

**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of: )  
)  
KINNEY SYSTEM, INC. )  
d/b/a CENTRAL PARKING SYSTEM OF )  
MASSACHUSETTS, )  
) Case 1-RC-71163  
Employer, )  
)  
and )  
)  
INTERNATIONAL BROTHERHOOD OF )  
TEAMSTERS, LOCAL 25, )  
)  
Petitioner. )

**BRIEF IN SUPPORT OF EMPLOYER’S EXCEPTIONS**

Comes now the Employer, Kinney System, Inc., d/b/a Central Parking System of Massachusetts (“Employer” or “Central Parking”), and files this Brief in Support of Exceptions to the Administrative Law Judge’s Report on Challenged Ballots, issued on May 15, 2012, in accordance with Section 102.69 of the Board’s Rules and Regulations, as amended.

**PROCEDURAL HISTORY**

The Petition in this case was filed by International Brotherhood of Teamsters, Local 25 (“Petitioner” or “the Union”) on December 21, 2011, and initially sought a unit including “All Full + Part-time cashiers, valets, dispatchers, custodians, attendants, shuttle drivers, supervisors, maintenance workers” and excluding “all others.” (Petitioner Exh. 2). The Union initially sought an election among those included categories of employees at nineteen (19) Boston-area locations, including eleven in the City of Boston, seven in Cambridge, MA and one in Quincy, MA. (Petitioner Exh. 2, pg. 2). Thereafter, a pre-election hearing was conducted at the Board’s Regional Office on January 6<sup>th</sup> and January 9<sup>th</sup>, 2012 (Bd. Exhs. 2 and 3). The Hearing Officer

conducting the hearing on both days of this proceeding was Alejandra Hung. (Bd. Exh. 2, p. 5; Bd. Exh. 3, p. 16). Despite the fact that the hearing consumed the better part of two business days, it only accounted for thirty-one (31) pages of hearing transcript. (Bd. Exh. 3). During the course of the hearing, Hearing Officer Hung announced that “the issue of supervisors will not be litigated at this proceeding...” (Bd. Exh. 2, p. 13).

During the second day of the hearing, the Hearing Officer proposed a stipulation “that an appropriate bargaining unit includes the following job classifications: all full and part-time attendants, valets, floor attendants, lead attendants, cashiers, dispatchers, shuttle drivers, maintenance workers, employed by the Employer at the Boston locations attached at [sic] to the Union’s original petition, as well as the three additional locations in Mattapan, Woodland and Riverside, and excluding supervisors, project managers, and auditors.” (Bd. Exh. 3, p. 21) (emphasis supplied). The Hearing Officer requested the Employer’s counsel to join in that stipulation, and he did so but only if it was modified to exclude “supervisors as defined in the Act,” (Bd. Exh. 3, p.21). (emphasis supplied). The Hearing Officer then restated the proposed stipulation “that an appropriate bargaining unit includes the following job classifications: all full and part-time attendants, valets, floor attendants, lead attendants, cashiers, dispatchers, shuttle drivers, maintenance workers, employed by the Employer at the Boston locations attached to the Union’s original Petition as well as the three additional locations in Mattapan, Woodland and Riverside, and excluding project managers and auditors, and guards and supervisors as defined in the Act. (Bd. Exh. 3, p. 22). (emphasis supplied). The Union and the Employer both joined in this stipulation. *Id.*

Subsequently, on January 13<sup>th</sup> (four days after the close of the hearing), the Regional Director issued a Decision and Direction of Election which failed to honor the parties’ stipulation. Instead, the Regional Director directed an election in a unit consisting of:

“All full-time and regular part-time attendants, cashiers, valets, floor attendants, lead attendants, dispatchers, shuttle drivers, and maintenance workers, employed by the Employer at various locations in the Boston, Massachusetts area, as listed in Attachment A, but excluding supervisors, project managers, auditors, all other employees, guards and supervisors as defined in the Act.”

(Petitioner Exh. 3, p. 2) (emphasis supplied).

In other words, the Regional Director substituted and combined the language of the first stipulation proposed by the Hearing Officer – which the Employer rejected – for the language of the stipulation which the parties did agree to.

During the course of the pre-election hearing the parties agreed to disagree on the issue of employees working as “accounting specialists” and therefore stipulated that those employees would be allowed to vote subject to challenge.

Subsequent to the Decision and Direction of Election, an election was conducted among eligible employees within the Metropolitan Boston area on February 7<sup>th</sup> and 8<sup>th</sup>, 2012. The initial Tally of Ballots showed that of approximately 361 eligible voters, 159 ballots were cast for the Petitioner, 138 ballots were cast against the Petitioner and there were 37 determinative challenged ballots. Of those 37 challenged ballots, 19 were challenged by the Board as having been cast by voters not on the *Excelsior* list; 12 were challenged by the Petitioner as “supervisors;” five were challenged as accounting specialists; and two were employees who had been terminated and whose votes were challenged by the Employer.<sup>1</sup>

The post-election Corrected Direction and Notice of Hearing on Challenged Ballots was issued by the Regional Director on March 12, 2012, and it specifically directed a hearing on the

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<sup>1</sup> The ballots of the two employees who were alleged discriminatees were specifically excluded from the scope of the post-election hearing, pursuant to *Texas Meat Packers*, 130 NLRB 279 (1961) and fn. 3 of the March 12, 2012 Notice of Hearing; the 8(a)(3) charges on behalf of those two employees were subsequently dismissed or withdrawn.

sole issue of the determinative challenged ballots. Although, because of the indeterminative outcome of the election, both the Employer and the Petitioner had filed timely Objections to Conduct Affecting the Results of the Election, the Regional Director specifically ordered that those objections “remain pending” and held in abeyance pending the outcome of the post-election hearing, as well as the investigation of unfair labor practice charges related to the Union’s objections. (Bd. Exh. 1).

The Hearing on Challenged Ballots was held before the Honorable Paul A. Bogas, Administrative Law Judge, on March 19 and 20, 2012. Both parties submitted post-hearing briefs, and on May 15, 2012, the ALJ issued a Report on Challenged Ballots, in which he honored the parties’ hearing stipulations to overrule certain challenges to (and open and count) the ballots of three employees, and also the parties’ agreement that the challenges be sustained with respect to the ballots of seven (7) other employees. (ALJD, p. 15). In addition, he overruled the challenges to, and directed that the ballots be opened, of four (4) additional employees. (ALJD, p. 14-15).

Finally, he recommended that the challenges to fifteen (15) hourly-paid employees who had been classified “as supervisors” be sustained (ALJD, p. 14); also, he recommended that the challenges to the ballots of six (6) employees working in the capacity of “accounting specialist” be sustained. (ALJD, p. 15).

## **ARGUMENT AND CITATION OF AUTHORITY**

### **I. The Employer’s Organization and Structure**

The Employer operates between 42 and 45 parking facilities (garages and lots) in the greater Boston area, and these are managed by 40-42 project managers. The project managers report to an Operations Manager, whose office is located at 125 Lincoln Street in Boston. The General Manager and the Regional Human Resources Manager also have their offices at this

address. The project managers have monthly meetings at 125 Lincoln Street, and all hiring is done by the Regional Human Resources Manager at that location. All employees at the Boston locations are subject to the same personnel policies, which are formulated at the Employer's headquarters in Nashville, TN, and all employees receive the same benefits, which also are determined in Nashville. Wage rates are determined by the General Manager, with input from the Regional Human Resources Manager. All new hires receive the same basic training, conducted by the Regional Human Resources Manager. All of the hourly paid employees use the same time-keeping system, named "KRONOS," using a "swipe card" to record their time. (TR 119-123).

The hourly pay ranges for the various classifications are generally as follows:

Attendant	\$9 – 12
Cashier	\$8.50 - \$10.50
Accounting specialist	\$15 – 20
Shuttle driver	\$14 – 19
Dispatcher	\$10
Maintenance employee	\$10 – 20

(TR 124-126)

## II. The “Supervisor” Classification/Misclassification Issue

The Petitioner challenged the votes of twelve (12) individuals on the grounds that they are classified or payroll-coded by the Employer as “supervisors” – even while the Petitioner admitted that they do not possess or exercise any of the authority delineated in Section 2(11) of the Act – based solely upon the mistaken wording of the Decision and Direction of Election.

The Decision and Direction of Election states that the parties stipulated to a unit which excludes *both* “supervisors” and “supervisors as defined in the Act.” At the hearing in this case, the Petitioner's agent, Steven Sullivan, testified (over the Employer’s continuing objection) that the Petitioner relied upon the description of the unit in the Decision and Direction of Election,

and that said description of the unit “confirm [ed]” his understanding of what he agreed to at the representation hearing.<sup>2</sup> (TR 30). However, the official transcript of the pre-election hearing flatly contradicts this. At the representation hearing on January 9, 2012, Hearing Officer Alejandra Hung, after proclaiming that “the issue of supervisors would not be litigated” (Bd. Exh. 2, p. 13), proposed a stipulation defining the proposed unit for the election, which would have excluded “supervisors.” Counsel for the Employer insisted that the stipulation be corrected to exclude only those “supervisors as defined in the Act.” (Bd. Exh. 2, p. 21). Hearing Officer Hung then read out loud the proposed stipulation with that correction, and asked each of the parties in turn if they accepted it, and Sullivan (speaking for the Petitioner) answered “yes.” (Bd. Exh. 3, pp. 21-22).

Sullivan testified at the post-election hearing that the Petitioner included the classification of “supervisor” in its original petition for an election, based solely upon the fact that the Petitioner solicited and received authorization cards signed by employees who gave their job title as “supervisor,” without making any effort to determine what authority they possessed under Section 2(11) of the Act. (TR 35-37). Sullivan also testified that neither he nor any of the Petitioner's other organizers had made any effort to distinguish between “supervisors” who actually had the types of authority listed in Section 2(11) of the Act, and those who did not. (TR 39). In other words, the job title didn't matter to the Petitioner. This is a classic case of “drive-by” organizing, in apparent contravention of Section 9 (c)(5) of the Act. Most importantly, most of the “supervisors” from whom the Petitioner initially obtained authorization cards, and which

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<sup>2</sup> The Employer objected to testimony from Sullivan and Petitioner's other witness, Robert Aiguier, Jr., on the grounds that Petitioner should not be permitted to add to or “explain” the official record of the representation proceeding. (TR 27). Counsel for the Employer subsequently testified about the representation hearing only after the Employer's motion to strike the testimony of Sullivan and Aiguier was denied. (TR 216). The Petitioner offered their testimony only for the clearly irrelevant purpose of explaining “the Union’s state of mind and their course of action” during the pre-election campaign. (TR 216).

initiated their inclusion in the unit description of the original petition, were actually known by the Petitioner to have been misclassified by the Employer. In his post-election hearing cross-examination testimony, Petitioner's organizer Robert Aiguier, Jr. admitted this knowledge:

- Q How many more [supervisors] did you say you can't vote in the election to?  
A I couldn't say exactly, but maybe 20 or so.  
Q Did you keep a list?  
A I have a list of supervisors who signed authorization cards, yes.  
Q Alright. And the only information that you relied upon to compile that list was people who had self-identified themselves as supervisors on the authorization cards?  
A No, that was part of what I used to make my decision.  
Q What else did you rely upon?  
A Speaking to employees and my understanding of how the company hierarchy worked.  
Q What was your understanding of how the company hierarchy worked?  
A That the supervisors that I spoke with –  
Q Excuse me. I asked what your understanding was  
A My understanding is that there's a branch manager or a regional manager, an operations managers, then there's manager and shift managers –

\* \* \*

THE WITNESS: There's a regional manager, below him is an operations manager, below him is shift managers, managers, possibly assistant managers, and then below them are supervisors, below them are the cashiers, attendants and valets.

BY MR. MOSS:

- Q And so your understanding of the company hierarchy was that the people you've just referred to as supervisors were in fact part of management?  
A No.  
Q So when you said hierarchy why did you list the supervisors above the cashiers?  
A I don't understand the question.  
Q Do you know what a hierarchy is, sir?  
A Yes.  
Q So in your description of the hierarchy you started with the branch manager, one down, and then you got to the point where you said supervisors and then everybody else below them. Do you remember saying that?  
A Yes.  
Q So by your testimony you listed the supervisors as part of management –  
A No.  
Q No?  
A I believe supervisors and management are two different classifications.  
Q Okay. What's the difference?  
A I believe the managers have the right to hire, fire, discipline, so forth and supervisors do not.

\* \* \*

- A I didn't list them above everybody else. I listed them below the regional manager, the operations manager, the managers, the shift managers and the assistant managers.
- Q And then you said after supervisors comes everybody else, ranking --
- A I didn't say after supervisors everybody else. I listed the other classifications.
- Q So are the supervisors on the same level as the cashiers and attendants?
- A Most of the supervisors I spoke to are, yes .
- Q So they don't really supervise anybody? It's just a title?
- A I believe the supervisors I spoke to, yeah, would fall into that category. It's just a classification.
- Q Okay. Do they move cars around?
- A I believe they do.
- Q The same as the valets and the attendants?
- A I believe they do.
- Q In fact, don't they perform all the same duties as the valets and attendants?
- A I don't know if they perform all of the same duties.
- Q Did you make any effort at all to distinguish between those people who exercise supervisory authority and those who
- A As far as which classification?
- Q I'm not asking --
- A I guess I don't understand the question.
- Q Okay. So you told approximately 20 people, you said, that they would not be permitted to vote, is that your testimony?
- A Yes.
- Q And that was based upon nothing other than the fact that they had said my job title was supervisor? It wasn't based upon any evidence that they exercised supervisory authority?
- A It was based on the direction of the election, which excluded supervisors from the bargaining unit.

(TR 68-72)

Employer witness Mike Mooney testified that there were two reasons why a number of employees were payroll-coded as “supervisors” in the Employer’s records, even though they do not possess the types of authority listed in Section 2(11) of the Act. First, the Employer's record keeping software, “ULTIPRO,” has been plagued with continuous problems since it was acquired, five years ago. These problems included not only system access difficulties, but incomplete reports. Mooney testified that it took him an entire week, utilizing the ULTIPRO

system, just to create the official NLRB eligibility list for the election, and even after it was completed it contained errors. (TR 161-162).<sup>3</sup>

Secondly, there are several parking operations which became automated in the last few years, and when that happened, the attendants and cashiers at those locations were laid off or transferred to other locations. (Emp. Exhs. 23-25). The supervisors at those locations were kept on, without any change in their rate of pay or job title, but they no longer had anyone to supervise. (TR 163,169-170).

Q Okay. And what work did they do after they became automated?

A They became customer service reps, fixed machines when they jammed, you know, just were present on site -- presence on site to help the customers out through the -- you know, as they came in and parked with the automation.

...

Q Do they -- you said they fix the ticket machines?

A Yes, they do, when they jam up.

Q Okay. Do they answer questions from the customers who come into park?

A Yes, they do.

Q Okay. Do they direct the customers where to park, if necessary?

A Yes.

Q Okay. Do they offer assistance to customers who are having trouble getting their cars

Q Yeah.

Q Or customers who are having trouble with their -- paying for their parking?

A Sure.

Q Are these all duties that the valets and attendants perform at the other nonautomated locations?

A Yeah. When they're on the floor, yeah.

Q So are the people who have previously been supervisors at the automated locations, perform -- are all the duties that they're performing at those locations, duties that are performed by the valets and attendants and cashiers at the non-automated locations?

A Yeah. There's -- I would say that. That's fair to say.

(TR 168-169).<sup>4</sup>

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<sup>3</sup> Shane Smith and John Saunders are examples of employees who were wrongly coded as "supervisors" in the ULTIPTRO system (Emp. Exhs. 30 and 31). Smith "keeps the dock clear, the loading dock clear" for the client at 60 State Street in Boston, and his rate of pay is \$13.00/hr. (TR 173; Pet. Exh. 32, page 8). Saunders, who testified at the post-election hearing pursuant to a subpoena, has always been a shuttle bus driver who has never supervised anyone. His rate of pay is \$ 14.00/hr. (TR 210-213). Both Smith and Saunders were employed during the eligibility period. (Emp. Exhs. 30 and 31)

<sup>4</sup> The wage rates of the "supervisors" at the automated locations range from \$10.55 to \$20.86. (TR 93-101; Pet. Exh. 32).

Counsel for the Employer testified that the parties spent two days in off-the-record discussions during the representation hearing on January 6 and 9, 2012, and that in those discussions he and Mooney “made clear ... the distinction between people who were coded as supervisors at the automated locations who we did not want to be disenfranchised and the approximately 55 supervisors who genuinely had and exercised the kinds of authority set forth in Section 2(11) of the Act.” In response, the Petitioner stated that it was going to amend its petition to take supervisors out of the proposed unit, and once that had been done the Hearing Officer stated that she was not going to receive any evidence regarding supervisory status. (TR 222-223; Bd. Exh. 2, pp. 8, 13).

During the pre-election hearing on January 6 and 9, the Hearing Officer seemed to be operating under the Board’s new proposed “Representation Case Rules” even though they were not yet in effect: that is the only way to explain her insistence on conducting the hearing off-the-record or her refusal to allow any evidence on the presence or absence of Section 2(11) authority of those people with the title – correct or otherwise – of “supervisor.”

The Employer’s Counsel stated in the pre-election hearing that only those “individuals employed as supervisors... [should be] excluded from the unit under Section 2(11) of the Act.” (Bd. Exh. 2, p. 12). This position was reiterated by him on the following day of the hearing (“Excluding supervisors as defined in the Act”). (Bd. Exh. 3, p. 21). He went on to state:

The Employer's position is that the supervisors numbering approximately 55 are appropriately excluded but that it is a mistake not to either stipulate to their authority or to take evidence regarding their authority or to take evidence regarding their authority because such a large group of employees should not be left in the dark as to their status. They are either eligible to vote or not eligible to vote and it's a disservice to them not to have it clearly understood what their status is.

We submit an offer of proof that if permitted to present evidence, the evidence would show that the approximately 55 supervisors regularly assign overtime, exercise independent judgment and discretion in directing the work of the valet

attendants, attendants, floor attendants and cashiers. That they have the authority to issue written warnings on their own, to take further disciplinary action on their own, and/or to effectively recommend the issuance of written warnings and stronger discipline up to and including termination.

(Bd. Exh. 3, p. 29) (emphasis supplied)

That number 55 is particularly significant, since there are approximately 70+ individuals coded as “supervisors” on Petitioner’s Exh. 32 – which is the approximate sum of the 55 *actual* supervisors and the 15 employees misclassified as supervisors.

The ALJ inexplicably found that “the Employer’s narrative about how the 15 at-issue employees came to be misleadingly classified as supervisors, while internally coherent, was not shown to be meaningfully tethered to reality.” (ALJD p. 14, lines 19-20). The employer has forthrightly admitted that its payroll software and systems in Boston are antiquated, inefficient and error-prone (TR 161-162), and that, because of the automation of some parking lots in Boston during the last few years, some employees previously and correctly categorized as supervisors under Section 2(11), no longer retained that status, but remained in that classification only because of payroll accounting inertia, or customer relations. These facts certainly do not justify disenfranchising such a large number of eligible voters in such an ultimately close election. The Board’s case law has long held that, for purposes of eligibility, job titles mean absolutely nothing. Here, the Petitioner stipulated that these fifteen challenged voters had no Section 2(11) supervisory authority, and one of its organizers admitted under oath that most of these so called “supervisors” performed the same work “as the valets and attendants.” (TR 71).

Despite the Regional Director’s initially harmless typographical error – and the Teamsters’ opportunistic attempts to capitalize on that error – the Board has long held to the principle that in matters of voter eligibility, names and titles and classifications mean next to nothing, and they cannot be used to create artificial supervisory authority, nor can they be used to

disenfranchise otherwise eligible voters. *Winco Petroleum Company*, 241 NLRB 1118, 1122 (1979).

For the foregoing reasons, the Employer submits that the challenges to the votes of Ben Adam Ragmari, Jose Flores, Fuad Ali, Osman Amin, Bezawit Abera, Demelash Abera, Hiruy Tasfaye, Felix Gonzalez, Andonet Bekele, Romeo Gauvin and Joseph Arthur, as well as those other employees merely misclassified as “supervisors,” should be overruled and their votes should be opened and counted.

### **III. The “Accounting Specialists” Issue**

The record evidence in this case shows that the accounting specialists have a substantial community of interest with the other classifications included in the stipulated unit in this case. The attendants, cashiers and accounting specialists enjoy common supervision (by the project managers at their respective locations) and employees in all three of these classifications share the same break room, at those locations where the accounting specialists work. The accounting specialists and all of the other classifications enjoy the same fringe benefits and are governed by the same policies, which are determined at the Employer's headquarters in Nashville, TN. The accounting specialists, like all other hourly employees, use the same time keeping system. All hiring for the positions at the Boston locations is done by the Regional Human Resources Manager from his office at 125 Lincoln Street; all new hires receive identical training, conducted by the Regional Human Resources Manager; all wage rates are determined by the General Manager and the Regional Human Resources Manager, at 125 Lincoln Street. The wage rates for the accounting specialists are almost identical to the rates paid the shuttle drivers (\$15.00-20.00 versus \$14.00-19.00), and the top rate is the same for accounting specialists and maintenance employees (\$20.00). The cashiers, attendants and accounting specialists all handle cash, interact with one another and with parking customers. The maintenance employees also may be required

to handle cash. (Emp. Exh. 20). By way of contrast, the shuttle drivers (whom the parties stipulated should be included in the unit) have no interaction with one another or with employees in any other classification. (TR 211, 213). The shuttle drivers alone must possess a valid CDL. The shuttle drivers and dispatchers do not handle cash; unlike the other classifications, the primary duty of the dispatcher involves the telephone. (Emp. Exh. 19).

There are certain well established principles that the Board has for decades applied in determining the appropriate unit for an election. Because the unit must be an appropriate one for collective bargaining, the dominant principle is that the employees included in the proposed unit share a community of interest. The rationale for this principle is that collective bargaining would not be practical or effective in a unit whose members' interests differ significantly one from another.

Because the scope of the unit is basic to and permeates the whole of the collective-bargaining relationship, each determination, in order to further effectuate expression of the statutory purposes, must have a direct relevancy to the circumstances within which collective bargaining is to take place. For, if the unit determination fails to relate to the factual situation with which the parties must deal, efficient and stable collective bargaining is undermined rather than fostered.

An Outline Of Law And Procedure In Representation Cases, Office Of NLRB General Counsel (Aug. 2008), [http://www.nlr.gov/sites/default/files/documents/44/rc\\_outline\\_2008\\_full.pdf](http://www.nlr.gov/sites/default/files/documents/44/rc_outline_2008_full.pdf) (hereinafter, "Outline"), at page 129 (quoting the Board's opinion in *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)).

Among other factors, community of interest may be shown by:

- The extent of functional integration
- Common supervision
- Common or similar duties, skills and functions
- Interchangeability and contact among employees

- Common work situs
- Common general working conditions.
- Common fringe benefits
- Common or similar pay scales

Outline, at 129 -130 (and cases cited there).

Section 9(c)(5) of the Act prohibits the Board from establishing a bargaining unit solely on the basis of the extent to which the union has succeeded in organizing employees. Similarly, the desires of the petitioning union are not dispositive - particularly where the petitioner's inclusions and exclusions from the unit appear to be arbitrary:

A petitioner's desire as to unit is always a relevant consideration but cannot be dispositive. *Marks Oxygen Co.*, supra; and *Airco, Inc.*, 273 NLRB 348 (1984), and section 12-140, infra. Obviously, a proposed bargaining unit based on an arbitrary, heterogeneous, or artificial grouping of employees is inappropriate. *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); and *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Thus, when all maintenance and technical employees have similar working conditions, are under common supervision, and interchange jobs frequently, a unit including only part of them is inappropriate. *U.S. Steel Corp.*, 192 NLRB 58 (1971).

Outline, page 128.

This is particularly important where the unit proposed by the petitioning union would leave out only a relatively few employees:

In fashioning overall or larger units, the Board is reluctant to leave a residual unit where the employees could be included in the larger group. *Huckleberry Youth Programs*, 326 NLRB 1272 (1998). See also *United Rentals, Inc.*, 341 NLRB 540 fn. 11 (2004) (only unrepresented employees at facility included in unit despite sparse record of community of interest) and section 19-440, infra.

Outline, page 13 8.

In *Kalamazoo Paper*, the Board refused the request of the petitioning union to sever the classification of truck drivers from an existing production and maintenance unit, because it concluded that the drivers *did* share a community of interest with the other employees in the unit:

As we view our obligation under the statute, it is the mandate of Congress that this Board "shall decide in each case ... the unit appropriate for the purpose of collective bargaining." In performing this function, the Board must maintain the two-fold objective of insuring to employees their rights to self-organization and freedom of choice in collective bargaining and of fostering industrial peace and stability through collective bargaining. In determining the appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function .... A title or classification in common usage does not necessarily establish that separate special interests exist and are preponderant. This can be determined only by making an informed judgment based upon an analysis of the factual circumstances bearing upon the distinguishing factors present in each case.

136 NLRB at 137-138.

Here, the Board should be most hesitant to exclude an extremely small residual unit of six or so "accounting specialists" from the larger group, especially one that shares a substantial community of interest with many employees in that larger group.

In the parties' post-hearing briefs to the ALJ, neither the Petitioner nor the Employer argued, referenced or cited to the Board's recent decision in *Specialty Healthcare*, 357 NLRB No. 83 (2011). Nor did the Hearing Officer (at least on the record) or the Regional Director (in the January 13<sup>th</sup> Decision and Direction of Election) cite to or reference this decision. And yet, in concluding that the challenges to the ballots of the Accounting Specialists should be sustained, the ALJ specifically relied on *Specialty Healthcare*, concluding that "the employer can prevail only if it demonstrates that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." (ALJD p. 6, lines 32-33).

For the most obvious of reasons, *Specialty Healthcare* has absolutely no application to the instant case. *Specialty Healthcare*, by its specific terms and scope, held that "in cases in

which a party contends that a petitioned-for unit containing employees readily identifiable as a group who share a community of interest is nevertheless inappropriate because it does not contain additional employees, the burden is on the party so contending to demonstrate that the excluded employees share an overwhelming community of interest with the included employees.” *Id.* There is absolutely no way that such a narrow, specific premise – possibly designed to lead to micro-units – could apply to the petition initially filed in this case. The petition in *Specialty Healthcare*, by its terms, covered only “certified nursing assistants (CNAs).” The petition in this case initially covered eight (8) different categories of individuals – including “supervisors” – at nineteen (19) different locations. When the election was directed, it covered eight (8) slightly different categories of employees at forty-one (41) locations. (Bd. Exh. 1).

In summary, it is apparent that the accounting specialists have a *substantially* greater community of interest with the attendants, cashiers and maintenance employees than the attendants, cashiers and maintenance employees have with the shuttle drivers and dispatcher. Since there are only five (5) shuttle drivers and two (2) dispatchers (*see* Board Exh. 3, page 23), it is difficult to see how the Petitioner's inclusion of *those* classifications in the unit, while excluding the accounting specialists, can be attributed to anything other than the extent of organization. Accordingly, the Employer submits that the challenges to the votes of Sosina Abebe, Meryama Alioui, Ling Nerie, Eleni Shaba, Mekdes Worku and Zheng Wang should be overruled and their votes should be counted.

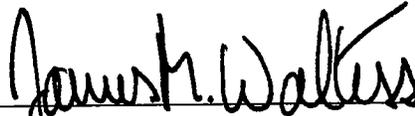
## CONCLUSION

For all the foregoing facts, argument and authorities, it is urged that the findings and conclusions of the Administrative Law Judge be reversed, and that the twenty-one (21) ballots, the challenges of which he recommended be sustained, be nonetheless open and counted.

Respectfully submitted,

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A handwritten signature in black ink that reads "James M. Walters". The signature is written in a cursive style and is positioned above a horizontal line.

Counsel for the Employer

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

KINNEY SYSTEM, INC.  
d/b/a CENTRAL PARKING SYSTEM OF  
MASSACHUSETTS,

Case 1-RC-71163

Employer,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 25,

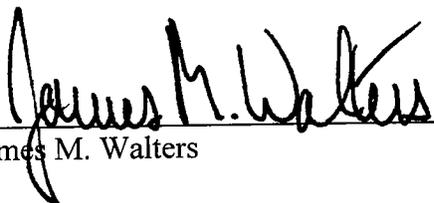
Petitioner.

**CERTIFICATE OF SERVICE**

I certify that I have, this 12<sup>th</sup> day of June, 2012, served a copy of the foregoing  
EMPLOYER'S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S REPORT ON CHALLENGED BALLOTS on the following individuals, via U.S. Mail  
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