

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

NATIONAL AUTO DEALERS  
EXCHANGE, INC.

Employer

and

Case 4-RC-20263

TEAMSTERS LOCAL UNION NO. 35,  
AFL-CIO<sup>1</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

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

---

<sup>1</sup> The Petitioner's name appears as amended at the hearing.

5. The Employer operates a wholesale automobile auction service at its facility in Bordentown, New Jersey (herein called the facility).<sup>2</sup> The Petitioner seeks to represent a unit of the Employer's Drop Zone department employees. The Employer, contrary to the Petitioner, contends that all of its "outside operations" employees share a community of interest with its Drop Zone employees and must be included in an appropriate unit. The Employer also contends, contrary to the Petitioner, that Drop Zone department Supervisors should be excluded from the unit because they are supervisors within the meaning of the Act. Finally, contrary to the Petitioner, the Employer would exclude two Drop Zone clerks as office clerical employees, while the Petitioner contends that they are plant clericals who should be included in the unit. There are about 85 employees in the petitioned-for unit and about 600 employees in the unit proposed by the Employer.

The facility is located on 170 acres and includes multiple buildings, which are separated by Route 68, a public road. The main auction building is located on one side of the road, and the remaining buildings are on the other side. The Employer receives vehicles from financial institutions and automobile dealerships and sells them at its weekly auctions. The Drop Zone is the facility's receiving area. It consists of an office building, parking and staging areas and an automobile storage garage. Vehicles brought to the Drop Zone generally require reconditioning in preparation for sale.<sup>3</sup> After a customer brings a vehicle to the Drop Zone, an employee prepares a report outlining its general condition and specifying work that may be required to prepare it for sale. Then, the customer decides whether the Employer should perform the work recommended in the report. If the customer agrees to the reconditioning work, a driver from the Drop Zone brings the vehicle to the Body Shop or Detail Shop, which are located nearby.<sup>4</sup> When the work is complete, the vehicles are moved to the main staging area for auction. The Employer conducts its auctions on Wednesdays<sup>5</sup> from 20 lanes, each with its own auctioneer. On a typical sale day, about 2,500 to 3,000 automobile dealers attend the auctions, and the Employer sells 5,600 to 5,700 vehicles for its customers.

The Employer employs about 600 outside operations employees in twelve separate departments at the facility. Three of these departments constitute Lot Operations, which employs more than 300 drivers who work anywhere from one to five days per week, depending on their classification and schedules. About 250 of them work only one or two days a week. In the Arbitration Department, the Employer employs 13 individuals as coordinators, drivers and mechanics. This department attempts to resolve disputes between buyers and sellers concerning the condition of vehicles purchased at the auction. The Certification Department has 12 mechanics and drivers who test sale vehicles for defects at the owner's request and warrant that a vehicle is free from these defects. Mechanics in the Certification Department may work throughout the facility, including the Drop Zone, but the record is silent as to how frequently they work there. The Detail Shop employs about 163 employees in four departments. These

---

<sup>2</sup> The Employer operates 85 other facilities in the United States, Canada, Australia and Europe.

<sup>3</sup> Customers generally bring vehicles to the Drop Zone. If a vehicle needs no reconditioning, however, the customer may bring it directly to the auction area.

<sup>4</sup> There is also a Mechanic Shop at the facility, where employees of a subcontractor of the Employer perform work.

<sup>5</sup> Occasionally, the Employer will also hold additional auctions on other days.

employees include probationary and regular full-time Detailers and Detailer-Quality Control employees. The Body Shop employs about 17 employees in two departments.<sup>6</sup>

The Drop Zone is located across Route 68 from the main auction center and adjacent to the Body Shop and Detail Shop. The Employer employs about 88 individuals in the Drop Zone department in the following classifications: Account Coordinator, Assistant Account Coordinator, Assistant Coordinator–Chase, Assistant Coordinator-First Union, Assistant Coordinator-Nissan, Assistant Supervisor-Condition Report Writer, Assistant Supervisor-Cyberlot, Clerk-Office, Condition Report Writer, Coordinator-GMAC, Coordinator-Honda, Coordinator-Subaru, Driver, Driver-Tow Truck, Estimator, Imager-Cyberlot, Mechanic, Photographer, VIN Verification, and Drop Zone Supervisor.<sup>7</sup> The approximately ten Account Coordinators, Assistant Account Coordinators, and Assistant Coordinators have general responsibility for ensuring that their assigned vehicles are efficiently processed to ultimate sale. Once a Condition Report has been prepared, they have the vehicle brought in for reconditioning work, and they thereafter check the status of their vehicles with employees in the Body and Detail Shops. They are paid at hourly rates ranging from \$7.50 to \$12, depending on their level of experience and the size of the accounts for which they are responsible. There are three Coordinators, one each for GMAC, Honda and Subaru, who are ultimately responsible for the work for those accounts. They are paid \$10 to \$15 per hour. The Assistant Supervisor-Condition Report Writer is responsible for a group of smaller accounts, as well as for the imaging of Chase account vehicles, which involves taking digital photographs for placement on Internet sales sites, or “Cyberlots.” He or she earns in the range of \$9 to \$14 per hour. The Assistant Supervisor/Cyberlot is involved in selecting vehicles for placement on a Cyberlot. He may go anywhere in the facility to identify the appropriate vehicles for this purpose. He is paid about \$8 to \$12 per hour. The three employees classified as Imager/Cyberlot prepare images to memorialize damage to vehicles or for placement on the Cyberlots. In addition to the Drop Zone, they may go to the auction sale lot and the Detail Shop area for these purposes. They earn from \$7.50 to \$12 an hour. The Photographer's job is similar to that of the Assistant Supervisor/Cyberlot, although more of the Photographer's responsibilities take place in the Drop Zone. The Photographer is paid on an hourly basis, but the record does not show the rate of pay. There are 22 Condition Report Writers, who are responsible for completing vehicle reports for newly tendered vehicles either by filling out paperwork or by entering data into a hand-held computer. They are paid at an hourly rate ranging from \$7.50 to \$14.25 per hour, depending on their experience. Some of the more experienced Condition Report Writers may also write repair estimates. Similarly, the three Estimators prepare condition reports and estimate repair costs. Estimators and Condition Report Writers generally remain at the Drop Zone other than on sale days, but they occasionally leave the Drop Zone to view sale vehicles that were inadvertently stocked elsewhere. Estimators are paid an hourly rate ranging from \$7.50 to \$14.25 an hour. The two Tow Truck Drivers tow vehicles that have been disabled by flat tires or dead batteries to repair areas at the facility or to automobile dealerships outside the facility for warranty repairs. There are about 27 Drop Zone Drivers who transport the vehicles on most days from the Drop

---

<sup>6</sup> The parties stipulated that the following individuals from departments other than the Drop Zone are supervisors within the meaning of the Act: John Beckus, Robert Miller, Joe Cruz, John Donohoe, Charles Smith, Al Mondragon, Ben Lasala, Ralph Bates and Gary Noler.

<sup>7</sup> The parties stipulated that Administrative Assistant Edie Oelschlager is an office clerical and should not be included in an appropriate unit.

Zone to and from the various shops for reconditioning work. On auction days, they bring vehicles to the sale lot for auction. Drivers are paid an hourly rate ranging from \$7.50 to \$10 an hour, depending on their experience. The Drop Zone Mechanic assists in moving sale vehicles throughout the facility by plugging tires, jump starting vehicles, providing gasoline for vehicles that have run out of fuel, and other minor mechanical work. The Drop Zone Mechanic may work throughout the Employer's facility and is paid on an hourly basis in a range from \$12 to \$15 an hour. Two VIN Verification employees verify Vehicle Identification Numbers when sale vehicles are initially tendered to the Employer's facility. They are paid from \$7.50 an hour to \$10 an hour.

Peter Sauber is the General Manager of the facility, and he has ultimate authority over its operations. Gregory Conover, one of the Employer's Assistant General Managers, is generally responsible for all outside operations, including the reconditioning shops. At the time of this hearing, Conover had been temporarily acting as the Drop Zone Manager for about two weeks. The Drop Zone Manager has authority over the entire Drop Zone department. Previously, Frank Zasowski had served as the Drop Zone Manager, and the Employer anticipates hiring a new Drop Zone Manager in the near future.

The Employer's Lot Operations drivers earn \$7.25 per hour. Detail employees are paid primarily on a piece rate system, but on sale days are paid on an hourly basis for driving cars to the auction area or touching up cars at the auction. Detail Shop Quality Control employees earn \$14 to \$16 per hour. Most Body Shop employees earn between \$9 and \$14 per hour, but experienced painters and body repair workers can earn up to \$21 per hour. The record is silent as to the other employees' wage rates.

Sixty-eight of the 82 Drop Zone employees work on day shift between the hours of 8:00 a.m. and 5:30 p.m. Six Condition Report Writers work from 1 p.m. to 9 p.m., and six to eight drivers work from 5:00 p.m. to 9:00 p.m. Lot Operations employees have staggered starting times and work until 4:30 p.m., and Detail Shop employees work until 5:00 p.m.<sup>8</sup>

Some Drop Zone employees perform work at the main auction area on sale day. Account Coordinators and Assistant Account Coordinators may direct the drivers at the main auction area as to where to stop or park. Additionally, twenty Drop Zone employees participate in driving vehicles to the Employer's auction area on sale day, although some of them are not classified as drivers.<sup>9</sup> Lot Operations employees also drive the vehicles to the auction sites. About 18 drivers from other departments regularly move cars to and from the Drop Zone for the GMAC account.

The Employer's handbook has been in effect since 1999, and its policies apply to all employees. Full-time employees throughout the facility share the same employee benefits package, which allows them to choose between different types of benefits including HMO insurance, other medical insurance, disability insurance, life insurance, and pension contributions. Sick leave, vacations, pension and holidays benefits are also uniform for all of the

---

<sup>8</sup> There is also a second shift for Detail employees.

<sup>9</sup> Drop Zone employees may also be assigned to work at the main auction building approximately three times a year, when late arriving vehicles create unexpected volumes requiring sudden movement of vehicles to the main auction area.

Employer's full time employees. The Employer's part-time employees also receive some benefits, but the record does not specify which benefits. Drop Zone employees must punch in at the Drop Zone time clock, while other employees punch clocks at different buildings. The Drop Zone, like the other buildings in the Employer's facility, has its own break room, and employees also have lockers in the Drop Zone building. About four to six employees have transferred from other departments to the Drop Zone during the last few years.<sup>10</sup> None of the Employer's employees are required to wear uniforms.

In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine *an* appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). The Petitioner's desire is a relevant consideration, but it is not determinative of the appropriateness of the unit. *Florida Casino Cruises*, 322 NLRB 857 (1997); *Airco, Inc.*, 273 NLRB 348 (1984). Moreover, "the Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis." *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999).

In making unit determinations the Board weighs a variety of factors, including differences in the employees' interests and working conditions, wages or compensation, hours of work and benefits; supervision; degree of dissimilar qualifications, training and skills; differences in job functions; frequency of contact with other employees; work situs of the various classifications; degree of integration or interchange of work between the classifications; the history of bargaining; and whether the classification at issue is part of an integrated operation. *Overnite Transportation*, 322 NLRB 723, 724 (1996); *Esco Corp.*, 298 NLRB 837, 839 (1990); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

I find that the petitioned-for unit is appropriate because the Drop Zone department employees are a cohesive group that shares an identity separate from employees in other departments. They are generally in charge of receiving the vehicles from customers and shepherding them through the various processes at the facility up to and including the auction. The fact that the Employer has set up a separate department for this function emphasizes that while the department includes employees who perform several different types of tasks they constitute a distinct grouping. See *PECO Energy Co.*, 322 NLRB 1074, 1082 (1997); *Harron Communications, Inc.*, 308 NLRB 62, fn. 1 (1992). The Drop Zone is located in a separate area of the facility. Drop Zone employees report to work and punch in at the Drop Zone building, and most of them remain there for the majority of the day, if not the entire day. They have their own break room and lockers in the Drop Zone building. While some Drop Zone employees occasionally go to other areas of the facility to monitor the movement of sale vehicles or photograph cars, there is no evidence that on those occasions they have more than minimal interchange with other employees. Thus, Account Coordinators and Assistant Account Coordinators merely inquire as to when their vehicles will be ready to move on to the next step on its way to eventual sale. Similarly, although Drop Zone drivers drive vehicles throughout the

---

<sup>10</sup> The exact number of transfers can not be ascertained from the record because the testimonial evidence does not match the documentary evidence proffered by the Employer.

Employer's facility, their instructions originate from the Drop Zone, and there is no evidence that they have significant contact with employees from other departments as they carry out their driving responsibilities. Drop Zone employees work extensively alongside other employees only on sale days, and the record does not show that their responsibilities are intertwined. Thus, while the Drop Zone employees have some contact with other employees, especially on sale day, the record does not establish that the level of contact is substantial. See *Lawson Mardon U.S.A., Inc.*, 332 NLRB No. 122 (2000); *Bowie Hall Trucking Inc.*, 290 NLRB 41, 42-43 (1988). Moreover, there have been very few transfers of employees from other departments into the Drop Zone or of Drop Zone employees into other departments. The Drop Zone is separately supervised by a Drop Zone Manager, and there is no evidence that Drop Zone employees report to supervisors or managers in other departments. The separate supervision militates strongly in favor of finding that the Drop Zone employees have a separate community of interest. See *Lawson Mardon U.S.A., Inc.*; *supra*; *Omni International Hotel of Detroit*, 283 NLRB 475 (1987). Drop Zone employees have very different functions and skills than Body Shop or Detail Shop employees, who are involved in reconditioning the vehicles. In fact, the Detail Shop employees are unique in that they work on a piece rate system, while all Drop Zone employees are hourly paid. Although Lot Operations drivers perform similar work to Drop Zone drivers, they do not share a close community of interest, as they are separately supervised and the vast majority of them only work one day a week, exclusively transporting vehicles to the auction area. Day shift Drop Zone employees share the same schedule, and this schedule is somewhat different than schedules in the other departments. Although the larger unit proposed by the Employer would also be appropriate, I find that the Drop Zone employees share a separate community of interest and constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. *Lawson Mardon U.S.A., Inc.*, *supra*; *Overnite Transportation Co.*, 325 NLRB 612 (1998); *Overnite Transportation Co.*, 322 NLRB 347 (1996).<sup>11</sup>

The Employer contends that all of the employees classified as Supervisors in the Drop Zone, i.e., Sharon Gibson, Lou Byrd, Robert Clark, Jeff Barrett, Theodore Thomas, Joseph Simons and Jim Desiderio, are supervisors within the meaning of Section 2(11) of the Act. Interim Drop Zone Manager Conover, who had served in this capacity for two weeks at the time

---

<sup>11</sup> The Employer contends that only a facility-wide unit is appropriate in the auto auction industry, but the cases it cites for this proposition are inapposite. In *Fresno Auto Auction*, 167 NLRB 878 (1967), the Board was not presented with the question of the appropriateness of the petitioned-for unit, but with issues concerning the eligibility of casual employees and whether certain employees were statutory supervisors. In *Detroit Auto Auction*, 324 NLRB No. 143 (1997) *enfd* 182 F.3d 916 (6<sup>th</sup> Cir. 1999), the Board granted a Motion for Summary Judgment in the context of an employer's test of the union's certification, and the Board made no findings concerning the appropriateness of the unit.

The Employer's reliance on a prior unit determination involving the same parties and facility in Case 4-RC-11640 is also misplaced. The case was decided in 1975 at a time when the Employer did not perform reconditioning work and the Employer's outside operations group consisted of only 75 employees. Moreover, the petitioned-for unit of the outside employees was found appropriate rather than the broader unit contention that had been advanced by the Employer.

The Employer also cites *Mid-America Auto Auction*, Case 9-RC-17409, another decision that was not reviewed by the Board. In that case, the Regional Director found a petitioned-for unit of various reconditioning, lot operations, check-in employees and a roll-back driver to be inappropriate, in significant part, because it excluded employees who were commonly supervised and because the proposed unit was not coextensive with the employer's departmental structure. In this case, the petitioned-for unit employees are separately supervised, and the Petitioner has sought a unit limited to employees in a particular department.

of his testimony, was the Employer's only witness regarding their authority and responsibilities. He also served as Drop Zone Manager for an unspecified time period ending two-and-a-half years ago. He testified that Gibson is a Supervisor for fleet lease accounts including First Union Bank, among others. She oversees two Account Coordinators, an Assistant Account Coordinator, a VIN verification employee, and another unspecified employee. Byrd, the Drop Zone Supervisor responsible for logistics, oversees the department's drivers. He instructs them as to which vehicles to move and where to move them and coordinates movement of the vehicles with Account Coordinators and Assistant Sales Coordinators. Clark, Barrett and Thomas oversee 20, 25 and 5 employees, respectively. Each is in charge of several accounts and allocates the work on those accounts between the employees. The record does not indicate how the work is divided or what role the Supervisors play in directing it. Desiderio is the Cyberlot Supervisor. He oversees several Imagers, an Assistant Cyberlot Coordinator and one driver. Desiderio generally directs employees as to how to meet customers' specifications and requirements. He also reviews the quality of their work and may require that an employee redo an image if it is unacceptable. The record is silent, however, as to how he directs employees and how frequently he has required them to redo unsatisfactory images. Drop Zone Supervisors may adjust employee work schedules and shift their responsibilities as necessary to meet the department's demands. For example, if one account is short of Condition Report Writers, a Supervisor may move a Condition Report Writer from another area. Supervisors may ask employees to work on Saturdays, but Saturday work is voluntary. The Drop Zone Supervisors occasionally drive sale vehicles on auction days and also substitute as Account Coordinators and Condition Report Writers as needed. All of the Supervisors report directly to the Drop Zone Manager.

Conover testified that Drop Zone Supervisors have the authority to hire employees, but the record does not reflect that any Supervisor has been involved in hiring for at least two-and-a-half years.<sup>12</sup> The Employer's Human Resources Department places hiring advertisements in newspapers, with no involvement from the Supervisors, and there is no evidence as to who interviews the applicants or makes the decision. With respect to disciplinary authority, Conover testified that during the two weeks preceding the hearing, Drop Zone Supervisors Barrett, Gibson, and Clark recommended that he discharge an employee, but the record does not indicate the circumstances of the discharge or whether Conover did an independent investigation before he adopted their recommendation. The Employer placed in evidence several warning notices signed by Supervisors. However, three of them were also signed by former Drop Zone Manager Zasowski, and there is no evidence as to the Supervisors' role in issuing them. At most, the record shows that Supervisors have punished employees by switching them to drive less desirable vans. Drop Zone Supervisors sign probationary employee evaluations, as does the Drop Zone Manager, but Conover was unaware of the extent of their input in determining whether the employee is retained.<sup>13</sup> There is no evidence of involvement by supervisors in

---

<sup>12</sup> Conover testified that Gibson hired an employee two-and-a-half years ago, but the Employer presented no supporting documentary evidence of the hire, and it is unclear to what extent other officials were involved in the hiring process.

<sup>13</sup> The evaluation form asks calls for "Yes" or "No" answers to five questions concerning whether the employee has been acceptable in the following five categories: (1) absences, (2) lateness (3) satisfactory work; (4) work attitude, and (5) adherence to the dress code. There is no space for narrative, and both the Supervisor and the Drop Zone Manager sign the documents.

preparing performance reviews for non-probationary employees. Conover testified that Supervisor Clark once recommended that a Condition Report Writer receive a raise because of the employee's outstanding work performance. The record does not clearly indicate whether Drop Zone Supervisors have authority to grant vacation requests, as Conover was unaware of how these matters were handled prior to two weeks ago. According to Conover, during the last two weeks Drop Zone Supervisors have granted employee vacation requests, but he reviewed and signed off on them. The single vacation request form in the record was signed only by Zasowski.<sup>14</sup> If an employee requests to leave work early, a Supervisor and the Drop Zone Manager must approve the request. Drop Zone Supervisors earn between \$15 to \$20 per hour and are paid at time and a half for hours in excess of 40 hours in a week. They had been salaried until last month, but the Employer changed them to an hourly pay structure at their request so that they could earn money for the extra hours they work. All of the agreed-upon statutory-supervisors from other departments remain salaried. Drop Zone Supervisors are eligible for bonuses at the end of the year, but the record is silent as to how the bonuses are calculated or on what they are based. Unlike other employees, the Supervisors have desks in the Drop Zone office building.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center*, 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries*, 311 NLRB 109, 100 (1993). The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care*, 121 S.Ct. 1861, 1866, 1867 (2001); *Fleming Companies, Inc.*, 330 NLRB No. 32, fn. 1 (1999). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center*, supra, 295 NLRB at 490. The exercise of some authority in a merely routine clerical or perfunctory manner does not confer supervisory status on employees. *Juniper Industries*, supra, 311 NLRB at 110. The authority to effectively to recommend, "generally means that the recommended action is taken with *no* independent investigation by an individual's superiors, not simply that the recommendation ultimately is followed. *Children's Farm Home*, 324 NLRB 61 (1997). The Board insists on evidence supporting a finding of actual as opposed to mere paper authority. *Food Store Employees Local 347 v. NLRB*, 422 F.2d 685 (D.C. Cir. 1969); *NLRB v. Security Guard Service*, 384 F.2d 143 (5<sup>th</sup> Cir. 1967).

The Employer has not satisfied its burden of establishing that the Drop Zone Supervisors are statutory supervisors within the meaning of Section 2(11) of the Act. The testimony of the Employer's sole witness was insufficient to establish any of the indicia of supervisory authority. At most, the testimony revealed one occasion in which a Supervisor recommended a raise and one occasion in which several Supervisors recommended the discharge of an employee. No documentary evidence was provided in support of this testimony, however, and the evidence does not indicate whether the recommended actions were taken solely as a result of the

---

<sup>14</sup> According to Conover, the Drop Zone Manager was not required to approve vacations two-and-a-half years ago.

Supervisors' recommendations or as a result of independent investigation by higher-level supervisors. With respect to discipline, although the Employer introduced four warnings into evidence that were signed by Supervisors, the Drop Zone Manager also signed three of them, and without further explanation it is impossible to conclude that the adverse employment action reflected in the warning was imposed independently by the Supervisor. There is insufficient evidence to show that the Drop Zone Supervisors exercise independent judgment in directing employees. While Conover testified in conclusory terms that they oversee employees, the record does not show what decisions they make or how they make them. The record fails to establish that Drop Zone Supervisors independently make decisions as to employee vacation requests or that they determine whether probationary employees are retained. There was no evidence as to how the evaluations are prepared, and they are signed by the Drop Zone Manager as well as the Supervisor. Although the Supervisors are generally paid more than other Drop Zone employees are, this secondary indicium of supervisory status cannot transform them into statutory supervisors in the absence of a finding that they possess at least one of the statutory indicia. *Billows Electric Supply of Northfield, Inc.*, 311 NLRB 878, fn. 2 (1993). Accordingly, I find that the Employer has failed to satisfy its burden of demonstrating that the Drop Zone Supervisors are supervisors within the meaning of Section 2(11) of the Act, and I will include them in the unit.

The Employer employs two clerks in the Drop Zone, Lynn Hawkins and Dana Lasure. The Employer takes the position that they are office clerical employees and should be excluded from the unit. The Petitioner contends that they are not office clerical employees because they spend a substantial amount of time performing non-clerical tasks that are similar to tasks performed by other Drop Zone employees. Hawkins processes paperwork, including Condition Reports and bills, for the Employer's Ford accounts, and reports to Robert Clark. She testified without contradiction that she spends approximately 30 to 40 minutes of each hour out of the office performing duties at the Drop Zone parking lot such as placing stickers on windshields and checking cars to obtain missing data. For example, she regularly opens the hood of vehicles to ascertain their engine size. At the lot, she interacts regularly with Condition Report Writers. She also works in the office preparing the stickers and filing and copying documents. The record does not indicate the nature of Lasure's duties although she testified that she remains almost entirely in the office and works on different accounts than Hawkins. She reports to Sharon Gibson. The clerks work the same schedule as the other Drop Zone day shift employees.

The test as to whether an employee is an office clerical or a plant clerical is rooted in community of interest concepts and generally depends on whether the employees' duties are related to the production process or to general office operations. *Cook Composites & Polymers Co.*, 313 NLRB 1105 (1994). The record indicates that Hawkins performs clerical duties that are closely linked to the preparation of sale vehicles for movement through the Employer's facility. She works in the same general location as other Drop Zone employees and spends most of her time outside of the office. In these circumstances, I find that Hawkins is a plant clerical employee, and I shall include her in the unit. *Syracuse University*, 325 NLRB 162, 168-169 (1997). As Lasure testified that she works almost exclusively in the office and there is insufficient evidence as to her duties or contact with other Drop Zone employees, I shall permit her to vote subject to challenge.

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 full time and regular part-time employees employed by the Employer in the Drop Zone Department, excluding all other employees, Administrative Assistant, and guards and supervisors as defined in the Act.**

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>15</sup> subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this 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 their status as such during the eligibility period and their replacements. Those in the military services of the United States 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

### **TEAMSTERS LOCAL UNION NO. 35, AFL-CIO**

### **LIST OF VOTERS**

In order to assure 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 an election eligibility list, containing the **full** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, 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, 615

---

<sup>15</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official 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.

Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **September 25, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

**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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **October 2, 2001**.

Signed: September 18, 2001

at Philadelphia, PA

/s/ \_\_\_\_\_  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

420-2933  
420-4083