

Syracuse University and Local 200A, Service Employees International Union. Case 3-RC-10506

November 8, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On March 25, 1997, the Regional Director for Region 3 issued a Decision and Direction of Election in which she found appropriate for purposes of collective bargaining an overall unit of parking lot attendants, parking enforcement officers, and parking control officers, including the Employer's parking and transit service department (parking service) clerical employees. The Regional Director, *sua sponte*, included non-parking service department employees who volunteer to work for the parking service department during special events, as "on-call" employees eligible to vote under the formula set forth in *Davison-Paxon Co.*, 185 NLRB 21 (1970).

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Petitioner filed an opposition brief. By Order dated May 1, 1997, the Board granted the Employer's request for review.¹ The election was held as scheduled on April 30, 1997, and the ballots were impounded pending the Board's Decision on Review.

Having carefully reviewed the entire record, including the Employer's brief on review, the Board affirms the Regional Director's conclusion that the petitioned-for unit is appropriate for the reasons stated in the Regional Director's Decision and Direction of Election.² The Board further concludes, however, for the reasons set forth below, that the Regional Director erred by including "on-call" employees regularly employed in departments other than the Parking Service department.

The Employer is a large, private nonprofit institution of higher learning in Syracuse, New York. The Petitioner seeks to represent employees in the Employer's Parking Service department, including 26 field and 7 clerical employees. In addition to these unit employees, the Employer occasionally utilizes employees from

other departments, on a volunteer basis, to perform miscellaneous parking lot duties during special events held at the Employer's Carrier Dome. There is no expectation or requirement that these employees continue to assist the Parking Service department beyond any special event for which they have agreed to work.³

The Board has described "on-call" employees as "contingent" or "extra" employees who are on call to work for indefinite periods of time, i.e., employees who work on an irregular and unscheduled basis, and whose eligibility to vote in the unit is determined by whether the individual has a substantial working history, with a substantial probability of employment. *Davison-Paxon*, 185 NLRB at 23-24. By comparison, the Board characterizes employees who perform more than one function for an employer as "dual-function" employees whose inclusion in an appropriate bargaining unit is determined in a similar manner to the question of inclusion of part-time employees.⁴

The employees included by the Regional Director as "on-call" are otherwise employed by the Employer on a regular full-time basis. They are not irregular or unscheduled employees but are akin to "dual-function" employees who would be included in the unit if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit.⁵

To the extent, then, that the Regional Director was considering the placement of the Employer's non-Parking Service Department employees, the Regional Director used an incorrect analysis. Rather, the proper analysis is to determine whether such employees work a sufficient amount of time performing unit functions in the Parking Service department to be deemed eligible to vote for union representation.

Accordingly, we reverse the Regional Director's inclusion of these employees as "on-call" under the *Davison-Paxon*, but affirm her finding that the petitioned-for unit is appropriate.⁶

³ The record does not specify the total number of employees who have assisted the Parking Service department in this manner.

⁴ *Berea Publishing Co.*, 140 NLRB 516, 519 (1963).

⁵ See *Continental Cablevision*, 298 NLRB 973 (1990).

⁶ Member Fox, dissenting in part, would not include the Parking Service clerical employees in the unit. The Parking Service clericals work in an entirely separate location from the field employees; in fact, they work right alongside the office clericals in the administration building. They spend a substantial amount of their time performing inherently clerical duties, such as answering telephones, using photocopy and facsimile machines, scheduling meetings, and mailing documents. They have separate immediate supervision from the field employees. In these circumstances, Member Fox does not agree with the Regional Director's conclusion that the Parking Service clericals are akin to "plant clerical" employees, and she would conclude that they do not share a sufficient community of interest to be included in a unit with the Parking Service field employees.

¹ Chairman Gould, dissenting, would have denied review with respect to the Regional Director's unit determination but reversed the Regional Director's inclusion of other employees of the Employer as "on-call."

² The relevant portions of the Regional Director's Decision and Direction of Election are attached as an appendix. We note that several unit employees considered "field employees" perform a clerical function, in that they write up tickets on computerized hand-held parking ticket writing units. The inclusion of employees performing clerical duties in a unit whose members also perform similar clerical duties is consistent with Board precedent. See, e.g., *Portland General Electric Co.*, 268 NLRB 788 (1984).

ORDER

This proceeding is remanded to the Regional Director for further appropriate action consistent with this Decision on Review.

APPENDIX

DECISION AND DIRECTION OF ELECTION

Both parties herein filed posthearing briefs. Petitioner seeks to represent all regularly scheduled full-time and part-time employees, including clerical employees, in the Parking Services Department, excluding all temporary employees, confidential employees, supervisors, and guards as defined in the Act and all other employees.¹ In this regard, the record reveals that the Parking and Transit Services department (Parking Services) consists of at least 26 field staff, having the job titles of parking lot attendants and parking control officers, and 7 office staff, who are classified as office coordinators and data coordinators. The Petitioner contends that the Parking Services clerical employees it seeks to represent are plant (service) clericals who share a community of interest with the parking lot attendants and parking control officers. The Employer, however, argues that the clerical employees in Parking Services are in fact office clericals who do not share a community of interest with Parking Services field staff, but rather have interests similar to clericals employed in other numerous Employer departments. Moreover, the Employer contends that three of the Parking Services field staff, referred to as enforcement officers, are guards as defined in Section 9(b)(3) of the Act, inasmuch as their principal responsibilities involve issuing tickets and tow warnings for parking violations, thus enforcing rules against employees and other persons to protect the Employer's property. The Petitioner, however, contends that the enforcement officers are not statutory guards, inasmuch as all Parking Services field staff possess the same authority to issue parking tickets and tow warnings, coupled by the fact that their authority to enforce rules to protect the Employer's property is limited.²

The Petitioner further maintains that the Board should direct an election herein pursuant to its established precedent enunciated under *The Globe Machine & Stamping Co.*, 3 NLRB 294 (1937), and *Armour & Co.*, 40 NLRB 1333 (1942), commonly referred to as

Armour-Globe elections. In this regard, the Petitioner essentially contends that Parking Services employees should be granted a self-determination election to establish whether they wish to be included in the existing bargaining unit of the Employer's service and maintenance employees, which the Petitioner currently represents, or whether to remain unrepresented.³ The Employer, however, argues that Parking Services field and clerical employees cannot be appropriately included in the existing service and maintenance bargaining unit because the Petitioner has not sought to represent all of the Employer's unrepresented service and maintenance employees. In addition, the Employer asserts that Parking Services employees do not share a community of interest with the service and maintenance bargaining unit because of the uniqueness of the duties and functions performed by the field staff and because of its position that the clerical employees are office clericals.

The Employer's facility is comprised of a north (main) and south campus, containing approximately 266 buildings dispersed throughout a geographic area of about 900 acres. The Employer's North (main) campus contains, among other things, the Chancellor's office, most of the Employer's academic schools, the main library and the Carrier Dome, a stadium where the Employer conducts numerous concerts, as well as athletic and other major events. The Employer's south campus is primarily made up of student housing facilities and administrative buildings. The approximate student population is about 19,000. The Employer employs about 4000 full-time and part-time employees. About 2000 of those employees are professional employees, of whom 800-850 are faculty members. The other 2000 employees are nonprofessional employees, of whom about 750 are represented by the Petitioner, as described above, and about 1100 of whom are not represented at all.

The Employer's governing authority is made up of a board of trustees. The Employer's chief officer is Chancellor and President Kenneth A. Shaw. The Employer is divided administratively into 5 divisions, containing a total of about 250 departments. Each division is headed by either a vice president or vice chancellor who reports directly to Chancellor Shaw. The division of business, finance and administrative services is

¹ The Petitioner amended the petition at the hearing to exclude all temporary employees from the bargaining unit found appropriate herein.

² Other than their disagreement as to the unit placement of the enforcement officers and clerical employees, the Employer and the Petitioner agreed that an appropriate bargaining unit would consist of employees in the Parking Services Department. In this regard, the Petitioner stated its intention to proceed to an election in any size bargaining unit including the petitioned-for employees found to be appropriate herein.

³ The Petitioner has represented the following employees of the Employer for the period of time referenced herein: physical plant employees since the late 1960's; food service employees since about 1970; and library employees since 1974. The Petitioner was certified to represent the physical plant and food service employees through the New York State Labor Board and was certified by the NLRB to represent the library employees. The parties previously maintained three separate contracts regarding the employees' terms and conditions of employment, but since 1980 have incorporated all represented employees into one collective-bargaining agreement covering such service and maintenance employees.

headed by Senior Vice President Louis Maroccia. This division is comprised of numerous departments, one of which is facilities support services and whose director is Michael Riley. Parking Services, as well as three other departments, report directly to Riley.⁴

The Employer has highly centralized universitywide policies and procedures regarding purchasing of materials, departmental budgets, as well as matters applicable to all nonrepresented employees, including Parking Services department employees, concerning interview and hiring process, employee identification, grievance procedure, and various employee benefits, which are incorporated within the Employer's staff handbook that has been in existence for about 27 years (E. Exh. 16).⁵ In addition, the Employer has a universitywide pay grade for clerical and technical employees, as well as a centralized process of producing job descriptions compiled by Roger Casanova, director of wage and salary administration in the office of human resources. In this regard, the record reveals that the Employer has four levels or pay grades of office coordinators widely dispersed throughout various departments of its facility, including Parking Services, human resources, payroll, accounting, as well as other administrative and academic departments. In total, the Employer has about 117 office coordinator positions on a universitywide basis.

The Parking Services department is engaged in overseeing vehicular parking access on the Employer's facility and providing shuttle services to students, faculty, staff and visitors for academic purposes throughout the campus, including the Carrier Dome. The managerial and supervisory hierarchy of Parking Services consists of R. Susan Olley, director; Arguster Lewis, manager; Denise Brubaker and Mark Oda, assistant managers; A.J. O'Connor, day shift field supervisor; Diana Bailey, night-shift field supervisor; Jim Davis-Carr, enforcement staff field supervisor; and Al Sauer, office supervisor. O'Connor, Bailey and Davis-Carr supervise the field staff and Sauer supervises the clerical employees.

Parking Services clerical employees work on the Employer's South campus in the Skytop office building (the Employer's largest administrative building located about 2 miles from the North campus), where the Parking Services' office and most of the Employer's other administrative offices are situated. Parking Services field staff mainly conduct their work duties on the Employer's North (main) campus where they report to a trailer at the Veterans Administration Hospital

(VAH) parking lot and where most of the Employer's 100-150 parking lots and 11,000 parking spaces are located. However, Parking Services field staff also attend a parking lot at Manley Fieldhouse (another administrative building) located on the Employer's south campus about 1 mile from the Skytop office building. In addition, Parking Services has made prior efforts and a current request to move its office to the Employer's North (main) campus where most of the field staff engage in their work duties.

The names and job classifications of Parking Services clerical employees are as follows: Peggy Bennett, office coordinator I; Robbie Thomas, office coordinator II; Samantha Merrill, office coordinator II; Elaine Silverstein, office coordinator II; Maryanne Wilcox, office coordinator II (who provides clerical services for Parking Services and the Employer's real estate services department);⁶ Dawn McDanough, data coordinator; and Darnardo (D.J.) Scarfino, data coordinator. The work duties of Parking Services clerical employees involve responsibilities both inside and outside of the office. In this regard, the clerical employees generally work in the office year-round from 8:30 a.m. to 5 p.m. and record their working hours on a timecard, which they then submit to a manager. While in the office, office coordinators utilize a computer a major portion of their office time to carry out various functions, issue parking permits to faculty, staff, students, and visitors, answer telephones, use photocopy and facsimile machines, schedule meetings, and mail documents. Likewise, while in the office, data coordinators use a computer for a majority of their office time in order to monitor issuance of identification numbers allowing access to gated parking lots, input data on hand-held parking ticket machines utilized by Parking Services field staff, assist with parking violation appeals, and monitor client billing and addresses. The clerical employees also engage in duties of accommodating 8000 to 10,000 requests for VIP visitor parking.

During the academic year, which runs from late August to mid-May, Parking Services field staff have two shifts which operate from 6:30 a.m. to 2 p.m. and 1:30 p.m. to 9 p.m.⁷ During the summer months, however, the field staff work 4 days a week, 10 hours per day. In particular, parking lot attendants in Parking Services insure that people parking vehicles in the Employer's parking lots have a permit or pay the proper fee, issue parking tickets to vehicles parked either illegally, without proper payment made or without a permit, collect money for vehicles parking in the Employer's parking

⁴Of the four departments that report directly to Riley, the Petitioner currently represents employees in two or them: steam and chilled water distribution, as well as mail services.

⁵The following abbreviations will be used throughout this Decision and Direction of Election: Bd. Exh.= Board Exhibit; E. Exh.= Employer Exhibit; and Pet. Exh.= Petitioner Exhibit.

⁶The real estate services department reports directly to Michael Riley.

⁷The Parking Services field staff also includes regularly scheduled temporary employees. However, the parties stipulated that all temporary employees are to be excluded from the bargaining unit found appropriate herein.

lots, issue 1-day parking passes and audit paperwork.⁸ The work duties of the parking control officers consists of issuing parking tickets to vehicles violating the Employer's parking regulations, issuing temporary parking passes, barricading restricted parking areas with construction cones, redirecting traffic when necessary, controlling access of streets and giving individuals directions to hotels and various highways. Parking Services field staff wear uniforms provided and maintained by the Employer and have access to parking lot gate arms and parking lot meters. In addition, during the course of their working duties, Parking Services field staff routinely use equipment such as a flashlight, parking cones, two-way radios, ticket books, bull horns, and orange reflective vests. Finally, Parking Services field staff are responsible for monitoring specific areas of the Employer's facility, as well as keeping their booth clear, both inside and outside, of any snow, debris, and unauthorized posted materials.⁹

The record reveals that Parking Services clerical employees maintain consistent interaction with the field staff. In this regard, Parking Services field staff and clerical employees communicate with each other either by way of telephone or two-way radio, the latter for which Scarfino is principally accountable, but is accessible to all clerical employees in the office. In particular, Parking Services field staff refer to the office as "base" when communicating with clerical employees. Examples of communications by Parking Services clerical employees to field supervisors and staff entail notifying them that a particular vehicle is disabled or has been granted a VIP parking reservation and on such or other basis requesting that a parking ticket not be issued, advising field staff that a vehicle's lights are on, requesting clarification of personal notes made on a parking ticket and verifying discrepancies in pay lot transactions. Likewise, examples of communications from field staff to clerical employees involve inquiring as to the overdue balance, if any, on the account of a vehicle to which they will be issuing a parking ticket in order to determine whether to request that the vehicle be towed. In this regard, field staff are directed to initiate vehicle towing, with the permission of a field supervisor, when a vehicle has prior unpaid parking tickets and the outstanding balance exceeds a certain amount. Parking Services field staff also contact cleri-

cal employees in order to determine, based on the license plate number, whether a vehicle has a parking permit and just inadvertently forgot to display it. In total, Parking Services clerical employees spend approximately 25 percent of their time in the office engaging in work communications with field staff.

Moreover, the record shows that field supervisors maintain a small area in the Parking Services office which is used to coordinate work activities in the field. Parking Services field staff also visit the office about once or twice a day in order to tender their hand-held parking ticket machines to clerical employees for computer updating of vehicle and parking ticket information. Parking Services clerical employees also deal, on a daily basis, with handwritten parking tickets issued by field staff. In addition, the record shows that, as part of her work duties, Elaine Silverstein, office coordinator II, rides shuttle buses on the Employer's facility in order to verify that the buses are maintaining their required time schedule.

The record also discloses that there have been recent transfers among clerical and field employees in Parking Services. Accordingly, Scarfino testified that he began working for the Employer as a temporary employee assisting in special events at the Carrier Dome and working in the Parking Services office during the summer. Scarfino then held, at different periods of time, all of the positions available to Parking Services field staff. Thereafter, for about a year Scarfino temporarily substituted as data coordinator in the Parking Services office for a clerical employee on maternity leave. Recently, Scarfino was assigned the data coordinator position on a permanent basis. Likewise, Michael DeVivo, former Parking Services data coordinator, began working for the Employer as a temporary employee in the Parking Services office, then because a field employee and field supervisor, and was finally transferred to the position of Parking Services data coordinator until the time of his termination.¹⁰

Furthermore, the record shows that there is regular interchange of work duties among clerical and field employees in Parking Services. Thus, twice a year Parking Services clerical employees conduct parking permit distributions to students wherein Parking Services field staff assist the clerical employees. In the fall semester, the parking permit distributions last 6 days and in the spring semester last about 4 days, where all clerical and field employees involved work about 10-12 hours per day. In addition, a year ago Parking Services trained several field employees regarding computer equipment used by clerical employees in their normal work duties in order to substitute for clerical

⁸The record does not clarify the differences, if any, between the job duties of enforcement officers and other parking lot attendants, especially in regard to duties involving issuing parking tickets and warning notices concerning potential vehicle towing. In this regard, it appears that all field staff are responsible for issuing parking tickets and vehicle tow warnings. Moreover, field staff are not responsible for vehicles exceeding the speed limit or enforcing traffic laws on the Employer's facility.

⁹As of August 1995, the Parking Services field staff are required to punch a timeclock in order to record their working hours. Before such time, field staff recorded their hours on a timecard similar to the Parking Services clerical employees.

¹⁰I take administrative notice of the fact that DeVivo is the named discriminatee in an outstanding complaint filed in Case 3-CA-20396, which alleges that the Employer violated Sec. 8(a)(1) and (3) of the Act.

employees who are either sick, on vacation or on some other kind of leave status or overloaded with work. In this regard, Dave Gursky, Ed Rother, and James Hudson, parking control officers, as well as Scarfino (when he was a field employee) were trained to operate the computer equipment. Currently, Gursky works in the Parking Service office every Friday night from about 6 to 10 p.m., after his regular shift in the field, updating files and performing computer data entry. Moreover, Rother and Hudson regularly substitute for clerical employees who are sick or on vacation and recently substituted for a clerical employee in the Parking Service office for a period lasting about 4-6 weeks while the clerical employee was absent. Similarly, Pat Sullivan, former Parking Services field employee, used to perform work as office coordinator and data coordinator in the Parking Service office.

Similarly, Parking Services clerical employees engage in work duties generally performed by the field staff. In this regard, Parking Services field staff are responsible for assisting in about 75-85 special events managed annually by the Employer. It appears that the field staff perform their regular work duties at such special events. However, Parking Services clerical employees, as well as many other employees throughout the Employer's facility, are also responsible for assisting with such special events conducted by the Employer.¹¹ Accordingly, Employer job opening notices for clerical positions (Pet. Exh. 1 and 2) clearly specify that "significant overtime" is required as part of the clerical employees' work duties. Scarfino testified that overtime for clerical employees refers to assisting in the field on the Employer's special events. As a result, Parking Services clerical employees are expected to perform the overtime work at special events. In particular, Scarfino testified that Denise Brubaker, assistant manager, refers to the Employer's special events as mandatory overtime, and that clerical employees are automatically signed up for all upcoming special events and expected to work therein unless they notify management of their unavailability, in which case discipline would not result.

Olley testified and the Employer presented evidence (E. Exh. 18) showing that in 1996, Parking Services clerical employees worked about 20-25 special events, sometimes during their regular work hours. In addition,

¹¹ Ed Clark, former Parking Services employee and present custodian department, also engages in work duties performed by Parking Services field staff at the Employer's special events held in the Carrier Dome. In this regard, Clark is authorized to issue parking tickets during his regular work hours. In addition, clerical employees from other departments, such as Bernard Alleyne, Cynthia Doss, Gale Jackson, Dora Peterson, Karen Pridgo and Pat Tyrdo, also engage in work duties performed by Parking Services field staff at the Employer's special events. However, the record does not specify how many other employees, if any, perform the work duties of Parking Services field staff either at special events or otherwise.

the Petitioner introduced evidence (Pet. Exh. 3) demonstrating the Employer's calendar of special events mainly for the spring semester of 1997. In this regard, Scarfino, who is not listed on E. Exh. 18, testified that Parking Services clerical employees are expected to work overtime on about 30 events listed on Pet. Exh. 3. Moreover, Scarfino testified that Parking Services clerical employees are expected to work overtime on about 50-60 special events in the fall semester. Scarfino noted that Parking Services clerical employees are placed on a "pecking order" for overtime work on the smaller of the 75-80 special events. Nevertheless, Scarfino stated that in practice about 90 percent of the Employer's special events are partially staffed by Parking Services clerical employees.

Prior to engaging in work duties at special events related to the field staff, Parking Services clerical employees must, in the same fashion as the field staff, sign a form concerning Carrier Dome parking employee protocol agreeing to abide by certain rules and regulations (E. Exh. 17). At such special events, Parking Services clerical employees are generally responsible for counting the number of people who ride the shuttle buses, handing out ticket stubs to customers parking in the Employer's parking lots for purposes of customer receipts and auditing conducted by Parking Services, as well as serving as cashiers at parking lots, wherein they receive an initial amount of money (starting bank) in order to give out change to customers. During the Employer's special events, various clerical employees in Parking Services use equipment such as a flashlight, parking cones, two-way radios, ticket books, bull horns, and orange reflective vests. Neither Parking Services clerical employees nor field employees are required to punch a timeclock at special events.

Parking Services clerical employees also assist field staff during move-in and move-out days when students transport their belongings into or out of their dormitories on the Employer's facility. During such occasions, Parking Services clerical employees, during their regular work hours, insure that students do not park their vehicles in fire lanes or loading zones for an excessive period of time. In addition, Parking Services clerical employees also engage in duties performed by the field staff during the Employer's commencement ceremonies for graduating students and during "Reunion Weekend" and "Fall Friday and Spring Day" when parents visit the Employer's facility with prospective students for the Employer's recruiting purposes. Parking Services clerical employees engage in work performed by field staff, other than special events, about 25-30 times per year and are required to wear uniforms issued by the Employer while working in the field, except for special events. Moreover, Scarfino and McDonough, who has worked as a Parking Services field employee, have been issued parking

ticket books, which they use to issue parking tickets to vehicles at the Skytop parking lot, around the Employer's campuses when traveling with a supervisor and at special events conducted at the Carrier Dome.

As previously noted, the Petitioner herein seeks a self-determination election among the Parking Services employees to establish whether they wish to be included, on a residual basis, in the Employer's service and maintenance bargaining unit currently represented by the Petitioner or to remain unrepresented. In this regard, the Board has consistently held that groups of employees omitted from established bargaining units constitute appropriate residual units, provided they include all the unrepresented employees of the type covered by the petition. *Fleming Foods*, 313 NLRB 948 (1994). Thus, the Board requires that all unrepresented employees residual to an existing unit or units be included in an election to represent them on a residual basis. *The Armstrong Rubber Co.*, 144 NLRB 1115, 1119 fn. 11 (1963); *American Radiator & Standard Sanitary Corp.*, 114 NLRB 1151, 1154-1155 (1955).

Applying the relevant case law to the facts herein, the record discloses that Parking Services employees generally perform service-and-maintenance-type duties. However, the record establishes that there are a total of about 1100 unrepresented employees, at least some of whom, it appears, are also engaged in service and maintenance work duties. Thus, the petitioned-for employees do not constitute an appropriate residual unit, inasmuch as only a portion of the remaining unrepresented service and maintenance employees are sought to be represented by the Petitioner. In this regard, the Petitioner cited *S. S. Joachim & Anne Residence*, 314 NLRB 1191 (1994), and *Comax Telcom Corp.*, 219 NLRB 688 (1975), for the proposition that the petitioned-for employees herein should be granted a self-determination election on a residual basis. Nevertheless, the facts in *S. S. Joachim & Anne Residence* and *Comax Telcom Corp.*, were such that, in each case, the respective petitioner represented all of the employer's employees, except for those petitioned-for on a residual basis. Thus, in neither case was the Board presented with a situation, as here, where a petitioner sought to represent, on a residual basis, only a portion of the employer's remaining unrepresented employees. Consequently, I find *S. S. Joachim & Anne Residence* and *Comax Telcom Corp.*, to be inapposite and the Petitioner's reliance on them to be misplaced. In addition, the Petitioner requested that, should I find a self-determination election to be inappropriate, the record be reopened to allow it an opportunity to present evidence establishing a community of interest between the petitioned-for employees and the Employer's service and maintenance employees currently represented by the Petitioner. However, based on the conclusion that the

petitioned-for employees represent only a portion of the Employer's unrepresented service and maintenance employees, I find the Petitioner's request in this regard to be moot and unwarranted.¹²

The Employer contends that the Parking Services field employees referred to as enforcement officers are guards as defined in Section 9(b)(3) of the Act, inasmuch as their principal responsibilities involve issuing tickets and tow warnings for parking violations. Based on such work duties, the Employer argues that enforcement officers, thus, enforce rules against employees and other persons to protect the Employer's property. In this regard, the record reveals that the duties of Parking Services field employees referred to as enforcement officers include issuing parking tickets and tow warnings. However, the record discloses that other parking lot attendants and parking control officers also issue parking tickets and tow warnings, but are not claimed by the Employer to be guards. Thus, the Employer essentially concedes that such job duty, standing alone, does not render an employee a statutory guard.

While contending that Parking Services field employees referred to as enforcement officers are statutory guards, the Employer cited *Rhode Island Hospital*, 313 NLRB 343 (1993), wherein the Board held that employees classified as traffic control guards were guards as defined in Section 9(b)(3) of the Act. However, the Board based its decision primarily on the fact that the traffic control guards were responsible for protecting the employer's property therein and the safety of persons on the property as they regularly checked the premises for such purposes. In this regard, traffic control guards therein were administratively placed within the employer's security department. Furthermore, the duties of traffic control guards included responding to situations where: visitors were smoking in unauthorized areas; there were too many visitors; or staff requested assistance concerning physical assaults by patients. In contrast, the record does not reveal any evidence that Parking Services enforcement officers herein carry a gun, receive guard training, possess keys to open offices, make rounds or present themselves as guards or have the authority to enforce security rules of the Employer against employees or other persons. *Wolvering Dispatch, Inc.*, 321 NLRB 796 (1996);

¹² As previously noted, the Petitioner expressed its intent to proceed to an election in any size bargaining unit, including the petitioned-for employees, found to be appropriate herein. Thus, while I find a voting group of the petitioned-for employees to be inappropriate on a residual basis, I conclude, based on the parties' agreement, as well as the unique and distinctive nature of their work duties, that the Parking Services department constitutes an appropriate bargaining unit on a separate basis, with the only remaining issue concerning the unit placement of certain job classifications within the unit. However, should the Petitioner not wish to represent the employees on a separate basis, I will dismiss the petition herein pursuant to established Board precedent. *Oakwood Hospital Corp.*, 219 NLRB 620 (1975).

Purolator Courier Corp., 300 NLRB 812 (1990). Consequently, Parking Services enforcement officers do not possess the authority or exercise the work duties generally performed by employees found to be guards under Section 9(b)(3) of the Act.

Based on the above and the record as a whole, I conclude that Parking Services field employees referred to as enforcement officers are not statutory guards. Thus, I conclude that they share a community of interest with the petitioned-for unit employees. I shall therefore, include Parking Services field employees referred to as enforcement officers in the bargaining unit found appropriate herein and find them eligible to vote in the election to be directed.

The Petitioner maintains that Parking Services clerical employees are plant (service) clericals who share a community of interest with Parking Services field employees and should, therefore, be included in the bargaining unit found appropriate herein. On the other hand, the Employer argues that Parking Services clerical employees are office clericals who, pursuant to Board precedent, are not to be included in other bargaining units and, thereby, should be excluded from the bargaining unit found appropriate herein. In this regard, the Employer contends that Parking Services clerical employees have a community of interest with office clerical employees in the Employer's other numerous departments.

The Board has generally excluded office clericals from a production and maintenance unit. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957). However, plant clerical employees are customarily included in a production and maintenance bargaining unit because they generally share a community of interest with the employees in the unit. *Raytee Co.*, 228 NLRB 646 (1977); *Armour and Co.*, 119 NLRB 623 (1957). The Board has noted that "the distinction drawn between office clericals and plant clericals is not always clear." *Hamilton Halter Co.*, 270 NLRB 331 (1984). In this regard, the test is usually whether the employees' duties are related to the production or service process (plant clericals) or related to general office operations (office clericals). The distinction is rooted in community-of-interest concepts. *Mitchellace Inc.*, 314 NLRB 536 (1994); *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994). Some of the duties that plant clericals generally perform include timecard collection, transcription of sales orders to forms to facilitate production, maintenance of inventories, and ordering supplies. *Hamilton Halter Co.*, supra. On the other hand, typical office clerical duties are billing, payroll, phone, and mail. *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993).

I find, pursuant to the record evidence herein, that the functions and duties performed by Parking Services

clerical employees are more akin to plant clericals than office clericals. In this regard, the facts reveal that Parking Services clerical employees spend a significant amount of time engaging in duties closely associated with Parking Services field employees, as well as the service process which they perform. In particular, Parking Services clerical employees: prepare and issue parking permits to faculty, staff students, and visitors, similar to Parking Services field employees who grant access to the Employer's parking lots and sometimes issue temporary parking permits; collect money for parking permits, as well as collecting payment or appeals for parking violations, similar to Parking Services field employees who at times collect payment from customers upon entrance to the Employer's parking lots; enter data from parking ticket transactions on a computer which are then utilized by the Parking Services field employees; develop and distribute to Parking Services office and field employees, for their regular use, a calendar of the Employer's special events, a list of VIP reserved parking spaces, and a list of vehicles that must be towed due to excessive parking violations; handle "starting banks" and tickets that are used at the Employer's parking pay lots for its special events; and personally monitor, throughout the Employer's facility, shuttle bus service for proper maintenance of time schedules. Thus, Parking Services clerical employees are intimately connected with the work performed by Parking Services field employees.

Moreover, Parking Services clerical and field employees interact often with each other. In this regard, Parking Services clerical employees communicate daily with the field employees in order to: check data concerning vehicle license plate numbers at the request of the field employees; update information on the field employees' hand-held parking ticket writing units; process parking violation appeals by verifying, with field employees, information documented on parking tickets; and process parking pay lot transactions by discussing, with field employees, discrepancies regarding overages or shortages. Similar to *Brown & Root, Inc.*, 314 NLRB 19 (1994), wherein the Board included document control clerks within a unit of construction workers, the primary function of Parking Services clerical employees is "directly related to [field] work and in carrying out these duties they provide daily assistance to unit employees." *Id.* at 25. Hence, even though the Parking Services clerical employees exercise some clerical skills they are intimately connected with the work performed by Parking Services field employees and require regular and substantial work contacts with unit employees.

Furthermore, there is regular and frequent interchange of work duties between Parking Services clerical and field employees. In this regard, Parking Services field employees consistently engage in work per-

formed by clerical employees in the Parking Services office. Likewise, Parking Services clerical employees typically perform work in the field engaged in by Parking Services field employees during the Employer's special events and on other several occasions. Consequently, as in *Columbia Textile Services*, 293 NLRB 1034 (1989), wherein the Board found certain employees to be plant clericals rather than office clericals, even though Parking Services clerical employees have separate work locations in an enclosed office and exercise some inherent clerical functions, I conclude that their tasks are functionally integrated with the service process performed by Parking Services field employees and are, thus, plant clericals who share a community of interest with Parking Services field employees. Accordingly, Parking Services clerical and field employees have equivalent qualifications for their job classifications, have similar wages and benefits and are generally under the same direction by the department manager.

The Employer contends that including the Parking Services clerical employees herein in a bargaining unit with Parking Services field employees would fragment the Parking Services clericals from the clerical employees in the Employer's other numerous departments. In this regard, the Employer cited *Georgetown University*, 200 NLRB 215 (1972), wherein the Board excluded office clerical employees from a unit consisting of parking lot attendants, maintenance and custodial employees. However, I find such case to be distinguishable, inasmuch as I have concluded that Parking Services clerical employees are plant clericals rather than office clericals. Similarly, I find unpersuasive the Employer's contention that Parking Services clerical employees possess a greater community of interest with clerical employees in the Employer's other numerous departments than with Parking Services field employees. Accordingly, it is well established that, in deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). The Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or the most appropriate unit for collective bargaining. *Overnite Transportation Co.*, 322 NLRB No. 122 (December 13, 1996). Thus, inasmuch as I have concluded that a unit made up of Parking Services clerical and field employees constitutes an appropriate bargaining unit, I need not analyze whether including all of the Employer's clerical employees in the bargaining unit constitutes a better unit for collective-bargaining purposes.¹³

¹³ Nevertheless, the record does not disclose that the Employer took the position that the inclusion, into the unit found appropriate herein, of all its clerical employees on a university-wide basis was required in order to render the bargaining unit appropriate.

Furthermore, the Employer cited, and attached as an exhibit to its posthearing brief, a prior Decision and Order issued by the undersigned in Case 3-RC-9246 involving the Employer and another labor organization. In such case, the petitioned-for unit of employees therein, working in the Employer's bookstore and having job classifications of clericals, salespersons and warehouse persons, did not constitute an appropriate bargaining unit, inasmuch as they did not possess a community of interest sufficiently distinct from the other Employer's employees so as to justify the creation of a separate unit for them.

It is significant that the Employer's position in Case 3-RC-9246, with respect to the scope of the bargaining unit, was that essentially all of its unrepresented employees, with certain exceptions, should be included in the unit found to be appropriate. Accordingly, the bargaining unit found to be appropriate therein was a unit of all of the Employer's unrepresented employees, with various exclusions. However, as previously mentioned, the parties herein stipulated that Parking Services employees constitute an appropriate bargaining unit, with the only issue relating to the unit placement of Parking Services clerical employees and field employees referred to as enforcement officers. In particular, the Employer clearly expressed its intention, both at the hearing and in its posthearing brief, to proceed to an election in a unit consisting of Parking Services field employees, in the Employer's words, "because of their distinctive—indeed unique—nature of their blue-collar duties within the University community." Inasmuch as I have found that Parking Services clerical employees perform substantially similar functions as Parking Services field employees, the Employer's description of the field employees' work duties would apply to Parking Services clerical employees as well. Therefore, I find the facts in the Decision and Order in Case 3-RC-9246 to be substantially different from those presented herein and, therefore, inapposite.

In sum, I find that the Parking Services clerical employees are plant clericals based on the fact that they perform work duties in close association with the Parking Services field employees and the entire service process related to parking on the Employer's facility. Thus, I conclude that Parking Services clerical employees share a community of interest with the petitioned-for unit employees. I shall therefore, include Parking Services clerical employees in the bargaining unit found appropriate herein and find them eligible to vote in the election to be directed.¹⁴ Furthermore, I conclude that all employees from the Employer's other numerous departments, who regularly engage in work du-

¹⁴ Pending the outcome of the unfair labor practice charge filed in Case 3-CA-20396, I will allow Michael DeVivo to vote in the election directed herein, subject to the traditional voter challenge procedures utilized by the Board.

ties generally performed by Parking Services field employees, also share a community of interest with the petitioned-for unit employees. Consequently, I shall include such employees in the bargaining unit found appropriate herein and find them eligible to vote in the election to be directed.¹⁵

¹⁵The record does not specify the total number of employees who engage in duties, at the Employer's special events or otherwise, similar to the kind Parking Services field employees perform. However, I find that those employees who regularly perform work in Parking Services, except those classified by the Employer as temporary employees, are to be included in the bargaining unit found appropriate herein. In order to determine which employees from other departments have sufficient regularity of employment in Parking Services, I will utilize the Board's traditional test concerning the regularity of employment of on-call employees. In this regard, the Board has traditionally held that, absent special circumstances, an on call employee has sufficient regularity of employment if the employee averages 4 or more hours/week for the last quarter prior to the eligibility date. *Davison-Paxon Co.*, 185 NLRB 21 (1970). Thus, all employees, except temporary employees, in departments other than Parking Services who average 4 or more hours/week of employment in the Parking Services department for the last quarter prior to the eligibility date are to be included in the bargaining unit found appropriate herein and eligible to vote. Moreover, inasmuch as I have found appropriate a broader unit than that sought by the Petitioner, in accordance with the Board's usual practice, I shall provide the Petitioner a reasonable period of time, not to exceed 10 days, from the date that it receives the Employer's election eligibility list in which to demonstrate the requisite showing of interest among the employees whom I find comprise a unit appropriate for the pur-

APPROPRIATE UNIT

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

All regularly scheduled full-time and part-time employees, including plant (service) clerical employees and all other employees regularly scheduled to perform work in the Parking and Transit Services department, including parking lot attendants, parking enforcement officers, parking control officers, office coordinators, and data coordinators; but excluding all temporary employees, confidential employees, professional employees, supervisors, and guards as defined in the Act. The record does not specify the approximate number of employees in the bargaining unit found to be appropriate herein, but appears to be at least 40-50 employees.

The record does not specify the approximate number of employees in the bargaining unit found to be appropriate herein, but appears to be at least 40-50 employees.

poses of collective bargaining within the meaning of the Act. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.