

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

LIFE QUALITY MOTOR SALES, INC.
Employer¹

and

Case No. 29-RC-9173

LOCAL 259, UNITED AUTOMOBILE
WORKERS OF AMERICA, AFL-CIO
Petitioner²

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Amy Krieger, a Hearing Officer of the National Labor Relations Board, herein called 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 record³ in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The undersigned hereby amends the record *sua sponte* as indicated in Appendix A attached hereto. References to the record will hereinafter be abbreviated as follows: "Tr. #" refers to transcript page numbers, "Pet. Ex. #" refers to Petitioner's exhibits numbers, and "Er. Ex. #" refers to Employer Exhibit numbers.

2. The parties stipulated that Life Quality Motor Sales, Inc., herein called the Employer, is a New York corporation, with its principal office and place of business located at 940 Remsen Avenue, Brooklyn, New York, herein called the Employer's Brooklyn facility, where it is engaged in the retail sale and service of new and used automobiles. During the past year, which period is representative of its operations generally, the Employer, in the course and conduct of its business operation, derived gross revenues in excess of \$500,000. During that time, the Employer also purchased and received, at its Brooklyn facility, automobiles and automobile parts valued in excess of \$5,000, directly from suppliers located outside the State of New York.

Based on the stipulation of the parties, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization⁴ involved herein 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.

5. The Petitioner seeks to represent a unit of full-time and regular part-time service shop employees, parts department employees, and body shop employees employed at the Employer's Brooklyn facility, excluding all other employees, sales

⁴ A stipulation regarding the labor-organization status of Local 259, United Automobile Workers of America, herein called the Petitioner, was inadvertently omitted from the record. A stipulation signed by the parties is attached hereto as Appendix B.

employees, office clerical employees, guards and supervisors as defined in the Act.⁵ Specifically, the petitioned-for unit consists of approximately 22 employees in the following classifications: 9 service technicians, 2 car jockeys/drivers and 1 porter (in the service department); 3 parts counter employees, 1 stock person and 1 delivery person (in the parts department); and 4 body technicians⁶ and 1 detailer (in the body shop). Petitioner generally characterizes the petitioned-for classifications as non-supervisory employees who handle cars or parts, as opposed to those whose duties are primarily clerical, administrative and/or sales-oriented.

The Employer does not dispute the inclusion of the petitioned-for classifications in the unit. Both sides agree that the petitioned-for parts-department employees and body-shop employees should be included. However, in the service department, the Employer also seeks to include the following *additional* positions: 1 dispatcher, 1 foreman/troubleshooter, 1 quality control person, 1 scheduler, 2 service advisors, 2 cashiers, 1 file clerk and 2 warranty clerks. (The Employer's proposed unit would thus include a total of approximately 33 employees.) The Employer essentially argues that these additional, non-supervisory service-department employees, some of whom it characterizes as "plant clericals," share such a strong community of interest with the petitioned-for employees that it would be inappropriate to exclude them.

By contrast, the Petitioner argues that the dispatcher, foreman, and quality control person must be excluded as statutory supervisors and, in any event, do not share

⁵ The petitioned-for unit appears as amended at the hearing.

⁶ Since all four body-shop technicians are male, they are also called the "body men." Male pronouns are sometimes used herein to refer to employees generically, since most of the employees concerned are male.

a community of interest with the petitioned-for employees. The Petitioner also asserts that the other disputed classifications (scheduler, service advisors, cashiers, file clerk, warranty clerks) do not share such a strong community of interest so as to mandate their inclusion in the unit. The Petitioner has indicated its willingness to proceed to an election in any unit found appropriate herein.

In support of its position, the Petitioner called five witnesses to testify: service technicians Evangelos Liangas, Forrest Jackson and Frank Papellas; detailer Alberto Foster; and union organizer Brian Schneck. The Employer called two witnesses to testify: general manager Phillip Salazar and service manager Frank Sangiorgio. Neither party called any employees in the disputed classifications to testify.

General background facts

The Employer is a BMW dealership, engaged in selling and servicing new and used BMW cars. The Employer also sells BMW parts directly to customers on a retail basis.

The owner and president of the company (also called the "dealer-principal") is James Giordano. The general manager, Phillip Salazar, reports directly to Giordano. The following four department heads work under the general manager: service manager Frank Sangiorgio, parts manager Frank Manuzza, body-shop manager John Marzulo, and sales manager Charles Caparero.⁷

⁷ The sales manager's last name is not entirely clear from the record. At some points, it is spelled "Kaparile."

It should be noted that, although the parties did not expressly stipulate to the supervisory status of these managers, neither side sought to include them in the bargaining unit. The record clearly establishes that the managers have authority, *inter alia*, to hire and fire employees, to determine their wage rate, and to assign overtime. I hereby find that they are supervisors as defined in Section 2(11) of the Act.

The eastern end of the Employer's Brooklyn facility contains: (1) a showroom for new cars; (2) several sales offices; (3) the owner's office; (4) an office for the general manager and billing, bookkeeping, and payroll employees; and (5) two restrooms. This entire area will be referred to herein as the sales area. The central portion of the facility contains the parts department, including: a parts inventory area, a parts receiving area, the parts manager's office, and two parts counters (retail and non-retail). The western portion of the facility contains the service department, described below in more detail. It appears that customers who enter from the north side of the building (presumably from Remsen Avenue) may choose either to go east along a passageway towards the sales area; or to go slightly south to the retail parts counter if they want to buy car parts directly; or to go west towards the service department. There are solid walls separating the sales area from the parts department, so the northeastern passageway is the only connection between the two. Solid walls also separate the parts and service departments, except that there is a second, open parts counter between the two. This is the "non-retail" parts counter, where service-department employees can get parts for their repairs.

Customers who enter the service department (going from north to west) first encounter an area with a few desks for the service advisors and scheduler, plus a cashier's booth. This area will be referred to herein as the service department entrance area.

Adjacent to the service department entrance are the service manager's office, the dispatcher's office, and the warranty clerks' office. Beyond those offices, occupying the western-most portion of the facility, is a large service shop containing several car-repair

bays where the service technicians work. The area between the central parts department and the western service department also contains a locker room, restrooms, a porter's closet, a lunch room, and a conference room. These latter areas are connected by various walls, windows, doorways and hallways which will not be described in detail here.

Finally, the body shop is located in a separate building, just south of the main building. The employee parking lot is also located south of the main building.

Description of uncontested classifications

Before the contested classifications of employees are described, the uncontested classifications will be described as background. As for the body shop, the Petitioner and Employer both agree that the body technicians and the detailer should be included in the bargaining unit. The **body technicians** work on cars that have been damaged by collisions or theft, repairing the cars' frame, exterior paneling, fenders, paint, etc. The cars are usually towed to the Employer's facility. The body technicians work in the body-shop building. They wear a blue uniform, consisting of a light blue shirt with a BMW logo and dark blue pants. The body shop manager, John Marzulo, coordinates the technicians' work within the body shop, and also coordinates with the customers' insurance companies. If a customer's car also needs service or repairs in addition to body work, the car goes to the service department in the main building, where the dispatcher then assigns it to a service technician. The body technicians are paid an hourly rate for 40 hours per week, plus overtime when approved by the body shop manager. Three of the four body technicians (who were hired a few years ago, when the body shop first opened) also receive "incentive" pay that is a percentage of the total

number of labor hours sold by the body shop, although a fourth body technician (who was hired more recently) does not receive this incentive pay.⁸

The **detailer** also works in the body shop, although he is not actually involved in body work. He cleans, washes, waxes and buffs cars, both new and used. The detailer knows which cars to prepare by looking at a board near the dispatcher's desk (located in the service department in the main building), where the dispatcher posts the car keys in lines, showing which cars have been promised to customers on this day, the next day, and so forth. The detailer also wears a blue uniform. Detailer Alberto Foster⁹ used to be paid a rate of \$8.50 per hour for 40 hours per week. Under a subsequent incentive system, Foster continued to be guaranteed at least \$8.50 per hour for 40 hours per week. However, based on an estimate that a car takes 1½ hours to prepare (the equivalent of \$12.75 per car at his hourly rate), Foster could earn more than the guaranteed minimum if he finished the cars faster and got more cars done within the 40 hours. He also earned

⁸ The four body-shop technicians were identified as Daniel Magnini, Gregory Francis, Freddy Barrios, and Byron "Tony " Barrios. As of the December 1998 hearing in the instant matter, Byron Barrios had been on disability leave for a few months, but was hoping to return to work that very week. Salazar testified that the Employer was waiting to receive a certification from Barrios' doctor as to what type of work Barrios could do. Salazar also testified that a fifth body-shop technician, Benjamin McCrea, who had filled in during Byron Barrios' absence, would "more than likely" be laid off as soon as Barrios could resume his normal duties. The Employer argues that McCrea is ineligible to vote because of his temporary status. However, since Barrios' ability to resume his duties was still uncertain at the time of the hearing, McCrea's possible layoff was also uncertain. Thus, based on the record at this time, McCrea's expectancy of continued employment is impossible to determine. If McCrea is still employed by the Employer at the time of the election directed herein, he may vote subject to challenge.

Finally, I hereby summarily reject the Employer's contention that McCrea -- who works in the Employer's body shop building, directly under the supervision of the body-shop manager, on work assigned by the manager as part of the Employer's regular body work, at times assigned by the manager, presumably using the Employer's tools and equipment, and who pay is based on the amount of time worked -- is an "independent contractor."

⁹ The layoffs of detailer Alberto Foster and technician Evangelos Liangas on December 2, 1998, were the subject of an unfair labor practice charge, which was subsequently withdrawn. Their layoffs will not be discussed in detail here, except insofar as they may relate to the foreman/troubleshooter's alleged supervisory status.

overtime pay for any hours worked in excess of 40. A recently-hired detailer, "Ricky" Ricardo Seale, earns an hourly rate plus overtime, but does not participate in the incentive system. All body shop employees (technicians and detailer) work Monday through Friday, 7:30 AM to 4:30 PM.

As for the parts department, the Petitioner and Employer both agree that the parts-counter employees, the stock person and the delivery person should be included in the bargaining unit. As indicated above, the parts department is located in a central area of the Employer's main building, accessible both to customers and to service-department employees. The **parts-counter employees** sell parts to customers at the retail counter and distribute parts to technicians at the non-retail counter. They work in slightly staggered shifts (e.g., one person from 7:30 AM to 4:30 PM, another from 8:30 AM to 5:30 PM) in order to cover the hours when parts are needed (i.e., starting at 7:30 AM, Monday through Friday, for technicians; 8:00 AM to 5:00 PM, Monday through Friday, and 9:00 AM to 1:00 PM on Saturdays for retail customers). The **stock person** receives all the parts that are delivered to the Employer's facility, and stocks them on the parts-department shelves. He works Monday through Friday, 7:30 AM to 4:30 PM. The **delivery person** delivers parts to other dealerships, working 8:00 AM to 5:00 PM, Monday through Friday. These employees are supervised by parts-department manager Frank Manuzza. They all wear a uniform that includes a white shirt with a BMW logo. (Witnesses differed as to whether they wear uniform dark blue pants, or their own pants.) Parts-department employees punch time cards that are located near the dispatcher's desk in the service department. They are paid various hourly rates, plus

overtime as approved by the parts manager. The parts-counter employees also receive a monthly commission based on how many parts the department sells.

As for the service department, the Employer and Petitioner agree that the service technicians, the car jockeys/drivers and the porter should be included in the bargaining unit. The manager of the service department is Frank Sangiorgio.

The **service technicians** (also known as mechanics) actually perform the repair and service work on customers' cars. They work Monday through Friday, 7:30 AM to 4:30 PM. Service technicians are divided into classifications A, B and C, based on whatever training and certifications they have received from BMW and based on service manager Sangiorgio's assessment of their skills. Class C technicians, the least experienced, are generally assigned to perform simple tasks, such as oil changes. Class A technicians, the most experienced and highly paid, can perform the more complicated repairs, such as those involving electronics. As described in more detail below, service technicians initially get their repair assignments from the dispatcher.

Service technicians work primarily in the car-repair bays, located at the western-most portion of the Employer's facility. When necessary, they go to the non-retail parts counter to obtain parts. Service technicians wear the same blue uniforms as body-shop employees. They store their uniforms, and change in and out of them, in the locker room located between the service and parts departments. At a minimum, service technicians are guaranteed 40 hours of pay at their hourly rates, which range from \$13 to \$21 per hour based on their skill-level and experience. However, under a rather complicated incentive system, service technicians may also earn more money if they perform repairs faster than the standard repair-times estimated in BMW's warranty

manual. In essence, if service technicians can perform in 40 hours what is considered by BMW to be more than 40 hours worth of work, they are paid for that additional work. They also earn overtime when they actually work more than 40 hours in a week. This incentive system applies to all the technicians in the service department who perform repairs. It does not apply to the one "prep" technician who prepares customers' new cars, for example, by removing temporary battery cables, setting the clock, adjusting the tire pressure, and installing such optional features as a CD player or telephone.

The **car jockeys** (also known as drivers) pick up and deliver cars for service to/from the customers' homes or workplaces. When customers drive their own car in for service (to a canopied "drive through" area located on the north side of the main building, near the service department entrance), the car jockeys write down the car's plate number, condition and other information; tag the car and keys; and give the customer a receipt to bring inside to the service department. The car jockeys then put plastic covers on the seats, park the car and bring the tagged keys into the dispatcher. They work primarily outdoors, in the drive-through and parking areas, but also spend time in the service department entrance and the dispatcher's area. Car jockeys wear a uniform, although witnesses differed as to whether they wear the white shirt or blue shirt. They work from 7:30 AM to 4:30 PM, Monday through Friday. They are paid an hourly rate, plus overtime when authorized by service manager Sangiorgio.

The **porter** is responsible for cleaning the facility, such as wiping the cars in the showroom, cleaning the coffee pot, taking out the garbage, etc. As a result, the porter works in various locations throughout the facility, except for certain areas of the parts department which are cleaned by the stock person. The porter stores his supplies in a

closet near the non-retail parts counter. He wears a blue uniform. He works Monday through Friday, 8:00 AM to 5:00 PM. The porter is paid a rate of \$8 per hour, plus overtime as approved by service manager Sangiorgio.

Description of contested classifications in the service department

As noted above, the Employer argues that the following additional service-department classifications must also be included in the bargaining unit: dispatcher, foreman/troubleshooter, quality control person, scheduler, service advisors, cashiers, file clerk and warranty clerks. The disputed issues include whether the dispatcher, foreman and quality control person are statutory supervisors, and whether all of these additional classifications share such a strong community of interest with the petitioned-for employees that their exclusion would render the resulting unit inappropriate. These classifications will be described "sequentially" herein, following the sequence of customers and their cars through the shop.

Scheduler

An employee named Freddy Borrero,¹⁰ who used to work for the Employer as a car jockey, subsequently became a scheduler or "appointment maker." Service manager Sangiorgio testified that this new position was created a few months ago to increase customer satisfaction. As the scheduler, Borrero answers the service-department telephone, and books service appointments for customers. He sometimes consults with the service manager or service advisors to determine how many hours to book for a certain type of repair. The scheduler puts preliminary information into the computer

¹⁰ In technician Liangas' testimony, he repeatedly referred to the scheduler as Freddy "Barrios" rather than "Borrero." The Employer's records indicate that the scheduler's name is Freddy Borrero, Jr. (Pet. Ex. 2). (Liangas may have been confusing Borrero with a body-shop technician named Freddy Barrios.)

system, such as the customer's name and type of repair. The scheduler also coordinates the car jockeys' pick-up and delivery of customers' cars and loaner cars. He has a desk immediately next to the customers' entrance to the service department, in the same room as the service advisors. It appears that the scheduler has regular contact with customers, service advisors and car jockeys, but little contact with the service shop technicians, parts or body-shop employees. The scheduler does not wear a uniform. He works from 7:30 AM to 4:30, Monday through Friday. He is paid by an hourly rate, plus overtime as approved by Sangiorgio.

Service advisors (a.k.a. service writers)

As mentioned above, customers who call in advance to make appointments already have some preliminary information in the computer by the time they arrive. After the car jockeys take the customers' cars and keys, the customers proceed inside to the service department entrance, and talk to the service advisors there. The service advisors discuss what repairs are needed with customers in more detail, and put additional information into the computer. The service advisors then print a written repair order from the computer. The repair order is brought to the dispatcher's desk near the service shop, either by the service advisors themselves or by other people (e.g., service manager, car jockeys) who are going in that direction. The customer's car keys and repair order are eventually joined at the dispatcher's desk, to be assigned to a service technician.

The advisors serve as the primary contact with service customers, both for writing the initial repair order and for any subsequent issues that arise. For example, if a

technician diagnoses additional problems when he examines the car, a service advisor must contact the customer for authorization to make additional repairs. After the repair is done, an advisor also notifies the customer and prints up the final invoice for the customer's payment.

Service advisors do not work on the cars themselves, and are not required to know how to perform repairs. Nevertheless, general manager Phillip Salazar testified that the best service advisors are often those who worked as technicians, since they understand the cars' mechanical operations. On the other hand, they also have to be able to communicate well with customers, which some technicians cannot. Salazar testified that one of the Employer's current service advisors (Fabian Bonici) used to be a technician and, conversely, one of the technicians (Frank Papellas) used to be a service advisor. The other service advisor (Frank Reda) was apparently not a technician, although his background was not explained on the record.

Two issues -- where the service advisors work within the Employer's premises, and how much interaction they have with service technicians and other petitioned-for employees -- are interrelated. There is no dispute that the service advisors have desks with computers in the customers' entrance area of the service department, near the scheduler and the cashier. General manager Salazar generally testified that this is where the service advisors work. Witnesses testified both about technicians' contact (or lack thereof) with the service advisors in the service department entrance and, conversely, about service advisors' contact with employees in other areas of the facility.

Specifically, the three technician-witnesses testified that their contact with the service advisors in the service department entrance is extremely limited. In early- to

mid-1998, when the Employer was completing renovations of its facility, foreman Simon Wong announced at a meeting that technicians should not speak to service advisors in the service department entrance (where customers are) because of their dirty hands and uniforms. Technicians were told to direct all communication to the service advisors through the dispatcher. As a result, technicians testified that they have very little direct

contact with the service advisors or customers¹¹ in the service department entrance. Service manager Sangiorgio essentially corroborated this testimony regarding the policy announcement, although he claimed that the policy has not been enforced. Sangiorgio claimed that if service technicians need to communicate with service advisors (e.g., to get authorization for additional repairs), they talk to the dispatcher first and then to the service advisors directly. The only specific example of service technicians communicating with the advisors in the service department entrance area came from technician Evangelos Liangas. Liangas stated that when foreman Wong tried to cover for the dispatcher in the dispatcher's absence, Wong became overwhelmed and did not have time to relay all the communications between the service technicians and the service advisors. On those occasions, Wong would tell Liangas to speak to the service advisors directly. Liangas stated that his uniforms were "usually pretty clean," so he would not get his "head chewed off" if he went into the service department entrance area.

¹¹ All three technician-witnesses (Liangas, Jackson and Papellas) testified that, unlike the service advisors, they as technicians have almost no direct contact with customers. Jackson explained that customers are not allowed to enter the service shop area. If a technician or any employee happens to see a customer in another location (e.g., while leaving the facility during a break), he should greet the customer, ask if the customer needs any help, etc. However, the service technicians testified that they do not talk to customers regarding the work on their vehicles.

Witnesses also differed somewhat as to how frequently the service advisors have contact with employees in other areas of the service and parts departments. The service technicians generally said they have little contact with service advisors, although Liangas admitted a few exceptions. Specifically, Liangas recalled occasions where a repair (e.g., involving a car flooded by weather conditions) was so problematic that Liangas wanted to physically show the problem to the service advisor, so that the advisor could better explain it to the customer. Liangas also admitted to seeing service advisors "here or there for a minute," e.g., when the advisors "drop off the paperwork" (presumably at the dispatcher's desk) or at the non-retail parts counter. By contrast, service manager Sangiorgio claimed that advisors spend up to 60% of their time dealing with parts employees and service technicians. On cross examination, Sangiorgio explained that his 60% estimate included time that the service advisors spend communicating with the dispatcher. The record does not contain any more specific estimates of how much time the service advisors spend in contact with the petitioned-for employees.

It is undisputed that service advisors do not wear uniforms.

The service advisors usually work from 7:30 AM to 4:30 PM, Monday through Friday, although they sometimes have to stay past 4:30 PM if a customer wants to pick up his/her car later. Service advisors earn a salary of \$500 per week. They do not punch a time clock, and do not receive overtime. Since part of their job is to "sell" service to customers, service advisors also earn a monthly commission based on the total amount of labor hours and parts that they sell.

Additional information regarding service advisors' training is given below.

Dispatcher

The dispatcher, Henry "Hank" DeAngelo, has a desk in an office area located between the service department entrance and the service shop. As mentioned above, the written repair orders are delivered from the service advisors to the dispatcher's desk. DeAngelo's primary duty is to assign repairs to various service technicians in the shop. DeAngelo physically gives the repair order and the car keys to the assigned technician.

DeAngelo generally assigns simple repair work to Class C technicians, more complicated work to Class B technicians, and the most complicated work to Class A technicians. Although Sangiorgio could not recall whether DeAngelo uses a *written* list of the technicians' classifications, there seems to be no dispute that he is familiar with their classifications and assigns the work accordingly. The dispatcher also bases the distribution of assignments on the technicians' availability at a given time. General manager Salazar testified that the dispatcher's assignment of work does not require "independent thought" but rather is "a connect-the-dots type of thing." Salazar stated that the dispatcher consults the service manager if any "major" assignment decisions are needed, although he did not give any specific examples. Service manager Sangiorgio stated that he himself also influences the assignments, for example, telling DeAngelo to give a complicated repair to a new technician for training purposes.

As noted above, the dispatcher also acts as a liaison between the service advisors and the technicians. If a technician sees that the car has a problem not covered on the initial repair order, the technician must notify DeAngelo, who in turn notifies the service advisor, who in turn asks the customer for authorization to perform the additional work.

Service manager Sangiorgio, who initially decides how to classify technicians (A, B or C) when they are hired, testified that he subsequently meets with the dispatcher, the foreman and sometimes the quality control person to get their "feedback" on whether Sangiorgio should "advance" a technician to a higher classification. Sangiorgio said that he gives their recommendations "some weight," and then makes his decision. It is not clear from the record whether Sangiorgio conducts any independent review of the technicians for reclassification. No specific examples were given.

Sangiorgio testified that the dispatcher does not have authority to hire employees, or effectively to recommend the hiring of employees. In fact, Sangiorgio said that even though DeAngelo recommended some friends for employment, Sangiorgio did not hire them. Sangiorgio also testified that the dispatcher has not disciplined, discharged, transferred, or promoted employees.

It appears from the record that Sangiorgio is the only person who authorizes overtime in the service department, and that Sangiorgio decides how to divide the "CSI bonus" (which the company receives from BMW when its customer satisfaction index is high) for distribution among employees. There is no evidence that the dispatcher plays any role in deciding overtime or the CSI bonus.

Salazar testified that the dispatcher and the foreman used to attend monthly management meetings that the Employer instituted about a year ago, when the company's customer satisfaction index was dropping. At that time, the owner (Giordano), general manager (Salazar), and all four department managers attended those meetings, as well as the dispatcher and foreman, to discuss improving customer satisfaction and other issues. However, after a few months, the Employer decided that

the dispatcher and foreman "had no input" and did not "belong" at these meetings because they were not managers. They stopped being invited to the meetings about six to eight months ago.

The dispatcher works from 7:30 AM to 4:30 PM, Monday through Friday. The Employer's records indicate that DeAngelo earns \$825.20 per week for 40 hours, which is equivalent to \$20.63 per hour. Salazar described DeAngelo's earnings as a 40-hour "salary," and said that DeAngelo does not punch a time clock or receive overtime. The Employer also provides DeAngelo with a car to drive to and from work.¹² The value of this employer-provided vehicle (\$45.19 per week) also appears on DeAngelo's pay records, since it is considered taxable compensation.

It appears from the record that DeAngelo is not required to wear a uniform. Technician Liangas testified that DeAngelo does not, in fact, wear a uniform. Salazar testified that DeAngelo wears the uniform dark-blue pants, but only as a "personal preference thing for himself."

Sangiorgio testified that the dispatcher interacts with the technicians, service advisors, quality control person, parts employees and detailer. The dispatcher generally does not attend the weekly meetings which the service department holds with service technicians, to discuss BMW service bulletins and other technical information. There is no evidence that the dispatcher ever substitutes for technicians, or that he otherwise works on cars.

Foreman/troubleshooter

¹² The Employer also provides vehicles for the department managers, one of the sales employees, and occasionally the quality control person. The previous dispatcher (DeAngelo's predecessor) did not have an employer-provided vehicle.

Simon Wong is known as the shop foreman or "troubleshooter." Salazar described Wong as the best technician in the shop. There is no dispute that one of Wong's primary duties is to help the service technicians with difficult repairs. Sangiorgio estimated that Wong spends up to 80% of his time "in the car" helping technicians with repairs. Wong himself does not get assignments from the dispatcher but, rather, helps to complete repairs after the regular technicians get "stuck" on a problem.

Although service technicians initially get their assignments from the dispatcher, Wong may subsequently change their assignment by asking them to work on a different car. As a specific example, about a week before the hearing, technician Forrest Jackson was repairing an instrument cluster on one car, when Wong told him to stop working on that car and, instead, to finish another car that "had to go" back to the customer. Jackson estimated that Wong gives him these types of directions approximately four or five times per day. Service technician Frank Papellas estimated that Wong changes his assignment about once per week. Wong also helps to assign the technicians' work in the dispatcher's absence.

There is no dispute that Wong accompanies Sangiorgio on some job interviews for prospective service technicians, although the parties dispute whether Wong actually has authority to hire or effectively to recommend hiring. Technician Liangas testified that, when he was hired in April 1998, his interview started with Sangiorgio alone. Then Sangiorgio called Wong into the interview, to evaluate Liangas' technical experience since Sangiorgio himself does not work on cars. Wong asked Liangas about the work he had done (for Japanese car companies), such as how many hours per week

he used to perform. At some point, Sangiorgio said that Liangas was hired. After Sangiorgio said that Liangas was hired, while Wong walked Liangas out of the office, Wong said: "Try it out. If you like it, you stay. If you don't like it, you go back to the Japanese cars."

Technician Forrest Jackson, who had worked for the Employer previously, testified that Wong recommended hiring him again in early 1998. Specifically, Jackson stated that Wong called to see if he was interested in working for the Employer again. Wong said the Employer would pay \$18 per hour, but Jackson wanted more because he was earning more elsewhere at the time. Wong said he would get back to Jackson. During a subsequent phone conversation, Jackson agreed to meet with Wong and Sangiorgio. When they met in the Employer's lunch room, Wong looked at some paperwork that Jackson had brought. At some point, Wong said something like "Everything look[s] interesting on paper." At some other point,¹³ Jackson started to fill out a form (presumably an application form), but Sangiorgio said that Jackson did not have to fill it out since Jackson had worked there before. Wong asked how much Jackson wanted, and he said \$19 per hour. Sangiorgio said he could pay \$18.50 per hour, and Jackson agreed.

Sangiorgio admitted in his testimony that Wong recommended hiring Jackson, and that Wong attended the interview. Sangiorgio said he usually asks Wong to attend interviews for technicians, to ask about their technical knowledge. (Although Sangiorgio started as an auto mechanic in the 1960s, he is not familiar with recent technology such as auto electronics.) However, Sangiorgio said the final hiring decision

¹³ The exact order of events is unclear from Jackson's testimony.

is his own to make. Sangiorgio said there were times when he declined to hire someone recommended by Wong and, conversely, times when he hired someone whom Wong advised against hiring.

As mentioned above in connection with the dispatcher, Sangiorgio also seeks the foreman's "feedback" on whether to advance technicians to a higher classification. It is not clear from the record whether Sangiorgio conducts any independent review before deciding on the technicians' reclassification.

The record does not establish that Wong has any authority to decide or recommend wage increases for employees, or to adjust their grievances. Technician Papellas testified that, when he asked Wong for a raise a couple of months before the hearing, Wong responded that Papellas would have to talk directly to Sangiorgio or Giordano. (Papellas did not subsequently ask Sangiorgio or Giordano for a raise, and he did not receive one.) General manager Salazar testified that there were a "couple of times" when Wong relayed technicians' pay-rate disputes to Sangiorgio or Giordano. However, on cross examination, Salazar did not recall any specific examples, and did not know whether Sangiorgio or Giordano took any action on the pay-rate complaints relayed by Wong.

The record contains no evidence that the foreman has ever issued a written warning, suspension or disciplinary discharge of employees. The only example of a written warning came from Sangiorgio. Specifically, Sangiorgio testified that he once decided to issue a written warning to a technician whose work on a car created a safety hazard. Although Sangiorgio asked Wong to have the technician sign the warning form, Sangiorgio himself actually decided, wrote and signed the warning on behalf of the

company. Technician Liangas testified that Wong has verbally "warned" employees on occasion. For example, Liangas said that Wong threatened technicians that they would not get a CSI bonus if they did not do a better job. (As mentioned above, Sangiorgio is the person who actually decides how to divide up the CSI bonus from BMW.)

According to Liangas, Wong also threatened that "He [the owner] told me to fire you if the floor is not clean."

It is undisputed that Wong was present when Liangas was informed of his layoff on December 2, 1998, although the parties dispute the significance of Wong's presence. Specifically, Liangas testified that Wong approached him that day near the dispatcher's office, and asked him to come to Sangiorgio's office. When they entered the office Sangiorgio was not there, but Salazar was there. Salazar proceeded to tell Liangas that he had to be laid off because work was slow. In his testimony, Liangas did not mention that Wong played any role in the layoff, other than physically bringing him into the room and physically being present.¹⁴ For the Employer's part, Salazar testified that Giordano and Sangiorgio made the decision to lay off Liangas. Salazar was present when they discussed the layoff, but Wong was not involved. Salazar testified that, when he subsequently notified Liangas of the layoff, he asked Wong to be present simply as a witness.¹⁵

¹⁴ There was also some testimony from technician Jackson that, after Liangas emerged from the office that day, Liangas said "Simon [Wong] just fired me" (Tr. 164). However, Jackson later changed his changed his testimony somewhat, claiming that Liangas said "*They* just fired me" (Tr. 182, emphasis added). In any event, even if Liangas told Jackson that Wong had just fired him, that second-hand statement does not conform with Liangas' own first-hand testimony that Salazar (not Wong) informed him of the layoff, and does not establish that Wong had any role whatsoever in actually deciding the layoff.

¹⁵ Salazar testified that the Employer's policy is to have a witness present when employees are terminated. On cross examination, the Petitioner attempted to show that the Employer has not consistently followed this alleged policy, giving an example of another employee who was recently terminated without a witness. However, even if Wong's presence at Liangas' layoff was unprecedented, it does not prove that

Witnesses Jackson and Papellas gave somewhat inconsistent accounts regarding statements that Wong allegedly made regarding his authority to terminate employees. Specifically, Jackson testified that, sometime the week after Liangas was laid off, Wong said to him (Jackson), Frank Papellas and a couple of other employees: "I guess if you guys [are] going to bring the union in, maybe I need to fire me a few more guys" (Tr. 166). However, Papellas' account of that conversation was different. According to Papellas, after a conversation between Wong and parts manager Manuzza, Wong turned to Jackson and said: "If I would have wanted you [?] to fire anybody I could have wrote [sic] you up already, anybody for any kind of reason" (Tr. 215). Papellas did not recall Wong saying that he would need to fire guys if they brought the union in (Tr. 216). In any event, this inconsistent testimony shows, at most, that Wong may have expressed a subjective belief that he has authority to discipline and discharge employees. It does not show that the Employer has actually given him such authority, and the Petitioner's witnesses gave no specific examples to establish that the foreman himself actually exercised any such authority. For the Employer's part, Sangiorgio testified that Wong has never discharged any employees, or recommended their discharge. Sangiorgio also stated that when he receives complaints from Wong (or from anybody) regarding problems in the service shop, he investigates the complaints himself.

Wong had any role in *deciding* the layoff. For purposes of Section 2(11), the evidence must show that the alleged supervisor has authority to lay off employees, or effectively to recommend their layoff. Thus, evidence regarding Wong's mere presence when Liangas was notified of his layoff, and regarding its consistency or inconsistency with the Employer's usual policy, is not probative of Wong's supervisory status and will not be relied on herein.

There is no evidence that Wong schedules employees, or approves their overtime. The record indicates that only service manager Sangiorgio approves overtime for the service-department employees.

As mentioned above in connection with dispatcher DeAngelo, foreman Wong no longer attends the monthly management meetings.

There was a great deal of testimony, not all of which will be detailed here, regarding Wong's weekly meetings with the service technicians. Essentially, the record indicates that Wong meets with technicians on Wednesdays to distribute and review BMW service bulletins and to discuss other service-related issues. The quality control person (Salvatore Invincible) and occasionally Sangiorgio also attend these weekly meetings. Wong sometimes postpones or cancels the meeting if he is too busy with other work. Sangiorgio testified that he meets with Wong every Wednesday morning before the meeting, to go over the agenda. Sangiorgio gives the service bulletins to Wong for distribution, and he also tells Wong what announcements to make at the meeting. Service technicians can also raise issues at the weekly meetings, which Wong may relay to back Sangiorgio. For example, Sangiorgio testified that technicians said they were spending a lot of time washing the service-shop floors. Sangiorgio subsequently decided to have technicians wash the floor only in their own service bay.

Wong is scheduled to work on the same schedule as service technicians, 7:30 AM to 4:30 PM, although he typically works an extra hour per day. Wong is paid \$22 per hour, plus overtime as approved by the service manager. Wong usually tells Sangiorgio that he (Wong) has to stay late, for example, to finish setting up the computers or the stalls for the next day. Sometimes Sangiorgio tells Wong not to stay

late, for example, if Sangiorgio has to leave. (Sangiorgio is the last to leave because he locks up the shop.) Wong does not participate in the service technicians' incentive program described above.

Wong has a desk, located near the locker room, in the area between the parts department and the service shop. However, he spends a great deal of time working away from his desk, working alongside the technicians in the service shop and in other areas.

Finally, Wong wears a uniform with the white BMW shirt.

Quality control person

After cars are repaired by the service technicians (with the foreman's assistance, if necessary), they are inspected by the quality control (QC) person, Salvatore Invincible. The QC person test drives cars, makes sure that the repairs on the written repair order were done properly, and reviews a standard checklist of items.

There is no dispute that the QC person may tell technicians directly to rectify their mistakes or omissions, and that he generally reports the mistakes to others including the service manager. However, witnesses differed somewhat as to exactly how Invincible reports the mistakes. Technician Liangas testified that, although Invincible is "supposed to" report problems to the dispatcher, he actually goes to Wong or Sangiorgio most of the time, and that Wong tells the technicians to fix the mistake. General Manager Salazar testified he was "pretty sure" that Invincible reported problems directly to Sangiorgio, who in turn would ask the technicians to rectify the problem. However, Sangiorgio himself denied that Invincible reports problems immediately to him, stating: "I have certain rules that I set forth ahead of time, and not everything has to go through me." Specifically, Sangiorgio testified that if Invincible notices a minor problem, e.g., that the technician forgot to replace a light bulb or wiper blade, Invincible may return the car to the technician to solve the problem right away. However, if Invincible notices a more serious problem, e.g., that the "check engine" light still goes on, Invincible may need to talk to the dispatcher about scheduling the car for further diagnosis and repair. Finally, Sangiorgio testified that Invincible gives him a daily list of "returns." Sangiorgio uses the lists to monitor problems, to decide if further training

is necessary, and to decide whether to have Wong or DeAngelo talk to a technician about a problem.

Although the service technicians initially get their assignments from the dispatcher, their work may be interrupted by Invincible's instructions to rectify a mistake. For example, technician Jackson testified that Invincible once "took him off" one car, to have him repair a flat tire and replace a bulb on another car that Jackson had repaired earlier. Jackson estimated that Invincible tells him what to do in this manner a few times a day.

The QC person sometimes speaks at the weekly meetings with Wong and the service technicians. Technician Papellas estimated that, approximately twice per month, Invincible attends the meeting to remind technicians about things they have forgotten. Technician Liangas testified that one time, after he forgot to check a spare tire that was two pounds low on air, Invincible complained and a special meeting was called to remind technicians to check the spare tires.

The record contains no evidence that the QC control person's reports of mistakes have resulted in discipline or any other adverse impact on the technicians' employment status (e.g., discharge, demotion, pay cut, reclassification). Sangiorgio testified that Invincible has never hired, transferred, disciplined, discharged or promoted any employees, or recommended any such action. Invincible neither approves overtime nor decides on the CSI bonus for service department employees.

Invincible wears a uniform (white shirt and dark blue slacks). He usually works the same hours as the service technicians, 7:30 AM to 4:30 PM. Each day, he starts his work from the dispatcher's area, but spends the day working in various locations,

including outdoors (i.e., when test-driving cars) and the service shop. Sangiorgio testified that as QC person, Invincible interacts with service technicians, as well as the dispatcher, foreman, service advisors and cashier. Invincible is paid a rate of \$15.62 per hour, plus overtime as approved by the service manager. He does not participate in the technicians' incentive program.

In addition to evidence regarding Invincible's possible supervisory status and his community of interest with the petitioned-for employees, the record also contains evidence regarding Invincible's status as a relative of management, although this was not explicitly identified as an issue at the hearing. Specifically, the record indicates that Invincible is an uncle to the company's owner and president, James Giordano. He is also an uncle to service manager Sangiorgio. (Giordano and Sangiorgio are first cousins.) Thus, in Invincible's capacity as quality control person in the service department, he is supervised by his nephew, Sangiorgio. Invincible is also the great-uncle of Vivian Giordano, the owner's daughter who works in the owner's office in an untitled management position. Invincible drives a company-owned car approximately twice per week, on days when he does not drive to work with James Giordano. Invincible's payroll records do not indicate the value of the employer-provided vehicle; it appears that he does not pay income tax on that compensation. As noted above, other people who regularly drive company-owned cars include the departments managers, one of the sales employees, and the dispatcher. Sangiorgio also testified that employees in any classification could use a company car for a "special occasion," such as to drive home if their own car breaks down, or a white car for a wedding.

Cashiers

The Employer employs two part-time cashiers. One works from 7:30 AM to 1:00 PM, and the other works from 1:00 PM until closing.

After each car is finally repaired and inspected, a service advisor notifies the customer that the car is ready, and prints up a final invoice. It is not clear from the record whether the customer physically obtains the invoice from the service advisor or from the cashier. In any event, when customers come to pick up their car, a cashier looks at the repair order/invoice to determine if they have to pay. (Presumably, the customers do not have to pay when the repair is covered under warranty.) The cashier then accepts payment for service work, gives the customer a copy of the final repair order/invoice, and keeps a copy for the Employer's records. The cashier also takes payment for customers who want to obtain parts from the retail parts counter.

According to Sangiorgio, the cashiers also help answer the phone, referring calls to the service advisors or scheduler, as appropriate, or taking messages for them.

The cashiers work in a windowed booth, a small area which Salazar described as "like a glass atrium," between the service department entrance and the retail parts counter. They do not wear a uniform. They do not come in direct contact with the cars or parts. Technician Jackson testified that he has no contact with the cashiers.

Sangiorgio testified that cashiers regularly have contact with the service advisors, car jockeys, scheduler, parts employees and warranty clerk. Specifically, as for the parts employees, Sangiorgio explained that the cashiers must "have constant communication" to verify that customers have paid for their parts before picking them up at the retail parts counter. (He did not explain exactly how this communication takes place.)

Sangiorgio testified somewhat summarily about the cashiers' contact with car jockeys and warranty clerks, without explaining the nature of the contact.

The cashiers earn a rate of \$8 per hour. Because they work part-time, they generally do not earn overtime. They do not participate in any commission or incentive program, other than the CSI bonus for which all employees are eligible.

Warranty clerks

The Employer employs two warranty clerks. A full-time warranty clerk, Robert Patrick, works from 8:00 AM to 5:00 PM, five days per week, whereas a part-time clerk, Helen Hnetinka, works from 7:00 or 7:30 AM to 3:00 or 3:30 PM, three days per week.

After the repairs are finished and the customers have paid, Sangiorgio obtains the final repair orders/invoices from the cashier, and reviews them. Sangiorgio gives the papers regarding non-warranty work (i.e., paid by the customer rather than BMW) directly to the file clerks for filing, as described in more detail below. However, Sangiorgio must give papers regarding warranty work to the warranty clerks for further processing, in order to charge BWM for the warranty work. Specifically, the warranty clerks check the notations which the service technicians have made on the repair order, indicating what parts were used, what work was done, and how long it took. In some cases, if the warranty clerks cannot decipher the technicians' notations, the clerks may have to ask the technicians about them. The warranty clerks then "translate" these notations into various BMW code numbers, and submit the information (via computer) to BMW for warranty payment. Thus, the warranty clerks deal primarily with the documentation process related to warranty payment. As technician Liangas testified, the warranty clerks do not actually "touch" the cars or parts.

Witnesses gave vastly differing accounts of how much time the warranty clerks spend in contact with service technicians and other employees. On one hand, technician Liangas testified that he never has contact with Helen Hnetinka, and that Robert Patrick "might" ask him a question only when they see each other smoking cigarettes outside. Liangas claimed that the service advisors' and technicians' notes on the repair order are usually self-evident but that, if the warranty clerks had any questions (e.g., why a particular repair took so long) they would ask the foreman or dispatcher before asking the technician. Technician Jackson testified that warranty clerk Patrick asks him to explain his notations approximately once or twice per week. Technician Papellas stated that he has contact with Patrick "sometimes on a daily basis," to explain a repair in more detail. For the Employer's part, Sangiorgio testified that Patrick spends up to 80% of his time with the dispatcher and technicians in the service shop, 10% of his time in the parts department, and only 10% of his time "actually doing the work."

The warranty clerks work in an office with two computers, filing cabinets and all the BWM warranty books and manuals. The warranty office is located (along with the dispatcher's office and service manager's office) in the area between the service department entrance and the service shop. Technician Liangas testified that the warranty office is separately partitioned, and cannot be seen from the service shop. The warranty clerks also work in other areas, e.g., if they need to go consult with service advisors, dispatcher, service technicians, or parts employees in completing their documentation.

For some reason which is not explained on the record, one of the warranty clerks wears a uniform, and one does not. Specifically, the record indicates that Robert Patrick

wears a white-shirt uniform, whereas Helen Hnetinka does not.¹⁶

Patrick earns a rate of \$10.50 per hour, plus overtime as approved by Sangiorgio. Hnetinka earns \$9.73 per hour. Since Hnetinka is part-time, she normally does not earn overtime. The warranty clerks do not participate in any commission or incentive program, other than the CSI bonus for which all employees are eligible.

File Clerks

After Sangiorgio reviews the completed repair orders, he gives them to the file clerk, Elsa Salazar.¹⁷ The file clerk is responsible for filing the orders, alphabetically by customer. Sangiorgio testified that the Employer is in the process of converting to a new filing system, so the file clerk has also worked on transferring information from the old files to the new files. Like the cashiers and warranty clerks, the file clerk does not come in contact with the actual cars or parts. Technicians Jackson and Papellas testified that they have no contact with the file clerk.

The file clerk works in two locations. She puts the file folders together in the conference room (between the parts department and the service department), and actually files them near the service advisors (in the service department entrance area).

The file clerk does not wear a uniform.

The file clerk works full-time, from 8:00 AM to 5:00 PM, Monday through Friday. She earns a rate of \$8 per hour, plus overtime as approved by service manager

¹⁶ For some reason, the two warranty clerks are also listed in separate departments on the Employer's payroll records (Pet. Ex. 2). Specifically, Hnetinka is listed under a service department called "Department 22C clerical," whereas Patrick is listed under a service department called "Department 23C other salaries."

¹⁷ The record does not indicate whether file clerk Elsa Salazar is related to general manager Phillip Salazar.

Sangiorgio. She does not participate in any commission or incentive program, other than the CSI bonus for which all employees are eligible.

Other community of interest factors

Both Salazar and Sangiorgio testified about the training that employees receive from BMW, sometimes in the form of videotapes, computer disks, or a satellite hookup to BMW North America, and sometimes in classes at BMW's regional headquarters in New Jersey or other locations. Technicians, who must be certified by BMW, receive classroom training at least several times per year, according to general manager Salazar. However, it is not clear from the record exactly which other employees receive what types of training. Salazar testified generally that some training (e.g., a "model update" whenever BMW comes out with a new model) applies to all employees, whereas some other types of "intensive training" (unspecified) apply only to sales employees, service advisors, technicians and/or parts employees. When Salazar was asked more specifically about this during cross examination, he was somewhat vague, stating for example that "There could be combined classes and there could be specific classes." Salazar initially stated that all employees, including the porter, receive training several times per year from BMW, but then admitted that he did not know specifics about the porter's training, nor the file clerk's, car jockeys' or dispatcher's training. Salazar also stated that there "may" be a common training class which service advisors, technicians and parts employees attend, but he then admitted that he does not know one way or the other. Service Manager Sangiorgio testified that practically all employees receive some kind of BMW training. For example, the cashiers have watched a video regarding interaction with customers. Sangiorgio's testimony regarding the technical training was

also somewhat vague, stating for example that "they [BMW] tell us this gentleman has got to be sent here for this school, that school and that school." Sangiorgio stated that he sometimes likes to "cross reference" employees by sending a service advisor to a technical class "so he could get a better understanding." However, service technicians Papellas and Jackson testified on rebuttal that they have not seen service advisors attend the technicians' training classes.

As noted above in connection with the foreman's duties, BMW sends service bulletins which are distributed to service technicians at their weekly meetings. These bulletins, which cover a variety of topics related to service and parts (e.g., how to install a roll bar on a convertible), are also considered part of employees' ongoing training. Salazar admitted that service advisors do not attend the weekly meetings where these bulletins are reviewed and distributed to service technicians. However, Salazar explained that the written bulletins are also distributed to the service advisors, parts employees, dispatcher, warranty clerks, and scheduler. The bulletins are also available to everyone in a set of books located outside the lunch room, between the parts and service departments.

As indicated above, foreman Wong sometimes substitutes for dispatcher DeAngelo in DeAngelo's absence. The record indicates no other examples of interchange or substitution among employees. In fact, when the Hearing Office explicitly asked about interchange of employees, Salazar responded that there was none.

The record indicates that all employees may use the lunch room, located between the parts and service departments. There is also a locker room adjacent to a men's room

(between the parts and service departments), which is used primarily for the technicians to change into their uniforms.¹⁸

To recapitulate the evidence regarding uniforms, the record indicates that all of the petitioned-for employees (parts employees; body shop employees; and the technicians, car jockeys and porter in the service department) wear uniforms, with either a blue or white BMW shirt. The foreman and quality control person in the service department also wear uniforms. The dispatcher is not required to wear a uniform. The scheduler, service advisors, cashiers, and file clerk do not wear uniforms. Salazar characterized the wearing of uniforms in the service department by saying "basically [it is] anyone that works ... with regards to anywhere around cars." For some reason, one of the warranty clerks wears a uniform while the other does not.

The evidence regarding employees' compensation indicates a variety of wage rates, salaries and incentive systems described above, which will not be reiterated here. However, the following evidence regarding employees benefits must also be noted. All employees are entitled to Employer-paid health insurance, and six days of paid sick leave per year. All employees get one week of paid vacation after one year of employment, then two weeks of vacation after three years of employment. There is no pension plan. Employees may participate in a payroll deduction plan, to put part of their earnings into a mutual fund account and/or for life insurance. Employees may also purchase car parts from the Employer at a discount. As mentioned above, all employees are eligible for part of the "CSI bonus," which BMW distributes when the Employer's

¹⁸ The record is slightly unclear regarding locker-room use. Liangas testified that the service technicians and body shop employees both use the locker room, whereas Salazar testified that the body shop employees have their own changing area and lockers in the body shop building.

customer satisfaction index meets certain standards. Each department manager decides how to divide up the CSI bonus among individual employees in his department. All service, parts and body-shop employees are entitled to two 15-minute breaks per day, and the same paid holidays. All employees are also eligible for certain holiday benefits (Fourth of July picnic, free turkeys at Thanksgiving, Christmas party, etc.) and have access to the refrigerator, microwave, coffee machine, etc. in the lunch room.

Finally, it should be noted that the Petitioner also introduced evidence regarding bargaining-unit inclusions and exclusions at other car dealerships, in an attempt to show the "industry practice." For example, Liangas testified that in three dealerships where he previously worked, the service advisors, warranty clerks, file clerks and cashiers were excluded from the bargaining unit. The Petitioner solicited similar testimony from one of its organizers, Brian Schneck. However, with certain exceptions not relevant here, the Board generally does not rely on "industry practice" as a factor in making unit determinations but, rather, uses a case-by-case approach, assessing the traditional community-of-interest factors for each individual employer. The Washington Palm, Inc., 314 NLRB 1122, 1128-9 (1994)("area practice" does not change result where other, "primary" factors predominate); Big Y Foods, Inc., 238 NLRB 855, 857 (1978)(units at union's other shops irrelevant). Thus, to cite a hypothetical example, service advisors at one shop may have a much stronger community of interest with technicians than at another shop, depending on how the company has structured its supervisory hierarchy, its physical plant, its degree of integration and interchange, its pay, benefits, working conditions and so forth. Accordingly, the Petitioner's evidence regarding other car

It should also be noted that not all employees who wear uniforms have a locker. Liangas testified

dealerships will not be recounted in detail or relied on herein. Furthermore, cases cited by the Petitioner where the unit composition was not in dispute have little precedential value for the unit issues herein.¹⁹

Discussion

As stated above, the parties do not dispute the inclusion of the petitioned-for employees in the bargaining unit, including the parts department employees, body shop employees and certain service department employees (service technicians, car jockeys, porter). However, the parties dispute the appropriateness of excluding certain other service department employees (service advisors, scheduler, cashiers, file clerk and warranty clerks) and the supervisory status of others (dispatcher, foreman, and quality control person).

Unit issues

It is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the "ultimate" unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our

that some employees who wear uniforms (e.g., parts employees) take the uniforms home to change.

¹⁹ For example, McDaniel Ford, Inc., 322 NLRB 956 (1997), involved various unfair labor practice allegations, including violations of Section 8(a)(5) of the Act. In that case, the union had represented a

inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposal." Dezcon, Inc., supra, 295 NLRB at 111. Thus, the unit requested by a petitioning union is the starting point for any unit determination. The Board has affirmed that the unit sought by the petitioning union is *a* relevant factor although, under Section 9(c)(5) of the Act, the extent of union organization cannot be the "controlling" factor. Central Power & Light Co., 195 NLRB 743, 746 (1972); Overnite Transportation Co., 322 NLRB 723 (1996). In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other working terms and conditions. Some classifications may share such a close community of interest with the petitioned-for classifications that it would be inappropriate to exclude them. Overnite Transportation, supra.

In the automobile dealership industry, the Board has acknowledged that more than one type of bargaining unit may be appropriate. In Gregory Chevrolet, Inc., 258 NLRB 233 (1981), the Administrative Law Judge stated that, depending on the "particular factual situations," a unit limited to mechanics could be appropriate, for example, and that a larger unit of all service and maintenance employees could also be appropriate. The judge reiterated that a union is required only to seek *an* appropriate unit. Id. at 238.

Bearing these principles in mind, I find that the petitioned-for unit is an appropriate bargaining unit, notwithstanding its exclusion of service advisors, schedulers,

service-shop bargaining unit (which excluded service advisors) since 1988; the appropriateness of the unit

cashiers, file clerks and warranty clerks.²⁰ The Petitioner essentially seeks to represent the Employer's employees who actually handle cars or parts. The "hands on" duties of these employees include repairing, preparing, cleaning and moving cars, as well as physically stocking, delivering and distributing car parts. These employees all wear uniforms. As Salazar acknowledged in his testimony, the service-department employees who wear uniforms are those "who work[] ... with regards to anywhere around cars," thus distinguishing them from the other service-department employees who do not work anywhere around cars. The technicians in particular have special certifications, training and weekly meetings related to their "hands on" work of servicing and repairing cars. From the nature of the petitioned-for employees' duties, it also follows that they work in locations where the cars and parts are physically located, including the car-repair bays in the service shop, the parts department, the body shop, and various outdoor locations where the car jockeys handle customers' cars and loaner cars. Except for the two car jockeys and one retail parts counterperson, the petitioned-for employees have limited contact with customers.

By contrast, the additional classifications sought by the Employer (scheduler, service advisors, cashiers, warranty clerks, file clerk) do not handle cars or parts. Rather, their duties primarily involve customer relations (e.g., scheduling appointments, discussing the repairs needed, obtaining payments), and various administrative/clerical tasks (e.g., generating repair-related paperwork, preparing documentation for BMW warranty

was not an issue.

²⁰ The supervisory issues are discussed separately below.

payments, filing).²¹ It appears from the record that they receive different types of training (i.e., customer-relations training for the cashier, technical training for the technicians), although there is some common BMW training for all employees. The equipment that service clerical employees use (e.g., computers, warranty books, files) is completely different from what the petitioned-for employees use (e.g., repair tools, cleaning equipment). They are not required to wear uniforms and, with one exception, they do not, in fact, wear uniforms.²² They work primarily in separate areas of the service department, namely, the service-department entrance area, the warranty clerks' office, and the conference room for some file preparation. They generally do not come in direct contact with cars or car parts, although Liangas described one exceptional example of physically showing a problematic car to a service advisor.

Although there was some dispute regarding inter-employee contact, the record generally does not establish substantial contact between the petitioned-for employees and the service clerical employees. The record indicates that service advisors and service technicians normally go through the dispatcher to communicate with each other (with some exceptions), and that the Employer has discouraged technicians from entering the service department entrance area. The file clerk appears to have no contact with the petitioned-for employees. Although the cashiers have some type of "communication" with the parts counter employees regarding customers' payment, the record does not clearly

²¹ For the sake of convenience, these employees will be referred to herein as "service clerical employees." The Employer's payroll records (Pet. Ex. 2) list the service advisors, cashiers, warranty clerk and file clerks in "Department 22C, clerical service," although for some reason the scheduler is listed under "Department 23C, other salaries service."

establish regular contact with the other petitioned-for classifications. Similarly, the scheduler appears to have little contact with the petitioned-for employees, other than coordinating the car jockeys' pick-up and delivery of cars. Finally, the record does not clearly establish that the warranty clerks have substantial contact with the petitioned-for employees.²³

The record also indicates that there is no interchange or substitution among these classifications of employees. They do not have common wage rates. Rather, the record indicates a wide variety of hourly rates, salaries, commissions and incentive programs among the classifications.

Based upon these factors, I do not find the Petitioner's proposed unit to be an "arbitrary" or "artificial" grouping, as the Employer contends. Unlike Worthington Chevrolet, Inc., 271 NLRB 365 (1984), where the Board found "no clear line of demarcation" between the petitioned-for classifications (sales "lot persons," detailers, car washers, porters and car runners) and other service-department classifications, there is a clear line of demarcation in this case. The Employer itself acknowledges this demarcation -- between employees who actually handles cars or parts, and those who do not -- by its requirement for uniforms. Since the petitioned-for employees herein have a distinct

²² Although one of the two warranty clerks wears a uniform, the other does not. As noted above, this anomaly is not explained in the record.

²³ As indicated above on pp. 29-30, the witnesses gave vastly differing accounts regarding the warranty clerks' contact with petitioned-for employees. On one hand, two technicians testified that they have very little contact with the warranty clerks. On the other hand, Sangiorgio testified that the warranty clerks spend a total of 90% of their time in the service shop and parts department, and only 10% of their time "actually doing the work." This testimony cannot be reconciled, especially without testimony from the warranty clerks themselves. I hereby find that Sangiorgio's testimony alone -- as disputed by the technicians and as uncorroborated by warranty clerks' testimony or other evidence -- is insufficient to establish that warranty clerks have substantial and regular contact with the petitioned-for employees.

identity based on the nature of their duties, their locations, and their uniform, I find that they constitute an appropriate unit for bargaining.

Admittedly, the Employer has submitted evidence to show that a unit including *all* non-supervisory service-department employees might also be perfectly appropriate. For example, all the service department employees are supervised by the same manager (Sangiorgio), they are eligible for the same fringe benefits and CSI bonus, and they are separate and distinct from employees who work in the sales and administrative areas in the eastern portion of the building. However, as stated above, the fact that a larger unit might also be appropriate does not necessarily make the proposed smaller unit *inappropriate*. When faced with multiple possibilities, the petitioning union must simply seek *an* appropriate unit. Gregory Chevrolet, supra.

The Employer also cites such cases as Jensen's Motorcycle, Inc., d/b/a Honda of San Diego, 254 NLRB 1248,1264-5 (1981)(warranty clerk and cashier included as "plant clericals" in parts and service employees' unit) and R.H. Peters Chevrolet, Inc., 303 NLRB 791 (1991)(service advisors included in unit of service, parts and body shop employees) to support its argument for a broader unit. However, those cases are distinguishable from the instant case. In Honda of San Diego, supra, the warranty clerk and cashier were both found to have "regular and frequent contacts" with service mechanics and parts employees "on a daily basis." 254 NLRB at 1264. In R.H. Peters, supra, the service advisors took the same yearly examination as the mechanics; had daily, direct contact with the mechanics; and were sometimes replaced by a mechanics in their absence. 303 NLRB at 792. In those cases, the community of interests between those classifications were such that it would have been inappropriate to exclude them from the

unit. Cf. Heuer International Trucks, Inc., 279 NLRB 127 (1986)(unit of service-department employees including mechanics but excluding service clerical employees); Weldun International, Inc., 321 NLRB 733, 735 (1996)(plant clericals such as estimating clerk and parts estimator, who never perform production work and who have limited contact with production employees, excluded from production and maintenance unit). For reasons discussed above, I do not find the community of interest between the disputed classifications and the petitioned-for classifications to be so strong as to mandate their inclusion in the unit. Overnite Transportation, *supra*.

Finally, I reject the Employer's assertion that excluding the service clerical employees would necessarily "leave" them with the office clerical employees in the sales/office area, with whom they have almost no community of interest. I see no reason why the 8 or 9 service clerical employees could not appropriately form their own separate unit, if they so choose. At the very least, a residual unit would appear to be available to these employees.

Accordingly, based on the distinct functions of the employees who handle cars or parts, their equipment, uniforms and locations, as well as the lack of interchange between employees and other community of interest factors, I conclude that the petitioned-for unit (excluding the service clerical employees) is an appropriate unit.

Supervisory issues

In enacting Section 2(11)'s definition of "supervisor," Congress stressed that only individuals invested with "genuine management prerogatives" should be considered supervisors, as opposed to "straw bosses, leadmen ... and other minor supervisory employees." Quadrex Environmental Company, Inc., 308 NLRB 101, 102

(1992)(quoting S.Rep. No. 105, 80th Cong., 1 Sess. 4 (1947)). It has long been the Board's policy not to construe supervisory status too broadly, since a finding of supervisory status deprives individuals of important rights protected under the Act. Id. A party who seeks to exclude alleged supervisors from a bargaining unit therefore has the legal burden of proving their supervisory status. Tuscan Gas & Electric Co., 241 NLRB 181 (1979); The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989). Furthermore, to prove supervisory status under Section 2(11), the party must demonstrate not only that the individual has certain specified types of authority over employees (e.g., to assign or responsibly direct them), but also that the exercise of such authority requires the use of "independent judgment," and is not merely "routine" in nature.

In the instant case, the Petitioner has not met its burden of proving that the dispatcher, foreman and quality control person are supervisors as defined in the Act. At most, they possess some low-level authority to assign and oversee employees, but without using independent judgment and without exercising any real supervisory authority over their employment status.

The record indicates that the **dispatcher**, Hank DeAngelo, assigns work to service technicians. However, the assignment of work, based on the pre-existing classification of mechanics' skills and on such common-sense considerations as availability, does not appear to require independent judgment. In such circumstances, dispatchers' assignment of work has been found to be "merely routine or clerical in nature," rather than supervisory. B.P. Oil, Inc., 256 NLRB 1107 (1981), *enfd* 109 LRRM 3296 (3rd Cir. 1982); Express Messenger Systems, Inc., 301 NLRB 651 (1991). Although service manager Sangiorgio sometimes seeks DeAngelo's "feedback" regarding

reclassification or promotion of mechanics, there is no evidence that Sangiorgio accepts DeAngelo's recommendations without conducting his own independent review. Thus, the record falls short of establishing that the dispatcher has authority effectively to recommend the promotion of employees. Furthermore, the record does not establish that the dispatcher has any authority to hire, fire, discipline, transfer, lay off employees, or to adjust their grievances, authorize overtime, or decide on their CSI bonus. Absent proof of such "primary" criteria, any secondary indicia (such as a high wage rate, use of company car) are insufficient to support a finding of supervisory status. Express Messenger, supra, 301 NLRB at 655.²⁴ Thus, I find that the Petitioner has not met its burden under Tuscan Gas, supra, of proving that the dispatcher is a supervisor as defined in Section 2(11) of the Act.

Nevertheless, I decline to include the dispatcher classification in the bargaining unit, inasmuch as this classification has more in common with the service clerical employees than the petitioned-for employees. Specifically, the dispatcher does not perform "hands on" work with cars or parts but, rather, performs ministerial tasks related to the assignment of repair orders to service technicians. The dispatcher generally does not attend the weekly meetings with the foreman and service technicians. Although the dispatcher has regular contact with technicians and other petitioned-for employees, he does not substitute for them. He is not required to wear a uniform, and works in an office area somewhat separate from the service shop. Finally, unlike the petitioned-for employees, the dispatcher is paid on a salary basis, does not punch a time clock, and does

²⁴ In its brief, the Petitioner asks rhetorically why the Employer would give DeAngelo such a high wage if his job did not require independent judgment. However, the Petitioner has the burden of providing affirmative evidence of statutory supervisory indicia. The Petitioner cannot argue "backwards," i.e., that the primary indicia must necessarily exist because the secondary criteria exist.

not get paid for overtime work. Thus, even though the dispatcher classification is non-supervisory, it does not share such a strong community of interest with the petitioned-for employees to require its inclusion in their bargaining unit.

The **foreman**, Simon Wong, presents a closer case on the supervisory issue. As a highly valued technician and "troubleshooter," Wong clearly enjoys a unique status. He is sometimes asked to assess applicants' technical skills during their job interviews. Wong earns a higher hourly rate than even the highest-paid technicians, and has unusual discretion in determining his own overtime hours. To some extent, Wong assists in the assignment of work to service technicians. He also schedules and conducts weekly meetings to relay information to the technicians. Yet, these characteristics are more typical of a "lead mechanic," based on superior skills and experience, rather than any real supervisory authority over employees' status, as that term is defined in Section 2(11) and interpreted by the Board.

Specifically, the record does not clearly establish that Wong has authority to hire employees, or effectively to recommend their hiring without independent review by service manager Sangiorgio. In an example involving technician Liangas, the record indicates that Wong attended the interview in order to help evaluate Liangas' technical experience, but that it was Sangiorgio who actually decided to hire Liangas. Contrary to an assertion in the Petitioner's brief, Wong does not "appear to have hired" Liangas.²⁵ In another example, technician Jackson initially testified that Wong actually offered him the job

²⁵ Specifically, page 16 of the Petitioner's brief points to Wong's comment to Liangas ("Try it out. If you like it, you stay. If you don't like it, you go back to Japanese cars") as evidence that Wong actually hired Liangas. However, Liangas clearly testified that Wong made this comment while they were walking out after the interview, i.e., *after* Sangiorgio had already told Liangas he was hired (Tr. 84-5).

during his interview (Tr. 159). However, upon further questioning by the Hearing Officer and cross-examination by the Employer (Tr. 159-61, 176-81), the story became less clear. It appears that although Wong initially solicited Jackson's application and arranged the interview, both Wong and Sangiorgio attended the interview. According to Jackson, Wong was the person who did most of the talking, who reviewed Jackson's paperwork, and said something like "Everything look[s] interesting on paper" (Tr. 179). But at some later point during the interview, it was Sangiorgio who proposed a compromise wage rate which Jackson accepted. Thus, based on Jackson's testimony, it is not entirely clear that Wong made the decision to hire Jackson, independent of Sangiorgio's input and involvement. For his part, Sangiorgio admitted that Wong recommended hiring Jackson, but Sangiorgio also stated generally that he himself makes the final decision, and that he does not always follow Wong's recommendations. (Neither party called Wong to testify.) On balance, this one isolated, somewhat ambiguous example involving Jackson does not establish that Wong actually has authority to hire employees, or effectively to recommend hiring, independent of Sangiorgio. A person's mere presence at job interviews does not confer supervisory status, Anamag, 284 NLRB 621, 623 (1987), without evidence that the person's recommendations are automatically or generally accepted by the Employer without independent review.

Similarly, Wong's presence when general manager Salazar told Liangas that he was laid off does not establish that Wong had any role in deciding the layoff.

As for discipline and discharge, Liangas testified that Wong has verbally "warned" or threatened employees, such as warning that employees would not get a CSI bonus if they did not do a good job, and warning that Liangas would be fired if his floor

was not clean. Papellas and Jackson also testified (albeit somewhat inconsistently from each other) of an incident wherein Wong allegedly threatened to discharge employees. However, the record is completely devoid of evidence that Wong has actual authority to make any such decisions affecting employees' status. There is no evidence, for example, that Wong actually decides the distribution of CSI bonuses, suspends or otherwise disciplines employees, or discharges employees. Thus, although these statements may show Wong's subjective belief as to his authority, the record does not substantiate that Wong actually possesses such authority.

The record does not establish that Wong has authority to promote or reward employees, or to adjust their grievances. In fact, one time when Papellas asked about getting a raise, Wong referred him to Sangiorgio or Giordano. Although Sangiorgio testified that he solicits "feedback" from Wong regarding the technicians' reclassification, there is no evidence that Sangiorgio accepts any recommendations from Wong without conducting his own review. The record also shows that Sangiorgio, not Wong, approves overtime for service-department employees. Although Wong sometimes changes the technicians' assignments, such changes appear to be based on routine considerations (e.g., availability of the technician, when the customer is supposed to retrieve the car) rather than independent judgment.

It is undisputed that Wong spends most of his time performing diagnostic and repair work (i.e., bargaining-unit work), using the same equipment, skills and training as the service technicians. He wears a uniform.²⁶ He spends a great deal of time in the

²⁶ For some reason, the Petitioner points to the fact that Wong and Invincible wear the white-shirt uniform as evidence that they are supervisors. However, it should be noted that the petitioned-for employees in the parts department also wear white-shirt uniforms.

service shop location, working directly alongside the technicians there, although he also has a desk near the locker room.

In short, I find that the Petitioner has not met its burden of proving that the foreman is a supervisor as defined in Section 2(11) of the Act. Furthermore, since the foreman clearly shares a strong community of interest with the petitioned-for service technicians, I shall include the foreman classification in the bargaining unit.

The **quality control person**, Salvatore Invincible, conducts routine inspections to ensure that the cars work properly before they are returned to customers. In some instances, he returns cars to technicians, and directs them to rectify their mistakes or omissions. There is no evidence that this "direction" of technicians requires independent judgment. Rather, it is based on pre-established parameters and common sense considerations, such as a standard inspection checklist and the technician's availability. The QC person may also report any problems to the dispatcher, foreman and/or service manager, although the record is not entirely clear in this regard. He also gives a daily list of "returns" to Sangiorgio. There is no evidence that Invincible's reports have resulted in discipline or any other adverse impact on the technicians' employment status (e.g., discharge, demotion, pay cut, reclassification). The Board has held that the acts of inspecting and reporting problems, without more, do not confer supervisory status. Brown & Root, Inc., 314 NLRB 19, 21 (1994)(leadman who inspects and reports on employees, not supervisory); Aeronca, Inc., 221 NLRB 326, 329 (1975)(quality method planners, not supervisory). Invincible has no independent authority to discipline, hire, transfer, discharge or promote employees, or recommended any such action. Invincible neither approves overtime nor decides on the CSI bonus for service department

employees. Thus, the record falls far short of establishing that the quality control person is a supervisor as defined in the Act.

The quality control classification also shares a strong community of interest with the petitioned-for employees. Like them, the QC person performs "hands on" work directly related to the repair of cars. He wears a uniform. He appears to spend a substantial amount of time in the service shop, interacting with technicians. He sometimes attends the weekly meetings with the foreman and service technicians, to discuss repair-work issues. Accordingly, based on the factors discussed above, it would be inappropriate to exclude the QC classification from the bargaining unit.

Nevertheless, although the QC person generally belongs in the unit as a *classification*, there may be an issue of whether Invincible as an *individual* is eligible, due to his status as a relative of the owner and management. As stated above, Invincible is an uncle to both the owner (Giordano) and the service department manager (Sangiorgio), who directly supervises him in the service department. The Board disqualifies close relatives of ownership/management if they enjoy a special status, or if the record as a whole demonstrates that their interests are more likely to be aligned with the family's business interests than with the unit employees. NLRB v. Action Automotive, Inc., 469 U.S. 490, 118 LRRM 2577, *reh'g denied*, 471 U.S. 1049 (1985). A relative who has access to a company car may or may not be seen as enjoying "special benefit," depending on all the facts and circumstances. *Cf. John N. Hansen Co., Inc.*, 293 NLRB 63, 74 (1989)(access to a luxury car seen as special benefit) with Star Color Plate Service, Division of Einhorn Enterprises, Inc., 279 NLRB 576, 593 (1986)(riding in company car not a special benefit, where other employees occasionally did so too).

Because this issue was not fully identified and litigated at the pre-election hearing herein, Invincible's eligibility cannot be determined at this stage. For example, the record does not indicate whether Invincible is the only employee who drives a company car without being subject to income tax for it; whether Invincible enjoys other types of special benefits or status; whether he is related to any other co-owners, corporate officers, managers or supervisors; whether Vivian Giordano or other relatives are involved in the day-to-day operation of the business; whether Invincible lives with any of the owning or managing relatives, and so forth. Consequently, Invincible's eligibility may need to be determined by the challenged ballot procedure, or by some other mechanism such as the parties' agreement or unit clarification. I will therefore include the quality control classification in the bargaining-unit description, in the event that Invincible is eligible as an individual, and for possible future reference if someone else holds the quality control position. However, his individual vote will be subject to challenge.

In sum, I have concluded, in agreement with the Petitioner, that the service advisors, scheduler, cashiers, file clerk and warranty clerks may appropriately be excluded from the bargaining unit. I have rejected the Petitioner's contention that the dispatcher, foreman and quality control person are supervisors. Nevertheless, because the dispatcher shares a greater community of interest with the service clerical employees than the petitioned-for employees, his classification will be excluded from the unit. The non-supervisory classifications of foreman and quality control person will be included in the unit, since they share an overwhelming community of interest with the other

uniformed employees who handle on cars in the service shop.²⁷ However, because of Salvatore Invincible's status as a relative of ownership/management, he may vote subject to challenge.

Accordingly, I hereby find that the following employees 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 in the body shop, parts department and service department who handle car and parts, including the body technicians,²⁸ detailers, parts counter employees, parts stock persons, parts delivery persons, service technicians, foremen, quality control persons, car jockeys, and porters employed by the Employer at its 940 Remsen Avenue, Brooklyn, New York facility, but excluding all other employees, dispatchers, schedulers, service advisors, cashiers, file clerks, warranty clerks, sales employees, office clerical employees, 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 subject to the Board's Rules and Regulations. Eligible to vote are employees 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 that 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 who

²⁷ Because of the inclusion of the foreman and the quality control classifications, the unit found appropriate herein is slightly larger than the originally petitioned-for unit. It has been administratively determined that the Petitioner's showing of interest meets the 30% requirement in the expanded unit.

²⁸ As noted above in note 8, if body-shop technician Benjamin McCrea stills works for the Employer at the time of the election, he may vote subject to challenge, to determine his possible status as a temporary employee.

are employed in the unit may vote if they appear in person or 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 they desire to be represented for collective bargaining purposes by Local 259, United Automobile Workers of America, 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 the 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. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) 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 undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before March 2, 1999. No extension of time to file the 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.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by March 9, 1999.

Dated at Brooklyn, New York, this 23rd day of February, 1999.

David Pollack
Acting Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

177-8560-1000, -1500, 4000, -8000, -9000
362-6798
420-1285
440-1760-2400, -7800

APPENDIX A

The transcript is hereby amended as follows:

- Page 6, line 8: "Remsen" Avenue rather than "Ranson".
- Page 8, line 19: "Remsen" Avenue rather than "Ranson".
- Page 16, line 11 et seq.: All references to James "Jordano" should be spelled "Giordano".
- Page 53, line 21: Frank "Sangiorgio" rather than "Sangilajos".
- Page 231, line 13: "borough" rather than "burrough".
- Page 231, line 14: "Staten" Island rather than "Staton".
- Page 301, line 11: Salvatore "Invincible" rather than "Mencible".
- Page 363, line 23: Ricky Ricardo "Seale" rather than "Sr."
- Page 366, line 10: "Wun Cheung" Chan rather than "Wong Chan" Chan.
- Page 373, line 18: "meted" rather than "meeded".
- Page 403, line 19: "manager" rather than "matter".
- Page 419, line 25: dealer "principal" rather than "principle".
- Page 440, line 2: "tire" rather than "time".
- Page 494, line 9 et seq.: All references to Section "211" should be indicated as "2(11)".
- Page 498, line 11: The case name is "Serramonte" rather than "Ceremonte".

APPENDIX A