

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

KELLY-AMERIT FLEET SERVICES, INC.,

Employer

and

CASE NO: 02-RC-074779

**COMMUNICATION WORKERS OF AMERICA,
AFL-CIO,**

Petitioner.

DECISION AND DIRECTION OF ELECTION

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

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this consolidated proceeding, as well as the briefs filed by the Petitioner and the Employer after the closing of the record, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that Kelley-Amerit Fleet Services, Inc., herein the Employer, a Delaware corporation, with an office and principal place of business located at 1331 N. California Blvd., Walnut Creek, CA, annually derives gross revenues in excess of \$50,000 from the performance of fleet maintenance services to commercial

clients that are themselves directly engaged in interstate commerce. Based upon the record, and the stipulation of the parties, I find that 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 parties stipulated that Communication Workers of America, AFL-CIO, herein Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. Accordingly, based upon the stipulation of the parties, the record establishes, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

The parties have stipulated that there is no collective-bargaining agreement covering any of the employees in the unit sought by the petition which would bar the holding of an election in this case.

5. Petitioner seeks to represent all automotive techs servicing Verizon vehicles employed by the Employer at its Manhattan and Bronx facilities, excluding all guards, supervisors, managers, confidential employees, and all others excluded by the Act. The Employer, on the contrary, asserts that the smallest appropriate unit must be comprised of all automotive techs servicing Verizon vehicles employed by the Employer at all East coast locations, or alternatively, throughout the United States.

For the reasons set forth herein, I find that the petitioned-for unit is an appropriate unit for collective bargaining.

FACTS

Overview of the Employer's Operations

The Employer provides fleet maintenance services to public and private sector clients throughout the United States, including Verizon New York (hereafter Verizon). The Employer's Human Resources division is located at its corporate headquarters in Walnut Creek, CA. The Employer employs about 800 automotive techs throughout the country and of those, 159 automotive techs service Verizon vehicles exclusively. The East coast division servicing Verizon vehicles consists of 81 garages located throughout New York, New Jersey, Connecticut, Pennsylvania, Massachusetts, and Maryland.

Director of Human Resources, Jennifer Toll, oversees a staff of generalists who handle personnel matters. The HR Generalist for the Verizon account, Christina Ledesma, has nine Fleet Managers report to her on all Human Resources issues, including disciplinary matters. The Fleet Managers oversee the garages servicing Verizon vehicles. They report to Senior Fleet Manager, Kevin McClune, regarding operational and manpower issues. Staffing needs at the various garages that service Verizon vehicles are decided by McClune in consultation with Ledesma and the Fleet Managers.

Automotive Tech Terms and Conditions

The job description for automotive techs was created at the Human Resources Department. All of the Employer's automotive techs have the same basic responsibilities: “[T]imely repair and maintenance of tractors, trailers, aerial lifts, and other equipment to ensure a safe and efficient fleet of vehicles. Operate [sic] vehicles and test [sic] all working parts in various functions to ensure proper operation.” All automotive techs are

required to have two years' experience in vehicle maintenance or a diesel technology diploma from an accredited technical school, as well as at least two Automotive Service Excellence (ASE) Certifications in any of several specified areas, including diesel engines, automatic transmission, brakes and electronic systems.

Many aspects of the Employer's operations are highly centralized. Human Resources generates new employee paperwork, W-2 forms, tax forms, payroll data, and conducts background checks on all new employees consistent with various clients' requirements. All of the Employer's employees receive the same Employer Handbook, which was created at the Human Resources Department. Safety matters for all of the Employer's garages are handled by the Director of Safety and Compliance, Don Bartel, and all garages are subject to the same safety rules. Personnel files for all employees are maintained exclusively by Human Resources at the Employer's headquarters.

With respect to hiring, two recruiters, who report to Toll, are responsible for posting jobs and soliciting and reviewing applications for posted positions. Selected applications are forwarded to the Fleet Manager, who reviews them and conducts initial interviews. The Fleet Manager makes hiring recommendations to Human Resources, which ultimately extends offers to applicants.

Regarding wages and benefits, the Employer's automotive techs servicing Verizon vehicles have pay rates that range from \$13 to \$28 per hour, adjusted for geographic cost of living variances. All automotive techs servicing Verizon vehicles have the same payment options, direct deposit or "pay card," and are subject to pay periods established by Verizon. They all have the same benefits package. Human Resources

determines whether wage increases will be given to employees based on annual appraisals prepared by the Fleet Managers.

The Fleet Manager is responsible for preparing a draft performance appraisal using the Employer's performance appraisal form and submits the draft appraisal to the Human Resources Department for review and approval. Once the appraisal is approved, the Fleet Manager meets independently with the employee to deliver it. In regard to discipline, Fleet Managers report incidents that they believe warrant discipline to a Human Resource generalist, who makes a determination whether discipline, and what level of discipline, is appropriate and participates by telephone when the discipline is given to the employee.

Verizon has a substantial role in setting certain terms and conditions of employment for the Employer's automotive techs who service their vehicles. Thus, these automotive techs are subject to particular background check requirements established by Verizon and are issued Verizon identification for entering Verizon worksites. Verizon determines the number of automotive techs needed at each garage location and sets the shift schedules for all of the automotive techs that service its vehicles. All automotive techs servicing Verizon must use a Verizon system, called TimeIPS to sign in and out. Fleet Managers have access to this system, limited to the time records of the automotive techs that fall under their direct supervision.

The Employer's automotive techs servicing Verizon vehicles use a Verizon computer system, called Enrich to check the jobs waiting to be done on any given day. Each garage has particular Verizon vehicles assigned to it and Verizon drivers call in needed repairs to a call center that enters the jobs into this system. Automotive techs pull

up the day's work by logging into the system. The Fleet Managers have access to this Verizon system, however, the Employer's Human Resources does not.

Finally, while HR Director Toll testified that there is a general company policy of moving manpower to the Employer's various locations according to Employer needs, she was unable to provide any specific examples of interchange among the Employer's various garages and testified that the Employer does not keep any records of such interchanges. She recalled only one employee, Terry Bates, who "transferred" from Portland, Oregon, to work at one of the Employer's Manhattan garages servicing Verizon vehicles, for a few weeks in June 2011. Toll admitted that Bates did not work for the Employer in Portland, but for another company by the name of Kelley Fleet Services, and that he had not previously worked on Verizon vehicles.

New York City Garages

There are five garages servicing Verizon vehicles in Manhattan, two garages servicing Verizon vehicles in the Bronx and seven garages servicing Verizon vehicles in Brooklyn. Many of these garages have only one automotive tech. In total, there are seven automotive techs who work out of the Manhattan garages, three automotive techs who work out of the Bronx, and twenty-one automotive techs who work out of Brooklyn. The Manhattan garages are located at the following addresses: 84 King Street ("King Street"); 601 West 26th Street ("26th Street"); 460 West 129th Street ("129th Street"); 615 West 48th Street ("48th Street"); and 620 West 153rd Street ("153rd Street"). The Bronx garages are located at 1200 Wyatt Street and 325 Exterior Street.

The Brooklyn garages include locations at 230 43rd Street ("43rd Street"), 318 Nevins Street ("Nevins"), 567 East 105th Street ("105th Street"), and 1580 Nostrand

Avenue (“Nostrand”), as well as, several other locations. The 105th Street Brooklyn garage is larger than the other garages and has a conference room, used for training purposes, as well as, a body shop.

The Brooklyn garages are supervised by Fleet Manager, Jim Murphy, who also supervises two garages in Long Island. The Manhattan and Bronx garages are supervised by Fleet Manager, Ralph Fasano, who also oversees three locations in Pennsylvania in Hazelton, Williamsport, and St. Claire, two of which share a single automotive tech. The five garages in Manhattan appear to be between two and 10 miles from each other. The Williamsport, PA, garage is about 200 miles from Manhattan. The Hazelton garage is about 140 to 150 miles from Manhattan. It is not clear from the record the relative proximity of the Brooklyn garages to each other or to the Manhattan garages generally, although Mr. Fasano testified that Nevins (Brooklyn) is about four miles from King Street (Manhattan).

Fasano directly oversees the work of the automotive techs who service Verizon vehicles out of the Employer’s Manhattan and Bronx garages. His office was located in Manhattan at 615 West 48th Street. Although Fasano visits the garages under his supervision when he can, he communicates daily with the automotive techs by telephone. Fasano assigns work as necessary using Verizon’s work tracking system for reference. Fasano has access to the Verizon time keeping system, limited to the records of the automotive techs who report to him, and he testified that he goes into the system occasionally to sign out automotive techs who may have forgotten to do so before leaving at the end of the day or for their lunch break. Fasano is also responsible for arranging coverage for the automotive techs who report to him in the event that they call out sick.

Fasano communicates daily by telephone with Senior Fleet Manager McClune and with other fleet managers, particularly Brooklyn's Jim Murphy. The principal issue that Fasano discusses with McClune, and other fleet managers, is manpower. If a fleet manager has a lot of work that needs to be completed by the end of the month at a particular location, he may send automotive techs from other garages he oversees to assist in completion of the work. Moreover, a fleet manager may contact another fleet manager to discuss whether any of that Fleet Manager's automotive techs are available to assist. Fleet Managers seek approval from McClune before loaning an automotive tech to another fleet manager. However, the Employer does not keep records of the movement of automotive techs between garages and they are paid at their usual rate, even when they are sent to work at a garage location with a different pay scale.

Fasano testified that eight out of the ten automotive techs that he supervises in Manhattan and the Bronx have been sent to the 105th Street Brooklyn garage at some point, however, it is unclear how many of these individuals actually performed mechanic work on those occasions. Fasano recalled a few instances, such as, automotive tech, Radame Lopez, who works at the 26th Street location in Manhattan, has done mechanic work at the 105th Street Brooklyn garage on four or five occasions; and automotive tech, Henry Jimenez, who works at the 153rd Street location in Manhattan, has done preventative maintenance work and State inspections at the 105th Street Brooklyn garage on two or three occasions. Fasano's testimony in this regard was contradicted by Lopez and Jimenez, who both testified that they performed mechanic work at the 105th Street Brooklyn garage on only on one occasion.

Fasano testified that his automotive techs go to the 105th Street Brooklyn garage to deliver vehicles that have sustained body damage. It is unclear how often this occurs. Fasano testified that vehicles were brought to 105th Street in Brooklyn by “the company” once a week or once every two weeks and that Bronx automotive tech, Danny Joseph-Pauline, has delivered vehicles six or seven times. Drop-off requires two automobile techs in order to drive back to Manhattan or the Bronx after they have delivered the damaged vehicle.

Furthermore, Fasano testified that he has obtained parts from 105th Street on occasion and, on one occasion, sent automotive techs from his Manhattan, Bronx and Pennsylvania garages to 105th Street to attend a two-day training course offered by the Employer to teach the automotive techs how to use a new software program. Automotive techs from other Brooklyn garages servicing Verizon vehicles also attended the training at 105th Street garage.

Fasano testified that he has also “borrowed” automotive techs from Brooklyn garages on occasion. Specifically, Fasano recalled borrowing an employee from Nostrand on two occasions for a couple of hours and another employee from 43rd Street on one occasion for four hours. Fasano testified that since he began working for the Employer, he has borrowed a mechanic named Alex, who possesses diesel engine repair skills, on five to seven occasions for a few hours from the 105th Street Brooklyn garage. Fasano testified that Alex performed State inspections, as well as, diesel engine work on some of those occasions.

In addition, Fasano, on one occasion, sent three employees from his Manhattan garages, specifically Joe Gonzalez, Calvin Smith and Steve Gray, to the Employer’s

garage in Linden, New Jersey, to help clean up the garage. Two of these employees worked on one Saturday and the third worked on a Friday, performing the clean up work. None of the employees performed any mechanic work. Fasano testified that he has never sent any automotive technicians from Manhattan or the Bronx to the Pennsylvania garages that are under his supervision, nor has he sent any of the automotive techs from his Pennsylvania garages to Manhattan or the Bronx.

Fasano testified that automotive techs from his Manhattan garages work at other Manhattan garages under his supervision about three times per month. The Manhattan automotive techs also work at the Bronx locations that he supervises and vice versa, but he did not indicate how frequently this occurs. Manhattan automotive techs call automotive techs at other Manhattan garages under Fasano's supervision to seek diagnostic advice in regard to vehicles they are repairing. In fact, Fasano keeps a list of the telephone numbers of all of the garages under his supervision posted on the wall at each garage in order to facilitate such communications. Fasano testified that such communications occurred "every couple of weeks."

Henry Jimenez, who is the sole automotive technician working out of the Employer's 153rd Street garage in Manhattan, testified about various aspects of his employment. He applied for work at the Employer through MSN CareerBuilder.com and was offered an automotive tech position by McClune in April 2011. He received a copy of the Employer's new hire packet via email and the employee handbook from HR generalist, Ledesma. Jimenez described his job duties as maintaining, troubleshooting, diagnosing and repairing Verizon fleet vehicles. On his first day of work at 153rd Street, he was assisted by a couple of employees from "other states" whose names he did not

recall in cleaning up the garage. Jimenez also testified that he had on one occasion worked for a day at the Employer's Linden, New Jersey garage to assist in cleaning.

Jimenez communicates on a daily basis with Fasano, his immediate supervisor, but otherwise has no contact with anyone else from the Employer's management. He testified that he obtains his work assignments by logging in to the Enrich system to see what jobs have been called in by Verizon. Jimenez uses on line tools, including a program called ALLDATA and Identifix, to assist him when necessary in diagnosing problems and performing repairs. He also speaks with his co-workers at the other Manhattan garages that service Verizon vehicles three to four times a week about work issues and he has also talked about work with Bronx automotive tech, Joseph-Pauline. Jimenez goes to other Manhattan garages to help with their work load about once a week. He has worked for a whole or half day at King Street, 26th Street, 48th Street, and 129th Street garages in Manhattan. On some of these occasions, he has been sent by Fasano, however, in other cases, he has responded directly to a call from a co-worker after obtaining authorization from Fasano. Jimenez confirmed that he has worked at other Manhattan garages servicing Verizon vehicles between 40 and 50 times during the course of his 11-month employment with the Employer. He knows the names of the Employer's automotive techs at the Bronx and Manhattan locations, but does not know that names of the automotive techs at any Brooklyn, New Jersey, or Pennsylvania locations servicing Verizon vehicles.

Jimenez testified that he attended a two-day training course at the Employer's 105th Street Brooklyn garage. In addition, Jimenez worked at this location once, on a Saturday, performing preventative maintenance and State inspections. He has been to the

105th Street location on two other occasions to drop off vehicles, but not to perform mechanic work. Other than a day spent cleaning up the shop in Linden, Jimenez has never worked at any New Jersey location. Jimenez testified that he has never performed mechanic work at any Employer garage in New Jersey, Pennsylvania, Connecticut or Massachusetts and has no contact with any of the Employer's employees at these locations.

Radame Lopez, who is the Employer's sole automotive tech at the 26th Street garage in Manhattan, has worked out of that location servicing Verizon vehicles for three years prior to the Employer taking over the account in May 2, 2011. The record does not establish who hired Mr. Lopez, but he received new hire paperwork and an employee handbook via email from HR generalist Sarah Siner, who was Ledesma's predecessor. Fasano is his direct supervisor, and apart from a single conversation with Ms. Siner at the beginning of his employment, he has no contact with anyone else in the Employer's management.

Lopez testified that he obtains his work assignments for the day by logging on to the Enrich system and selecting from the listed jobs those he wants to perform on that day. He is also sent out once or twice a month by Fasano to the Employer's other Manhattan garages servicing Verizon vehicles to help out with their workload. Lopez has worked at King Street and 48th Street. He brings his own tools whenever he works at a different location. In addition, he communicates regularly with the Employer's other automotive techs servicing Verizon vehicles in Manhattan, at the 48th Street, King Street, 153rd Street and 129th Street locations. He does not communicate with automotive techs in Brooklyn or the Bronx or with anyone else from the Employer.

Lopez also testified that he was sent by Fasano to a two-day training course at the Employer's 105th Street Brooklyn garage. He has also gone to the 105th Street Brooklyn garage on one Saturday to perform preventive maintenance work and has dropped off vehicles for body work on about five occasions. Lopez also worked for one Saturday doing preventative maintenance work at the Employer's Nevins Street garage in Brooklyn. Lopez has never been to any Employer locations in New Jersey, upstate New York, or Pennsylvania and does not communicate with anyone in the Employer's North Carolina, Pennsylvania or Brooklyn locations when he needs advice regarding a job on which he is working.

ANALYSIS

Based on the foregoing facts, the entire record and careful review and consideration of the arguments of the parties at the hearing and in their briefs, I find that a unit of automotive techs at the Employer's Manhattan and Bronx locations servicing Verizon vehicles is an appropriate unit for purposes of collective bargaining.

In determining whether to direct an election at multiple locations, the Board evaluates whether the grouping shares a "community of interests" by considering a number of factors including 1) centralization of management, particularly regarding labor relations; 2) extent of employee interchange; 3) degree of interdependence or autonomy of facilities; 4) differences or similarities in skills and functions of employees; 5) geographical location of the facilities in relation to each other; and 6) prior bargaining history. *Trustees of Columbia University*, 222 NLRB 309 (1976). The Board may also consider the extent of the Union's organization, although this factor may not be controlling. *Metropolitan Life Insurance Co.*, 156 NLRB 1408 (1966).

Here, it is undisputed that there is a substantial degree of centralization of operations in regard to certain aspects of the automotive techs' terms and conditions of employment. Specifically, the Human Resources Department created the automotive tech job description, did the recruitment and made final offers of employment, determined the wage scale, generated new employee paperwork and the Employer Handbook, and maintains the personnel files of all employees. However, these aspects of the Employer's operations appear to apply equally to all of the Employer automotive techs, and not exclusively for those who service Verizon vehicles. Senior Fleet Manager, Mr. McClune oversees operational matters for these employees.

Some significant aspects of the terms and conditions of employment of the unit employees sought here, specifically their benefits package, their hours, their time tracking system, their work tracking system, and their background check requirements, are determined in whole or part by Verizon. It also appears that all of the automotive techs servicing Verizon vehicles have similar if not identical skills and job functions.

The above considerations may well suffice to establish that all of the Employer's automotive techs servicing Verizon vehicles may have a sufficient community of interests to constitute an appropriate unit; however, that is not the question presented here. Rather, I must determine whether the petitioned-for unit consisting solely of the Employer's Manhattan and Bronx automotive techs is an appropriate unit. The Act does not require that the unit for bargaining be the only appropriate unit or even the most appropriate unit; the Act requires only that the petitioned-for unit be an appropriate unit. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, a union is not required to seek representation in the most

comprehensive grouping of employees, unless such grouping alone constitutes an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). A petitioner's unit desire is not dispositive but is a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). There is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996).

The Employer contends that the only factor that would support a finding that the petitioned-for unit is appropriate is commonality of supervision and that this factor is insufficient to establish a distinct community of interest for the petitioned-for locations here. The Employer relies on *Sleepy's Inc.*, 355 NLRB 132 (2010), and *Laboratory Corporation of American Holdings*, 341 NLRB 1079 (2004) in support of this contention. However, in both cases, there was affirmative evidence that the locations assigned to the employers' supervisors were in flux, undercutting supervision as a stable factor that could define an appropriate unit. See *Sleepy's, Inc.*, 355 NLRB at 135 (citing *Laboratory Corporation of American Holdings*, 341 NLRB at 1082, for the proposition that if any employer frequently changes supervisory assignments, then a grouping of facilities based on common supervision does not form a sufficiently stable collection of facilities for collective bargaining purposes). There is no such evidence here. Moreover, both cases involved substantial evidence of regular interchange between the petitioned-for locations and locations outside the petitioned-for unit. See *Sleepy's, Inc.*, 355 NLRB at 134 (petitioned-for unit not appropriate where employees from locations outside the unit worked at included locations 52 percent of the time); *Laboratory Corporation of American Holdings*, 341 NLRB at 1082 (petitioned-for unit not appropriate where

employees from included locations worked at excluded locations every weekend). As discussed in detail below, that is not our case.

The Employer further contends that the common supervision here is undercut by Mr. Fasano's lack of autonomy. I disagree. While it is undisputed that Fleet Managers do not have independent authority to hire, fire, discipline, or set wage increases for the automotive techs under his supervision, the evidence indicates that Fleet Managers have a substantial role in determining various aspects of the automotive techs' employment. Thus, they interview applicants for open job positions and make recommendations in regard to hire to Human Resources, which extends job offers. In addition, they are responsible for preparing employee appraisals, subject to Human Resources review, and for independently reviewing the appraisals with the automotive techs. Although only Human Resources can grant a wage increase, Human Resources Director Toll testified that she relies on appraisals in deciding whether a wage increase is warranted.

Furthermore, the evidence indicates that Mr. Fasano has substantial autonomy in overseeing the day-to-day work of the automotive techs under his supervision. Thus, he testified that, as a Fleet Manager, he is responsible for making work assignments where necessary, using the Verizon work tracking system, and is in daily contact with the automotive techs under his supervision. Jimenez and Lopez testified that they have no contact with any other management personnel in regard to their day-to-day work apart from Mr. Fasano. Mr. Fasano has access to the time records of the automotive techs he supervises using the Verizon IPSTime system and testified that he occasionally clocks his automotive techs out at the end of the day or for a lunch break. Finally, Mr. Fasano makes decisions in regard to the interchange among the automotive techs he supervises.

Although he requires approval from Senior Fleet Manager McClune for interchanges of automotive techs with other Fleet Managers, there is no indication that he requires Mr. McClune's approval to move employees among the garages he supervises in Manhattan and the Bronx, a significantly more frequent occurrence. Manhattan automotive tech Jimenez testified that when he receives a request for assistance from another Manhattan automotive tech, he contacts Mr. Fasano for approval before going out to the other garage location.

Moreover, contrary to the Employer, I find that there are several additional factors here that support a finding that the petitioned-for locations have a distinct community of interests. Specifically, I note their high degree of employee interchange in Manhattan and the Bronx, the interdependence, and geographic proximity of the garages in Manhattan and the Bronx. Mr. Fasano admitted that he sends the Manhattan and Bronx automotive techs to work at other Manhattan and Bronx locations. Jimenez, who works out of the 153rd Street garage, testified that he goes to other Manhattan garages for a whole or half day approximately once a week. He has worked at the King Street, 26th Street, 48th Street, and 129th Street garages. In total, Mr. Jimenez confirmed that he has worked at other Manhattan locations between 40 and 50 times since he began his employment with the Employer in April 2011. Mr. Lopez testified that he has worked at King Street and 48th Street in Manhattan and that Mr. Fasano dispatches him to another Manhattan garage servicing Verizon "once or twice a month."

In contrast, Mr. Jimenez testified that he has never performed mechanic work at any Employer garage in New Jersey, Pennsylvania, Connecticut or Massachusetts. Mr. Lopez testified that he has never been to any Employer location in New Jersey, upstate

New York, or Pennsylvania. Finally, Mr. Fasano admitted that he has never sent any automotive techs from Manhattan or the Bronx to work at the garages he oversees in Pennsylvania or from his garages in Pennsylvania to the Manhattan or Bronx locations. Indeed, Mr. Fasano testified that the Pennsylvania garages he supervises are a great distance from Manhattan and the Bronx garages.

Although there is evidence that automotive techs from Manhattan and the Bronx drop off vehicles for body work at 105th Street with some frequency, this does not in my view constitute genuine interchange as they perform no mechanic work at such times and the nature of the drop off process is unknown. Thus, contrary to the Employer, I find the evidence of interchange outside the petitioned-for unit is intermittent, sporadic and negligible, in comparison with the regular exchange of personnel between the petitioned-for locations.

Furthermore, the evidence indicates that there is significant interdependence between the automotive techs supervised by Fleet Manager Fasano in Manhattan and the Bronx that supports the conclusion that they share a distinct community of interests. Mr. Jimenez and Mr. Lopez testified that they regularly contact automotive techs at other Manhattan garages servicing Verizon and have contacted a Bronx automotive tech to discuss work or obtain diagnostic assistance. Indeed, Mr. Jimenez indicated that he communicates with the automotive techs at the other Manhattan garages that service Verizon vehicles three to four times per week, sometimes on Mr. Fasano's instruction and also on his own initiative. Mr. Jimenez and Mr. Lopez testified that they do not contact automotive techs in the Brooklyn garages servicing Verizon for diagnostic assistance or communicate with any of the Employer's other automotive techs. Cf.

Clarian Health Partners, Inc., 344 NLRB 332, 334 (2005)(petitioned-for unit of maintenance employees at two out of the employer's three hospital facilities within one mile of one another not appropriate, in part because of evidence of regular telephone contact and exchange of information between the maintenance employees at all three facilities). Notably, Mr. Jimenez did not know the names of any employees at the Brooklyn garages.

The Employer contends that the petitioned-for unit is inappropriate in that it does not correspond to any administrative function or organizational grouping, citing *Bashas', Inc.*, 337 NLRB 710 (2002). However, the Board reached that conclusion in regard to the petitioned-for multi-facility unit in *Bashas'* based on the absence of common supervision among the included facilities and the absence of significant interchange or other evidence of functional integration. *Id.* at 711. Our case is clearly distinguishable, in light of the shared supervision and regular weekly interchange and communication among automotive techs at the petitioned-for locations. Moreover, although as in *Bashas'* there is an excluded location (Nevins) located quite close to an included location (King Street), I would not on that basis conclude that a unit limited to the Manhattan and Bronx locations lacks coherence. As noted above, there is only one instance in which a Manhattan automotive tech worked at Nevins, in contrast with the regular weekly interchange and communication among the petitioned-for locations.

Finally, the Employer suggests that the fact that employees from within and outside of the petitioned-for unit are trained together at the Employer's 105th Street facility and that Mr. Fasano has obtained parts from 105th Street undercuts a finding that the petitioned-for unit is appropriate. There is no evidence that either of these

circumstances has occurred on more than one occasion, let alone with any degree of frequency. Given the absence of any regular communication, contact or interchange between the petitioned-for unit and the automotive techs at other locations, I would not conclude that these isolated incidents undermine the distinct community of interests of the petitioned-for unit. Cf. *Sleepy's, Inc.*, 355 NLRB at 133, 134 (petitioned-for unit, which had same skills as, and trained side by side with, excluded employees, not appropriate in light of regular telephone and email contact and substantial interchange between included and excluded employees).

In concluding that the petitioned-for unit is appropriate, I note that application of the Board's analysis in *Specialty Healthcare*, would not yield a different result here. The the petitioned-for unit is a "readily identifiable" group that shares a community of interest. The evidence discussed above makes clear that there is nothing arbitrary about the petitioned-for unit. It is comprised of automotive techs in a defined geographic area, under the supervision of a single supervisor, Mr. Fasano, and who have a substantial level of interchange and interdependence with one another not shared with the other employees under Mr. Fasano's supervision. Although the petitioned-for employees have some intermittent contact with excluded locations, such as the Employer's 105th Street facility in Brooklyn, the Employer has not demonstrated that its automotive techs at the other locations servicing Verizon vehicles share an "overwhelming community of interest" with the petitioned-for group. Merely establishing that the more comprehensive grouping also shares a community of interest is insufficient to meet this burden.

In view of the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: all full-time and regular part-time automotive techs servicing Verizon vehicles employed by the Employer in Manhattan and the Bronx.

EXCLUDED: all guards, supervisors, managers, confidential employees, and all others excluded by the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time¹ and place set forth in the notice of election² to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the notice of intent to conduct election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit

¹ Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

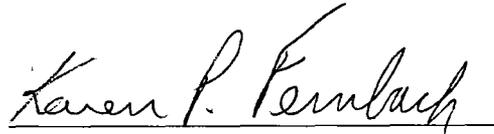
² The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

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.³ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Communication Workers

³ 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 that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Acting Regional Director, Region 2, 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 at the address below, on or before **April 6, 2012**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

of America.⁴

Dated at New York, New York,
March 30, 2012



Karen P. Fernbach
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

⁴Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by close of business on **April 13, 2012** at 5 p.m. Eastern Daylight Savings Time, unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically. If exceptions are filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than **11:59** p.m. Eastern Time on the due date. If submitted by mail or sent by a delivery service, it must be received by the close of business at **5:00** p.m. Eastern Time or be postmarked or given to the delivery service no later than **April 12, 2012**. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.