

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

CLEANSOURCE,

Employer,

and

Case 27-RC-7957  
(Formerly 21-RC-20105)

WHOLESALE DELIVERY DRIVERS,  
SALESPERSONS, INDUSTRIAL AND  
ALLIED WORKERS, LOCAL 848,  
INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO,

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

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

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

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> Exceptions to certain rulings, which were appealed to the Regional Director during the course of the hearing, were appropriately resolved at that time.

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

**UNIT A:**

**INCLUDED:** All office clerical employees, including the receptionist, customer service representatives, customer service manager, and administrative assistant employed by the Employer at its facility located at 5600 East Olympic Boulevard, Commerce, California.

**EXCLUDED:** All equipment repair technicians, the equipment repair coordinator, sales representatives, purchasing agents, managers, guards and supervisors as defined in the Act, and all other employees.

**UNIT B:**

**INCLUDED:** All equipment repair technicians and the equipment repair coordinator employed by the Employer at its facility located at 5600 East Olympic Boulevard, Commerce, California.

**EXCLUDED:** All office clerical employees, sales representatives, purchasing agents, guards, and supervisors as defined in the Act, and all other employees.

**STATEMENT OF THE CASE:**

The Employer, CleanSource, a California corporation with its principal offices located at 1711 Rogers Avenue, San Jose, California, and an office located at 5600 East Olympic Boulevard, Commerce, California, is engaged in the wholesale distribution and repair of cleaning chemical equipment and supplies for janitorial and industrial uses. The only facility at issue herein is the Commerce, California facility. The parties stipulated that there is no history of collective bargaining between the parties involving the petitioned-for unit. The Petitioner, however, jointly represents a different unit along with Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 986, International Brotherhood Of Teamsters, AFL-CIO. That unit was certified in Case No. 21-RC-19915 on April 23, 1998, and is described as:

Including: All warehousemen, drivers, senior drivers, and warehouse supervisor employed by the Employer at its facility located at 5600 East Olympic Boulevard, Commerce, California; excluding; all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

At the hearing, the Petitioner amended its petition to include all equipment repair technicians, equipment repair coordinators, receptionists, customer service representatives, and to exclude all other employees. Contrary to the Petitioner, the Employer asserts that there must be two separate units, because it is inappropriate to include office clerical employees with the equipment repair technicians, who are basically production/maintenance employees. Thus, the Employer asserts that an election should be directed in a unit consisting only of the equipment repair technicians and the equipment repair coordinator, who it contends is a plant clerical. The Employer further contends that an election should be directed in a separate unit consisting of the office clerical employees. With regard to the office clerical employees, the Petitioner would only include the receptionist and the customer service representatives. The Employer argues that the office clerical unit must also include the administrative assistant, the two purchasing agents, and the customer service representative manager, who the Petitioner contends is a statutory supervisor. Finally, the Employer contends that sales representatives should be included in that unit, because they share a unique, distinct community of interest with the customer service representatives. The Petitioner's position regarding the administrative assistant, purchasing agents, and sales representatives is that the community of interest that these employees share with the petitioned-for unit does not mandate their inclusion. The Petitioner stated at the hearing that it was willing to proceed to an election in any unit or units found appropriate.

#### FACTS:

The Employer is a janitorial and maintenance supplier that sells, leases and repairs janitorial equipment and sells related supplies. The Commerce facility is a 55,000 square foot facility consisting of an office area and warehouse that also houses a repair shop. This facility services a geographic region between Bakersfield and San Diego, California. The Employer's

sole owner is Gary Fredkin. His office is at the Employer's San Jose facility. Reporting directly to Fredkin from the Commerce facility are sales manager Bob Friedman, purchasing director Ted Norimatsu, and operations manager Joann DeMonaco. DeMonaco is responsible for the overall operation of the Commerce facility. Reporting to DeMonaco are transportation manager Richard Vega, who is responsible for the truck drivers, and inventory control manager Joe DeLeon, who is responsible for the warehouse employees. DeMonaco is also responsible for all of the employees at issue herein except for the two purchasing agents who report directly to Norimatsu.

All of the Employer's unrepresented employees, including management, enjoy the same benefit package, which includes medical, dental, vision and life insurance; holiday pay, paid time off for vacation, illness, jury duty and bereavement; a 401(k) plan; and an employee discount on products. Contrary to the equipment repair technicians discussed below, the office clerical employees, customer service representatives, equipment repair coordinator and sales representatives do not wear uniforms or punch a time clock.<sup>2</sup> All of the employees park in the same parking lot and use the same lunchroom located in the general office area. The office area is located at the front of the building and consists of approximately seven private offices, three partitioned areas with cubicles for the customer service representatives and sales representatives, an open reception area, a kitchen/breakroom, and a conference room. Directly behind the office area is the 27,000 square foot warehouse, which has an office and repair area at the far end where the equipment repair technicians and repair coordinator work. The warehouse and driver managers have their offices in the middle of the warehouse.

#### Equipment Repair Technicians

There are three full-time and one part-time equipment repair technicians. They work in the office and repair area located at the far end of the warehouse. This office area houses three desks used by the repair technicians and the equipment repair coordinator. This office area is adjacent to the work area where the repair technicians keep parts, equipment and tools. The repair technicians are paid hourly and punch the same time clock as the drivers and warehouse employees. The repair technicians' wages range between \$10.00 and \$16.00 per hour, based on

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<sup>2</sup> Their time is recorded by hand on time cards.

experience and length of service. The full-time repair technicians work from 6:00 a.m. to 3:00 p.m., Monday through Friday. The part-time repair technician does not have set hours, but works at least some hours everyday, as the workload dictates. All the repair technicians report directly to DeMonaco. The repair technicians are required to wear a uniform consisting of dark pants and a dark gray and blue striped shirt.<sup>3</sup> The repair technicians typically take their breaks or eat their lunches in their work area. However, the repair technicians are not required to do so, and they may use the same lunchroom as any other employees.

The equipment repair technician duties include keeping track of all the equipment that comes in, troubleshooting problems with the equipment, making necessary repairs, arranging with the Employer's truckdrivers for return of

repaired equipment to the customer, and filling out appropriate paperwork. The equipment repaired by the technicians includes floor-cleaning equipment, vacuum sweepers, carpet cleaners, scrubbers, and pressure washers. The repair technicians are not required to have special education or training, but are expected to be proficient in using hand tools, pneumatic tools and electric power tools, as well as forklifts, pallet jacks, hand trucks and battery chargers. They repair equipment sold or leased by the Employer and any similar equipment, regardless of the seller. The Employer also has one mobile equipment repair technician (primarily Gabe Montoya because of his level of experience) available to customers to perform repairs on equipment at the customers' facilities. An Employer van, stocked with necessary repair and supplies, is provided for this service. The repair technician using the mobile van also carries a pager provided by the Employer.

#### Equipment Repair Coordinator

The equipment repair coordinator is Martha Hernandez. She has held this position since earlier this year, when the position was first created. Prior to that time, Hernandez was a customer service representative. Hernandez works 8:00 a.m. to 5:00 p.m., Monday through

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<sup>3</sup> The equipment repair coordinator does not wear a uniform. The warehouse employees and drivers wear

Friday, and she reports directly to DeMonaco. Hernandez' work is performed in the office adjacent to where the repair technicians perform repairs. Her hourly wage rate is comparable to that paid the repair technicians. It is Hernandez' responsibility to keep the repair function flowing. Specifically, the equipment repair coordinator ensures that the incoming machines are logged in and tagged appropriately; makes sure work orders are being filled out properly and processed, and ensures that equipment is being serviced in a timely manner on a first in, first repaired basis. Hernandez also enters the work orders or so-called "pick tickets" into the computer system. Once a repair has been completed, a repair technician returns the paperwork to the repair coordinator. Hernandez is then responsible for giving the customer a copy and inputting the data into the computer system so that the San Jose office can bill the customer. Finally, she is responsible for maintaining inventory control over the parts and equipment used by the technicians, ordering supplies through the purchasing agents, and communicating with customers regarding repair estimates, completed projects, and problems as they arise.

#### Customer Service Representatives

Of the four customer service representatives, two work from 8:00 a.m. to 5:00 p.m., Monday through Friday. The other two work from 9:00 a.m. to 6:00 p.m. All four customer service representatives report to DeMonaco and customer service manager Dee Dee Conner, who will be addressed immediately below. The customer service representatives work in open cubicles directly behind the receptionist's workstation. The customer service representatives are paid hourly and their wages range from \$9.00 to \$13.00 per hour, depending on experience. They answer all incoming calls from customers and sales representatives, and they handle anything to do with customer service. In this regard, the customer service representatives generate computer orders, print the sales tickets, trouble shoot if a customer has a problem such as undelivered items and returns, and discuss potential new products with purchasing agents on behalf of customers. The customer service representatives also advise customers regarding particular products and try to increase the level of the sale as they are taking the order over the

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uniform shirts of a different color and are not required to wear uniform pants.

telephone. Specifically, if they notice the customer has not purchased something in a while, they may ask that customer if they are in need of a particular item. The sales representative receives the commission from such increased sales, not the customer service representative. In this regard, the sales representatives are teamed or assigned to a specific customer service representative, and that representative generally handles the calls related to the particular sales representative's customers. Similarly, the sales representative will call his or her customer service representative to work together to handle customer problems that arise.

#### Customer Service Manager

Dee Dee Conner is the customer service manager. She has an office directly adjacent to the cubicles where the customer service representatives are stationed. She is salaried at a rate of approximately \$41,000 per year and generally works from 7:30 a.m. to about 7:30 p.m. Conner spends about 80 percent of her time performing customer service work that is identical to the work performed by customer service representatives. She is responsible for handling the overflow of calls and for following up on customer problems. Like the four customer service representatives, Conner has three sales representatives assigned directly to her.

With regard to supervisory duties, the record establishes that Conner does not have the independent authority to hire, fire, discipline, transfer, promote, reward, or grant time off. She prepares the break schedule for the customer service representatives, and Conner then fills in for them when they are on break. As to disciplinary matters, Conner can make recommendations to DeMonaco regarding discipline for a customer service representative. However, DeMonaco testified without contradiction that she always calls in the affected employees and listens to what they have to say. After conducting an independent investigation, DeMonaco determines whether discipline is warranted and what form the discipline should take. Similarly, requests for time off must be approved by DeMonaco. Conner also participates in the annual appraisal process of customer service representatives by meeting directly with DeMonaco to discuss the performance of those employees. Again, the uncontroverted record evidence shows that, while Conner can and does make recommendations regarding the wording of the appraisal and amount of wage

increase, DeMonaco makes the ultimate decision based upon her personal knowledge about the performance of the employee being evaluated.

#### Receptionist

The receptionist works 8:00 a.m. to 5:00 p.m., Monday through Friday. She is paid hourly at an entry level of \$9.00 and reports directly to DeMonaco. The receptionist is responsible for answering phones and greeting pedestrian traffic that comes to the facility. In this regard, she works in an open area adjacent to the lobby of the facility. In addition to her telephone and receptionist duties, the receptionist also does general office filing of documents such as proof of delivery forms.

#### Administrative Assistant

The administrative assistant is Lisa Abed. This is also a newly created position. Prior to April 1999, Abed was a customer service representative, and, before that time, she was a receptionist. Abed works 8:00 a.m. to 5:00 p.m., Monday through Friday, in a work space next to the operation manager's office and directly adjacent to the cubicles of the customer service representatives. While her direct supervisor is DeMonaco, Abed also does typing for the sales manager, Bob Friedman. Her duties and responsibilities include typing bids, quotes, letters to customers, and memos for the sale representatives and customer service representatives. Abed also creates and distributes sales fliers, and she orders trophies and plaques. The administrative assistant also fills in for the receptionist during breaks and lunch, and she does the same for customer service representatives. When so doing, Abed performs the same work as employees in those classifications. Finally, Abed is actually assigned to handle several accounts that have been the subject of customer complaints, instead of those accounts being handled by a customer service representative.

#### Purchasing Agents

There are two purchasing agents at the Commerce facility. They work in an office directly adjacent to the open cubicle area where the customer service representatives work. They work 8:00 a.m. to 5:00 p.m., Monday through Friday, and report to the director of purchasing, Ted Norimatsu. Norimatsu, in turn, reports to the vice president of purchasing in the San Jose office, Ed Badal. While the purchasing agents report directly to Norimatsu, they also take work direction from DeMonaco regarding timely completion of reports, maintaining proper stock levels of inventory, ordering inventory and parts in a timely manner, and expediting customers' orders.

The purchasing agents are paid a salary of approximately \$2,100 per month. They are responsible for ordering all of the supplies and equipment sold by the Employer. In this regard, the purchasing agents maintain a computerized daily inventory, which DeMonaco also reviews. In addition to ordering parts, the purchasing agents also review invoices for discrepancies and physically go to the warehouse to perform daily so-called "cycle counts" to count a particular line of product and reconcile the physical count with the computer count.

With regard to work-related contact with the customer service representatives, the record establishes that these employees also monitor computer inventories and notify the purchasing agents if the inventory is low or not there at all. Likewise, the purchasing agents interact with customer service representatives, sales representatives and the equipment repair coordinator daily regarding new items, special orders, and inventory issues in general.

#### Sales Representatives

There are ten sales representatives stationed at the Commerce facility, and two more work out of a small facility in San Diego, but report directly to the Commerce facility. All of these sales representatives directly report to Bob Friedman, sales manager. Unlike the other employees, the sales representatives sign an employment agreement when they are hired. That agreement sets forth their salary and commission compensation levels, and, among other things, contains non-compete and confidentiality clauses. While the sales representatives are paid a salary during their first year of employment, the goal is to have them earning straight commission

by the end of that year. The first year salaries vary, but are approximately \$60,000. Some of the commissioned sales representatives actually earn less than that, but the commissions of other sales representatives exceed \$100,000 annually. There is not a cap on the commission amount that can be earned. The sales representatives are also eligible to receive \$150.00 per month cell phone and automobile allowance if their performance meets certain goals. Finally, the sales representatives are issued pagers by the Employer.

The sales representatives are responsible for developing new business for the Employer and satisfying the needs of existing customers. In this regard, although they do maintain regular telephone contact with the customer service representatives assigned to support them, the sales representatives spend less than five percent of their time in the office. While the sales representatives are assigned geographical territory, they are allowed to open up new accounts in any area that they choose.

## **ANALYSIS**

Supervisory status:

I turn first to the issue of whether customer service manager Dee Dee Conner is a statutory supervisor, as contended by the Petitioner. Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

This section is read in the disjunctive, and an individual need only possess one of the enumerated authorities to render that individual a supervisor. **Providence Hospital**, 320 NLRB 717 (1996). However, an individual possessing Section 2(11) supervisory indicia must exercise authority in a manner that is not merely routine or clerical in nature. Only individuals with genuine management prerogatives are to be considered supervisors, as opposed to lead persons and

other minor supervisory employees. **Panaro & Grimes, d/b/a Azusa Ranch Market**, 321 NLRB 811 (1996). The burden is on the Petitioner, as the party alleging supervisory status, to present evidence that Conner is a statutory supervisor. **California Beverage Co.**, 283 NLRB 328 (1987). I find that the Petitioner has failed to meet that burden.

The Board has long held that the title “supervisor” or “manager” is not dispositive of supervisory status. **Waterbed World**, 286 NLRB 426 (1987). Therefore, the fact that the Employer may have designated Conner as “manager” is of no consequence, absent a showing that she possesses one or more of the indicia set forth in Section 2(11).

There is no record evidence that Conner has the authority to hire or fire employees. With regard to disciplining employees, the record establishes that Conner reports potential disciplinary matters to DeMonaco, who then conducts an independent investigation and determines, what, if any, discipline should be meted out. Moreover, the fact that Conner may report incidents regarding other employees or rule infractions to upper management is not indicative of supervisory status. Such a reportorial function does not constitute supervisory authority. **Panaro & Grimes**, supra at 812; **Ryder Truck Rental, Inc.**, 326 NLRB No. 149 (1998); **TK Harvin & Sons, Inc.**, 316 NLRB 510, 530 (1995).

While the Petitioner asserts in its post-hearing brief that it is undisputed that Conner has authority to exercise independent judgement in directing employees, there is scant evidence in the record that she does more than train new customer service representatives and assist them with problem customers. In fact, the overwhelming majority of her time (80 percent) is spent performing the same work as the customer service representatives. Thus, the Petitioner has failed to establish that Conner performs these tasks in a manner that is not merely routine or perfunctory in nature or based on her experience. In **SDI Operating Partners**, 321 NLRB 111 (1996), the Board held that that an individual’s responsibility for planning and scheduling field operations, assigning work to others at those operations, and directing others to perform various discrete tasks at those operations, did not render the responsible individual a supervisor, as those responsibilities were carried out based upon the individual’s experience and expertise, and did not involve “real managerial discretion that would require the exercise of independent

judgment.” In the matter herein, it appears that Conner merely directs other employees based upon established Employer procedures and familiarity with the work to be accomplished and that she is essentially “coordinating team work”. **Providence Hospital**, 320 NLRB at 733; **Millard Refrigeration Services, Inc.**, 326 NLRB 156 (1998). Also, cf. **Heritage Fire Protection, Inc.**, 307 NLRB 824 (1992).

Similarly, there is an absence of record evidence to warrant a determination that Conner exercises independent judgment with respect to training, scheduling, and adjusting employee hours of work. **JC Brock Corp.**, 314 NLRB 157 (1994); **First Western Building Services**, 309 NLRB 591 (1992); **Chevron Shipping Company**, 317 NLRB 381 (1995).

Based on the forgoing, I conclude that the record evidence is insufficient to sustain the Petitioner’s burden of demonstrating that Conner is a statutory supervisor. I shall, therefore, include her in the unit with the other customer service representatives.

Unit Determination:

The Petitioner seeks a unit comprised of the equipment repair technicians, the equipment repair coordinator, receptionist, and customer service representatives, excluding all other employees. As the Petitioner correctly asserts, the Board has long held that a unit need not be the only appropriate or even most appropriate unit, but merely an appropriate unit. **Omni International Hotel**, 283 NLRB 475 (1987); **Hamilton Test Systems**, 265 NLRB 595 (1982). This, however, does not negate the fact that, while a petitioner’s desire as to the unit is always a relevant consideration, it cannot be dispositive where, as here, the Petitioner is seeking a unit based on arbitrary groupings of employees. **Florida Casino Cruises**, 322 NLRB No. 155 (1997); **Arco Inc.**, 273 NLRB 348 (1984). As to that issue, the Board has long held that it is appropriate to include plant clericals in a production and maintenance unit, because they generally share a community of interest with employees in such units. **Raytee Co.**, 228 NLRB 646 (1977). In contrast, even though plant and office clericals may be under the same supervision and share the same mode of compensation, office clericals are nevertheless

excluded from production and maintenance units in which plant clericals are included. **S & S Parts Distributors Warehouse, Inc.**, 277 NLRB 1293 (1985); **Mosler Safe Company**, 188 NLRB 650 (1971); **Lilliston Implement Co.**, 121 NLRB 868 (1958). Similarly, the Board excludes office clerical employees from residual units of production and maintenance employees. **California Steel & Supply Corp.**, 104 NLRB 787 (1953).

Turning now to the facts presented by this case, I conclude on the record before me that it would be inappropriate to direct an election in the petitioned-for unit, because the proposed unit combines what are essentially production employees and a plant clerical employee with the Employer's office clerical staff employees. Thus, for the reasons set forth below, I shall direct an election in two separate units. Unit A shall be comprised of all office clerical employees, including the receptionist, customer service representatives, customer service manager, and the administrative assistant. Unit B shall be comprised of all equipment repair technicians and the equipment repair coordinator.

As to Unit B, I find merit to the Employer's contention that the equipment repair technicians are essentially production employees, who share little or no community of interest with the office clerical employees at issue. Thus, the repair technicians work in the warehouse area, have different work schedules and have little interaction with the office clerical staff that is charged with the administrative and business functions of the Employer's operation.

I also conclude that the equipment repair coordinator is a plant clerical employee, whose work function is closely aligned with the equipment repair technicians. Thus, the repair coordinator shares the same workspace and interacts with the repair technicians constantly as they perform their duties. In this regard, the repair coordinator position was recently created explicitly to perform the paperwork functions related to the equipment repair performed by the repair technicians. Accordingly, I find that the equipment repair coordinator is a plant clerical employee, who shares a community of interest with the repair technicians, and that it is appropriate to include her in the technician unit denoted as Unit B. **Fleming Foods, Inc.**, 313 NLRB 948 (1994); **Weyerhaeuser Co.**, 173 NLRB 1170 (1968).

With regard to the receptionist, customer service representatives and customer service manager, I conclude that they perform traditional office clerical work and that it is appropriate to include these classifications in the office clerical unit denoted as Unit A. I further conclude that the administrative assistant must be included in the office clerical unit, because she performs traditional office clerical work and shares a community of interest with the office clerical employees the Petitioner seeks to represent.

As noted above, the administrative assistant is a former customer service representative and a former receptionist. Further, in addition to the general office duties she performs, the administrative assistant currently fills in daily for both the receptionist and customer service representatives, and, in fact, still is assigned certain problem customers for customer service issues. The administrative assistant is paid at a wage rate comparable to the customer service representatives, and she shares common work hours and supervision with the customer service representatives. Accordingly, it would be inappropriate to exclude the administrative assistant from the office clerical unit denoted as Unit A, simply because the Petitioner does not seek to represent her.

With regard to the purchasing agents, the Board has analyzed employees in such classification on a case-by-case basis and typically found them to be either plant clerical employees<sup>4</sup> or office clerical employees,<sup>5</sup> depending on the facts and circumstances in a particular case. As noted above, the Employer contends that the purchasing agents herein are office clerical employees and should be included in Unit A. The Petitioner argues that, because of minimal interchange between the purchasing agents and other petitioned-for employees, they do not share a sufficient community of interest warranting their inclusion in any unit. Neither party urges the inclusion of purchasing agents in Unit B with the equipment repair technicians and the equipment repair coordinator.

Based upon the record evidence herein, I find that the purchasing agents

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<sup>4</sup> See, e.g., **Brown & Root Inc.**, 314 NLRB 19 (1994) and **S&S Parts Distributors Warehouse, Inc.**, 277 NLRB 1293 (1985),

<sup>5</sup> See, e.g., **Trailways, Inc.**, 271 NLRB 612 (1984), **International Manufacturing Company**, 238 NLRB 1361 (1978), **Baldwin Supply Co.**, 159 NLRB 745 (1966).

do not share a sufficient community of interest to require their inclusion in Unit A. Specifically, the purchasing agents at issue are separately supervised, they have no work related interchange with the office clerical employees, and, unlike the office clerical employees, the purchasing agents are paid a salary rather than an hourly rate. Further, while the purchasing agents herein work in the office area near the office clerical employees, the work performed by the purchasing agents primarily involves the maintenance of inventory and the ordering of the Employer's product, which is not traditional office clerical work.<sup>6</sup> If anything, the purchasing agent work herein is more closely akin to that performed by traditional plant clerical employees, not office clerical employees.<sup>7</sup>

While potentially the purchasing agents could have been included in the unit denoted as Unit B, consisting of the equipment repair technicians and the equipment repair coordinator, as noted above, the Petitioner does not seek to represent the purchasing agents, and the Employer has not sought their inclusion with the Unit B employees.<sup>8</sup>

Finally, I conclude that the sales representatives do not share a sufficient community of interest with the office clerical employees to warrant inclusion. The sales representatives are separately supervised, and they have vastly different terms and conditions of employment from the office clerical employees. In this regard, the sales representatives spend 95 percent of their time out of the office; are required to sign an employment contract; are paid commission rather than a salary or hourly wage rate by the end of their first year of employment, and have expense

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<sup>6</sup> For example, at least a portion of their daily job duties requires the purchasing agents' physical presence in the warehouse to count inventory.

<sup>7</sup> The Board has long held that the distinctions between plant and office clericals are routed in community of interest analysis. **Cook Composites & Polymers Co.**, 313 NLRB 1105 (1994). Thus, 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.**, 270 NLRB 331 (1984). On the other hand, some of the duties typically performed by office clericals include billing, payroll, answering telephones and handling mail. **Dunham's Athleisure Corp.**, 311 NLRB 175 (1993).

<sup>8</sup> Moreover, even if the Employer had sought the inclusion of the purchasing agents inclusion in Unit B, in view of the Petitioner's desire that they be excluded, the differences in working conditions, the different methods of compensation, and separate supervision, it would still have been appropriate to exclude the purchasing agents from Unit B. As noted above, the Board does not require that the unit(s) determined be the most appropriate unit(s); it only requires that the unit(s) be appropriate for purposes of collective bargaining.

accounts. The fact that the sales representatives work closely with the customer service representatives is insufficient to overcome the vast disparity in their terms and conditions of employment as compared to the other employees included in the office clerical unit. Accordingly, I find that the sales representatives do not share a sufficient community of interest to require their inclusion in Unit A. **Consolidated Papers, Inc.**, 274 NLRB 1356 (1985).

There are approximately seven employees in Unit A and five employees in Unit B.

#### **DIRECTION OF ELECTION<sup>9</sup>**

An election by secret ballot shall be conducted by the Regional Director for Region 21 among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.<sup>10</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

WHOLESALE DELIVERY DRIVERS, SALESPERSONS, INDUSTRIAL AND  
ALLIED WORKERS, LOCAL 848, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO

#### **LIST OF VOTERS**

In order 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 in 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); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Regional Director for Region 21, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 888 South Figueroa Street, 9<sup>th</sup> Floor, Los Angeles, CA 90017-5449 **on or before September 1, 1999**. No extension of time to file this list shall be granted

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<sup>9</sup> Based on an administrative showing of interest check, I have determined that the Petitioner has provided a sufficient showing of interest for both Unit A and Unit B.

<sup>10</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provision 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. This request must be received by the Board in Washington by **September 8, 1999**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 25th day of August, 1999.

/s/ B. Allan Benson  
B. Allan Benson, Regional Director  
National Labor Relations Board, Region 27  
600 Seventeenth Street  
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