy General Counsel for Collective
25 Brands.

1 its own HR function. It has its own finance, marketing,
2 different type of corporate functions.

3 Q. But from the standpoint of legal, are you involved in
4 overseeing the Payless --

5 A. I am.

6 Q. -- store?

7 A. I am.

8 Q. Okay. Could you please generally describe for us the
9 nature of Payless' business?

10 A. Payless is involved in the retail shoe sales throughout
11 all 50 states in the United States. We also have retail
12 locations in Canada and in Latin America, and then also in
13 some states in Asia.

14 Q. Okay. Let me just go back for one minute. If you could
15 just generally describe your current duties and
16 responsibilities in your position?

17 A. As Group Counsel, Litigation and Employment, I have
18 general oversight of all litigation matters; also have
19 oversight for labor matters, and then day-to-day
20 consultation and advice with HR on various employment law
21 type issues.

22 Q. So that would include labor relations with respect to
23 the Payless stores?

24 A. Yes, it would.

25 Q. Where is Payless' corporate headquarters located, and

1 along with that, the Collective Brands corporate
2 headquarters?

3 A. Both Payless and Collective Brands are located in the
4 same building, and we're located in Topeka, Kansas.

5 Q. I'm assuming that's where you work?

6 A. That's where I work as well.

7 Q. In performing your duties, do you have occasion to
8 travel to other Payless locations?

9 A. Yes. Pretty much a couple times a month at least.

10 Q. You may have covered this to some degree already, but
11 just to clarify. In what geographic areas does Payless own
12 and operate stores?

13 A. Throughout every state in the United States, in Canada,
14 in Latin America, and in Asia.

15 Q. Does Payless franchise any stores elsewhere in the
16 world?

17 A. All of its stores in North America are company-owned
18 stores. It does franchise stores in Latin America -- that's
19 not correct. It has joint ventures in Latin America with
20 its stores, and then has some franchise locations in Asia.

21 Q. Okay. How many stores does Payless own and operate
22 throughout the world?

23 A. Approximately 4,500.

24 Q. And approximately how many stores does Payless own and
25 operate in the United States?

1 A. Approximately 3,500.

2 Q. And again, approximately, how many employees does
3 Payless employ throughout the world?

4 A. 25,000 to 28,000 throughout the world.

5 Q. And approximately how many employees does Payless employ
6 in the United States?

7 A. Approximately 21,000.

8 Q. Does Payless have an administrative structure to its
9 stores?

10 A. It does.

11 MR. SCHREINER: Can we go off the record for one minute?

12 HEARING OFFICER HOLDERMAN: Sure. Can we please --

13 MR. SCHREINER: I just want to tie down.

14 **(Off the record.)**

15 **(Employer's Exhibit 1 marked for identification.)**

16 Q. BY MR. SCHREINER: I'm going to hand you what we're
17 marking for identification purposes as Employer Exhibit
18 No. 1. I'd like you to take a look at this, Jay, and just
19 starting off briefly identify what this exhibit is, what
20 this document is.

21 Go ahead. Can you tell us generally what this document
22 is?

23 A. This is a current alignment map that shows our corporate
24 administrative structure for Payless in the United States
25 and in Latin America, Canada.

1 Q. Focusing on the United States, what are the largest
2 administrative grouping of stores that Payless has?

3 A. The largest administrative grouping of Payless stores
4 would be at the zone level. So, you'll see we have two
5 zones. We have a Zone A, or also called the North Zone, and
6 then a Zone B, which is also called the South Zone.

7 Q. And can you point out for us the dividing line between
8 Zones A and B?

9 A. Yeah. On this exhibit you can see the black line that's
10 pretty much through the center of the United States, north-
11 south.

12 Q. Approximately how many Payless stores are located in
13 Zone A?

14 A. I think there's approximately 1,900.

15 Q. And approximately how many Payless stores are located in
16 Zone B in the United States?

17 A. 1,700.

18 Q. Approximately how many employees are employed by Payless
19 in Zone A?

20 A. Approximately 11,000.

21 Q. And approximately how many employees are employed by
22 Payless in Zone B?

23 A. Somewhere between 9,000 and 10,000.

24 Q. And what is the Payless store that's covered by the
25 election petition in this case?

1 A. That is a store in Rolla, Missouri. So if we're looking
2 at this map, it's within the dark green color, and that is
3 what's called Region --

4 Q. Okay. We'll get to that in a minute. It would be Zone
5 A, I take it?

6 A. Yeah, I -- okay, yes, Zone A.

7 Q. Okay. We will get to that in a minute.

8 A. Sorry about that.

9 Q. No, no, not at all. As usual you're one step ahead of
10 me.

11 Next, let's get into where you were going. Let me ask
12 it this way. What is the next administrative subgrouping of
13 Payless stores below the zone level?

14 A. Below the zone level is the region level, and there
15 are --

16 Q. And totally in the United States, do you know how many
17 regions there are?

18 A. There are 11.

19 Q. Referencing Employer Exhibit 1 again, and let's focus on
20 Zone A or the northern zone, can you take us through what
21 the regions are?

22 A. Sure. Looking at the top portion of the map for Zone A,
23 you'll see that there are -- from left to right there,
24 you'll see the six regions. Region A1 is in the red; Region
25 A2 is in the yellow; A3 is in the dark green; A4 is in the

- 1 A. He oversees A1, A3, B1 and B2.
- 2 Q. And where would Mr. Eagle's office be located?
- 3 A. Each of these Human Resources Managers are all located
4 in the corporate headquarters in Topeka, Kansas.
- 5 Q. So that applies to both those under Zone A and under
6 Zone B?
- 7 A. Yes, and as well as the Retail Support Associates. They
8 also reside in Topeka.
- 9 Q. Okay. I don't think it makes much of a difference, but
10 your technical employer is --
- 11 A. Collective Brands.
- 12 Q. -- Collective Brands. The staff that we've been talking
13 about here, both the zone VPs, the regional operational
14 staff and the human relations staff that you've been
15 referring to, what corporate entity are they actually
16 employed by?
- 17 A. They're employed by the Payless Shoe Source, Inc., a
18 Missouri corporation.
- 19 Q. Well, we've gone through the zones and then the regions.
20 Does Payless have any administrative subgrouping of stores
21 below the regional level?
- 22 A. Yes, we have districts.
- 23 Q. How are the districts in a region identified?
- 24 A. Districts are identified by a number, or actually it's a
25 letter, so let's take Region A3. Districts would be

1 identified by District A3A, A3B, A3C, A3E, A3 --

2 Q. Et cetera, okay. Approximately how many stores are
3 located in a district?

4 A. Approximately 25.

5 Q. Can that vary somewhat from district to district?

6 A. That does vary. But, you know, 25 to 30.

7 Q. Can it ever be below 25?

8 A. It could probably be a little bit below.

9 Q. So, 25 plus or minus?

10 A. The goal is 25.

11 Q. Is there a managerial position for the districts?

12 A. There is a -- there is, yes.

13 Q. And what is that?

14 A. The district leader.

15 Q. Is a district the lowest administrative subgrouping of
16 stores throughout Payless?

17 A. Yes.

18 Q. So there's really no administrative subgrouping below
19 the district level?

20 A. No, there is not.

21 Q. Okay. Next, I'd like to focus on the districts in
22 Region A3 since that's the region that the Rolla store is
23 in, correct?

24 A. Correct.

25 **(Employer's Exhibit 3 marked for identification.)**

1 generally is A3A?

2 A. That is the --

3 Q. Is that dark blue?

4 A. That's dark -- looks like dark blue to me. It's
5 Oklahoma and Kansas.

6 Q. Okay.

7 A. And then A3B is in Iowa, red circle. A3C is Missouri --

8 Q. And those would be the --

9 A. -- central and west Missouri.

10 Q. Okay.

11 A. A3D is Kansas City and surrounding areas. A3E is the
12 blue circles, and that's south, east and central Missouri
13 and then St. Louis.

14 Q. Okay. And which district is the Rolla store in?

15 A. Rolla is in District A3E, the blue circle.

16 Q. And can you point out for us -- I think it can be seen
17 on this map, but where the location -- if you could point
18 that out for the Hearing Officer?

19 A. Yes.

20 HEARING OFFICER HOLDERMAN: Maybe we'll get into this,
21 but do the -- the same color, the light blue, but it looks
22 like a flag around the St. Louis City, do those have any
23 meaning or is it just a function of the way that it --

24 THE WITNESS: Those represent the unionized stores, the
25 St. Louis --

1 A. This is a chart that represents the current district
2 leaders in -- within Region A3. And you can see at the top
3 where it says DM, that's District Manager. We are changing
4 from calling district managers district leaders, and
5 sometimes we don't get that cleaned up. But if I say DM or
6 DL, it's going to be district manager, district leader, it's
7 the same thing.

8 Q. It's the same thing?

9 A. Same thing.

10 Q. Are they being changed to district leader or to district
11 manager?

12 A. They're being changed to district leader.

13 Q. Okay. So, just explain to us, then, what -- it's
14 probably self-explanatory. But if you would just explain
15 what this document represents?

16 A. Okay. Left to right at the top of the chart is the
17 districts, A3A through A3L. We have the district leaders
18 assigned to each district that shows the store count in each
19 district, and then it shows the geographic area on the right
20 side of where each of those districts are.

21 Q. Okay. And again, what district is the Rolla store in,
22 which is the subject of this petition?

23 A. It's in District A3E.

24 Q. That shows Bill Halley as the district leader, correct?

25 A. Correct.

1 Q. Looking at District A3F, I see that there are two names
2 there, Bill Halley and Rhonda Richerson. Can you explain
3 for us why two names appear under the district leader
4 category for that district?

5 A. Yes. Rhonda was just hired a few weeks ago as a new
6 district leader, so she is going through a training on-
7 boarding session with Bill Halley. So they're kind of --
8 Bill is overseeing two districts at the present, at the hope
9 in October-November time frame that Rhonda will take over
10 A3F, and Bill will just have A3E.

11 Q. That's the plan at least?

12 A. That's the plan.

13 Q. But there's no guarantee of that?

14 A. There is not.

15 Q. I'm looking at this and just doing the math where you
16 would -- you disagree with my count that it looks as though
17 there are about 294 stores in Region A3?

18 A. That's sounds right; approximately 300.

19 MR. SCHREINER: Move to introduce Employer Exhibit
20 No. 4.

21 HEARING OFFICER HOLDERMAN: Any objections to
22 Employer 4?

23 MS. MARTIN: No.

24 HEARING OFFICER HOLDERMAN: Employer Exhibit 4 is
25 received.

1 Districts A3A, A3E and A3F; A3C being green, A3E being blue,
2 and A3F being yellow.

3 Q. And if you could explain for us again the stores that
4 are symbolized by the flags, what those are?

5 A. Those would symbolize stores that are unionized, and
6 with the -- you have CW Local 655.

7 Q. Okay. We'll talk more about the union stores in a
8 minute. I want to come back to that.

9 I think this is pretty self-explanatory. I don't have
10 any other questions for you on this.

11 MR. SCHREINER: So, Employer moves to introduce Employer
12 Exhibit No. 5.

13 HEARING OFFICER HOLDERMAN: Objections?

14 MS. MARTIN: No.

15 HEARING OFFICER HOLDERMAN: Employer Exhibit 5 is
16 received.

17 **(Employer's Exhibit 5 received in evidence.)**

18 MR. SCHREINER: Give me one minute?

19 HEARING OFFICER HOLDERMAN: Sure.

20 MS. MARTIN: Can we take a break, actually, to --

21 MR. SCHREINER: Sure.

22 HEARING OFFICER HOLDERMAN: Can we go off the record,
23 take maybe a ten-minute break?

24 MR. SCHREINER: Yeah, that'd be great.

25 **(Off the record.)**

1 Q. BY MR. SCHREINER: Jay, just before we move off Employer
2 Exhibit 5, if you would, I'm sure -- our Hearing Officer
3 appears young and sharp enough that he can probably see this
4 for himself, but if you would please point out where the
5 Rolla store is on this map?

6 A. It's right down -- A3E.

7 Q. And it's one of the blue circles?

8 A. It's in the blue circle.

9 Q. Thank you.

10 **(Employer's Exhibit 5(a) marked for identification.)**

11 Q. BY MR. SCHREINER: Next I'm going to be handing you what
12 we're marking for identification purposes as Employer
13 Exhibit 5(a), another map. I'd like you to take a look at
14 this and identify it for us, please.

15 A. Yeah, this is a map that shows in -- basically this is a
16 map that shows the Districts A3F and A3E, A3F being in blue,
17 A3 -- excuse me -- A3F being in green, A3E being in blue.
18 The triangles, the blue and the green triangles denote
19 stores that are currently non-union, and then the green
20 circles, A3E and A3F, denote union stores within Local 655.

21 Q. Okay. So the blue circles, then, would be union stores
22 in A3E district?

23 A. Yes.

24 Q. And the green circles are the union stores in District
25 A3F, correct?

1 A. Correct.

2 Q. Okay. And again, how is -- the Rolla store, where is
3 that located and how is that denoted?

4 A. The Rolla store is in A3A. It's a blue triangle.

5 Q. Thank you.

6 MR. SCHREINER: The Employer moves to introduce Employer
7 Exhibit 5(a).

8 HEARING OFFICER HOLDERMAN: And I don't think that we
9 have admitted 5.

10 MR. SCHREINER: Oh, didn't we? I thought that we had
11 before the break. But if we didn't, then I was neglectful
12 and I move to introduce 5 and 5(a).

13 HEARING OFFICER HOLDERMAN: Any objections to 5 and
14 5(a)?

15 MS. MARTIN: No.

16 HEARING OFFICER HOLDERMAN: 5 and 5(a) are received.

17 **(Employer's Exhibit 5(a) received in evidence.)**

18 **(Employer's Exhibit 5(b) marked for identification.)**

19 Q. BY MR. SCHREINER: And next I'm going to hand you what
20 we're marking for identification purposes as Employer
21 Exhibit 5(b), another map. I'd like you to take a look at
22 this document and tell us what this represents.

23 MR. SCHREINER: Off the record.

24 **(Off the record.)**

25 Q. BY MR. SCHREINER: Jay, if you could identify for us

1 what Employer 5(b) is?

2 A. This is a map showing the stores in blue located within
3 District A3E and then the stores in green located within
4 District A3C. The Rolla store is in A3E and it's the blue
5 dot.

6 Q. Okay. A3C is denoted by green circles, correct?

7 A. Correct.

8 Q. Those stores? Are there any unionized stores in that
9 district?

10 A. No.

11 Q. And on this map, the unionized stores in A3E are denoted
12 how?

13 A. They're denoted by flags.

14 Q. Okay.

15 MR. SCHREINER: We move to introduce Employer Exhibit
16 5(b).

17 MS. MARTIN: No objection.

18 HEARING OFFICER HOLDERMAN: Employer 5(b) is received.

19 **(Employer's Exhibit 5(b) received in evidence.)**

20 Q. BY MR. SCHREINER: As we've been going through these
21 maps, you've been mentioning that some of the stores in
22 Districts A3E and A3F have sales associates and they're
23 represented by the Union, correct?

24 A. That's correct.

25 Q. And when I say the Union, I'm going to generally be

1 referring to UFCW Local 655.

2 I'm going to hand you another document to identify,
3 please. It's a document showing a listing of various
4 stores. I'd like you to take a look at that and tell us
5 what it is, and we're marking this for identification
6 purposes as Employer Exhibit 6.

7 **(Employer's Exhibit 6 marked for identification.)**

8 THE WITNESS: This is a summary of the -- all stores
9 within Districts A3E and A3F. The top left is the store
10 number, followed by the district; and then if it's a union
11 store within one of those districts, it's in red, and then
12 the address, city and state.

13 HEARING OFFICER HOLDERMAN: Just out of curiosity, I see
14 all these numbers for the stores, the first three digits
15 being anywhere from 200 on through 2006. Is there any
16 significance to that?

17 THE WITNESS: There's no significance -- let's just at
18 the top where it says 200643. There's no significance to
19 the 2-0 number. It's a computer issue or whatever. So
20 that's going to be Store No. 643. And you -- we'd only be
21 concerned about stores being like a 643, or if you went down
22 inside 2153 or 2092. It's not going to be anything -- a
23 store higher than a four-digit store number.

24 HEARING OFFICER HOLDERMAN: Just out of curiosity,
25 looking down about one, two, three, four, five, six --

1 202000, how would you refer to that store?

2 THE WITNESS: Store 2000.

3 HEARING OFFICER HOLDERMAN: Okay.

4 Q. BY MR. SCHREINER: Now, are the stores that are
5 indicated union on Employer's Exhibit 6, are they covered
6 under one bargaining unit and one collective bargaining
7 agreement, or are there separate bargaining units and
8 contracts for those stores?

9 A. They're one bargaining unit, one contract.

10 Q. And I think we've established this nine ways from
11 Sunday, but who again is the Union that represents the
12 employees in that bargaining unit?

13 A. UFCW Local 655.

14 Q. I don't know if you want to refer to this exhibit and
15 count, or if you know, but how many stores in Districts A3E
16 and A3F are covered by the Union contract?

17 A. In A3A, I believe 17 stores are covered by the Union
18 contract. A3F, I believe 7 stores are covered by the Union
19 contract.

20 Q. So, for a total of 24, then --

21 A. Right.

22 Q. -- that are covered? And if you can tell us, please,
23 how many non-union stores are there in Districts A3E and
24 A3F?

25 A. There are 8 non-union stores in A3E, and, I want to say

1 20 non-union stores in A3F.

2 Q. For a total of 28 non-union stores?

3 A. Correct.

4 MR. SCHREINER: We move to introduce Employer Exhibit 6.

5 MS. MARTIN: No objection.

6 HEARING OFFICER HOLDERMAN: Employer Exhibit 6 is
7 received.

8 **(Employer's Exhibit 6 received in evidence.)**

9 **(Employer's Exhibit 7 marked for identification.)**

10 Q. BY MR. SCHREINER: Next, Jay, I have another document to
11 show you. It's a chart with some numbers on it that we're
12 marking as Employer Exhibit No. 7. I'd like you to take a
13 look at this document, please, and identify what this is.

14 A. This document shows the number of full-time and part-
15 time employees within Districts A3E, A3F, and then combined
16 A3E and A3F, and it shows --

17 Q. Okay. Let me just interrupt you for one minute. When
18 you say employees, and just look at the chart. On the left-
19 hand side of the chart is the district, I assume?

20 A. Yes.

21 Q. And then on the right-hand side it says number of
22 employees. Yeah, what are we referring to on this chart
23 when we say employees?

24 A. We're referring to store associates, whether they be
25 full-time, part-time or temporary.

1 Q. BY MR. SCHREINER: But in those two districts, the
2 number of non-union employees, 152. Does that look right to
3 you?

4 A. Yes.

5 Q. And the number of union employees, 69?

6 A. Yes.

7 MR. SCHREINER: The Employer moves to introduce Employer
8 Exhibit 7(a).

9 MS. MARTIN: No objection.

10 HEARING OFFICER HOLDERMAN: 7(a) is received.

11 **(Employer's Exhibit 7(a) received in evidence.)**

12 **(Employer's Exhibit 8 marked for identification.)**

13 Q. BY MR. SCHREINER: The next document I have for you to
14 take a look at is marked as Employer's Exhibit 8. It's a
15 multi-paged contract. I'd like you to take a look at this
16 if you would, please, and tell us what this document is.
17 Just briefly identify it.

18 A. This is the current collective bargaining agreement
19 between Local 655 and Payless.

20 Q. Now, who was Payless' chief spokesperson in the contract
21 negotiations leading to this contract?

22 A. I was.

23 Q. And who was the Union's chief spokesperson?

24 A. Gary Torpia.

25 Q. How long, Jay, have you been involved on behalf of

1 Payless in negotiating the collective bargaining agreements
2 for this bargaining unit covered by Employer Exhibit 8?

3 A. Since 2000.

4 Q. Have you been the company's chief spokesperson during
5 that time?

6 A. Not the first time. This is the fifth contract. The
7 first contract, I was not.

8 Q. Now, just for the record to specify, does this
9 bargaining unit -- does the bargaining unit covered by this
10 contract cover all the union stores we've been discussing
11 that are located in Districts A3E and A3F?

12 A. Yes.

13 Q. So it covers 24 stores, correct?

14 A. Correct.

15 Q. Currently?

16 A. Yes.

17 Q. Directing your attention to the contract, page 1, how is
18 the scope of the bargaining unit defined in the contract,
19 just briefly?

20 A. By county.

21 Q. And what counties are included under the contract?

22 A. Well, it's -- actually it looks like the City of St.
23 Louis, and then the counties. St. Louis County, St. Charles
24 County, Jefferson County, and Washington County.

25 Q. And can you tell us where that is set forth in this

1 collective bargaining agreement?

2 A. It is set forth in the preamble, in Section 1(b).

3 Q. And what about Section --

4 A. And 2(b).

5 Q. Okay.

6 A. And (a), I guess. No, just Section 2(b).

7 MR. SCHREINER: The Employer moves to introduce Employer
8 Exhibit No. 8.

9 MS. MARTIN: No objection.

10 HEARING OFFICER HOLDERMAN: Employer 8 is received.

11 **(Employer's Exhibit 8 received in evidence.)**

12 **(Employer's Exhibit 9 marked for identification.)**

13 Q. BY MR. SCHREINER: Next I'm going to hand you a map of
14 Missouri, which we're marking for identification purposes as
15 Employer Exhibit 9. Bear with me one minute here --
16 stapler.

17 And what is this, Jay?

18 A. This is a map of every county in Missouri.

19 Q. I don't know if you need to reference the collective
20 bargaining agreement, but could you just point out for us
21 again on this map what counties are covered by the contract
22 with the Union?

23 A. Yes. Let me just look. St. Louis, St. Charles,
24 Jefferson, and Washington counties, and then St. Louis City.

25 Q. Okay. So it stretches from St. Charles on the north

1 side, to the north, which is in green --

2 A. Yes.

3 Q. -- down to Washington, which is in blue on the south?

4 A. Yes.

5 Q. Okay.

6 MR. SCHREINER: Move to introduce Employer Exhibit 9.

7 MS. MARTIN: No objection.

8 HEARING OFFICER HOLDERMAN: Employer 9 is received.

9 **(Employer's Exhibit 9 received in evidence.)**

10 Q. BY MR. SCHREINER: Do you know, Jay, how long there has
11 been a collective bargaining relationship between Payless
12 and the Union with respect to this bargaining unit?

13 A. For at least 25 years.

14 Q. Before your involvement?

15 A. Yes.

16 Q. Do you know, have there been any Payless stores which
17 have been opened, new stores, in the counties covered by the
18 contract which have been added to the bargaining unit? Do
19 you know whether that's happened?

20 A. I believe that's the case.

21 Q. You're not sure?

22 A. I'm not.

23 Q. Okay. But you think that stores have been added?

24 A. I do.

25 Q. Have there been any stores added to the bargaining unit

1 covered by the collective bargaining agreement outside of
2 the counties specified in the contract?

3 A. No.

4 Q. Let me ask this. Do you know whether there have ever
5 been more than 24 stores covered by this collective
6 bargaining agreement?

7 A. There have. If my recollection serves me, at one time
8 there was perhaps close to 36 stores within the bargaining
9 unit, but unfortunately due to economic difficulties, we've
10 had to close some stores.

11 Q. Since you've been involved in conducting negotiations on
12 behalf of the company, do you know, has the Union ever made
13 a bargaining proposal to expand the scope of the bargaining
14 unit covered by the contract we've been discussing?

15 A. Yes.

16 Q. And what was that?

17 A. In 2009, they proposed all counties within Missouri.

18 Q. So for the entire State --

19 A. Yes.

20 Q. -- of Missouri, all stores?

21 A. Yes.

22 Q. Was there ever any agreement reached on that?

23 A. No, that was withdrawn.

24 Q. We may have covered this in some of the preliminaries
25 here today, but to your knowledge has there ever been an

1 NLRB unit determination decision involving Payless stores?

2 A. Not to my knowledge.

3 MR. SCHREINER: Can we go off the record for a minute?

4 HEARING OFFICER HOLDERMAN: Sure.

5 **(Off the record.)**

6 Q. BY MR. SCHREINER: Okay. Next, Jay, I'd like to talk a
7 little bit about the functional integration business --
8 corporate control. I know you don't have a lot of day-to-
9 day responsibilities in that regard, but I assume in your
10 corporate position you have some familiarity with corporate
11 policies?

12 A. Correct.

13 Q. How would you characterize the administration of
14 Payless' business operations? Is it controlled centrally or
15 are its stores relatively autonomous in their operation?

16 A. Payless is extremely centralized in its operations, and
17 what we try to do is, you know, our store in Rolla will have
18 the same general layout, same product, same prices, same
19 real estate -- about, you know, geographic size as a store
20 in Cincinnati, for example. Very standardized.

21 Q. Is there any corporate philosophy or approach that
22 drives those things that you've described?

23 A. Just wanting to make sure that all of our customers
24 throughout the United States have the same shopping
25 experience, and so it's just very, very standardized, very

1 A. Yes.

2 Q. And would store managers have the authority to change or
3 vary any corporate banking policies?

4 A. No.

5 Q. To the extent there ever is any variance from
6 established corporate policies such as the banking policy,
7 at what managerial level would that have to be done, if you
8 know?

9 A. For banking? At the very lowest, I think it would be at
10 the district level, but my guess when you're talking about
11 banking is that it would be at the vice president level.

12 Q. Okay. Let's talk about establishing budgets, the
13 budgeting process. I'm assuming, or let me ask: Does
14 Payless have any policy or process applicable to all its
15 stores in the United States regarding budgeting?

16 A. Yes.

17 Q. And at what level of the company is that policy
18 formulated?

19 A. At the corporate level.

20 Q. You're generally aware there is a policy on budgeting.
21 Are you aware of the specifics of that? Do you get involved
22 in the specifics of the budgeting policy?

23 A. No, a general awareness of it.

24 Q. Can you just give an overview, then, of what that
25 process is?

1 A. Sure. The vice presidents would be given a budget each
2 year from perhaps each season with which to work, and from
3 that budget they would establish a payroll for each of the
4 regions, and everyone would work to operate within that
5 budget.

6 Q. Okay. Do you know, are the store managers expected to
7 follow that budgeting -- whatever that budget is that is
8 established?

9 A. Sure, yes.

10 Q. And would the store managers have any authority to
11 change or vary the budget that was established for them?

12 A. No.

13 Q. They would not have any authority to do that?

14 A. No, not to my knowledge.

15 Q. Let's talk about payroll. You may have touched upon
16 that. But does Payless have any policy applicable to all
17 its stores with respect to the administration of payroll?

18 A. Yes. It's a corporate-wide policy.

19 Q. Do you know the specifics of that or generally how
20 payroll is done?

21 A. Generally, again, it's given to -- Payroll is set from
22 the corporate level based on some analyses that are done by
23 our Finance Department in Topeka. Each of the vice
24 presidents are given a yearly payroll number that they have,
25 and then they work with the directors of retail operations

1 to figure out what makes sense for each of their regions.

2 Q. Okay. Are the store managers expected to follow the
3 policies that have been set by corporate with respect to
4 payroll?

5 A. Yes.

6 Q. And do they have any authority to vary that corporate
7 policy with respect to payroll?

8 A. No.

9 Q. Let's talk about pricing.

10 MR. SCHREINER: And I should note for the record, I'm
11 trying to give a view kind of from 50,000 feet here. We'll
12 get into this more when we get into testimony from
13 operations people that have to work in the real world with
14 all these things we're discussing.

15 Q. BY MR. SCHREINER: Pricing. I just want to touch upon
16 that for a moment. You mentioned that briefly when you were
17 testifying a few minutes ago.

18 But let me ask again just to confirm. Does Payless have
19 any policy applicable to all its stores in the United States
20 regarding the pricing of its products?

21 A. Yes.

22 Q. And where is that policy established?

23 A. At the corporate level.

24 Q. I think you touched upon this to some degree, but
25 essentially if you could relate for us, you know, what that

1 pricing policy is?

2 A. Sure. For each shoe or each accessory that a store or
3 that the company sells, no matter where they are in the
4 United States it's going to be the same price. So a central
5 price is established from the corporate office.

6 Q. So even if a shopper went into a store in Manhattan, New
7 York versus saying going to a Rolla store, the price would
8 be the same?

9 A. That is my understanding, yes.

10 Q. Do store managers -- well, let me ask it this way, are
11 store managers expected to follow those pricing policies?

12 A. Yes.

13 Q. Would a store manager have any authority to vary the
14 pricing of products?

15 A. No.

16 Q. The next thing let's talk about marketing and
17 advertising. I'm assuming that Payless engages in marketing
18 and advertising activities?

19 A. They do.

20 Q. What level of the corporation are the marketing and
21 advertising decisions made?

22 A. Those are made at the corporate level.

23 Q. Is there a particular group that is involved with the
24 advertising and marketing for the company?

25 A. Yes, we have a marketing and advertising department,

1 it's within one department, called the Marketing Department.
2 And any of the decisions on print advertising or newspaper
3 advertising, freestanding inserts, TV, is made by the
4 Marketing Department in consultation with the President of
5 Payless.

6 Q. You said GD?

7 A. TV.

8 Q. Oh TV, I'm sorry.

9 A. Television.

10 Q. I thought you were talking about -- I do know that. I
11 thought you were talking about some electronic marketing
12 thing --

13 A. No.

14 Q. -- that I'm not smart enough to understand. Okay, are
15 store managers expected to follow the marketing and
16 advertising decisions that have been made at the corporate
17 level?

18 A. Yes.

19 Q. And do store managers have any authority to vary the
20 marketing or advertising campaigns that have been
21 established from corporate?

22 A. Not to my knowledge.

23 Q. Next let's talk about merchandising Payless' products
24 and distribution of its products. With respect to the
25 products that it sells in its stores, how they are

1 practices would be set from the corporate office.

2 Q. Okay. Would store managers be expected to follow the
3 expense control policies that have been set by the corporate
4 office?

5 A. Yes.

6 Q. And would they have any authority to vary those
7 policies?

8 A. No.

9 Q. Loss prevention is a retail operation. Does Payless
10 have some type of policy to try to prevent theft and control
11 cash and that sort of thing?

12 A. Yes.

13 Q. At what level of the company are those types of policies
14 set?

15 A. Those policies are set at the corporate level. We have
16 a Loss Prevention and Field Audit Department in Topeka, who
17 sets those polices and practices.

18 Q. Okay. And is each store manager throughout the
19 corporation expected to conform to those loss prevention
20 policies?

21 A. Yes.

22 Q. Does the store manager have any authority whatsoever to
23 vary or deviate from those loss prevention policies?

24 A. No.

25 Q. Does Payless have any polices in effect or processes

1 that are used by the company to measure store performance?

2 A. Yes.

3 Q. At what level of the company are those types of policies
4 set?

5 A. At the corporate level.

6 Q. Are you familiar or can you give us any specifics as to
7 what type of policies Payless has established?

8 A. I think I can. The company has what are called Key
9 Performance Indicators, and those are something that each
10 store throughout the chain is measured upon. And those
11 would be in areas like sales, conversion, which is if a
12 customer comes in, how many pairs of shoes, if any, did you
13 sell them, customer satisfaction, units per transaction --
14 conversion is actually if they came in, did you sell them
15 versus leaving and not selling. I think the last Key
16 Performance Indicator has to do with what's called CRM or
17 Customer Relations Management, and that's a e-marketing
18 tool; did you get the customer to sign up for -- as we all
19 go into stores, can I have your e-mail address so I can send
20 you advertisements. That's called CRM, and that's what --
21 your corporate-wide policy to try to get people to sign up
22 for.

23 Q. And I am assuming then that these Key Performance
24 Indicators that you've been talking about -- at what level
25 of the corporation are those established?

1 A. At the corporate level.

2 Q. And are store managers expected to follow and apply
3 those corporate policies relating to Key Performance
4 Indicators?

5 A. Yes.

6 Q. Do the store managers have any authority to vary or
7 deviate, come up with their own performance indicators?

8 A. No.

9 MR. SCHREINER: Can I have one minute?

10 **HEARING OFFICER HOLDERMAN: Let's go off the record for**
11 **a moment.**

12 **(Off the record.)**

13 HEARING OFFICER HOLDERMAN: Okay. Let's go back on the
14 record, please. And I'm sorry, you said that --

15 MR. SCHREINER: I'm sorry I thought we were on. That's
16 all we have on direct of this witness.

17 HEARING OFFICER HOLDERMAN: Okay, Ms. Martin.

18 MS. MARTIN: Sure. And we don't have much, so hopefully
19 we will be able to get done.

20 **CROSS-EXAMINATION**

21 Q. BY MS. MARTIN: The policies that you were just talking
22 about involving banking -- let me go back to my list. You
23 testified that Payless has corporate policies relating to
24 banking, payroll, pricing of product, marketing/advertising,
25 product selection I think was maybe the last one you were

1 THE WITNESS: They would contact someone in the Human
2 Resources Department that is located in Topeka.

3 HEARING OFFICER HOLDERMAN: Okay.

4 THE WITNESS: They may also contact the district leader.

5 HEARING OFFICER HOLDERMAN: Okay. So depending on --
6 well, correct me if I'm wrong here. It seems that who they
7 would contact would depend on what district they are in, and
8 anyone in that same district, regardless of the store that
9 they are in, would be contacting whatever Human Resources
10 person would be representing the district?

11 THE WITNESS: Right.

12 HEARING OFFICER HOLDERMAN: Okay. Where are records
13 kept? For instance -- well, let's stick with W-2s.
14 Employees' W-2s where are they physically located?

15 THE WITNESS: W-2s I believe are electronic and they are
16 located in Topeka.

17 HEARING OFFICER HOLDERMAN: Okay. I'm not sure if there
18 is a personnel file or something specific to each employee,
19 but do you know where these files would be kept?

20 THE WITNESS: It varies, but a district leader would
21 maintain the personnel files for the store managers. And
22 then part of the store associate's personnel file would be
23 in the store, and then the other part of it, the electronic
24 parts of it like the I-9, the W-4, counseling forms and
25 things of that nature, would be kept in Topeka.

1 HEARING OFFICER HOLDERMAN: Okay. What would be
2 examples of items that would be at the store opposed to at
3 Topeka?

4 THE WITNESS: Maybe a training -- we have a training
5 booklet. The store should have a training program that is
6 standardized throughout the company, but each manager would
7 work an associate through the training booklet and I think
8 those booklets; they have check boxes and everything, those
9 are maintained in the personnel file. A copy of a
10 disciplinary action, counseling form -- a copy of that would
11 be kept in the personnel file local and a copy would be sent
12 to the corporate office.

13 HEARING OFFICER HOLDERMAN: Okay. I believe that's all
14 that I have. Mr. Schreiner, do you have anything else for
15 this witness?

16 MR. SCHREINER: Just one, just to clarify.

17 **REDIRECT EXAMINATION**

18 Q. BY MR. SCHREINER: Does the corporate office dictate
19 product and price at the stores?

20 A. Yes.

21 MR. SCHREINER: That's all.

22 HEARING OFFICER HOLDERMAN: And Ms. Martin, do you have
23 anything else?

24 MS. MARTIN: No, I'm done.

25 HEARING OFFICER HOLDERMAN: Thank you very much.

1 perspective those investigations that require one-on-one HR
2 involvement. I will be out in the field conducting those as
3 well.

4 Q. Okay. Can you estimate approximately how often are you
5 out in the field?

6 A. I would say, if you averaged it out, I am in a store at
7 least once a month.

8 Q. Have you ever been to the Rolla store?

9 A. Yes, I have.

10 Q. I want to talk a little bit about the stores. Do
11 Payless stores all have the same essential type of layout,
12 or is each store laid out differently?

13 A. Each store is very much laid out the same, depending of
14 course based on square footage that we are able to negotiate
15 with the landlord. I think the square footage of the store
16 is generally in about the 3,000 square foot area. And so
17 depending on how much rack space we have will determine how
18 much product we are able to carry in that store and the
19 actual layout. But generally speaking the front 15 has your
20 accessories, you've got your racks and your sizes of either
21 men's, women, children, and they are laid out identically.

22 Q. Why is that? Why the identical nature of the layout?

23 A. Well, Payless tries to make sure that every time a
24 customer goes into a store, they get the exact same
25 experience; that we have for years trained our Payless

1 customers that shoes are in your size in the racks. It's a
2 self-service driven business. And so we want to make sure
3 that every time a customer goes into a Payless store, that
4 they are able to find their product and make their
5 purchases.

6 Q. Is that policy -- at what level of the corporation is
7 that policy dictated?

8 A. The policy, I don't know that that's a written policy.
9 However, Payless sends out on a weekly basis, for example, a
10 promotional flyer -- I don't remember the actual -- somebody
11 else will testify I imagine what the actual term is, but
12 from my experience there is brochure, a document that is
13 sent out to every store that says put this shoe in this
14 place, with this poster behind it. And that is dictated by
15 a corporate responsibility.

16 Q. You mentioned that you have been in the Rolla store. Is
17 there any difference in the layout of the Rolla store
18 compared to any of the other Payless stores you've been in?

19 A. No, it looked identical.

20 Q. Are the working conditions of the sales associates in
21 the Rolla store the same as those sales associates in other
22 Payless stores?

23 A. Yes, they are the same.

24 Q. Are there any differences in the job positions from
25 store to store, or does each Payless store have essentially

1 the same job positions?

2 A. The job positions are the same across all Payless
3 stores.

4 Q. And what are the job positions in a Payless store?

5 A. So we have -- the majority of our associates are part-
6 time sales -- part-time associates. Then depending on store
7 volume, it depends on what other associates are budgeted in
8 the payroll cycle, so if the volume allows for it, we will
9 have full-timers, and if the volume allows for it, a
10 potential for an assistant. And then as previously
11 testified, there will either be a singular store manager, or
12 that store will report to a multiple store leader.

13 Q. Who has the authority to make that determination as to
14 what the mix of sales associates will be?

15 A. There is a guideline that is produced by corporate, and
16 the district leader ultimately makes the decision.

17 Q. Would a store manager have the authority to make the
18 determinations as to how many part-time, full-time sales
19 associates he or she was hiring?

20 A. The number hired goes back to the payroll and the
21 budgeting and the allotted hours. So you could have
22 multiple part-time associates, but they would not get very
23 many hours. So that mix and that balance is determined by
24 the district leader.

25 Q. Okay. So I'm asking does the store leader have any

1 authority to vary that or make determinations?

2 A. Partnership with the district leader, not on their own.

3 **(Employer's Exhibit 10 marked for identification.)**

4 Q. BY MR. SCHREINER: I'm handing you what we are marking
5 for identification purposes as Employer's Exhibit 10. I
6 would like you to take a look at that and then just briefly
7 tell me what this form document is?

8 A. This is a store associate job description that describes
9 the essential functions and qualifications to be an
10 associate in our stores. It pertains to both part-time and
11 full-time.

12 Q. You anticipated my question.

13 A. Sorry.

14 Q. No, no, that's okay. It saves me the time.

15 A. The duties are identical throughout the company; it just
16 depends on the number of hours.

17 Q. Who within the company is responsible for putting
18 together this job description? I guess I should say this
19 and any other job description utilized in the stores?

20 A. This would be a corporate responsibility.

21 Q. Do you know who specifically is involved in putting
22 together job descriptions?

23 A. We have a corporate HR Compensation Department, Learning
24 and Development Department, as well as partnership with the
25 field management and the field HR persons like myself that

1 would come together in the creation of a document like this.

2 Q. Are store managers involved in putting together a
3 document like this?

4 A. No.

5 Q. Or this document specifically?

6 A. No.

7 Q. Are the job duties and skills required for a sales
8 associate at the Rolla store -- well, let me strike that.

9 Does this job description apply to the sales associates
10 at the Rolla store?

11 A. Yes.

12 Q. Are the duties and skills required of a sales associate
13 at the Rolla store the same as for any other sales associate
14 at any other Payless store?

15 A. They are the same.

16 MR. SCHREINER: I would move to introduce Company's
17 Exhibit 10.

18 MS. MARTIN: No objection.

19 HEARING OFFICER HOLDERMAN: Employer's Exhibit 10 is
20 received.

21 **(Employer's Exhibit 10 received in evidence.)**

22 Q. BY MR. SCHREINER: Does Payless have any type of
23 training program for its sales associates?

24 A. Yes, the on-boarding and hiring process and training of
25 field store associates is very defined.

1 calling out -- well, first starting on the left is the week,
2 and then the topic that is going to be covered, and where
3 you get the in depth, detailed learning and development
4 material that you are supposed to be learning. So
5 specifically in that source column, you would see the
6 letters CBL, that's computer-based learning. So there are
7 packets of CDs in the back of all of our stores that
8 corporate sends to all the stores. And this says "Go to CD
9 Number 1," and you'll find your orientation for day one and
10 so forth.

11 Q. Is this training program that is represented by this
12 form, is that something that the -- I believe you called it
13 the Learning and Development Team at corporate would put
14 together?

15 A. Yes. The field specific one would be responsible for
16 this.

17 Q. Are you involved in carrying out any training of
18 associates?

19 A. No, I would not say at that level.

20 Q. Okay. Who would be involved in going through the
21 training program with associates as represented in this
22 document?

23 A. The store leader.

24 Q. Does the district leader have any involvement in that?

25 A. Yeah, actually the district leader starts off or kicks

1 off in this window. They have what's called a Store
2 Associate University, an SAU, which is district leader led
3 meetings that is kind of the welcome to my team collective.

4 Q. Okay, we'll get into that with the district leader.

5 MR. SCHREINER: We move to introduce Employer's Exhibit
6 11.

7 MS. MARTIN: No objection.

8 HEARING OFFICER HOLDERMAN: Employer's Exhibit 11 is
9 received.

10 **(Employer's Exhibit 11 received in evidence.)**

11 Q. BY MR. SCHREINER: Does Payless have any type of dress
12 code for -- oh, one question before we move on to that.
13 This training program that is represented in Employer's
14 Exhibit 11, is this program uniformly followed throughout
15 Payless for all of its sales associates?

16 A. Yeah. We are pretty methodical when it comes to our
17 training and our tracking of our training. You know, the
18 fact of the matter is we're -- about 80 percent of our
19 workforce is part-time, and of that 80 percent, it's close
20 to 120 percent turnover. So the people we train this year
21 very likely, the nature of our specialty retail business
22 won't be here next year; there will be somebody else doing
23 that job. And so the sheer nature of that turnover requires
24 us to have very disciplined training, on-boarding process so
25 that that end customer gets the same shopping experience no

1 vice presidents, the retail operations vice president, Cris
2 Beffort, Wendy Jacek, at a zone level. Because they are
3 really trying to set that tone for what do we want to
4 represent to our customers.

5 Q. But when you say field leadership, and you've used that
6 with respect to all of these policies that we have been
7 talking about, does that include the store leader? Would
8 they have involvement or input in that regard?

9 A. No. Field leadership would be at a corporate level.

10 Q. Understood. Thank you.

11 **(Employer's Exhibit 12 marked for identification.)**

12 Q. BY MR. SCHREINER: I am handing what we are marking for
13 identification purposes as Employer's Exhibit 12. If you
14 would please take a look at this policy, and if you could
15 identify for us briefly what this document is?

16 A. This is a Business Casual Dress Code and Personal
17 Appearance Policy, a corporate level policy that applies to
18 all associates throughout the company.

19 Q. And is this basically the dress code policy for all
20 sales associates?

21 A. Yes, the sales associates are specifically called out in
22 this policy. Yes.

23 MR. SCHREINER: And we move to introduce Employer's
24 Exhibit Number 12.

25 MS. MARTIN: No objection.

1 does this policy apply to the Rolla sales associates as well
2 as to all other non-union sales associates employed by
3 Payless throughout the United States?

4 A. It does apply uniformly.

5 Q. There is a section entitled Employment Guidelines, with
6 a number of rules set forth in pages 8 through 11 of the
7 employee handbook. Do those polices apply to the Rolla
8 sales associates as well as all other non-union sales
9 associates employed by Payless throughout the United States?

10 A. Yes.

11 Q. Pages 8 through 11.

12 A. Yes, they apply to the Rolla stores as well.

13 Q. And no exception for Rolla?

14 A. No exceptions for Rolla.

15 Q. Directing your attention to the Employee Relations
16 provisions of the employee manual, pages 11 through 13, do
17 those polices apply to the Rolla sales associates as well as
18 to all other non-union sales associates employed by Payless
19 throughout the United States?

20 A. Yes, they do.

21 HEARING OFFICER HOLDERMAN: Mr. Schreiner, is it not
22 possible to say that the entire Employee Handbook --

23 MR. SCHREINER: Yeah. I just wanted to make sure, but
24 yeah. I was just going to go through the rest of it, but
25 we've probably got that one covered.

1 stores.

2 So with that they look at the geographic impact of where
3 our stores are and they decide, they set a grid based on --
4 of course, there are federal and state and local impacts of
5 that, minimum wage impacts and whatnot, but generally
6 speaking they set those wages based on the geographic
7 ranges. We have low geographic, medium geographic, high,
8 and very high geographic areas across the company.

9 Q. Okay. What are the wage ranges for the sales associate
10 positions at the Rolla store?

11 A. The actual dollar amount?

12 Q. Yeah.

13 A. I believe it's minimum wage, \$7.25 to a ceiling of -- I
14 think it's about \$9.50 -- \$9.53.

15 Q. Does that apply for part-time and full-time employees?

16 A. Yes. The geographic review for the state of Missouri
17 says that -- our corporate partners have determined that it
18 is the same for both part-time and full-time in the state of
19 Missouri.

20 Q. Now, I'm going to reference -- our reference point is
21 District A3C, which is in Missouri, and then A3E, which is
22 Rolla' district, as well as A3F. And not including the
23 wages that are of course covered by the collective
24 bargaining agreement. How do the wage rates for the sales
25 associates at the Rolla compare to the other sales

1 associates employed at the non-union store in those
2 districts?

3 A. Except for a caveat of a little bit A3F leads over into
4 Illinois and Illinois has a much higher minimum wage
5 required from a state standpoint, everything else in those
6 are identical.

7 Q. The wage ranges for the Rolla store compared to all the
8 non-union stores in those districts?

9 A. They are -- they are the same.

10 Q. You say much higher in Illinois. What is the difference
11 in the minimum wage rate there?

12 A. I think it's about a dollar higher.

13 Q. Okay. What about on the high end in Illinois, is there
14 -- about how much higher --

15 A. I think it's about a 1.50 higher on the high end of the
16 full-time scale.

17 Q. But that is dictated by the legal requirements in
18 Illinois, I take it?

19 A. Correct, and -- for the high end.

20 Q. Next, I would like to go into just a little more detail
21 regarding the benefits applicable to the sales associates at
22 the Rolla store and Payless' other non-union stores.

23 With respect to policies related to leaves of absence,
24 are the policies that apply to the Rolla store employees the
25 same as to other sales associates at Payless stores in the

- 1 United States?
- 2 A. They are the same.
- 3 Q. The same question with respect to paid vacations?
- 4 A. They are the same.
- 5 Q. What about personal days?
- 6 A. It's the same for all associates.
- 7 Q. Paid holidays, same question?
- 8 A. It's the same for Rolla as for other non-union.
- 9 Q. Jury and witness duty leave?
- 10 A. It's the same.
- 11 Q. Paid funeral and bereavement leave?
- 12 A. All the same.
- 13 Q. And does Payless have a merchandise discount?
- 14 A. They do, and it is the same for Rolla as it is the rest
- 15 of the associates.
- 16 Q. Okay.
- 17 A. A base percentage.
- 18 Q. In addition to the benefits that I just mentioned, does
- 19 Payless provide any other benefits to its sales associates?
- 20 A. I don't think we specifically called out examples, more
- 21 national, your health, dental, 401(k). Those are accessible
- 22 to all associates.
- 23 Q. So group insurance benefits and 401(k) retirement plan?
- 24 A. The only difference on those would be who the potential
- 25 provider was, but the level of benefit is the same due to

1 national impacts on them.

2 Q. Well, let me ask about that. Let's talk about group
3 insurance benefits, what type of group insurance benefits
4 are there?

5 A. Well, medical and dental. We have vision as well. We
6 have flexible spending accounts.

7 Q. And at what level are those group insurance benefits
8 determined and negotiated?

9 A. At a corporate level. We have an HR Department at
10 corporate called Benefits, who works with national carriers
11 and negotiates rates and coverages and maintains consistency
12 across the entire company on those coverages across those
13 different providers.

14 Q. So the group insurance benefits that the Rolla employees
15 would be eligible for are the same as for any other sales
16 associates throughout the United States?

17 A. They are the same.

18 Q. What about the 401(k) retirement plan, is that I assume
19 done at the corporate level as well?

20 A. All associates the same plan.

21 Q. Oh, they are under the same plan nationwide?

22 A. They are.

23 Q. So the sales associates at the Rolla store would be
24 eligible for the same 401(k) benefit as any other sales
25 associate?

1 policies and the sales associates at the stores?

2 A. No, I am not in charge of the policies. I enforce the
3 procedures, policies.

4 Q. With respect to the actual sales associates?

5 A. Oh, yeah.

6 MR. SCHREINER: Okay. You know, I think what I am going
7 to do at this point is we may as well introduce the job
8 description. We are now on what, 13?

9 HEARING OFFICER HOLDERMAN: Yes.

10 COURT REPORTER: Fourteen.

11 HEARING OFFICER HOLDERMAN: Oh, I'm sorry.

12 **(Employer's Exhibit 14 marked for identification.)**

13 Q. BY MR. SCHREINER: I am handing you what we are marking
14 for identification purposes as Employer's Exhibit 14. I
15 would like you to take a look at that. Can you tell us what
16 this is?

17 A. This is the position requirements for the district
18 leader.

19 Q. Would this apply to you?

20 A. Yes, I hope.

21 Q. Okay. I want to reference for one minute, Bill, an
22 earlier exhibit, Employer's Exhibit 4; it is the chart. And
23 I think that Jay may have covered this a little bit, but
24 could you just explain why your name is down twice here as
25 district leader for A3E and A3F?

1 A. Yes. I am overseeing both districts at this point
2 because the other district leader left at the end of June.
3 And Rhonda, Rhonda is on there. She is in training with me.
4 She is assigned to be a district leader in F, but she is
5 actually shadowing me for a few weeks for her training -- in
6 the completion of her training.

7 Q. When will her training be completed approximately?

8 A. She is scheduled to be assigned the middle of October.

9 Q. And when that happens, which district will she be the
10 district leader of?

11 A. F.

12 Q. And then I presume you will continue as district leader
13 for E?

14 A. Yes.

15 Q. If something does not work out with her or she leaves or
16 whatever, who would continue to have responsibility for F?

17 A. Me.

18 Q. Okay. Do you have an office that you work out of?

19 A. Actually I have an office that I never use. I work out
20 of my home; it is just more convenient to pull numbers. So
21 I work out of my home for an office one day a week.

22 Q. Where is your home office?

23 A. It's in O'Fallon, Missouri.

24 Q. And about how far is O'Fallon from the Rolla store, an
25 approximation of miles?

1 A. About -- I'm going to say around 100 or maybe a little
2 less. By the crow flies probably 80.

3 Q. As district leader for A3E and A3F, do you have
4 responsibility for employment matters relating to the store
5 associates in your two districts?

6 A. Yes.

7 Q. Would that also include the unionized employees of the
8 stores in your district?

9 A. Yes, I do.

10 Q. I would like to give a little bit more detail to some of
11 these business practices that Jay testified about that he is
12 obviously involved in on a day-to-day basis. So I'll try to
13 zero in on how these corporate policies are actually carried
14 on.

15 Let's first talk about banking. If you could describe
16 what the banking arrangements are, who sets the banking
17 policies and how that works in practice?

18 A. Well, according to how I understand this is that for
19 years -- we are going to open a store, well, when we open a
20 store we determine -- Topeka asks us what is the closest
21 bank to do this procedure? We turn in a name. They take
22 care of all the banking set up for the store. So it is set
23 through the Topeka office.

24 Q. And then who gives the input on a local basis for the
25 banking arrangement? Is that the district leaders?

1 A. The district leaders.

2 Q. Does the store leader have any authority to set banking
3 arrangements?

4 A. No.

5 Q. You are familiar with the budgeting process for the
6 stores?

7 A. Uh-huh.

8 Q. Once again, if you can describe how the budgeting
9 process works?

10 A. For example, what kind of budget? I mean there is
11 budgets for expenses and there are budgets for payroll.

12 Q. Let's talk more in terms of expenses. We'll get to
13 payroll in a minute as to how that works.

14 A. Okay. And it is all based off of the same thing which
15 is the sales. The company says this six months we are going
16 to do this much in sales and we want to hold it to 3 percent
17 -- our expenses to 3 percent of that total sales. Then it
18 is broken down into zones. Then it is broken down -- it is
19 divvied up in to regions, then it is divvied up into
20 districts, and then it is broken down into stores, a
21 recommended breakdown by store for store expenses.

22 Q. How often are budgets prepared?

23 A. Every six months.

24 Q. And at what level of the company are the budgets
25 prepared for the stores?

1 A. Topeka, Kansas. Finance.

2 Q. Okay. Within your district can the budget for the
3 stores be varied at all?

4 A. I can adjust them.

5 Q. Can you explain how that works?

6 A. For an example let's say payroll, I get a budget, they
7 give me a recommended budget for the store, how many dollars
8 per week and for the six months. But I have -- I believe it
9 is 18 days after I see it, I can adjust sales and I can
10 adjust payroll that goes to each individual store. I've
11 still got to stay within my dollars total.

12 Q. Total for what?

13 A. For my district, but I can adjust it from store to
14 store.

15 Q. Okay. So you can actually in effect move monies around
16 from store to store as long as you stay within your budget
17 for the district?

18 A. Exactly right.

19 Q. Do the store managers or store leaders, using those
20 interchangeably, have any authority to vary their budgets
21 for the store?

22 A. No.

23 Q. Let's talk about payroll, that aspect of the budget.
24 How is the payroll budget determined?

25 A. Basically the same way, sales, a certain percent of the

1 total corporation's sales is going to go into payroll. The
2 payroll is then divided up into the zones. Every zone gets
3 -- depending on how much volume they do, how big they are,
4 there are a lot of variations, then it is broken down into
5 the regions which is my boss' overall picture. Then it's
6 broken down into the district. I get a certain amount of
7 payroll, then they give me a breakdown of what they think it
8 should be in the stores, per week for the six months.

9 Q. And describe if you will what, if any, variances there
10 can be among the stores?

11 A. Again, I can go back in. I have 18 days to
12 adjust -- before they finalize it, I have 18 days to adjust
13 the payroll dollars and the sales for those stores.

14 Q. Can you move dollars around among the stores in your
15 district?

16 A. That's what we do, yes.

17 Q. Okay. Do the store managers have any authority to vary
18 their budgets with respect to payroll?

19 A. No, they don't. They don't even know I do that.

20 Q. At what level of the company is payroll prepared for
21 sales associates?

22 A. Where do they get their dollars when they -- okay, at
23 the end of the week their timesheets are electronically
24 transferred to Topeka and the Payroll Department after
25 scrubbing it out I guess for two days then they cut them --

1 they don't cut them a check, they do direct deposits into
2 their account for the time they worked from the previous
3 week.

4 Q. So is it fair to say that the payroll is controlled by
5 the corporate office?

6 A. Oh, yeah.

7 Q. That's who does it?

8 A. Absolutely.

9 Q. Next let's talk about pricing. I think Jay covered
10 this, but from your perspective how are pricing decisions
11 made for Payless' products?

12 A. It's all done through the buying staff, and they have a
13 budget that they have to meet. They have gross margins they
14 have to meet. And everything that comes in the United
15 States is all the same price. It's priced actually where
16 it's made before it even gets to the United States. So
17 everything is the same price.

18 Q. Is there any authority to vary price on a more localized
19 level such as sales for something? What authority is there
20 in that regard and who has it?

21 A. I have the authority to request that we do price changes
22 if we have a certain situation in a store, yes.

23 Q. What do you mean a certain situation?

24 A. Let's say that we are at the end of the season right now
25 and we've got flip-flops. Everybody knows what a flip-flop

1 is and we've got too many of them and I want to liquidate
2 them faster. I call my boss, she gives me authorization, I
3 can take extra markdowns on them on a weekend.

4 Q. Does a store leader have any authority to vary price or
5 engage in sales?

6 A. No. He can give me a recommendation, but it's my choice
7 to go up to my boss.

8 Q. We've heard testimony that the marketing and advertising
9 functions are controlled by corporate. Can you describe how
10 that works?

11 A. Marketing, as far as TV, that's corporate run, and they
12 tell you where it is going to. FSIs are called Free-
13 Standing Inserts. It's the paper you get like on a Sunday
14 with our advertising in it. They determine where that goes
15 and what's in it.

16 As far as the in-store marketing, every store gets
17 what's known as an InfoSource. It is a colored layout on
18 how the store has to look per display. They have to follow
19 it and they are trained to follow it because that's the
20 message or the promotion we are trying to tell everybody.

21 Q. Is that all dictated from corporate?

22 A. Yes.

23 Q. At a local level is there any authority to vary any
24 marketing or advertising devices from what is dictated to
25 you by corporate?

1 A. They do not have the authority to change any marketing
2 in that InfoSource without my approval.

3 Q. When you say they?

4 A. A store.

5 Q. Okay. Well, do you have the authority to vary any
6 marketing?

7 A. I do, depending on what's in the store.

8 Q. Okay. Does the store leader have any authority in that
9 regard to vary any marketing or advertising?

10 A. Not without my approval.

11 Q. Okay. Let's talk about product distribution for a
12 minute. How are the products distributed to Payless'
13 stores?

14 A. Okay, there are two warehouses; there's one in
15 California, there's one in Ohio. The St. Louis area has --
16 or everything on the east side of the United States comes
17 out of Ohio.

18 Q. Would that apply to Missouri, that warehouse?

19 A. Yes, everything in Missouri. I don't know if it goes to
20 KC or not, but Missouri for sure. So the big trucks with
21 all of the freight coming from the ocean liners, they drop
22 it off at Ohio. Those shoes, they already know where they
23 are going to go. It's already programmed where every shoe
24 is going to go, so they put those -- they divide them up
25 into areas.

1 Q. And then who makes that determination if you request it?

2 A. It's the buying staff at Topeka.

3 Q. As far as expense control for the stores, spending
4 money, do the store managers have any authority to make
5 expenditures on their own, or do any expenditures that they
6 make have to be approved at a higher level?

7 A. They have to come through me first.

8 Q. Is this a part of the budgeting process as to what each
9 store is allowed to spend on supplies and that sort of
10 thing?

11 A. Supplies are already in the budgeting process.

12 Q. Okay.

13 A. This is above that, where they need to go out and buy
14 something out of petty cash or paid-outs we call it, they
15 need my approval.

16 Q. Okay. So a store leader does not have the authority to
17 spend any kind of petty cash without your approval?

18 A. No, none whatsoever.

19 Q. What if there is a problem in the store of some sort,
20 the roof leaks or there needs to be some type of a service,
21 the phones don't work or whatever, how does that work and
22 what's the authority of the store leader?

23 A. They have a number in Topeka to call, and we have a
24 special department that handles that, even in an emergency
25 situation that they can get that taken care of immediately.

1 Q. Okay.

2 A. Or pretty close to immediate.

3 Q. But as far as authorizing expenditures to do that, does
4 the store leader have the authority to do so?

5 A. No.

6 Q. That has to be approved out of Topeka?

7 A. Uh-huh.

8 Q. Loss prevention, does Payless have any corporate
9 policies relating to loss prevention?

10 A. Yes, we do.

11 Q. And can you generally describe what those policies are?

12 A. There's a lot of them. There is the CPP Policy, which
13 is the Cash Protection Policy. There is the -- what we call
14 the intensive care -- IC Program, which is a procedure.

15 When a store comes up short a product, in other words when
16 we have lost a lot of product, then we have a procedure the
17 store leader has to follow, and I have to make sure that I'm
18 verifying that it's followed. It's a pretty simple
19 procedure, but it's one way that helps us control the
20 product in the stores -- control the loss of product.

21 **(Employer's Exhibit 15 marked for identification.)**

22 Q. BY MR. SCHREINER: I'm handing you what we are marking
23 as Employer's Exhibit 15. Could you tell us what this form
24 is?

25 A. This is the Cash Protection Procedure Policy that every

1 associate gets the first day at Payless?

2 Q. This is the CPC Procedure?

3 A. Cash Protection Policy -- or Procedures.

4 Q. Okay. Does a store leader have any authority to vary
5 from this policy at all?

6 A. None whatsoever.

7 Q. And I've probably asked this, but who establishes this
8 policy?

9 A. It is the Loss Prevention Department in Topeka, Kansas.

10 Q. And I believe there was testimony as far as how stores
11 are measured or evaluated, a Key Performance Indicator; is
12 that correct?

13 A. Yeah, Key Performance Indicator, or KPI we call it.

14 Q. Where is that policy established or at what level of the
15 corporation is that policy made?

16 A. I don't know if the proper term is policy, but that is
17 the measurement we use to determine their performance.

18 Q. And what level of the corporation are those indicators
19 established?

20 A. Topeka, Kansas.

21 Q. Do you have any authority to vary from that policy?

22 A. I negotiate with my boss, who negotiates with her boss.

23 Q. Explain what you mean by that. I'm not sure I follow?

24 A. Okay, let's say I'm in charge of 10 million dollars
25 worth of business overall. I can say no, because of this

1 situation, maybe a market move, I need to be at 9.5 million.
2 She can adjust that, but she has to get that half -- she
3 still has an umbrella of dollars she has got to do, she'll
4 have to give that 500,000 to somebody else. But she has the
5 right to adjust that and take it to her boss for approval.

6 Q. I see. So these are performance standards for sales and
7 other areas?

8 A. Exactly.

9 Q. Does a store leader have any authority to vary those Key
10 Performance Indicator policies?

11 A. No.

12 Q. How often are you in the stores in your districts?

13 A. When I have one district, I am there at least every five
14 weeks, more like every four weeks.

15 Q. Have you tried to continue that pace even though you
16 have two districts?

17 A. No. I mean I'm in that many stores, but I can't be in
18 every one when I have 52.

19 Q. Okay. How often do you communicate with the stores in
20 your districts?

21 A. I'm known as the over-communicator. Okay, twice on
22 Mondays with every store, because they are setting up the
23 week and talking about the week before. Then every day
24 Monday through Friday, I have a 9:45 huddle call with every
25 store at one time, I have a 2:30 follow-up call, and I have

1 a 5:30 evening huddle call with those teams, Monday through
2 Friday. Saturday I give them a break, and I only have a
3 9:45 and a 2:30.

4 Q. So you are in communication with the stores in your
5 districts several times every day?

6 A. Oh, yeah.

7 Q. Okay. We heard testimony that the Payless stores are
8 essentially the same type of layout. Can you basically
9 describe the layout of a Payless store?

10 A. Okay, front lobby we have the InfoSource that tells you
11 what the promo is, the posters and what shoes exactly go on
12 there. The racks are the big story of our stores because
13 they are rack-planned. They tell a story by size. They are
14 not just thrown there. I mean it's a story and they are set
15 up by size. Every store in the company is that way. Back
16 rooms are basically all the same, with the same posters and
17 the same layout and the same information that I need and the
18 store needs to perform their duties.

19 Q. So is it fair to say the Rolla store layout is the
20 same/different than any other store?

21 A. Basically the same.

22 Q. Can you point to any different working condition that a
23 sales associate has in the Rolla store compared to any other
24 store that you manage?

25 A. No, there is none.

1 Q. I want to talk a little bit about the training, and I'm
2 going to reference an earlier exhibit, I believe it's 12 --
3 no, I'm sorry it's 11, the Sales Associate Learning Tracker.
4 Do you have any involvement with this or any other training
5 of sales associates?

6 A. No, this is something I have to check every time I go
7 into a store.

8 Q. This document?

9 A. This document? To make sure that the associate has
10 completed their training, depending on their time with the
11 company -- their first 90 days.

12 Q. Okay. So you oversee the filling out of these forms?

13 A. Oh, yeah, I oversee the training.

14 Q. Can you describe any other involvement that you have
15 with the training of sales associates?

16 A. I do the SAU, which we talked about earlier, which is
17 the Store Associate University. I am required within the
18 first six weeks of an associate's employment to go in and do
19 a SAU. And what that entails is I go in there and really
20 step them through what service means and my expectations.

21 Q. And you do that with every new sales associate?

22 A. Uh-huh. That is the expectation from my boss, yes.

23 Q. Okay. So you better do it?

24 A. She'll find out.

25 Q. I would like to next go through the various employment

1 functions relating to the employees. I believe you
2 testified earlier that you are involved with your sales
3 associates in a number of different respects. Let's start
4 off by talking about hiring.

5 Who is responsible for determining the manpower levels
6 in Districts A3 and A3F?

7 A. Manpower or --

8 Q. How many people will be hired?

9 A. We get a recommendation. I can hire more or less
10 depending on the dollars. I still have to live up to the
11 dollars of the payroll. So the manpower could change
12 depending on the dollar.

13 Q. And this would be true of any district?

14 A. All districts.

15 Q. Does the store leader have any authority to vary those
16 dictates from corporate?

17 A. No.

18 Q. But the district leader does?

19 A. Absolutely.

20 Q. Who has the final authority to hire any sales associate?

21 A. They all have to be cleared through me.

22 Q. Can you describe the hiring process and your involvement
23 in that with respect to new sales associates?

24 A. Okay, there are -- of course I can't be there to
25 interview every one of them, but they do have to go through

1 -- everybody that applies at Payless today applies online.
2 And they actually apply by category: part-time, full-time,
3 or store manager position. At that point they have to take
4 -- there is a test online, too, to see if they are
5 qualified. The manager then can go out -- if they need
6 somebody, they will ask me, I need to hire a part-timer.
7 You go out online and you can find those people that are
8 green. In other words they will get a green label that
9 they've passed. They have to interview that person, and
10 generally there is a second interview.

11 If it is a full-timer or a store manager, I have to
12 talk to them personally, mostly in person, sometimes over
13 the phone, depending on our timing. Part-timers it's
14 usually both of the interviewers call me and say I recommend
15 them, this is their qualifications, then I give them the
16 approval. But I do approve them. I am required to approve
17 anybody hired in the district.

18 Q. Regardless of whether it's a part-time or full-time
19 position?

20 A. Yes.

21 Q. Would a store leader have any authority to hire someone
22 without clearing it through you?

23 A. No. I'm not saying that it has not been done, but no
24 they don't, and it could lead to a disciplinary action.

25 Q. Okay. Let's talk a little bit about employee complaints

1 and that sort of thing. And I am going to exclude the union
2 stores in Districts 3A and F. If a sales associate has an
3 issue or complaint, does Payless have a process for trying
4 to resolve that complaint?

5 A. Absolutely.

6 Q. Are you involved in that process for resolving
7 grievances?

8 A. Hopefully I am the first one that gets involved.

9 Q. If you could just describe what that process is and what
10 your involvement in it is?

11 A. The manager calls me or -- I have an open door policy,
12 and they call me, and this is my issue. Most of them are
13 just pretty basic issues that I can determine what has to be
14 done. And if it is according to corporate procedures, then
15 we can resolve it right then and there.

16 If it gets to be more of an issue, I take it to my HR
17 manager, who we talk about it and resolve it more formally,
18 and it is resolved then. And then the last one is they call
19 an Alert Line and that goes right to Chris, the HR Manager,
20 and then I get involved, and again, that's even more formal.
21 Then we resolve it according to company procedures.

22 Q. Okay. Discipline and discharge, as district leader do
23 you get involved in disciplining and discharging sales
24 associates?

25 A. Every one.

1 Q. Does the store leader have any authority to discipline
2 sales associates?

3 A. Not without my notification first.

4 Q. Do you have to approve discipline?

5 A. Yes.

6 Q. What about terminations, does the store leader have any
7 authority to terminate sales associates?

8 A. No.

9 Q. So if there is to be a termination of a sales associate,
10 who has the authority to make that determination?

11 A. I do in code of conduct problems. Generally even with
12 code of conduct, I will contact my HR manager to get final
13 approval.

14 Q. To get advice and approval?

15 A. Uh-huh.

16 Q. But the final termination who makes that decision, is
17 that you?

18 A. It can go all the way up to Chris.

19 Q. Does Payless ever layoff employees?

20 A. We do not do layoffs.

21 Q. Why is that?

22 A. We tend to keep the same amount of people or staff
23 working. Depending on the payroll dollars, we will adjust
24 them more hours or less hours. So we keep them on. We
25 don't want people to go -- we like to keep them there all

1 the time.

2 Q. Who has the authority to determine or adjust the hours
3 of employment for associates?

4 A. Well, I do.

5 Q. That's your authority?

6 A. It doesn't happen much, but yeah I do.

7 Q. Next let's talk about performance reviews. As district
8 leader, are you responsible for conducting performance
9 evaluations of sales associates?

10 A. I have to review those with the store manager.

11 Q. If you could describe the store manager's role and your
12 role in the performance review process?

13 A. Their role is to whenever they are due for an increase,
14 they have to go and evaluate them on certain aspects of
15 their job. They call me and say, hey, I'm going to give
16 them this rating because of this. Then they can submit that
17 rating.

18 Q. Do you review all the performance reviews that are
19 conducted by the store leaders?

20 A. Do I physically see them?

21 Q. Well, I'm asking is there a review process where you
22 have to approve a review?

23 A. Oh, yeah, I have to approve the review.

24 Q. Okay. How are pay increases determined?

25 A. Again, that's a matrix according to how they did in

1 their review; then that determines what their next increase
2 would be.

3 Q. And who is the person on the local level, district,
4 whatever, who approves any wage increases? Is that you?

5 A. I can give wage increases, but in the formal evaluation
6 that's all determined through Topeka.

7 Q. Does a store leader have any authority to make a wage
8 increase without your approval?

9 A. They can't.

10 Q. Who has the authority to promote sales associates?

11 A. I do.

12 Q. Does the store leader have any authority to promote
13 someone into another position?

14 A. No, it has to be approved through me.

15 MR. SCHREINER: If we could just take a short break.

16 **HEARING OFFICER HOLDERMAN: Off the record, please.**

17 **(Off the record.)**

18 **HEARING OFFICER HOLDERMAN: Okay, we're back on the**
19 **record.**

20 MR. SCHREINER: All right, that is all the questions we
21 have on direct.

22 HEARING OFFICER HOLDERMAN: Okay, Ms. Martin.

23 **CROSS-EXAMINATION**

24 Q. BY MS. MARTIN: The store leader, is that considered a
25 member of the management team?

1 note that the discipline has to go through you, but I
2 thought that the store managers could effectively recommend.
3 Am I wrong there?

4 THE WITNESS: They come to me with disciplinary actions,
5 and I step them through the process. And I am the one that
6 has to approve it, yes.

7 HEARING OFFICER HOLDERMAN: I mean I just threw that out
8 as a possibility, but that's what I was saying was
9 effectively -- recommend discipline. If that's not the
10 case, would it be accurate to say that they have the
11 responsibility to direct them or adjust grievances?

12 MR. SCHREINER: Well, again, Bill has testified that
13 he's -- I mean it is really kind of borderline. The one
14 thing where I thought they had some authority to recommend
15 was in performance reviews, but --

16 THE WITNESS: Performance reviews and discipline. They
17 have to, because they are in the stores.

18 MR. SCHREINER: But you have to approve it?

19 THE WITNESS: Oh, yeah, it has to all be cleared through
20 me because --

21 MR. SCHREINER: Do you do an independent review of the
22 discipline?

23 THE WITNESS: Oh, yeah, I have to.

24 MR. SCHREINER: So I'm not sure that that's effectively
25 recommend when there is an independent review that is

1 conducted?

2 THE WITNESS: They come to me with the issue. Then I
3 have to do the review of it before they can do the
4 discipline.

5 HEARING OFFICER HOLDERMAN: But we are not proposing
6 that they are --

7 MR. SCHREINER: We're not. We are not proposing that
8 they should be in the unit.

9 HEARING OFFICER HOLDERMAN: Okay. So at a minimum we
10 can stipulate that the individuals that are considered store
11 leaders/store managers should be excluded from the unit
12 then?

13 MR. SCHREINER: Yes.

14 HEARING OFFICER HOLDERMAN: Okay.

15 MR. SCHREINER: I think that's maybe a better way to do
16 it rather than to say -- to stipulate that they are 2(11)
17 supervisors. We agree that they -- because there are some
18 other recognized exclusions as well that is more case law,
19 such as managerial. I mean I think they are managerial in
20 nature, whether they actually have the supervisory authority
21 or not. I think it's more borderline frankly.

22 HEARING OFFICER HOLDERMAN: And that's fine with you,
23 Ms. Martin?

24 MS. MARTIN: Yes.

25 HEARING OFFICER HOLDERMAN: Okay. The stipulation, to

1 be clear -- and I'm sorry, Ms. Decision Writer, for muddying
2 this record. So the stipulation is simply to include under
3 the exclusions the store leader/store manager.

4 MS. MARTIN: Yes.

5 MR. SCHREINER: Right.

6 HEARING OFFICER HOLDERMAN: That stipulation is
7 received. Thank you.

8 Q. BY MS. MARTIN: Can you describe what the store leader
9 does on a daily basis?

10 A. The store leader coaches the team to the service
11 behaviors. The store leaders actually sells like everybody
12 else. Eighty percent of their job is to sell and put out
13 shoes like every other sales associate. They input the
14 schedule. Now, we do have a tool, and it's a corporate tool
15 that all they do is have the names of all the associates
16 already in there, and their restrictions, I give them a
17 dollar amount that they get, they have to put it in there
18 and it spits out a schedule. So they do the schedule. If
19 somebody does not show up, then they have to call me to try
20 to readjust the schedule -- or they even do work sometimes
21 because they can't get another associate. They are
22 accountable to me for the KPIs, because they have certain
23 standards, which is our Key Profit Indicators.

24 HEARING OFFICER HOLDERMAN: And we don't have a job
25 description of the store leaders here, do we?

1 their performance does allow them discretionary bonuses I
2 think is relevant, but that was the only question I was
3 going to ask on it, and the same with the district leader.
4 But fine, I don't really need to know about the district
5 leader. The store leader was more of what I was going for,
6 and we got that.

7 Q. BY MS. MARTIN: One of the things you talked about
8 earlier was that there is no -- store leaders have no
9 ability to change a price of a product in their store
10 without going to the district leader; is that correct?

11 A. Correct.

12 Q. Would that be true if an item was damaged, you know a
13 shoe was scuffed or --

14 A. If it is damaged or scuffed, we damage it out on the
15 computer, put it in a box, and it is sent back to Topeka.

16 Q. Okay. So they can't say you can take it for 10 bucks
17 off?

18 A. No.

19 Q. That's too bad.

20 A. That can lead to a dismissal.

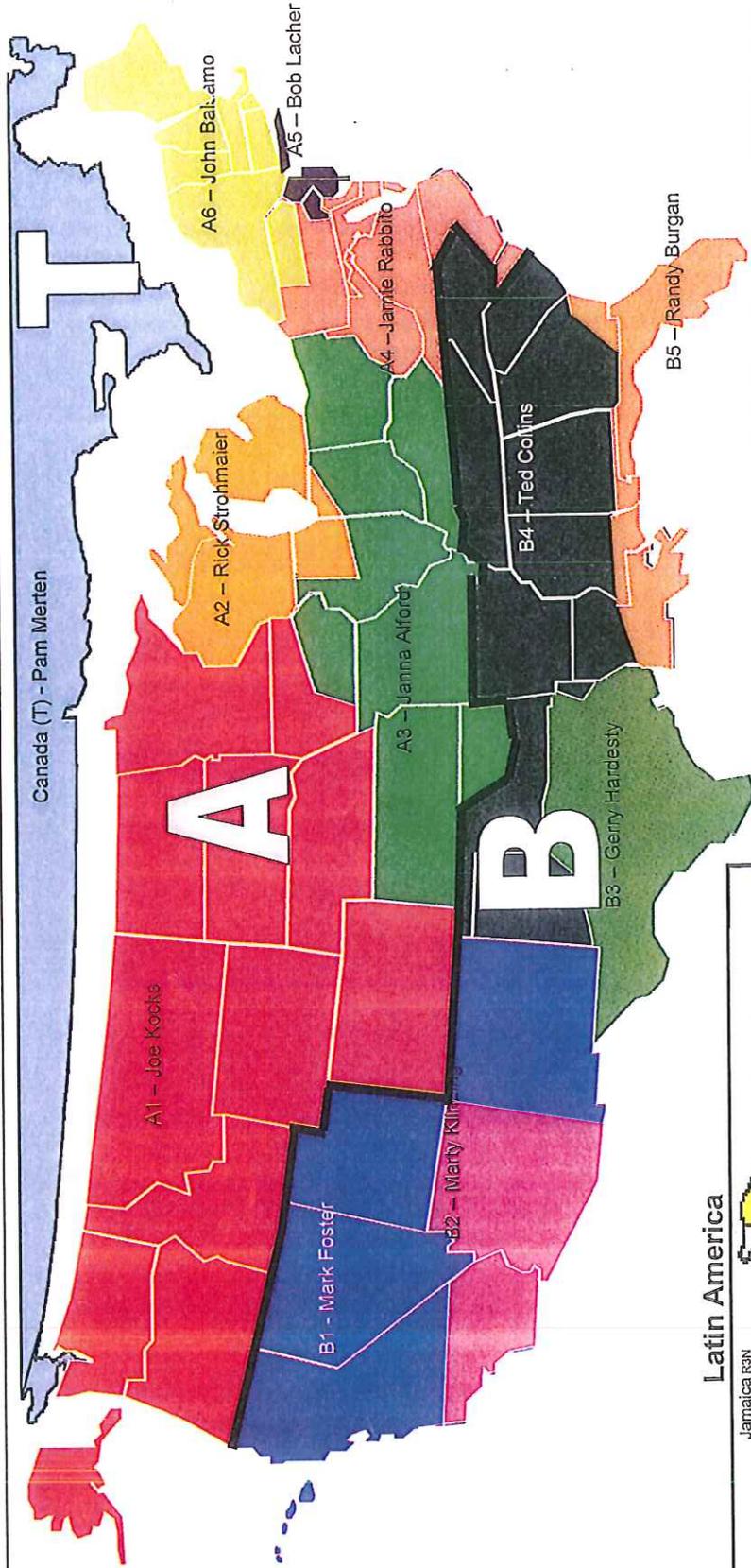
21 Q. Are the employees in Rolla ever assigned to work at any
22 of the other Payless stores?

23 A. I have not had it, and I'm 99 percent sure no.

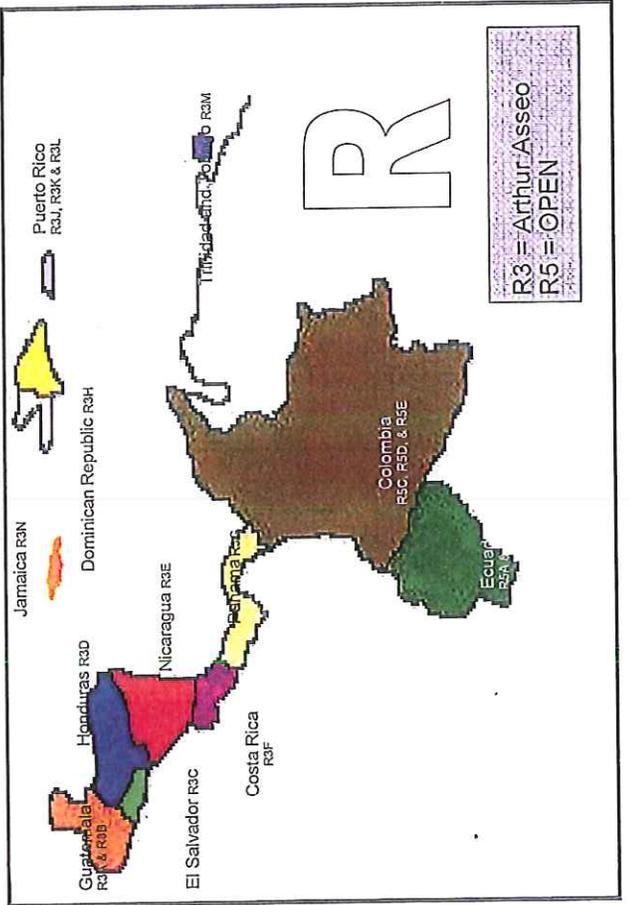
24 Q. Do you ever hold any district-wide parties for the
25 members of your -- or the employees in your district?

- 1 A. District-wide parties?
- 2 Q. Christmas parties, you know holiday parties or anything
3 like that?
- 4 A. For the managers, yes.
- 5 Q. But not for the associates?
- 6 A. No. What I do, do have is if a store does really well,
7 I will give them pizza parties on Saturdays or something,
8 just in recognition.
- 9 Q. How often are the employees evaluated in the stores --
10 the non-management ones -- the sales associates?
- 11 A. Six months? I don't know. They just call me when they
12 are ready to have it, and I think it is every six months.
- 13 Q. And is there a form that is filled out?
- 14 A. It's an electronic form.
- 15 Q. Okay. And is it the store leader that fills out the
16 electronic form?
- 17 A. Yes, but he has to call me while he is doing it or
18 before he is doing it.
- 19 Q. To tell you that he is about to do it or to walk through
20 the form with you?
- 21 A. He can do it either way.
- 22 Q. Okay. Because when you are only overseeing one
23 district, you are only in the store every four to five
24 weeks, correct?
- 25 A. Correct.

2012 ALIGNMENT MAP

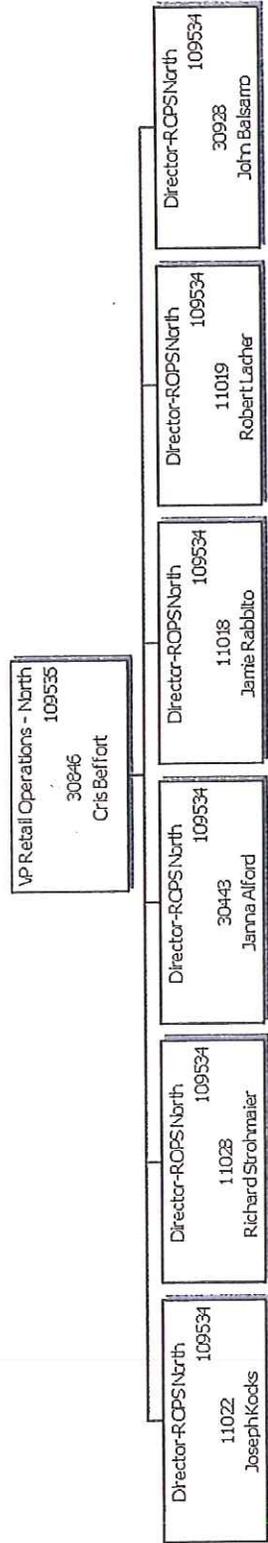


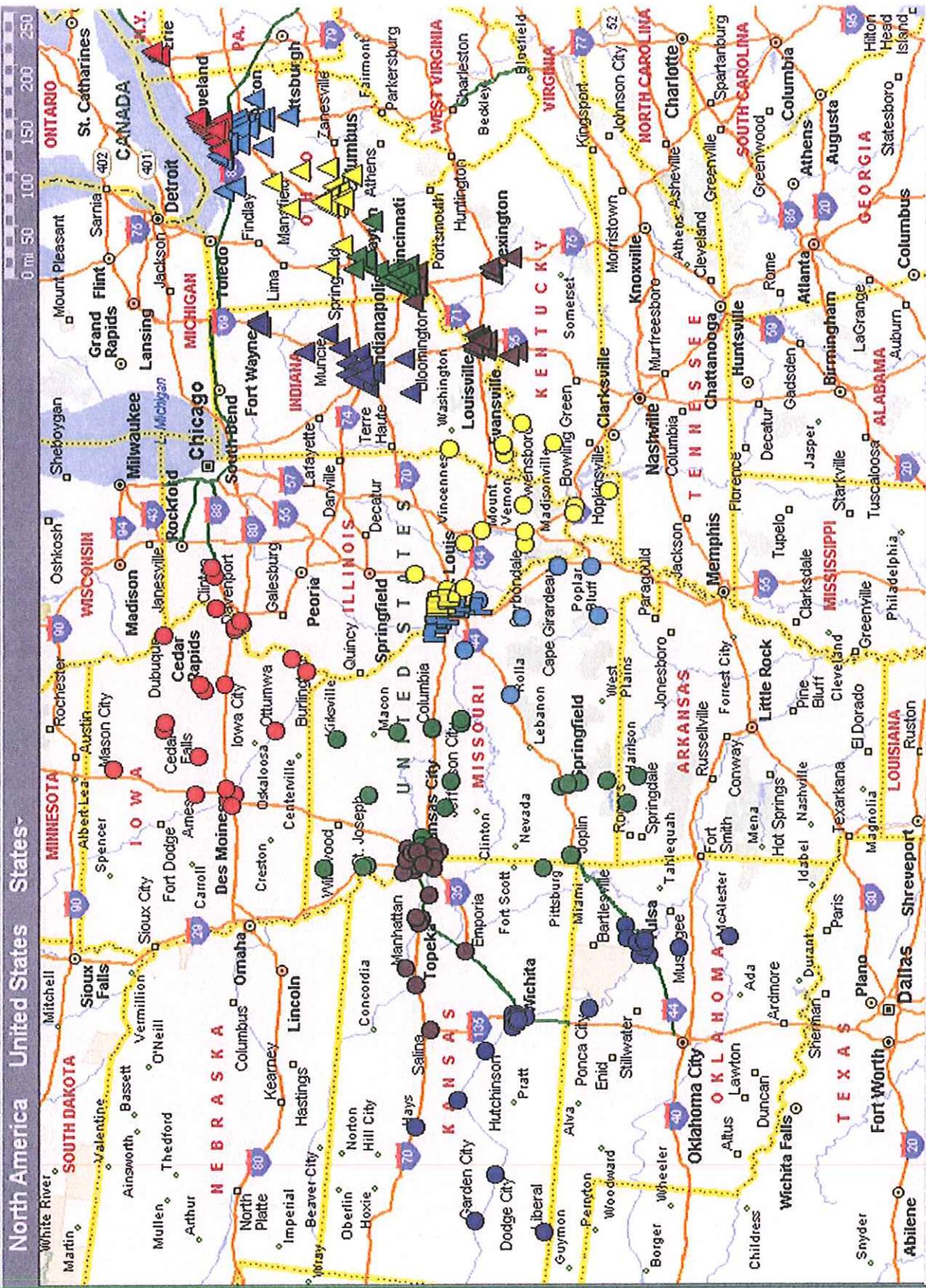
Latin America



Zone A - NORTH		Zone B - SOUTH	
Cris Beffort		Wendy Jacek	
HRD - Lisa Aschenbrenner	HRD - Kelly Burke	HRM - Wendy Jacek	RSA - Kelly Burke
HRM - Lisa Aschenbrenner	RSA - Wendy Jacek	HRM - Wendy Jacek	RSA - Kelly Burke
A1 - Chris Eagle	A1 - Kim Feldkamp	B1 - Chris Eagle	B1 - Kim Feldkamp
A2 - Curtis Snell	A2 - Heather Myrick	B2 - Chris Eagle	B2 - Kim Feldkamp
A3 - Chris Eagle	A3 - Heather Myrick	B3 - Darrin Kite	B3 - Alana Beer
A4 - Curtis Snell	A4 - Alana Beer	B4 - Darrin Kite	B4 - Heather Myrick
A5 - Curtis Snell	A5 - Chris Stephens	B5 - Darrin Kite	B5 - Chris Stephens
A6 - Curtis Snell	A6 - Chris Stephens		
Zone R/T - INT'L		Zone R/T - INT'L	
Darren Haddock		Darren Haddock	
HRD - Leo Valdez		HRD - Leo Valdez	
HRM - Darren Haddock	RSA - Leo Valdez	HRM - Darren Haddock	RSA - Leo Valdez
R3 PR - Curtis Snell	R3 PR - Chris Stephens	R3 PR - Curtis Snell	R3 PR - Chris Stephens
R3 CA - Beverly Yglesias	R5 - Nayibe Mendoza	R3 CA - Beverly Yglesias	R5 - Nayibe Mendoza
T - Carol Perdic		T - Carol Perdic	

Payless - Retail Operations North Zone





A3 Districts

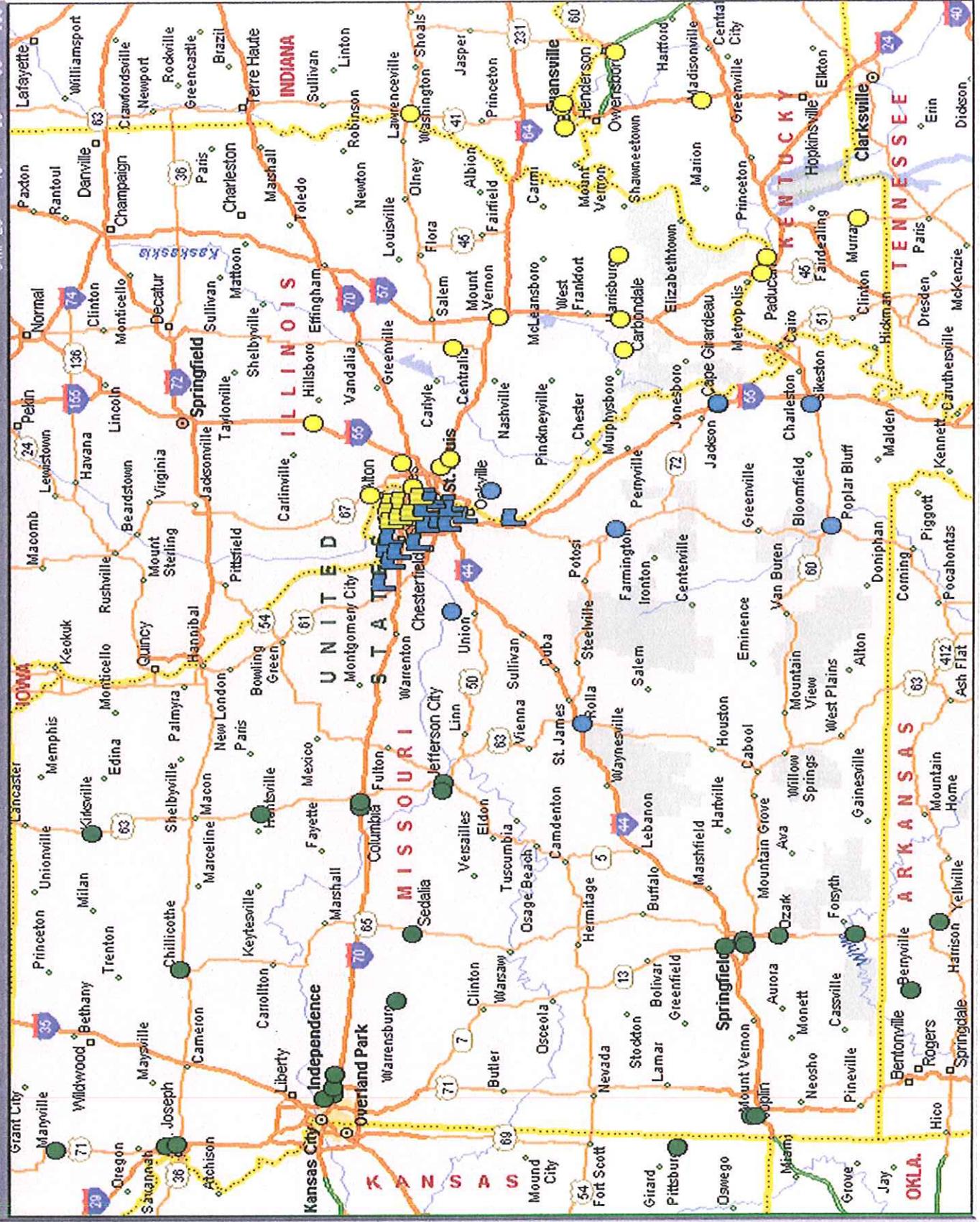
District	D.M.	Store Count	Area
A3A	Brooke Jackson Holman	25	Wichita & Western KS, Tulsa
A3B	Nancy Kanwischer	26	IA and Western IL.
A3C	Todd Grasser	27	Western MO
A3D	Ryan Hartman	25	Kansas City, MO
A3E	Bill Halley	25	Southern MO
A3F	Bill Halley / Rhonda Richerson	27	E. MO. S. IL. SE. IN. W KY.
A3G	Karen Smith	24	Indianapolis, IN
A3H	David Wilson	23	Louisville, KY
A3I	Gary Cowens	23	Cincinnati, Southern OH
A3J	Donna Vanhooser	23	Columbus & Central OH
A3K	Mike Berry	24	South Cleveland OH
A3L	Dorothy Zahler	22	Cleveland & NE OH

Legend an... X



North America United States Missouri

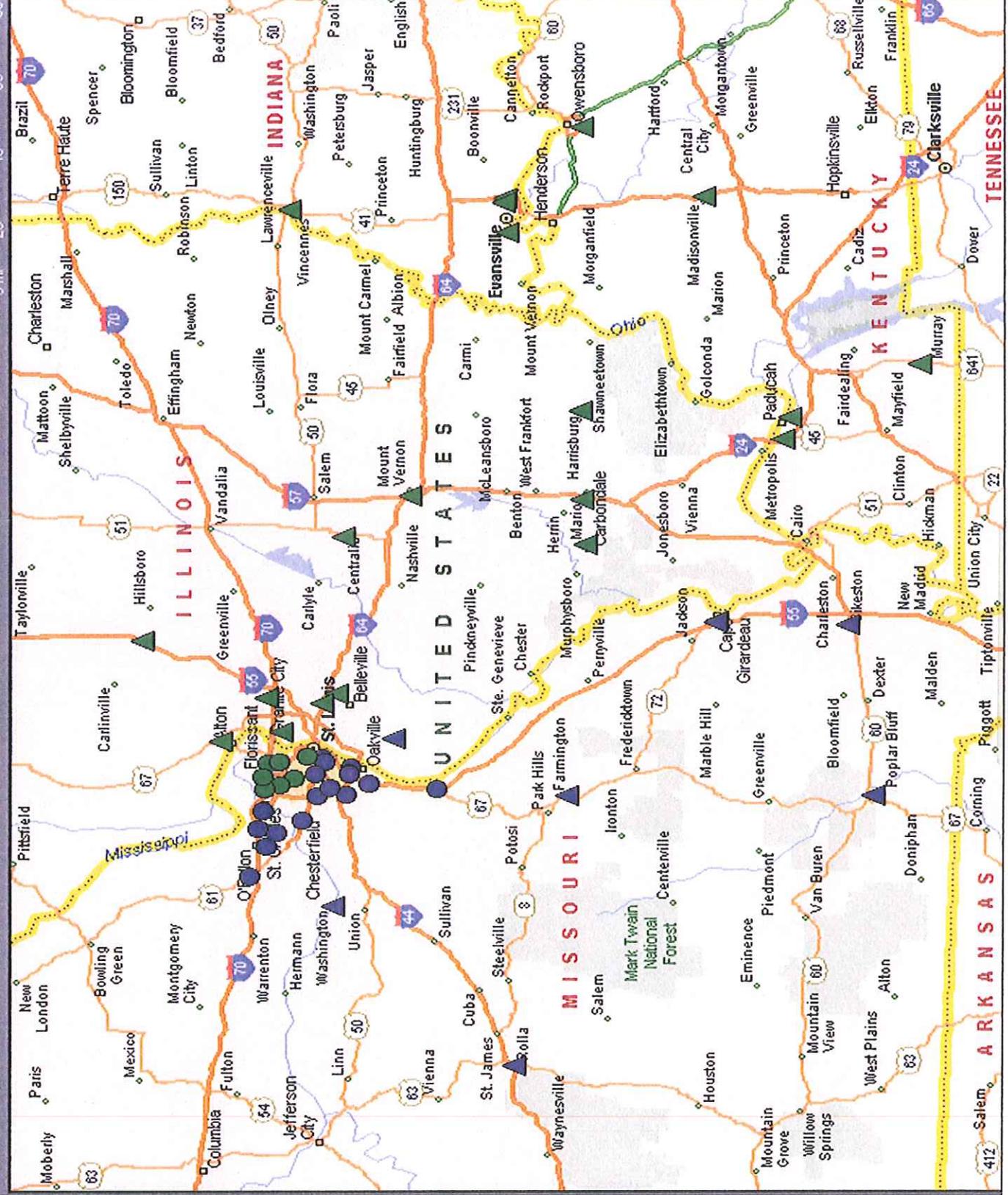
0 mi 20 40 60 80 100



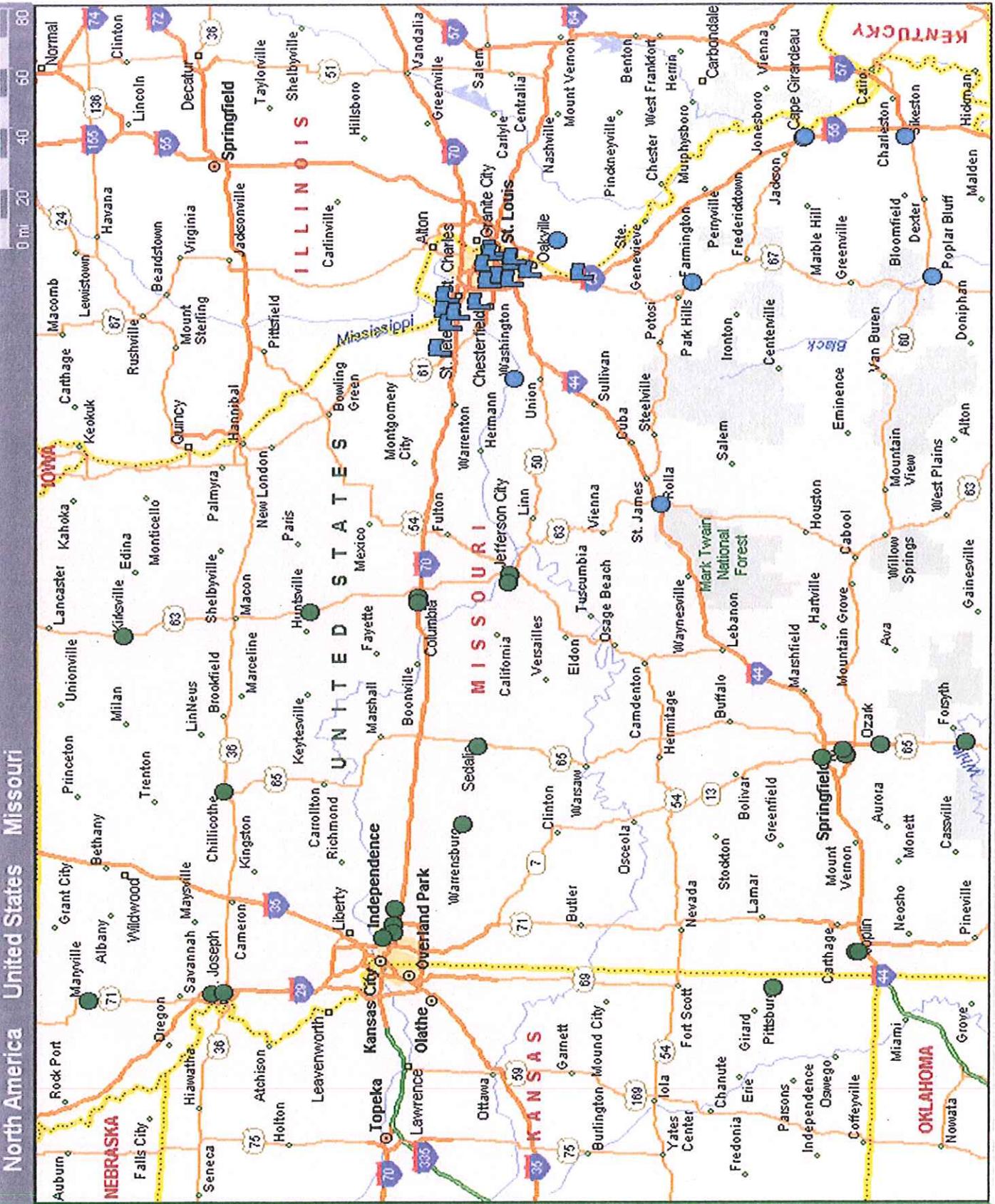
- Pushpins
 - A3F
 - A3E
 - A3C
- Populated Pl...
- Boundaries
- Transportati...
- Parks and Re...
- Miscellaneous



North America United States Missouri St. Louis



- Pushpins
 - A3F - Union
 - A3F - Non Union
 - A3E - Union
 - A3E - Non Union
- Populated Places
- Boundaries
- Transportation
- Parks and Reserves
- Miscellaneous



- Pushpins
 - A3E
 - A3C
- Populated Pl...
- Boundaries
- Transportati...
- Parks and Re...
- Miscellaneous

Store	Dist	Union	Store Address 1	City	St
200643	A3E	Union	1003 W GANNON DR	FESTUS	MO
200661	A3E	Union	WATER TOWER PLACE	ARNOLD	MO
200897	A3E	Union	REGENCY PLAZA	SAINT CHARLES	MO
200901	A3E	Union	4926 CHRISTY BLVD	SAINT LOUIS	MO
201031	A3E	Union	SOUTH COUNTY CENTER	SAINT LOUIS	MO
202000	A3E	Union	SOUTH LAKEVIEW PLAZA S/C	SAINT LOUIS	MO
202092	A3E	Union	CROSSROADS MARKET PLACE	WENTZVILLE	MO
202153	A3E	Union	KIRKWOOD COMMONS	KIRKWOOD	MO
202712	A3E	Union	MID RIVERS MALL	SAINT PETERS	MO
203767	A3E	Union	WEST COUNTY MALL	DES PERES	MO
203855	A3E	Union	94 CROSSING SC	SAINT PETERS	MO
204286	A3E	Union	THE SHOPS AT LAURA HILL	O FALLON	MO
204445	A3E	Union	3515 BAMBERGER	SAINT LOUIS	MO
204573	A3E	Union	MAPLEWOOD COMMONS	MAPLEWOOD	MO
204750	A3E	Union	CHESTERFIELD MALL	CHESTERFIELD	MO
205305	A3E	Union	FENTON PLAZA	FENTON	MO
205339	A3E	Union	TELEGRAPH CROSSING	SAINT LOUIS	MO
200619	A3E		555 WASHINGTON SQUARE	WASHINGTON	MO
200641	A3E		603 S BISHOP AVE	ROLLA	MO
200757	A3E		3437 WILLIAM	CAPE GIRARDEAU	MO
200789	A3E		MANSION MALL SHPG CNTR	POPLAR BLUFF	MO
200835	A3E		907 N ILLINOIS RTE 3	WATERLOO	IL
202288	A3E		WESTFIELD WEST PARK	CAPE GIRARDEAU	MO
202455	A3E		SOUTHPOINT S/C	SIKESTON	MO
203441	A3E		730 MARKET ST	FARMINGTON	MO
200621	A3F	Union	CYPRESS VILLAGE S/C	SAINT ANN	MO
200779	A3F	Union	9080 OVERLAND PLAZA	OVERLAND	MO
200955	A3F	Union	ST LOUIS MILLS	HAZELWOOD	MO
201446	A3F	Union	LINDELL MARKET PLACE	SAINT LOUIS	MO
202238	A3F	Union	7661 N LINDBERGH BLVD	HAZELWOOD	MO
202456	A3F	Union	DUNN CENTER	FLORISSANT	MO
202495	A3F	Union	PLAZA ON THE BOULEVARD	JENNINGS	MO
200664	A3F		LITCHFIELD PLAZA	LITCHFIELD	IL
200815	A3F		3640 GREEN MOUNT CROSSING DRIVE	SHILOH	IL
200864	A3F		KING CITY SQUARE	MOUNT VERNON	IL
200881	A3F		VINCENNES PLAZA	VINCENNES	IN
200902	A3F		NAMEOKI COMMONS SC	GRANITE CITY	IL
200990	A3F		FAIRVIEW PARK PLAZA	CENTRALIA	IL
201196	A3F		TOWN SQUARE MALL	OWENSBORO	KY
201309	A3F		UNIVERSITY MALL	CARBONDALE	IL
201361	A3F		ALTON SQUARE	ALTON	IL
201886	A3F		RED BANKS COMMONS SC	EVANSVILLE	IN
202489	A3F		EVANSVILLE PAVILION	EVANSVILLE	IN
202555	A3F		KENTUCKY OAKS MALL	PADUCAH	KY
202807	A3F		ST CLAIR SQUARE	FAIRVIEW HEIGHTS	IL
203483	A3F		PADUCAH TOWNE CENTER	PADUCAH	KY
203632	A3F		ARROWHEAD POINT	HARRISBURG	IL
203868	A3F		ILLINOIS CENTRE	MARION	IL
204062	A3F		NORTHSIDE SHOPPES	MURRAY	KY
204488	A3F		COTTONWOOD STATION MALL	GLEN CARBON	IL
205646	A3F		EASTLAND MALL	EVANSVILLE	IN
206217	A3F		82 MADISON SQUARE CENTER	MADISONVILLE	KY

AGREEMENT
BETWEEN
PAYLESS SHOE SOURCE
AND
UFCW LOCAL 655

MAY 6, 2012

THROUGH

May 9, 2015

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AGREEMENT

THIS AGREEMENT is made and entered into this 6th day of May 2012, by and between Payless Shoe Source, Inc. for its stores in St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri, hereinafter referred to as the "Employer" and United Food and Commercial Workers Union, Local No. 655 of St. Louis, Missouri, chartered by United Food and Commercial Workers International Union, hereinafter referred to as the "Union".

SECTION 1. INTENT AND PURPOSE

A. It is the intent and purpose of the parties hereto that this Agreement is to promote and improve industrial and economic relationship between the Employer and its employees, to recognize mutual interests, to provide a channel through which information and problems may be transmitted from one to the other, to formulate rules to govern the relationship between the Union and the Employer, to promote efficiency and service, and is to be observed between the parties hereto during the life of this Agreement.

B. The Employer recognizes the Union, or its representatives, as the sole collective bargaining agent or unit for all the employees, as hereinafter defined, employed at the retail stores in St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri, for the purpose of negotiating rates of pay, hours of employment, working conditions, and for the purpose of adjusting any grievance or complaint which may exist or may arise in the future.

SECTION 2. COVERAGE

A. The term "Employer" as used in this Agreement shall refer and relate to all of the retail stores of the above-named Employer in the City of St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri.

B. The term "employee" as used in the Agreement shall include all employees of the Employer in St. Louis, St. Louis County, St. Charles County, Jefferson County, and Washington County, Missouri, except multi Store Leader, the Store Leader, office, clerical, Store Leader Trainee, and supervisory employees.

C. There shall be no more than ten (10) SLT's (Store Leader Trainee) or LIH's (Leader in Holding) working in stores represented by the union at any one time.

D. An employee classified as a SLT for more than twelve (12) months and not promoted to a Store Leader, will be reclassified to a bargaining unit position.

E. SLT's or LIH's will not be used to replace bargaining unit members.

F. No person, other than a member in good standing of Local No. 655 and employees working for the first thirty-one (31) days of their employment, shall perform any work of

employees covered by this contract, except one Store Leader per store shall be permitted to perform bargaining unit work.

G. The Employer agrees not to enter into any agreement or contract with the employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement.

SECTION 3. NON-DISCRIMINATION, MANAGEMENT RIGHTS

A. The Employer agrees not to aid, promote, or finance any other group or organization, which purports to engage in collective bargaining, and the Employer agrees that there shall be no discrimination against any employee on account of Union activities or affiliation, not in violation of this Agreement.

B. The management of the business and the direction of the working forces, including the right to plan, direct and control store operations, hire, suspend, or discharge for proper cause, transfer or relieve employees from duty because of lack of work or for other legitimate reasons, the right to study or introduce new or improved production methods or facilities, and the right to establish and maintain reasonable rules and regulations, covering the operations of the stores, a violation of which shall be among the causes for discharge, are vested in the Employer, provided, however, that this right shall be exercised with due regard to the rights of the employees, and provided further, that it will not be used for the purpose of discrimination against any employee. This paragraph is subject to grievance procedure.

SECTION 4. UNION AFFILIATION

A. All employees covered by this contract working at the time this contract is signed, must attain full membership in Local No. 655 within thirty-one (31) days after the effective date of this contract, and remain members in good standing for the duration of their employment.

B. NEW EMPLOYEES. All new employees must become members of the Union thirty-one (31) days after their employment date, and remain members in good standing as a condition of employment. The Employer shall notify the Union of all new hires monthly.

C. During the first thirty-one (31) days of employment, a new employee shall be on a trial basis and may be discharged at the discretion of the Employer, with or without proper cause. No employee shall be deprived of membership in the Union except in accordance with the Constitution and By-Laws of the Union.

SECTION 5. CHECK-OFF

A. The Employer agrees to deduct Union dues and assessments, where lawful, uniformly required as a condition of acquiring or retaining membership in the Union, from the wages of each employee, present and future, as the same shall be due, provided each such employee executes written authorization therefor, in a form authorized by law, and such authorization is turned over to the Employer.

- B. The Employer agrees to remit such dues as deducted to the Union.
- C. The Union shall, on or before the tenth (10th) day of each month, furnish to the Employer a list of member-employees and the amounts due therefore, including dues owing for the succeeding month.
- D. The Employer shall, on or before the last day of the same month, deduct and remit such dues as authorized to the Union.
- E. The Employer will deduct Union dues and initiation fees on a weekly basis. The Employer shall, on or before the tenth (10th) day of the following month, remit such dues as authorized to the Union.
- F. At the time of such remission of check-off sums, the Employer shall also furnish the Union a list of all persons hired within the previous thirty (30) days (or since the last such list was furnished, whichever is the later), including name, address, assigned store, department and date of hire.
- G. In the event no wages are then due the employee, or are insufficient to cover the required deduction, the deduction for such month shall, nevertheless, be made from the first wages of adequate amount next due the employee and thereupon transmitted to the Union.
- H. The Union accepts full responsibility for the authenticity of each and every authorization and assignment submitted to the Employer, and shall indemnify and save the Employer harmless from any claims, suits, judgments, attachments and from any other form of liability as a result of making any deductions in accordance with the foregoing authorizations and assignments. The Union agrees to refund promptly to the Employer any such dues, fees or assignments found to have been erroneously or improperly deducted.

SECTION 6. HOLIDAYS AND SUNDAYS

- A. The Employer observes the following Holidays in the Stores; New Years Day (January 1), Easter Sunday, Memorial Day, Independence Day (July 4), Labor Day, Thanksgiving Day, Christmas Day (December 25), or on days legally celebrated in lieu thereof.
- B. Work performed on Sunday and Holidays shall be outside the basic work week, shall be done on a voluntary basis, and shall be offered to the employees having the greatest amount of seniority, among the full-time employees and secondly among the part-time employees, within the supervisor's unit. In the event the Employer is unable to obtain a qualified staff of employees on a voluntary basis, the Employer may obtain a sufficient number of employees by requiring them to work in inverse order of seniority, first among the part-time employees and secondly among the full-time employees.
- C. Work performed on Sunday by all employees shall be paid at their basic rate of pay plus a one dollar (\$1.00) per hour premium.

D. Work performed by all employees on a Holiday shall be paid for at the rate of one and one-half (1 ½) times the employee's regular rate of pay. In any calendar week in which a Holiday occurs, the basic straight time work week shall consist of thirty-two (32) hours to be worked in four (4) eight (8) hour days, exclusive of the Holiday, not necessarily consecutive, and employees shall be paid one and one-half (1 ½) times their regular rate of pay after thirty-two (32) hours actually worked.

E. Except as herein provided, there shall be no work on the following Holidays: Easter Sunday, Thanksgiving Day, Christmas Day or on days legally celebrated in lieu thereof.

F. It is agreed that stores will close at 6:00 P.M. on Christmas Eve and New Year's Eve except mall stores, which will close according to mall hours, but in no event later than 10:00 P.M.

G. All full-time employees shall be paid eight (8) hours for the above Holidays, when not worked. Each part-time employee shall be paid Holiday pay on a pro-rata basis based on the average number of hours worked during the last complete four (4) week period preceding the Holidays provided that Holiday pay shall be not less than four (4) hours of pay at regular rate of pay.

H. New employees must complete thirty (30) days of employment before becoming eligible for Holiday pay.

I. All employees must work the scheduled day before and after the Holidays to be eligible to receive Holiday pay unless:

- a. The employee has a proven illness or injury;
- b. The Holiday falls on a vacation;
- c. The employee is taking authorized funeral leave; or
- d. Prior written permission of the Store Leader.

J. Whenever New Year's Day or Independence Day falls on a Sunday, it shall be considered to be celebrated on the following Monday. In such cases, work performed on the Monday shall be paid at the rate of one and one-half (1 ½) times the employee's regular rate of pay, plus Holiday pay. If the Monday is not worked, the employee will receive Holiday pay. Work performed on the Sunday will be paid at the employees regular rate of pay plus the Sunday premium.

K. If, in case of emergency, employees are required to work on any of the above-named closed holidays, they shall be paid at the rate of time and one-half (1 ½) the employee's regular rate in addition to the eight (8) hour Holiday pay.

SECTION 7. HOURS AND WORKING CONDITIONS

A. The basic straight time work week shall consist of forty (40) hours to be worked in five (5) days of eight (8) hours each, Monday through Saturday, inclusive, not necessarily consecutive, except one (1) day per week when ten (10) hours may be worked at straight time.

B. Overtime is defined as work in excess of forty (40) hours per week, in excess of eight (8) hours per day, except one (1) day per week when ten (10) hours may be worked at straight-time; in excess of five (5) days per week, in excess of four (4) days in a work week in which a holiday occurs. Overtime pay shall be at the rate of one and one-half (1 ½) times the employee's regular rate of pay.

C. There shall be no pyramiding of overtime and premium pay. Hours paid for at overtime or premium rates shall not be used again in computing overtime compensation. No employee shall be required to take time off to equalize overtime.

D. All full-time employees shall receive one full day off per calendar week in addition to Sunday, unless the employee volunteers to work on Sunday or is scheduled to work on Sunday under Section 6B.

E. All employees working six (6) hours or more shall be entitled to an unpaid thirty (30) minute lunch period, if requested, which shall be allowed between the beginning of the fourth (4th) hour and the ending of the sixth (6th) hour after starting time. At the employees request and with the agreement of the store leader or his/her designee, the meal period may be extended to one (1) hour. On the ten (10) hour day, two (2) meal periods, not to exceed one (1) hour each, shall be allowed if requested.

F. Employees are required to inform the managers by 12:00 noon Wednesday of the preceding week if they intend on taking lunches the following week. Should the schedule change between Wednesday and Friday employees have the right to change their lunch schedule.

G. It is agreed that night work, after 6:00 P.M., will be assigned on an equitable basis among all employees.

SECURITY

A. The Union shall communicate with the Employer regarding security issues that may arise in the stores covered by this contract. The Employer will continue to provide reasonable and appropriate security and safety measures for all of the stores covered by this Collective Bargaining Agreement.

B. The Employer must notify the Union office before employees work in any emergency. In the event a sudden emergency occurs while the Union office is closed, the Employer must within forty-eight (48) hours notify the Union office of such emergency.

SECTION 8. FULL-TIME AND PART-TIME EMPLOYEES

A. A full-time employee is defined as one who is so designated by the Employer or who works 24 or more hours for eight (8) consecutive weeks. All other employees shall be considered part-time employees. Full-time employees will be scheduled twenty-four (24) hours or more per week (except holiday weeks), and subject to the employee's availability and business needs.

B. All employees shall be paid in accordance with the minimum schedule for employees shown on Schedule "A" attached hereto.

C. When an employee advances from Part-time to Full-time status, the employee will be given a full-time seniority date equal to the date they are promoted to that status. Their hourly pay will be increased to the next higher rate on the full-time scale and they will advance on the full-time scale at the six (6) month, and eighteen (18) month anniversary of that full-time seniority date.

D. No present employee shall suffer a reduction in weekly take-home pay because of this Agreement.

E. Except in cases of stores with yearly sales volume of five hundred thousand dollars (\$500,000) or less, the Employer agrees not to employ three or more part-time employees in a store where it is possible to employ one (1) or more full-time employee(s). Any affected fulltime position will be reduced through attrition or transfer.

SECTION 9. SCHEDULE

A. The Employer will post a work schedule (in ink or other permanent means) for all employees, by surname and initial, for the following week by 11:00 AM on the Friday preceding the start of the next work week. Such schedule shall be available to all employees and the Union. Changes in the working schedule shall be posted on the bulletin board twenty-four (24) hours in advance of such change and the employee(s) must be notified by phone, except in cases of emergency.

B. Starting time shall not be changed without twenty-four (24) hours notice or more to each employee affected by such change and each employee must be notified by phone, except in cases of emergency.

C. No employee shall be required to work a split shift.

D. Employees who report for work in the regular course, not having been notified on the preceding day or prior thereto not to report will be compensated in the following manner. Full-time employees shall receive at least four (4) hours work, or pay therefore, part-time employees shall receive scheduled time lost not to exceed four (4) hours work, or pay therefore, at the regular hourly rate, except in such cases as power failure, fire, storm damage, acts of God, or any cause over which management has no control.

SECTION 10. SENIORITY

A. Seniority shall prevail among all employees of the Employer covered by this contract. Seniority shall be calculated by length of service, beginning with the employee's first date of employment under this collective bargaining agreement. With regard to employees who become covered by this contract as the result of a transfer from outside of the bargaining unit, seniority shall be calculated from the date such employee becomes a member of the bargaining unit. No part-time employee shall accumulate seniority over full-time employees.

B. In the event that an employee requests a transfer out of the bargaining unit, the Employer may, in its sole discretion, allow such transfer in accordance with its established policy. In the event that such transfer is allowed, the employee shall cease to be covered by this contract and forfeit any seniority rights as a member of the bargaining unit.

C. In the case where an employee leaves to attend school and returns to the bargaining unit within twelve (12) months, in which case his/her original seniority date will be recognized. When an employee is on a leave for purpose of attending school, the leave shall be the same as if they had worked for the purpose of increases.

D. When work forces are increased or decreased, either temporarily or permanently, and in cases of promotion, employees shall exercise their seniority rights over junior employees.

E. In case of promotion or layoff, demonstrated lack of skill to perform the job, whether such demonstration be in the present job or in the new job, then an employee shall not be entitled to avail himself of seniority.

F. No employee shall acquire any seniority rights until he/she has been employed by the Employer at least thirty-one (31) days, and he/she shall not be deemed to be entitled to any of the privileges of seniority until he/she has been employed that long. After thirty-one (31) days, seniority shall apply from date of employment.

SECTION 11. LEAVE OF ABSENCE

A. When a leave of absence is granted to an employee, the Union Representative shall be notified within forty-eight (48) hours as to the name of the employee and for how long the leave of absence is granted.

B. The following Company policy shall govern leave of absence: No leave of absence will be granted except with the approval of the Store Leader, District Manager and the Director, Stores Human Resources. Leaves of absence are not to be paid absences. Holiday pay will not be paid during a leave of absence; however, vacation credits will not be lost due to a leave of absence, providing the leave of absence is not over six (6) months in duration. Seniority will continue for the period of the leave of absence, but not to exceed one (1) year.

C. Leaves of absence shall be granted for personal illness and Family and Medical Leave Act (FMLA). If an employee feels the need of additional leave of absence for personal illness, he or she shall apply for an extension of said leave of absence.

D. Leaves of absence shall be granted to employees by their:

a. Submitting to the Store Leader, as soon as practicable after the employee learns of his/her condition, a doctor's certificate attesting to the medical condition and certifying that the employee is physically unable to perform his/her job duties to a certain date. Additional doctor's certificates may be periodically required at the Employer's discretion. At the end of said period specified by the doctor an employee may, in his/her discretion, terminate his/her employment or request an extension to the leave of absence.

b. Upon return from a medical or Family and Medical Leave Act (FMLA) leave of absence, the employee must present a doctor's certificate attesting to his/her physical ability to perform his/her work.

E. It is the Employer's exclusive responsibility to administer leaves of absence requested under the Family and Medical Leave Act (FMLA) of 1993. Employees who have been employed for at least 12 months and have worked at least 1,250 hours during the twelve (12) month period preceding request for leave are eligible for unpaid leaves for up to 12 weeks under FMLA. Request may be made for FMLA leave based upon birth or adoption of a child or upon serious health condition of the employee, his/her spouse, child or parent. Certification of an employee's fitness for duty and ability to resume work will be required before an employee's return to work from a medical leave for him/her. During any leave granted under FMLA, an employee's health insurance will be continued under the same conditions as if the employee had not taken the leave (including the payment of regular contributions during the leave period by the employee).

SECTION 12. UNIFORMS

All uniforms required by the Employer, shall be furnished by the Employer, without charge including laundry cost.

SECTION 13. VACATIONS

A. Each full-time and part-time employee shall receive an annual vacation to be used in the following anniversary year with full pay therefore, as follows:

- a. Upon completing one (1) year of continuous employment, one (1) week of vacation.
- b. Upon completing two (2) years of continuous employment, two (2) weeks of vacation.
- c. Upon completing five (5) years of continuous employment, three (3) weeks of vacation.

- d. Upon completing ten (10) years of continuous employment, four (4) weeks of vacation.
- B. Full pay for each week of vacation shall be based on the average number of hours worked per week by the employee from the anniversary date to the anniversary date of the following year.
- C. When a holiday falls within the vacation period of an eligible employee, the employee shall be entitled to, and shall receive, an extra day of vacation with pay, or pay in lieu thereof.
- D. Vacations shall be scheduled in advance by the Employee, and where practicable, the selection of the time for any employee's vacation shall be governed according to seniority. Vacations may not be taken during peak seasons unless mutually agreed between the Employer and the employee.
- E. Unused Vacation will be paid out to the employee no later than thirty (30) days after the conclusion of the employees' anniversary year.

SECTION 14. PAID TIME OFF

- A. Effective January 1, 2013: Beginning with the first day of employment, full-time employees are eligible for eight (8) days of Paid Time Off ("PTO") and part-time employees are eligible for three (3) days of PTO, which may be used for any purpose. PTO is granted on a calendar year basis.

Each full-time employee's PTO shall be eight (8) hours pay. Each part-time employee's PTO Off shall be on a pro-rata basis based on the average number of hours worked during the last complete four (4) week period preceding the PTO, provided that pay shall not be less than four (4) hours of pay at regular rate of pay.
- B. PTO must be authorized by the Store Leader at least seven (7) days in advance, and is subject to approval based on business needs.
- C. Unused PTO existing at the end of the pay period of December 31 of the current year will be paid out to full-time employees (up to a maximum of three days) but is forfeited for part-time employees.
- D. If an employee leaves the employer, all unused PTO days are forfeited.
- E. For the contract year ending December 31, 2012 only, any unused Sick Pay for full-time employees will be paid out on a pro rata basis.

SECTION 15. FUNERAL LEAVE

In the event of the death of a parent, grand-parent, grandchild, brother, sister, spouse, same sex domestic partner, son, daughter, or present mother-in-law or father-in-law, brother-in-law, sister-in-law, present step-father, present step-mother, of an employee, or other relative residing with the employee, the Employer will grant a leave of absence from day of death until and including the day of the funeral, not to exceed three (3) days with pay for scheduled working days, provided the employee attends the funeral. In the case of a son-in-law or daughter-in-law not living with the employee, one (1) day will be given off with pay, that day being the day of the funeral. The employee shall not be paid beyond the date of the funeral. Part time employees will be given one (1) day off, with pay, that day being the day of the funeral for the above named relatives.

SECTION 16. JURY DUTY

Employees who are subpoenaed and who report for jury service, shall receive the difference in pay for the time lost and the amount received as jury pay, but in no case shall the total pay exceed forty (40) hours pay at the employee's regular straight-time hourly rate of pay. When an employee is released for a day or the greater part of a day, he/she shall report to his/her store for work. This situation shall not exceed ten (10) working days per calendar year.

SECTION 17. UNION ACCESS

The Employer agrees to permit an authorized representative or officer of the Union to have free access to the stores at all hours in which said stores are open for business to satisfy the Union that the terms of the Agreement are complied with, but such representative or officer shall not interfere with the duties of said employees, or the business of the Employer.

SECTION 18. GRIEVANCE PROCEDURE AND ARBITRATION/UNAUTHORIZED ACTIVITY

A. Should any differences, disputes or complaints arise over the interpretation or application of the contents of this Agreement, there shall be an earnest effort made on the part of both parties to settle same promptly through the following steps:

Step 1. By conference between the aggrieved associate, the union steward and/or Union Representative or both, and the store leader. Store Management shall make its decision known within two (2) working days thereafter. If the matter is not resolved in Step 1, it shall be referred to Step 2 within two (2) working days.

Step 2. By conference between the Union Representative and a supervisor of the Employer. The Employer shall make its decision known within three (3) working days thereafter. If the matter is not resolved in Step 2, it shall be reduced to writing and referred within three (3) working days to Step 3.

Step 3. By conference between an official or officials of the Union and a designated representative of the Employer.

Step 4. In the event the last step fails to settle the complaint, it shall be referred, within seven (7) working days, to Arbitration.

B. In any case in which an employee is aggrieved and the Union promptly notifies the employee that it does not intend to request arbitration after the Step 3 meeting, the time for requesting arbitration shall be stayed pending the associate's exhaustion of internal union appeals to the Union's Executive Board.

C. The Employer and the Union shall mutually agree to an impartial arbitrator to hear said arbitration case; however, if said arbitrator cannot be chosen within three (3) days then the Federal Mediation and Conciliation Service will be requested to furnish a panel of seven (7) names from which the arbitrator may be chosen. The arbitrator will be selected within seven (7) days, after the receipt of the panel by both parties. The arbitrator may be chosen by alternately striking names. The party striking first will be determined by the flip of a coin. The decision of the arbitrator shall be binding on both parties. The expenses of the arbitrator shall be paid for jointly. Should either party postpone a scheduled arbitration date, that party shall be responsible for any cancellation fee. The arbitrator shall hear the dispute and render a decision within thirty (30) days after receiving each party's briefs. In addition, each party may agree to extend time for the arbitrator's decision.

D. Such Arbitrator shall not be empowered to add to, detract from, or alter the terms of this Agreement.

E. The Employer may, at any time, discharge any worker for proper cause. The Union or the employee may file a written complaint with the Employer within seven (7) days after the date of discharge asserting that the discharge was improper. Such complaint must be taken up promptly. If the Employer and the Union fail to agree within five (5) days, it shall be referred to Arbitration. Should the Arbitrator determine that it was an unfair discharge, the Employer shall abide by the decision of the Arbitrator.

F. Grievances must be taken up promptly. No grievance will be considered, discussed, or become arbitrable which is presented later than seven (7) days after such has happened.

G. The Employer shall have the right to call a conference with a Union steward or officials of the Union for the purpose of discussing his grievance, criticisms, or other problems.

H. Grievances will be discussed only through the outlined procedures; except that by mutual agreement between the Union and the Employer, the time limits may be waived.

I. There shall be no lockout, strike, cessation of work, picketing, or any other action by either party which may adversely affect the other.

J. The Employer and the Union mutually agree that in the event of an unauthorized strike or slowdown by an employee or employees that the Employer will not file or press suits for monetary damages against the Union for a period of fifteen (15) days. The Union agrees that it will immediately take every reasonable means to induce the employee or employees to return to their jobs or resume standard production. Should such employee or employees refuse to return to work or to resume normal production following an appropriate written directive from the Union, the Employer may exercise whatever disciplinary action it deems proper against such employee or employees, including discharge, layoff, loss of seniority rights, or other privileges granted employees under this contract or Employer policy.

SECTION 19. STORE CARD, BUTTONS

A. The Union store card may be displayed in all places where members of Local No. 655 are employed exclusively. The store card shall be removed at the request of the Union.

B. The Union shall use its best efforts as a labor organization to enhance the interests of the Employer as an employer of union labor.

C. Members of the Union must wear their Union buttons when on duty.

D. The Employer agrees to furnish bulletin board space in each backroom of each store next to the alert line poster no less than 16x11 area for official Union notices. "Official" is defined as authorized by the President of Local 655. The notices will not be detrimental to the Company, or objectionable in nature.

SECTION 20. VETERAN RIGHTS

Any member of the Union inducted or drafted into military or other service by or for any branch of the United States Government, shall upon his or her discharge from service, be reinstated to his or her former position without loss of privileges granted hereby, if he or she applies for such position within ninety (90) days after the date of such discharge and is physically fit to perform the services required hereby.

SECTION 21. PICKET LINES

A. The failure of any employee to cross or work behind a lawful and primary picket line which has been officially recognized by the St. Louis Labor Council or the UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, shall not constitute a violation of this contract. The Employer shall not discriminate against any employee in any way for exercising this prerogative.

B. The Union and the Employer agree that neither will make any rules or regulations conflicting with the terms of this contract.

SECTION 22. HEALTH AND WELFARE

A. The Employer shall continue to make available to all eligible employees Payless Shoe Source, Inc. medical/dental/vision plans then in effect, and such employees who elect to participate in the plan(s) will participate subject to the terms and conditions of the eligibility of the plan(s) as set forth in the plan booklet(s). The employee shall pay the same portion of the weekly cost of either single or family coverage of the plan he/she elects as is paid by the other Employer associates enrolled in the same plan. Such employee contributions may change from time to time as determined by the Employer.

B. Eligible employees, as defined by the Employer's life insurance plan, shall be covered by such plan. To receive said benefit, employees must complete and submit an enrollment card, designating beneficiary or beneficiaries, in accordance with plan requirements. Once enrolled, this benefit will continue through the last day of the month during which the employee terminates or becomes ineligible because of loss of full-time status, following which the employee will have the right of conversion, in accordance with the plan provisions and applicable law.

SECTION 23. STORE CLOSING

A. In the event of a permanent closing or sale of a store, the Employer shall have the right to dismiss all of the employees. The Employer shall give the Union three (3) weeks prior written notice by certified mail of its intention to permanently close the store. Employees dismissed by reason of the closing or sale of a store shall receive their accrued but unused vacation pay as herein provided. Employees will also be eligible to receive severance pay and health benefit continuation, if applicable, as follows: continuation of weekly base pay for the greater of one (1) week for each full year of service with the employer or two (2) weeks for full-time employees and one (1) week for part-time employee. If the employee is enrolled in health or medical benefits with the employer at the time of termination, those benefits will continue for the period of the employee's severance pay. Upon termination of severance pay, the opportunity to continue coverage in such health or medical benefit plan will be made available through COBRA as applicable.

B. As a condition precedent to receiving severance pay and other benefits, the employee is required to sign a settlement agreement releasing all claims arising out of employment with the employer. Such release will only include a release of civil claims and/or claims arising out of the CBA and will not waive any current or future claim the employee may have for workers' compensation benefits nor shall it waive any of the employee's benefit vested as of the employee's release date.

C. In the event of a store closing, employees in the closed store will have the option to bump the least senior employee in their job classification in the bargaining unit or accept the severance benefits. Employees who accept the severance benefits forfeit their seniority and shall have no recall rights.

D. In the event of a temporary closing of a store due to fire or other action, or due to a major alteration requiring the closing of the store, all of the employees may be laid off by the Employer. Such employees, however, will be re-employed in the store upon its re-opening.

SECTION 24. SEPARABILITY

In the event any article, section, or portion of this Agreement should be held invalid or unenforceable by operation of law or by any tribunal of competent jurisdiction, such decision shall apply only to the specific article, section, or portion thereof. Specifically specified in the decision; and upon issuance of such decision, the Employer and the Union agree to immediately negotiate a substitute for the invalid article, section, or portion thereof.

SECTION 25. PROFIT SHARING/401K PLAN

The Employer intends to endeavor to provide a Profit Sharing/401K Plan. The Employer will notify the Union of plan changes.

SECTION 26. TERM OF CONTRACT

This Agreement shall be in full force and effect from May 6th, 2012, to May 9th, 2015, at which time it shall automatically renew itself for one (1) year periods thereafter, provided, however, that either party may open this contract for improvements, changes or amendments, or to abrogate said contract, by written notice, to the other party sixty (60) days prior to the termination date or any subsequent anniversary of this Agreement. It is further provided that any improvements, changes or amendments shall become effective on the anniversary date.

ACCEPTED FOR

UNITED FOOD & COMMERCIAL
WORKERS UNION LOCAL NO. 655

BY *Garry Torres*

BY *Maria C. Berry*

DATE *8-7-12*

ACCEPTED FOR

PAYLESS SHOE SOURCE, INC.

BY *Jay Ande*

BY _____

DATE *08/13/12*

SCHEDULE "A" WAGES

Full-Time Wage Scale

	Effective Current	Effective 05/06/12	Effective 05/06/13	Effective 05/04/14
Hire	\$8.55	\$8.60	\$8.75	\$8.90
6 Months	\$9.20	\$9.25	\$9.40	\$9.55
18 Months	\$10.40	\$10.45	\$10.60	\$10.75

Full time employees who are over the eighteen (18) month rate 05/06/12, 05/6/13, or 05/4/14 will receive a wage increase of twenty-five cents (25¢) per hour. For the purpose of eligibility to receive this over scale increase, the base rate of pay excludes the additional forty-cents (40¢) per hour amount paid to Assistant Store Leaders.

Part-time Wage Scale

	Effective Current	Effective 05/06/12	Effective 05/06/13	Effective 05/04/14
Hire	\$8.40	\$8.45	\$8.60	\$8.75
6 Months	\$8.55	\$8.60	\$8.75	\$8.90
18 Months	\$9.10	\$9.15	\$9.30	\$9.45

Part-time employees who are over the eighteen (18) month rate as of 05/06/12, 05/6/13 or 05/4/14 will receive a wage increase of twenty-five cents (25¢) per hour.

OTHER WAGE PROVISIONS

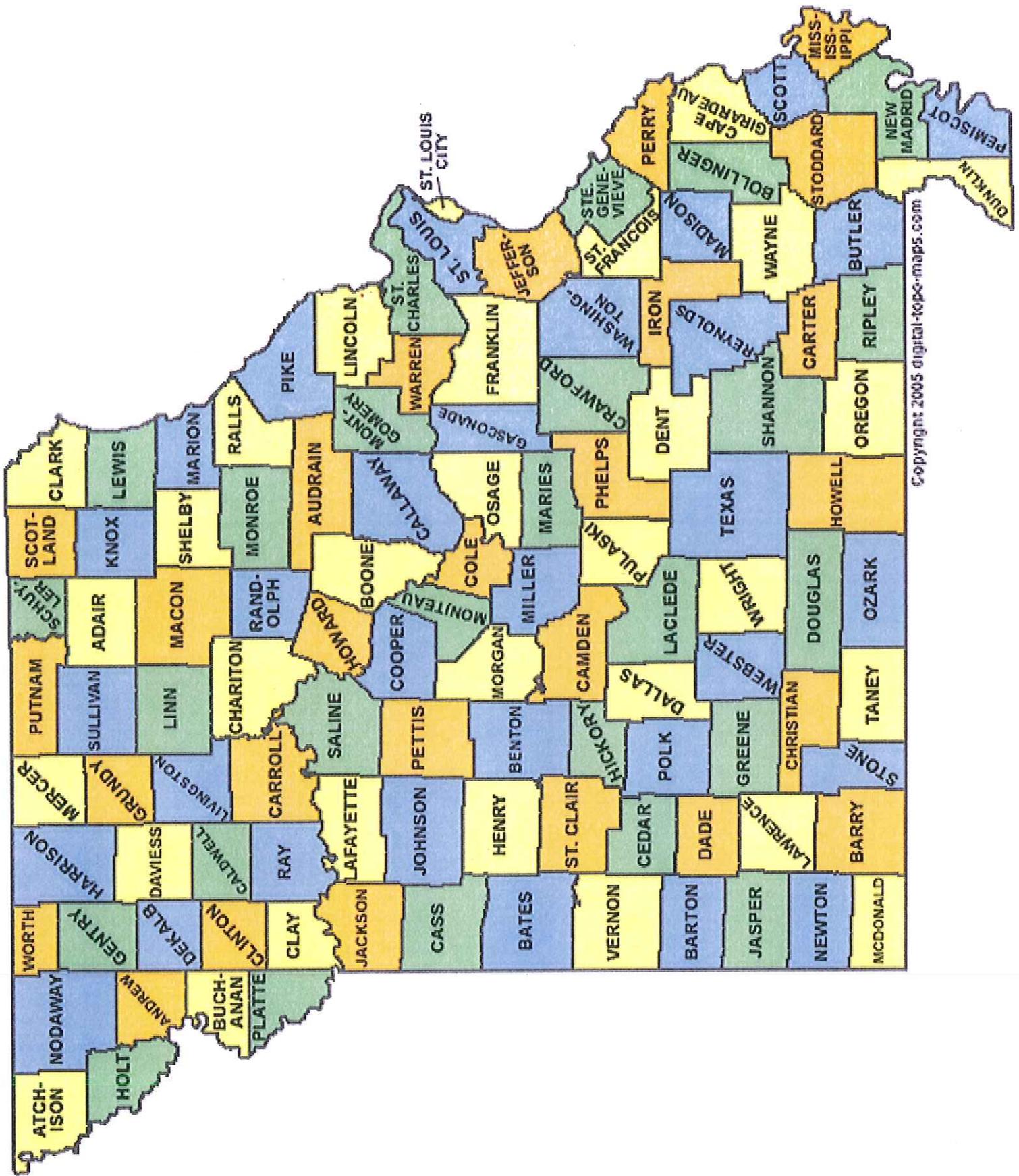
Assistant Store Leaders.

It is agreed the designated Assistant Store Leaders of each store will receive an additional forty cents (40¢) per hour over the applicable contract rate and there will only be one (1) Assistant Store Leader designated by the Company for each store.

Assistant Store Leaders or full-time employees relieving a store leader for seven (7) or more days shall receive fifty cents (50¢) per hour over their present rate of pay for such time worked.

Employees hired at a rate higher than the entry level rate but below the maximum wage scale rate will progress to the next level on the pay scale upon ratification of the contract.

Whenever the Employer elects to hire a new employee at a rate of pay higher than the entry level scale, the employee's rate of pay will be increased to the next level on the appropriate wage scale after six (6) months of service, and at eighteen (18) months of service, if appropriate.



Position Requirements: Store Associate

General Description:

The position title "Store Associate" is used for Part-time and Full-time Store personnel who perform a variety of duties. The duties Store Associates are assigned and trained to perform vary according to Store needs.

Duties are grouped into general position responsibilities for training and assignment. The areas of responsibility are:

- Shipment Processor
- Cashier
- Associate without Administrative Responsibilities
- Associate with Administrative Responsibilities
- Key Carrier

Whenever possible, the Company is committed to promoting from within. Promotion from one position to another is based on your qualifications, job performance and recommendations by your Store Leader to your District Leader.

With general direction from the Store Leader, this position requires the individual to provide superior Customer Service, complete sales transactions and other merchandise transactions according to company procedures. It also requires Associates to maintain Store cleanliness and merchandise availability. Key Carriers, as well as Store Associates with administrative responsibilities, will complete assigned administrative tasks including opening and closing paperwork.

Essential Functions of the Store Associate Position	
Customer Service	Associate must be able to service Customers' needs and use sales techniques. Associate must understand Store layout and be able to respond to Customers' questions about the location of merchandise, payment and return policies, etc., in a prompt and courteous fashion. Associate must be able to communicate clearly with all Customers.
POS Register Operation	Associate must be able to enter data into register to accomplish various transactions (i.e. sales, refunds, payment by check or credit card, closing the register, etc.).
Transaction Accuracy	Associate is responsible for accurately recording transactions and making change. Associate will be held responsible for following the Cash Protection Procedures.
Verification of Prices and Lot Numbers	Associate must be able to read small print to verify price, style, and size on items at the POS register, during shipment processing, and while maintaining racks throughout the day.
Transaction Document Processing	Associate must process paperwork associated with all forms of POS transactions (i.e. refund and exchange, identification verification, verification of approval codes through check verification and/or credit card verification, manual completion of receipts and completing Customer information on checks, etc.).
Bagging Customers Purchase	Associate must be able to package Customer purchases, unassisted, in bags provided for this purpose.
Floor Control	Associate must be able to move freely throughout the Store to observe Customers, provide service, and detect theft or other security risks.
Shipment Processing	Associate must have the dexterity and physical ability to receive and move cases of merchandise weighing up to 40 pounds.

Maintaining Racks and Overstock	Associate must have the ability to follow a colorized rack plan, locate and match mismates, and move merchandise in and out of overstock.
Price Changes and Box Tagging	Associate must have the manual dexterity to change prices and tag merchandise as directed.
Store Displays	Associate must be capable of changing Store displays and signs. This often requires the ability to climb step ladders.
Other Administration	To become a Store Associate with administrative responsibilities or a routine Key Carrier, Associate must demonstrate the ability to adequately perform all previously listed tasks and be able to complete and file paperwork as directed by the Store Leader.
Store Opening/Closing	Associate must have the scheduling flexibility and experience to open or close the Store as required. Associate must have the dexterity required to operate a key lock, a tumbler or key pad safe combination, and may be required to activate or deactivate an alarm system through the entry of a security code. Associate may also be required to lift or open a security gate.
Housekeeping	Associate must have the ability to complete routine, daily housekeeping tasks (i.e., vacuuming, glass cleaning, picking up trash, taking out trash and cleaning restrooms, etc.).

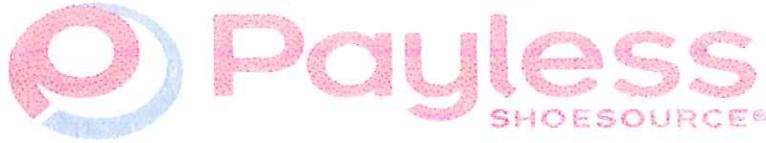
Non-essential Functions

Due to limited staffing in our Stores and scheduling directly linked to workload and sales projections, there are no non-essential functions for this position.

Qualifications, Knowledge, Skills and Abilities:

- Associates, including DECA students must be 17 years old.
- High school diploma is required for Full-time Associates. Two years of college or equivalent is preferred, but not required.
- Part-time Associates may be hired while still in high school if they are 17 or in the DECA program.
- Successful completion of interview with the Store Leader and review by either the Training Supervisor or District Leader.
- Demonstrated ability to work with people. Previous retail experience is desired but not required.
- Ability to read price information, Customer checks, Customer identification and similar written materials (most with smaller type).
- Ability to complete basic math functions (addition, subtraction, multiplication and division) necessary to verify cash register balances and process refunds and returns.
- Ability to lift or move goods weighing up to 40 pounds a distance of several feet. Ability to lift merchandise in and out of overstock.
- Visual acuity sufficient to observe and detect signs of shoplifting or dangerous behavior.
- Ability to hear and understand Customer and Associate inquiries, oral instruction from supervisors, and emergency announcements.
- Sufficient manual dexterity to operate all registers and security equipment, package Customer purchases, and restock shelves with new merchandise at an average rate of 75 to 100 units per hour.

NOTE: Associate must possess the above mentioned skills and abilities or be able to explain and demonstrate that they can perform the essential functions of this position, with or without reasonable accommodation, using some other combination of skills and abilities.



Name:

Hire Date:

Prepare

Certify

Begin Date

Complete Date/Int.

Store Leader Initials

Date Certified

Sales Associate Learning Tracker

31 to 60 days

WK	Topic	Source
5	SMILES: Try-on	SG
5	Handling Difficult Customers	CBL (CD 4)
6	SMILES: Checkout and Walkout	SG
6	SMILES: Selling Accessories	SG
6	Understanding Harassment	CBL (CD 4)
6	Confidentiality in the Workplace	CBL (CD 4)
7	SMILES: Selling Beauty (if applicable)	
7	SMILES: SMILES Leader	SG
7	Information Sources	CBL (CD 4)
7	Communication Skills	CBL (CD 4)
8	Progress Checkpoint	

61 to 90 days

9	Help Desk Ticket (if applicable)	JA
9	Store Maintenance (if applicable)	JA
9	Responding to Visitors	CBL (CD 5)
9	Giving and Receiving Feedback	CBL (CD 5)
10	Mismates	CBL (CD 5)
10	Damages Overview	CBL (CD 5)
11	Retail Math	CBL (CD 5)
12	Store Associate Certification Complete	

Store Leader - This checklist is to be used in conjunction with the Store Associate's CBL Guide. Upon completion, move the completed Learning Tracker to the Associate's personnel folder.

BUSINESS CASUAL DRESS CODE & PERSONAL APPEARANCE

Purpose: To ensure a professional working environment.

Policy: Corporate, Field Management, Distribution Center (non-union)
Creating an on-the-job image appropriate for our industry is an important step in communicating the Payless fashion message. How you choose to dress for work each day directly influences the overall image of our Company.

The care we take in presenting ourselves projects a professional image. Associates should always be clean and well groomed (e.g. neatly combed hair, well trimmed nails and facial hair, etc.). In consideration of others, Associates should avoid the use of products with strong odors (e.g. cologne, perfume, hair spray, etc.).

Your on-the-job image can have a positive impact on your self-confidence and your mental attitude. Keep in mind that some fashions are not appropriate for our business and work setting. These include, but are not limited to:

- Athletic clothes and hats
- Denim pants (all colors)
- Shorts (all types)
- Poorly kept or severely worn clothing or footwear

Clothing should never be distracting or detract from the business at hand. For this reason, the following are not acceptable:

- Necklines and hemlines that do not reflect a professional image
- Exposed midriffs
- Observable lack of undergarments or exposed undergarments
- Clothing or visible body art with offensive writing or images
- Body piercings, accessories and hair styles or colors that are excessive or offensive

Footwear should always reflect a business casual environment.

The Company may designate specific days when different clothing and footwear options are permitted. Associates will receive communication regarding the types of attire that are appropriate for these occasions.

Certain departments or groups of Associates may be required to wear uniforms for safety and/or identification purposes. In addition, some Associates may be given management approval to dress more casually if the nature of their work requires them to perform tasks or work in environments that would be challenging in business attire (e.g. heavy lifting, warehouse work, maintenance, etc.).

There may be occasions when Associates may be allowed to dress more casually or may be required to wear traditional professional business attire

based on the activity or business function. In all cases, Associates will be notified in advance by their supervisor or manager. Additionally, all Corporate Office and Distribution Center Associates must dress in business casual attire when visiting a Store for business purposes.

Stores

You're a critical part of creating a Great Shopping Experience for our Customers and reinforcing the Payless brand. Your on-the-job image can have a positive impact on your self-confidence, your mental attitude and the trust your Customers place in you as an advisor.

To support our brand promise — *inspiring, fun, fashion possibilities for the family...Payless* — you should select attire that reflects a professional image, that is fashionable, trend-right and appropriate for the season.

Examples of professional dress include:

- For women – Dress slacks, dresses, skirts, blouses, sweaters, vests, jackets or blazers.
- For men – business casual pants or khakis, sweaters, dress shirts and vests.

Employee badges must always be worn.

Keep in mind that some fashions are not appropriate for our business and work setting. These include, but are not limited to:

- Athletic clothes, sweatshirts or t-shirts
- Denim bottoms (all colors)
- Athletic shoes, sneakers, flip flops
- Shorts
- Poorly kept or severely worn clothing or footwear

Clothing should never be distracting or detract from the business at hand. For this reason, the following are not acceptable:

- Necklines and hemlines that do not reflect a professional image
- Exposed midriffs
- Observable lack of undergarments or exposed undergarments
- Excessive piercing
- Clothing or body art with offensive writing or images

There may be occasions when Associates may be allowed to dress more casually or may be required to wear traditional professional business attire, based on the activity or business function. In all cases, Associates will be notified in advance by their supervisor or manager.

Ultimately, we expect Payless Associates to exercise good judgment on the job, and this extends to your professional image as well. If you're not sure whether or not an outfit is appropriate to wear to work, it probably isn't. Dressing well and appropriately always requires using common sense.

Key Procedures: Associates should direct questions regarding the Company's expectation of

Associate dress and personal appearance to their supervisor or manager. Department managers who have questions or need clarification should contact the Human Resource department. Associates in violation of this policy may be subject to disciplinary action, up to and including termination of employment.

Forms:

Refer To: Business Casual Dress Clarification Attachment

Policy Changes/Disclaimer: *These provisions supersede all existing policies and procedures and may not be amended or added to without the express written approval of the Senior Vice President-Human Resources.*

Women

Examples of acceptable business casual dress include:

Suit or sport coats, blazers
Dresses, skirts, dress slacks, casual or capri pants
Sweaters, vests, turtlenecks, mock turtlenecks
Long, short or sleeveless blouses & sweaters
Dress tees, camp, oxford, or sport/polo shirts
Denim shirts, vests, jackets, dresses/jumpers & skirts
Dress shoes, dress boots, loafers, oxfords, sandals or other leather type casual footwear

Examples of unacceptable business casual dress include:

Denim pants of any color, bib overalls
Shorts of any type, skorts, mini skirts
Spandex, stirrup pants
Flannel shirts, t-shirts
Spaghetti-strap tops or dresses, tanks, halters or any revealing top or dress worn without a jacket or blouse
Shirts with large lettering/logos
Athletic or canvas shoes, work boots, beach-style flip flops

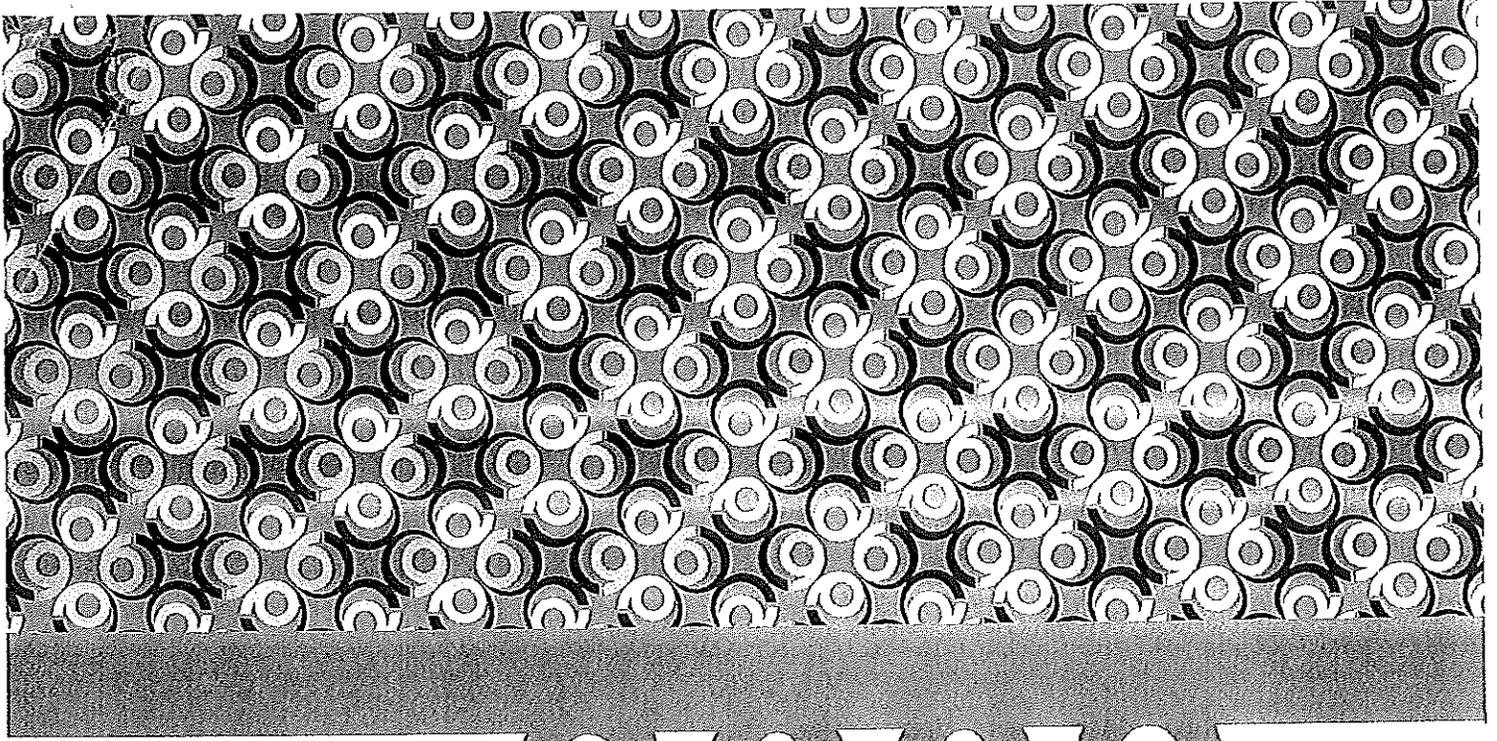
Men

Examples of acceptable business casual dress include:

Suit or sport coats, blazers
Dress slacks, casual pants
Sweaters, vests, ties, turtlenecks, mock turtlenecks
Long or short sleeve dress shirts
Dress tees, camp, oxford or sport/polo shirts
Denim shirts, vests & jackets
Dress shoes, loafers, boots, oxfords, boatshoes, city sandals or other leather type casual footwear

Examples of unacceptable business casual dress include:

Flannel shirts, t-shirts, tank tops
Shirts with large lettering/logos
Athletic or canvas shoes, work boots, beach-style flip flops



2009



**Associate Handbook
for Store Associates**



Every Associate is responsible for ensuring equal employment opportunity. For questions about this policy, or to report a suspected violation, contact your Manager, District Manager, the Human Resource department or the AlertLine (1-800-255-2465).

Hiring

It is Company policy to hire individuals who are qualified for employment as determined by standards of experience, education and aptitude. Any prospective applicant who desires to apply for work must be provided the opportunity to do so. All job offers must be approved by the District Manager or designee.

Minimum Age Requirement

Applicants must be at least 17 years old, possess a high school diploma, GED, or be actively pursuing a high school diploma to be eligible for employment. State-specific work hours and rest break/meal period restrictions, as well as Store operations restrictions, also apply when employing 17 year olds.

Employment Eligibility Compliance

The Company is committed to employing U.S. citizens and individuals authorized to work in the United States, and does not discriminate on the basis of citizenship or national origin.

In compliance with federal immigration laws, every Associate, as a condition of employment, must complete an Employment Eligibility Verification (Form I-9). Failure to maintain a valid Form I-9 is grounds for termination.

Federal tax laws also require the Company to obtain a valid Social Security Number (SSN) from each Associate, which is used on tax reports filed by the Company and included on Associates' Withholding Allowance Certificates (Form W-4s). SSNs for all new hires and Associates are verified with the Social Security Administration on a regular basis. If the Social Security Administration is unable to confirm an SSN, and the Associate cannot provide the Company a corrected number within the specified time frame, termination will result. A false name, birth date or SSN are also grounds for termination.

Background Checks/Criminal Records

The Company may check an applicant's work history, employment references, education record, military record, financial record (including consumer report), driving record or any other pertinent information for employment purposes, consistent with the Fair Credit Reporting Act and any similar state laws. In addition, the Company may conduct a retail theft and/or criminal records check of an applicant's or Associate's work or personal history as well as conduct pre-employment drug testing in certain districts.

Misdemeanor and felony convictions will be investigated and carefully considered before an offer of employment is extended or, if occurring after employment begins, employment is continued. A prior conviction will not necessarily disqualify an applicant or Associate from employment, nor will the Company consider misdemeanors over 10 years old (or as mandated by state law) or convictions that have been sealed, expunged or otherwise removed by law or court order. However, the Company will not hire or retain an Associate if the felony (or misdemeanor less than 10 years old) conviction relates to (i) an act of violence, including assault, battery, carrying a concealed weapon or the destruction of property; (ii) theft, fraud, embezzlement, misappropriation of funds or check writing; (iii) use, possession or distribution of illegal drugs; or (iv) any form of sexual assault, child molestation or similar offense.

If the Company discovers an applicant or Associate has misstated, falsified or omitted information on the Application for Employment, the Company may cease to consider that individual for employment or terminate the Associate.

Orientation and Training

To facilitate Associates' personal and professional growth, the Company has developed an orientation and training program. The foundation of this program is the applicable Learning Booklet (e.g. Store Associate, Key Carrier or Store Manager), Computer Based Learning ("CBL") modules and the on-line Job Aids & References. Store Managers can direct Associates to the tools used for tracking progress, and assist Associates in their development and provide feedback as these programs are completed.

achievement of goals. Our practice has always been to treat each Associate as an individual and a positive environment is a priority for our Company. To maintain an atmosphere where these goals can be accomplished, we provide a workplace that is comfortable and progressive. It is a workplace where communications are open and problems can be discussed and resolved in a mutually respectful atmosphere taking into account the circumstances of the individual Associate.

Historically, Associates have benefited from the opportunity to work directly in addressing their concerns without intervention from a third party. The Company firmly believes it is in all associate's best interest to work in a union-free environment. While the federal government gives employees the right to organize and join unions, it also gives them the right to say "no" to union organizers and not join unions.

Open Door Policy

The Company has an open door policy, which exists to ensure a review to any Associate who believes that administration of a policy, procedure or condition of employment has resulted in unfair treatment.

In most cases, Managers can answer questions quickly and help solve Associate concerns. To raise a question with someone other than their Manager, Associates can use this open door policy. First, Associates should talk to their District Manager. If the Associate still has questions or concerns, they should contact the Director of Retail Operations or Vice President of Retail Operations. The Human Resources department can also provide assistance at any point in the process.

Associates who are unable to resolve their concerns also can write Payless ShoeSource (attn: Senior Vice President - Human Resources), 3231 S.E. 6th Street, Topeka, KS 66607, Fax: (785) 368-7534, or contact the confidential AlertLine (1-800-255-2465). The Company is eager to resolve issues to the satisfaction of Associates, and encourages Associates to use this open door policy.

Non-Discrimination and Harassment

The Company will not tolerate discrimination or harassment, whether based on race, color, creed, religion, national origin, ethnicity, ancestry, age, sex, pregnancy, sexual orientation, disability, marital status, citizenship, status as victims of domestic violence or sexual assault, veteran's status or any other protected class status, in the workplace or any functions related to the workplace. Harassment, whether caused by another Associate, Customer, vendor or supplier, is unacceptable.

One form of harassment is sexual harassment. Sexual harassment is defined as unwelcome or unwanted sexual advances, requests for sexual favors, and any other verbal, visual or physical conduct of a sexual nature where submission or rejection of the conduct leads to tangible employment action. Unacceptable harassment also includes unwelcome behavior or actions (e.g. epithets, jokes, comments, gestures, circulating graphic material or other verbal or physical conduct) directed to a person or group based on their protected class status that unreasonably interferes with work performance or creates a hostile work environment.

Associates should immediately report all harassment or discrimination by an Associate, Customer or vendor to their Manager, District Manager, the Loss Prevention department or the AlertLine (1-800-255-2465). It is essential Associates report all claims of harassment or discrimination, whether they experience, witness or learn of it.

The Company will take appropriate steps upon receiving a complaint or otherwise learning of harassment or discrimination. Individuals with knowledge of the incident or similar problems will be questioned. Written statements also may be requested. Confidentiality will be preserved to the extent reasonably possible and information sharing will be limited to those with a "need to know." Upon completion of the investigation, immediate corrective action will be taken if this policy is violated. If warranted, disciplinary action will be taken against the offending party, up to and including termination.

Retaliation against Associates who report, or provide information regarding discrimination or harassment, also violates this policy and will subject the offending party to disciplinary action, up to and including termination. Associates should immediately report all acts of retaliation or threatened retaliation.

More detailed information on the Company's anti-harassment policy also can be found in the "Separate Policy Against Harassment" located in each Store's backroom in File Drawer 2, Folder 6-HR Policies and Information.

Employee Assistance Program

The Company has an Employee Assistance Program (EAP) available for all Associates and their household members. Situations addressed by the EAP include marriage and family problems, emotional problems, alcoholism and alcohol abuse, drug abuse and dependency, financial problems, grief or bereavement, work stress, anger management, compulsive gambling and eating disorders. Your privacy is guaranteed and conversations and all records are confidential.

Cost of the EAP is fully Company-paid and professional counselors are available 24 hours a day, 7 days a week via a toll-free phone number (1-800-588-8412). Additional information may be obtained at www.MagellanAssist.com or by contacting the Human Resources department.

ASSOCIATE CONDUCT AND DISCIPLINARY ACTION

Outside Employment

While employed by the Company, Associates may not be an employee, officer, director or consultant of a competitor or current or prospective supplier, distributor, vendor or landlord ("Third Party"). Performing non-Company work, or soliciting that work on Company premises or while working on Company time, including while on a leave of absence, also is prohibited. However, after disclosure to their Manager, Associates may engage in outside employment with a non-Third Party, or in "free-lance" or "moonlighting" activity, so long as it does not create scheduling conflicts, significantly interfere with the time and attention which should be devoted to the duties of the job, or adversely affect the quality of work.

Ordinarily the Company does not interfere in the private lives of our Associates. However, if a conflict with a Customer or an Associate's "off-duty" activity is of a nature that could tarnish the image of the Company, or hurt our business position in the community, we reserve the right to take disciplinary action, up to and including termination.

Questions whether outside employment or business activities would violate this policy should be directed to the Store Manager, District Manager or the Human Resources department.

Confidentiality of Business Information

From time to time, Associates may be exposed to the Company's confidential information. "Confidential information" is all non-public information that might be of use to competitors or harmful to the Company if disclosed and includes but is not limited to:

- * Technical data
- * Human Resources and Retail Operations training materials
- * Company financial information (e.g. sales, sales plans, profits, inventory levels)
- * Real Estate plans (e.g. relocations, new store openings)
- * Merchandise planning materials (e.g. promotion schedules, inventory levels)
- * Pricing
- * Sales audit and e-commerce data
- * Marketing plans or strategies
- * Compensation data
- * Customer addresses, credit card numbers or social security numbers
- * Information pertaining to personnel data of Associates or former Associates
- * Information pertaining to anyone with whom the Company does business (e.g., suppliers, landlords)

Associates in possession of confidential information should apply all necessary safeguards to protect it, such as marking it "Confidential" and keeping it in a secure area or locked drawer when not in use. If you

a specific Store or location. All requests for transfers in the same District or different Districts must be discussed with the Associate's Manager. To be considered for a transfer, Associate performance should be meeting job responsibility expectations. Efforts will be made to keep the Associate at the same pay, position and average hours worked, but this is not guaranteed. Final approval depends on available positions and District Manager approval.

A "promotion" is an upward move resulting in increased pay and responsibility. The Company utilizes the Expression of Interest (EOI) process, which is designed to allow Associates to indicate their interest in being considered for promotion to a Store management position. It is repeated every six months for Store Manager positions and once per year during the performance review process for Training Supervisor and Assistant District Manager positions. Guidelines for the EOI process are in each Store's backroom in File Drawer 2, Folder 6-HR Policies and Information. Questions about the EOI process should be directed to the District Manager or the Human Resources department.

A job posting and application tool called Talent Central also exists to communicate available Corporate Office and Field management jobs. Notices of open positions are generally posted for three business days.

WORKPLACE STANDARDS

Public Accommodation and Nondiscrimination

The Company is committed to providing the best possible service to our Customers. It is our expectation that every Customer be treated with dignity and respect regardless of their race, creed, color, age, sex, sexual orientation, pregnancy, religion, disability, marital status, national origin/ancestry, citizenship, military or veteran's status or any other protected status. Any conduct by Associates resulting in a denial or refusal of the full and equal enjoyment of our Stores and services, or discouraging a reasonable Customer from visiting our Stores, is prohibited. Violation of this policy will result in disciplinary action, up to and including termination.

Cash Protection Procedures

Associates are required to understand and sign the Cash Protection Procedures ("CPP") form in their Store, or Shared Labor Stores, upon joining the Company. This form contains information on:

- * Limits on the amount of cash/checks in the register or safe
- * Locking and securing the register at all times
- * Properly keying transactions in the register
- * Deposit procedures
- * No IOUs or any form of promissory payment

In addition, to be a Key Carrier, an Associate must have personal transportation. Associates may not rely on public transportation to make bank deposits.

Preventing Robberies

Robberies are deterred through the use of strict cash controls, security systems where installed, and training Associates in the best ways to respond should a robbery occur. The best deterrents are (i) following the CPP; (ii) good Customer service and alert Associates; and (iii) well-organized stores.

In case of a robbery:

- * Keep the interaction short and smooth
- * Obey the robber's orders and cooperate. Don't argue or resist
- * Tell the robber of any possible surprises, such as a co-worker returning from break
- * Don't pursue the robber as he or she leaves
- * Call the police after the robber leaves the Store

Preventing Shoplifting

The best deterrent to preventing shoplifting is outstanding Customer awareness and floor control. Proper

Position Requirements: District Leader

General Description:

District Leaders are responsible for an average of \$10 million in annual sales and generally oversee 20 to 25 Stores. District Leaders are responsible for ensuring Stores meet business plans, are effectively staffed and maintain Company operations standards. District Leader positions are filled by internal candidates called Assistant District Leaders (ADL) or candidates hired from outside because of their considerable retail experience in other companies. The external candidates are called District Leaders Unassigned (DLU).

Essential Functions of the District Leader Position	
District Profitability	District Leader must administer the procedures and controls necessary to meet or exceed sales, profit and shrink goals for the District. District Leader must be able to read, interpret and act on financial reports.
Staff Selection	District Leader must recruit, interview and hire Store Management Trainees and other needed staff with assistance from Training Supervisors. This requires the ability to do long-term and short-term manpower planning for the District. It also requires communication skills sufficient to follow the Interview Guide and interview structure. District Leader must ensure candidates have skills and abilities required for the position.
Coaching and Counseling	District Leader must provide guidance and direction to Store Leaders through coaching and counseling to ensure effective job performance. District Leader must also be able to advise Store Leaders about coaching, counseling and termination situations and be able to work with Stores HR Director on Associate relations issues.
Training and Development	District Leader is ultimately responsible for the training and development of all personnel in the District. This responsibility requires the District Leader to directly develop Training Supervisors and Store Leaders and then monitor their development of SLTs and Store Associates.
Performance Evaluation	District Leader has the responsibility to complete and present performance appraisals according to Company procedures. District Leader must be able to determine and fairly administer compensation and recommend salary increases and promotions in accordance with Corporate guidelines.
Merchandise	District Leader must be able to identify, detail and communicate merchandise needs throughout the District. District Leader must be able to read, interpret and act on merchandise reports.
Administration	District Leader must be able to complete reports and other documents on paper and electronically as required by management.
Store Maintenance	District Leader is responsible for identifying and ensuring repair of interior and exterior Store maintenance issues. District Leader is also responsible for overseeing new Store openings and relocations.
Responding to Emergencies	District Leader must have the ability to immediately respond to emergencies in any Store in his or her District. District Leader must ensure Stores are opened as scheduled and staffed, especially when there are extenuating circumstances. District Leader may also need to make immediate decisions about closing Stores in cases of emergency.

Qualifications, Knowledge, Skills and Abilities:

- Demonstrated pattern of success in management.
- Successful completion of either the ADL or DML program.
- Approved for the position by the DRO, ROPS SVP, and MRD.
- Ability to read and interpret all Store tickets, tags, paperwork and District, Region and Corporate reports.
- Ability to complete mathematical analysis necessary to interpret financial and merchandise reports.
- Ability to hear and understand Associate and Customers inquiries and other forms of verbal communication (much of the District Leader's work is done over the telephone).
- Ability to communicate directions, procedures and expectations to Store Leaders.
- Sufficient dexterity to operate a computer keyboard.
- Ability to immediately perform or learn basic computer skills.
- Ability to independently operate a motor vehicle (District Leader is required to travel to Stores or other locations to do business almost every day.).

NOTE: District Leader must possess the above mentioned skills and abilities or be able to explain and demonstrate they can perform the essential functions of this position, with or without reasonable accommodation, using some other combination of skills and abilities.

Cash Protection Procedures

Store # _____ District: _____ Date: _____

I agree that the cash protection and security procedures listed below were discussed with me by my District Leader or Store Leader. I feel that I can fulfill my Store responsibilities while strictly adhering to these procedures. I further agree that willful or negligent violation of Cash Protection Procedures, the armored car policy, or other established cash handling and security procedures, particularly, but not limited to, those that result in a loss of Company money, assets or increase the safety risks to other associates, will be considered sufficient grounds for my termination under the Company's code of conduct policy for failure to exercise adequate control over the business assets entrusted to me.

1. The maximum amount of cash and checks kept in each POS register in this Store is: **\$125.00**
2. The total cash base fund assigned to this Store for operating purposes is the sum of all base funds listed on register close-out reports. I understand that these monies are the property of the Company and are to be used only for authorized Company business. A Store's base fund is to consist solely of cash. No IOU's, checks of any kind, or any other form of promissory payment may be held as part of the Store's base fund. If this Store has multiple registers their individual base funds are as indicated on each registers close-out report.

Total base fund amounts must be verified at closing and at opening each day as registers are opened. Variances must be reported to the Store Leader or District Leader.

3. I agree to the following procedure for preparing deposits: Money will not be counted in the check out area or in the presence of customers. I will not move around the Store with cash visible or leave cash or deposits unattended. Deposits will be processed in the backroom. Whenever two or more Associates are working, they will both verify the deposit and sign the deposit slip. Associates must then secure deposit in the safe or transported to the bank.
4. Daily bank deposits will be prepared and verified in accordance with instructions in the job aids and references. Failure to comply with Bank deposit procedures will be considered sufficient grounds for termination.
 - a) The maximum amount of cash (includes all cash and checks) that may be on hand in this Store is **\$3,500.00**. When this limit is reached, I understand that we are required to prepare a deposit and deposit the funds at the bank. The only exceptions allowed are:
 - (1) if only one person is on duty, then the deposit will be made by the person in charge of the Store as soon as staffing permits;
 - (2) if it would require a deposit after dark;
 - (3) the maximum amount does not include the base fund, authorized weekend change fund and authorized net cash payroll funds. Funds held in excess of the authorized amounts will be considered a violation to this policy;
 - (4) if Store uses armored car services. Refer to Armored Car, Weekend Change Fund and Cash Payroll Policy and Procedures using the job aids and references.
 - b) Deposits should be taken to the bank soon as staffing levels permit.
 - c) Night bank deposits are not authorized. (A night deposit is defined as a bank drop made after dark.) A deposit must be made each business day, even if the store maximum cash limit of **\$3,500.00** is not reached.
 - d) If I am responsible for making bank deposits, I will follow this procedure: I will use locking or sealed deposit bags to transport deposits to the bank. Deposit bags will be placed in an inconspicuous non-transparent container and carried to the bank for placement in the bank night depository vault or with tellers inside the bank. I will remove my nametag before leaving the store when making a deposit. I will go directly to the bank. Whenever two or more associates are working and staffing or time of day permits, we will both escort the deposit to the bank. If staffing does not permit two people, one person will take the deposit to the bank.

- e) If I use the banks night depository chute I will ensure the deposits are placed in the correct chute and dropped into the banks safe. I will reopen the chute to ensure the deposit successfully fell into the banks safe. I understand that I am authorized to use my best judgement to use the tellers inside the bank to make deposits if I have safety concerns for using the outside night depository.
 - f) The next day, or after the bank has had the opportunity to process the deposit, it is the Store Leader's or designated associate's responsibility to pick up the validated deposit slip from the bank, if the bank provides a copy as part of our banking agreement. All deposit verification processes must be completed and validated deposit slips must be placed in the corresponding business day's daily recap envelope. All deposit variances must be reported to the District Leader.
 - g) I agree that all money, left in the store overnight will be locked in the safe. If the store has a time-delay safe all money except the opening register base fund must be in the time-delay portion of the safe.
 - h) I will not make multiple deposits of same amounts on the same day.
5. I understand that all POS registers will be closed out once each day at the end of the business day.
 6. I understand that my District Leader must be contacted the day after there is a cash variance on my POS register of **\$10.00** or more.
 7. I will keep all safes completely locked at all times except when making change and preparing deposits. (Any associate working alone must have the combination of the safe.) Safes are not to be left with the door ajar or on daylock position at anytime. For closing deposits, associates should not open the time delay safe until the Store is closed and the front doors have been secured. (The time delay safe can be activated so the door opens at the closing time to speed up the Store closing procedures.)

Stores with Time Delay Safes:
I understand that no more than **\$200.00** total in cash, checks and change can be stored in the non-Time Delay compartment of the safe during business hours.
 8. I understand the locked slotted drawer in the register counter may be used (when locked) to store change, checks and charge sales slips. A limited amount (not to exceed **\$50.00** total) of rolled coins and \$1.00 bills can be stored in this drawer for change replenishment (checks are not included in the \$50.00 total). This drawer must be locked at all times and the key for the drawer must be stored in the POS register drawer.
 9. I will not cash my own checks, or key any POS transactions for myself, family or relatives. All Associate transactions will be keyed by the Store Leader; All Store Leader's transactions will be keyed by the Assistant Store Leader or other designated person.
 10. I will key in and complete each customer transaction on the POS register. This means all phases of the transaction, including the subtotal, entering the amount tendered; placing the money in the cash register drawer, issuing the customer's change and receipt and closing the cash register drawer.
 11. The following transactions are prohibited: Failure to key customer purchases, using another Associates personal identification number, under ringing merchandise for less than ticketed or known selling price, and falsification of any POS transaction or document. Falsifying or manipulating transactions, customer data, or customer traffic equipment in an effort to modify or control performance indicators i.e. UPT's, or conversion, or other special contests, is strictly prohibited.
 12. Misuse of any coupon or multiple coupons to manipulate performance or for personal gain is strictly prohibited and will be considered sufficient grounds for disciplinary action up to and including termination.
 13. No paid-outs or cash payments should EVER be made directly or via wire transfer without direct approval from your District Leader. Any paid-out request will come through your District Leader and never in a letter or phone call from the corporate office, a company or a second party individual.
 14. Gift Cards must be processed and stored as outlined in job aids and references.

