

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

COLONIAL PARKING, INC.

and

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 27

Case No. 04-RC-187843

**REVISED REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION AND REGIONAL DIRECTOR'S DECISION ON
EXCEPTIONS TO THE HEARING OFFICER'S REPORT ON CHALLENGED
BALLOTS¹**

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¹ Respondent submits this Revised Request for Review pursuant to the directions of the Office of the Executive Secretary of the National Labor Relations Board, received by Respondent on May 16, 2017.

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Pursuant to Rules 102.67(c) and 102.69(c) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), Colonial Parking, Inc. (“Colonial” or “Employer”) respectfully requests review of the Regional Director’s Decision on Exceptions to the Hearing Officer’s Report on Challenged Ballots issued in the above-captioned proceeding on April 28, 2017 (“Decision on Exceptions”), as well as the Regional Director’s Decision and Direction of Election and Erratum issued in the above-captioned proceeding on December 1, 2016 and December 5, 2016, respectively (collectively, “DDE”). *See* Decision on Exceptions to the Hearing Officer’s Report on Challenged Ballots, Decision and Direction of Election, and Erratum attached hereto at Exhibit 1, Exhibit 2, and Exhibit 3, respectively. Compelling reasons exist for granting review. In support thereof, Employer states as follows:

I. OVERVIEW

Petitioner United Food and Commercial Workers, Local 27 (“UFCW” or the “Union”) filed an election petition that resulted in the Regional Director’s direction of a mail ballot election. A directed mail ballot election was held in December 2016, which resulted in ten (10) ballots cast for the Union, nine (9) ballots cast against the Union, and two (2) challenged ballots that were not opened or counted. Thus, the challenged ballots are determinative of the election. After a Post-Election Hearing regarding the challenged ballots, the Hearing Officer found that the two (2) challenged ballots should not be counted. The Regional Director issued a Decision on Exceptions that adopted the Hearing Officer’s findings, certified the results of the election, and resulted in the issuance of a certification of representative.

The Board should overturn the Regional Director’s certification of election and issuance of a certification of representative because the Regional Director ignored the applicable presumption in favor of manual elections, and the decision to conduct a mail-ballot election is

based on the erroneous factual determination that employees in the proposed unit are “scattered.” Moreover, the decision to conduct the election via mail ballot has resulted in prejudicial error.

If the Board does not grant Employer’s request to overturn the results of the election, the Board should grant review of the Decision on Exceptions and reverse the Regional Director’s decision to exclude Lot Auditor Neil Blanchette and Maintenance Associate Paul York from the proposed unit. The Decision on Exceptions contains errors on substantial factual issues that prejudicially affect the rights of Colonial. Furthermore, the Decision on Exceptions raises substantial questions of law and policy due to the Regional Director’s departure from officially reported Board precedent. Thus, the Regional Director’s erroneous factual determinations and departure from Board precedent necessitate the Board’s review and reversal of the Decision on Exceptions. As a result, the votes of the excluded employees should be opened and counted

II. FACTUAL AND PROCEDURAL BACKGROUND

Colonial provides parking facility management services at locations throughout Delaware and Pennsylvania. Colonial oversees parking facility management services at thirteen (13) locations in downtown Wilmington, Delaware that the Union seeks to organize, most of which are less than one mile from each other (the “Parking Facilities”). The Parking Facilities include multi-level parking garages, surface parking lots, valet parking lots, and unattended parking lots.

A. PETITION AND PRE-ELECTION HEARING

On November 8, 2016, the Union filed an election petition with a proposed bargaining unit including “[a]ll full-time and regular part-time cashiers, lot attendants, attendants, valet attendants, floaters, and customer service employees employed by [Employer] in Wilmington, Delaware.” In response to the petition, Colonial asserted that “[m]aintenance employees who perform cleaning and related duties and relieve as parking attendants and the Lot Auditor”

working at the Parking Facilities should also be included in the proposed unit. *See* Employer's First Amended Statement of Position, dated November 17, 2016, attached hereto at Exhibit 4. Employer also asserted that the election should be conducted manually in Employer's conference room located at 715 Orange Street, Wilmington, Delaware because, "[w]ith the exception of the 50[3] South Market location,² all work locations for eligible employees are within a ten minute walk from the proposed location for the election." *Id.*

After a Pre-Election Hearing, the Regional Director issued the DDE, which provided that the election would be conducted by mail and specified that the employees eligible to vote would include "[a]ll full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters and Maintenance Associates employed by the employer at [its Parking Facilities]." Exhibit 3. The DDE further stated that:

The parties have agreed that the Lot Auditor [Neil Blanchette] and the Skilled Maintenance Employee [Paul York] may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following election.

Exhibit 3.

B. ELECTION AND POST-ELECTION HEARING

The Region counted the mail ballot votes on December 28, 2016. The election resulted in ten (10) ballots cast for the Union, nine (9) ballots cast against the Union, and two (2) challenged ballots that were not opened or counted. Thus, the challenged ballots are determinative of the election. On January 24, 2017, a Post-Election Hearing regarding the challenged ballots was held before Hearing Officer Robert Gleason. On March 13, 2017, the

² Although Employer's e-mail mistakenly referred to "501 South Market" Street, the DDE correctly listed the Parking Facility location as "503 S. Market Street, Wilmington." *See* Exhibits 2 and 3.

Hearing Officer issued a Hearing Officer's Report on Challenged Ballots ("HOR"), in which he determined that 1) the proposed unit was appropriate because the proposed unit employees are readily identifiable as a group and share a community of interest, and 2) the votes of Blanchette and York should not be counted because neither employee shares an overwhelming community of interest with the proposed unit. *See* HOR, attached hereto at Exhibit 5.

C. EMPLOYER'S EXCEPTIONS AND REGIONAL DIRECTOR'S DECISION ON EXCEPTIONS

On March 27, 2017, Colonial filed exceptions to the HOR and a brief in support, arguing that: 1) the Hearing Officer did not require a *prima facie* showing that proposed unit employees have an interest separate and distinct from Blanchette and York; 2) the proposed unit did not constitute a readily identifiable group sharing a community of interest; 3) even if the proposed unit constituted a readily identifiable group sharing a community of interest, Blanchette and York share an overwhelming community of interest with the proposed unit; and 4) the Hearing Officer erred in excluding unskilled Maintenance Associate Paul York from the proposed unit, because the proposed unit expressly includes all unskilled "Maintenance Associates." *See* Brief in Support of Respondent's Exceptions to the Report of the Hearing Officer. On April 28, 2017, the Regional Director issued the Decision on Exceptions, in which he affirmed all of the factual findings and legal conclusions from the HOR. Exhibit 1.

D. THE JOB DESCRIPTIONS IN QUESTION

1. Lot Auditor Neil Blanchette

Neil Blanchette is currently employed by Colonial as a Lot Auditor, and previously worked a Lot Attendant for Colonial for approximately three (3) years. *See* Post-Election Hearing Transcript at 12-13, attached hereto at Exhibit 6. Blanchette audits and monitors Colonial's Parking Facilities to determine whether vehicles display appropriate parking permits.

Exhibit 6 at 13-14. Blanchette is also responsible for booting vehicles not permitted to park in the Parking Facilities, issuing warning notices to unpermitted vehicles, and monitoring and directing customers. Exhibit 6 at 13-14, 16-23, 25-30; Em. Ex. 2.³ Blanchette works a set schedule similar to other employees. Exhibit 6 at 15, 27. He is responsible for auditing both “open lots,” which generally are not staffed by any employees, and “staffed lots.” Exhibit 6 at 13, 23-24. For those Parking Facilities where there is no assigned attendant, Blanchette checks the parking permits of parked cars in much the same way that the Lot Attendants do at the non-automated Parking Facilities.

Blanchette audits approximately three (3) to five (5) Parking Facilities per day, where he walks around to inspect individual vehicles. Exhibit 6 at 14, 16-17. Blanchette responds to parking customer concerns, directs customers to avoid hazards, and generally approaches other Colonial employees at Parking Facilities to determine if there are any issues to be aware of in the area. Exhibit 6 at 14, 18, 23, 25-26. Colonial’s Area Manager Rob Clark supervises Blanchette on a day-to-day basis. Exhibit 6 at 26. Clark is also the immediate supervisor to multiple Colonial Facility Managers and directly supervises the activities of Colonial’s Lot Attendants. Exhibit 6 at 26-27, 79-80. Blanchette receives the same benefits, anniversary wage increases based upon work performance, and yearly bonuses as all other employees and wears a similar Colonial uniform. Exhibit 6 at 26, 102-103, 107, 117, 163; Em. Exs. 14 and 15.

2. Maintenance Associate Paul York

Paul York is a Maintenance Associate who has worked for Colonial for fifteen (15) years. Exhibit 6 at 51. York is responsible for completing minor repairs and routine maintenance at the

³ “Em. Exs.” refers to the Employer’s exhibits presented during the Post-Election Hearing. These exhibits are collectively attached hereto at Exhibit 7 and labeled as “Exhibit __.”

Parking Facilities. Exhibit 6 at 52-67; Em. Ex. 3. York is also responsible for interacting with customers to address parking or facility concerns, booting vehicles not permitted to park in the Parking Facilities, removing boots at the direction of Colonial's staff, monitoring and directing customers, and the general cleaning of Parking Facilities in conjunction with proposed unit employees, including trash removal and light snow removal. Exhibit 6 at 52-67; Em. Ex. 3.

York regularly works alongside Colonial's other Maintenance Associates and Government Center Custodian Russel Marshall to complete all the same maintenance tasks at the Parking Facilities. For example, York works with proposed unit employees to move heavier objects left at the Parking Facilities or boxed office records. Exhibit 6 at 53, 66. York regularly coordinates with all other proposed unit employees other than Cashiers to perform shared trash removal duties. Exhibit 6 at 105. Similarly, York teams with Maintenance Associates and Marshall to perform shared snow removal duties. Exhibit 6 at 53-56. York distributes supplies of calcium or salt, salt spreaders, and snow shovels and blowers to other proposed unit employees, who are principally responsible for clearing snow. Exhibit 6 at 54-57. York also routinely teams with Marshall to distribute supplies to, and pick up materials from, the Parking Facilities. Exhibit 6 at 70-72, 170.

In addition, York is responsible for filling in for other proposed unit employees in the event of call-outs. Em. Ex. 3. In instances when another employee calls out at a Colonial-managed parking facility at the West Chester County Courthouse in Pennsylvania, York fills in as a Lot Attendant in place of proposed unit employees who would otherwise have to travel from Wilmington, Delaware to West Chester, Pennsylvania. Exhibit 6 at 67. York, the longest serving Maintenance Associate, receives the same benefits, anniversary wage increases based upon work

performance, and yearly bonuses as all other employees, and wears a similar Colonial uniform. Exhibit 6 at 26, 102-103, 107, 117, 163; Em. Exs. 13 and 15.

3. Remaining Proposed Unit Employees

All other proposed unit employees, as well as Blanchette and York, share similar work schedules, “similar benefits, similar bonus amounts, a similar clock in/out procedure, and similar uniforms . . . [and] they perform routine unskilled work similar to [each other and the excluded employees].” Exhibit 5 at 12; Exhibit 6 at 26, 102-103, 107, 117, 133, 163.

a. Cashiers

Colonial employs approximately six (6) dedicated Cashiers,⁴ whose responsibilities include interacting with customers to address parking concerns, calculating accurate parking fees, collecting the correct amount of parking fees from customers and issuing the correct amount of change. Exhibit 6 at 96; Em. Ex. 10. Unlike both the remaining proposed unit employees and excluded employees, Cashiers do not perform any monitoring, parking enforcement, cleaning, repair, or maintenance responsibilities. Em. Ex. 10.

b. Customer Service/Cashiers⁵

Colonial employs approximately five (5) Customer Service/Cashiers. Whereas Cashiers work from a booth using a cash register or fee computer, Customer Service/Cashiers are not responsible for “processing every transaction at their facility.” Exhibit 6 at 97. Customer Service/Cashiers are responsible for interacting with customers to address parking concerns,

⁴ See “Parking Facility Location of Colonial Employees” table, *infra*, Section III.B.5., listing work locations of employees. See also Voter Eligibility List Colonial submitted to the Board on December 5, 2016, attached hereto at Exhibit 8. Although the Voter Eligibility List identified Brandy Gordy as a Cashier, Gordy testified that she currently works as a Customer Service employee at the Parking Facility located at 401 King Street. Exhibit 6 at 140.

⁵ Employees with the job title Customer Service/Cashier are classified as Customer Service employees in the Voter Eligibility List submitted to the Board to coincide with the classifications set forth in the Regional Director’s Decision and Direction of Election. As such, the “Parking Facility Location of Colonial Employees” table below references Customer Service/Cashier as Customer Service employees.

collecting the correct amount of parking fees and issuing the correct amount of change, and picking up and disposing of trash. Exhibit 6 at 94-96; Em. Ex. 9.

c. Customer Service/Maintenance/Supervisor⁶

Colonial employs approximately four (4) Customer Service/Maintenance/Supervisors, who are responsible for calculating accurate parking fees, collecting the correct amount of parking fees and issuing the correct amount of change, general cleaning and maintenance duties, picking up and disposing of trash, emptying garbage cans and transferring trash to pick-up locations, sweeping Parking Facilities, repairing gate arms, filling ticket machines, and snow removal. Exhibit 6 at 156-158, 160-162; Em. Ex. 8. Similar to Blanchette, Customer Service/Maintenance/Supervisors perform monitoring activity within, and walk throughout, Parking Facilities during each shift. Em. Ex. 8.

d. Floaters

Colonial employs two (2) Floaters who are responsible for filling in for, and performing the job duties of, the other classifications of proposed unit employees depending on Colonial's daily and hourly operational needs. Accordingly, Floaters do not have a fixed worksite or perform a fixed set of duties day-to-day. *See* Exhibit 6 at 169 ("Jamil does what I do, but he's a floater. He's different locations.").

e. Government Center Custodian

Colonial employs one (1) Government Center Custodian, Russell Marshall.⁷ He regularly works with York due to their coinciding maintenance, cleaning, and repair duties. *See*

⁶ Employees with the job title Customer Service/Maintenance/Supervisor are classified as Maintenance Associates employees in the Voter Eligibility List submitted to the Board to coincide with the classifications set forth in the DDE. As such, the "Parking Facility Location of Colonial Employees" table below references Customer Service/Maintenance/Supervisors as Maintenance Associates.

Exhibit 6 at 53-54, 65-67. Marshall's responsibilities include trash removal, general facility cleaning, snow removal, and monitoring of the Parking Facilities. Exhibit 6 at 84; Em. Ex. 5. Marshall assists York in completing larger maintenance tasks, such as disposing of heavy items, providing support to remove large amounts of snow, moving office records from Colonial's storage room, cleaning electrical rooms that flood during rainstorms, and delivering supplies to various Parking Facilities. Exhibit 6 at 53-54, 65-67, 170.

f. Lot/Valet Attendants

Colonial employs six (6) Lot/Valet Attendants at its Parking Facilities who are responsible for interacting with customers to park and move cars, general cleaning and maintenance duties, and picking up and disposing of trash. Em. Ex. 7. As with Blanchette, Lot/Valet Attendants are directly supervised by Area Manager Robert Clark. Exhibit 6 at 26-27.

g. Valet Parking Attendants

Colonial employs three (3) Valet Parking Attendants who are responsible for interacting with customers to park and move cars, general cleaning and maintenance duties, picking up and disposing of trash, and monitoring pedestrian traffic. Em. Ex. 6. Valet Parking Attendants are only assigned to one Parking Facility, 1000 King Street, and are the single classification in the proposed unit assigned to that location. *See* Exhibit 8.

...continued from previous page

⁷ Although Russell Marshall works with York to a greater degree than other Maintenance Associates, the title of "Government Center Custodian" is essentially the equivalent of "Maintenance Associate" for the employee performing maintenance and repair duties at the Government Center Parking Garage. *See* Exhibit 5 at 6 n.4.

III. LEGAL ARGUMENT

The decision to order a mail ballot election constitutes an abuse of discretion because the Regional Director ignored the applicable presumption in favor of manual elections, and the decision to conduct a mail-ballot election is based on the erroneous factual determination that employees in the proposed unit are “scattered.” Further, the decision to conduct the election via mail ballot has resulted in prejudicial error. Thus, the Regional Director’s certification of election and issuance of a certification of representative should be overturned.

If the Board does not grant Employer’s request to overturn the results of the election, the Board should reverse the Regional Director’s decision to exclude Lot Auditor Neil Blanchette and Maintenance Associate Paul York from the proposed unit. The Decision on Exceptions contains errors on substantial factual issues that prejudicially affect the rights of Colonial. Furthermore, the Decision on Exceptions raises substantial questions of law and policy due to the Regional Director’s departure from officially reported Board precedent. Thus, the Decision on Exceptions should be reversed and the votes of the excluded employees should be opened and counted.

A. THE RULING TO CONDUCT THE ELECTION BY MAIL BALLOT IS CLEARLY ERRONEOUS ON THE RECORD AND RESULTED IN PREJUDICIAL ERROR.

The Regional Director’s ruling to conduct the election via mail ballot has resulted in prejudicial error. In its Statement of Position, Employer argued that the representation election should be conducted manually in Employer’s conference room located at 715 Orange Street, Wilmington, Delaware because, “[w]ith the exception of the 50[3] South Market location, all work locations for eligible employees are within a ten minute walk from the proposed location

for the election.”⁸ See Exhibit 4. In support of this fact, Employer submitted turn-by-turn walking directions to the Board’s Labor Management Relations Examiner, Jennifer Schulze, demonstrating that the Parking Facilities, other than the 50[3] South Market location, are less than ten (10) minutes walking distance from 715 Orange Street. See “RE: Colonial Parking, Inc., 04-RC-18784” e-mail to Jennifer Schulze dated November 17, 2016, attached hereto at Exhibit 10. Employer also provided bicycle directions to Ms. Schulze demonstrating that 715 Orange Street is an eleven (11) minute bicycle ride from 503 South Market Street, as “[t]he employee who works there rides a bike to work.” Exhibit 10.

At the Pre-Election Hearing, Employer confirmed that the “times for the election [should be] between 2:00 and 4:00 p.m.” and “that the appropriate method of election in this case would be a manual election.” See Exhibit 9 at 11. The Union requested the election be conducted via mail ballot, but stated that “if there is an in place election, it should at least go until 5:00 o’clock.” Exhibit 9 at 20.

In the DDE, the Regional Director stated:

I have determined that a mail ballot election will be held because the employees in the proposed bargaining unit work at 13 separate locations, and are thus scattered. In such situations, the Board has recognized that mail balloting is appropriate. *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). Moreover, where other factors favor mail balloting, the economic and efficient use of Board Agents is reasonably a concern. . . . While the Employer proposed that a manual election be conducted at a single location, it appears, based on the voter lists submitted by the employer with its Statement of Position, that none of the employees in the proposed unit work at that location. Thus, all would be

⁸ As noted by Employer at the Pre-Election Hearing, “[t]hat office location is, on various occasions during the course of the year, a location where employees come to either participate in open enrollment, as they are doing today, or training, to receive their Christmas hams and for other activities. So the employees are not unfamiliar with the location or how to get there. . . . It’s functionally no different than a centralized mail ballot in a large factory or a multi-story healthcare facility. The opportunity therefore would be available to insure that this election is conducted under the appropriate laboratory conditions and that’s with a manual ballot in the presence of an agent of the NLRB.” See Pre-Hearing Transcript at 12, attached hereto at Exhibit 9.

required to walk or drive to that location to vote. In these circumstances, where employees are dispersed over numerous worksites in the city of Wilmington, Delaware and it is not feasible to conduct voting sessions at all of the worksites, it is appropriate to conduct a mail ballot election.

Exhibit 2 at 2-3. The Regional Director's ruling to hold a mail ballot election because proposed unit employees are "scattered" is based upon a misapprehension of the facts and misapplication of the law, and thus has resulted in prejudicial error.

"[U]nder existing Board precedent and policy, the applicable presumption favors a manual election, not a mail-ballot election." *Willamette Industries, Inc.*, 322 NLRB No. 151, slip op. at 1 (1997); *see also* NLRB Casehandling Manual (Part Two), Section 11301.2 (making clear that the "Board's longstanding policy is that representation elections should, as a general rule, be conducted manually."). While allowing for some discretion, Section 11301.2 of the Board's Casehandling Manual provides that the longstanding policy of conducting elections manually should be adhered to unless "eligible voters are 'scattered' because of their job duties over a wide geographic area; . . . [or] 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times[.]"

Here, Colonial's employees are not scattered in the geographic sense. *Cf. San Diego Gas & Electric*, 325 NLRB 1143 (1998) (finding employees "spread across an area of over 80 miles" are scattered); *London's Farm Dairy, Inc.*, 323 NLRB No. 186, slip op. at 1 (1997) (finding employees working at locations 199 and 130 miles from the Regional Office are scattered). All but one of Colonial's employees work between 85 feet and 0.4 miles from 715 Orange Street, and the one employee working at a greater distance had access to the proposed voting location via an eleven (11) minute bike ride (his normal mode of transportation to work). *See* Exhibit 10. Nor are Colonial's employees scattered by virtue of their work schedules. As found by the Hearing Officer and affirmed by the Regional Director, all of the proposed unit and excluded

employees work similar set schedules, and the Union's suggested polling time would have provided all employees with an opportunity to vote within a single three (3) hour period. "The mere fact that employees may work multiple shifts, thereby necessitating more than one voting session during the course of the workday, is not in and of itself a sufficient basis for directing a mail ballot election." *San Diego Gas and Elec.*, 325 NLRB 1143, 1145 n.7 (1998). Thus, the Regional Director's direction of an election by mail ballot violates the applicable presumption in favor of manual elections and is based on substantial factual errors.

Further, the Regional Director's direction of election by mail ballot resulted in the disenfranchisement of two proposed unit employees. Lot Attendant Christopher Dineen received an election ballot from the Board, completed the ballot with his voting choice, and deposited the completed ballot in the mail approximately two (2) to three (3) days after receipt. *See* Statement of Christopher Dineen, dated May 10, 2017, attached hereto at Exhibit 11.⁹ Despite mailing the completed ballot to the Board on December 9 or 10, 2016, well before the conclusion of the voting period on December 27, 2016, the Board did not receive Dineen's ballot and did not count any vote for Dineen in the election tally. *See* Statement of Christopher Hankins, dated May 10, 2017, attached hereto at Exhibit 12 ("During the counting process, the NLRB official read the names of Colonial employees from the ballot envelopes that had been received via mail. The NL[R]B did not receive a ballot from Colonial employee Chris Dineen."). Thus, the Regional Director's erroneous decision to conduct a mail ballot election resulted in a failure to count a mail ballot cast by an eligible voter included in the proposed unit.

⁹ A Post-Election Hearing was not held on the question of the Regional Director's inappropriate use of the mail ballot process. As such, the Board may consider offers of proof at this stage in accordance with Rule 102.69(d)(3).

In addition, the Regional Director's decision to conduct a mail ballot election likewise disenfranchised Lot Attendant Jerry Pacheco. Employer's representative present for the counting of ballots in this matter was informed prior to the counting of ballots by NLRB agent Donna Bernini-Martin that the Board had received two ballots on two different dates each purportedly bearing the signature of Jerry Pacheco. *See* Statement of Joseph P. Hoffman, dated May 10, 2017, attached hereto at Exhibit 13. Employer's representative was permitted to inspect the two ballots purportedly received from Pacheco and observed that each ballot bore "clearly different" signatures. *Id.* Employer's representative is unfamiliar with Pacheco's signature so he "was unable to make a determination as to which of the two signatures was, in fact, the actual signature of Mr. Pacheco." *Id.* Ms. Bernini-Martin informed Employer's representative that "Region 4 had determined that it would count the ballot purportedly received from Mr. Pacheco on the date closest to December 28, 2016 and set aside and not count the ballot purportedly received earlier from Mr. Pacheco." *Id.* Thus, the Regional Director's erroneous decision to conduct a mail ballot election resulted in a failure to assure that the mail ballot cast by Pacheco was counted in the election.

Where a Regional Director determines to direct an election by mail ballot, the Board reviews the Regional Director's determination for clear abuse of discretion. *See Nouveau Elevator Industries, Inc.*, 326 NLRB No. 49, slip op. at 2 (1998). If the direction of election via mail ballot constitutes a clear abuse of discretion based upon the facts of the case and "the applicable presumption favor[ing] a manual, not a mail-ballot election[.]" the Board should exercise its authority to overturn the direction of election. *Id.* Here, because the employees are not "scattered" geographically or by varying work schedules, the Regional Director's determination to direct the election by mail ballot constitutes a clear abuse of discretion,

compelling the Board to “reverse the . . . Regional Director's direction of a mail-ballot election, and direct that a manual election be conducted.” *Willamette Industries, Inc.*, 322 NLRB No. 151, slip op. at 1 (1997).

B. THE REGIONAL DIRECTOR’S DECISION ON EXCEPTIONS RELIES ON CLEAR MISSTATEMENTS OF THE RECORD EVIDENCE AND SUCH ERRORS RESULTED IN THE ERRONEOUS DECISION TO EXCLUDE THE CHALLENGED VOTES OF BLANCHETTE AND YORK.

Although Colonial excepted to the HOR on thirty-five separate grounds, the Regional Director disposed of the exceptions wholesale, stating that he had “reviewed the Employer’s Exceptions . . . and reach[ed] the same conclusion [to reject all of Employer’s exceptions] based on the reasoning that I have set forth in [the Decision on Exceptions].” Exhibit 1 at 6. The absence of specific legal and factual bases for the Regional Director’s blanket rejection of Employer’s exceptions undermines Colonial’s ability to provide a cogent response to the Decision on Exceptions. Employer should not be forced to partake in a guessing game regarding the reasons relied underlying the Regional Director factual determinations and legal conclusions.

Beyond the Regional Director’s near-non-existent analysis of Employer’s exceptions, the Decision on Exceptions contains erroneous factual determinations. Further, the Regional Director’s failure to address, let alone acknowledge, several of Employer’s exceptions to factual errors made by the Hearing Officer constitutes reversible error. Thus, the Board should grant review of the Decision on Exceptions and reverse the Regional Director’s certification of the election and issuance of a certification of representative.

1. The Regional Director Erroneously Excluded Maintenance Associate Paul York from the Proposed Unit.

The Regional Director’s exclusion of Maintenance Associate Paul York from the proposed unit, despite York’s employment in a job classification specifically included in the

proposed unit, is clear error. The DDE specified that the proposed unit eligible to vote in the election included “[a]ll *full-time* and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters and *Maintenance Associates* employed by the employer at [its thirteen locations in Wilmington, Delaware].” Exhibit 3 (emphasis added).

The Hearing Officer correctly determined that characterizing York as a Skilled Maintenance Associate “is a misnomer” because York’s work is routine and unskilled in nature and he “does not perform any work that is typically associated with the term ‘skilled employee.’” Exhibit 5 at 4 fn.3. The Hearing Officer then concluded that the proposed unit, comprising all Maintenance Associates employed at Colonial’s Parking Facilities was an appropriate one, but nevertheless excluded York. Exhibit 5 at 2, 12.

Colonial disagreed with York’s exclusion, arguing that “the Hearing Officer’s illogical decision to exclude Maintenance Associate Paul York from a unit that includes all other employees in the same exact classification performing work at the same Parking Facilities in Wilmington, Delaware is a material error and should be reversed.” See Brief in Support of Respondent’s Exceptions to the Report of the Hearing Officer at 35. In the Decision on Exceptions, the Regional Director reiterated the Hearing Officer’s conclusion regarding Paul York, finding that he “performs routine unskilled maintenance work.” Exhibit 1 at 4. Nonetheless, the Regional Director also excluded York from the proposed unit.

Inexplicably, the Regional Director failed to acknowledge Colonial’s argument that York should be included in the proposed unit because he is an employee who performs unskilled maintenance work and the proposed unit includes “[a]ll full-time . . . Maintenance Associates.” The Regional Director also failed to explain why it would be appropriate to exclude a

Maintenance Associate from a proposed unit that explicitly includes “Maintenance Associates.” Because the evidence demonstrates that York performs work as a Maintenance Associate rather than as a “Skilled Maintenance Employee”—a conclusion reached by both the Hearing Officer and Regional Director—the decision to exclude York from the proposed unit is clearly erroneous on the record and should be reversed.

2. Several Proposed Unit Employees Are Not Assigned to a Specific Work Location and Do Not Work for Their Entire Shift at a Single Work Location.

The Regional Director erroneously found that employees in the proposed unit “are all stationed in either a surface lot or parking garage setting, where they spend their *entire* shift at that designated lot.” Exhibit 1 at 4 (emphasis added). Further, the Regional Director stated that employees in the proposed unit “are regularly assigned to, and work for, the *duration* of their workday at *specific* garages and lots throughout Wilmington, Delaware.” Exhibit 1 at 4 (emphasis added). In sum, the Regional Director erroneously determined that each employee in the proposed unit is regularly assigned to a single, specific work location and performs work at that location for the entire day. The record evidence demonstrates otherwise.

In its exceptions, Colonial argued that “employees included in the proposed unit are not identified by a common or fixed work location.” *See* Brief in Support of Respondent’s Exceptions to the Report of the Hearing Officer at 19. As detailed in the DDE, employees in the proposed unit work at thirteen (13) different locations in Wilmington Delaware. Exhibit 3. The DDE also provides that Floaters and Maintenance Associates are included in the proposed unit. Exhibit 3. As indicated by their title, Floaters relieve, replace, or assist other employees at various Parking Facilities throughout each day depending on Colonial’s changing operational needs. The Hearing Officer concluded as much. *See* Exhibit 5 at 7. In addition, testimony adduced at the Post-Election Hearing likewise demonstrates that Floaters regularly work at

different locations throughout each workday. *See, e.g.*, Exhibit 6 at 169, (“Jamil does what I do, but he’s a floater. He’s different locations.”). As does the voter eligibility list in this matter. *See* Exhibit 8 (listing “Multiple locations” as the work location of Floaters).

Maintenance Associates included in the proposed unit also do not work at a single location. For example, Maintenance Associate Kenneth Lewis regularly works at two different locations, 1201 N. Market Street, and 1200 N. Orange Street. *See* Exhibit 8. Further, Russell Marshall frequently assists York with maintenance duties at various locations, including snow removal duties, moving office records, cleaning Colonial’s electrical rooms, and distributing supplies to employees stationed across various Parking Facilities. *See* Exhibit 6 at 53-54, 65-67, 170. In short, Floaters and Maintenance Associates routinely perform work at multiple locations.

Despite clear evidence to the contrary, the Regional Director concluded that “employees in the proposed unit are easily identified by their work locations” because the employees “are regularly assigned to, and work for, the duration of their workday at specific garages and lots throughout Wilmington, Delaware.” Exhibit 1 at 4. Although Colonial excepted to the same conclusion made by the Hearing Officer, the Regional Director again failed to acknowledge, let alone address, Employer’s arguments on the subject. This shows that one of the bases used by the Regional Director to exclude the challenged ballots from the count—that the voting unit worked at fixed locations and the excluded voters do not—is not supported by the record. As such, the Decision on Exceptions should be reviewed and corrected.

3. Proposed Unit Employees Are Not Each Supervised by a Single Facility Manager Present at Employees’ Work Locations or by Facility Managers Alone.

The Regional Director’s factual findings regarding the “separate day-to-day supervision” of proposed unit employees are contrary to the record. The Regional Director found that the “Facility Managers at the various garages and lots, who report to Area Managers, supervise the

agreed-upon unit employees on a day-to-day basis. However, these Area Managers are responsible for overseeing the unattended lots and supervise the lot auditor and skilled maintenance employee directly.” Exhibit 1 at 4. Further, the Regional Director found that employees in the proposed unit “are identified along supervisory lines since *each employee* is supervised by *the* Facility Manger responsible for *his* garage.” Exhibit 1 at 4 (emphasis added). Accordingly, the Regional Director erroneously concluded that each proposed unit employee is only subject to daily supervision by a specific Facility Manager stationed at the employee’s fixed work location, and that neither Area Manager directly supervises any proposed unit employees or any work locations other than unattended parking lots. While Colonial argued to the contrary in its exceptions to the HOR,¹⁰ the Regional Director again failed to address Employer’s argument.

The evidence on record establishes that multiple proposed unit employees not supervised on a daily basis by a single or specific Facility Manager. As detailed above, Floaters and Maintenance Associates perform work at multiple locations throughout each day, depending on Colonial’s operational needs, whereas Facility Mangers are stationed at a fixed location. *See* Exhibit 6 at 79 (“[F]acility Managers . . . foresee a particular parking garage or location”); Exhibit 6 at 169 (noting Floaters work at “different locations”). Thus, because Floaters and Maintenance Associates do not perform work at a single, fixed location, neither classification of employees is supervised by a single or specific Facility Manager on a day-to-day basis.

Further, Area Managers are also responsible for supervising proposed unit employees. At the Post-Election Hearing, Colonial’s Vice President of Operations, Chris Hankins, testified that Area Manager Jeff Garrison, who also serves as Maintenance Director, supervises all of the

¹⁰ *See* Exhibit 6 at 19-21.

attended lots and garages north of Sixth Street in Wilmington, Delaware as well as the unattended lots in that area. *See* Exhibit 6 at 79-80. Hankins also testified that Area Manager Robert Clark is responsible for supervising all of the attended lots and garages and unattended lots south of Sixth Street. *See* Exhibit 6 at 80. Lastly, Hankins testified that Garrison directly supervises proposed unit employees who perform maintenance duties, such as Russell Marshall, Anita Smith, Kenneth Lewis, Margaret Harding, and Johnheem Boardley. Exhibit 6 at 80-81.

Lot Auditor Neil Blanchette also testified that Colonial's Area Managers directly supervise employees in the proposed unit. *See* Exhibit 6 at 26-27. When asked whether Area Manager Robert Clark "also supervises the lot attendants and the people working in the parking garages" Blanchette responded "[y]es, sir." Exhibit 6 at 27. Indeed, all Lot Attendants report directly to Colonial's Area Managers, and the line purportedly separating the direct day-to-day supervision of the remaining proposed unit employees by Facility Managers and Area Managers is distinctly blurred. The following exchange between the Union's Counsel, the Hearing Officer, and Cashier Brandy Gordy, who works at the 401 King Street Parking Facility, is demonstrative:

Union Counsel: Who is your direct supervisor?
Gordy: Rob Clark
Union Counsel: Would you tell me what Rob Clark's title is?
Gordy: Well, Janai [Clark] is the supervisor. If something doesn't go -- well, I report to Janai, Janai may have an issue or something or have to talk it over with Rob. That's it.
Union Counsel: So you report directly to Janai?
Gordy: Yes.
Union Counsel: And do you know what Janai's title is?
Gordy: She's a supervisor. She's like area manager, facility manager, I don't -- supervisor, area manager.
Union Counsel: Did you hear the Employer's testimony before, I'm sorry, Mr. Hankins' testimony about the sort of structure, the area managers and facility managers --
Gordy: Yeah.
Union Counsel: -- those descriptions?
Gordy: Yes.

Union Counsel: Do you think -- do you believe that Janai is a facility manager or an area manager?

Gordy: I think she's an area manager. It's either area manager -- I really don't know.

Union Counsel: Okay. You're not -- you're unsure.

Gordy: I'm not really for sure.

Union Counsel: That's fine, that's fine.

Gordy: I just know I report to her.

Union Counsel: Okay you report to her.

Gordy: Yes.

Union Counsel: And she report to Rob.

Gordy: Yes.

Union Counsel: And she report to Rob.

Gordy: Yes.

Hearing Officer: And she is not on site?

Gordy: No.

Hearing Officer: She's at the main office?

Gordy: No, she's at the [New Castle County] courthouse [located at 510 N. King Street, Wilmington, Delaware].

Union Counsel: Do you know if Neil [Blanchette] or Paul [York] ever report to Janai?

Gordy: No.

Hearing Officer: You don't know?

Gordy: I don't know. I don't know.

Exhibit 6 at 147-148.

Gordy's testimony demonstrates that proposed unit employees regularly work at a location different than that of a Facility Manager and that a clear-cut division of supervision by Facility Managers on one hand, and Area Managers on the other, does not exist. Thus, the Regional Director's finding that proposed unit employees are subject to *exclusive* daily supervision by the specific Facility Manager stationed at each employee's fixed work location is clearly erroneous on the record. So, too, is the finding that Area Managers do not directly supervise any proposed unit employees. Again, the Regional Director relied on an erroneous understanding of Colonial's operations when issuing his Decision on Exceptions in that he believed the excluded employees had a management structure that was unique from the rest of

the proposed unit. This is not the case. Thus, the Decision on Exceptions should be reviewed, and the two challenged votes included in the count.

4. Lot Auditor Neil Blanchette and Maintenance Associate Paul York Have Regular Contact with Employees in the Proposed Unit.

The Regional Director determined that “[t]he Lot Auditor and . . . Maintenance Employee have very limited contact with employees in the proposed unit.” Exhibit 1 at 5. The Regional Director’s factual determination contradicts the record.

a. Lot Auditor Neil Blanchette

Without citing to any evidence for support, the Regional Director stated that “Lot Auditor [Neil Blanchette] spends less than 10% of his time visiting surface lots where the proposed unit employees work and has limited interaction with customers.” Exhibit 1 at 4. Colonial argued to the Regional Director that no evidence or testimony supported the Hearing Officer’s conclusion that Blanchette spends less than 10% of his time at locations where employees in the proposed unit work. Exhibit 5 at 30-31. Again, however, the Regional Director failed to address Colonial’s argument and simply restated the Hearing Officer’s unsupported conclusion.

At the Post-Election Hearing, Blanchette testified that he regularly audits Parking Facilities staffed by employees in the proposed unit and interacts with proposed unit employees to perform his auditing duties. *See* Exhibit 6 at 13-14, 24-25. Although Blanchette audits other locations where proposed unit employees do not work, no evidence on record supports that Blanchette spends less than 10% of his *time* at lots where proposed unit employees do work. The arbitrary and unsupported figure conceived by the Hearing Officer and parroted by the Regional Director is belied by Blanchette’s testimony that he routinely approaches proposed unit employees to “ask them if there’s any issues that [he] need[s] to be aware of, prior to going around, and checking out the cars and that type of thing.” Exhibit 6 at 14.

b. Maintenance Associate Paul York

Again without citing to record evidence, the Regional Director asserted that Maintenance Associate Paul York “seldom requests any assistance from other maintenance employees[.]” Exhibit 1 at 4. To the contrary, York has regular contact with employees in the proposed unit. York testified that he routinely works alongside proposed unit employee Russell Marshall and Colonial’s other Maintenance Associates to complete maintenance and repair tasks. For example, York testified that he works with Marshall or other Maintenance Associates to move heavier objects, such as boxed office records and water logged mattresses left at the Parking Facilities. *See* Exhibit 6 at 53, 66. York also routinely coordinates with proposed unit employees to perform shared trash removal duties. Exhibit 6 at 105. Similarly, York teams with Maintenance Associates and Marshall to perform shared snow removal duties. *See* Exhibit 6 at 53-56. Further, York distributes supplies of calcium or salt, salt spreaders, snow shovels, and snow blowers to Marshall and the other Maintenance Associates to clear snow, and provides general assistance for snow removal duties. *See* Exhibit 6 at 54-57.

At the Post-Election Hearing, proposed unit employees also testified regarding their contact with York. Customer Service/Maintenance/Supervisor Anita Smith testified that York and Marshall are responsible for distributing maintenance supplies such as bleach to proposed unit employees at each Parking Facility. Exhibit 6 at 170. Customer Service/Maintenance/Supervisor Margaret Harding testified that York will “come by and see if we have trash there. And if it’s trash there, he will come and remove it.” Exhibit 6 at 160. Thus, the testimony of both York and proposed unit employees demonstrates that York routinely discusses, coordinates, and teams with proposed unit employees to perform maintenance duties. The Regional Director’s finding that York worked separate from the rest of the proposed unit, with limited

interaction, is a misreading of the unchallenged testimony on this topic. When properly analyzed, York’s regular working relationship justified his inclusion in the proposed unit. Thus, it is inappropriate to exclude his vote from the count.

5. The Excluded Employees Have at Least as Much or Even More Contact with the Voting Unit Than Do Other Proposed Unit Employees.

The Regional Director determined that employees in the proposed unit “have regular contact with the other employees working at the same or an adjacent parking facility and fill in for one another.” Exhibit 1 at 3. The Regional Director relied upon this determination to contrast the level of contact that the excluded employees have with the proposed unit, which the Regional Director found to be “very limited.” See Exhibit 1 at 5. In turn, the Regional Director used this finding of “very limited contact” as a basis for his ultimate conclusion that Blanchette and York do not share an overwhelming community of interest with the proposed unit. However, the record demonstrates that Blanchette and York have at least as much, if not more, contact with the voting unit than that of several other employees within the proposed unit.

The Voter Eligibility List submitted to the Board illustrates the limited contact that multiple classifications of employees have with other employees in the proposed unit. The spread of proposed unit employees across the Parking Facilities included in the proposed unit is depicted in the table below:¹¹

¹¹ Colonial’s Floater employees, Jamil Mason and Brandon Owens, are not represented in this table as they are responsible for performing work at all of the above Parking Facilities based on operational needs.

<i>Parking Facility Locations of Colonial Employees</i>					
Location	Cashier	Customer Service	Maintenance Associate	Valet Parking Attendant	Lot Attendant
9th & French Streets	2	0	2 ¹²	0	0
1000 King Street	0	0	0	3	0
401 King Street	0	2 ¹³	0	0	0
12th & Washington Streets	0	1	0	0	1
713 Shipley Street	0	0	0	0	1
1201 N. Market Street¹⁴	2	0	1*	0	0
903 Shipley Street	0	1	1	0	0
503 S. Market Street	0	0	2	0	2
1200 N. Orange Street	0	0	1*	0	0
222 Delaware Avenue	1	0	0	0	0
711 Orange Street	0	0	0	0	1
510 N. King Street	0	2	0	0	0
10th & Washington Streets	0	0	0	0	1

As illustrated above, Cashiers only work at Parking Facilities where three (3) other individual proposed unit employees are regularly assigned, and thus do not have any regular contact with a majority of employees in the proposed unit. *See* Exhibit 8. Valet Parking Attendants are only assigned to one Parking Facility, 1000 King Street, and are the single classification in the proposed unit regularly assigned to that location. *See* Exhibit 8.

Accordingly, Valet Parking Attendants do not have regular contact with any other classifications of proposed unit employees other than Floaters.

¹² The Voter Eligibility List identified “Government Center Custodian” Russell Marshall as a Maintenance Associate located at 9th & French Streets. *See* Exhibit 8. Accordingly, Marshall is represented above as one of the two (2) Maintenance Associates located at 9th & French Streets.

¹³ Although the Voter Eligibility List identified Brandy Gordy as a Cashier, Gordy testified that she currently works as a Customer Service employee at the Parking Facility located at 401 King Street. *See* Exhibit 6 at 140. Accordingly, Gordy is represented above as a Customer Service employee located at 401 King Street. The Voter Eligibility List does not identify any other employees working as a Cashier at 401 King Street.

¹⁴ *Maintenance Associate Kenneth Lewis regularly works at the Parking Facilities located at both 1201 N. Market Street and 1200 N. Orange Street. *See* Exhibit 8. Accordingly, Lewis is represented above as the only Maintenance Associate located at both locations. The Voter Eligibility List does not identify any other employee working as a Maintenance Associate at 1201 N. Market Street or 1200 N. Orange Street.

The record also demonstrates that Customer Service/Cashiers, the Government Center Custodian, Russell Marshall, and Customer Service/Maintenance/Supervisors are only regularly assigned to Parking Facilities also regularly staffed by Cashiers. *See* Exhibit 8. Thus, neither classification has regular contact with additional employee classifications other than Floaters. Furthermore, Lot Attendants are regularly assigned as the only proposed unit employee at the 713 Shipley Street, 711 Orange Street, and 10th & Washington Street Parking Facilities. Thus, none of the proposed unit employees working as Lot Attendants have any regular contact with any other proposed unit employees. *See* Exhibit 8.

In contrast, the responsibilities of Blanchette and York necessitate each employee to routinely interact with proposed unit employees across all Parking Facilities. As such, the Regional Director's determination that employees in the proposed unit have regular contact with other employees in the proposed unit to a greater extent than Blanchette and York is mistaken. Therefore, the Regional Director's reliance on this determination to exclude the votes of Blanchette and York is in error.

6. Proposed Unit Employees Also Perform Work at Employer's Unattended Lots.

The Regional Director concluded that Colonial "also operates unattended lots, which are not locations where the employees in the petitioned-for unit work." Ex. 1 at 4. The conclusion that proposed unit employees do not perform work at Colonial's unattended lots, and that York and Blanchette do, is not accurate, and the Regional Director's attempt to draw a distinction on this basis is not supported by the record.

At the Post-Election Hearing, Colonial's Vice President of Operations, Chris Hankins, testified that the proposed unit employees who work at Colonial's 510 N. King Street location also perform monitoring and auditing duties at Colonial's unattended lot located at 516 King

Street. Specifically, Hankins testified that Customer Service/Maintenance/Supervisor Anita Smith and Customer Service/Cashier Melanie Williams monitor “the surface lot at 516 King Street for illegal parkers[.]” Exhibit 6 at 104-05. Like Lot Auditor Neil Blanchette, Smith and Williams are responsible for checking the unattended lot at 516 King Street and applying parking boots to vehicles not permitted to park in parking spaces there. Exhibit 6 at 105. Thus, the conclusion that no proposed unit employees perform work at unattended lots is erroneous. In fact, these proposed unit employees perform many of the same duties as Blanchette does at unattended lots. As such, the Regional Director should not rely on this distinction to justify the exclusion of Blanchette’s vote.

7. Blanchette and York Are Not “Entrusted With Greater Responsibilities” than Proposed Unit Employees.

The Regional Director incorrectly concluded that Lot Auditor Neil Blanchette and Maintenance Associate Paul York “are entrusted with greater responsibilities than the other attendants and maintenance associates in the proposed unit.” Ex. 1 at 5. As apparent support for this conclusion, the Regional Director stated that, “[m]ost notably, the Lot Auditor and the . . . Maintenance Associate perform job duties independently and travel to numerous lots each day in Employer-provided vehicles, whereas the proposed unit employees are routinely assigned to the same garage or lot on a daily basis.” Ex. 1 at 5. This analysis is flawed. As mentioned above, and shown through the uncontroverted evidence at the Post-Election Hearing, other members of the voting unit regularly hold these same “greater responsibilities.”¹⁵ As such, the record

¹⁵ Presumably, the Regional Director’s reference to the performance of “job duties independently” is intended to mean performance of work independent of direct supervision. As depicted in the “Parking Facility Location of Colonial Employees” table above, several proposed unit employees are regularly assigned to Parking Facilities where no other proposed unit employees are present, *e.g.*, the Lot Attendants working at the 713 Shipley Street, 711 Orange Street, and 10th & Washington Street Parking Facilities. Accordingly, if the Regional Director’s reference to

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demonstrates that employees in the proposed unit are no different than Blanchette and York in this regard.

Testimony from the Post-Election Hearing establishes that Floaters, Maintenance Associates, and Cashiers routinely perform work independent of direct supervision. *See* Exhibit 6 at 26-27, 79-81, 147-148 (Colonial’s Area Managers are not stationed at the same work locations as the Maintenance Associates and Lot Attendants they directly supervise; Cashier Brandy Gordy works independently of her supervisor, Facility Manager Janai Clark, who is stationed at a separate Parking Facility). Likewise, the nature of the work performed by Floaters and Maintenance Associates entails travel from Parking Facility to Parking Facility. Floaters relieve, replace, and assist other employees at various Parking Facilities depending on changing operational needs. Maintenance Associates assist and team with Paul York to complete maintenance and repair tasks at the Parking Facilities, such as moving heavy objects,¹⁶ performing snow removal duties,¹⁷ and distributing supplies to other proposed unit employees.¹⁸ Thus, proposed unit employees are also “entrusted with” the “greater responsibilities” which the Regional Director erroneously concluded are unique to Blanchette and York. The Regional Director’s attempt to draw a distinction between Blanchette and York in this regard is not based on an accurate portrayal of the record. As such, the votes of Blanchette and York should be counted.

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the performance of “job duties independently” is intended to mean independent of other proposed unit employees, the Regional Director’s implicit determination that no proposed unit employees work independent of all other proposed unit employees is clearly erroneous on the record.

¹⁶ *See* Exhibit 6 at 53 and 66.

¹⁷ *See* Exhibit 6 at 54-57.

¹⁸ *See* Exhibit 6 at 170.

8. Employees in the Proposed Unit Are Not Readily Identifiable as a Group Based on Work Locations and Supervisory Lines.

The Regional Director determined that the proposed unit constitutes a readily identifiable group based on work locations and supervision:

The employees in the proposed unit are easily identified by their work locations. They are regularly assigned to, and work for, the duration of their workday at specific garages and lots throughout Wilmington, Delaware. They are identified along supervisory lines since each employee in the proposed unit is supervised by the Facility Manager responsible for his garage.

Exhibit 1 at 4. The Regional Director's determination is contradicted by the record.

First, proposed unit employees are not identifiable by specific work locations. Both Floaters and Maintenance Associates regularly perform work at multiple Parking Facilities depending on Colonial's operational needs. *See* Exhibit 6 at 169 (“[Proposed unit employee] Jamil [Mason] does what I do, but he's a floater. He's different locations.”). The Regional Director's failure to account for, or even acknowledge, this fact constitutes material error.

Second, proposed unit employees are not identified along supervisory lines. Some proposed unit employees work at the same Parking Facility as the Facility Manager by whom they are directly supervised, while others do not. For example, Cashier Brandy Gordy works at Employer's 401 King Street parking facility, while her Facility Manager, Janai Clark, works at the Parking Facility located at 510 N. King Street. Exhibit 6 at 147-148. Further, Area Managers directly supervise employees included in the proposed unit. For example, Area Manager Robert Clark directly supervises all Lot Attendants. Exhibit 6 at 26-27. Thus, the Regional Director's determination that proposed unit employees are readily identifiable as a group based on work locations and supervision is clearly erroneous on the record. Thus, the Decision on Exceptions should be reversed, and the votes of Blanchette and York should be included in the count.

C. THE DECISION ON EXCEPTIONS DEPARTS FROM OFFICIALLY REPORTED BOARD PRECEDENT RAISING SUBSTANTIAL QUESTIONS OF LAW AND POLICY.

The Board should grant review of the Decision on Exceptions and reverse the Regional Director's certification of the election and issuance of a certification of representative because the Decision on Exceptions raises substantial questions of law and policy due to the Regional Director's departure from officially reported Board precedent.

1. The Decision on Exceptions Departs from the Board's Requirement in *Specialty Healthcare* to Show that a Proposed Unit is *Prima Facie* Appropriate Raises a Substantial Question Concerning the Legality of the Unit.

Colonial excepted to the Hearing Officer's failure to require "a *prima facie* showing that the proposed unit is appropriate by demonstrating that the members of the proposed unit have an interest that is separate and distinct from other employees." Exhibit 5 at 1. Colonial argued to the Regional Director that, under *Specialty Healthcare & Rehabilitation Center of Mobile*,¹⁹ "the requirement to demonstrate an overwhelming community of interest between excluded employees and members of the proposed unit is triggered only after a *prima facie* showing is made that the proposed unit is an appropriate unit." Exhibit 5 at 17. This *prima facie* showing is necessitated by the statutory mandate of Section 9(c)(5), which prohibits the extent of organization from serving as the controlling factor in determining appropriate units.²⁰ Nevertheless, the Hearing Officer failed to require a *prima facie* showing that the proposed unit is an appropriate unit, abdicating the responsibilities imposed by Section 9(c)(5).

¹⁹ 357 NLRB 934 (2011).

²⁰ See *Specialty Healthcare* at 942 ("In *Metropolitan Life*, the Court made clear that 'Congress intended to overrule Board decisions where the unit determined could *only* be supported on the basis of the extent of organization.' In other words, the Board cannot stop with the observation that the petitioner proposed the unit, but must proceed to determine, based on additional grounds . . . that the proposed unit is an appropriate unit." (emphasis in original) (quoting *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 441 (1965))).

The Regional Director attempted to excuse the Hearing Officer’s failure in this regard by focusing on Colonial’s description of the *prima facie* burden as one requiring a showing that proposed unit employees have interests “sufficiently distinct” from employees excluded from the unit.²¹ The Regional Director also took issue with Colonial’s citation to *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432 (3d Cir. 2016), when describing how the Hearing Officer misapplied the *Specialty Healthcare* framework.²² In cherry-picking two words used to describe the *prima facie* burden and Colonial’s citation to a single Third Circuit decision, the Regional Director not only mischaracterizes (or, at the very least, misconstrues) Employer’s argument, but also ignores the substance of the applicable legal standard from *Specialty Healthcare*. Contrary to the Regional Director’s assertions, *Specialty Healthcare* requires a *prima facie* showing in the manner outlined by Colonial, and such *prima facie* burden is accurately described as one requiring that proposed unit employees be shown to have “sufficiently distinct” interests.

Specialty Healthcare plainly requires an initial *prima facie* showing that a proposed unit is appropriate. See 357 NLRB 934, 944 n.25 (“As long as the Board applies the overwhelming community-of-interest standard only after the proposed unit has been shown to be *prima facie* appropriate, the Board does not run afoul of the statutory injunction that the extent of the union's organization not be given controlling weight.” (emphasis added) (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008))). Unless the proposed unit is presumptively appropriate, which it is not here, the appropriateness of the unit must be

²¹ See Exhibit 1 at 6 (“Nowhere in the Board’s Specialty Healthcare decision, however, is there a separate requirement to show that a proposed unit has ‘sufficiently distinct’ interests from the interest of the proposed additions to the unit, and I am bound to follow Board law.”).

²² See Exhibit 1 at 6 (“[T]o the extent that the Third Circuit was referring to such a requirement [that sufficiently distinct interests be shown], it was simply further delineating the requirement that the proposed unit must be a readily identifiable group and must share a community of interest.” (citing *FedEx Freight, Inc.*, 832 F.3d 432, 440-41)).

established as the first step of the *Specialty Healthcare* analysis. *See id.* at 945 n.28 (“[W]hen the petitioned-for unit is presumptively appropriate, after there has been a showing that the petition describes employees who are readily identifiable as a group and share a community of interest, the Board can and should find the proposed unit to be an appropriate unit unless an opposing party proves otherwise.”). Thus, Colonial’s description of the required *prima facie* showing comports with the legal framework set forth in *Specialty Healthcare*.

Moreover, the Regional Director’s rejection of Colonial’s *prima facie* argument based on the belief that *Specialty Healthcare* cannot be described as requiring a showing that proposed unit employees have interests “sufficiently distinct” from excluded employees is without merit. Although Colonial described the *prima facie* burden as one requiring a showing that proposed unit employees have “sufficiently distinct” interests from excluded employees, Colonial also described the burden as one requiring a showing of “separate and distinct”²³ and “meaningfully distinct”²⁴ interests. Without explanation, the Regional Director focused solely on Colonial’s use of the term “sufficiently distinct.” Regardless, the term “sufficiently distinct” is applicable to the analysis required by *Specialty Healthcare*.

Not including Member Hayes’ dissent, the Board in *Specialty Healthcare* invoked the phrase “sufficiently distinct” three separate times. *See* 357 NLRB at 945. Further, in describing the factors considered when determining whether a proposed unit is an appropriate unit, the Board stated that it “examines: [w]hether the employees are organized into a *separate* department; have *distinct* skills and training; have *distinct* job functions and perform *distinct* work . . . ; are functionally integrated with the Employer's other employees; . . .

²³ *See* Exhibit 5 at 1, 3, and 16.

²⁴ *See* Exhibit 5 at 1, 3, and 17.

have *distinct* terms and conditions of employment; and are *separately* supervised.” *Id.* at 942 (emphasis added) (internal quotation marks omitted) (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)).

In the dissent, Member Hayes argued that the majority’s decision effectively overruled *Wheeling Island Gaming*²⁵ by altering the Board’s traditional test for unit determinations.²⁶ The majority responded by stating “[t]he dissent asserts that the holding here effectively overrules *Wheeling Island Gaming*, but, as demonstrated in our citations to that decision here and elsewhere in our opinion, the majority holding there is, in fact, an integral part of our analysis here.” *Specialty Healthcare* at 946 n.32.

Tellingly, *Wheeling Island Gaming* provides that for unit determinations “the Board’s inquiry ‘never addresses, solely and in isolation whether the employees in the unit sought have interests in common with one another. . . . Our inquiry—though perhaps not articulated in every case—necessarily proceeds to a further determination whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit.’” *Wheeling Island Gaming* at 637 n.2 (emphasis in original) (quoting *Newton-Wellesley Hospital*, 250 NLRB 409, 411-12 (1980)). In turn, the Board stated in *Newton-Wellesley* that “[t]his approach has been followed by the Board not only with regard to *whether the unit sought is initially appropriate*, but also with regard to the placement of specific employees within or without the unit. The inquiry is always whether the interest of these employees are *sufficiently distinct* to justify exclusion.” 250 NLRB 409, 411 n.6 (emphasis added).

²⁵ 355 NLRB 637 (2010).

²⁶ See *Specialty Healthcare* at 951 (citing *Wheeling Island Gaming* at 637 n.2).

The Third Circuit, among others, has also described the *prima facie* showing mandated by *Specialty Healthcare* as one requiring evaluation of whether proposed unit employees have interests “sufficiently distinct” from excluded employees.²⁷ While such in-kind descriptions by the Circuit Courts support Colonial’s use of the term “sufficiently distinct,” it is the Board’s binding authority cited above which mandates that the Regional Director require a *prima facie* showing that the interests of proposed unit employees are “sufficiently distinct” from those of excluded employees. As such, the Regional Director’s rejection of Colonial’s *prima facie* argument based on use of the term “sufficiently distinct” is contrary to officially reported Board precedent requiring such a showing be made. Consequently, the Regional Director’s failure to require the *prima facie* showing impermissibly resulted in giving controlling weight to the extent of the Union’s organizing. Thus, the Regional Director’s departure from officially reported Board precedent warrants the Board’s review and reversal of the Decisions on Exceptions.

2. The Decision on Exceptions Departs from Officially Reported Board Precedent Requiring Employees in a Proposed Unit to Be Readily Identifiable as a Group.

For a proposed unit to be found appropriate under *Specialty Healthcare*, the employees included in the proposed unit must be readily identifiable as a group “based on job classifications, departments, functions, work locations, skills or similar factors[.]” *Specialty Healthcare* at 945. Here, the proposed unit is not readily identifiable as a group based on job classifications, departments, functions, skills, or other similar factors, and the Regional Director

²⁷ See also *Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784, 794 (2nd Cir. 2016) (“Step one of *Specialty Healthcare* expressly requires the RD to evaluate several factors relevant to whether the interests of the group sought were sufficiently distinct from those of other employees to warrant the establishment of a separate unit.” (internal quotations and citations omitted)); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 43, 442-43 (3d Cir. 2016) (“[The Board in *Specialty Healthcare*] looked at similarities between the employees in the petitioned-for unit and whether their interests were sufficiently distinct from other employees.”); *Nestle Dreyer’s Ice Cream Co. v. NLRB*, 821 F.3d 489, 500 (4th Cir. 2016) (“[W]hether the interest of the group sought were sufficiently distinct from those of other employees to warrant the establishment of a separate unit.” (quoting *Newton-Wellesley* at 411)).

did not conclude as much. Instead, the Regional Director concluded that the proposed unit is readily identifiable as a group because “employees in the proposed unit are easily identified by their work locations” and “are identified along supervisory lines[.]” Exhibit 1 at 4. As argued above, *supra*, Section III.B.8., however, the Regional Director’s factual determination that proposed unit employees are readily identifiable as a group based on work locations and supervisory lines is clearly erroneous on the record. Thus, such bases cannot support a conclusion that employees in the proposed unit are readily identifiable as a group.

Moreover, the proposed unit as constructed cannot be readily identifiable as a group separate and apart from Blanchette and York. If the proposed unit is readily identifiable as a group based on work locations and supervisory lines, then the proposed unit cannot include Floaters, Maintenance Associates, and Lot Attendants, and exclude Blanchette and York.²⁸ Floaters and Maintenance Associates regularly perform work at several different locations,²⁹ and both Maintenance Associates and Lot Attendants, like the excluded employees, are subject to direct supervision by Area Managers. Thus, if the proposed unit is readily identifiable as a group and includes Floaters, Maintenance Associates, and Lot Attendants, then the unit must also encompass Blanchette and York. The proposed unit is either too narrow to be readily identifiable as a group and include Floaters, Maintenance Associates, and Lot Attendants, or too broad to exclude Blanchette and York. It cannot be both.

²⁸ Such a unit is “too narrow in scope in that it excludes employees who share a substantial community of interest with employees in the unit sought.” *Colorado National Bank of Denver*, 204 NLRB 243, 243 (1973) (citing *Whitehead & Kales Company*, 196 NLRB 111 (1972)).

²⁹ The lack of a single, common work location also significantly conflicts with the conclusion that the employees included in the proposed unit constitute a readily identifiable group. See *Odwalla, Inc.* 357 NLRB 1608, 1613 (2011) (noting that employees’ performance of work in different buildings and away from a common work site “sharply reduce[s] the significance” of worksite location as a consideration in determining whether a proposed unit constitutes a readily identifiable group and appropriate unit).

3. The Decision on Exceptions Departs from Officially Reported Board Precedent Requiring that Employees in a Proposed Unit Share a Community of Interest.

Under *Specialty Healthcare*, if a proposed unit is readily identifiable as a group, the employees in the proposed unit must then be shown to “share a community of interest after considering the traditional criteria[.]” See 357 NLRB 934, 945. “In determining whether the employees possess a separate community of interest, the Board examines such factors as mutuality of wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” *Id.* at 942 (emphasis in original) (quoting *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001)). The Regional Director’s analysis and explanation of the community of interest purportedly shared by employees in the proposed unit is deficient under *Specialty Healthcare* and factually incorrect.

In explaining how the proposed unit shares a community of interest, the Regional Director stated the following:

The employees perform similar tasks with the shared purpose of operating the specific parking facility in which they work, under common working conditions. They support one another’s job functions to ensure the smooth operation of each facility. Customers interact with the proposed unit employees as they utilize the parking facility. These employees are all stationed in either a surface lot or parking-garage setting, where they spend their entire shift at that designated lot. They are subject to common day-to-day supervision by Facility Managers, who direct the activities of the employees in the proposed unit and report into centralized administration. They are paid a similar hourly rate and receive the same benefits.

Exhibit 1 at 4.

Nowhere in the reasoning above does the Regional Director articulate what similar tasks are performed by proposed unit employees; which common working conditions are shared; how proposed unit employees support one another’s job functions; what type of customer interaction,

if any, proposed unit employees experience; or the extent to which proposed unit employees receive similar hourly rates and benefits. As such, the Regional Director's community of interest determination impermissibly relies on conclusory rationales. See *Specialty Healthcare* at 941 (“[T]he determination of whether a proposed unit is an appropriate unit requires ‘examination of the facts of each case’ and cannot be based on ‘conclusory rationales.’” (quoting *NLRB v. Yeshiva University*, 444 U.S. 672, 691 (1980))).

By ignoring this analysis, the Regional Director arbitrarily cuts across Colonial's workplace structure, contradicting the basic premise that the contours of an employer's operation should guide the outline of an appropriate unit. See *id.* at 942 n.19 (“It is highly significant that, except in situations where there is prior bargaining history, the community-of-interest test focuses almost exclusively on how *the employer* has chosen to structure its workplace.”) (emphasis in original). Here, “[t]he boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer.” *The Neiman Marcus Group*, 361 NLRB No. 11, slip op. at 4 (2014). It includes employees responsible for vehicle parking duties, maintenance duties, customer service duties (including processing customer payments and pay kiosk assistance), and Parking Facility monitoring/auditing duties. It also excludes employees responsible for such duties, namely, Neil Blanchette (Parking Facility monitoring/auditing duties) and Paul York (maintenance duties). Again, the Regional Director provides no explanation other than conclusory rationales to establish that employees in the proposed unit share a community of interest that would justify cutting across operational lines in this manner.

Further, the remaining community of interest factors cited in the Regional Director's analysis do not support a finding that proposed unit employees share a community of interest, as the Regional Director's conclusion on each factor rests on factual errors. As detailed above,

supra, Section III.B.2., proposed unit employees are not “all stationed in a . . . setting where they spend their entire shift at that designated lot.”³⁰ Nor are proposed unit employees “subject to common day-to-day supervision by Facility Managers” only. *See* Section III.B.3; Section III.B.8. In short, the Regional Director’s perfunctory and error-filled analysis falls well short of the mandates of *Specialty Healthcare*, and thus cannot support a conclusion that employees in the proposed unit share a community of interest. As such, the Board should grant Employer’s request for review and order that the votes of the excluded employees be counted.

4. The Decision on Exceptions Departs from Officially Reported Board Precedent Regarding the Standard for Demonstrating an Overwhelming Community of Interest.

Under *Specialty Healthcare*, if a proposed unit is shown to be an appropriate unit such that proposed unit employees are readily identifiable as a group and share a community of interest, “the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit” 357 NLRB 934, 945-46. Contrary to the Regional Director’s conclusion, proper application of the Board’s standard announced in *Specialty Healthcare* demonstrates that Blanchette and York share an overwhelming community of interest with proposed unit employees.

³⁰ Exhibit 1 at 4.

In support of the conclusion that the excluded employees do not share an overwhelming community of interest with the proposed unit employees, the Regional Director relied on the following “significant differences” purportedly unique to Blanchette and York:

Both are entrusted with **greater responsibilities** than the other attendants and maintenance associates in the proposed unit. . . . The Lot Auditor and . . . Maintenance Employee have **very limited contact with other employees in the proposed unit**. . . . Most significant is the **lack of interchange** with the proposed unit employees. . . . However, further support may be found in the existence of the **separate day-to-day supervision**.

Exhibit 1 at 5 (emphasis added). None of the “significant differences” cited by the Regional Director, each of which is addressed below, weigh against the conclusion that Blanchette and York share an overwhelming community of interest with proposed unit employees.

a) “*Greater Responsibilities*”

The “greater responsibilities” which the Regional Director attributes to Blanchette and York alone are the performance of work independent from direct supervision and travel to multiple work locations.³¹ As argued above, *supra*, Section III.B.7, such work conditions are not unique to Blanchette and York. Floaters, Maintenance Associates, and Cashiers routinely perform work independent of direct supervision. Exhibit 6 at 26-27, 79-81, 104-105, 147-148, 160, and 170. And Floaters and Maintenance Associates routinely perform work at multiple locations. Exhibit 6 at 53-57, 66. Thus, the “greater responsibilities” factor cited by the Regional Director does not support the conclusion that Blanchette and York do not share an overwhelming community of interest with the proposed unit.

³¹ See Exhibit 1 at 5 (“Most notably, the Lot Auditor and . . . Maintenance Employee perform job duties independently and travel to numerous lots each day in Employer-provided vehicles, whereas the proposed unit employees are routinely assigned to the same garage or lot on a daily basis.”).

b) Contact with Other Proposed Unit Employees

Although the Hearing Officer only attributed “an insufficient amount of contact” with proposed unit employees to Blanchette, the Regional Director determined that York also has an insufficient amount of contact with proposed unit employees to share an overwhelming community of interest. Consistent with the Regional Director’s reliance on conclusory rationales throughout the Decision on Exceptions, no support or explanation is provided for this determination. Regardless, the Regional Director’s conclusion on this issue is contrary to the evidence on record. Blanchette testified that he regularly audits Parking Facilities staffed by employees in the proposed unit and interacts with proposed unit employees to perform his auditing duties. *See* Exhibit 6 at 13-14, 24-25. Similarly, York, as well as other proposed unit employees, testified that he routinely coordinates with and works alongside proposed unit employees to move heavy objects, remove trash, perform snow removal duties, and distribute supplies. *See* Exhibit 6 at 53-56, 66, 105, 160, and 170.

Further, as explained above, *supra*, Section III.B.5, several proposed unit employees regularly work at Parking Facilities where no other proposed unit employees are assigned. For example, Lot Attendants Christopher Dineen, Jerry Pacheco, and Roameil Smith-Teagle are the only proposed unit employees regularly assigned to the 713 Shipley Street, 711 Orange Street, and 10th & Washington work locations, respectively. As such, those proposed unit employees have no, or very limited, regular contact with other proposed unit employees. Thus, the “very limited contact with other employees,” which the Regional Officer attributes only to Blanchette and York, does not differentiate either employee from the proposed unit. Rather, the greater degree of contact between Blanchette and York and other proposed unit employees supports that both share an overwhelming community of interest with the proposed unit.

c) Interchange

The Regional Director cites “lack of interchange with proposed unit employees” as the “most significant” factor weighing against a finding that Blanchette and York share an overwhelming community of interest with the proposed unit. The Regional Director overstates the significance of this factor in several respects.

The degree of interchange between Blanchette and York and proposed unit employees does not differentiate York and Blanchette from the proposed unit employees. The record demonstrates that there is very limited interchange among proposed unit employees, particularly between proposed unit employees employed in different classifications. The Regional Director failed to address this reality, again, simply relying on a conclusory statement that proposed unit employees “fill in for one another.” Exhibit 1 at 3. However, as argued in Colonial’s exceptions, other than minimal “interchange between Customer Service/Cashiers and Customer Service/Maintenance/Supervisors, and the interchange inherent in the job duties of Floaters, the record does not contain evidence of interchange between any other proposed unit employees occupying different classifications (*e.g.*, no interchange between Maintenance Associates and Cashiers, no interchange between the Government Center Custodian and Lot Attendants, no interchange between Valet Parking Attendants and any other classification, etc.).” *See* Brief in Support of Respondent’s Exceptions to the Report of the Hearing Officer at 26-27.

Indeed, the evidence on record regarding interchange among proposed unit employees is essentially limited to the following testimony from the Post-Election Hearing:

- Customer Service/Cashier Melanie Williams testified that no other proposed unit employees have ever filled in for her to cover her shift. *See* Exhibit 6 at 130.

- Customer Service/Maintenance/Supervisor Margaret Harding testified that no other proposed unit employees ever fill in for her except Johnheem Boardley, whom holds the same position as Harding.³² *See* Exhibit 6 at 167.
- Customer Service/Maintenance/Supervisor Anita Smith testified that if she is absent from work Floater Jamil Mason fills in for her. *See* Exhibit 6 at 171. Smith also testified that she will occasionally fill in for Customer Service/Cashier Brandy Gordy³³ during Gordy’s lunch break or at the end of a shift. *See* Exhibit 6 at 171.

Thus, while there is limited interchange among employees occupying the same classification, between Customer Service/Maintenance/Supervisors and Customer Service/Cashiers, and between Floaters and other employees, there is no evidence to support that there is general interchange between any additional classifications in the proposed unit.

Moreover, contrary to the Regional Director’s conclusion that “[t]here is no evidence of daily or even temporary interchange with employees in the proposed unit,”³⁴ the record establishes the interchange of Blanchette and York with proposed unit employees.³⁵ With respect to Blanchette, as found by the Hearing Officer, “[t]here is evidence of permanent

³² Harding testified that she and Boardley share the same job. *See* Exhibit 6 at 159-160 (“Johnheem performs actually the same things that I do. . . Actually, me and Johnheem does the same thing.”). Boardley’s signature also appears on the Customer Service/Maintenance/Supervisor position description introduced into evidence at the Post-Election Hearing. *See* Exhibit 6 at 91-92; Em. Ex. 8.

³³ Although listed as a Cashier on the Voter Eligibility List, Gordy testified that she is currently employed as a Customer Service/Cashier. *See* Exhibit 6 at 140.

³⁴ Exhibit 1 at 5.

³⁵ Even if there were a complete absence of interchange, that factor alone would not justify a finding that Blanchette and York do not share an overwhelming community of interest with proposed unit employees. *See DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 9 (2015) (“To be sure, a finding of interchange among employees, where various tasks can be assigned to any number of employees in a petitioned-for unit, is very compelling evidence in finding a shared community of interest (because employees are doing the same work as each other). But while its *presence* is important, the lack of it is not. That is because the lack of it tells us only that employees are in different job classifications and usually do work assigned to their particular jobs. . . . Minimal interchange among employees shows us that the Employer has an organized production process where employees by and large keep to their job responsibilities.” (emphasis in original) (Member Johnson dissenting)).

interchange when . . . Blanchette changed positions from a Lot Attendant to a Lot Auditor[.]” Exhibit 5 at 13. Further, there is evidence of interchange with proposed unit employees assigned to the 510 N. King Street work location. Proposed unit employees at that location, such as Melanie Williams and Anita Smith, assume Blanchette’s monitoring and auditing duties at the unattended lot at 516 King Street and apply parking boots to vehicles not permitted to park in reserved parking spaces there. *See* Exhibit 6 at 104-05, 126-27.

With respect to York, there is evidence of interchange with Russell Marshall, who is pulled from his regular duties to perform snow removal duties, move office records from Colonial’s storage room, clean electrical rooms that flood during rainstorms, and distribute supplies to other proposed unit employees. *See* Exhibit 6 at 53-54, 65-67, 170. York is also responsible for filling in for other employees in the proposed bargaining unit in the event of call-outs, as noted in his signed position description admitted into evidence at the Post-Election Hearing. *See* Em. Ex. 9. Additionally, in instances when another employee is absent from the parking lot Colonial manages at the West Chester County Courthouse in Pennsylvania, York fills in as a Lot Attendant in place of proposed unit employees who would otherwise have to travel to West Chester, Pennsylvania. Exhibit 6 at 67. Thus, lack of interchange does not support the conclusion that Blanchette and York do not share an overwhelming community of interest with the proposed unit.

d) Separate Day-to-Day Supervision

As detailed above, *supra*, Section III.B.3., Blanchette and York are not subject to “separate day-to-day supervision” than that of proposed unit employees. Like Blanchette and York, several proposed unit employees are directly supervised by Colonial’s Area Managers, *e.g.*, Maintenance Associates and Lot Attendants. *See* Exhibit 6 at 26-27, 79-81. In addition,

several proposed unit employees also do not work at the same location as the Facility Manager by whom they are supervised, *e.g.*, Floaters and Cashier Brandy Gordy. *See* Exhibit 6 at 147-148. Thus, the evidence on record demonstrates that Blanchette and York are subject to supervision in the same manner as proposed unit employees, supporting the conclusion that the excluded employees share an overwhelming community of interest with the proposed unit.

e) Wage Disparity

Within the overwhelming community of interest analysis, the Regional Director digresses into a strained argument regarding the wages of Blanchette and York. In a point apparently only deserving mention in a footnote, the Regional Director stated:

It is also worth noting that there is a substantial wage disparity between the . . . Maintenance Employee and the other employees in the proposed unit. He earns approximately \$3.00 more than the highest earning employee in the proposed unit. Such a wage disparity is a factor weighing in favor of finding a lack of an overwhelming community of interest. *See Scolari's Warehouse Markets*, 319 NLRB 153, 158 (1995). The Lot Auditor's wages are also higher than those of other employees in the proposed unit. The difference in earnings creates a separation between those in the proposed unit and the Lot Auditor and the Skilled Maintenance Employee. The interests of those earning higher wages are separate and distinct from those who earn less.

Exhibit 1 at 5 n.3. Although ostensibly not relied upon as a factor to support the conclusion that Blanchette and York do not share an overwhelming community of interest with the proposed unit,³⁶ the flawed reasoning of the Regional Director's aside regarding wages warrants a response.

As Employer argued in its exceptions, *Scolari's Warehouse Markets* does not stand for the proposition that higher wages alone are sufficient to destroy an overwhelming community of interest among employees otherwise sharing comparable terms and conditions of employment.

³⁶ *See* Exhibit 1 at 5 (“In sum, the lack of interchange and the lack of day-to-day supervision preclude me from finding that [Blanchette and York] share an overwhelming community of interest with the proposed unit.”).

Instead, the Board in *Scolari's Warehouse Markets* found that generally elevated wage levels for a specific classification of employees, meat cutters, indicated that the employer viewed those employees as “more highly skilled than its nonmeat department employees,” and the highly skilled nature of the employees’ work thus warranted a finding that a separate bargaining unit composed of meat department employees was appropriate. *See Scolari's Warehouse Markets*, 319 NLRB 153, 157 (1995).

Here, as found by the Hearing Officer and affirmed by the Regional Director, “[t]he work performed by the agreed-upon unit employees, as well as that performed by Blanchette and York, is routine and unskilled in nature.” Exhibit 5 at 10. Further, the level of York’s wages is based on his status as Colonial’s longest-serving Maintenance Associate, rather than a reflection of York’s classification entailing some specialized or divergent type of work. The pay of other Maintenance Associates in the proposed unit (between \$9.01 and \$10.37 per hour) is likewise reflective of the employees’ length of service. *See Em. Ex. 15*.

Moreover, the wage gap between other proposed unit employees occupying different classifications exceeds the \$3.00 wage difference singled out by the Regional Director. For example, the highest paid Cashier, Carol McBride, earns \$3.34 more than the highest paid Floater, Jamil Mason (and \$1.99 more than the Cashier with next highest level of wages, and \$4.14 more than the Cashier with the lowest hourly wage). *Em. Ex. 15*. Thus, the Regional Director’s mention of the wage differentials ignores the overall similarities in terms and conditions of employment that York shares with the proposed unit, misapplies the *Scolari's Warehouse Markets* decision, and places too much weight on this element overall. *See DTG Operations, Inc.*, 357 NLRB 2122, 2128 (2011) (“Similarity of wage rates alone is not determinative.” (citing *Specialty Healthcare*, 357 NLRB 934 (2011))). If, as the Regional

Director asserted, the interests of all employees “earning higher wages are separate and distinct from those who earn less[.]” then no proposed unit including employees earning different wages could ever be found to share a community of interest. Such an absurd result would plainly violate the spirit and substance of the Act.

f) Blanchette and York Share an Overwhelming Community of Interest with the Employees in the Proposed Unit.

Beyond the Regional Director’s misapplication of the overwhelming community of interest standard, and numerous factual errors upon which the conclusion that the excluded employees do not share an overwhelming community of interest is based, the evidence on record establishes that Blanchette and York do, in fact, share an overwhelming community of interest with proposed unit employees. As found by the Hearing officer, both excluded employees are functionally integrated with the proposed unit employees,³⁷ receive similar benefits and bonuses,³⁸ share similar work schedules,³⁹ wear similar employer-provided uniforms,⁴⁰ utilize comparable clock-in/clock-out procedures,⁴¹ and perform work similar to that of proposed unit employees, which is routine and unskilled in nature and requires little to no training.⁴²

In the Decision on Exceptions, the Regional Director affirmed the Hearing Officer’s above findings, stating:

³⁷ See Exhibit 5 at 11 (“York is functionally integrated with the agreed-upon unit employees. York performs some of the same type of unskilled maintenance work as the agreed-upon maintenance associates . . . Blanchette . . . is functionally integrated with the agreed-upon unit employees in that the essential duties of both are to ensure that parkers have paid to park.”).

³⁸ See Exhibit 5 at 9-10 (“All employees, including Blanchette and York, have the same benefits . . . All employees also receive the same bonus amount[.]”).

³⁹ See Exhibit 5 at 10 (“[Blanchette and York] both have a set schedule that is similar to the agreed-upon unit employees.”).

⁴⁰ See Exhibit 5 at 10 and 12 (“The Employer provides uniforms to its employees, including to Blanchette and York.”).

⁴¹ See Exhibit 5 at 10 (“Employees in the agreed-upon unit that are assigned to work at the Government Center Parking Garage clock in at a computer located there, as do Blanchette and York.”).

⁴² See Exhibit 5 at 10 (“The work performed by the agreed-upon unit employees, as well as that performed by Blanchette and York, is routine and unskilled in nature. It does not require training or certificates.”).

The Hearing Officer discharged his duty under Sec. 102.64(a) of the Board's Rules and Regulations to 'inquire fully into the matters in issue and necessary to obtain a full and complete record' and to prepare a report containing findings of fact and recommendations on the issues as required under Sec. 102.69(c)(1)(iii). I find that the Hearing Officer has fully satisfied these requirements and that the Report contains no prejudicial errors. The relevant facts set forth in the Hearing Officer's Report are supported by the evidence obtained during the hearing[.]

Exhibit 1 at 5-6. Thus, each factor above cited by the Hearing Officer weighs in favor of the conclusion that Blanchette and York share an overwhelming community of interest with proposed unit employees. Because the four additional factors cited by the Regional Director as weighing against such a finding—namely, greater responsibilities, limited contact, lack of interchange, and separate day-to-day supervision—are all based on factually erroneous findings and/or bolster a finding of an overwhelming community of interest,⁴³ the Board should grant Employer's request for review and reverse the Decision on Exceptions.

5. The Decision on Exceptions Departs from Officially Reported Board Precedent Prohibiting the Approval of Fractured Units.

"It is well established that the Board does not approve fractured units, *i.e.*, combinations of employees that are too narrow in scope or that have no rational basis." *Seaboard Marine, Ltd.*, 327 NLRB 556, 556 (1999) (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)). Departing from Board precedent, the Regional Director's decision to approve the proposed unit and exclude Blanchette and York results in a fractured unit.

As argued above, *supra*, Section III.B.4., the four factors cited by the Regional Director as weighing against a finding of an overwhelming community of interest—greater responsibilities, limited contact, lack of interchange, and separate day-to-day supervision—do not differentiate Blanchette and York from proposed unit employees. Moreover, as found the by

⁴³ As argued above, *supra*, Section III.B., Blanchette and York have the same or greater contact and interchange with proposed unit employees, and the same manner of supervision.

Hearing Officer and affirmed by the Regional Director, the remaining community of interest factors traditionally applied by the Board support that Blanchette and York share an overwhelming community of interest with the proposed unit. *See* Section III.B.4.f. Thus, “none of the Board’s traditional community-of-interest factors suggest that all employees in the recommended unit share a community of interest that [Blanchette and York] do not equally share, such that the community-of-interest factor would reasonably support drawing the unit’s boundaries to include the [proposed unit employees], but *not* [Blanchette and York].” *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (emphasis in original). Such a proposed unit too narrow in scope constitutes a fractured unit.

Further, “the petitioned-for unit d[oes] not follow any lines drawn by the employer, such as classification, department, or function.” *DPI Secuprint, Inc.*, 362 NLRB No. 172, slip op. at 7 (2015). Contrary to the statutory mandate of Section 9(c)(5), the boundaries of the proposed unit only track the extent of the Union’s organization. Thus, “the petitioned-for employees do not share a sufficiently distinct community of interest from [Blanchette and York] to warrant a separate unit and, therefore, that unit grouping sought by Petitioner is an arbitrary one.” *Seaboard Marine, Ltd.*, 327 NLRB 556, 556 (1999).

IV. CONCLUSION

For the reasons above, the Board should find merit to the Respondent's Request for Review and overturn the Regional Director's certification of the election and issuance of a certification of representative due the erroneous ruling to conduct the election via mail ballot. In the event Respondent's request to overturn the certification of the election and issuance of a certification of representative is not granted, the Board should reverse the Regional Director's decision to exclude Lot Auditor Neil Blanchette and Maintenance Associate Paul York from the proposed unit, and open and count the employees' ballots.

Respectfully submitted,

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Colonial Parking, Inc.*

CERTIFICATE OF SERVICE

I, Peter G. Fischer, hereby certify that a copy of the foregoing Revised Request for Review of the Regional Director’s Decision and Direction of Election and the Regional Director’s Decision on Exceptions to the Hearing Officer’s Report on Challenged Ballots was electronically filed through the Board’s website and furnished to the following on this 16th day of May 2017:

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EXHIBIT 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

COLONIAL PARKING, INC.

Employer

And

Case 04-RC-187843

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 27**

Petitioner

**REGIONAL DIRECTOR'S DECISION ON EXCEPTIONS TO THE HEARING
OFFICER'S REPORT ON CHALLENGED BALLOTS¹**

At the Stipulated Election in this proceeding, the Employer and the Union agreed that two classifications, the Lot Auditor and the Skilled Maintenance Employee, would vote subject to challenge. The ballots of those two employees have proven to be determinative of the results, so I am charged with the responsibility of determining whether those two classifications must be included with the proposed Unit. In agreement with the Report of the Hearing Officer who took evidence on these issues, and contrary to the Employer's Exceptions, I conclude that the employees in the proposed unit, consisting of essentially parking lot attendants and other related supportive classifications, are a readily identifiable group, and the two challenged classifications do not share an overwhelming community of interest with the proposed unit. I therefore adopt the Hearing Officer's recommendation that the challenges to the ballots be sustained, and issue a Certification of Representative.

PROCEDURAL HISTORY

United Food and Commercial Workers, Local 27, the Petitioner, filed a petition on November 8, 2016, seeking to represent a unit of certain employees employed by the Employer, Colonial Parking, Inc. Pursuant to a Decision and Direction of Election issued on December 1, 2016, and an Erratum issued on December 5, an election was conducted by mail beginning on December 6, 2016. The voting unit consisted of the following employees:

Included: All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following facilities, all located in Wilmington, Delaware:

¹ The Employer herein withdrew Objections to the Conduct of the Election during the hearing. Therefore, they were not part of this record.

1. 9th Street & French Street
2. 10th Street & Washington
3. 12th Street & Orange Street
4. 12th Street & Washington Street
5. 222 Delaware Ave.
6. 401 King Street
7. 510 North King Street
8. 503 S. Market Street
9. 711 Orange Street
10. 713 Shipley Street
11. 903 Shipley Street
12. 1000 King Street
13. 1201 N. Market Street

Excluded: All office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act.

Others permitted to vote: The parties have agreed that the Lot Auditor and the Skilled Maintenance Employee may vote in the election but their ballots will be challenged since their eligibility has not been resolved.

The ballots were counted on December 28, 2016, and the final Tally of Ballots revealed that of approximately 28 eligible voters, ten (10) ballots were cast for and nine (9) ballots were cast against the Petitioner, with two challenged ballots determinative of the results of the election, belonging to Lot Auditor Neil Blanchette and Skilled Maintenance Employee Paul York.

On January 24, 2017, Hearing Officer Robert Gleason conducted a hearing in this matter. On March 13, 2017, he issued a Report recommending that the challenges to the ballots of Lot Auditor Blanchette and Skilled Maintenance Employee York be sustained; he concluded that under the Board's standard set forth in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), Blanchette and York do not share an overwhelming community of interest with the other employees in the proposed unit.

On March 27, 2017, the Employer timely filed Exceptions to the Hearing Officer's Report and a Brief in Support. The Petitioner filed an Answering Brief on April 3, 2017. As set forth below, I have decided to adopt the Hearing Officer's recommendations and to dismiss the Employer's Exceptions, finding (1) that the proposed unit constitutes a readily identifiable group and shares a community of interest; and (2) that the Lot Auditor and the Skilled Maintenance Employee do not share an overwhelming community of interest with the employees in the proposed unit.

DISCUSSION

A. Applicable Legal Principles

In *Specially Healthcare*, the Board set forth the framework to be applied in making unit determinations where a party seeks a unit that is broader than the petitioned-for unit. The Board first looks at whether the petitioner seeks a unit consisting of employees "who are readily identifiable as a group," based on job classifications, departments, functions, work locations, skills, or similar factors. The Board also looks at whether these employees share a community of interest based on factors such as employee skills and job functions, common supervision, contact and interchange, similarities in wages, hours and other terms and conditions of employment, functional integration, and bargaining history if applicable.² *Id.* At 943-947. *Publix Super Markets*, 343 NLRB 1023 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins*, *supra*; *Home Depot USA*, 331 NLRB 1289 (2000).

Whether the employees are "readily identifiable as a group" and whether they share a community of interest are two separate inquiries. *Macy 's, Inc.*, 361 NLRB No. 4, slip op. at 8 (2014) and *Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 2 (2014). If both standards are met, the party seeking a broader unit must demonstrate "that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only when there is no legitimate basis upon which to exclude them from the petitioned-for unit because the traditional community-of-interest factors overlap almost completely. See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 (2011), *enf. denied* on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast*, 722 F. 3d 609 (4th Cir. 2013). The Board will not approve a petitioned-for fractured unit that seeks "an arbitrary segment" of what would be an appropriate unit. *Bergdorf Goodman*, *supra*, slip op. at 4 (2014); *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011); *Specially Healthcare*, *supra* at 946; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

B. Relevant Facts

The Employer's operation consists of paid parking facilities, including multi-level parking garages, surface parking lots, valet lots, and unattended lots, in the downtown area of Wilmington, Delaware.

The employees in the proposed unit work at the Employer's multi-level garages, surface parking lots, and valet lots. They are responsible for ensuring that customers pay for parking, assist customers with operating the payment kiosks, receive payments from customers, issue validations, and maintain records of vehicles parking in the garages and surface lots. They are also responsible for ensuring that the garages and surface lots are clean and maintained. These employees have regular contact with other employees working at the same or an adjacent parking facility and fill in for one another.

² There is no history of collective bargaining in the instant case.

The Employer also operates unattended lots, which are not locations where the employees in the petitioned-for unit work. The Lot Auditor is responsible for traveling in an Employer-owned Jeep from one unattended lot to another and uses a hand-held scanner to scan the barcodes to ensure that the customer is parked in the correct lot and has paid his or her monthly fee. The Lot Auditor spends less than 10% of his time visiting surface lots where the proposed unit employees work and has limited interaction with customers. There is no evidence of interchange and no one fills in for him if he is unavailable. The Skilled Maintenance Employee travels to the Employer's various garages in an Employer-provided pick-up truck and performs routine unskilled maintenance work. He seldom requests any assistance from other maintenance employees and only fills in for a lot attendant once or twice per year when there is an emergency. However, no one fills in for him when he is unavailable.

The Facility Managers at the various garages and lots, who report to Area Managers, supervise the agreed-upon unit employees on a day-to-day basis. However, these Area Managers are responsible for overseeing the unattended lots and supervise the lot auditor and skilled maintenance employee directly.

C. Analysis

If the agreed-upon unit consists of a readily identifiable group of employees and these employees share a community of interest, it will be found appropriate unless there are additional employees with whom those employees share an overwhelming community of interest. *Id.* at 944. I find that the proposed unit satisfies both threshold factors: (1) it constitutes a readily identifiable group, and (2) this group shares a community of interest. I also find that the record evidence does not support that the Lot Auditor and the Skilled Maintenance Employee share an overwhelming community of interest with the other employees in the proposed unit. In *DPI Secuprint, Inc.*, the Board explained that “‘readily identifiable as a group’ means simply that the description of the unit is sufficient to specify the group of employees the petitioner seeks to include, and is not another version of the community of interest analysis. 362 NLRB No. 172, slip op. at 4, fn.10 (2015). The employees in the proposed unit are easily identified by their work locations. They are regularly assigned to, and work for, the duration of their workday at specific garages and lots throughout Wilmington, Delaware. They are identified along supervisory lines since each employee in the proposed unit is supervised by the Facility Manager responsible for his garage.

The employees in the proposed unit also share a community of interest. As fully set forth by the Hearing Officer, these employees perform similar tasks with the shared purpose of operating the specific staffed parking facility in which they work, under common working conditions. They support one another’s job functions to ensure the smooth operation of each facility. Customers interact with the proposed unit employees as they utilize the parking facility. Employees in the proposed unit perform light maintenance of their assigned area and are responsible for identifying irregularities in the parking facility. These employees are all stationed in either a surface lot or a parking-garage setting, where they spend their entire shift at that designated lot. They are subject to common day-to-day supervision by Facility Managers, who direct the activities of the employees in the proposed unit and report into centralized administration. They are paid a similar hourly rate and receive the same benefits. These community of interest factors support finding a separate unit that includes the proposed unit classifications. These employees clearly share the same interests regarding their tasks and working conditions. Thus, I find that the proposed unit is appropriate and the burden is on the Employer to show that the Lot Auditor and Skilled Maintenance Employee share an overwhelming community of interest with these employees:

The Board has explained, "additional employees share an overwhelming community of interest with the petitioned-for employees only when there 'is no legitimate basis on which to exclude [the] employees from' the larger unit because the traditional community-of-interest factors 'overlap almost completely.'" *Northrop Grumman Shipbuilding*, supra, at 2017, citing *Specialty Healthcare*, supra at 944, and *Blue Man Vegas, LCC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008). There are significant differences that prevent the Lot Auditor and the Skilled Maintenance Employee from sharing an overwhelming community of interest with the proposed unit employees.³ Both are entrusted with greater responsibilities than the other attendants and maintenance associates in the proposed unit. Most notably, the Lot Auditor and the Skilled Maintenance Employee perform job duties independently and travel to numerous lots each day in Employer-provided vehicles, whereas the proposed unit employees are routinely assigned to the same garage or lot on a daily basis. The Lot Auditor and Skilled Maintenance Employee have very limited contact with other employees in the proposed unit. Contact, even "constant" contact, between employees, absent interchange, does not establish an overwhelming community of interest. See *DPI Secuprint*, supra at 5 (2015). Most significant is the lack of interchange with the proposed unit employees. When the Lot Auditor and Skilled Maintenance Employee take leave, no employee from the proposed unit fills in for them and their tasks go unperformed until they return to work. This indicates that the Employer considers the Lot Auditor's and Skilled Maintenance Employee's duties and responsibilities to be distinct from the proposed unit employees. There is no evidence of daily or even temporary interchange with the employees in the proposed unit. The absence of evidence of interchange would be sufficient for me to find that the community of interest factors do not "overlap almost completely" such that the Lot Auditor and the Skilled Maintenance Employee share an overwhelming community of interest with the proposed unit employees. See *Bergdorf Goodman*, supra at 3-4. However, further support may be found in the existence of the separate day-to-day supervision. The proposed unit employees are supervised by Facility Managers on a day-to-day basis. However, the Lot Auditor and Skilled Maintenance Employee are supervised by Area Managers on a day-to-day basis. Area Managers oversee the Facility Managers who supervise the employees in the proposed unit. The Lot Auditor and Skilled Maintenance employee skip this interim level of supervision and report to higher management. In sum, the lack of interchange and the lack of day-to-day supervision preclude me from finding that the Lot Auditor and Skilled Maintenance Employee share an overwhelming community of interest with the proposed unit. See *Macy 's, Inc.*, 361 NLRB No. 4 slip op. at 9 (2014).

D. Employer's Exceptions

The Hearing Officer discharged his duty under Sec. 102.64(a) of the Board's Rules and Regulations to "inquire fully into all matters in issue and necessary to obtain a full and complete record" and to prepare a report containing findings of fact and recommendations on the issues

³ It is also worth noting that there is a substantial wage disparity between the Skilled Maintenance Employee and the other employees in the proposed unit. He earns approximately \$3.00 more than the highest earning employee in the proposed unit. Such a wage disparity is a factor weighing in favor of finding a lack of an overwhelming community of interest. See *Scolari's Warehouse Markets*, 319 NLRB 153, 158 (1995). The Lot Auditor's wages are also higher than those of other employees in the proposed unit. The difference in earnings creates a separation between those in the proposed unit and the Lot Auditor and the Skilled Maintenance Employee. The interests of those earning higher wages are separate and distinct from those who earn less.

as required under Sec. 102.69 (c)(1)(iii). I find that the Hearing Officer has fully satisfied these requirements and that the Report contains no prejudicial errors. The relevant facts set forth in the Hearing Officer's Report are supported by the evidence obtained during the hearing and the Hearing Officer properly applied applicable Board case law. The Employer's Exceptions do not raise issues that warrant inclusion of the Lot Auditor and the Skilled Maintenance Employee in the proposed unit.

Many of the Employer's Exceptions challenge the determinations that the proposed unit constitutes a readily identifiable group and that these employees share a community of interest, and the Employer argues that even if there is such a finding, the Lot Auditor and Skilled Maintenance Employee share an overwhelming community of interest with the employees in the proposed unit. I have reviewed the Employer's Exceptions related to these issues and reach the same conclusion based on the reasoning that I have set forth in this Decision.

The Employer also contends that the Hearing Officer disregarded the prima facie standard articulated in *Specialty Healthcare*. A review of the Hearing Officer's Report shows otherwise. The Employer contends, citing *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432, 443 (3d Cir. 2016), that the Hearing Officer erred by not placing the initial burden on the Petitioner to show that the proposed unit has sufficiently distinct interests from the employees sought to be added, prior to determining whether these employees share a community of interest and whether excluded employees share an overwhelming community of interest with the proposed unit. Nowhere in the Board's *Specialty Healthcare* decision, however, is there a separate requirement to show that a proposed unit has "sufficiently distinct" interests from the interests of the proposed additions to the unit, and I am bound to follow Board law. And to the extent that the Third Circuit was referring to such a requirement, it was simply further delineating the requirement that the proposed unit must be a readily identifiable group and must share a community of interest. See *Id.* at 440-41. And in any event, just as the Third Circuit held in *FedEx Freight* with regard to the truck drivers at issue in that case (*Id.* at 446), the employees in the proposed unit in this case do in fact share a community of interest that is distinct from the interests of the two employees the Employer would include. As set forth above, among other factors, the employees in the proposed unit are all supervised by the same level of management, which is different from the management level that supervises the Lot Auditor and the Skilled Maintenance Employee, and the employees in the proposed unit all work in their respective parking facilities, whereas the Lot Auditor and the Skilled Maintenance Employee travel around to different facilities, some of which are not even encompassed by the proposed unit. The Hearing Officer therefore properly set forth and applied the analytic framework utilized by the Board in making unit determinations where one party seeks a unit that is broader than the proposed unit.

CONCLUSION

For the reasons explained above, I find that the proposed unit is a readily identifiable group who share a community of interest among themselves. I also find that the Employer has not demonstrated that the Lot Auditor and Skilled Maintenance Employee share an overwhelming community of interest with the employees in the proposed unit. Under *Specialty Healthcare*, the petitioned-for unit constitutes an appropriate unit for bargaining. The challenges are sustained and the Hearing Officer's Report is affirmed. Accordingly, I am issuing a Certification of Representative.

IT IS CERTIFIED that a majority of the valid ballots have been cast for the United Food and Commercial Workers, Local 27, in the following unit:

Included: All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following facilities, all located in Wilmington, Delaware:

1. 9th Street & French Street
2. 10th Street & Washington
3. 12th Street & Orange Street
4. 12th Street & Washington Street
5. 222 Delaware Ave.
6. 401 King Street
7. 510 North King Street
8. 503 S. Market Street
9. 711 Orange Street
10. 713 Shipley Street
11. 903 Shipley Street
12. 1000 King Street
13. 1201 N. Market Street

Excluded: All office clerical employees, administrative and bookkeeping employees, Lot Auditor, Skilled Maintenance employee, managerial employees, guards and supervisors as defined in the Act.

Pursuant to the provisions of Section 102.69 (c) (2) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a request for review of this decision. The request for review must confirm with the requirements of Sections 102.67 (e) and (i)(I) of the Board's Rules and must be received by the Board in Washington by May 12, 2017. If no request for review is filed, the decision will be final and shall have the same effect as if issued by the Board.

A request for review may be E-filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street, SE, Washington, DC 20570-0001. A party filing a request for review must serve a

copy of the request on the other parties and file a copy with the undersigned. A certification of service must be filed with the Board together with the request for review.

Dated at Philadelphia, Pennsylvania this 28th day of April, 2017.

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", written over a horizontal line.

DENNIS P. WALSH
Regional Director
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106

EXHIBIT 2

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

COLONIAL PARKING, INC.

Employer

and

Case 4-RC-187843

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 27

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Colonial Parking, Inc., operates parking facilities at various locations in Delaware and Maryland. The Petitioner, United Food and Commercial Workers Local 27, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's maintenance associates and a lot auditor. A hearing was held before 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. Based upon the entire record in this matter and for the reasons set forth below, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization that 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 parties stipulated, and I 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 Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following locations, **excluding** all office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act:

1. 9th Street & French Street, Wilmington
2. 10th Street & Washington, Wilmington
3. 12th Street & Orange Street, Wilmington
4. 12th Street & Washington Street, Wilmington
5. 222 Delaware Ave., Wilmington
6. 401 King Street, Wilmington
7. 510 North King Street, Wilmington
8. 503 S. Market Street, Wilmington
9. 711 Orange Street, Wilmington
10. 713 Shipley Street, Wilmington
11. 903 Shipley Street, Wilmington
12. 1000 King Street, Wilmington
13. 1201 N. Market Street, Wilmington

The sole issue presented at the hearing is whether the election should be conducted manually or by mail ballot. Election arrangements, including the voting method, are not matters within the scope of a pre-election hearing. Pursuant to its longstanding practice, the Board has left such determinations to the discretion of the Regional Director. *2 Sisters Food Group, Inc.*, 357 NLRB 1816, 1819 (2011); *Halliburton Services*, 265 NLRB 1154, 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367-1368 (1954). See also NLRB Casehandling Manual (Part Two), Representation Proceedings Sections 11228, 11301.4. The election arrangements are set forth in this Decision under "Election Details."

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Local 27.

A. Election Details

I have determined that a mail ballot election will be held because the employees in the proposed bargaining unit work at 13 separate locations, and are thus scattered. In such situations, the Board has recognized that mail balloting is appropriate. *San Diego Gas & Electric*, 325

NLRB 1143, 1145 (1998). Moreover, where other factors favor mail balloting, the economic and efficient use of Board Agents is reasonably a concern. *Id.* at 1145, fn. 8; *Williamette Industries*, 322 NLRB 856 (1997). While the Employer proposed that a manual election be conducted at a single location, it appears, based on the voter lists submitted by the Employer with its Statement of Position, that none of the employees in the proposed unit work at that location. Thus, all would be required to walk or drive to that location to vote. In these circumstances, where employees are dispersed over numerous worksites in the city of Wilmington, Delaware and it is not feasible to conduct voting sessions at all of the worksites, it is appropriate to conduct a mail ballot election.

The ballots will be mailed by 5:00 pm on **Tuesday, December 6, 2016** to employees employed in the appropriate collective-bargaining unit. Ballots will be mailed to voters from the National Labor Relations Board, Region 4, 615 Chestnut Street, Philadelphia, PA 19106. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Voters must return their mail ballots to the Region 4 office by close of business on **Tuesday, December 27, 2016**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **December 13, 2016**, should communicate immediately with the National Labor Relations Board by either calling the Region 4 Office at 215-597-1542 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 4 Office at 615 Chestnut Street, Philadelphia, Pennsylvania on **Wednesday, December 28, 2016** at 2:00 pm. In order to be valid and counted, the returned ballots must be received in the Region 4 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are all unit employees employed during the payroll period ending **November 23, 2016**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, December 5, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those

employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: *December 1, 2016*



DENNIS P. WALSH
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

EXHIBIT 3

12/5/16

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

COLONIAL PARKING, INC.

Employer

and

Case 4-RC-187843

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 27

Petitioner

ERRATUM

On December 1, 2016, the undersigned Regional Director issued a Decision and Direction of Election in this case. The Decision inadvertently omitted from the unit description on page 2, paragraph 5 two job classifications that the parties stipulated will be permitted to vote subject to challenge. Accordingly, the unit description is hereby changed to read as follows:

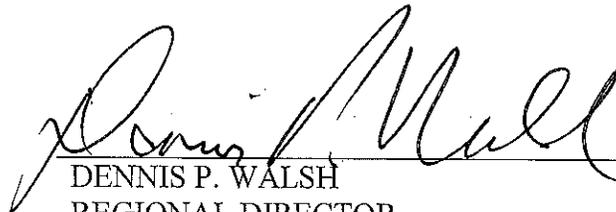
All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following locations, **excluding** all office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act:

1. 9th Street & French Street, Wilmington
2. 10th Street & Washington, Wilmington
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4. 12th Street & Washington Street, Wilmington
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12. 1000 King Street, Wilmington
13. 1201 N. Market Street, Wilmington

Others permitted to vote: The parties have agreed that the **Lot Auditor** and the **Skilled Maintenance Employee** may vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

Attached is a modified Notice of Election containing the revised unit description. The Employer should substitute the attached Notice of Election for all copies of the prior Notice of Election attached to the December 1, 2016 Decision and Direction of Election.

Dated: *December 5, 2016*

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", is written over a horizontal line.

DENNIS P. WALSH
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 04
615 Chestnut St Ste 710
Philadelphia, PA 19106-4413

EXHIBIT 4

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FIRST AMENDED STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 04-RC-187843	Date Filed

INSTRUCTIONS: <i>Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.</i> Note: <i>Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.</i>		
1a. Full name of party filing Statement of Position Colonial Parking, Inc.	1c. Business Phone: 302-651-3606	1e. Fax No.: 302-651-3612
1b. Address (Street and number, city, state, and ZIP code) 715 Orange Street, Wilmington, DE, 19801	1d. Cell No.: 302-218-7151	1f. e-Mail Address jhatfield@colonialparking.com
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>(A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)</i> Submitted previously		
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>(If not, answer 3a and 3b.)</i>		
a. State the basis for your contention that the proposed unit is not appropriate. <i>(If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)</i> Maintenance employees who perform cleaning and related duties and relieve as parking attendants and the Lot Auditor share an overwhelming community of interest with the petitioned-for employees and should be included.		
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added: Maintenance Associates, Lot Auditor Excluded: None		
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.		
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, state the basis for your position.</i>		
6. Describe all other issues you intend to raise at the pre-election hearing. The Employer proposes a manual ballot, instead of a mail ballot, with the election to be conducted in the conference room at the Employer's offices at 715 Orange Street in Wilmington, DE. With the exception of the 501 South Market location, all work locations for eligible employees are within a ten minute walk from the proposed location for the election.		
The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015 . A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be <i>added</i> to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be <i>excluded</i> from the proposed unit to make it an appropriate unit. (Attachment D)		
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail		
8b. Date(s) December 7, 2016	8c. Time(s) 2:00-4:00 PM	8d. Location(s) Conference room at 715 Orange Street, Wilmington, DE
8e. Eligibility Period (e.g. special eligibility formula) None	8f. Last Payroll Period Ending Date Wednesday, November 9, 2016	8g. Length of payroll period <input type="checkbox"/> Weekly <input checked="" type="checkbox"/> Biweekly <input type="checkbox"/> Other <i>(specify length)</i>
9. Representative who will accept service of all papers for purposes of the representation proceeding		
9a. Full name and title of authorized representative Joseph P. Hofmann, Attorney	9b. Signature of authorized representative /s/ Joseph P. Hofmann	9c. Date November 17, 2016
9d. Address (Street and number, city, state, and ZIP code) Stevens & Lee, P.C., 51 South Duke Street, Lancaster, PA 17602		9e. e-Mail Address jph@stevenslee.com
9f. Business Phone No.: 717.399.6643	9g. Fax No. 610.371.7946	9h. Cell No. 717.575.1329

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

EXHIBIT 5

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

COLONIAL PARKING, INC.

Employer

and

Case 04-RC-187843

**UNITED FOOD AND COMMERCIAL WORKERS
LOCAL 27**

Petitioner

**HEARING OFFICER'S REPORT ON CHALLENGED BALLOTS AND OBJECTIONS
TO ELECTION**

On December 28, 2016, an agent of Region 4 conducted a mail ballot election count among certain employees of Colonial Parking, Inc. (the Employer). The parties disagreed about whether certain individuals are eligible voters and they voted utilizing the Board's challenged ballot procedure. The subsequent count of the ballots revealed that the challenged ballots are sufficient to affect the results of the election.

The determinative challenged ballots, the party challenging eligibility, and the reasons for the challenge are as follows:

Lot Auditor Neil Blanchette	Challenged by agreement of the parties	Eligibility not resolved
Skilled Maintenance Employee Paul York	Challenged by agreement of the parties	Eligibility not resolved

On January 4, 2017, United Food and Commercial Workers Local 27 (the Union) filed timely Objections to the election. However, during the course of the hearing, the Union requested withdrawal of its Objections in their entirety. Accordingly, I recommend that the Union's request to withdraw its Objections be approved.

After conducting a hearing and carefully reviewing the evidence, as well as the arguments made by the parties, I conclude that Lot Auditor Neil Blanchette and Maintenance Employee Paul York do not share an overwhelming community of interest with the other employees eligible to vote and therefore recommend that the challenge to their eligibility be sustained and their ballots not be opened and counted.

After recounting the procedural history below, I discuss the applicable burdens of proof and the Employer's operation. Finally, I discuss each challenged ballot.

PROCEDURAL HISTORY

The Petitioner filed the petition on November 8, 2016. Pursuant to a Decision and Direction of Election issued by the Regional Director on December 1, 2016 and Erratum issued on December 5, an election by secret ballot was conducted by mail beginning on December 6 to determine whether a unit of employees of the Employer wish to be represented for purposes of collective bargaining by the Union. That voting unit consists of the following employees:

Included: All full-time and regular part-time Attendants, Lot Attendants, Valet Attendants, Cashiers, Customer Service Employees, Floaters, and Maintenance Associates employed by the Employer at the following facilities, all located in Wilmington, Delaware:¹

1. 9th Street & French Street
2. 10th Street & Washington
3. 12th Street & Orange Street
4. 12th Street & Washington Street
5. 222 Delaware Ave.
6. 401 King Street
7. 510 North King Street
8. 503 S. Market Street
9. 711 Orange Street
10. 713 Shipley Street
11. 903 Shipley Street
12. 1000 King Street
13. 1201 N. Market Street

Excluded: All office clerical employees, administrative and bookkeeping employees, managerial employees, guards and supervisors as defined in the Act.

Others permitted to vote: The parties have agreed that the Lot Auditor and the Skilled Maintenance Employee may vote in the election but their ballots will be challenged since their eligibility has not been resolved.

The Tally of Ballots prepared at the conclusion of the election on December 28, 2016 shows that of approximately 28 eligible voters, 10 ballots were cast for and 9 ballots were cast against the Petitioner, with two challenged ballots. The challenged ballots are determinative of the results of the election.

¹ Herein, I will refer to these classifications that the parties agreed constitute an appropriate unit as the “agreed-upon unit.”

The Regional Director for Region 4 ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the challenged ballots.² On January 24, 2017, as Hearing Officer designated to conduct the hearing and to recommend to the Regional Director whether to overrule or sustain the challenged ballots, I heard testimony and received into evidence relevant documents. Both parties timely filed briefs. Those briefs have been fully considered. This Report contains my findings and recommendations regarding the determinative challenged ballots.

THE BURDENS OF PROOF

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, it requires only that the unit be *an* appropriate one. *International Bedding Co.*, 356 NLRB 1336 (2011); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.1 Dick Contracting* 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only when the petitioned-for unit is not appropriate that the Board will consider alternative units, which may or may not be units suggested by the parties. *Id.*; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). In *International Bedding*, supra at 1337, the Board emphasized that the petitioner's position regarding the scope of the unit is a relevant consideration, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7 Cir. 1969), cert. denied 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as employee skills and job functions; common supervision; contact and interchange; similarities in wages, hours and other terms and conditions of employment; functional integration; and bargaining history, if any. *Publix Super Markets*, 343 NLRB 1023 (2004); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins*, supra; *Home Depot USA*, 331 NLRB 1289 (2000).

In *Specially Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934, 943-947 (2011), the Board clarified the framework to be applied in making unit determinations where a party seeks a unit that is broader than the petitioned-for unit. Pursuant to this decision, the Board first looks at whether the petitioner seeks a unit consisting of employees "who are readily identifiable as a group," based on job classifications, departments, functions, work locations, skills, or similar factors, and whether these employees share a community of interest. In *Macy 's, Inc.*, 361 NLRB No. 4, slip op. at 8 (2014) and *Bergdorf Goodman*, 361 NLRB No. 11, slip op. at 2 (2014), the Board made it clear that whether the employees are "readily identifiable as a

² The Regional Director also ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the Union's Objections. However, at the hearing the Union requested withdrawal of its Objections and presented no evidence in support of them.

group" and whether they share a community of interest are two separate inquiries. If both standards are met, the party seeking a broader unit must demonstrate "that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only when there is no legitimate basis upon which to exclude them from the petitioned-for unit because the traditional community-of-interest factors overlap almost completely. See *Fraser Engineering Co.*, 359 NLRB No. 80, slip op. at 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 (2011), enf. denied on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast*, 722 F. 3d 609 (4th Cir. 2013). On the other hand, the Board will not approve a petitioned-for fractured unit that seeks "an arbitrary segment" of what would be an appropriate unit. *Bergdorf Goodman*, supra, slip op. at 4 (2014); *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011); *Specially Healthcare*, 357 supra at 946; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

THE EMPLOYER'S OPERATION

The Employer operates paid parking facilities, including multi-level parking garages, surface parking lots, valet lots, and unattended lots. This case involves the Employer's operations in the downtown area of Wilmington, Delaware. There is no history of collective bargaining.

The employees in the agreed-upon unit work at the Employer's multi-level garages, surface parking lots, and valet lots. They are responsible for ensuring that customers pay for parking, assist them with operating the payment kiosks, receive payments from them, issue validations, and maintain records of vehicles parking in the garages and surface lots. Agreed-upon unit employees are also responsible for ensuring that the garages and surface lots are clean and maintained, which requires them to sweep the facilities, pick up litter, empty trash receptacles, wipe down the payment kiosks, and perform light snow removal duties.

The Employer also operates unattended lots. Customers parking in these lots pay a monthly fee and are given a barcode by the Employer that they must affix to their vehicles. The Lot Auditor is responsible for traveling from one unattended lot to another and using a hand-held scanner to scan the barcodes to ensure that the customer is parked in the correct lot and that the customer has paid his or her monthly fee. Occasionally, the Lot Auditor will scan barcodes at a surface lot where an agreed-upon unit employee works.

Like the Lot Auditor, the Skilled Maintenance Employee travels to the Employer's various garages and lots and performs routine unskilled maintenance work.³

³ The term "Skilled Maintenance Employee" is a misnomer. The record evidence establishes that this employee does not perform any work that is typically associated with the term "skilled employee." However, since the parties agreed to refer to this employee as the Skilled Maintenance Employee, I will do so herein.

The Employer employs Facility Managers at the various garages and lots that supervise the agreed-upon unit employees on a day-to-day basis. The Facility Managers report to two Area Managers – Jeff Garrison and Rob Clarke. In addition to supervising the Facility Managers, the Area Managers also are responsible for overseeing the unattended lots. Thus, Area Manager Rob Clarke directly supervises the Lot Auditor. Area Manager Jeff Garrison is also the Maintenance Director and directly supervises the Skilled Maintenance Employee. The Area Managers report to Vice President of Operations Chris Hankins.

EMPLOYEES IN THE AGREED-UPON UNIT AND THE CHALLENGED BALLOTS

The Order directing a hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative.

A. Job Functions, Employment Terms, and Compensation

The formal job titles listed on the Employer's job descriptions vary slightly from those set forth in the Decision and Direction of Election Erratum. However, the functions set forth in the job descriptions are consistent with the witnesses' testimony. Below is a summary of those job functions, employment terms, and compensation for the agreed-upon unit employees and the disputed Lot Auditor and Skilled Maintenance Employee.

Cashier

Employees in this classification provide customer service to the Employer's parking garage customers, calculate parking fees using either a cash register or computer, deduct validations and applicable discounts from any parking fees, collect the appropriate parking fee, and prepare reports concerning shift activities. The starting pay rate for this position is \$8.50 per hour. It is unclear exactly how many employees fall within this classification, but their pay rate ranges from \$8.75 to \$12.89 per hour.

Customer Service/Cashier

Employees in this classification provide customer service, as needed, to the Employer's parking garage customers, which includes answering questions from customers concerning the use, and assisting customers in the use, of centralized payment kiosks. They also collect fees from customers as needed. In addition to these duties, these employees spend part of their work time patrolling the parking garages to ensure cleanliness, picking up litter and trash, sweeping up debris, and counting the number of vehicles parked in the garage and reporting that information back to the Employer. They also collect accumulated trash and bring it to a central location for pick-up by the Skilled Maintenance Employee. The starting pay rate for this position is \$8.75

per hour. It is unclear exactly how many employees fall within this classification, but their pay rate ranges from \$8.75 to \$12.89 per hour.

Customer Service/Maintenance/Supervisor

Employees in this classification provide customer service to the Employer's parking garage customers, which includes answering questions from customers concerning the use, and assisting customers in the use, of centralized payment kiosks. They also calculate parking fees using either a cash register or computer, deduct validations and applicable discounts from any parking fees, collect the appropriate parking fees, and prepare reports concerning shift activities. These employees are also responsible for monitoring activity in their assigned parking garages, cleaning and maintaining the area around the pay stations and office, and collecting and disposing of litter. They are responsible for the general maintenance duties in their assigned facility, such as running a power sweeper, emptying garbage cans, sweeping, filling ticket machines, and light snow removal. They monitor activity within the facility and complete incident reports. The record establishes that agreed-upon unit employees Melanie Williams and Anita Smith will on occasion place a boot on a particular customer's vehicle if that customer has not paid his or her parking fees. According to the Employer's pay scale, the starting pay rate for this position is \$9.25 per hour. However, that does not appear accurate since other documents submitted by the Employer indicate that their pay rate ranges from \$9.01 to \$10.73 per hour. It is unclear exactly how many employees fall within this classification.

Government Center Custodian⁴

These employees are responsible for routine maintenance and cleaning of the facility, such as removing trash, cleaning the bathrooms, elevators, stairwells and sidewalk, removing snow, replacing light bulbs, and cleaning out the planters, bushes, fan filters, and all equipment. They also run the power sweeper throughout the garage. Again, it is unclear exactly how many employees fall within this classification, but agreed-upon unit employee Russell Marshall is in this classification and his pay rate is \$10.37 per hour.

Valet Parking Attendant

In some garage facilities, employees in this classification are assigned to park and/or move customers' vehicles within the facility. Their responsibilities include providing customer service, securing customers' vehicles and keys, cleaning and maintaining the interior of the valet attendant's booth, picking up and disposing of any litter in the facility, and monitoring pedestrian traffic to ensure customer safety. A driver's license and a clean driving record are required, in addition to the ability to drive a vehicle with a manual transmission. Employees that operate customers' cars are covered under the Employer's insurance policy. The starting pay rate for this

⁴ The Government Center Parking Garage is located at 9th and French Street, Wilmington, Delaware. The Government Center Custodian title is applicable to the maintenance associates working at the Government Center Parking Garage.

position is \$8.75 per hour. There are currently three employees in this position and their pay rate ranges from \$9.28 to \$10.36 per hour.

Lot/Valet Attendant

In surface parking lots, employees are assigned to work as lot attendants and may also perform valet duties, depending upon the size and layout of their assigned lot. Lot attendants provide customer service, collect parking fees and prepare reports of daily parking activities. They park or move vehicles, as needed, and secure customers' vehicles and keys. They are responsible for cleaning and maintaining the interior of the attendant's booth, picking up and disposing of litter found in the lot, and monitoring pedestrian traffic in the lot to ensure customer safety. Employees performing the valet function must have a valid driver's license. Employee's that operate customers' cars are covered under the Employer's insurance policy. The starting pay rate for this position is \$8.75 per hour. About seven employees currently hold this position and their pay rate ranges from \$8.75 to \$11.80 per hour.

Floater

The Employer has two employees currently designated as floaters. Floaters are assigned to relieve or replace employees when they are unavailable to work their usual shifts. The starting pay rate for this position is \$8.75. Currently, one floater earns \$9.00 per hour and the other earns \$9.55 per hour.

Lot Auditor (Neil Blanchette)

Neil Blanchette was a Lot Attendant for the first three years of his employment and has held the Lot Auditor position for about the last two years.

Blanchette's primary responsibility is to audit the unattended surface lots in the City of Wilmington. Blanchette clocks in at the Government Center Parking Garage using a computer and picks up the Employer-owned Jeep. He then drives to the Employer's main office and picks up a hand held scanner and an Employer-provided cell phone. He spends about 15 minutes performing paperwork and then drives to various unattended lots. Blanchette's operation of the Employer-owned Jeep requires that he be covered under the Employer's insurance policy. Blanchette walks through the unattended lots and scans the barcodes affixed to customers' vehicles. When Blanchette finds a vehicle without a barcode, he calls the Employer's main office and provides a description of the vehicle and sends a photo of it that he takes on an Employer-provided cell phone. An office employee will check the Employer's records to see if any customer called to report that he or she would be using a different vehicle that day. If there is no record of a customer calling the office, then Blanchette is sometimes authorized by the main office to place a boot on the vehicle. Other times, he will leave a warning note on the vehicle.

On occasion, Blanchette visits a surface lot in which an agreed-upon unit employee is present. Record evidence shows that this constitutes less than 10% of his work time. When he does this, he generally asks the employee if there are any issues that he needs to be aware of and

then proceeds to scan barcode stickers. If Blanchet finds a vehicle with a deficient barcode sticker at a surface lot where an attendant is present, then he will first speak to the attendant to see if the attendant knows why the vehicle is parked in the lot. If the attendant is not aware of the reason, then Blanchet will call the office, as described above, and obtain permission to place a boot on the vehicle.

Blanchette has some limited interaction with customers, such as occasionally answering questions that they have or assisting them in using the payment kiosks.

At the end of his day, he returns the Employer-owned Jeep to the Government Center Parking Garage and completes about 15 minutes worth of paperwork before clocking out.

Blanchette is assigned a weekly schedule that sets forth the lots he must audit, which vary from week to week. He earns \$11.10 per hour and works Monday through Friday from 7:30 a.m. to 11:30 a.m.

Skilled Maintenance Employee (Paul York)

Paul York has been employed by the Employer for 15 years. He spent the first three years of his employment in the now-defunct “stripping department,” i.e., the department that painted parking lines in the garages and lots. This department no longer exists and, for the past 13 years, York has worked in the maintenance department. According to his written job description, his current title is maintenance associate.

On a typical day, York signs in on the computer at the Government Center Parking Garage. There he has a table that serves as his workspace. He spends on average about an hour to an hour-and-a-half at the Government Center Parking Garage each day cleaning trucks and equipment, fueling the trucks and power sweepers, and writing reports of his daily tasks on a log sheet.

York has an Employer-provided pickup truck that he uses during the day and is covered under the Employer’s insurance policy. He does not have an Employer-provided cell phone. York uses the Employer-provided truck to travel to the various garages and lots to perform routine maintenance work. York’s duties include emptying trash cans at certain locations into a dumpster. He is responsible for calling the waste management company when the dumpster is full. In other locations, he collects and hauls away trash bags that the attendants have collected from the various trash cans at the garage or lot. He applies yellow safety paint, as needed, at the garages and lots. He cleans up broken glass, trash, and leaves in the garages and lots. Occasionally, when he needs assistance in performing certain tasks, such as removing wet mattresses from the lots or moving boxes of records at the Employer’s office, he will get help from maintenance employee Russell Marshall, an agreed-upon unit employee employed at the Government Center Parking Garage.

The Employer has four power sweepers that York delivers to the parking garages for use by the maintenance employees in the agreed-upon unit. York does not use the power sweepers to clean the garages.

During winter, York assists the Employer in its snow removal efforts. He will put a plow on the Employer's Jeep so that Operations Vice President Chris Hankins or Area Manager/Maintenance Director Jeff Garrison can use it to plow certain portions of the lots.⁵ He also puts salt spreaders and shovels on the Employer's truck and delivers them to the various lots so that the lot attendants can perform minor snow removal. York himself performs minor snow removal, such as shoveling and using a snow blower. York does not perform any maintenance on the snow blower other than filling it with gas. He also cleans the salt from the snow equipment after it has been used.

York repairs the wood on any broken gate arms at the various lots. He does not fix the gate mechanism. At one particular garage, the storm drains frequently get clogged. He is responsible for removing and replacing the grate, and unclogging the drain. He changes light bulbs in the garages. He notifies the main office if concrete is cracked and the Employer will hire an outside contractor to repair it. He moves bumper blocks back into place with a dolly if a customer hits them with his or her car. He also cuts the grass in certain lots.

York submits reports detailing the tasks he performs each day. These reports are then entered into the Employer's work order system and the Employer can track the monthly hours worked by York on various tasks. The largest portion of his working time is spent collecting and disposing of trash (40.1% in June 2016, 30% in August 2016, and 31.11% in November 2016). In the summer months, landscaping accounted for the second largest portion of his working time (25.36% in June and 22.65% in August). Cleaning up the parking lots also accounted for a substantial amount of his work time (20.53% in June 2016, 16.12% in August 2016, and 35.22% in November 2016). York's other tasks tracked by the Employer included gassing up sweepers and vehicles, moving boxes, painting, removing boots/moving vehicles, making laundry runs, and delivering supplies. Each of these tasks took up less than 10% of his time on any given month.

York does not perform the type of work typically associated with skilled maintenance work, such as repairing the snow blower, the mechanical mechanisms on the gates, or the payment kiosks in the garages and lots. That type of work is performed by either Area Manager Jeff Garrison or an outside contractor. York carries on his personal truck his own personal tools, such as a circular, reciprocating, and chainsaw, and drills, to which no one else has access. The record is silent on when he uses these tools, although York testified that most repairs are performed by Garrison and that he simply assists Garrison by, for example, going to the store to pick up parts.

York testified that he earns \$15 per hour, although the Employer's seniority list indicates that he earns \$15.90 per hour.

Other terms and conditions of employment

All employees, including Blanchette and York, have the same benefits, with part-time employee benefits being prorated for the number of hours the employee works. All employees

⁵ The Employer contracts with a snow removal company to perform most of the plowing work.

also receive the same bonus amount, again with part-time employees receiving a pro-rated bonus based on hours worked.

Employees in the agreed-upon unit are generally assigned to work the same location and have a set schedule. Neither Blanchette nor York is assigned to the same location every day. The nature of their jobs requires that they travel to numerous garages and lots during the course of their day. However, both have a set schedule that is similar to the agreed-upon unit employees.

Employees in the agreed-upon unit that are assigned to work at the Government Center Parking Garage clock in at a computer located there, as do Blanchette and York. Employees assigned to other garages and lots throughout the Wilmington area will clock in using a computer, a cell phone or a landline phone, depending on what is at their particular work location.

The Employer supplies uniforms to its employees, including to Blanchette and York. York is also responsible for making “laundry runs” where he collects the uniforms of any employee that wants his or her uniform cleaned. He takes the uniforms to the main office where they are cleaned. Once cleaned, he returns them to the employees.

The work performed by the agreed-upon unit employees, as well as that performed by Blanchette and York, is routine and unskilled in nature. It does not require any specialized training or certifications. The work requires only minimal on-the-job training related to a specific piece of equipment or task, e.g., the Cashier is trained on how to use the cash register, the Lot Auditor is trained on how to use the hand-held scanner, and the Skilled Maintenance Employee is trained on how to repair wooden gate arms.

B. Supervision

As discussed above, the agreed-upon unit employees working in the garages and lots report to Facility Managers, who oversee a particular garage or lot. Operations Managers Jeff Garrison and Rob Clark oversee the Facility Managers. Garrison and Clark report to Vice President of Operations Chris Hankins. Lot Auditor Blanchette reports directly to Rob Clark. Skilled Maintenance Employee York reports directly to Jeff Garrison.

C. Contact and Interchange

Generally, agreed-upon unit employees are regularly assigned to a particular parking facility where they report and remain for their entire shift. They have contact with the other employees that are assigned to the same parking facility or an adjacent facility. There is also evidence of temporary interchange among the agreed-upon unit employees where, for example, one employee may fill in for another employee that is out or an employee may cover the end of a shift for another employee.

Lot Auditor Blanchette spends the bulk of his day scanning barcodes in unattended lots. Despite this, the record establishes some degree of contact with the agreed-upon unit employees. Occasionally, Blanchette scans barcodes in lots that have an attendant, which constitutes less than 10% of the lots he visits. When scanning in the attended lot, he will interact with the attendant by, for example, asking the attendant if there is anything he needs to be aware of before he scans. There is no evidence of interchange between Blanchette and any of the bargaining unit employees. In fact, when Blanchette takes leave, no one fills in for him. As mentioned above, there is evidence of permanent interchange when about two years ago Blanchette moved from a Lot Attendant position to the Lot Auditor position.

Skilled Maintenance Employee York has more frequent contact with unit employees. For example, he picks up trash from their lots, delivers power sweepers to the maintenance associates in the garages, delivers snow shovels and salt to the garage and lot employees, and collects the uniforms of employees who wish to have their uniforms cleaned. He has virtually no interchange with agreed-upon unit members, although about once or twice a year he will work in a lot in West Chester, Pennsylvania, which is near his home, covering a shift for a lot attendant on an emergency basis. He described his responsibilities filling in at the West Chester, Pennsylvania lot as “hang[ing] out” until an attendant gets there. When York takes leave, no one fills in for him.

D. Functional Integration

Skilled Maintenance Employee York is functionally integrated with the agreed-upon unit employees. York performs some of the same type of unskilled maintenance work as the agreed-upon maintenance associates stationed in the garages, albeit York performs his work on a roving basis, instead of at a specific garage. York also delivers equipment to, and removes trash collected by, the agreed-upon unit employees.

Lot Auditor Blanchette spends the bulk of his time working independently from the agreed-upon unit employees. However, in general terms he is functionally integrated with the agreed-upon unit employees in that the essential duties of both are to ensure that parkers have paid to park.

ANALYSIS

If the agreed-upon unit consists of a readily identifiable group of employees who share a community of interest, it will be found appropriate unless there are additional employees with whom those employees share an overwhelming community of interest. *Specialty Healthcare*, 357 NLRB 934, 944 (2011). Therefore, the first two threshold questions are (1) whether the agreed-upon unit constitutes a readily identifiable group, and (2) whether the employees in this group share a community of interest.

I conclude that these questions should be answered affirmatively. The employees in the agreed-upon unit are identified by their work locations, i.e., they are regularly assigned to, and work for, the duration of their workday at specific garages and lots throughout Wilmington,

Delaware. Moreover, they are identified along supervisory lines since all the employees in the agreed-upon unit are supervised by Facility Managers on a day-to-day basis.

The employees in the agreed-upon unit also share a community of interest. They perform similar tasks under common working conditions. They are subject to common day-to-day supervision by Facility Managers. They are paid a similar hourly rate and receive the same bonus and benefits.

In short, the agreed-upon unit is appropriate and the burden is on the Employer to show that the Lot Auditor and Skilled Maintenance Employee share an overwhelming community of interest with them.⁶ The Board has explained, “additional employees share an overwhelming community of interest with the petitioned-for employees only when there is no legitimate basis on which to exclude [the] employees” from the petitioned-for unit because the traditional community-of-interest factors “overlap almost completely.” *Northrop Grumman Shipbuilding*, supra, 357 NLRB slip op. at 3, quoting *Specialty Healthcare*, supra at 944, and *Blue Man Vegas, LCC v. NLRB*, 529 F.3d 417, 421, 422 (D.C. Cir. 2008).

Here, there are several factors militating in favor of finding a community of interest, but at least some militating against such a finding. For example, the Lot Auditor and the Skilled Maintenance Employee share with the agreed-upon unit employees similar benefits, similar bonus amount, a similar clock in/out procedure, and similar uniforms. Moreover, they perform routine unskilled work similar to the agreed-upon unit employees. However, there are some differences that prevent the Lot Auditor and the Skilled Maintenance Employee from sharing an overwhelming community of interest with the agreed-upon unit employees. For example, the Lot Auditor primarily works independently traveling in an Employer-provided vehicle to various lots scanning barcodes. He also has only limited contact with other employees. The Skilled Maintenance Employee performs certain functions distinct from the agreed-upon maintenance associates stationed at specific garages, such as repairing wooden gate arms, cutting grass, making laundry runs and delivering supplies and equipment to the garages and lots. He also is required to travel in an Employer-provided vehicle. Importantly, there is no evidence of interchange between the agreed-upon unit employees and the Lot Auditor or Skilled Maintenance Employees. Both also have separate day-to-day supervision. Thus, I find that the Employer has failed to meet its burden since at least some of the community of interest factors would support finding a separate unit of Attendants, Lot Attendants, Valet Attendants, Cashiers,

⁶ The Employer does not appear to deny that the agreed-upon unit employees share a community of interest. Instead, it contends that the Lot Auditor and the Skilled Maintenance Employee share an overwhelming community of interest with the agreed-upon unit employees, such that excluding them would result in a “fractured” unit or an “arbitrary segment of what would be an appropriate unit.” See *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011). I disagree. In *Odwalla*, the petitioned-for unit did not follow any lines drawn by the employer, such as work location or supervision. The Board found “no rational basis” for excluding certain employees, the merchandisers, from the unit because no community of interest factors suggested that the employees in the petitioned-for unit shared a community of interest not shared by the merchandisers. *Id.*, slip op. at 5. As discussed herein, the agreed-upon unit employees share at least some community of interest factors that are distinct from the Lot Auditor and the Skilled Maintenance Employee.

Customer Service Employees, Floaters, and Maintenance Associates to be appropriate. Specifically, the factors that preclude me from finding an overwhelming community of interest are the lack of interchange and the lack of day-to-day supervision. In the case of the Lot Auditor, an insufficient amount of contact with the agreed-upon unit employees further supports a lack of an overwhelming community of interest. Finally, in the case of the Skilled Maintenance Employee, a significant wage disparity with the agreed-upon unit employees further supports a lack of an overwhelming community of interest.

The agreed-upon unit employees are routinely assigned to the same garage or lot on a daily basis. There is evidence that they occasionally fill in for or cover part of a shift for one another. The Lot Auditor and Skilled Maintenance Employee are not assigned to any particular garage or lot and travel to numerous facilities each day in Employer-provided vehicles. There is no evidence that the Lot Auditor and Skilled Maintenance Employee fill in for any agreed-upon unit employees. Moreover, when the Lot Auditor and Skilled Maintenance Employee take leave no agreed-upon unit employee fills in for them and their tasks go unperformed until they return to work. This indicates that the Employer views the Lot Auditor's and Skilled Maintenance Employee's duties and responsibilities as distinct from the agreed-upon unit employees. Thus, in the absence of any evidence of interchange, I find that the community of interest factors do not "overlap almost completely" such that the Lot Auditor and the Skilled Maintenance Employee share an overwhelming community of interest with the agreed-upon unit employees. See *Bergdorf Goodman*, 361 NLRB No. 11 (2014) slip op. at 3-4. There is evidence of permanent interchange when, about two years ago, Blanchette changed positions from a Lot Attendant to the Lot Auditor; however, I find that the lack of daily or intermittent interchange outweighs this one instance of permanent interchange. See *Macy's, Inc.*, 361 NLRB No. 4 slip op. at 10 (2014) citing *Bashas', Inc.*, 337 NLRB 710, 711 fn. 7 (2002).

The Lot Auditor has very little contact with agreed-upon unit employees. In fact, he spends less than 10% of his workday at lots where an agreed-upon unit employee is present. The Skilled Maintenance Employee does have more contact with agreed-upon unit employees than the Lot Auditor does. However, as mentioned above, there is no evidence of daily or even temporary interchange with agreed-upon unit employees. Contact, even "constant" contact, between employees, absent interchange, does not establish an overwhelming community of interest. See *DPI Secuprint*, 362 NLRB No. 172 slip op. at 5 (2015).

The agreed-upon unit employees are supervised by Facility Managers on a day-to-day basis. However, the Lot Auditor and Skilled Maintenance Employee are supervised by Area Managers on a day-to-day basis. While the Facility Managers report to the Area Managers, meaning that all of the employees share common upper-level supervision, I find that the lack of day-to-day supervision, in conjunction with the lack of interchange, is a sufficient factor indicating that the Lot Auditor and the Skilled Maintenance Employee do not share an overwhelming community of interest with the agreed-upon unit employees. See *Macy's, Inc.*, 361 NLRB No. 4 slip op. at 9 (2014).

The Skilled Maintenance Employee is distinct with respect to his wages. He earns approximately \$3.00 more than the highest earning employee in the agreed-upon unit. Such a

wage disparity is a factor weighing in favor of finding a lack of an overwhelming community of interest. See *Scolari's Warehouse Markets*, 319 NLRB 153, 158 (1995).

When the above factors are viewed together, I find that the community of interest factors among the agreed-upon unit employees and the Lot Auditor and the Skilled Maintenance Employee do not overlap almost completely and, thus, preclude a finding of an overwhelming community of interest.

CONCLUSION

Based on the foregoing, I recommend that the challenges to the ballots of Lot Auditor Neil Blanchette and Skilled Maintenance Employee Paul York be sustained and that their ballots not be opened and counted, and that a revised Tally of Ballots issue.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 4 by Monday, March 27, 2017. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, [Regional address].

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business at 5:00 p.m. on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: March 13, 2017

/s/ Robert Gleason
ROBERT GLEASON
Field Examiner

EXHIBIT 6

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: COLONIAL PARKING, INC., Employer, And UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 27, Petitioner.	Case No. 04-RC-187843
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The above-entitled matter came on for hearing pursuant to Notice, before ROBERT GLEASON, Hearing Officer, at The National Labor Relations Board, Region 4, 615 Chestnut Street, Philadelphia, Pennsylvania in Courtroom 5 on Tuesday, January 24, 2017, at 10:00 a.m.

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

A P P E A R A N C E S

1 On behalf of the Employer:

2

3 JOSEPH P. HOFMANN, ESQ.

4 Stevens & Lee, P.C.

5 51 South Duke Street,

6 Lancaster, PA 17602

7 717-399-6643

8

9 On Behalf of the Petitioner:

10

11 ADAM C. BREIHAN, ESQ.

12 ROSEANN R. ROMANO, ESQ.

13 Murphy Anderson, PLLC

14 1401 K Street N.W., Suite 300

15 Washington, D.C. 20005

16 202-223-2620

17

18

19

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
1						
2						
3						
4	Neil Blanchette	12	30	49	--	--
5	Paul B. York, Jr.	51	70	77	--	--
6	Chris Hankins	78	120	--	--	87
7	Melanie Williams	125	134	137		138
8	--					
9						
10	Brandy Gordy	139	151	--	--	--
11						
12	Margaret Harding	153	166	--	--	--
13						
14	Anita Smith	168	174	--	--	--
15						
16	Chris Hankins	176	--	--	--	--
17						
18						
19						

1			
2		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
	<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
3	Board's		
4	B-1	6	6
5	Employer's		
6	E-1	16	18
7	E-2	19	30
8	E-3	60	69
9	E-4	81	85/withdrawn
10	E-5	83	85
11	E-6	86	88
12	E-7	88	90
13	E-8	91	94
14	E-9	95	96
15	E-10	96	98
16	E-11	98	102
17	E-12	106	107
18	E-13	108	109
19	E-14	110	111
20	E-15	112	117
21			

P R O C E E D I N G S

(Time Noted: 9:51 a.m.)

HEARING OFFICER GLEASON: On the record.

The hearing will be in order. This is a hearing before The National Labor Relations Board in the matter of Colonial Parking, Inc., case number 04-RC-187843, pursuant to an order of the Regional Director dated January 10th 2017. The Hearing Officer conducting this hearing is Robert Gleason.

The official reporter makes the only official transcript of these proceedings and all citations in briefs and arguments must refer to the official record. In the event that any of the parties wishes to make off the record remarks, requests to make such remarks should be directed to the Hearing Officer and not to the official reporter. Statements of reasons in support of motions and objections should be specific and concise. Exceptions automatically follow all adverse rulings. Objections and exceptions may, on appropriate request, be permitted to an entire line of questioning.

It appears from the Regional Director's order dated January 10th that this hearing is held for the purpose of taking evidence concerning the challenges to lot auditor Neil Blanchette, and skilled maintenance employee Paul York and to the four objections filed by the Petitioner. In due course I will prepare and file with the Regional Director a report and recommendations in this proceeding and will cause a copy

1 auditor Neil Blanchette is appropriately included in the unit.
2 He is a -- an employee who works in the parking lots, just as
3 all the other employees in the unit, at auditing and checking
4 to make sure people have paid for parking. Spends his time --
5 majority of his time out in the lots, as do the employees in
6 the group. As to maintenance employee Paul York, he's
7 appropriately included in the unit, because he is not, as
8 claimed by the Petitioner, a skilled maintenance employee, but
9 rather an employee who performs the same kind of maintenance
10 duties as numerous other people in the unit, albeit performing
11 them on a more full time basis than some other employees.

12 With regards to the objections, the Employer's position on
13 objection one is that no employees were threatened with the
14 withholding of periodic wage increases, but rather the
15 employees were educated and explained to that in the event that
16 the Union would win the election, the wage increases would be
17 subject to negotiation, but no threat was made to withhold
18 periodically already scheduled wage increases. Secondly, with
19 regards to objection two, this alleges that a unit employee
20 Chris Dineen, acting as a conduit and agent of the Employer,
21 promised employees that if they signed the Union he was
22 circulating he would promoted back to management and would be
23 able to give employees a 50 cent raise in six months. Mr.
24 Dineen was not acting as a conduit or agent of the Employer.
25 He was acting on his own circulating a petition against the

1 Union. He made no promises to employees that if they signed
2 the petition he would be promoted back. And in fact will
3 testify that he would have not have said that, because he has
4 and maintains no such interest in being promoted back. And
5 further, testimony will establish that no supervisor would have
6 the authority to give employees a 50 cent raise at any time.

7 Objections three and four are consolidated in the notice
8 of election and they allege that the Employer polled employees
9 about their support of the Union. This also addresses Mr.
10 Dineen's activity. And Mr. Dineen again was not acting as a
11 conduit or agent of the employee -- Employer. And while he
12 asked employees to sign a petition that he initiated, seeking
13 to withdraw support for the Union's election petition, he was
14 not permitted to do so through the Employer. He did so on his
15 own time; took a vacation day in order to do it. Finally, the
16 objections allege that a supervisor whose name is Ronnie
17 Garrison (ph) told employees that Mr. Dineen would be walking
18 around with a petition soliciting signatures, and that is not
19 true and Ms. Garrison will testify to that.

20 HEARING OFFICER GLEASON: Okay. For the Petitioner, could
21 you just identify the issues and your position on each?

22 MR. BREIHAN: Okay. Well, our position is first to the
23 stipulate -- or to the challenged ballots, Paul York and Neil
24 Blanchette both do not share an overwhelming community of
25 interest with the other employees, who are primarily do tasks

1 of customer service, cash register work, lot attendant work and
2 some very -- maintaining of the lots and cleaning of the lots.
3 Paul York is a skilled maintenance person who fixes machines
4 and uses machines, uses a company truck and goes from lot to
5 lot to fix things that nobody else in the bargaining unit --
6 nobody in the bargaining unit I should say, would be able to
7 fix. And Neil Blanchette works a different schedule, a
8 different pay for going around also with a company car auditing
9 and putting boots on cars, which many and most of the people in
10 the bargaining unit do not do.

11 The -- as to the -- or as to the objections I should say,
12 our position remains unchanged on these. We believe that both
13 the Employer did threaten employ -- employees at the captive
14 audience meetings held in advance of the election, telling them
15 what things might change or would change, as a result of a
16 union being voted in as the bargaining representative. They
17 were told, we'll hear from our witnesses, about various things
18 that Employer's anti-union consultant was telling employees
19 would happen. And we also maintain our position as to the
20 other objections regarding Chris Dineen's behavior; that he was
21 in fact acting as a conduit for the Employer and was
22 communicating messages that he had discussed with the Employer
23 in advance to his numerous meetings with employees over several
24 days.

25 HEARING OFFICER GLEASON: Alright. So please be aware

1 that with respect to the challenged ballots, the Board applies
2 the test set forth in *Specialty Healthcare*, in sum where a
3 party seeks to add employees to a unit then the party seeking
4 the broader unit must show that the employees it seeks to add
5 share an overwhelming community of interest with the other
6 employees. To make this determination I will be examining
7 factors such as skills and job function, common supervision,
8 contact and interchange, similarity in wages, hours and other
9 terms and conditions of employment, functional integration and
10 bargaining history, if any. Can the parties stipulate that
11 there's no prior bargaining history here --

12 MR. HOFMANN: Yes.

13 HEARING OFFICER GLEASON: -- covering this unit?

14 MR. BREIHAN: Yes.

15 HEARING OFFICER GLEASON: With respect to the four
16 objections raised by the Petitioner, the burden will be on the
17 Petitioner and it will be two-fold. First, the Petitioner will
18 have to establish that the alleged actors were agents of the
19 Employer. The test for agency status is whether under all the
20 circumstances employees would reasonably believe that the
21 employees in question were reflecting company policy, and
22 speaking and acting for management. I will consider fact -- I
23 will consider the position and duties of the alleged agents, in
24 addition to the context in which the behavior occurred. If the
25 Petitioner is able to establish agency status, then it also

1 bears the burden of showing that the alleged conduct occurred
2 and that it materially affected the results of the election.

3 Please be advised that a party seeking to meet its burden
4 of proof must present specific detailed evidence in support of
5 its position. General conclusionary evidence by witnesses will
6 not be sufficient. Before we get started with witness
7 testimony, are there any prehearing motions that need to be
8 addressed at this time?

9 MR. HOFMANN: No.

10 MR. BREIHAN: No.

11 HEARING OFFICER GLEASON: So as I mentioned in off the
12 record discussions, I'd like to deal with the challenged
13 ballots first. Will the Employer please call its first
14 witness?

15 MR. HOFMANN: Neil Blanchette.

16 HEARING OFFICER GLEASON: Mr. Blanchette, would you please
17 raise your hand?

18 Whereupon,

19 NEIL BLANCHETTE

20 Having been first duly sworn, was called as a witness and
21 testified herein as follows:

22 HEARING OFFICER GLEASON: Could you please state your name
23 and spell it for the record? Just speak right into this
24 microphone.

25 THE WITNESS: I've got to take my hearing aids out. I can

1 hear better. Alright. What?

2 HEARING OFFICER GLEASON: Can you just state your name and
3 spell it for the record, please?

4 THE WITNESS: Neil Blanchette, Colonial Insurance --
5 Colonial Parking Authority.

6 HEARING OFFICER GLEASON: Could you just spell your name,
7 please?

8 THE WITNESS: I'm sorry.

9 HEARING OFFICER GLEASON: Just spell it.

10 THE WITNESS: You've to speak up a little bit.

11 HEARING OFFICER GLEASON: Could you spell your name,
12 please?

13 THE WITNESS: N-E-I-L B-L-A-N-C-H-E-T-T-E.

14 HEARING OFFICER GLEASON: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HOFMANN:

17 Q By whom are you employed, Mr. Blanchette?

18 A Colonial Parking.

19 Q And how long have you worked for Colonial Parking?

20 A Going on five years this summer.

21 Q What is your current position?

22 A I'm the auditor for the surface lots in the city of
23 Wilmington.

24 Q Have you held any previous positions with Colonial
25 Parking?

1 A I was a lot attendant at 6th and Shipley in Wilmington,
2 Delaware.

3 Q How long did you hold that position?

4 A Approximately two years. And prior to that I was at
5 another location for about a year and it was 11th and Jefferson
6 Street --

7 Q So how long have you held the lot auditor position?

8 A Hold long have I not held it?

9 Q How long have you held it?

10 A Oh, about two years.

11 Q Okay. Can you describe for us what you do as the lot
12 auditor on a daily basis?

13 A Okay. I'm issued a hand monitor called a scanner and I
14 will progressively travel to each of the surface lots that we
15 service. And each car is assigned a sticker with a barcode and
16 a number. I have to make sure that that sticker and number
17 correlates to what's in the thing, as to whether they belong in
18 that particular parking lot or not and as to whether they are
19 paid up and current with their monthly fee.

20 Q Now, the lots that you visit, are they staffed by other
21 Colonial Parking employees?

22 A Only a few.

23 Q Okay.

24 A Most of them are open lots. There are about three, maybe
25 four lots that have a -- an attendant there.

1 Q Now, what days of the week do you work?

2 A Monday through Friday in the morning hours from 7:30 to
3 11:30.

4 Q Do you visit each lot each day?

5 A Not each lot. I have a schedule. I may do three lots one
6 day, five another, four another and back to three another. And
7 it's a reciprocating schedule. It changes every week.

8 Q When you go to a lot that is staffed where another
9 Colonial Parking employee is working, do you speak to that
10 employee at all?

11 A More than likely I'll approach them if they're there and
12 ask them if there's any issues that I need to be aware of,
13 prior to going around, and checking out the cars and that type
14 of thing. And if there are, they'll let me know in advance, so
15 I'll know what to expect, if I find that particular vehicle.
16 One lot in particular, we let a doctor use that lot for their
17 patients and they have to have a special sticker -- not a
18 sticker, a ticket on their dashboard, to let me know that
19 that's what they're there for.

20 Q And who issues the ticket to the parker?

21 A The lot attendant.

22 Q What is the first thing that you normally do when you get
23 in, in the morning?

24 A Well, I check in at the government center. I log into the
25 computer. Then I'll go out and I transfer my belongings from

1 my car to the Jeep, check the Jeep out and make sure it's, you
2 know, good working order. I'll run it over and wash it, if I
3 have to wash it.

4 Then from there I'll -- prior to going to my office, I run
5 around to a couple lots that I know we have problems at and
6 make sure that everything is okay at that point. Then at 7:30
7 I show up at the office. I log in at the office, pick up any
8 notes and things of this nature.

9 On a Monday I pick up my schedule. Tuesday, Wednesday,
10 Thursday and Friday I -- I'll just go in there and let them
11 know I'm there. Sometimes if they have any issues in the
12 office or things that I should be watching for, any particular
13 sticker numbers that may be in violation of payment or
14 something of this nature, they'll give me that information at
15 that point. And then around 8:00 O'clock I'm out on the road,
16 you know, traveling to each assigned lot.

17 Q When you log in at the government center at the beginning
18 of the day, is that like punching a timecard or what's the
19 purpose of the two different logins?

20 A Well, the one at the government center is the computer
21 login. Well, I'll, you know, put my name and my company serial
22 number. And that's where I pick up the Jeep, because the Jeep
23 is left there on a daily basis, you know, when I leave duty
24 around 11:30.

25 But then when I get to the office I just login at that

1 point. Not punch in or anything like that. I just login my
2 name, you know, to show. At the end of my tour that day, I
3 will make a list of all the lots that I attended to.

4 MR. HOFMANN: An exhibit to show the witness.

5 BY MR. HOFMANN:

6 Q I'm showing you a document that's been marked as Employer
7 exhibit 1. Do you recognize that document, Mr. Blanchette? Do
8 you recognize this document?

9 A Oh, yes.

10 Q Can you tell us what it is?

11 A This is what I do when I appear at the office in the
12 morning at 7:30. As you can see there's a date on the left.
13 The number one indicates the scanner that I used.

14 There's two scanners. The other one is number two. I
15 don't know if that shows on here or not, but one of them works
16 a little bit better than the other. So that's why I've been
17 using number one.

18 And as you see on the right hand side numbers like 71, 24,
19 29, 32, that type of thing, those are the lots -- the surface
20 lots that I attended to that day. Now, more than likely the
21 first three, four or five numbers are the ones that I was
22 assigned to for that particular day. And the few extras that
23 you see in there are ones that I go to if I have time to check
24 out any additional lots, you know, for any problems.

25 (Employer's E-1 identified)

1 Q There are -- there's another column in the middle that
2 says boot wrench and then a sub-column saying taken and
3 returned. Can you explain what those are?

4 A Well, I carry a boot, sometimes two boots if we have them
5 available, that we attach to cars that are in violation of
6 whatever we have. Well, where it says taken, the key that's on
7 the desk there when I show up in the morning, I take that with
8 me and when I return to the office at the end of the morning I
9 return that same key.

10 Q How much time on a daily basis do you spend in the office
11 doing paperwork such as this or other paperwork?

12 A I would say an average of about a half an hour, 15 minutes
13 in the morning and 15 minutes when I return.

14 Q And where do you spend the rest of your workdays?

15 A Well, on the road or in my Jeep. My Jeep is like my
16 office. You know, I carry a briefcase with all my pertinent
17 information and things of this nature. So just basically those
18 two places, you know, either in the office, or in the Jeep or
19 back at the government center checking out.

20 Q Now, when you visit the parking lots, do you stay in the
21 Jeep or do you walk around the parking lots?

22 A Oh, I have to walk around. I have to go to each car and
23 monitor. If I run into a situation or an issue, I'll return to
24 the Jeep and I'll call the office and, you know, give them the
25 information I have and what I found is a problem.

1 And then when they answer in the office, they look up that
2 particular number and let me know that it's either okay, or
3 they're in arrears on their payments or that they're a new
4 customer and that particular number hadn't logged into the
5 computer yet. That type of thing --

6 Q Now, in the course of your duties, do you ever have the
7 opportunity to speak with parkers/customers?

8 A On occasion I'll run into them as they're parking, getting
9 out of their car. I'll, you know, wish them a good day at that
10 point. Sometimes they'll approach me asking me a question
11 about something or another.

12 On occasion also I have people that park there that aren't
13 supposed to be parking there, and they see me and they kind of
14 wonder what the story is. So now, just to clear their
15 conscience, they'll approach me, and ask me if it's okay to
16 park there and I'll probably tell them no, or whatever the situation
17 is, and redirect them to another lot, or suggest that they park
18 out in the street or something of this nature.

19 MR. HOFMANN: Before I forget, I'd like to offer Employer
20 exhibit 1.

21 HEARING OFFICER GLEASON: Any objection?

22 MR. BREIHAN: No objections, no.

23 HEARING OFFICER GLEASON: Exhibit 1 is accepted.

24 (Employer's E-1 received in evidence)

25 BY MR. HOFMANN:

1 Q Now, Mr. Blanchette, when you became the lot auditor, were
2 you shown a job description, and asked to review it and sign
3 it?

4 A Yes, I did.

5 (Employer's E-2 identified)

6 Q I'm showing you what's been marked as Employer's exhibit
7 2. Do you recognize that document, Mr. Blanchette?

8 A Yeah, I remember reading that.

9 Q Okay. And is that your signature at the bottom?

10 A Yes, it is.

11 Q Okay. Let's look at this document. After -- the first
12 bullet point talks about customer service. The next one talks
13 about operating a handheld computer. What is -- what does that
14 refer to, Mr. Blanchette?

15 A That's the unit that I hold in my hand that, when I waive
16 it over the barcode on the sticker that's attached to each
17 windshield, it gives me a reading, and it gives me their
18 account number and it also gives the sticker number, which is
19 on the window. It'll give me their name. And if for some
20 reason they're in violation of being in arrears on their
21 payment, it would kind of give me that information too
22 indicated by an X.

23 And sometimes it won't give me any information and at that
24 point I'll read it again to make sure that it just didn't pick
25 up the right numbers. And if it still comes up the same at

1 that point I'll make a note. I carry a little notepad. I'll
2 make a note of that number, and the model and color of the car.

3 Then when I get back to the Jeep I'll call the office and
4 ask them can you give me some information on this particular
5 number? It's not reading on my scanner. And at that time,
6 that's when they tell me yeah, they're a new customer and that
7 just hasn't gotten into the log yet. Or there again it could
8 something else, like maybe they're still in arrears on their
9 payments or maybe even tell me they're not in the right lot.
10 But the scanner will tell me if they're not in the right lot
11 too, because, you know, a number comes up on the lot. And if
12 it says 35 and they belong at 62, there again I call the office
13 and find out, to make sure that they didn't change lots in the
14 middle of the month or something like that and I haven't gotten
15 that information yet.

16 Q Did you receive any training when you began the position
17 of lot auditor, as to how to operate the scanner or handheld
18 computer?

19 A Yeah, I had a couple different people show me, you know,
20 the ropes on that department.

21 Q Who did that? Do you remember?

22 A Well, I think Mr. Hankins did. One of the guys in the
23 office named Mike. And I think Rob Clark, he's one of the, you
24 know, managers. So I think there was like three different
25 people that, you know, kind of showed me the thing, because

1 every now and then something came up that I didn't recognize,
2 when I first starting using it and I needed, you know, to get
3 it cleared.

4 Q Do you know whether any other employees use that device
5 besides you?

6 A I'm not sure if they use it over at the courthouse or not.

7 Q If you don't know, just tell me that.

8 A No, I don't.

9 Q Okay. Now, can you explain to me how you would go about
10 deciding whether a parker needed to be booted or a boot needed
11 to be removed?

12 A Okay. To determine whether the car needs a boot, first
13 off the car may not have a sticker on the windshield, which
14 would indicate that -- one of two things. They changed cars
15 with their wife that morning, and the other car didn't have a
16 sticker and they forgot to change it. Secondly, it could be
17 that somebody just came into town. They're not aware of the
18 parking arrangements and they may have just pulled into that
19 particular parking lot, because they saw a space open.

20 At that point, I cannot do anything without checking with
21 the office, and finding out whether that particular party
22 parked his car there knowing that he didn't have the sticker
23 and he may have called the office to tell them I brought my
24 wife's car. It's a blue Ford, you know, Galaxy or something
25 like that and I'm in lot so-in-so. In the office, the girls

1 and Mike write that information down on a log and they will
2 tell me yes, this particular car did call in. At that point I
3 can't do anything about it, because, you know, they cleared
4 there self.

5 If in the event that there's no log about that car being
6 in that particular parking lot, at that point I will take
7 pictures of that particular car of the windshield showing no
8 sticker, the license plate. I'll take a left, about three-
9 quarters shot, showing the parking space and some of the cars
10 around it.

11 No, let me go back a step. This is only in a parking lot
12 that has no gate operated with a key card. We have several
13 lots that you can just drive into without showing a card or
14 seeing anybody in particular. So at that point I will boot the
15 vehicle and leave a warning -- a written warning on the window,
16 boot the car and then call the office, give them all the
17 pertinent information on that particular car, and the boot
18 number and then proceed to the next lot or whatever.

19 Now, if in the event it is a gated lot with no attendant,
20 they had to get in with a keycard. There's no other way,
21 unless they drive over the curbing, you know, subjecting their
22 car to being damaged. At that point, instead of booting the
23 car, I will go through the same rhetoric of calling the office,
24 and finding out the information and giving them information.

25 I'll just leave a warning on the car, indicating that the

1 car is here with no sticker. You know, you need a sticker or
2 this is a private parking lot on a paid basis -- a monthly paid
3 basis by patrons, you know, to our company. So I can't boot
4 those cars, but the open lots I can install a boot if I need
5 to.

6 Q What about in the staffed lots?

7 A Basically the same thing. There again, most of the
8 staffed lots are open. A couple that I know in particular you
9 just drive in.

10 Now, the attendants at those lots, you know, they
11 generally have an idea of who's coming and going, but there are
12 occasions when somebody might sneak into that parking lot early
13 in the morning before the attendants get there. And I'm going
14 around making my rounds, and I'm checking and I can't find any
15 evidence that they belong there. And at that point, when the
16 attendant is there, I'll find out from him if he knows anything
17 about it. If he doesn't then I can boot that particular car.

18 HEARING OFFICER GLEASON: What's a -- I'm sorry, what's a
19 staff lot?

20 THE WITNESS: Pardon me?

21 HEARING OFFICER GLEASON: What's a staff lot? It's a lot
22 for the staff to park in?

23 MR. HOFMANN: No, no. I said staffed.

24 THE WITNESS: Staffed.

25 HEARING OFFICER GLEASON: Oh, I'm sorry. Okay, okay.

1 BY MR. HOFMANN:

2 Q Did you understand what I meant when I said staffed lot?

3 A Yeah.

4 Q And can you explain for the Hearing Officer what that
5 means?

6 A Okay.

7 Q What does it mean when a lot is staffed?

8 A Well, they have an attendant that stands there and he
9 monitors the cars that come and go in that fashion. And that's
10 what he's there for, because sometimes a lot of those lots have
11 let's say 30 spaces and 50 cars show up. So sometimes they
12 have to double up the cars. And to do that you'd have to leave
13 you key with somebody and these staff people, they will -- or
14 attendants will take keys and monitor, you know, where those
15 cars are parked.

16 Q On Employer exhibit 1, if you could look back to that,
17 your work -- the scanner and such sign out sheet? Do you see -
18 -

19 A Yeah.

20 Q -- that? Do you know here today any -- whether you can
21 identify any of the lots that are listed on your report that
22 are -- that do have attendants that are staffed, what numbers
23 they are?

24 A Yeah. Lot 16, lot 26, lot 22. Sometimes I have to go to
25 the courthouse and that's not really a staffed parking lot, but

1 sometimes the attendants in the courthouse watch over that lot
2 too, and I may have to go speak with them, which means I have
3 to go into the parking garage to their little office and find
4 out from them.

5 To digress here, unfortunately I booted a couple cars that
6 belong to our attendants, because they parked in that lot and
7 didn't tell anybody that they were parking there, whether it be
8 for 10 minutes or half a day, you know? Which, you know, is
9 kind of like a slap on their hand, because, you know, they
10 should know better. But just to clear the air and make sure
11 that I'm not, you know, putting a boot on a judge's car that is
12 working in the courthouse, you know, I just kind of cover my
13 tail a little bit.

14 Q So you have to talk to the other employees to find that
15 out?

16 A Yeah.

17 Q Okay. Alright. One of the duties on your job description
18 is to monitor pedestrian traffic on parking lots and garages,
19 to insure safety of customers and vehicles. And is that
20 similar to what you had told us about earlier, in terms of your
21 interaction with customers?

22 A Well, to a degree. Some of the lots, you know, have
23 imperfections in them. When I say that, there may be a little
24 bit of a sinkhole. There could be a big puddle some place.
25 There would be something obstructing something, like during the

1 plowing season some of the curbing or the tire stops, you
2 know, get moved by the plow.

3 And I'll just tell the people in basic general, you know,
4 avoid this area, walk over here, this type of thing. You know,
5 just to keep them from tripping up and hurting themselves or
6 whatever. For the most part the people who park there have an
7 idea where they're going and how to circumvent the cars to get
8 out of the lot.

9 Q Now, I see you're wearing a shirt today that says Colonial
10 Parking. Where did you get that shirt?

11 A It was issued to me at the office at the time of my
12 employment.

13 Q So do you wear that when you were working in the parking
14 lots like at 6th and Shipley?

15 A Yes, sir.

16 Q And do other employees wear that kind of shirt as well?

17 A Yes, they do, but maybe a different design, but for the
18 most part, you know, a polo type shirt.

19 Q Who is your supervisor?

20 A Well, I have one Rob Clark.

21 Q And what is his job? What is Rob Clark's job?

22 A He's just basically a manager.

23 Q Okay.

24 A Employee manager for, you know, myself and some of the
25 other people, staff people or attendants, whatever you want to

1 call them. He checks in on them most of the time.

2 Q So he also supervises the lot attendants and the people
3 working in the parking garages?

4 A Yes, sir.

5 Q And at the end of the day -- you told us that you login to
6 the computer at the government center at the beginning of the
7 day, to show that you're -- you have started your day. What do
8 you do at the end of the day to log out?

9 A At 11:30 I do the same thing in reverse. I just logout
10 and leave the key on the board for Jeep, in case they need to
11 use the Jeep for anything. Especially this time of year, where
12 the Jeep is used as a plow vehicle also, for emergency cases.

13 Q Do you know -- do you have any knowledge of how other
14 employees report their time worked?

15 A Well, the maintenance people a lot of times I have to let
16 them be aware of situations that I find in the various parking
17 lots. As I mentioned before, a tire stop or a temporary
18 curbing may get dislodged and it has to be relocated, because
19 there's pins that stick up out of the ground that hold those
20 things in place. People could trip on them. So I'll let, you
21 know, maintenance know about that or a sign that's broken off,
22 or fallen down, or anything of this nature or a sinkhole.

23 Q Can you tell us some of the names of the maintenance
24 employees that you would convey that information to?

25 A One being Paul York. Jeff, I can't think of his last name

1 right now.

2 Q Would that be Jeff Garrison?

3 A Yeah, that's it. Those are the only two maintenance
4 people that I know that will attend to that type of function.
5 If there's anything else having to do with maintenance, it's
6 either outside vendors or whatever, you know?

7 Q Now, let me ask you again, you -- I think you
8 misunderstand a question that I asked, but then you told me
9 some other information. So that's fine. You -- at the end of
10 the day, you go to the computer in the government center and
11 use that to logout and report that you have now finished your
12 day, correct?

13 A Right, right.

14 Q Do you know -- do you have any knowledge about how other
15 employees report their time worked?

16 A As far as I know they all -- the ones that I deal with in
17 the morning hours, they do the same thing. Now, the people in
18 my office, in the office building, I have no idea who they
19 login in the mornings, other than maybe on their computer.

20 Q But as to the employees who work in the parking lots, they
21 do it the same way you do?

22 A No, I don't know how they, you know, login, because, you
23 know, like I said lot 16 has just got a booth there with --

24 Q Okay.

25 A -- no computer. And lot 26 doesn't have a computer, to my

1 knowledge, inside the booth. So whether they have to come into
2 the office and do something there, I don't know to be honest
3 with you.

4 MR. HOFMANN: Okay. If you don't know, then that's fine.
5 I have no further questions for this witness. Oh, I'd like to
6 -- could I introduce exhibit -- or have number 2 entered into
7 evidence?

8 HEARING OFFICER GLEASON: Any objection?

9 MR. BREIHAN: No objection.

10 HEARING OFFICER GLEASON: I just had one question about
11 exhibit 2. It says issue warning notices. Who do you issue
12 those notices to?

13 THE WITNESS: Those go on the cars.

14 HEARING OFFICER GLEASON: To the parkers? You don't issue
15 warnings -- you don't have the ability to issue warnings to any
16 employees --

17 THE WITNESS: No, no, no.

18 HEARING OFFICER GLEASON: -- disciplinary --

19 THE WITNESS: Those are just for the cars themselves. So
20 when they return to the car and there's a boot on it, that has
21 all the information they need to call the office to get that
22 boot removed.

23 HEARING OFFICER GLEASON: Okay.

24 THE WITNESS: Then the office will call me, after they've
25 addressed that with the office. And they'll call me and say go

1 remove that boot. They've paid their fine. And I'll do that.

2 HEARING OFFICER GLEASON: Okay. Alright. Thank you.

3 Exhibit 2 is admitted into evidence. Stay seated.

4 (Employer's E-2 received in evidence)

5 THE WITNESS: Oh, I'm sorry.

6 HEARING OFFICER GLEASON: You stay seated.

7 MR. HOFMANN: Mr. Breihan gets to ask you questions now.

8 HEARING OFFICER GLEASON: He's going to ask you a few
9 questions.

10 THE WITNESS: I'm sorry.

11 MR. BREIHAN: Could I have just a short recess before
12 asking cross?

13 HEARING OFFICER GLEASON: Sure.

14 MR. BREIHAN: Just a few minutes.

15 HEARING OFFICER GLEASON: Take five minutes?

16 MR. BREIHAN: Sure. That'd be perfect. Thank you.

17 (Whereupon, a brief recess was taken)

18 HEARING OFFICER GLEASON: On the record.

19 CROSS EXAMINATION

20 BY MR. BREIHAN:

21 Q Okay. Hi, Mr. Blanchette. Thank for joining us today,
22 Mr. Blanchette. I just have a few questions for you. Again,
23 my name is Adam Breihan and I'm the attorney for the Union
24 today. I'd like to start out by asking you when you were a lot
25 attendant -- you said that you were a lot auditor attendant for

1 three years before becoming an auditor, correct?

2 A Right.

3 Q I'm sorry, could you say that for the record?

4 A I'm sorry.

5 Q Oh.

6 A Speak up a little bit.

7 Q You -- I'm sorry, I'll try to speak louder. I believe
8 your testimony was that you were a lot attendant for a few
9 years before becoming an auditor, is that correct?

10 A That's correct.

11 Q And when you were a -- an attendant, did you have an
12 office space at the main office?

13 A Main office, no. The only space I had was a booth, a four
14 by six, four by eight foot, depending on where I was. And
15 that's all I had to work out of. I made all my records at that
16 point.

17 Q Uh-huh.

18 A But at the end of my shift, I had to go to another office
19 or a parking garage to leave my daily intake -- financial
20 intake with them, with all my records and account of how many
21 cars were parked there that day. If there was any indication
22 that there was anybody illegally parked, that type of thing.
23 All that went to that particular location.

24 Q Sure.

25 A I had very little input with the main office.

1 Q Okay. And that changed when you became an auditor,
2 correct?

3 A Correct.

4 Q And now you have an office space at the main office,
5 correct?

6 A Well, not an actual office space or cubicle. I have a
7 counter area that I can report to where these logs that you
8 have I fill them out at that point. I leave my boot key at
9 that point, a cell phone -- the company cell phone that I use.
10 That's all left at that little area. But to have an actual
11 desk or anything of that nature, no, I don't.

12 Q Okay. Did you have a company cell phone when you were a
13 lot attendant?

14 A No.

15 Q Okay.

16 A No.

17 Q And do you report then to the office every day now that
18 you're an auditor?

19 A Yeah.

20 Q Right?

21 A Yeah, I -- I'll like go to the government center where I
22 have to pick up the Jeep and from there I go over to the
23 office, and check in there and get any information, updates on
24 different things, that type of thing.

25 Q And you said you use a company Jeep, correct?

1 A That's right.

2 Q Now, does anybody else share that company Jeep with you?

3 A Yes. After I use it one of the managers sometimes uses it
4 to turn down to Elkton for his purposes. There's also an
5 occasion when we get snow storms that they put a plow on the
6 front and they use it for little clean up area, because the big
7 plows can't get into certain tight areas. So they use it for
8 that.

9 Q You said they. Could you be clear about who you're
10 speaking about? Who uses the car for snowplowing?

11 A Well, the maintenance are the ones who take care of that
12 department of, you know --

13 Q Okay.

14 A -- but we do outsource the major plowing to another
15 company, but we still have our own trucks with plows on them to
16 do other things. You know, because we've got 30 odd lots, you
17 know --

18 Q Right, right --

19 A -- that need to be maintained.

20 HEARING OFFICER GLEASON: Which maintenance --

21 MR. BREIHAN: Big operation.

22 HEARING OFFICER GLEASON: I'm sorry, which maintenance
23 employees use the Jeep? Do you know? Would you please state
24 their names?

25 THE WITNESS: Well --

1 HEARING OFFICER GLEASON: To plow the lots.

2 THE WITNESS: -- Jeff and Paul.

3 BY MR. BREIHAN:

4 Q And that would be Jeff Garrison and Paul York?

5 A Yes.

6 Q Okay. So it sounds like, for your testimony, that you, an
7 occasional manager and then maintenance employees will use and
8 have access to the Jeep, is that correct?

9 A Right.

10 Q Okay. Did you ever have access to the Jeep as a lot
11 attendant?

12 A (No audible answer)

13 Q Could you state your answer for the record? Sorry.

14 A No.

15 Q Okay. Thank you.

16 A No.

17 Q We just want to make sure the record is clear. That's
18 all.

19 A Just one time they brought the Jeep to me, because the
20 electrical system in that booth where the heater was failed and
21 it was like zero degrees out. So --

22 Q Oh, wow.

23 A -- they brought me the Jeep to sit in.

24 Q To sit in, okay.

25 A You know, to keep warm, you know, rather than stand

1 outside in the inclement weather --

2 Q But you weren't --

3 A I wasn't assigned the Jeep.

4 Q -- moving from one lot to the next, is that --

5 A No, not at all.

6 Q Okay. Not like you do today --

7 A No.

8 Q -- as an auditor?

9 A That's right.

10 Q Okay. Are you covered under the company's car insurance
11 policy to use that vehicle?

12 A I believe I am. There's got to be some kind of
13 arrangement, you know, that would cover me for using it, in
14 case of an accident or something of that nature.

15 Q Sure, sure. And were you covered under that policy as a
16 lot attendant, do you know?

17 A That I couldn't tell you. I don't know.

18 Q Okay. Now you say you report to the main office every day
19 --

20 A Right.

21 Q -- correct? And you pick up your cell phone there,
22 correct?

23 A I pick up the cell phone and the handheld scanner.

24 Q Okay.

25 HEARING OFFICER GLEASON: This is company issued cell

1 phone?

2 THE WITNESS: Yeah.

3 HEARING OFFICER GLEASON: Okay --

4 MR. BREIHAN: And the scanner as well?

5 THE WITNESS: I'm sorry?

6 BY MR. BREIHAN:

7 Q And the scanner as well you said, correct?

8 A Yeah.

9 Q And you also mentioned earlier in your testimony that you
10 pick up a schedule at the office, is that correct?

11 A On Mondays.

12 Q On Mondays.

13 A On Monday morning they give the itinerary --

14 Q For the week?

15 A -- of how I'm going to cover each lot for the week.

16 Q Okay.

17 A And it changes from week to week.

18 Q And when you --

19 A They could reverse it or whatever.

20 Q Sure, sure. And when you say they, could you tell us who
21 you're talking about? Who gives you that schedule?

22 A Are IT man, you know, who takes care of all the
23 maintenance of the electronic computers and all that. He's the
24 one who sets all that up for me.

25 Q Okay. And who is that person?

- 1 A Pardon me?
- 2 Q And who is that person? Could you identify him?
- 3 A Doug Slavic (ph). Something like that. I --
- 4 Q Okay.
- 5 A I don't see his name that often, but it's --- the first
- 6 name is Doug.
- 7 Q Sure. And that's -- Rob Clark doesn't have any role in
- 8 generating that schedule for you --
- 9 A Not to my knowledge, no.
- 10 Q Okay.
- 11 A He may have at one time imported something into the
- 12 office, when they were setting up this program, but as far as
- 13 my interfacing with him on the schedule, I have nothing to do
- 14 with him on that.
- 15 Q Sure. And you say on a daily basis, when you have issues,
- 16 that you call to the office, correct?
- 17 A Correct.
- 18 Q And who do you call at the office about those issues?
- 19 A Pretty much whoever answers the phone. There's three
- 20 girls that could answer and one guy. His name is Mike. Now,
- 21 if it seems it's a sticky issue -- a situation, I may ask for
- 22 Mike. I think he would have a little more knowledge --
- 23 Q Uh-huh.
- 24 A -- about the situation --
- 25 Q Sure.

1 A -- than maybe the girls would.

2 Q Okay.

3 A So I'll ask for him. But most of the time, I'll just
4 direct my question to a girl -- either of the girls that
5 answers --

6 Q Sure.

7 A -- and they'd take care of the situation.

8 Q Okay.

9 HEARING OFFICER GLEASON: What's Mike's last name and job
10 title?

11 THE WITNESS: Pardon me?

12 HEARING OFFICER GLEASON: Mike's last name and job title?

13 THE WITNESS: Mike's last name. I can't remember Mike's
14 last name.

15 MR. BREIHAN: You can't recall?

16 HEARING OFFICER GLEASON: Do you know his job title?

17 THE WITNESS: I don't know what they -- do be honest with
18 you, no.

19 HEARING OFFICER GLEASON: You don't? Okay.

20 MR. BREIHAN: Okay. And if you were to take vacation
21 ever, would you call the office or who would you talk to at the
22 office about that?

23 THE WITNESS: When I make out a vacation schedule, like
24 generally this time of year, with the particular dates that I'm
25 going to need, I'll make three copies. One I'll give to Rob

1 Clark, my immediate supervisor. One I give to Mr. Hankins.

2 And the third one I'll give to Mike in the office, because
3 where he sits in his cubicle I see a board. Whatever you want
4 to call it. A marking board. And he'll make notes as to who's
5 off what days and who's going to be away the week or whatever.
6 That type of thing. So they're aware of the fact that I'm not
7 going to be around --

8 Q Okay.

9 A -- for the particular day or week.

10 Q And so you make up your vacation schedule on your own?

11 A Yeah.

12 Q Sorry, what was that?

13 A Yes, I do.

14 Q And who ultimately then approves that vacation schedule?

15 A Well, Rob will or, you know, Mr. Hankins. If there's an
16 objections to a particular day that I need to take off for the
17 week --

18 Q Uh-huh.

19 A -- I haven't had that happen yet, because it doesn't seem
20 to conflict with any --

21 Q Sure.

22 A -- you know, situation that, you know, is involving, you
23 know, my particular job.

24 Q And could you tell me -- so Chris Hankins, he works in the
25 main office, correct?

1 A Yes.

2 Q And Mike, the person that you've identified that you often
3 talk to in the main office, he's also located in the main
4 office, correct?

5 A Yes, he does.

6 Q Where does Rob Clark work?

7 A Basically, my understanding he's just stationed out of the
8 courthouse. There's an office over there that he monitors, you
9 know, a lot of the stuff that's going on with the parking
10 garage and me as an employee out in the field.

11 Q Uh-huh. So your understanding is that he works
12 courthouse?

13 A That's the only place I've ever seen him --

14 Q Okay.

15 A -- other than sometimes he'll come into the office --

16 Q Sure.

17 A -- for something, but whatever his business is there, I
18 don't know. He's usually not there very long --

19 Q Okay.

20 A -- from what I could observe.

21 Q Who covers for you, if you're on vacation?

22 A Nobody really, because I only take five days at the most
23 off in a row and then any other time I take off, it's usually
24 one, maybe two days. So to my knowledge they don't send
25 anybody else out there, unless there's a problem.

1 Q Sure.

2 A And I'm not aware of that, because when I come back I
3 never hear about any --

4 Q Problems.

5 A -- issues that happened while I was away.

6 Q Okay. So you would just then play catch up when you come
7 back?

8 A Try to.

9 Q Now, are there ever days that you aren't able to make it
10 to all the lots on your schedule or --

11 A Yeah, on occasion it happens.

12 Q Uh-huh.

13 A We have a lot that has a kiosk that people pull into the
14 gated area and use a credit card.

15 Q Okay.

16 A Every now and then -- and not such much the fault of the
17 machine, but the public using it doesn't know how to use it
18 properly.

19 Q Sure.

20 A And they get things all fouled up. In the mean time, cars
21 are backed up behind them that are trying to get into that lot.

22 Q Uh-huh, uh-huh.

23 A And they -- somebody calls the office and says Neil, you
24 got to go down, check out that lot. Or there's a possibility
25 that the tickets that are issued -- there's a big roll of

1 tickets. They may have run out unexpectedly.

2 Q Sure.

3 A And that's what Rob does also. He checks that type of
4 thing.

5 Q Okay.

6 A To make sure that it's up to snuff. And sometimes I'll
7 get call, because Rob is away on assignment down in Elkton.
8 And he'll call me up and say Neil, you got to go to the
9 courthouse to get the tickets, the key and refill the machine.
10 Well, that takes me away from my other duties --

11 Q Sure.

12 A -- and sometimes it happens where I don't make it to all
13 the lots.

14 Q Okay.

15 A Especially if it's a day where I have five lots --

16 Q Sure, sure. And who would you report that to then, if you
17 weren't able to make it to all of your lots?

18 A Nobody really. I just will tell Doug, you know, the guy
19 that gives me the schedule and all that, that I -- at the end
20 of that particular day, I said I couldn't attend to all the
21 lots and whatever he does about that. Just maybe makes a
22 mental note. But I think they have an understanding that does
23 happen and it's not that pertinent that I can't do all the
24 lots.

25 Q Sure, sure.

1 A If in essence I don't make a lot, the next day, time
2 permitting, I may go back to that lot, just to cover it and
3 make sure that there's no issues there.

4 Q Right.

5 A That type of thing. That's about the extent of that.

6 Q Okay. And so you say you sometimes will fill in for Rob
7 Clark?

8 A I'll what?

9 Q For -- you'll sometimes fill in for Rob?

10 A Fill in so much as, yeah, do the changing of the tickets
11 or go to that lot and find out what the problem is.

12 Q Sure.

13 A Sometimes by the time I get there the issue has been
14 resolved. You know, somebody else got out of their car and
15 showed somebody how to use that kiosk. And, you know, by the
16 time I get there, they've already parked and left the lot
17 auditor lot. And, you know, that line that was eight cars long
18 is now non-existent --

19 Q I see.

20 A -- or that type of thing

21 Q Okay.

22 A But I don't technically fill in for Rob, in his management
23 position, no.

24 Q Sure. Now, you say -- when you were a lot attendant, did
25 you ever issue the warning notices on cars that you issue

1 today?

2 A No, not really.

3 Q Okay.

4 A I was there basically to discuss it with the party in
5 question --

6 Q Sure.

7 A -- while the event was taking place. As far as warnings,
8 no, but I occasionally had to leave a note on a car that
9 they're parking skills need to be peaked a little but, because,
10 you know, the two wells are on a line --

11 Q Sure, sure.

12 A -- and that left not much space for the next car.

13 Q Yeah.

14 A If they left the lights on or left the window open. Now,
15 at the time they had stickers, you know, on the window. I
16 could read a number. I'd call the office and tell them sticker
17 number 8820, if you'd be so kind as to call that party and tell
18 them that they left their window open and it's going to rain
19 that day --

20 Q Oh, yeah.

21 A -- or something like that. But that's basically the only
22 kind of warnings and things that I left on people, if they have
23 a tire going flat --

24 Q Sure.

25 A -- just so when they return to the car they don't try and

1 drive off with a flat tire that they can't see. You know, that
2 type of thing.

3 Q So would you say more like helpful reminders --

4 A Yes.

5 Q -- than warnings?

6 A Basically.

7 Q Not the warnings about your account being in arrears?

8 A Right.

9 Q Okay. Who did that while you were a lot attendant? Who
10 did that work, before you?

11 A I don't know. Before me there was other lot auditors.

12 Q Auditors.

13 A Not that I saw them too often. So, you know, apparently
14 that job was short-lived with some of those people, because I
15 don't think I saw the same person twice in two years, you know?

16 Q Right.

17 A So there again I don't know how strongly they upheld that
18 --

19 Q Uh-huh.

20 A -- you know, program.

21 Q And as a lot attendant, did you ever use the boots that
22 you use today?

23 A No.

24 Q I'm sorry, what was that?

25 A I didn't --

1 Q Okay.

2 A -- have access to that type of thing. That was up to the
3 lot monitors or somebody in the office giving a command to
4 somebody, maybe somebody in maintenance, to go around and do
5 that --

6 Q Sure.

7 A -- you know?

8 Q What about pictures? Did you go around -- as a lot
9 attendant, did you go around and take pictures of cars that
10 were in arrears like you do today?

11 A No, I don't.

12 Q And what about the scanners, did you have any training
13 using the scanners when you were a lot attendant?

14 A A couple of times. The only scanner I used was for credit
15 cards --

16 Q Oh, okay.

17 A -- because when they were making that transition and the
18 machine didn't work for whatever reason, because there was
19 something new, somebody from the courthouse brought me over a
20 credit card thing, so I --

21 Q Uh-huh.

22 A -- could, you know, collect, you know, the money for --

23 Q Sure.

24 A -- you know, the fee to get in.

25 Q Yeah.

1 A But as far as using the scanner in the parking lot, no.

2 Q No. Okay. And when you became a lot auditor in 2015,
3 isn't it true that you got a pay increase?

4 A Well, basically the pay increase was only on my
5 performance. There was no additional money extended to me for
6 that position --

7 Q What do you currently get paid?

8 A What do I currently get paid?

9 Q Yes, what's your salary or --

10 A Just a mere 11.75 or something like that.

11 Q Okay. 11.75 an hour?

12 A Yeah.

13 Q And your schedule again is part time?

14 A Part time.

15 Q Okay.

16 A I retired from 43 years of working in the insurance
17 industry. I'm too active. I just can't sit still.

18 Q Yeah.

19 A You know, I got to keep moving.

20 Q Understand that.

21 A And so I just happen to apply to, you know, Colonial
22 through a friend of mine, and they took me on as a lot
23 attendant. And I look at it as my exercise program, because if
24 I stayed home in the morning and got up at 7:00 O'clock or
25 something like that, I wouldn't get the exercise I'm getting

1 doing what I do. You know, even as a lot attendant I had to
2 walk around the lot many times.

3 Q Uh-huh.

4 A In the course of a morning that's maybe a half a mile or a
5 mile walk, you know? Plus I'm ducking down in between mirrors
6 on cars, because they stick out like tennis rackets.

7 Q So --

8 A So I use it as an exercise program. I like to talk to
9 people and help people and this time of this. And this keeps
10 me busy and --

11 Q So --

12 A -- you know, not --

13 HEARING OFFICER GLEASON: Mr. Blanchette --

14 THE WITNESS: -- too negative --

15 HEARING OFFICER GLEASON: -- he's going to ask you a
16 follow up question.

17 BY MR. BREIHAN:

18 Q So but before you were just working in one lot, just
19 walking around in one lot, when you were a lot attendant, is
20 that correct?

21 A Right.

22 Q Okay. And today you're moving between many lots?

23 A Correct.

24 Q Okay. And so is it your testimony that in 2015, when you
25 became an auditor, that you did not get any pay increase?

1 A It didn't show up on my check at the time, you know, as
2 far as going from, you know, one level to another. Everything
3 was predicated on my performance reviews. So that's all I'll
4 tell you. At that point if they did, I don't know. It didn't
5 really -- wasn't explained to me that you're getting 50 cents
6 an hour more or something like that, you know, because my pay
7 just gradually increased as I went along.

8 Q Okay.

9 A There was no substantial increase.

10 MR. BREIHAN: Alright. Thank you very much.

11 HEARING OFFICER GLEASON: I had one follow up question.
12 You had previously testified that when you took a vacation no
13 one would fill in for and cover your auditor duties.

14 THE WITNESS: Right.

15 HEARING OFFICER GLEASON: Now, since you've been an
16 auditor, have you ever filled in and covered any of the lot
17 attendants, who may have been on vacation or out for some other
18 reason?

19 THE WITNESS: No, no.

20 HEARING OFFICER GLEASON: Anymore cross?

21 REDIRECT EXAMINATION

22 BY MR. HOFMANN:

23 Q I just have one follow up, Mr. Blanchette. Concerning
24 your testimony about being called to go to the government
25 center when the kiosk backed up, do you remember that

1 testimony?

2 A Not the government center.

3 Q Oh, where? What's the location?

4 A In this particular case it's lot 50. It's --

5 Q Okay.

6 A -- a surface lot.

7 Q Lot 50.

8 A That's where they have a kiosk that they set up there.

9 Q Alright. So where -- what -- are there times when you've
10 been called over there where you've had to speak to customers
11 and explain to customers how to use the kiosk?

12 A Yes.

13 MR. HOFMANN: Okay. No further questions.

14 HEARING OFFICER GLEASON: Any redirect?

15 MR. BREIHAN: No follow up.

16 HEARING OFFICER GLEASON: Okay. Alright. Thank you, Mr.
17 Blanchette.

18 THE WITNESS: Thank you.

19 HEARING OFFICER GLEASON: You can step down.

20 MR. HOFMANN: Paul York.

21 HEARING OFFICER GLEASON: Want to raise your right hand?

22 THE WITNESS: Got it.

23 Whereupon,

24 PAUL B. YORK, JR.

25 Having been first duly sworn, was called as a witness and

1 testified herein as follows:

2 HEARING OFFICER GLEASON: Please have a seat and --

3 THE WITNESS: Okay.

4 HEARING OFFICER GLEASON: -- state your name into the
5 microphone and spell it, please.

6 THE WITNESS: Paul B. York, Junior. P-A-U-L B, as in boy,
7 Y-O-R-K and J-R.

8 DIRECT EXAMINATION

9 BY MR. HOFMANN:

10 Q Okay. Mr. York, by whom are you employed?

11 A Colonial Parking.

12 Q And how long --

13 A Wilmington, Delaware.

14 Q How long have you been employed by Colonial Park --

15 A 15 years.

16 Q What is your current position?

17 A Maintenance assistant.

18 Q Can you tell me what other positions you've held, during
19 your 15 years with Colonial Parking?

20 A First three years I was working in a department called
21 striping, which we no longer do.

22 Q And what did you do in that striping department?

23 A Just helped out the guy who ran the striping machine and
24 did set ups in parking lots. Snapped lines so that the lines
25 would be straight when they painted them. Mixed the paint,

1 cleaned the machine.

2 Q Did you run the machine itself?

3 A No.

4 Q And you said you were in that department for three years?

5 A Three years.

6 Q And then where did you go?

7 A Maintenance.

8 Q Okay. And have you held any other position except the
9 current position you hold since then?

10 A That's it.

11 Q Alright. Who's your supervisor?

12 A Jeff Garrison.

13 Q Okay. Are there any other employees besides you in the
14 maintenance department?

15 A No, I'm it.

16 Q Okay. Can you tell me what your duties are?

17 A Empty all the trash at all the lots that we have trashcans
18 at. They don't all have trashcans, but whatever ones that have
19 them, I empty them. I take care of the dumpster that I dump
20 them in, which means that when it's full, I -- I'm in charge of
21 calling the Waste Management. They come, dump it, put it back
22 in place. I do some painting in the office, sometimes at
23 different garages. We're talking the yellow safety paint,
24 bollards, curbs and sometimes -- in the one lot, which would be
25 Trinity lot, sometimes because of all the leaves that fall, I

1 sometimes have to get a little striper that you put a can of
2 paint in and it rolls on four wheels and just to go over the
3 line, until the regular striper guy can do it the right way,
4 just so it's visible.

5 Q Okay. Do -- are there ever any situations where you have
6 to clean up a mess?

7 A Oh yeah.

8 Q Can you explain some of those?

9 A Glass.

10 Q Okay.

11 A Mainly glass.

12 Q Alright.

13 A A lot of people in Wilmington like to throw bottles. So
14 okay, I clean that up. Leaves. A lot of the lots have big,
15 big trees around them. That in the fall usually requires leaf
16 cleanup every day. The trash in the lots, I have to clean that
17 up.

18 Q Do you ever have any assistance from other employees with
19 any of your duties?

20 A Yeah.

21 Q Can you --

22 A When there's something heavy, for instance in the one lot
23 we have a lot of people like to dump mattresses, double
24 mattresses. When those get wet, they get heavy. I need help.

25 Q Okay. Who helps you?

1 A Russell Marshall.

2 Q And what is his regular job?

3 A He works at the government center.

4 Q Do you know what he does at the government center?

5 A He's the maintenance guy there.

6 Q Okay. What does he do as the maintenance guy at the
7 government center?

8 A Whatever Randy tells him to do.

9 Q Okay. Does he -- do you know whether he picks up trash?

10 A I think he does.

11 Q Do you know whether he does any snow removal work or
12 anything like that?

13 A Only when there's a big storm.

14 Q Okay.

15 A When there's a big storm, he's one of the extras that we
16 call in.

17 Q Can you tell me about what your duties would be, during --
18 in connection with snow removal?

19 A Okay. We have a snow blower. I have to make sure that
20 that's operational. Make sure I have a gas can for it, because
21 it takes special gas.

22 I have to put the plows on the Jeep, the 2015 truck and I
23 have to make sure they're all gassed up and ready to go. I
24 have to put the salt spreaders on two of the trucks and I have
25 to make sure all the hand salt spreaders are cleaned. After

1 the last storm, I have to hose them out with hot water and make
2 sure they're clean, make sure they're operational.

3 I also have to supply different lots with calcium or salt
4 as needed. I have to load the trucks with salt and calcium.
5 What else?

6 Make sure everybody who wants one has a snow shovel. And
7 at the end of the storm, when everybody throws their trash in
8 the warehouse like the empty bags, the empty pallets, whatever
9 else, I tell them to throw it all in one corner of the
10 warehouse. I take care of that. I clean all that up. And I -
11 -

12 Q Who --

13 A -- put it all in the dumpster.

14 Q Who is it that you deliver snow shovels to?

15 A I have delivered them to one or two of the surface lots.
16 Like one guy Jerry at 7th and Orange, is it? 7th and Orange.
17 And I've delivered one other to 22nd. No, lot 22. I think
18 it's 10th and Washington.

19 Q And to your knowledge do those employees who work at those
20 lots then use those snow shovels?

21 A Yeah.

22 Q Now, you mentioned, when we were talking about Russell
23 earlier, that he's one of the people who sometimes helps out
24 with snow removal. Are there any other employees who help out
25 with snow removal?

- 1 A From the company?
- 2 Q Yes.
- 3 A Okay. Chris drives one of the trucks.
- 4 Q Chris who?
- 5 A Chris Hankins.
- 6 Q Okay.
- 7 A Jeff drives another truck. And then the rest of it -- as
8 far as I know, the rest of it is subcontracted out. I drive a
9 truck, but I just go around and do the sidewalks. So I don't
10 have a plow on my truck, I don't have a salt spreader. I have
11 a hand salt spreader and I have either bags or buckets of
12 calcium with me.
- 13 Q Do you know who else uses salt spreaders besides you?
- 14 A Okay. There's one at PNC, there's one at the courthouse,
15 there's one at 12th and Orange and one at -- hmm. There's one
16 other.
- 17 Q Who is it at those locations who uses the salt spreaders?
- 18 A Far as I know, the people -- whoever is there who's ever
19 the maintenance person there. That's usually at the multi-
20 level garages. And then we usually take care of everything
21 else.
- 22 Q In connection with your trash duties, does anybody -- are
23 there another other circumstances besides mattresses, where you
24 get assistance from other employees?
- 25 A No.

1 Q Now, you mentioned, in connection with the snow removal,
2 that you need to check to make sure that the snow blowers are
3 operational, is that correct?

4 A Yeah, one snow blower, yeah.

5 Q Alright. One snow blower.

6 A Right.

7 Q If it's not operational, do you repair it?

8 A No.

9 Q Who does?

10 A I call Jeff and Jeff either repairs it himself or he'll
11 send it out. He'll say take it to a repair place.

12 HEARING OFFICER GLEASON: What's Jeff's last name?

13 THE WITNESS: Garrison.

14 HEARING OFFICER GLEASON: Okay --

15 THE WITNESS: He's my immediate supervisor.

16 HEARING OFFICER GLEASON: Yeah, okay.

17 BY MR. HOFMANN:

18 Q Now, from time to time do the -- well, let me back up. Do
19 any of the petition lots that you're familiar with have gates
20 that go up and down?

21 A Uh-huh.

22 Q And from time to time do those break?

23 A Yep.

24 Q What is your responsibility, with regards to broken gates?

25 A Okay. The gates -- I replace the gate. And on top of

1 that I make the gates. I go to Lowes, I buy the wood, I bring
2 the wood back, I prime it, I paint it and then I paint the
3 black stripes on it. And then it's my responsibility to just
4 replace the gate.

5 Q Do you repair the gate mechanism, if it's not working?

6 A No.

7 Q Who does that?

8 A Jeff.

9 Q Do you do any repairs of machinery, in connection with
10 your job?

11 A No.

12 Q Have you ever had any assignments, in terms of moving
13 equipment, or boxes or stuff from storage?

14 A Oh yeah.

15 Q Okay. Do you ever get assistance with that?

16 A If it's real heavy. If it's like a refrigerator. As far
17 as the warehouse, we have pallets of salt. You know, skids of
18 salt 10 high, five on a thing, five on a level. So there's 50
19 on there. Coming out to 2,500 pounds.

20 Q You're wearing a Colonial Parking jacket today and a
21 shirt, correct?

22 A Yeah.

23 Q Where did you get those?

24 A From the office.

25 Q Okay. Do you have any responsibility in your job

1 regarding the cleaning of those -- of that stuff for other
2 employees?

3 A For other employees, yeah. I make --

4 Q What do you do?

5 A I make laundry runs. Whatever clothes they want done at
6 the laundry mat get put in Jeff's office. He lets me know when
7 they're piled up, and I take them and then I bring back the
8 clean stuff. But I do my own. I take care of my own stuff.

9 Q Do you ever -- do any of the parking lots ever have
10 backups in their storm drains?

11 A Yes.

12 Q Can you tell me what your responsibilities are when that
13 happens?

14 A Mainly it's Trinity, the Trinity lot up by the Trinity
15 Church. It's three heavy grates. I have to pry those off, and
16 shovel out any sediment that's in there and get rid of it.

17 Q Do you ever need assistance with that?

18 A No.

19 Q Are there any another situations where there's let's just
20 say too much water in some place where it's not supposed to be
21 that you have to deal with?

22 A No, not that I know of, no.

23 Q Okay. I'm going to show you a document that's been marked
24 as Employer exhibit 3 and ask you if you recognize that
25 document.

1 A Uh-huh.

2 Q And what is this?

3 A This is like a yearly -- what do you call it? A review.

4 This is the yearly review.

5 Q Okay.

6 A And there's another piece of paper associated with this

7 where they put down grades. I think it's from one to five.

8 Q Is this a description of your job duties?

9 A Yeah.

10 (Employer's E-3 identified)

11 Q Let's look at the various bullet points on this. Tell me

12 -- the first one is about customer service skills. Tell me

13 about how you interact with customers of Colonial Parking.

14 A Usually not much.

15 Q Okay.

16 A Other than if somebody says can I park here?

17 Q Alright.

18 A And I'll say yes or no.

19 Q Okay. The next bullet points says that you need to have

20 knowledge of electrical, plumbing and concrete work and

21 experience with power and hand tools. What knowledge of

22 electrical work do you have?

23 A Changing light bulbs.

24 Q Okay. What about plumbing?

25 A Plumbing? The plunger.

1 Q What about concrete work?

2 A I'll let them know when the concrete starts cracking.

3 They bring in contractors for that.

4 Q What power and hand tools do you use?

5 A Well, there's drills, there's chainsaw, stuff in my truck.

6 Let me see. Any kind of screw drivers. You want power tools

7 though, right?

8 Q Right.

9 A Alright. I got a circular saw, I got a reciprocating saw,

10 drills, couple different drills. What else? What else? Yeah,

11 other than saws and drills that's pretty much it.

12 Q Okay. When -- in the next bullet point where it talks

13 about performing and/or assisting he maintenance director, is

14 the maintenance director Jeff Garrison?

15 A Yes.

16 Q Okay. What kind of repairs do you assist Jeff with?

17 A Pretty much he'll do the repairs. I'll run to the store

18 for parts. Other than that, you're talking about I clean the

19 salt off the trucks, I clean the salt out of the salt

20 spreaders, I hose down everything after a storm. That's pretty

21 much it.

22 Q We've already talked earlier about replacing light bulbs

23 and installing gates. What are the circumstances where you

24 would be assigned to change HVAC filters?

25 A That was in the old building. We're not in that building

1 anymore.

2 Q You don't do that anymore?

3 A No.

4 Q Okay. Do you ever move bumper blocks?

5 A Yes.

6 Q Okay. Why would you do that?

7 A If they're knocked out of place, if somebody ran into
8 them. Sometimes we have bumper blocks at an entrance, just to
9 keep cars behind the gate. If somebody bumps that or decides
10 to move it themselves, I put it back in place.

11 Q Do you need assistance with that ever?

12 A No. A two-wheeler.

13 Q Okay.

14 A Two wheel dolly.

15 Q On the next bullet point it mentions sweeping and cutting
16 grass. Do you -- is that part of your duties; cutting grass?

17 A Cutting grass.

18 Q Okay. What about sweeping?

19 A Sweeping up glass, sweeping up trash from lots. Sometimes
20 I sweep the snow if it's a little bit.

21 Q Are there employees in the parking garages who also do
22 sweeping?

23 A Don't know.

24 Q Okay. Does anyone besides you remove trash from the main
25 office?

1 A Somebody collects the trash and puts it in dumpsters in
2 the back of the office. I take the dumpsters out and dump the
3 stuff in my truck. It's usually bagged up.

4 Q And the next bullet point talks about you being trained to
5 work on the parking lots to cover call-outs as needed. Are you
6 trained to work on parking lots?

7 A Not really, no.

8 Q Have you ever done it?

9 A Yes.

10 Q Okay. How frequently do you have to work at a parking
11 lot?

12 A Once or twice a year.

13 Q What errands do you run?

14 A Anything they want. If they need parts from Lowes I go
15 there. If they need -- oh, also gas. I have to gas up all the
16 sweepers. We have four or five big powerful sweepers that you
17 ride on. I have to keep them gassed up, I have to keep the
18 trucks gassed up and I have to keep the Jeep gassed up.

19 Q Now, Mr. York, when you come to work at the beginning of
20 the day, is there a way that you report that you -- to the
21 company that you have started you day?

22 A Computer.

23 Q Okay. And where is that?

24 A At the government center.

25 Q So you log into a computer at the government center?

1 A Right.

2 Q And are you required to keep records of any kind of how
3 much time you spend working on various assignments?

4 A Uh-huh.

5 Q How do you do that?

6 A I have to turn -- I have a log sheet I turn in every day.

7 Q Okay. And what do you write on that log sheet?

8 A Job and, you know, what it is and for trash day I write
9 which lots I picked up trash from and how many garbage cans
10 each one has. What else? And that's pretty much it. And I
11 turn it in to Jeff and that's it.

12 Q You've been working for the company for 15 years?

13 A 15.

14 Q And have you generally received an increase on a regular -
15 - a pay increase on a regular basis?

16 A There was a while there where we -- where the wages were
17 frozen.

18 Q Do you know what your current wage is?

19 A Yeah.

20 Q What is it?

21 A 15.

22 Q Okay. Do you have benefits with the company?

23 A Yes.

24 Q Do you know if they're different in any way from the
25 benefits other employees have?

1 A Doubt it.

2 Q How do you schedule or get approval to go on vacation or
3 take days off?

4 A Tell Jeff.

5 Q Any time have you ever had your vacation request turned
6 down?

7 A Never.

8 Q Who takes care of your duties when you're not there, do
9 you know?

10 A The only one that would really need to be looked after
11 would be trash and it usually doesn't pile up that fast. I'm
12 usually only gone a week at a time.

13 Q Is there anyone besides you who does leaf cleanup?

14 A No, just me.

15 Q Okay. What about grass cutting?

16 A Me.

17 Q Tree and bush trimming, anybody --

18 A Me.

19 Q -- else? Just you?

20 A I do it.

21 Q Okay. What about painting?

22 A As far as I know it's me.

23 Q Have you ever had to move boxes for the company?

24 A Sure. All the time.

25 Q Okay. Can you tell me -- give me some examples of times

1 when that's happened?

2 A Office, office records. We have the storage room for the
3 office records is down in the basement. Unfortunately, there's
4 no elevator. So they have to be bumped down the stairs on the
5 two-wheeler. I'm the one that does that.

6 Q Okay. Does anybody ever help you?

7 A They have.

8 Q Who?

9 A Whoever is there.

10 Q People from the office or people -- or other maintenance -
11 -

12 A Well --

13 Q -- associates?

14 A -- usually I call Russell, but if Russell is not around
15 then -- yeah, it's pretty much just me or Russell, yeah.
16 They're small boxes. I can pretty much do them myself.

17 Q Have you ever had to clean up any floods?

18 A Oh yeah.

19 Q Can you tell me where?

20 A Basement of the main office.

21 Q Okay. And --

22 A And also the government center there's a couple electrical
23 rooms, and for some reason they leak in very bad rainstorms and
24 we've had to clean those up.

25 Q Have you had any assistance on cleaning those up?

1 A Oh yeah.

2 Q Who?

3 A Russell helps. Randy, who is Russell's boss, he helps
4 out. Sometimes if it's really bad Jeff comes. That's for the
5 one at the government center. The one at the office I pretty
6 much do by myself.

7 Q With regards to any floods in the electrical room at the
8 government center, after the -- after or in connection with
9 that, do you do any repairs to the electrical room?

10 A No.

11 Q Who does that?

12 A Contractors I guess.

13 Q Have you ever been assigned to sit at a parking lot and
14 make sure only valid parkers enter?

15 A Yeah.

16 Q Who told you to do that?

17 A Chris.

18 Q Okay.

19 A Chris Hankins.

20 Q Alright. And when was that?

21 A Once in a great while, West Chester.

22 Q Okay.

23 A Only because I live there. I'm the closest one. If
24 somebody calls out sick and they've got to bring somebody from
25 Wilmington, I'm -- I live close by. I'm less than five miles

1 from there.

2 Q Have you ever done this in Wilmington?

3 A No.

4 Q You're familiar with the lot at 15th and French Street?

5 A Yeah.

6 Q And can you describe that lot for me?

7 A Well, it used to be a building, a big storage building.

8 Q Okay. And what -- and it's just a surface lot?

9 A It is now.

10 Q Okay. And how is that staffed?

11 A There's nobody there.

12 Q Okay. Are there times when it has to be watched to make
13 sure that people are parking there that are approved to park
14 there?

15 A Oh, that's Neil's job.

16 Q Okay.

17 A That's not my job.

18 MR. HOFMANN: Alright. I have no further questions.

19 HEARING OFFICER GLEASON: Do you --

20 MR. HOFMANN: Oh.

21 HEARING OFFICER GLEASON: -- want to put this in?

22 MR. HOFMANN: I did it again. I would move that exhibit 3
23 be entered into evidence.

24 MR. BREIHAN: No objection.

25 HEARING OFFICER GLEASON: Exhibit 3 is received.

1 (Employer's E-3 received in evidence)

2 THE WITNESS: Do you want this?

3 MR. HOFMANN: No, the court reporter does.

4 HEARING OFFICER GLEASON: You can give it to the court
5 reporter.

6 MR. HOFMANN: But you hold --

7 THE WITNESS: Oh, you --

8 MR. HOFMANN: -- on to it for now, in case Mister --

9 THE WITNESS: Okay. Alright.

10 HEARING OFFICER GLEASON: Mr. Breihan, any --

11 MR. BREIHAN: If we could again just have a very short
12 recess? Five minutes?

13 HEARING OFFICER GLEASON: Can we -- I'd like to keep the
14 hearing moving along as quickly as possible. I don't want to
15 take breaks after every witness. If we -- can we just move
16 along?

17 MR. BREIHAN: Okay. If we could just have one moment then
18 to --

19 HEARING OFFICER GLEASON: Okay.

20 MR. BREIHAN: -- confer with my colleague?

21 HEARING OFFICER GLEASON: Okay --

22 MR. BREIHAN: We don't --

23 HEARING OFFICER GLEASON: Okay.

24 (Whereupon, a brief recess was taken)

25 HEARING OFFICER GLEASON: On the record.

1 CROSS EXAMINATION

2 BY MR. BREIHAN:

3 Q Hi, Mr. York.

4 HEARING OFFICER GLEASON: Mr. Brei --

5 THE WITNESS: Hey.

6 BY MR. BREIHAN:

7 Q Again, my name is Adam Breihan.

8 A Hello, Adam.

9 Q Hi. I'm here on behalf of the Union today and I just have
10 a few questions for you.

11 A Sure.

12 Q Thanks for joining us. Now, you talked a bit about using
13 your truck. Does anybody else use the company vehicle that you
14 use?

15 A Sure.

16 Q Who else uses that company vehicle?

17 A If one of the trucks has to go to either maintenance
18 repair or to -- you know, one of them breaks down or something,
19 somebody else may have to use that truck.

20 Q And who might that somebody else be?

21 A It could be Rob Clark. You've heard that name before,
22 right?

23 Q A manager --

24 A It could be --

25 Q -- is that right?

- 1 A Right.
- 2 Q Okay.
- 3 A He has to go to Maryland to manage that lot sometimes.
- 4 But pretty much the '97 Ford that I drive is pretty much mine.
- 5 Q Okay. Do you have a company issued cell phone?
- 6 A No.
- 7 Q No, okay.
- 8 A I have my own.
- 9 Q And you said you normally report to where each day?
- 10 A The government center.
- 11 Q The government center.
- 12 A Which is the Carvel -- it's called the Carvel Building.
- 13 Q Sure. And do you have a workspace there at the government
- 14 center?
- 15 A I have sort of a workspace there, yeah.
- 16 Q Sure.
- 17 A I have a tabletop and it has a sound system on it and a
- 18 few boxes of just odds and ends; screws and parts, stuff like
- 19 that.
- 20 Q Now, these tools that you mentioned before, the drills and
- 21 power saws, are those all located at government center?
- 22 A They're all mine.
- 23 Q Oh, they're all your --
- 24 A They're mine.
- 25 Q Okay.

- 1 A Yeah.
- 2 Q Where do you keep those?
- 3 A In my truck.
- 4 Q In your truck?
- 5 A I have a personal truck that I drive to and from work
6 every day.
- 7 Q Sure. Does anybody else have access to those tools?
- 8 A No.
- 9 Q And does anybody that you know, other than you and Jeff,
10 use power tools like that?
- 11 A As far as I know we're the only ones.
- 12 Q Okay.
- 13 A But I don't know. I mean that could be wrong. I don't
14 know.
- 15 Q Okay. Isn't it correct that nobody else helps you
16 building those gates, those parking lot gates?
- 17 A That's all me.
- 18 Q Okay. And are you covered by company insurance to drive
19 the car that you do?
- 20 A Yes.
- 21 Q Okay.
- 22 A All the trucks have an insurance in the glove box and to
23 renew it I think in Delaware it's every two years. Pretty
24 sure.
- 25 Q Now, you said that you worked at a West Chester lot a

1 couple of times?

2 A Right.

3 Q And how often was that again?

4 A Well, when it first opened I was there a lot, because they
5 hadn't hired anybody. This is when they were building the
6 courthouse.

7 Q Uh-huh.

8 A Okay? And I would go there, you know, a couple times a
9 week to cover, only because I live up that way.

10 Q Right.

11 HEARING OFFICER GLEASON: When did it open?

12 THE WITNESS: 2005 I think.

13 MR. BREIHAN: And is that in the proposed bargaining --
14 are there any workers working at that location in the proposed
15 bargaining unit, as far as you're aware?

16 THE WITNESS: I don't know. That's -- you know, I don't
17 know.

18 BY MR. BREIHAN:

19 Q Sure. So that West Chester lot is obviously outside of
20 Wilmington.

21 A Oh, yeah. It's at the courthouse. It's at the West
22 Chester Courthouse on the main street.

23 Q Okay. Now, you said -- I believe your testimony was that
24 once or twice a year you had to go attend or sit at a lot
25 within --

- 1 A The West Chester.
- 2 Q And that was just the West Chester?
- 3 A That's usually if somebody calls out at the last minute
- 4 and they say okay, there's nobody -- you know, we can't pull
- 5 anybody out of Wilmington. And they call me early in the
- 6 morning and say can you go to West Chester and hang out for a
- 7 few hours?
- 8 Q Okay.
- 9 A Okay.
- 10 Q And what do you do when you hang out there?
- 11 A Pretty much just open the office. I have a dedicated key
- 12 just for that. I also have a key for the storage room there,
- 13 which I keep on me at all times. And I wait until somebody
- 14 gets there.
- 15 Q So you're not issuing validations, are you?
- 16 A No.
- 17 Q And you're not going and giving people --
- 18 A Tickets --
- 19 Q -- one stamp --
- 20 A -- or warnings?
- 21 Q Yeah, yeah.
- 22 A No.
- 23 Q One hour tickets --
- 24 A I don't do any of that. I don't do --
- 25 Q None of --

1 A -- any of that.

2 Q -- those things?

3 A No.

4 Q Okay. Sure. If I could have you look at Board exhibit 1?
5 It should be in front of you. And perhaps the court reporter
6 or Hearing Officer might --

7 A Oh, this thing?

8 Q -- hand you a copy? And I'm sorry, do we -- if I could
9 have you turn to page? And I do apologize. I don't have the
10 document in front of me right now. I need you to turn to a
11 page that says at the top -- that says in bold and underlined
12 text notice of hearing on challenged ballots and objections to
13 election.

14 A Okay. Hold on. Alright.

15 Q And there on the first page you see a list of 13
16 locations, correct?

17 A Yeah, yeah.

18 Q Okay. And can you tell me what it says in the sentence
19 right above that? Included --

20 A Included are full time and regular part time attendants,
21 lot attendants, valet attendants, cashiers, customer service
22 employees, floaters and maintenance associated (*sic*) employed
23 by the Employer at the following facilities all located in
24 Wilmington, Delaware.

25 Q Okay. And anywhere in that list do you see the West

1 Chester lot that you occasionally sit at?

2 A No.

3 Q Okay. Thank you. Now, who trained you to do the
4 maintenance tasks that you do?

5 A I learned that in jobs I had before.

6 Q Did Jeff Garrison have any part in telling you how to do
7 some of these tasks?

8 A Well, the gate arms --

9 Q Okay.

10 A -- you know?

11 Q Building the gates, is that --

12 A Yeah, yeah.

13 Q And fixing them?

14 A Doing them from scratch, yeah.

15 MR. BREIHAN: Okay. No further questions. Thank you.

16 THE WITNESS: Sure.

17 HEARING OFFICER GLEASON: Any recross (*sic*)?

18 MR. HOFMANN: I have no redirect.

19 HEARING OFFICER GLEASON: I just have one follow up
20 question. How much -- you said -- you testified that you clock
21 in at the government center?

22 THE WITNESS: Yeah.

23 HEARING OFFICER GLEASON: What percentage of your time do
24 you spend at the government center in an average day?

25 THE WITNESS: In and out I'd say an hour, hour and a half

1 --

2 HEARING OFFICER GLEASON: Okay.

3 THE WITNESS: -- max.

4 HEARING OFFICER GLEASON: And what do you do, while you're
5 at the government center?

6 THE WITNESS: Usually I clean the trucks, clean out all
7 the snow stuff, write up reports, gas up the sweeper, gas up
8 the trucks, that kind of stuff.

9 HEARING OFFICER GLEASON: Okay.

10 REDIRECT EXAMINATION

11 BY MR. HOFMANN:

12 Q And there's a power sweeper, is that what --

13 A Power sweeper.

14 Q -- you're gassing up?

15 A There's four. Is it four? There's four.

16 Q Who uses those?

17 A Whoever is at whatever garage they're at.

18 Q Okay --

19 A Like at the government center it's Randy or it's Russell.
20 Either one of them.

21 Q And what about at --

22 A At the other garages, I'm not sure who uses them there. I
23 just get -- they call me, I run over with the gas, I gas them
24 up.

25 Q Alright. Do you ever run the sweeper yourself?

1 A No.

2 Q Okay. You just gas it up and send it --

3 A I just gas it up.

4 MR. HOFMANN: Nothing further.

5 HEARING OFFICER GLEASON: Any --

6 MR. BREIHAN: Nothing further.

7 HEARING OFFICER GLEASON: Alright. That's it. You can
8 step down. Thank you.

9 THE WITNESS: Okay.

10 HEARING OFFICER GLEASON: Mr. Hofmann, you can call your
11 next witness.

12 MR. HOFMANN: Yes, Chris Hankins.

13 HEARING OFFICER GLEASON: Mr. Hankins, would you please
14 raise your right hand?

15 Whereupon,

16 CHRIS HANKINS

17 Having been first duly sworn, was called as a witness and
18 testified herein as follows:

19 HEARING OFFICER GLEASON: Have a seat. And please state
20 your name and spell it for the record.

21 THE WITNESS: My name is Chris Hankins, C-H-R-I-S H-A-N-K-
22 I-N-S.

23 DIRECT EXAMINATION

24 BY MR. HOFMANN:

25 Q Mr. Hankins, by whom are you employed?

1 A Colonial Parking.

2 Q And what is your position?

3 A The vice president of operations.

4 Q Can you describe the -- sort of the organizational
5 structure of Colonial Parking, as it relates to Wilmington,
6 where the -- where this election -- this union election
7 occurred?

8 A Sure. So there are -- I guess I'll go in reverse. So I'm
9 the vice president of operations. There are two area managers.
10 One is Jeff Garrison, who is also a maintenance director. And
11 then the other is Rob Clock. And then each of those two area
12 managers have a different number of facility managers, who
13 foresee a particular parking garage or location. And then
14 there are maintenance associates, lot attendants, supervisors,
15 cashiers, customer service folks who work at their supervision,
16 the facility manager's supervision.

17 Q So Mr. Garrison, whom we've heard testimony about before,
18 is not only the maintenance director, but he's also an area
19 manager?

20 A Yes, he's currently the maintenance director and area
21 manager --

22 Q Okay.

23 A -- of area one. And so what facilities does that cover?

24 A That would cover everything north of -- well, that'd be
25 Sixth Street. So that would be the government center parking

1 garage at 100 King Street, 12th and Orange, 1201 North Market,
2 7th and Shipley, 7th and Orange, 10th and Washington. I'm not
3 sure if I got everything.

4 Q Okay. And then what about Mr. Clark, what would his area
5 be then?

6 A So his area would be to the south and that would encompass
7 the New Castle County Courthouse garage, the Renaissance
8 parking garage, Ships Tavern parking garage or the 1 Christina
9 Centere garage, 503 South Market, as well as -- and each of
10 those area managers have a number of unattended parking lots in
11 their area that they're responsible for as well.

12 Q Now, does Mr. Clark have any -- anything -- any other
13 additional duties like Mr. Garrison has the maintenance duties?

14 A No, Mr. Garrison would be a little unique in that respect.

15 Q Okay. Now, which garages have maintenance associates?

16 A Let's see. So the government center has Russ Marshall.
17 At 12th and Orange and 1201 North Market, Kenny. His last name
18 is escaping me right now. The -- essentially, each garage has
19 somebody who's responsible for cleaning maintaining the
20 appearance of the garage. So at the New Castle County
21 Courthouse that would fall quite a bit on Ms. Anita. At High
22 Park Garage Margaret and Johnheem take care of cleaning there.
23 So yeah, at each parking garage somebody there is responsible
24 for cleaning, dealing with trash and taking care of those
25 things. And then the lot attendants are responsible for

1 keeping their lots -- parking lots clean as well. Free of
2 trash and that sort of thing, where they work.

3 HEARING OFFICER GLEASON: I just have a question. What's
4 the difference between attendants and lot attendants? An
5 attendant --

6 THE WITNESS: So probably not a whole lot. So an
7 attendant may work at a parking garage where a lot attendant
8 may work on surface --

9 HEARING OFFICER GLEASON: A surface --

10 THE WITNESS: -- lot?

11 HEARING OFFICER GLEASON: -- lot?

12 THE WITNESS: Right.

13 HEARING OFFICER GLEASON: Okay. And then --

14 THE WITNESS: So --

15 HEARING OFFICER GLEASON: Okay.

16 BY MR. HOFMANN:

17 Q I've shown you what's been marked as Employer exhibit 4.
18 Do you recognize that document?

19 A Yes.

20 Q Okay. And what is that?

21 A That is the general job responsibilities for a garage
22 attendant/maintenance person.

23 (Employer's E-4 identified)

24 Q And there is -- there's a signature at the bottom. Do you
25 recognize that signature?

- 1 A Yes.
- 2 Q And who is that?
- 3 A It's James Pew (ph).
- 4 Q Is he currently employed?
- 5 A He is.
- 6 Q Okay. And where is he? Where does he work?
- 7 A He works at the Union Hospital petition garage.
- 8 Q Okay. So in connection with his responsibilities, does he
- 9 have to do cleaning and general maintenance?
- 10 A Yes.
- 11 Q Okay. Does he run a power sweeper?
- 12 A At that particular location, yes, he does.
- 13 Q Okay. What responsibility does he have -- this job
- 14 description mentions repairing gate arms. Do you know if he
- 15 has any responsibility regarding repairing gate arms?
- 16 A In so much as replacing the wooden gate extension, should
- 17 it be broken, that would be his responsibility.
- 18 Q But he wouldn't repair the mechanism of the machine?
- 19 A No, no.
- 20 HEARING OFFICER GLEASON: Is --
- 21 MR. HOFMANN: There's another --
- 22 HEARING OFFICER GLEASON: I'm sorry, I had -- is the Union
- 23 Hospital parking garage one of the garages in the bargaining
- 24 unit?
- 25 THE WITNESS: It is not.

1 HEARING OFFICER GLEASON: Okay.

2 BY MR. HOFMANN:

3 Q It is not?

4 A It is not.

5 Q Okay. Are there -- let's skip over this. I'll withdraw
6 that exhibit. Well, no I won't. Are -- would this job
7 description apply to any other employees working in other
8 facilities that are part of the bargaining unit?

9 A Yes, it would.

10 Q Where? Who would it apply to?

11 A It would apply to garage attendants/maintenance. So it
12 would apply to probably Johnheem Boardley, who works second
13 shift. It would apply to -- it may apply to Kenny.

14 It may apply to some others. There's a number of job
15 descriptions which are pretty close and similar. And I may not
16 remember exactly whose --

17 Q Alright. So I'm showing you what's been marked as
18 Employer exhibit 5 and ask you if you recognize that?

19 A I do recognize that.

20 Q And what is this?

21 A These are the general responsibilities for the government
22 center custodian.

23 (Employer's E-5 identified)

24 Q Okay. And who is that person?

25 A That is Russell Marshall.

1 Q Okay. We've heard testimony about Russell Marshall here
2 from Mr. York previously. Can you tell me who does Mr.
3 Marshall report to?

4 A He reports to Randy Boatwright --

5 Q And Randy --

6 A -- on a regular basis.

7 Q What's Randy's job?

8 A He is the facility manager for the government center
9 parking garage.

10 Q And to whom does Randy report?

11 A To Jeff Garrison.

12 Q Okay. Now, if you would look at this, the first bullet
13 point on Mr. Marshall's job description is walking levels of
14 the garage looking for suspicious individuals. Is that a
15 normal responsibility for all government -- or excuse me, all
16 custodians and maintenance employees?

17 A That one is probably a little bit specialized for the
18 government center, but we do -- the responsibilities of lot
19 attendants, and cashiers and really anybody is to make sure
20 they're aware of what's going on in the parking lot or parking
21 facility.

22 Q Okay. So the next bullet point is -- covers a lot of
23 different tasks. Is that -- do those describe Mr. Marshall's
24 responsibilities in that garage?

25 A Yes, it does.

1 MR. HOFMANN: Okay. I would offer Employer exhibit 5.

2 MR. BREIHAN: I have no objection to exhibit 5. I do
3 wonder about exhibit 4 --

4 MR. HOFMANN: I'm not offering it.

5 MR. BREIHAN: Okay. It is --

6 HEARING OFFICER GLEASON: Oh, okay.

7 MR. BREIHAN: Okay.

8 HEARING OFFICER GLEASON: Exhibit 5 is --

9 MR. HOFMANN: It's withdrawn.

10 (Employer's E-4 withdrawn)

11 MR. BREIHAN: Withdrawn. Okay.

12 HEARING OFFICER GLEASON: No objection to 5?

13 MR. BREIHAN: No objection to 5.

14 HEARING OFFICER GLEASON: Exhibit 5 is received.

15 (Employer's E-5 received in evidence)

16 BY MR. HOFMANN:

17 Q Now, are there some locations where you have valet parking
18 attendants?

19 A We have a -- we operate a garage where we valet park cars
20 and then there are three surface lots where attendants are
21 required to take keys and move cars around. So yes.

22 Q Okay. And are those -- is that garage you described one
23 of the facilities that's part of the bargaining unit?

24 A It is.

25 Q Which one is it?

1 A It is the 1000 King Street garage.

2 Q Okay. And the -- are the surface lots also part of the
3 bargaining unit?

4 A They are.

5 Q And which ones are they?

6 A That would be 7th and Shipley, 7th and Orange and 10th and
7 Washington.

8 Q Now, the employees who move vehicles as valet parking
9 attendants, are they required to have driver's licenses?

10 A They are.

11 Q Okay. And do they have to know how to drive a manual
12 transmission as well?

13 A We'd like them to, yes.

14 Q Are they -- does the company carry insurance on their
15 activities in driving these customer's vehicles?

16 A Certainly.

17 Q I'm showing you what's been marked as Employer exhibit 6
18 and ask if you recognize that?

19 A I do.

20 Q And what is that?

21 A Those are the general job responsibilities for a valet
22 parking attendant.

23 (Employer's E-6 identified)

24 Q Okay. And the -- part of the job description mentions, in
25 addition to things we've already talked about, that they are to

1 pick up and dispose of litter. Is that -- and keep the
2 attendant booth clean. Is that in fact functions that they
3 perform?

4 A Yes.

5 MR. HOFMANN: I would offer Employer exhibit 6.

6 MR. BREIHAN: A quick --

7 HEARING OFFICER GLEASON: Any --

8 MR. BREIHAN: Sorry.

9 HEARING OFFICER GLEASON: Any objection?

10 MR. BREIHAN: Quick voir dire on that.

11 VOIR DIRE EXAMINATION

12 BY MR. BREIHAN:

13 Q Could you tell me who the associate's signature is there?
14 Who this employee is?

15 A Sure. That's -- the signature on exhibit 6 is what we're
16 looking at, right?

17 HEARING OFFICER GLEASON: Yes.

18 BY MR. BREIHAN:

19 Q Yes.

20 A Okay. That's Kim Cheeks.

21 Q Kim Cheeks-Stone?

22 A Yes.

23 Q Okay. And she's at which parking lot?

24 A That is a male and he works at 1000 --

25 Q Oh, okay.

1 A -- King Street.

2 Q Oh, I'm sorry about that. 1000 King Street?

3 A Correct.

4 MR. BREIHAN: Okay. Alright. No objections.

5 HEARING OFFICER GLEASON: Okay. Exhibit 6 is received.

6 (Employer's E-6 received in evidence)

7 CONTINUED DIRECT EXAMINATION

8 BY MR. HOFMANN:

9 Q Now, do you have a different job description for lot valet
10 attendants?

11 A We -- I can't remember. We have a lot of different job
12 descriptions.

13 Q Okay.

14 A We may very well, yes.

15 Q I'm going to show what's marked as Employer exhibit 7. Do
16 you recognize that document?

17 A I do.

18 Q Okay. And what is that?

19 A That is the general job responsibilities for parking
20 lot/valet attendants.

21 (Employer's E-7 identified)

22 Q And do you recognize the associate's signature at the
23 bottom?

24 A I do. I believe that's Chris Dineen.

25 Q Okay. And what lot does he work at?

1 A He works at the 7th and Shipley parking lot.

2 Q Okay. And is that part of the bargaining unit?

3 A It is.

4 Q Okay. I'd like to ask you, in addition to some of the
5 other things we talked about, this mentions a preparation of a
6 daily shift report. Can you explain what the daily shift
7 report is?

8 A Yes. A daily shift report would be an accounting of
9 parking tickets that have been sold for the day. However,
10 interestingly as it relates to Chris Dineen and the other folks
11 who work in the surface lots, they no longer have to complete a
12 shift report, because there is a kiosk there that essentially
13 collects the payments and takes care of all that stuff. So
14 they are more focused on dealing with the customers, getting
15 cars parked, handling keys and keeping their parking lots
16 clean.

17 Q We -- you heard test -- we hear testimony from Mr. York
18 that he prepares a report of his daily activities.

19 A Yes.

20 Q And also from Mr. Blanchette that he prepares a report of
21 his daily activity.

22 A Uh-huh.

23 Q What other employees in the bargaining unit prepare
24 reports of their daily activities?

25 A Sure. So each cashier would complete an accounting of,

1 you know, their activity, during the course of their shift.
2 Each parking garage will typically have a location log where
3 they should be keeping notes on what occurred, during the
4 course of the day, if vendors came and that sort of thing. So
5 there's a couple of examples.

6 MR. HOFMANN: I would offer Employer exhibit 7.

7 HEARING OFFICER GLEASON: Any objection?

8 MR. BREIHAN: A quick voir dire, Your Honor.

9 VOIR DIRE EXAMINATION

10 BY MR. BREIHAN:

11 Q So is this the current job description for Mr. Dineen?

12 A That is a current job description, yes, but it does --
13 again, it doesn't reflect the change in the technology, in
14 terms of how customer payment are collected.

15 Q Okay. And when did that change happen?

16 A Probably early '15.

17 Q Okay. So -- but he signed this on January 20th --

18 A He did.

19 Q -- 2016? So it just hasn't been updated?

20 A To reflect the new payment system, correct?

21 MR. BREIHAN: Okay, okay. I have no objection.

22 HEARING OFFICER GLEASON: Exhibit 7 is received.

23 (Employer's E-7 received in evidence)

24 CONTINUED DIRECT EXAMINATION

25 BY MR. HOFMANN:

1 Q Now, Mr. Hankins, are you familiar with a job that you
2 refer to as customer service/maintenance/supervisor?

3 A Yes.

4 Q Can you explain what that job is?

5 A So that's a little bit of everything. That's somebody who
6 helps people use parking equipment or pay -- you know, pay on
7 kiosks. They're also responsible for cleaning and so a little
8 bit of everything.

9 So they're making sure the garage is clean, litter is
10 picked up, trash is taken care of. Again, dealing with
11 customers who need assistance. So yeah, a little bit of
12 everything.

13 Q Do they actually supervise employees?

14 A No, they're really supervising a location. And they're
15 typically there by themselves supervising the physical
16 location.

17 Q I'm showing you what's been marked for -- as Employer
18 exhibit 8. Do you recognize that document?

19 A I do.

20 Q And what is that?

21 A So those are the general responsibilities for customer
22 service/maintenance/supervisor staff.

23 (Employer's E-8 identified)

24 Q Okay. And do you recognize the signature on the bottom of
25 this one?

- 1 A I do.
- 2 Q And who's is that?
- 3 A That would be Johnheem Boardley.
- 4 Q And where does Mr. Boardley work?
- 5 A He works at the HyPark Garage.
- 6 Q And is that one of the facilities in the bargaining unit?
- 7 A It is.
- 8 Q Okay.
- 9 A 913 Shipley I believe.
- 10 Q So --
- 11 HEARING OFFICER GLEASON: Or 903 Shipley?
- 12 THE WITNESS: There you go.
- 13 MR. HOFMANN: 903 Shipley?
- 14 THE WITNESS: Yes.
- 15 BY MR. HOFMANN:
- 16 Q Okay. So does Mr. Boardley still have to prepare a daily
- 17 shift report, as this job description describes?
- 18 A He would have to if he needed to conduct a transaction
- 19 through the fee computer, which is -- most of the transactions
- 20 will go through pay on foot kiosks. If there is some reason,
- 21 you know, that transaction won't go through there, then he
- 22 might conduct a transaction.
- 23 Q Now, we heard testimony from Mr. York and Mr. Blanchette
- 24 that at the beginning of their workday and the end of the
- 25 workday they login their hours and logout their hours at a

1 computer at the government center.

2 A Uh-huh.

3 Q How do the rest of the employees in the bargaining record
4 their hours worked?

5 A Most where there is a computer available log in, in the
6 same manner that Mr. York and Mr. Blanchette described, where
7 they use a computer to go into the time and attendance system,
8 and put in their number and essentially punch in and then punch
9 out at the end of the day.

10 Q So it may not be the computer at the government center.
11 Where would these computers be located?

12 A The New Castle County Courthouse parking garage has
13 computer and most of the garages will have computers for that
14 purpose as well as other purposes, but the surface parking lots
15 where there is not a computer, a telephone is used.

16 Q Is that a company cell phone that's used?

17 A No. For the purposes of punching in and out it's
18 typically a landline.

19 Q Okay. Do any of the employees in the bargaining besides
20 Mr. Blanchette have a company cell phone?

21 A Company cell phones are issued to particular locations for
22 use by the staff to allow them to be reached by folks at the
23 office and as well as to allow them to communicate. A lot of
24 times they will receive customer calls on those particular
25 phones.

1 Q You -- can you recall what particular locations that are
2 within the bargaining unit the employ -- they are issued
3 company cell phones?

4 A So 12th and Orange and 1201 North Market has a cell phone.
5 I'm trying to think. I don't know if I can remember everywhere
6 else. I'm not sure. I can't remember whether -- some
7 locations may not have a cell phone, but they do have a
8 cordless phone kind of used for the same purpose. I think
9 Ships Tavern has a cordless phone for that same purpose. So,
10 yeah.

11 MR. HOFMANN: I would offer Employer exhibit 8.

12 HEARING OFFICER GLEASON: Any objections to Employer
13 exhibit 8.

14 MR. BREIHAN: One moment. I'm sorry. No objection to
15 exhibit 8.

16 HEARING OFFICER GLEASON: Exhibit 8 is received.

17 (Employer's E-8 received in evidence)

18 BY MR. HOFMANN:

19 Q Now, Mr. Hankins, do you also have job descriptions for
20 the customer service and cashier positions?

21 A Yes.

22 Q I'm showing you exhibit -- what's been marked as exhibit 9
23 and ask if you recognize that document?

24 A Sure. So that is the general responsibilities for
25 customer service/cashier staff.

1 (Employer's E-9 identified)

2 Q Do you recognize the signature on this particular
3 document?

4 A Yes, that would be Tamara Coverdale.

5 Q And where does Tamara Coverdale work?

6 A She works at the Renaissance parking garage.

7 Q Is that part of the bargaining unit?

8 A It is.

9 Q Okay. This mentions, among other things, that she's to
10 prepare a daily shift report. Is that still accurate in her
11 case?

12 A It is a little bit accurate. So there is a pay on foot
13 kiosk there as well. So typically the transactions would run
14 through that machine. If for some reason that machine didn't
15 work, then she would have to collect parking fees manually and
16 then complete a parking shift report.

17 Q Two under that it mentions completing a vehicle inventory
18 at the end of the shift. What is that?

19 A Walking around the garage and essentially taking an
20 account of how many vehicles are still in the garage at the
21 close of business.

22 Q Okay. So she has to walk around the garage and look to
23 see who's parked there, correct?

24 A Correct.

25 Q Okay. And are there other facilities where that same end

1 of shift inventory is done?

2 A There are -- yeah, there's a couple of them. The
3 government center garage and the Ships Tavern parking garage.

4 MR. HOFMANN: Okay. I would offer Employer exhibit 9.

5 MR. BREIHAN: No objection.

6 HEARING OFFICER GLEASON: Any objection? Exhibit 9 is
7 received.

8 (Employer's E-9 received in evidence)

9 BY MR. HOFMANN:

10 Q I'm showing you now what's been marked as Employer exhibit
11 10 and ask if you recognize that document?

12 A I do. It's the job responsibilities for a cashier
13 position.

14 (Employer's E-10 identified)

15 Q And do you recognize the signature at the bottom?

16 A Yes.

17 Q And who's is that?

18 A That is Kenyetta Charles.

19 Q And is Kenyetta Charles one of the employees in this
20 bargaining unit?

21 A Yes.

22 Q Where does she work?

23 A She works at the government center parking garage.

24 Q Okay. What's the difference between customer
25 service/cashier and cashier?

1 A So a cashier is someone who has a register, for lack of a
2 better -- or a fee computer. And so every car that has pulled
3 a ticket for daily parking at a garage exit the -- exits the
4 garage and a cashier will conduct that transaction. The
5 difference between and cashier and a customer service/cashier
6 is that the customer service/cashier is not processing every
7 transaction at their particular facility.

8 They may only process transactions that can't be processed
9 through a pay on foot kiosk for example. So since they're not
10 processing every car exiting the facility, they can help people
11 use the pay on foot kiosk, they can do cleaning functions and
12 that sort of thing. So the difference is a cashier is in a
13 booth processing a lot of people's transactions, handling money
14 on a regular basis, where a customer service/cashier person
15 does that less, and also has cleaning responsibilities and
16 customer service responsibilities, since they're not processing
17 transactions.

18 Q Now in the case of Ms. Charles at the government center,
19 who would her supervisor be?

20 A She would report to Randy Boatwright.

21 Q Okay. And who Randy Boatwright report to?

22 A Jeff Garrison.

23 MR. HOFMANN: I would offer Employer exhibit 10.

24 MR. BREIHAN: No objection.

25 HEARING OFFICER GLEASON: Any objections? Employer

1 exhibit 10 is received.

2 (Employer's E-10 received in evidence)

3 BY MR. HOFMANN:

4 Q Now, Mr. Hankins, we heard testimony earlier today from
5 Mr. York about how he reports daily the duties that he
6 performs, during the course of the day. Does the company
7 generate a report from that information that he collects, to
8 determine what he's been doing?

9 A Yeah. So Mr. York keeps his log, as he said. And then
10 he turns that into Jeff Garrison, who then enters that
11 information into a work order system that we use to track his
12 time and allocate his time. And then from that database we can
13 look at where his time is spent on which tasks.

14 Q Okay. Are you able to then pull that information up on a
15 monthly summary basis?

16 A We are.

17 Q Okay. I'm going to show you what's been marked as
18 Employer exhibit 11. Can you identify that document for me?

19 A Yes. This is a document that shows the percent of time on
20 task type that Paul York spent in June, August and November of
21 2016.

22 (Employer's E-11 identified)

23 Q Okay. And is this generated from that -- initially from
24 the reports that Mr. York makes and then Mr. Garrison enters
25 into the system?

1 A Yes. Yes, it is.

2 MR. HOFMANN: I'd offer Employer exhibit 11.

3 MR. BREIHAN: A few voir --

4 HEARING OFFICER GLEASON: Any objections?

5 MR. BREIHAN: -- dire questions about this.

6 MR. HOFMANN: Sure.

7 VOIR DIRE EXAMINATION

8 MR. BREIHAN:

9 Q Is this how the document, the reports usually appear on a
10 sheet like this with three months?

11 A No, it's pulled out by month.

12 Q Okay. So who prepared this particular document?

13 A I did.

14 Q You did. Is there any reason why you chose particular
15 months, June, August and November I see?

16 A No, I was pulling kind of random -- three random months.

17 Q Okay. So you would normally have just one month at a time
18 on one of these reports?

19 A You could, yeah, or you could look at it three random
20 months, or three consecutive months or --

21 Q How do you normally review these reports?

22 A I would look at either a given month or I would look at,
23 you know, one month maybe in the fall and one month in the
24 spring or two consecutive months to see how the hours changed.
25 It sort of depends on what I would be looking for.

1 Q And how are you using -- for what task are you using this?
2 Or for what purpose are you using this document?

3 A Well, for this document would be to look at where Paul
4 spends his time. And so myself, as an operations, manager
5 knows essentially what he's doing. He's assigned to unmanned
6 parking lots.

7 So the employees that are assigned to say a parking
8 garage, you know, they're at the parking garage. They're doing
9 whatever tasks they're assigned to. So Paul is assigned to
10 multiple locations --

11 Q Uh-huh.

12 A -- and this is a way that we can see what he's doing.

13 Q Okay. Are you generating these reports for other
14 employees in the proposed bargaining unit?

15 A No.

16 Q Okay.

17 A No.

18 Q And Jeff Garrison, again, his direct supervisor -- Paul
19 York's direct supervisor generates these --

20 A That's correct.

21 Q -- for you and you review them? And again, could you just
22 tell me one more time how does Paul indicate what specific
23 tasks he's doing? I mean does he have these limited options
24 that he's able to pick from or --

25 A So --

1 Q -- how does that work?

2 A Sure. So Paul has a piece of paper log. Okay. So he's
3 writing from this time to this time I did this task at this
4 location.

5 Q Uh-huh.

6 A So then that goes to Jeff Garrison, who inputs it into the
7 database.

8 Q So there's -- I see that these are like standardized tasks
9 --

10 A Uh-huh.

11 Q -- across the three months. Are there like a standardized
12 list of tasks that he can choose from?

13 A I wouldn't say there's a standardized list of tasks.
14 These are the tasks that appeared in those particular months.
15 And obviously he does the same thing a lot. So --

16 Q Sure, sure.

17 A -- therefore you see --

18 Q Repeats.

19 A Yes.

20 MR. BREIHAN: Okay. I have no objections. I mean I --
21 with the caveat I do want it to be said for the record that
22 this is a random sampling of three months. And I don't -- it
23 may -- I don't how random it is.

24 HEARING OFFICER GLEASON: Okay. Exhibit 11 will be
25 received into evidence.

1 (Employer's E-11 received in evidence)

2 CONTINUED DIRECT EXAMINATION

3 BY MR. HOFMANN:

4 Q So you review these reports concerning Mr. York's duties
5 over the course of a full year?

6 A Sure. Yes.

7 Q And just looking at this I would notice that in June and
8 August he was spending about half of his time on landscaping
9 and then in November very little. Do you see that?

10 A Yes.

11 Q Is that an accurate -- over the course of the year, would
12 that provide us with an example of how his work duties might
13 change from time to time, over the course of the year?

14 A Yes. I mean you would expect and the practice would be
15 that he would have more landscaping responsibilities in, you
16 know, May, June, July than he would in November and December.

17 Q Okay. Can you describe for me the benefit program that
18 these employees receive from Colonial?

19 A Sure. So there is a health plan that they're eligible to
20 participate in. There's a 401K plan with matching. There is
21 life insurance at no cost to them. There are vacation days
22 that accrue based upon your time of service. There may be
23 others --

24 Q Are there any differences in the benefits received by Mr.
25 York compared to the employees who are in the bargaining unit?

1 A No, he would receive the same full time -- as a full time
2 employee he would have the same benefits as a full time, you
3 know, parking attendant or valet attendant.

4 Q Other than Mr. Blanchette, are there any part time
5 employees in the bargaining unit?

6 A Yes.

7 Q Does Mr. Blanchette's benefits, as a part time employee,
8 differ in any way from the part time employee benefits?

9 A No, they don't.

10 Q What part time employee benefits are there?

11 A The benefits are essentially the same as I just described.
12 In terms of the vacation, obviously that's adjusted for
13 somebody who works part time.

14 Q Besides Mr. Blanchette and Mr. York, what other employees
15 in the bargaining unit need to have a driver's license as part
16 of their job requirement?

17 A So the attendants at 1000 King Street, Anthony Portlock,
18 Frank McQueen, Kim Cheeks-Stone. The lot attendants -- the
19 valet lot attendants at 7th and Shipley, 7th and Orange and
20 10th and Washington. So Chris Dineen, Ro Smith-Teagle and
21 Jerry Pacheco.

22 Q Are you familiar with whether any employees in the
23 bargaining unit besides Mr. York assist in snow removal
24 activities?

25 A Yeah. Russell Marshall helps with the overall effort. If

1 there are -- so at each location -- I think Paul talked about
2 delivering salt spreaders and shovels. So at each location
3 there's some responsibilities to take care of some of that and
4 maintain certain areas for customers, between the time the
5 maintenance guys or the vendor can get around to deal with
6 snow.

7 So a parking attendant like Ro Smith-Teagle would need
8 some of that calcium to make sure that the area in front of the
9 payment kiosk is not slippery or snow covered, or the area in
10 front of the parking booth where she would step in and out is
11 dealt with. You know, likewise in a garage, you know, the
12 folks who work at the garages have to make sure that snow is
13 cleared in front of the doorway or they may need to clean, you
14 know, snow out of where the cars have drug it into the entrance
15 and things of that nature. So, you know, if you're working at
16 a location, and the weather is bad and it's snowing, everybody
17 sort of has to participate and help in some way, shape or form
18 to make sure that, you know, there's no hazards to the best of
19 our ability.

20 Q Neil Blanchette testified that one of his duties is
21 issuing warning notices to people who are improperly or
22 illegally parked. Is there anybody else who does that within
23 the bargaining unit?

24 A The folks who do that probably on a most regular basis
25 would be our staff at the New Castle County Courthouse garage.

1 So Melanie Williams and Ms. Anita. There's some reserved
2 parking spaces in that garage. So they enforce those reserved
3 parking spaces with a parking boot, same as Neil would apply,
4 as well as warnings. And they historically have gone out and
5 checked the surface lot at 516 King Street for illegal parkers,
6 since they're so close. And they actually -- the New Castle
7 County Courthouse is home to a boot to immobilize cars at those
8 two locations that those folks will apply when needed.

9 Q Can you give me a summary of the employees in the
10 bargaining unit who have cleaning duties besides Paul York?

11 A Well, as, you know, we've sort of gone through the job
12 descriptions and really just about everybody has some
13 responsibility to -- related to cleaning, whether that's
14 keeping the booth, where a cashier works, clean and the
15 surrounding area free of litter. Essentially all of the
16 employees have some sort of responsibility, in terms of picking
17 up trash or, you know, emptying a trashcan. So it's really
18 across the board, the -- you know, the differences in the scale
19 in which they're responsible for cleaning.

20 HEARING OFFICER GLEASON: Just you mentioned employees who
21 work at the courthouse also maintain 516 King Street. Is that
22 -- did you mean 510 North King Street?

23 THE WITNESS: No, no.

24 HEARING OFFICER GLEASON: Or is it --

25 THE WITNESS: So 516 King Street is an unattended lot out

1 in front of the New Castle County Courthouse.

2 HEARING OFFICER GLEASON: Okay.

3 THE WITNESS: So there's not somebody staffed.

4 BY MR. HOFMANN:

5 Q Showing you a document that's been marked as Employer
6 exhibit 12 and ask if you recognize that.

7 A I do.

8 Q And what is that?

9 A That is Colonial's pay scale effective June 1st of 2015.

10 (Employer's E-12 identified)

11 Q Okay. There's a -- there's at least one position on here
12 that I notice is not part of the described unit and it's called
13 walker. Can you explain what that is and why we don't have
14 anyone?

15 A So sure. A walker is somebody whose responsibility is to
16 really do a lot of walking in a particular garage. The
17 position is really geared towards 222 Delaware Avenue PNC
18 parking garage. So the position is designed so that there's
19 somebody continuously moving through the garage to provide a
20 security presence, but also as they're doing that to do trash
21 cleanup and, you know, pull trash cans where needed.

22 Q Why is there nobody in that position right now?

23 A It's -- well, it's vacant and it hasn't been filled. I
24 think that's just a matter of process.

25 Q I note that there's no box on this pay scale for the lot

1 auditor position that Mr. Blanchette holds. Why is that?

2 A It's -- there's -- you know, there's one person that does
3 it. It's a part time position and it's one where, you know,
4 there's not a lot of turnover. And we would really consider it
5 along the lines of a lot attendant, in that he is making sure
6 that the cars parked on a surface lot are valid cars.

7 So we see it analogous to that, with the exception that
8 that position is outside more, out in the weather more. And in
9 order to get from lot to lot to verify that the cars are valid,
10 he uses a vehicle. So there's a little bit of a premium from
11 the lot attendant.

12 Q Now, what shows on here are start -- starting pay and 90
13 day pay. Are -- do employees receive additional increases
14 after that?

15 A So the typical practice or the, you know, how it's set
16 forth in the handbook is that at the time of an associate's
17 anniversary they receive a performance review. And should
18 business conditions warrant and the performance of the employee
19 or associate warrant, at that time there is an opportunity for
20 an increase.

21 MR. HOFMANN: Okay. I would offer Employer exhibit 12.

22 HEARING OFFICER GLEASON: Any objections?

23 MR. BREIHAN: One moment. I'm sorry. No objection.

24 HEARING OFFICER GLEASON: Okay. Exhibit 12 is received.

25 (Employer's E-12 received in evidence)

1 BY MR. HOFMANN:

2 Q Now, in preparation for today's hearing, did you have a
3 chance to review Mr. York's pay history?

4 A I did.

5 Q By the way, how long have you been employed?

6 A I've been employed by Colonial Parking for nine years,
7 eight to nine years.

8 Q I'm showing you what's been marked as Employer exhibit 13.
9 Is this the review of Mr. York's rate history that you told me
10 about?

11 A It is.

12 (Employer's E-13 identified)

13 Q Okay. And where did you get the information for this?

14 A From our human resource director.

15 MR. HOFMANN: Okay. Offer Employer exhibit 13.

16 HEARING OFFICER GLEASON: Any objections.

17 MR. BREIHAN: A couple voir dire questions.

18 VOIR DIRE EXAMINATION

19 BY MR. BREIHAN:

20 Q I'm sorry, could you state by name who the person that
21 prepared this was?

22 A Sure. Theresa Crawford (ph).

23 Q Theresa Crawford. And she prepared this in preparation
24 for today's hearing?

25 A We asked her, at some point, to provide pay history for

1 Mr. York and she provided it.

2 Q And was this -- and that was in preparation for this
3 hearing?

4 A I'm not sure if it was in preparation for this or as a
5 part of a general -- yeah, probably so. I will acknowledge --

6 Q So it was last week or the week before?

7 A It was probably before that, but it was surrounding the
8 issue of -- yeah, yeah.

9 Q Okay. And was this reviewed with Mr. York?

10 A I'm not certain that it was.

11 Q Okay. But you reviewed this and compared it to the actual
12 records to make sure it was accurate?

13 A Say that again.

14 Q Did you compare this to the actual pay records to see if
15 it was accurate?

16 A No, I assumed this was an accurate reflection of the pay
17 increases.

18 MR. BREIHAN: Okay. No further questions and no
19 objections.

20 HEARING OFFICER GLEASON: Okay. Exhibit 13 is received.

21 (Employer's E-13 received in evidence)

22 CONTINUED DIRECT EXAMINATION

23 BY MR. HOFMANN:

24 Q Now similar to the question about Mr. York, did you have
25 the HR people get you similar pay history information for Mr.

1 Blanchette?

2 A I did.

3 Q Okay. And do you recognize this document then?

4 A I do.

5 Q And what is this?

6 A That's Mr. Blanchette's hourly rate history.

7 (Employer's E-14 identified)

8 Q Now, I believe Mr. Blanchette testified that it was in
9 2013 that he became the lot auditor, is that correct?

10 A I -- yeah, I can't remember. I think he said he's been
11 doing it a couple years or more, yeah.

12 MR. HOFMANN: Okay. I would offer exhibit 14.

13 HEARING OFFICER GLEASON: Any objections?

14 MR. BREIHAN: A few questions about this one as well, if I
15 could.

16 VOIR DIRE EXAMINATION

17 BY MR. BREIHAN:

18 Q Was this prepared by the same person?

19 A I would say along the same lines, Ms. Theresa Crawford,
20 yes.

21 Q Okay. I notice that the lot attendant starting salary is
22 8.75.

23 A Uh-huh.

24 Q But Mr. Blanchette started at 9.00. Is there a reason for
25 that difference?

1 A Yeah, I don't know. I don't know.

2 Q Okay. I notice at one point here he received an 80 cent
3 increase. Was there a reason for that large jump?

4 A I believe that was the time that he transferred from being
5 a lot attendant to being a lot auditor.

6 Q Okay. Would you say that -- looking at this document, is
7 that a more substantial jump than the other steps he made?

8 A Yes.

9 MR. BREIHAN: Okay. Nothing further.

10 HEARING OFFICER GLEASON: Any objections?

11 MR. BREIHAN: No objection.

12 HEARING OFFICER GLEASON: Exhibit 14 is received.

13 (Employer's E-14 received in evidence)

14 MR. HOFMANN: Thank you.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. HOFMANN:

17 Q In connection with this hearing, did you request that the
18 human resources department provide you a list of the pay rates
19 and job titles for all the employees in the bargaining unit,
20 and Mr. York and Mr. Blanchette as well?

21 A I did.

22 Q Showing you what's been marked as Employer exhibit 15.
23 Tell us what that is.

24 A So that is a list of associates in the bargaining unit
25 with their pay rate and their job classification.

1 (Employer's E-15 identified)

2 HEARING OFFICER GLEASON: This is their current pay rate?

3 THE WITNESS: Yes.

4 MR. HOFMANN: I offer Employer exhibit 15.

5 HEARING OFFICER GLEASON: Any objection?

6 MR. BREIHAN: I have a few questions.

7 VOIR DIRE EXAMINATION

8 BY MR. BREIHAN:

9 Q So I see on Employer 12 lot maintenance starting salary is
10 10.50.

11 A Uh-huh.

12 Q Who occupies that title?

13 A I don't know. I'd have to go through each person and
14 figure out if somebody currently occupies that particular job
15 description.

16 Q So does it appear anywhere in the proposed bargaining
17 unit?

18 A What's that?

19 Q Does that title, lot maintenance, appear anywhere in the
20 proposed bargaining unit?

21 A I think that lot maintenance and maintenance associate are
22 essentially analogous. A matter of what it's referred to. So
23 a lot maintenance I think is essentially referring to a
24 maintenance associate.

25 Q Okay. So then taking that answer, I'd like to ask you a

1 couple follow up questions about particular people on this
2 list. I'd like to go through the maintenance associates. Can
3 we first look at Johnheem Boardley?

4 A Sure.

5 Q Okay. What is his pay rate listed on this document?

6 A It is listed at 9.01.

7 Q Okay. And can we look back at exhibit 12? Could you tell
8 me what it says for lot maintenance starting salary?

9 A 10.50.

10 Q Why is Mr. Boardley paid a dollar and 49 cents less than
11 the start salary for a maintenance -- a lot maintenance person?

12 A So going back to look at his job description, which his
13 signature is on --

14 Q Uh-huh.

15 A -- which is listed as customer service maintenance
16 supervisor, if you look at, you know, customer service that's
17 8.75 to start.

18 Q Right.

19 A Maintenance supervisor is 9.25. So I guess in a nutshell
20 I'm not certain. I don't recall what his terms were at hiring.
21 I don't know if he was hired particularly as a customer service
22 person. Yeah, I'm not -- I don't recall.

23 Q Okay. So I mean has he been working there more than 90
24 days --

25 A Yes.

1 Q -- do you believe? And could you look at the customer
2 service after 90 day pay rate?

3 A Yes.

4 Q What is it?

5 A It is 9.00.

6 Q Okay. So he currently makes one cent more than the
7 customer service 90 day rate?

8 A That's correct.

9 Q Okay. And 49 cents short of the 90 day maintenance
10 supervisor rate?

11 A Yes.

12 Q Why don't the Colonial pay scale titles match the pay
13 rates and titles of the people in the bargaining unit?

14 A So the pay scale is established for starting --
15 essentially as a guide for new employees coming in to the
16 company. So as of June 1st, this was established as what that
17 pay scale is. And this --

18 Q June 1st of?

19 A June 1st of 2015.

20 Q Okay.

21 A So in that I believe there was an increase in the minimum
22 wage at that time of 50 cents. So these are adjusted
23 accordingly to move the pay scale upwards with the increase in
24 the minimum wage. So --

25 Q Was that pay increase not distributed to workers currently

1 at Colonial?

2 A It was. So typically everybody was adjusted by a 50 cent
3 rate. Now if Johnheem started at the pay scale prior to this,
4 when it was -- maybe it was, you know, 8.00 or 8.50, you know,
5 that may explain why he's at 9.01 currently.

6 Q So why doesn't a single maintenance associate, other than
7 Paul York, make above the starting salary or starting wage rate
8 for a lot maintenance person?

9 MR. HOFMANN: Objection to characterization of the
10 testimony.

11 MR. BREIHAN: We can go through the document. I was just
12 trying to speed things up, but I can go through each one.

13 MR. HOFMANN: Go ahead. I'll withdraw the objection.

14 HEARING OFFICER GLEASON: Okay.

15 MR. BREIHAN: Okay.

16 THE WITNESS: Can you ask that again?

17 BY MR. BREIHAN:

18 Q Sure. Of course. Why does, with the exception of Paul
19 York, does not a single employee listed as maintenance
20 associate make the starting rate for a lot maintenance
21 employee?

22 A So the folks listed -- so if you go down and you look at
23 John Downes, Kenneth Lewis --

24 Q Uh-huh.

25 A Who else you got there? So Russell. So in the case of

1 John Downes and Kenneth Lewis, so they are maintenance
2 supervisors assigned to a garage. So a lot maintenance person
3 I think is more so intended to do something along the lines of
4 what Paul York does.

5 Q Okay.

6 A Yeah.

7 Q So would you say that in the bargaining unit the only
8 person occupying the title of lot maintenance -- or in the
9 proposed -- in the company's proposed bargaining --

10 A Uh-huh.

11 Q -- unit I should clarify, that the only person occupying
12 the title of lot maintenance would be Paul York?

13 A Yeah, I would say that.

14 Q So where do these other -- let's see, one, two, three,
15 four people listed as lot maintenance associates fall? Or what
16 job title on the Colonial pay scale do they fall under?

17 A So a maintenance associate they would probably fall under
18 the maintenance/supervisor. It -- you know, it depends. So
19 there's a lot of -- as you've seen, a lot of different job
20 descriptions.

21 Q Uh-huh.

22 A So the pay scale probably doesn't encompass every single
23 job description that we have.

24 MR. BREIHAN: Alright. And -- okay, I have no objections
25 to this document, although it does make me question exhibit 12

1 and its relevance to this proceeding and its accuracy.

2 HEARING OFFICER GLEASON: Maybe we can clear some of that
3 up on cross examination --

4 MR. BREIHAN: Sure.

5 HEARING OFFICER GLEASON: -- at that point? But so if
6 there's no objection we'll take exhibit 15 as being received.

7 (Employer's E-15 received in evidence)

8 CONTINUED DIRECT EXAMINATION

9 BY MR. HOFMANN:

10 Q There's been some testimony about the employee uniforms
11 earlier. Can you tell me what the company's practice is, with
12 regards to uniforms and what's required?

13 A So a cashier is required to wear a shirt or smock and then
14 a Colonial jacket. Those are all items that Colonial will
15 provide. If somebody is out, you know, walking in a garage or
16 out among the public then it's pants, shirt, you know, jacket.
17 If it's a hat, Colonial provides hats.

18 Q Which are the jobs that you would provide the hats and the
19 pants for?

20 A So a pants would be basically any position that is not --
21 that involves walking around. So that would be lot attendants,
22 the floaters, the maintenance folks, the valets. Essentially
23 everybody but cashiers.

24 Q What about Mr. York?

25 A Yes, he would be out among the public. So he would wear

1 the same uniform as everybody else; the pants, the shirt,
2 jacket if needed.

3 Q And what about Mr. Blanchette?

4 A Again, he's out among the public, so pants, shirt, jacket
5 issued by Colonial.

6 MR. HOFMANN: I have no further questions.

7 HEARING OFFICER GLEASON: Okay. I had some clarifying
8 questions. Can -- if I can list each of the 13 lots here, can
9 you tell me whether it's a surface lot, a garage and what type
10 of employees work there, whether it's an attendant, lot
11 attendant, valet attendant, just so I can be clear on the
12 record?

13 THE WITNESS: Sure.

14 HEARING OFFICER GLEASON: So 9th and French Street?

15 THE WITNESS: That is a parking garage, as what we refer
16 to as the government center parking garage.

17 HEARING OFFICER GLEASON: Okay. And what type of
18 employees work there.

19 THE WITNESS: You have cashier, maintenance associates.
20 So that would be it.

21 HEARING OFFICER GLEASON: And 10th Street and Washington?

22 THE WITNESS: 10th and Washington that is a surface lot
23 and there is a lot attendant at that lot.

24 HEARING OFFICER GLEASON: 12th Street and Orange Street?

25 THE WITNESS: 12th and Orange is a parking garage. So you

1 have a maintenance supervisor type person.

2 HEARING OFFICER GLEASON: As well as an attendant or --

3 THE WITNESS: No. Just --

4 HEARING OFFICER GLEASON: Just a maintenance supervisor?

5 THE WITNESS: Just a maintenance supervisor, yeah.

6 HEARING OFFICER GLEASON: 12th Street and Washington
7 Street?

8 THE WITNESS: 12th and Washington you have a couple of
9 employees there, yes.

10 HEARING OFFICER GLEASON: Well, what type of lot is it?

11 THE WITNESS: It is a parking garage. I'm sorry.

12 HEARING OFFICER GLEASON: Garage. And what job
13 classifications work there?

14 THE WITNESS: They would be garage attendants.

15 HEARING OFFICER GLEASON: 222 Delaware Avenue?

16 THE WITNESS: It's a parking garage.

17 HEARING OFFICER GLEASON: 401 King Street?

18 THE WITNESS: 401 King Street is parking garage.

19 HEARING OFFICER GLEASON: 510 North King Street?

20 THE WITNESS: It's a parking garage.

21 HEARING OFFICER GLEASON: 503 South Market Street?

22 THE WITNESS: It's a surface lot.

23 HEARING OFFICER GLEASON: With an attendant?

24 THE WITNESS: Correct.

25 HEARING OFFICER GLEASON: 711 Orange Street?

1 THE WITNESS: Surface lot.

2 HEARING OFFICER GLEASON: 713 Shipley Street?

3 THE WITNESS: Surface lot with an attendant.

4 HEARING OFFICER GLEASON: 903 Shipley?

5 THE WITNESS: Parking garage.

6 HEARING OFFICER GLEASON: 1000 King Street?

7 THE WITNESS: Parking garage.

8 HEARING OFFICER GLEASON: And then 1201 North Market
9 Street?

10 THE WITNESS: Parking garage.

11 HEARING OFFICER GLEASON: So it's about 20 of 1:00. Can
12 we go off the record for a second?

13 (Whereupon, a brief recess was taken)

14 HEARING OFFICER GLEASON: Back on the record.

15 Mr. Breihan, your witness.

16 CROSS-EXAMINATION

17 BY MR. BREIHAN:

18 Q Hi, Mr. Hankins.

19 A Hello.

20 Q Thanks for joining us today. Again, my name is Adam
21 Breihan for the Union. I just have a few more questions for
22 you. First of all, you mentioned a place called Ship Tavern a
23 few times. Is that in the bargaining unit, in the proposed
24 bargaining unit that location?

25 A The Ship's Tavern garage is not.

1 Q What is it called?

2 A The Ship's Tavern --

3 Q Ship's Tavern.

4 A -- parking garage is not.

5 Q It is not, okay.

6 HEARING OFFICER GLEASON: What's the address of that
7 facility?

8 THE WITNESS: That is at 2nd and King Street.

9 BY MR. BREIHAN:

10 Q Okay. Now you mentioned company cell phones that exist at
11 a couple of locations, correct?

12 A Um-hum.

13 Q You said that those are checked out to the location?

14 A Well, they're not checked out. But when they are
15 purchased, they're provided to the location.

16 Q Okay. So nobody is checking them out each day from the
17 main office?

18 A That's correct. There is an office at the garage where
19 the associates can go in and get it.

20 Q So it stays there at that location?

21 A Correct.

22 Q And no particular associate or lot attendant is assigned
23 to it. It is, rather, assigned to the location, is that
24 correct?

25 A Sure. So whoever is working in that particular area,

1 yeah, or that facility.

2 Q So I mean is its function basically the same as the
3 landlines that exist at other locations?

4 A It's function. Well, I would say no in that, and the
5 example I would use is 12th and Orange. There is no cashier
6 there. It's a pay on foot system, a kiosk.

7 Q Sure.

8 A So nobody is in one place in the office at all times to
9 answer a phone. It's different than landlines in that the
10 people who work there need to carry that with them around the
11 garage to receive phone calls from customers or call the office
12 if they have a problem with a monthly key card or something of
13 that nature.

14 Q Sure. So this is the line of communication for those
15 workers at the -- whoever is working at that time --

16 A Sure.

17 Q -- to call the main office?

18 A Yes. And for the main office to contact them or
19 customers.

20 Q And that would be similar to the landlines at other lots
21 where it's used to communicate between the office, correct?

22 A Sure, sure.

23 Q Okay. If you can look at Exhibit 15 again, Company's
24 Exhibit 15, I should say. Could you tell me how long Carol
25 McBride has worked for the company?

1 A I could not. It's been a long time.

2 Q Would the estimate of 30 years surprise you?

3 A No. No, a long time.

4 Q So ballpark 30 years?

5 A Sure, yeah.

6 Q What about Jerry Pachecko?

7 A Again, I'm not certain as to how long he's been around but
8 it's been a long time.

9 Q What's a ballpark range for Jerry Pachecko?

10 A For Jerry, I would say I would ballpark it 15, 15 years.

11 Q Okay. Now where is your office, Mr. Hankins?

12 A It's at 715 Orange Street.

13 Q And that's the main office for the company?

14 A It is.

15 Q Who else works at that office with you?

16 A There are the customer service folks; accountants; the
17 president of the company, Jed Hatfield; auditors who audit
18 paperwork; so there's probably 8, 8 to 10 folks.

19 Q And you mentioned that Neil Blanchette reports to the
20 office?

21 A He goes to the office to see -- to sign out the boot key
22 as he discussed and comes back there when he's finished to
23 write down the lots that he has audited.

24 MR. BREIHAN: No further questions.

25 MR. HOLMANN: I have nothing further for this witness.

1 HEARING OFFICER GLEASON: Mr. York at one point testified
2 that he would go to West Chester facility and sit there as an
3 attendant when the facility was first opening. Do any other
4 employees in this bargaining unit, in Wilmington, have they
5 ever transferred and worked at any other facilities out of the
6 West Chester area?

7 THE WITNESS: No.

8 HEARING OFFICER GLEASON: Any other questions?

9 MR. HOLMANN: No.

10 MR. BREIHAN: I'm through.

11 HEARING OFFICER GLEASON: All right, thank you. You can
12 step down.

13 (Witness excused.)

14 HEARING OFFICER GLEASON: Mr. Holmann, your next witness?

15 MR. HOLMANN: As to the challenged ballots portion of the
16 hearing, that concludes the Employer's presentation.

17 HEARING OFFICER GLEASON: Okay. Do you have any
18 additional witnesses you would like to call with respect to the
19 challenged ballots?

20 MR. BREIHAN: I believe we do. We could go ahead and take
21 a lunch recess, and call them after lunch.

22 HEARING OFFICER GLEASON: Let's do that. Let's take a
23 recess. Go off the record.

24 (Off the record from 12:54 p.m. to 1:40 p.m.)

25 HEARING OFFICER GLEASON: On the record.

1 A For that job, a good five months.

2 Q Do you remember when you started?

3 A I'll say like November -- no, not November. Probably like
4 June, somewhere around that, yeah, like June.

5 Q Were you working for Colonial before that?

6 A Yes.

7 Q What position did you have then?

8 A Cashier at the Government Center.

9 Q How long did you do that job?

10 A A year and a half.

11 Q Can you tell me a little bit about your job
12 responsibilities as a customer service employee?

13 A My main focus is to handle customers, make sure that they
14 come in, they pay, they know how to pay, where to pay. We have
15 a locker box, make sure that all the customers get their locker
16 box. A lot of their machines break down so I have to always
17 make sure that the customers get their locker keys right, make
18 sure that they pay. That's pretty much it.

19 Q Do you do any cleaning at the garage?

20 A Yes, I do, but very light, very light.

21 Q Can you kind of describe the type of cleaning you might do
22 on a regular day?

23 A A little bit of sweeping maybe if I see any, but my main
24 focus is customers.

25 Q Do you ever put boots on cars in your garage?

- 1 A Yes, I have.
- 2 Q How frequently would you say you do that?
- 3 A Maybe once every two months probably.
- 4 Q So the main thing that you do is work with the customers?
- 5 A Yes.
- 6 Q Does anybody else work at your location?
- 7 A Yes.
- 8 Q Who else works there?
- 9 A Say that again?
- 10 Q Who else works there with you?
- 11 A I have Anita Smith, Janai Clark, and we have a floater,
12 Jamil.
- 13 Q Okay. Do you use a scanner in your lot at all?
- 14 A No.
- 15 Q What do Anita and Jamil do in your lot? Is it similar to
16 what you're doing?
- 17 A Yes, it is. But their main focus when they come in is
18 cleaning.
- 19 Q Are there any tools at your workplace?
- 20 A Far as?
- 21 Q Screwdrivers or just any, anything that you might use to
22 fix equipment or anything?
- 23 A No.
- 24 Q You mentioned sometimes the machines break. What do you
25 have to do to fix those?

1 A I personally do not fix them. I just go on the handheld.
2 We do it by hand. Come inside the office, there's a machine
3 there and we use that, or we can use the cash register, type it
4 in, zoom it through the tickets, and that's about it.

5 Q Do you know the lot auditor, Neil Blanchette?

6 A I don't know him, but I've seen him probably like three,
7 four times.

8 Q Do you know what he does?

9 A Yes.

10 Q Can you describe it for me, just things that you've seen?

11 A Most of the times he's in front of a car.

12 Q Okay.

13 MR. HOLMANN: I'm sorry. I didn't understand that
14 response.

15 BY MS. ROMAN:

16 Q Can you repeat your answer to that?

17 A Most of the times he's in front of a car.

18 Q And what is he usually doing when he's standing in front
19 of a car?

20 A He has a machine. He's looking at the tag numbers or he's
21 in front of it looking at the bar code.

22 Q Would you ever do any tasks like that?

23 A No.

24 Q Does Neil ever fill in for you if you're out for a day or
25 something like that?

1 A No, he does not.

2 Q Do you know the skilled maintenance employee, Paul York?

3 A Yes.

4 Q Do you know what kind of work he does?

5 A Pick garbage, maintenance, maintenance work, light bulbs.

6 Q Does he ever bring anything to your garage or anything
7 like that?

8 A Yes. Tools sometimes.

9 Q What kind of stuff does he deliver?

10 A He doesn't deliver anything. He might fix something
11 there. And I don't know what's really like in his truck.

12 Q Does he do any of the same kind of work that you do with
13 the customers or anything like that?

14 A No.

15 Q How frequently do you see Paul and Neil?

16 A When?

17 HEARING OFFICER GLEASON: Can you just kind of clarify
18 once a month, once a week?

19 THE WITNESS: Maybe once a month, yes, once a month
20 definitely about once a month.

21 BY MS. ROMAN:

22 Q When you show up to work, where do you report?

23 A New Castle County Courthouse.

24 Q Do you know where the other lot workers that are Colonial
25 employees, where do they report every day?

1 A Everyone has their own facility that they report to.

2 Q Do you know where Paul and Neil report for work?

3 A Yes.

4 Q Where do they report?

5 A Well, I used to work at the Government Center, so
6 sometimes in the morning time I would see Mr. Paul and I would
7 see Mr. Neil right there.

8 Q Why would they be at the Government Center, is there an
9 office there or something?

10 A Well, Mr. Paul, he has sort of his own little office in
11 the back with tools and whatnot.

12 Q Would Paul or Neil ever fill in for you?

13 A No.

14 Q Would you ever fill in for them?

15 A No.

16 Q So if you have to be gone from work either on vacation or
17 because you're sick, who covers your shifts?

18 A Someone that I work with in my office.

19 Q Has this ever happened before where you're gone and
20 somebody has to cover your shift?

21 A No. I'm always there.

22 Q Okay. If Mr. York were out of town or something, would
23 you be able to cover his shift for him?

24 A No.

25 Q Why do you think that is?

- 1 A Mainly because I wasn't trying to be a maintenance person.
- 2 Q What about Mr. Blanchette, if he was gone would you be
- 3 able to cover for him? Would you be able to do his job?
- 4 A No.
- 5 Q Is that for the same reason?
- 6 A Yes.
- 7 Q Do Mr. York and Mr. Blanchette, do they ever work in your
- 8 lot or in your garage?
- 9 A Work, no. Far as doing the things that I do, no.
- 10 Q Why might they be in your lot?
- 11 A Picking up trash.
- 12 Q And Mr. Blanchette, what would he be doing in your lot if
- 13 he was there?
- 14 A Picking up a boot to use for another car out of our lot.
- 15 Q Do you ever work in Paul's office at the Courthouse lot?
- 16 A No. He does not have an office in the lot.
- 17 Q Who is your direct supervisor?
- 18 A Janai Clark.
- 19 Q Do you know if Paul or Neil report to Janai ever?
- 20 A No.
- 21 Q Do you know who they report to?
- 22 A No.
- 23 Q Do you know what Janai's title is?
- 24 A Supervisor.

1 Q Did you receive any type of training when you started your
2 job as a customer service person?

3 A Yes.

4 Q What type of training did you get?

5 A Just basically customer service, learn how to work the
6 register, learn how to assist the customers with the pay
7 station, with the locker boxes.

8 Q Did you get any different type of training when you were
9 working as a cashier?

10 A No.

11 Q Do you know what type of training Paul and Neil might get?

12 A No.

13 Q Have you ever seen Paul or Neil use tools to do their
14 jobs?

15 A Yes.

16 Q What type of tools?

17 A They might use like you said, like earlier he said
18 screwdrivers. I see nails. A couple of times I have seen him
19 pull out a ladder.

20 HEARING OFFICER GLEASON: Who is that, which one?

21 THE WITNESS: Mr. Paul.

22 BY MS. ROMAN:

23 Q Does Paul ever bring snow removal supplies to your garage?

24 A I haven't seen him, no, not as far as I've been there, no.

1 Q Sure, okay. So have you ever done any snow removal for
2 Colonial?

3 A No.

4 Q How much do you make?

5 A \$9.50 an hour.

6 Q Do you know anything about Paul and Neil's salary or wages
7 or anything?

8 A Only from what the testimony has been said today.

9 Q How do you usually get your weekly schedule?

10 A It's pretty much already adjusted. It's basically the
11 same, but Janai.

12 Q So your hours are pretty much set --

13 A Yes.

14 Q -- every week. Okay.

15 A Yes.

16 Q What are your normal hours?

17 A Monday through Friday.

18 Q What hours?

19 A 8:30 to 3:00.

20 Q Do you know if Neil and Paul work on similar shifts to you
21 and the other garage workers?

22 A Only from what was testimony today.

23 Q Do Paul and Neil generally need to know how to run the
24 cash register or help customers from what you've seen?

25 A No.

1 MS. ROMAN: Okay, I think that's all I have for now.

2 Thank you.

3 CROSS-EXAMINATION

4 BY MR. HOLMANN:

5 Q Hi. Do you have any knowledge what Paul or Neil do when
6 they're not in the building where you work?

7 A Yes.

8 Q How do you know what they do when they're not in the same
9 building you are?

10 A Because when I used to work at the Government Center, I
11 used to see Mr. Paul.

12 Q I'm asking about now. How do you know what they're doing
13 at other locations?

14 A Oh, I don't know.

15 Q You don't know, do you?

16 A No. I'm not everywhere.

17 Q How do monthly parkers get in and out of your location?

18 A They have a key card.

19 Q What happens when their key card doesn't work?

20 A It's shut off and they cannot enter.

21 Q What do you have to do then?

22 A If I have to do something, I will have to tell my manager.

23 Q And then what happens?

24 A She will fix it. Most of the times I would, if she will
25 ask me, call the office.

1 Q You testified in response to questions from Ms. Roman
2 about what you did when the machine breaks. What machine were
3 you talking about?

4 A What machines? Any machine.

5 HEARING OFFICER GLEASON: The kiosk machines? What
6 machines are we talking about here?

7 THE WITNESS: It's a lot of machines. It's kiosk. It's
8 machines when you go over there and you pay for tokens.

9 HEARING OFFICER GLEASON: And just one other
10 clarification, what's the lock box?

11 THE WITNESS: A lock box is a lot of people are coming and
12 you can't bring your cell phones in the office -- I mean in the
13 courthouse, so you have to pay to get a locker.

14 BY MR. HOLMANN:

15 Q Did you do that when you were at -- the lock box thing
16 when you worked at the other location, at the Government
17 Center?

18 A No. I was a cashier.

19 Q Did anybody do that at the Government Center?

20 A No. They're cashiers with me. I'm a cashier.

21 Q So it's only at the County Courthouse where the employees
22 have to handle these lock boxes?

23 A Yes.

24 Q Is there any other location where that happens?

25 A I don't believe so. I don't know.

1 Q Do you ever use a handheld device to help customers?

2 A No.

3 Q You said that you see Paul in the building where you work
4 fixing things. Tell me what he fixes.

5 A A couple of months ago, there was a fixture that had fell
6 off the roof in the garage. He came. He put it back up.

7 Q And he changes lightbulbs?

8 A Yes. I have seen him change lightbulbs at the Government
9 Center.

10 Q And I believe you said he takes out -- removes trash, is
11 that correct? Does anybody else remove trash?

12 A Yes.

13 Q Who?

14 A Many of us.

15 Q Many of you?

16 A Yes.

17 Q Are you one of them?

18 A Yes.

19 MR. HOLMANN: I have no further questions.

20 HEARING OFFICER GLEASON: In addition to yourself, you
21 said many people, you remove trash. Who else? Can you give us
22 some names of people who remove trash and what their job titles
23 are?

24 THE WITNESS: Anita Smith. She is the supervisor for
25 night shift and she is maintenance supervisor.

1 HEARING OFFICER GLEASON: Anyone else?

2 THE WITNESS: Yes, Jamil. I believe his name is Weeks, I
3 believe. What's his last name? Mason? Mason. And the only
4 time I really have to take out the trash is when it's like
5 real, real light; real, real light and I have nothing else to
6 do. Sometimes they want us to be moving, making it seem like
7 we're not just sitting there.

8 HEARING OFFICER GLEASON: Any redirect?

9 THE WITNESS: It's nothing that I really have to do.

10 MS. ROMAN: Just a couple of questions.

11 REDIRECT EXAMINATION

12 BY MS. ROMAN:

13 Q Can you kind of clarify what you mean remove trash? Is
14 that just get it out of the trashcans or are you taking it
15 somewhere outside of the garage?

16 A No. I don't take anything outside of the garage.

17 Q Okay. So can you describe how you remove the trash?

18 A We might have a personal trashcan inside. We have
19 personal trashcans outside of the pay station and they are
20 very, very small. I might take it out if it's over filling or
21 I might pick some trash up around the bin, put it back in
22 there. That's about it.

23 Q Okay. So you're not putting large trash bags in
24 dumpsters, for example?

25 A No, no.

1 Q And you've never used a company car or anything to --

2 A No.

3 Q -- to remove trash?

4 A No.

5 MS. ROMAN: Okay. I don't have anything further.

6 HEARING OFFICER GLEASON: Mr. Holmann?

7 RECROSS EXAMINATION

8 BY MR. HOLMANN:

9 Q When you worked at the Government Center, who pulled the
10 trash there?

11 A Mr. Paul and Russell.

12 Q Russell?

13 A Yes.

14 Q Russell Mason?

15 A No, his last name is something different.

16 Q Russell Marshall?

17 A Yes.

18 Q Who pulls the trash at the facility where you work now
19 regularly?

20 A That would be the nighttime super manager (sic).

21 Q Who is that?

22 A Anita Smith.

23 MR. HOLMANN: Nothing further.

24 HEARING OFFICER GLEASON: All right.

25 MS. ROMAN: I don't have anything else.

1 HEARING OFFICER GLEASON: Okay, thank you. You can step
2 down.

3 (Witness excused.)

4 HEARING OFFICER GLEASON: Mr. Breihan, you can call your
5 next witness.

6 MR. BREIHAN: Sure. We'd like to call Brandy Gordy.

7 HEARING OFFICER GLEASON: Hi, please take a seat right
8 here.

9 (Whereupon,

10 BRANDY GORDY,
11 was called as a witness by and on behalf of the Petitioner, and
12 after having been duly sworn was examined and testified as
13 follows:)

14 HEARING OFFICER GLEASON: You can have a seat. Can you
15 stay your name and spell it for the record?

16 THE WITNESS: Brandy Gordy, B-R-A-N-D-Y, Gordy, G-O-R-D-Y.

17 HEARING OFFICER GLEASON: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BREIHAN:

20 Q Hi, Ms. Gordy.

21 A Hi.

22 Q Thanks for joining us today. I've just got a few
23 questions for you. I'll start out by asking you were do you
24 work?

1 A I work at -- I work for Colonial Parking at the
2 Renaissance Building.

3 Q What address is the Renaissance Building?

4 HEARING OFFICER GLEASON: I was just going to say for my
5 clarification can we go by addresses because that's how it's
6 listed on the notice of hearing.

7 THE WITNESS: 405.

8 HEARING OFFICER GLEASON: What is it, 405?

9 MR. BREIHAN: It's listed as 401.

10 HEARING OFFICER GLEASON: 401 King Street?

11 MR. BREIHAN: Yeah, 401 King.

12 BY MR. BREIHAN:

13 Q Does Colonial own that lot?

14 A I think it's contract by Commonwealth.

15 Q What is your position?

16 A Customer service.

17 Q How long have you worked in that job?

18 A I've been at the Renaissance maybe six years, seven years,
19 somewhere between that. I started off at 6th and Shipley.

20 Q How long ago did you start working for the company?

21 A It'll be 11 years in June.

22 Q And so besides 6th and Shipley, and 401 King Street, have
23 you worked at any other locations for the Employer?

24 A Yes. I worked at OCC.

25 Q OCC. And which --

1 A Walnut.

2 Q -- address is that?

3 A I'm not for sure of their address. I know it's on Walnut.

4 Q Okay, that might be outside the proposed unit. Did you
5 hold similar positions at those locations? Were you also a
6 cashier there?

7 A At 6th and Shipley, I was a cashier.

8 Q Okay. And OCC?

9 A OCC, I was a cashier as well.

10 Q Now could you describe for us a little bit your primary
11 job responsibilities as a cashier? What do you do on a normal
12 day?

13 A I'm not a cashier now.

14 Q Oh, sorry, customer service.

15 A I tend to the customers. We have pay stations so 9 times
16 out of 10 I'll help them if they have problems with their
17 credit cards paying going out.

18 Q Are you issuing validations to people?

19 A No.

20 Q No? Do you handle cash at all?

21 A Time to time, if the machine breaks down.

22 Q Do you have a backup cashier or cash register or
23 something?

24 A No. My supervisor will bring me a bank over in the
25 morning if our pay station is down. And then I assist the

1 customers on their way out if they have to leave and pay with
2 cash.

3 Q Are there periods of time where the pay station is down
4 for --

5 A PS.

6 Q -- a few days or --

7 A Yes.

8 Q Who ultimately will fix a pay station if it's down?

9 A If I have a problem at my location, we'll have to get a
10 service call put in and then you have to have a company come
11 out and fix our service.

12 Q So it's like a third party contractor?

13 A Yes, yes.

14 Q Do you fix any machines at your lot?

15 A I do not.

16 Q Do you have any tools to perform any work at your lot?

17 A I do not.

18 Q Does anyone else work at your location?

19 A Yes.

20 Q How many people do you work with?

21 A Well, I have a night lady that comes in at 4:30, but I get
22 off at 3:00. So between Melanie or Anita or Jamil, they'll
23 cover my shift -- well, they'll cover the 3:00 shift once I'm
24 gone until the night lady comes in.

1 Q Those people that you just mentioned, is that Melanie who
2 we just heard from?

3 A Yes. Yes, it is.

4 Q And then other people that work at her lot?

5 A Yes, it is.

6 Q Why is it that they would cover that period of time?

7 A I don't know.

8 Q Does it have something to do with the proximity of the
9 lots, I mean how close they are to one another?

10 A I think it has something to do with the timing being as
11 though I get off at 3:00, the night lady doesn't come in until
12 4:30, so somebody has to cover that shift when I'm leaving till
13 she comes in.

14 Q Is your lot near Melanie's lot?

15 A Yes, it is.

16 Q Across the street?

17 A Directly.

18 Q Okay. You know -- are you familiar with Neil Blanchette?

19 A No, not at all.

20 Q You don't really see his work at all?

21 A I don't see him at all.

22 Q Do you do any booting at your lot?

23 A I do not.

24 Q Do you have a -- you heard the testimony earlier today --

25 A Yes.

- 1 Q -- from Mr. Blanchette?
- 2 A Yes.
- 3 Q Do you have a monitor that --
- 4 A No.
- 5 Q -- he described?
- 6 A No.
- 7 Q The scanner?
- 8 A No.
- 9 Q Do any of your co-workers?
- 10 A No.
- 11 Q From what you heard of his testimony today, do those tasks
- 12 -- do you perform any of those same tasks?
- 13 A No.
- 14 Q You say that -- is that every day that somebody has to
- 15 cover that period of time from 3:00 to 4:30 at your lot?
- 16 A Yes.
- 17 Q Have you ever seen Neil Blanchette cover that?
- 18 A No.
- 19 Q Have you ever seen Paul York come and --
- 20 A No.
- 21 Q -- relieve you from duty?
- 22 A No.
- 23 Q Okay. Are you familiar with Paul York?
- 24 A To a certain -- no, no.
- 25 Q He never comes to your lot?

- 1 A No.
- 2 Q Did he ever come to your previous lots that you worked at?
- 3 A When I worked at OCC.
- 4 Q Okay. What sort of things would you see him do there?
- 5 A Trash pickup.
- 6 Q Any fixing things at that location?
- 7 A I didn't see him fix anything.
- 8 Q Okay. That was nine years ago or so you said?
- 9 A It was.
- 10 Q Okay. So do you ever see Paul now?
- 11 A No.
- 12 Q You heard him describe the things that he does today?
- 13 A Yes.
- 14 Q Do you ever do any of those tasks?
- 15 A No.
- 16 Q Do any of your co-workers at your location perform those
- 17 tasks?
- 18 A The night -- oh, do I perform any of his tasks?
- 19 Q Yeah.
- 20 A Well, I mean I clean up. I sweep up. I'll wipe down the
- 21 equipment in the garage. I sweep the garage. That's pretty
- 22 much it.
- 23 Q Do you use a power sweeper?
- 24 A No.

- 1 Q Now so are most of -- are you doing any other sort of
2 maintenance tasks other than just sweeping up --
- 3 A No.
- 4 Q -- and light cleaning?
- 5 A No.
- 6 Q Are you going around and hauling out trash bags --
- 7 A No.
- 8 Q -- to dumpsters or anything like that?
- 9 A No.
- 10 Q Do you ever have access to a truck --
- 11 A No.
- 12 Q -- to do that sort of thing? Do you have a cell phone at
13 your location?
- 14 A I have a landline phone.
- 15 Q A landline phone. And what do you use that for?
- 16 A To clock in and out.
- 17 Q At the start of your shift, do you report directly to your
18 lot?
- 19 A Yes.
- 20 Q Do you ever have reason to go to the main office?
- 21 A No.
- 22 Q What about your fellow workers at your location, do they
23 do the same? Do they report directly to your location?
- 24 A The night lady does, the evening lady, yes.

1 Q Do you or any of the other customer service workers, you
2 or the night person that works at your location, do you ever
3 fill in for Neil or Paul?

4 A No.

5 Q Who is your direct supervisor?

6 A Rob Clark.

7 Q Could you tell me what Rob Clark's title is?

8 A Well, Janai is the supervisor. If something doesn't go --
9 well, I report to Janai, Janai may have an issue or something
10 or have to talk it over with Rob. That's it.

11 Q So you directly report to Janai?

12 A Yes.

13 Q And do you know what Janai's title is?

14 A She's a supervisor. She's like area manager, facility
15 manager, I don't -- supervisor, area manager.

16 Q Did you hear the Employer's testimony before, I'm sorry,
17 Mr. Hankins' testimony about the sort of structure, the area
18 managers and facility managers --

19 A Yeah.

20 Q -- those descriptions?

21 A Yes.

22 Q Do you think -- do you believe Janai is a facility manager
23 or an area manager?

24 A I think she's an area manager. It's either area manager
25 -- I really don't know.

1 Q Okay. You're not -- you're unsure.

2 A I'm not really for sure.

3 Q That's fine, that's fine.

4 A I just know I report to her.

5 Q Okay. You report to her.

6 A Yes.

7 Q And she report to Rob.

8 A Yes.

9 HEARING OFFICER GLEASON: And she is not on site?

10 THE WITNESS: No.

11 HEARING OFFICER GLEASON: She's at the main office?

12 THE WITNESS: No. She's at the courthouse.

13 BY MR. BREIHAN:

14 Q Do you know if Neil or Paul ever report to Janai?

15 A No.

16 HEARING OFFICER GLEASON: You don't know?

17 THE WITNESS: I don't know. I don't know.

18 BY MR. BREIHAN:

19 Q What type of training did you receive for your job?

20 A Which one? When I first started?

21 Q Currently, customer service.

22 A Oh, three-day training, operate the computer, wipe around
23 and sweep around the garage, wipe the equipment, assist the
24 customers, pretty much it.

25 Q Who provided that training?

1 HEARING OFFICER GLEASON: What was 3A training?

2 THE WITNESS: 3A training?

3 HEARING OFFICER GLEASON: Is that what you said?

4 THE WITNESS: No.

5 HEARING OFFICER GLEASON: Oh, I'm sorry.

6 THE WITNESS: Who trained me?

7 BY MR. BREIHAN:

8 Q Who trained you, yes?

9 A Fran Walker.

10 Q Does she still work --

11 A No, she's no longer here. She's deceased.

12 Q Oh, she's deceased. Do you know what position Fran Walker
13 had?

14 A She was a high-upper. She was a boss, a manager.

15 Q Was she an area manager?

16 A I believe an area manager.

17 Q Has her position been filled yet, do you know?

18 A I don't know.

19 Q When did she pass away?

20 A Last year, I want to say June or July, yeah, sure, June or
21 July.

22 Q What is your current hourly wage?

23 A \$9.60.

24 Q \$9.60. Do you receive yearly raises?

25 A I received one last year.

1 Q How much was that raise for?

2 A I think 20 cents, maybe 30 cents.

3 Q So let's see --

4 HEARING OFFICER GLEASON: Was that on your anniversary?

5 THE WITNESS: Yes.

6 HEARING OFFICER GLEASON: Is that your work anniversary
7 wage increase?

8 THE WITNESS: Um-hum.

9 BY MR. BREIHAN:

10 Q If you could look at Company Exhibit 15? Is that there?
11 Do you see your name on this?

12 A I do.

13 Q Do you see the pay rate next to it?

14 A I do.

15 Q Is that an accurate pay rate?

16 A No.

17 Q How much is it off by? Is it off by -- well, you don't
18 have to answer, it's on there.

19 A And I'm not a cashier.

20 Q Job title is wrong as well?

21 A Yes.

22 Q Okay. And so this is -- so \$9.60 is your pay rate. And
23 could you remind us again how long you've been working for the
24 company?

25 A It'll be 11 years in June.

1 Q Do you receive bonuses?

2 A Christmas.

3 Q Christmas bonus. Usually, how much do you receive?

4 A Last year -- this year Christmas, well, last year

5 Christmas I got \$100. Year before last, I got \$275.

6 Q What about the year before that, do you remember?

7 A Like \$220.

8 Q So it dropped this past year?

9 A Yes.

10 Q When did that -- when did you get that? Was it right
11 around Christmas?

12 A I think it was December 24th, the 24th or the 23rd.

13 Q Do you have a standard weekly schedule?

14 A My schedule is normally basic. I work from 7:00 to -- I
15 mean 8:00 to 3:00 every day, Monday through Friday.

16 Q 8:00 to 3:00 p.m.?

17 A Yes.

18 MR. BREIHAN: Okay, nothing further.

19 CROSS-EXAMINATION

20 BY MR. HOLMANN:

21 Q Ms. Gordy, I think you testified that part of your job
22 duty is to answer customer questions?

23 A Yes, I assist customers.

24 Q Can you tell me some of the questions you have to answer?

25 A Which way does the credit card go.

1 Q That's the primary one?

2 A Pretty much.

3 Q Okay. Any others that you hear?

4 A What's wrong with the machines? Why are they not working?

5 Pretty much that.

6 Q How many customers do you talk to every day?

7 A It all depends. Majority of the customers I talk to are
8 on their way out, if they're going on lunch break or they're
9 ready to leave for the remainder of the day, or they're on
10 their way into work and they stop by, hey, Brandy. That's
11 pretty much it.

12 A What do you do when you're not talking to customers?

13 Q Either walking the garage, wiping down the equipment,
14 trying to keep busy.

15 A When you're walking the garage, do you have anything
16 you're supposed to be looking for or what's the purpose of
17 walking the garage?

18 Q I walk the garage due to the fact that I work across the
19 street from Wildlife Café, a little restaurant/bar and they
20 have parties there. So sometimes people leave their bottles,
21 trash, or whatever, and I sweep it up, clean it up.

22 MR. HOLMANN: All right, I have no further questions.

23 MR. BREIHAN: Nothing further from us.

1 HEARING OFFICER GLEASON: I have one question. You
2 mentioned a couple of times that you clean equipment. What
3 does the --

4 THE WITNESS: I wipe down equipment, pay stations.

5 HEARING OFFICER GLEASON: Okay.

6 THE WITNESS: Yes.

7 HEARING OFFICER GLEASON: So you're just basically wiping
8 them down with a rag to --

9 THE WITNESS: Yes.

10 HEARING OFFICER GLEASON: Okay. Thanks. You can step
11 down.

12 (Witness excused.)

13 HEARING OFFICER GLEASON: Call your next witness.

14 MR. BREIHAN: Yes. We'll call Margaret Harding next.

15 HEARING OFFICER GLEASON: Raise your right hand.

16 (Whereupon,

17 MARGARET HARDING,
18 was called as a witness by and on behalf of the Petitioner, and
19 after having been duly sworn was examined and testified as
20 follows:)

21 HEARING OFFICER GLEASON: You can have a seat. And then
22 would you state your name and spell it for the record?

23 THE WITNESS: My name is Margaret Harding, M-A-R-G-A-R-
24 E-T, last name H-A-R-D-I-N-G.

25 DIRECT EXAMINATION

1 BY MR. BREIHAN:

2 Q All right, hi, Ms. Harding.

3 A Hi.

4 Q Thanks for joining us today. Where do you work?

5 A I work for Colonial Parking. And I work for High Park
6 Garage, Shipley Street. I don't know the address. I always
7 use the Orange Street side so I don't know the exact address
8 for Shipley Street.

9 Q Is that 713 Shipley Street? Does that sound right? Or is
10 that -- let's see.

11 UNIDENTIFIED SPEAKER: 903.

12 BY MR. BREIHAN:

13 Q Yes, sorry, 903 Shipley Street, right?

14 A 903.

15 HEARING OFFICER GLEASON: You're at 903?

16 THE WITNESS: Yes.

17 HEARING OFFICER GLEASON: Okay.

18 BY MR. BREIHAN:

19 Q Does the Employer own that parking lot?

20 A No.

21 Q Do they have a contract with the facility?

22 A Yes.

23 Q What is your position there?

24 A Cashier/maintenance supervisor/supervisor customer
25 service.

- 1 Q Okay. A lot thrown in there, huh?
- 2 A Yeah.
- 3 Q How long have you worked in that job?
- 4 A Between eight and nine years.
- 5 Q Is that how long you've worked for the company?
- 6 A Yes.
- 7 Q Have you always been at the one location?
- 8 A No. I've been working other places besides High Park,
9 too.
- 10 Q Do you remember which other locations you worked at?
- 11 A As far as PNC -- where is the one my daughter worked at,
12 1201 --
- 13 Q 1201 Market Street?
- 14 A Yes.
- 15 Q So you've worked at a few different locations?
- 16 A Yeah, a few different ones, yeah, throughout.
- 17 Q You just mentioned your daughter. Does your daughter also
18 work for the company?
- 19 A Yes.
- 20 Q Who might she be?
- 21 A Emma Harding.
- 22 Q Where does she work?
- 23 A She works at, I believe it's 1201.
- 24 Q Okay. 1201 Market?
- 25 A Yes.

1 Q Do you have any other family members work for the company?

2 A Yes.

3 Q Who?

4 A I have my brother. His name is Marcus Harding. I have my
5 sister. Her name is Nairobi Harding.

6 Q They no longer work for the company though?

7 A No. Oh, and Taylor Harding. That's my other daughter,
8 too.

9 Q Okay. What are your primary job responsibilities right
10 now?

11 A What I have to do at my garage is assist customers if they
12 need help at the pay station. If anything goes wrong at the
13 exits, tickets not working at the exits, I'll go out there and
14 assist customers as far as making sure their tickets are
15 inserted correctly. If not, if they can't read, I have a key
16 to open the gate and let the customers out because it's not
17 reading the way they print them out. Supervise the garage,
18 walk around, do counts, space counts. Clean the garage. Wipe
19 down pay stations, gate arms, and things like that, and
20 maintenance office.

21 Q Do you handle cash?

22 A Sometimes, not a lot.

23 Q Is that when things break down?

24 A Yes. If a customer has a problem with payment out there
25 at the pay station, they would have to come to the office.

1 Customers with the stickers, the little stickers we have, we
2 have to validate those in the office.

3 Q So you're also filling in validations for people? You're
4 doing validations?

5 A Yes.

6 Q What about one-hour time stamps, do you do those?

7 A Those too, yes.

8 Q What does that include?

9 A Wherever they are, they have the hour stamp. Like we have
10 a dentist's office around the corner that they use hourly
11 stamps. And they would bring, depending on how long they've
12 been at the doctor's, the dentist's office, they would give
13 them how many stamps and I would have to validate those stamps.

14 Q Now you said that part of your job title is maintenance
15 supervisor, right?

16 A Yes.

17 Q Could you tell us what maintenance work, the maintenance
18 work you're doing includes?

19 A You know, cleaning the garage, sweeping up trash, making
20 sure the trashcans is emptied. We have a trashcan on every
21 floor. Making sure the stairwells stay clean. Wiping down
22 dust in the stairwells. Wiping down the signs, gate arms. And
23 if the gate arms, well, if the gate equipment needs tickets, I
24 fill those up, also, replace the tickets.

25 Q Okay. Do you use any tools to perform those jobs?

1 A No.

2 Q Do you fix any machines at your lot?

3 A Only if the tickets get stuck in the machine, I will go in
4 and retrieve the ticket out directly like that, yeah. But as
5 far as tools, no.

6 Q So just minor troubleshooting?

7 A Yes.

8 Q If a machine breaks down, what do you do?

9 A I'll call someone to get it fixed.

10 Q Who is that someone?

11 A I will call Bob first and then I guess Bob will call --

12 Q Call who?

13 A I guess Jeff or somebody to come.

14 HEARING OFFICER GLEASON: What's Bob's last name and his
15 job title, do you know?

16 THE WITNESS: Bob Long is, I believe, if I'm not mistaken,
17 facility manager.

18 BY MR. BREIHAN:

19 Q Is he your direct supervisor?

20 A Yes, things that I would report to him, some of the
21 things, yes.

22 Q Who ends up ultimately coming and fixing those things when
23 they break?

24 A Jeff would.

25 Q Jeff Garrison would?

- 1 A Yes.
- 2 Q Have you ever seen Paul York fix those?
- 3 A No.
- 4 Q Does anyone else work at your location?
- 5 A Yes.
- 6 Q Who?
- 7 A Johnheem Boardley.
- 8 Q What tasks does Johnheem perform?
- 9 A Johnheem performs actually the same things that I do.
- 10 Q Same type of work?
- 11 A Yes.
- 12 Q Do you know who the lot auditor, Neil Blanchette, is?
- 13 A Yes.
- 14 Q Did you hear the testimony today about what he does each
15 day?
- 16 A Yes.
- 17 Q Do you do any of those job tasks?
- 18 A No.
- 19 Q Does Johnheem ever do those tasks?
- 20 A No.
- 21 Q Are you familiar with Paul York?
- 22 A Yes.
- 23 Q You heard him speak about the job duties that he does
24 today?
- 25 A Yes.

1 Q Do you do any of that work?

2 A As far as cleaning, you know, removing trash, trash from
3 floors and putting it in a spot where he comes and get it, and
4 picks it up.

5 Q Okay, that's interesting. So I want to talk a little bit
6 more about that. In your lot, it sounds like you're going
7 around and collecting trash from individual trashcans, is that
8 right?

9 A Yes. Actually, me and Johnheem does the same thing. He
10 has a side that he does and I have a side that I do. So we
11 both collect trash from each side if it's full, take it down,
12 put it in the spot where Pauly can pick it up.

13 Q Where is that spot? Where do you put it?

14 A It's by the entrance near Shipley Street.

15 Q Is there a dumpster or something or just a --

16 A No.

17 Q You just put trash bags over by this corner of the
18 building?

19 A Yes.

20 Q And then what does Pauly do then?

21 A He'll come by and see if we have trash there. And if it's
22 trash there, he will come and remove it.

23 Q So he's not going through the facility and cleaning.

24 A No.

25 Q He's just picking up trash from that location?

- 1 A Yes.
- 2 Q How is he picking up the trash from that location?
- 3 A He grabs every bag and puts it in the truck.
- 4 Q In his truck?
- 5 A By hand. Yes.
- 6 Q That's a company truck?
- 7 A Yes. Or his truck, in his truck.
- 8 Q Okay. Do you report to your lot at the beginning of the
- 9 shift?
- 10 A Yes.
- 11 Q Do you clock in and clock out there?
- 12 A Yes.
- 13 Q How do you clock in and clock out?
- 14 A On the computer.
- 15 Q You have a computer at that location?
- 16 A Yes.
- 17 Q Do you have a phone at that location?
- 18 A Yes.
- 19 Q It's a landline?
- 20 A I have a landline and I have a cell phone.
- 21 Q The lot has a cell phone?
- 22 A Yes.
- 23 Q You don't check out that cell phone each day, right?
- 24 A No.
- 25 Q Do you ever go into the main office?

- 1 A 715?
- 2 Q Yeah.
- 3 A No. I mean no, no, for nothing, no.
- 4 Q I'm not asking about some of the more recent trips that
5 workers have made.
- 6 A Oh, okay.
- 7 Q But just generally.
- 8 A No.
- 9 Q Does Johnheem also report to your lot at the beginning of
10 the shift?
- 11 A Yes.
- 12 Q Do you know where Neil and Paul report?
- 13 A I don't.
- 14 Q Do Paul or Neil ever fill in for your and Johnheem?
- 15 A Never.
- 16 Q Do you and Johnheem ever fill in for Paul and Neil?
- 17 A No.
- 18 Q What type of training did you receive for your job?
- 19 A Well, I've been trained on how to work the pay stations if
20 they go down, if tickets get stuck. Cashier training for
21 working the registers and doing tickets. They train us on how
22 the tickets are being done. And basically that's it.
- 23 Q Who trained you?
- 24 A Fran -- well, no, I'm sorry. Ms. Carol.
- 25 Q Okay, Ms. Carol?

- 1 A Yes.
- 2 Q Is that Carol McBride?
- 3 A Yes.
- 4 Q She's another cashier?
- 5 A Yes.
- 6 Q What's your hourly wage?
- 7 A I make \$9.81.
- 8 Q \$9.81, okay. And you've been working again for the
- 9 company for nine years, is that right?
- 10 A Yes, close to nine, just between eight and nine.
- 11 Q Do you know who determines your pay?
- 12 A As far as?
- 13 Q Who decides when you get a raise?
- 14 A I believe that's up to the human resources.
- 15 Q Okay. How often do you receive raises?
- 16 A Every anniversary, when the anniversary comes up.
- 17 Q How much have your increases been? How much have the
- 18 raises been in the past?
- 19 A Well, I can tell you how much it was for the last two
- 20 years. This year, this year that passed, I believe a 28 cent
- 21 increase. And then last year was I think if I'm not mistaken
- 22 30 cents.
- 23 Q Okay. Do you know anybody else besides Neil Blanchette
- 24 who is a lot auditor?
- 25 A No.

1 Q You don't know anybody else who used to work as a lot
2 auditor?

3 A Oh, my brother did when he worked there.

4 Q Oh, he did.

5 A Yeah, he did.

6 Q How long ago was that?

7 A It's been a while. I'll say probably maybe three.

8 Q Three years ago?

9 A Yeah.

10 Q How long did your brother work for the company total?

11 A Actually, I'm not sure. Actually, I'm not sure how long
12 it's been.

13 Q Was he there before you?

14 A Yes.

15 Q Okay, a little bit?

16 A Yes.

17 Q Do you know if when he was working as a lot auditor if he
18 was paid more than you?

19 MR. HOLMANN: Objection, foundation.

20 MR. BREIHAN: Can you elaborate?

21 HEARING OFFICER GLEASON: Yeah, can you explain that?

22 MR. HOLMANN: Is there any basis for this witness to know
23 what her brother made?

24 MR. BREIHAN: I asked her if she did know.

1 HEARING OFFICER GLEASON: I'm going to overrule the
2 objection. You can answer the question.

3 THE WITNESS: Yes, I know how much he made.

4 BY MR. BREIHAN:

5 Q Do you remember if he made more than you did?

6 A Yes.

7 Q Do you remember how much --

8 A Yes.

9 Q -- exactly?

10 A Yes.

11 Q Could you tell us?

12 A He said he made \$10.

13 Q Okay. Do you ever receive bonuses?

14 A Yes.

15 Q When do you usually receive bonuses?

16 A Christmas.

17 Q And usually how much?

18 A Well, this year I got \$100, this past Christmas. The year
19 before that it was \$200.

20 Q Do you remember the year before that?

21 A Probably \$200.

22 Q Okay. Do you have a standard weekly work schedule?

23 A Yes.

24 Q What are those hours that you work normally?

25 A 8:00 a.m. to 4:00 p.m.

1 Q 8:00 a.m. to 4:00 p.m. What hours does Johnheem normally
2 work?

3 A 3:30 to 7:30.

4 Q So is Johnheem part-time?

5 A Yes.

6 MR. BREIHAN: Just one moment. Okay, no further
7 questions.

8 CROSS-EXAMINATION

9 BY MR. HOLMANN:

10 Q Ms. Harding, do you as part of your job duties spend time
11 walking around the garage at any time?

12 A Yes.

13 Q Tell me what you do when you're doing that.

14 A When I walk around, I'm walking around counting spaces.

15 Q Why are you counting spaces?

16 A They want to keep a count of how many, I guess how many
17 people park in the garage.

18 Q So that's part of your responsibility is to count?

19 A Yes, I do that every day. Yes.

20 Q While you're doing that, do you do any of the trash duties
21 that you talked about earlier?

22 A Yes.

23 Q Do you ever fill in for Brandy Gordy?

24 A No.

25 Q Does Brandy Gordy ever fill in for you?

- 1 A No.
- 2 Q A What about Kenny Lewis, do you know him?
- 3 A Yes.
- 4 Q Do you ever fill in for him?
- 5 A No.
- 6 Q Does he ever fill in for you?
- 7 A No.
- 8 Q What about Russell Marshall, do you ever fill in for him?
- 9 A No.
- 10 Q Does he ever fill in for you?
- 11 A No.
- 12 Q Who fills in for you?
- 13 A As far as?
- 14 Q If you're not there?
- 15 A Johnheem.
- 16 Q Anybody else?
- 17 A No.
- 18 MR. HOLMANN: No further questions.
- 19 HEARING OFFICER GLEASON: Any redirect?
- 20 MR. BREIHAN: No redirect.
- 21 HEARING OFFICER GLEASON: All right, thank you. You may
- 22 step down.
- 23 (Witness excused.)
- 24 HEARING OFFICER GLEASON: Do you have any additional
- 25 witnesses?

1 MS. ROMAN: Yes, one more. We'd like to call Anita Smith.

2 HEARING OFFICER GLEASON: Would you please raise your
3 right hand?

4 (Whereupon,

5 ANITA SMITH,
6 was called as a witness by and on behalf of the Petitioner and
7 after having been duly sworn was examined and testified as
8 follows:)

9 HEARING OFFICER GLEASON: Have a seat.

10 THE WITNESS: Thank you.

11 HEARING OFFICER GLEASON: And please state your name and
12 spell it for the record.

13 THE WITNESS: My name is Anita Smith, A-N-I-T-A,
14 S-M-I-T-H.

15 DIRECT EXAMINATION

16 BY MS. ROMAN:

17 Q Anita, where do you work?

18 A At the New Castle County Courthouse through Colonial
19 Parking.

20 Q What is your position there?

21 A Right now I'm a night supervisor.

22 Q How long have you been in that position?

23 A Since September 27th.

24 Q Of last year?

25 A Yeah, 2016.

1 Q Okay. Have you worked in any other jobs with Colonial?

2 A No. I started at the courthouse.

3 Q Can you tell me a little bit about your job
4 responsibilities?

5 A Well, I clean the garage at night, the courthouse garage,
6 mainly just trash and picking stuff up off the ground, and the
7 gate arms, cleaning off the machines like the pay station and
8 where the key cards go.

9 Q Do you interact with customers at all?

10 A All the time.

11 Q What kind of things do you do with the customers? What
12 kind of questions do they have for you?

13 A Most of them want either tokens, they want to know why the
14 gate not raising, and they ask crazy questions.

15 Q How many other workers work at your location?

16 A There's three of us working and then there's two bosses.

17 Q Who are the workers that are working with you?

18 A Melanie Williams and Jamil Mason.

19 Q What kind of jobs are they performing in the garage?

20 A Melanie is a cashier in the daytime. Jamil does what I
21 do, but he's a floater. He's different locations.

22 Q Do you ever have to fix any machines at your location?

23 A They better not let me fix no machines. No. I do have to
24 unjam like the machines when the tickets, I have to like open

1 them up and unjam them, like take tickets out. But that's as
2 far as I go with the machines.

3 Q Did you hear the testimony that Mr. Blanchette gave today?

4 A Yes.

5 Q Does it sound like he does work similar to what you're
6 doing?

7 A No, he doesn't do what I do.

8 Q Do you see Neil very much?

9 A Only when he got to use the bathroom.

10 Q Did you hear Paul York's testimony today?

11 A Yes.

12 Q Does he do any of the same kind of jobs that you do?

13 A No.

14 Q How frequently do you see Paul?

15 A I see him when we get like an order in, he drops off the
16 order at the courthouse. He did bring us the calcium for the
17 snow and ice. Like Melanie said, the thing fell. He fixed
18 that with some wire.

19 HEARING OFFICER GLEASON: What were the orders? What does
20 he drop off?

21 THE WITNESS: He drop off like we need like bleach. Jamil
22 put the order in for like our supplies and most of the time
23 it's Pauly and Russell, but the last couple of times it's just
24 been Pauly. And he dropped the supplies off. And he fixed --
25 it was like a caution sign that fell down, a real heavy one. I

1 was standing there holding it for a second and then he came
2 with some wire and put it up. But other than that, I don't see
3 him.

4 BY MS. ROMAN:

5 Q Do you ever do any of the jobs that he does?

6 A No.

7 Q Would Paul and Neil ever fill in for you if you were gone
8 from a shift?

9 A No.

10 Q Would you ever fill in for them?

11 A No.

12 Q If you did have to be gone for a day, who would fill in
13 for you?

14 A Well, I've been training Melanie, so hopefully she'll do
15 it for me because she's doing a good job. Jamil mostly though.

16 Q Do you ever cover shifts for other lot attendants in other
17 garages?

18 A Sometimes I go over to the Renaissance. It might be like
19 11:30 and Brandy got to go to lunch or 3:00 when she leave.

20 Q If you had to cover for Paul, would you be able to do his
21 job?

22 A If somebody told me, I would. But, no.

23 Q With your training right now, would you be able to?

24 A No, because I don't know how to do all the stuff he does.

1 Q Okay. What about for Neil, if he was gone would you be
2 able to fill in for him?

3 A No. I really don't know what he do. I just know he use
4 that scanner thing. I mean I would. I seems easy. But I'm
5 not trained for that.

6 Q Who is your supervisor, your direct supervisor?

7 A Janai Clark.

8 Q Do you know if Paul and Neil report to her?

9 A No, they don't.

10 Q Do you know who they report to?

11 A I'm not sure of that.

12 Q Did you receive any type of training for your current job?

13 A Yes.

14 Q What type?

15 A Janai taught me everything I need to know, I mean
16 everything I know in the garage. Everything that I learned was
17 from Janai. Emma's taught me a little bit about the cleaning
18 at night. It's mostly between Emma and Janai.

19 Q How much do you make per hour?

20 A \$9.55 an hour.

21 Q Have you gotten any raises since you started?

22 A Yes.

23 Q When did you get your raise?

24 A After six months, I got a raise, a quarter raise or 20
25 something, 23, I think. And then after a year, I got a raise.

1 Well, it was like a year and two months. It was supposed to
2 have been a year. And then I just got a raise I think last
3 month for becoming the night supervisor and that was 23 cents.

4 Q Did you get a raise 90 days after you started?

5 A Six months -- well, I did. I did, I'm sorry, because
6 that's right at first, I did. When they told me I had
7 benefits, I did get a raise. I did. I forgot about that.

8 Q If I can have you look at the Employer's Exhibit
9 Number 15? Do we still have that handy? Do you see your name
10 on that list?

11 A Yes.

12 Q Is the pay rate and job classification accurate?

13 A No.

14 Q Can you tell us what's wrong with it?

15 A It says that I make \$9.50. I make \$9.55. It say customer
16 service. I'm not customer service anymore.

17 Q Okay, great. How do you get your weekly schedule?

18 A My schedule is already -- it's the same all the time,
19 unless I have to -- like I Janai asks me or Rob asks me to work
20 some other time or change my shift around, I'll do that, only
21 because they ask.

22 Q What is your -- sorry.

23 A 12:00 to 8:00 every day.

24 Q Okay, great. I think that's all that I have right now.

25 Thank you.

1 A Thank you.

2

CROSS-EXAMINATION

3 BY MR. HOLMANN:

4 Q Ms. Smith, does your job at all require you to walk around
5 the garage?

6 A Yes.

7 Q What do you do when you walk around the garage?

8 A Most of the time, sweep up the garage. Or I could be at
9 the end doing car inventory, seeing the cars that's left in the
10 garage. Just mostly picking up trash and stuff. Like I do go
11 between the cars and that's about all.

12 Q What do you do with the information that you get from the
13 car inventory?

14 A We have a log on the wall, a car inventory log put up
15 there.

16 Q And you have to fill that out?

17 A Yes.

18 Q In the time that you've been working at this facility, has
19 -- is there a gate arm that goes up and down?

20 A Yes.

21 Q Has it ever broken?

22 A A couple of times.

23 Q Was it the arm that broke or the machine?

24 A I think it was the machine. One time, the arm was broke.

25 Q Who fixed the arm?

1 A I'm not sure.

2 Q Do you know who fixed the machine when it broke?

3 A I think Jeff came and fixed the gate arm.

4 Q Jeff Garrison?

5 A Um-hum. For the machine, it would be like Doug and all of
6 them, Brian and them from different places come out.

7 Q But Paul didn't fix the machine?

8 A No, I've never seen him fix the machine.

9 MR. HOLMANN: I have nothing further.

10 HEARING OFFICER GLEASON: Any additional questions?

11 MS. ROMAN: I don't have anything else.

12 HEARING OFFICER GLEASON: Okay, thank you.

13 THE WITNESS: Thank you.

14 HEARING OFFICER GLEASON: You can step down.

15 (Witness excused.)

16 HEARING OFFICER GLEASON: Do you have any additional
17 witnesses?

18 MR. BREIHAN: The Union has no additional witnesses for
19 the challenges.

20 HEARING OFFICER GLEASON: Okay.

21 MR. HOLMANN: I'd like to bring Mr. Hankins back with a
22 rebuttal question.

23 HEARING OFFICER GLEASON: Okay. Mr. Hankins? Remember
24 you're still under oath.

25 (Whereupon,

1 A I don't remember exactly how much it was. I don't
2 remember.

3 Q Did you make any distinction in the amount of bonus to
4 employees for any reason?

5 A Length of service. I think it was prorated for length of
6 service.

7 MR. HOLMANN: I have no further questions.

8 HEARING OFFICER GLEASON: Any additional questions?

9 MR. BREIHAN: No further questions.

10 HEARING OFFICER GLEASON: Okay, thank you, Mr. Hankins.
11 You can step down.

12 (Witness excused.)

13 HEARING OFFICER GLEASON: So that's all the witnesses
14 we'll be receiving for the --

15 MR. HOLMANN: Challenged ballots.

16 HEARING OFFICER GLEASON: -- the challenged ballot issue.
17 Okay, I guess we can attend to the objections now. Petitioner
18 is going to bear the burden. I'd like for them to call their
19 witnesses first.

20 MR. BREIHAN: I hate to ask for this, but if we can just
21 have a short five-minute recess? I need to discuss something
22 with my client.

23 HEARING OFFICER GLEASON: Okay, we'll take a short
24 five-minute recess and come back at 2:50. Off the record.

25 (Off the record from 2:45 p.m. to 2:55 p.m.)

1 HEARING OFFICER GLEASON: Back on the record.

2 Petitioner, you can call your first witness.

3 MR. BREIHAN: At this time, actually, the Union would like
4 to withdraw its objections.

5 HEARING OFFICER GLEASON: Okay.

6 MR. BREIHAN: I know it might be unexpected.

7 HEARING OFFICER GLEASON: Okay. Can we go off the record
8 for a second?

9 (Off the record from 2:56 p.m. to 3:03 p.m.)

10 HEARING OFFICER GLEASON: I just want to clarify with the
11 Petitioner that it's withdrawing all four of its objections in
12 its entirety.

13 MR. BREIHAN: Yes. We withdraw Objections 1 through 4.

14 HEARING OFFICER GLEASON: So we're only left with the
15 challenged ballot issue and the objections won't be deal with
16 in the hearing officer's report other than to add a footnote
17 saying they have been withdraw and the withdrawal has been
18 approved by the hearing officer.

19 So that just leaves the filing of the briefs. We
20 discussed off the record that the parties will file briefs.
21 They will be due one week from today. And please in your brief
22 address the position of whether these employees, the lot
23 auditor and this maintenance employee, please address your
24 position as to what unit they could be included in should they
25 be excluded from the petitioned-for unit.

1 The parties are reminded that they should request an
2 expedited copy of the transcript from the court reporter. If
3 you fail to do so, late receipt of the transcript will not be
4 grounds for an extension of time to file briefs.

5 Is there anything else that the parties would like to add
6 before we close the record?

7 MR. HOLMANN: No, Mr. Gleason.

8 MR. BREIHAN: Nothing further.

9 HEARING OFFICER GLEASON: Okay, the hearing is closed.

10 (Whereupon, at 3:04 p.m., the above entitled matter was
11 closed.)

12

13

14

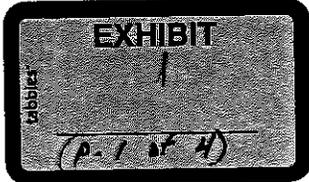
15

EXHIBIT 7

Colonial Parking, Inc.

WASP Barcode Scanner Signout Sheet

Date	H/HH	Name	Boat wrench		Lot #s
			Taken	Returned	
3/3/2016	1	Joe Parker	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	047, 078, 021
8-1-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-15-36-76
8-2-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH - 76-15-29-33
8-3-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH - 76-29-15-36
8-4-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-15-29-76
8-8-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-53-15-51-91-36-34
8-9-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-15-36-34-51-62
8-10-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-15-29-15
8-12-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH - 29-76-15
8-15-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-15-76-36-34
8-16-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-15-76-29-15
8-17-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52-76-15
8-18-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62-29-76-15-46-36
8-19-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-50-43-27-15-51-91-29-76
8-22-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-62-85-76-15-51-29
8-23-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-51-91-36-34
8-24-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-29-74-36-34-32-15-15
8-25-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52-76-29-15-34-36
8-26-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-76-15-34-36
8-29-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52-76-15-29-36-34-48
8-30-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-76-15-36-34
8-31-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH - 29-76-34-36-1
9-1-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-43 BOTH - 51-41-29-76
9-2-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-15-29-76-15
9-6-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-62 BOTH - 85-15-76-29
9-7-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-15-29-15
9-8-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH - 76-29-53-56-34



Colonial Parking, Inc.

WASP Barcode Scanner Signout Sheet

Date	HHH	Name	Boot wrench		Lot #s
			Taken	Returned	
3/3/2016	1	Neil Blanchette	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	047,078,021
9-9-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-62-85-44-15-8
9-12-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-83-76-29-15
9-13-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-57-91-76
9-14-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH - 76-29-15-34
9-15-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-26
9-16-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	44-85-62 BOTH 29-76-15
9-19-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-50-43-27-15-57-91-36
9-20-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH - 76-29-15-36
9-21-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-26
9-22-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH 15-76-29-8
9-23-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-62-15-76-34
9-26-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH - 34-36-15
9-27-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-76-29-33-36-34-15
9-28-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-57-91-76-36-34
10-3-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH - 76-29-36-34-15
10-4-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-26-74
10-5-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH - 76-29-36-34
10-6-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-29-33-53-15-62-85-44
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10-12-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-50-43-15-36-34-29
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10-14-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-76-29-16-26
10-17-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-27-50-43-91-57
10-18-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52-76-15-36-34-62-29
10-19-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-32-26

Colonial Parking, Inc.

WASP Barcode Scanner Signout Sheet

Date	HHR	Name	Boot wrench		Lot/Is
			Taken	Returned	
3/3/2016	1	Joe Parker	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	047, 078, 021
10-20-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	76-18-44-85-62 BOTH
10-21-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-29-33-63-76
10-31-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	44-50-62 BOTH-85-76-29-15
11-1-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-33-53-29-76-15
11-2-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	52-33-76-36-34-15-62-85
11-3-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-51-91-36
11-4-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-15-76
11-7-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	50-43-27-15-51-91-76-29-36
11-8-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-29-76-15-76-29
11-9-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	44-15-62 BOTH-85-29
11-10-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-76-29-33-15-36-34
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11-14-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62 BOTH-76-29-63-36
11-15-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-76-50-43-27-15-51-91-2
11-16-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-76-53-29-33-15-36-34
11-17-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH-76-29-55-42-15
11-18-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-15-76-29
11-21-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-15-76-34-36
11-22-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	44-85-62 BOTH-76-15-29-36
11-23-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	74-36-34-32-15-76-29
11-25-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-50-43-27-15-51-91-36-34
11-24-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-74-36-34-44-85-62-53-29-15
11-30-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	44-85-62 BOTH-76-53-29-15
12-1-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-53-29-33-15-76-34-36
12-2-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-52 BOTH-76-15-36-34-6
12-5-16	1	NEIL BLANCHETTE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18-44-85-62-76-29-45

12/100

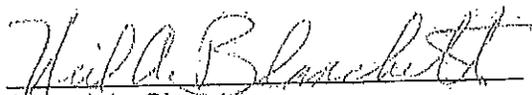
Colonial
Parking

**Colonial Parking, Inc.
Auditor**

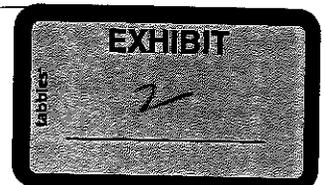
Responsibilities:

- ☐ Provide excellent service to all customers and react to all customer concerns and questions in prompt and professional manner.
- ☐ Must be able to operate a handheld computer to audit all surface lots for illegal parkers.
- ☐ Issue warning notices.
- ☐ Must have a valid driver's license.
- ☐ Operate a company vehicle safely and in accordance with all applicable traffic laws and regulations.
- ☐ Booting illegal parkers and removing boots at the direction of Colonial office staff.
- ☐ Must be able to stand and walk for long periods of time.
- ☐ Monitor pedestrian traffic on parking lots and garages to ensure the safety of customers and vehicle.
- ☐ Must enjoy working outdoors in varying temperatures.
- ☐ Must be able to lift a minimum of 50 pounds.
- ☐ Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- ☐ Other duties as assigned by Management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.


Associate Signature

3-20-15
Date





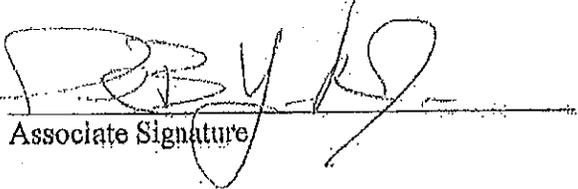
Colonial Parking, Inc.

Maintenance Associate

Responsibilities:

- o Excellent customer service skills required. Must respond to all customer questions, concerns or problems in a prompt and professional manner.
- o Some knowledge of electrical, plumbing and concrete work desired. Experience with power and hand tools helpful.
- o Will perform and/or assist Maintenance Director with repairs and routine maintenance of multi - facilities.
- o Repairs may include but not limited to: replacing light bulbs, installing gates, changing HVAC filters, painting, running errands, moving bumper blocks, etc.
- o Routine maintenance and cleaning of all parking lots located within downtown Wilmington. This includes trash removal, sweeping, cutting grass, and snow removal. Trash removal from the Main Office is required.
- o Maintenance associate will also be trained to work on our parking lots to cover call-outs as needed.
- o Must be able to lift a minimum of 80 pounds.
- o Must have a valid driver's license with a clean driving record. Must have the ability to drive a stick shift.
- o Other duties assigned by Management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.


Associate Signature

2/2/16
Date





Colonial Parking, Inc.
Government Center Custodian

Responsibilities:

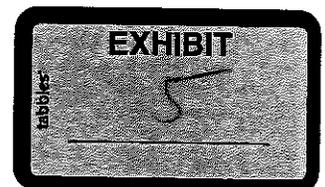
Must possess excellent customer service skills and react to all customer concerns and problems in a prompt and professional manner.

- Walk all levels of garage looking for suspicious individuals not belonging in the facility.
- Routine maintenance and cleaning of the facility. This includes trash removal, cleaning the restrooms, elevators, stairwells, sidewalks and common area, snow removal, replacing light bulbs, cleaning out the planters, bushes, fan filters, and all equipment.
- Running the sweeper throughout the garage.
- Must be able to lift a minimum of 50 pounds.
- Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- Other duties as assigned by management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.

Russell Marshall
Associate Signature

11/11/15
Date





Colonial Parking, Inc.
Valet Parking Attendant

Responsibilities:

- ☐ Providing excellent service to all customers. Respond to customer questions, concerns and problems in a prompt and professional manner
- ☐ Park and/or move customer vehicles as needed throughout work shift. Secure customer's vehicle and keys as outlined by company policy.
- ☐ Clean and maintain interior of valet attendant's booth.
- ☐ Pick up and dispose of any litter found in the garage.
- ☐ Monitor pedestrian traffic to ensure safety of customer's vehicles.
- ☐ Must be able to walk long distances and stand for long periods of time during shift. Must be able to move in and out of all types of vehicles quickly.
- ☐ Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- ☐ Driver's License with clean driving record. Must be able to drive stick shift vehicles.
- ☐ Other duties assigned by Management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.

Kim Clark

Associate Signature

02/18/16

Date





Colonial Parking, Inc.
Lot/Valet Attendant

Responsibilities:

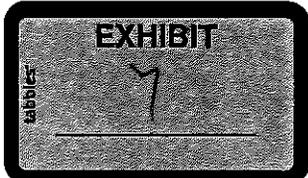
- Provide excellent service to all customers and react to all customer concerns and questions in a prompt and professional manner.
 1. Greet the customers with a smile.
 2. Answer any questions the customer may have.
 3. Assist customers with the use of the pay station.
- Promptly and accurately calculate parking fees for the customer – as needed.
- Accountable for the initial cash issued at beginning of shift and cash collected during the shift – as needed.
- Prepare Daily Shift Report following company guidelines at the end of your shift to provide a detailed accounting of all activity that occurred while on duty – as needed.
- Park or move any cars for customers, as needed. Secure customer's car keys as outlined in company policy.
- Clean and maintain the interior of the attendant's booth while at work.
- Pick-up and dispose of any litter found on the parking lot.
- Must be able to lift a minimum of 50 pounds.
- Must have a valid driver's license with a clean driving record.
- Must be able to stand for long periods of time. Must also be able to move in and out of vehicles quickly.
- Monitor pedestrian traffic on parking lot to ensure safety of customers and vehicles.
- Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- Other duties as assigned by Management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.



Associate Signature

1-20-10
Date

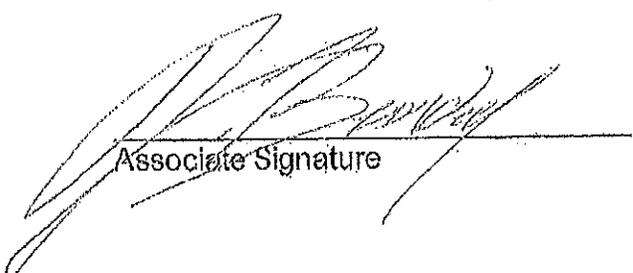


COLONIAL PARKING, INC.
Customer Service/Maintenance/Supervisor

Responsibilities:

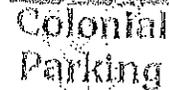
- Must possess excellent customer service skills and react to customer concerns and questions in a prompt and professional manner.
 1. Greet the customers with a smile
 2. Answer any questions the customer may have
 3. Assist customers with the use of the pay station
- Promptly and accurately calculate parking fees for the customer by using a cash register – as needed.
- Deduct any validations/discounts from customer parking fee – as needed.
- Collect appropriate amount of cash for the parking fee from each customer and issue correct change when necessary – as needed.
- Accountable for the initial cash issued at beginning of shift and cash collected during the shift – as needed.
- Prepare Daily Shift Report following company guidelines at the end of your shift to provide a detailed accounting of all activity that occurred while on duty – as needed.
- Shortages must be paid back to Colonial.
- Clean and maintain the area around the pay stations and office.
- Pick-up and dispose of any litter found in the vicinity of the pay stations.
- Cleaning and general maintenance involved. This includes running a power sweeper, emptying garbage cans, sweeping, repairing gate arms, filling ticket machines, snow removal, etc.
- Monitor activity within facility being supervised.
- Complete incident reports as needed and forward to the claims department at the main office. Handle customer at the scene of accident.
- Must be able to lift a minimum of 50 pounds. Possess ability to walk throughout multi-level parking garages during work shift.
- Responsible for opening/closing garage, locking all doors, entrance/exit gates and turning alarms on, as needed.
- Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- Any other duties as assigned by management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.


Associate Signature

7-28-15
Date

EXHIBIT
8



COLONIAL PARKING, INC.
Customer Service/Cashier

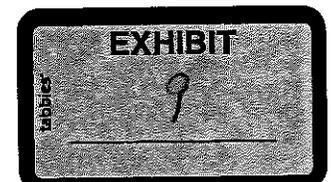
Responsibilities:

- Must possess excellent customer service skills and react to customer concerns and questions in a prompt and professional manner.
 1. Greet the customers with a smile
 2. Answer any questions the customer may have
- Collect appropriate amount of cash for the parking fee from each customer and issue correct change – as needed.
- Accountable for the initial cash issued at beginning of shift and cash collected during the shift – as needed.
- Prepare Daily Shift Report following company guidelines at the end of your shift to provide a detailed accounting of all activity that occurred while on duty.
- Any shortages must be paid back to Colonial Parking.
- Complete a vehicle inventory at the end of the shift.
- Pick-up and dispose of any litter found in the vicinity.
- Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- Any other duties as assigned by management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.

Anna Colodale
Associate Signature

Feb 26 2016
Date



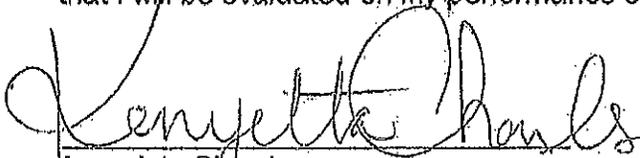


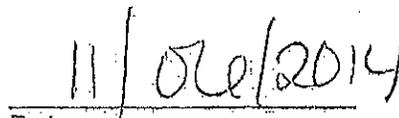
Colonial Parking, Inc.
Cashier

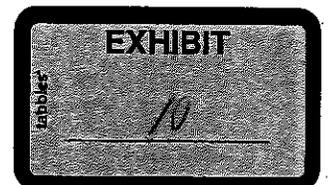
Responsibilities:

- Must possess excellent customer service skills and react to customer concerns and questions in a prompt and professional manner.
- Promptly and accurately calculate parking fees for the customer by using a cash register.
- Deduct any validations/discounts from customer parking fee.
- Collect appropriate amount of cash for the parking fee from each customer and issue correct change when necessary.
- Accountable for the initial cash issued at beginning of shift and cash collected during the shift.
- Shortages must be paid back to Colonial.
- Prepare Daily Shift Report following company guidelines at the end of your shift to provide a detailed accounting of all activity that occurred while on duty.
- Thoroughly know and follow the rules and regulations of the company as outlined in the handbook.
- Any other duties as assigned by management.

I acknowledge: 1) that I have read the above job responsibilities, 2) that I have had the opportunity to ask questions regarding these responsibilities, and 3) that I understand that I will be evaluated on my performance of these responsibilities.


Associate Signature

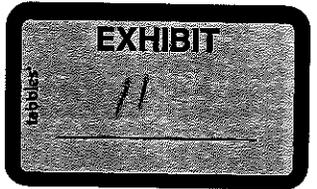

Date





Paul York
% of Time on Task Type

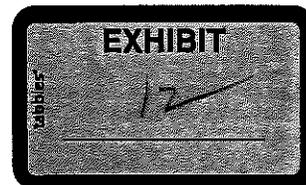
June	Task	Hours	%	August	Task	Hours	%	November	Task	Hours	%
	Clean Up Lot	42.5	20.53%		Clean Up Lot	39.50	16.12%		Clean Up Lot	68.5	35.22%
	Landscaping	52.5	25.36%		Landscaping	55.5	22.65%		Landscaping	3	1.54%
	Trash	83	40.10%		Trash	73.50	30.00%		Trash	60.5	31.11%
	Vacation/Holidays	8	3.86%		Vacation/Holidays	56	22.86%		Vacation/Holidays	24	12.34%
	Fill In for Attendant				Fill In for Attendant	2.5	1.02%		Fill In for Attendant		
	Gas up Sweepers & vehicles	18.5	8.94%		Gas up Sweepers & vehicles	17	6.94%		Gas up Sweepers & vehicles	18.5	9.51%
	Move Boxes	1	0.48%		Move Boxes	1	0.41%		Move Boxes		
	Painting				Painting				Painting	13	6.68%
	Remove Boots/move vehicle	1	0.48%		Remove Boots/move vehicle				Remove Boots/move vehicle	3	1.54%
	Laundry Run				Laundry Run				Laundry Run	1	0.51%
	Deliver Supplies	0.5	0.24%		Deliver Supplies				Deliver Supplies	3	1.54%
		207	100.00%			245	100.00%			194.5	100.00%



COLONIAL PAYSCALE

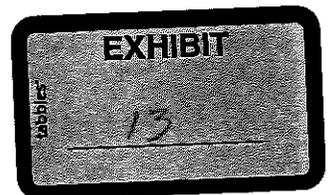
Effective June 1, 2015

Position:	As of June 2015 Starting Pay 0 - 90 Days	As of June 2015 Rate of Pay at 90 Day Review
Cashier	\$8.50	\$8.75
Customer Service	\$8.75	\$9.00
Lot Attendant	\$8.75	\$9.00
Valet Attendant	\$8.75	\$9.25
Lot Maintenance	\$10.50	\$11.00
Walker	\$9.25	\$9.50
Floater	\$8.75	\$9.00
Maint/Supervisor	\$9.25	\$9.50



The increase after the 90 day Introductory Period is approximately 3%. After the 90 day Introductory Period there will be an annual merit increase of approximately 3%.

Paul York Hourly Rate History	
2000 (Hired)	\$10.00
2001	\$11.00
2002	\$11.44
2003	\$11.78
2004	\$11.78
2005	\$12.13
2006	\$12.49
2007	\$12.86
2008	\$13.10
2009	\$13.10
2010	\$13.10
2011	\$13.10
2012	\$13.10
2013	\$13.50
2014	\$13.97
2015	\$15.42
2016	\$15.90



Neil Blanchett Hourly Rate History	
2012 (Hired)	\$9.00
2012 (90 day)	\$9.25
2013	\$9.55
2014	\$10.35
2015	\$10.75
2016	\$11.10



Associate Seniority List

Associate	Pay Rate	Job Classification
Kenyetta Charles	8.75	Cashier
Donald Mayo	8.75	Lot Attendant
Luis Henry	9.00	Lot Attendant
Brandon Owens	9.00	Floater
Johnheem Boardley	9.01	Maintenance Associate
Tamara Coverdale	9.27	Customer Service
Roamiel Smith-Teagle	9.27	Lot Attendant
Kim Cheeks - Stone	9.28	Valet Attendant
Anita Smith	9.50	Customer Service
Williams, Melanie	9.50	Customer Service
John Downes	9.53	Maintenance Associate
Emma Harding	9.53	Cashier
Kenneth Lewis	9.53	Maintenance Associate
Jamil Mason	9.55	Floater
Chardon Hampton	9.80	Cashier
Margaret Harding	9.81	Customer Service
Brandy Gordy	9.92	Cashier
Chris Dineen	10.30	Lot Attendant
Frank McQueen	10.36	Valet Attendant
Anthony Portlock	10.36	Valet Attendant
Russell Marshall	10.37	Maintenance Associate
Natt DarDen	10.73	Customer Service
Syve Soul	10.90	Lot Attendant
Donna Hall	10.95	Cashier
Neil Blanchette	11.10	Lot Auditor
Jerry Pacheco	11.80	Lot Attendant
Carol McBride	12.89	Cashier
Paul York	15.90	Maintenance Associate

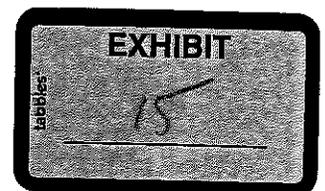


EXHIBIT 8

VOTER LIST (To be furnished within 2 Business Days of the Issuance of the Decision)

Employer Name: Colonial Parking, Inc. Case No.04-RC-187843

Employees in Petitioned for Unit [Employees subject to challenge listed at #27 and 28 and italicized)

Employee Name and Phone Number on file	E-mail Address	Work Location	Shift	Job Classification	Address	Correct Address
1. Boardley, Johnheem P. 302.377-6545	None on file [not collected by Employer]	913 Shipley Street	1 st	Maintenance Associate	2102 N. Church St. Wilmington, DE 19802	OK
2. Charles, Kenyetta P. 302.287.3176	None on file [not collected by Employer]	9 th & French Streets	2 nd	Cashier	401 N. Pine St., Apt. A Wilmington, DE 19801	OK
3. Cheeks-Stone, Kim P. 302.220.7863	None on file [not collected by Employer]	1000 King Street	2 nd	Valet Attendant	53 N. Rodney Drive, Wilmington, DE 19809	33 Dallas Dr. New Castle, DE 19720
4. Coverdale, Tamara P. 302.377-9787	None on file [not collected by Employer]	401 King Street	2 nd	Customer Service	310 N. Harrison St. Wilmington, DE 19805	OK
5. Darden, Watt P. 302.507.2497	None on file [not collected by Employer]	12 th & Washington	1 st	Customer Service	413 Greenhill Ave. Wilmington, DE 19805	OK
6. Dineen, Christopher P. 302.652.9581	None on file [not collected by Employer]	713 Shipley Street	1 st	Lot Attendant	2003 Nicholby Drive, Wilmington, DE	OK

Employee Name and Phone Number on file	E-mail Address	Work Location	Shift	Job Classification	Address	Correct Address
					19808	
7. Downes, John P. 407.8566	None on file [not collected by Employer]	9 th & French Streets	2 nd	Maintenance Associate	528 E. 12 th Street Wilmington, DE 19801	OK
8. Gordy, Brandy P. 302.691.3502	None on file [not collected by Employer]	401 King Street	1 st	Cashier	1619 W. 4 th St. Wilmington, DE 19805	OK
9. Hall, Donna P. 302.358.5061	None on file [not collected by Employer]	1201 N. Market	1 st	Cashier	2114 N. Spruce St. Wilmington, DE 19802	OK
10. Hampton, Chardon P. 302.494.7239	None on file [not collected by Employer]	9 th & French Streets	1 st	Cashier	1216 Chestnut St. Wilmington, DE 19805	OK
11. Harding, Margaret P. 302.358.6591	None on file [not collected by Employer]	903 Shipley Street	1 st	Customer Service	1228 Claymont St. Wilmington, DE 19802	OK
12. Harding, Emma P. 302.290.2071	None on file [not collected by Employer]	1201 N. Market	2 nd	Cashier	720 Cherry St. Wilmington, DE 19805	41 Lauray Rd New Castle, DE 19720
13. Henry, Luis P. 302.357.4710	None on file [not collected by Employer]	503 S. Market	2 nd	Lot Attendant	503 W. 5 th St., Apt. B Wilmington, DE 19801	720 Cherry St. Wilmington, DE 19805

Employee Name and Phone Number on file	E-mail Address	Work Location	Shift	Job Classification	Address	Correct Address
14. Lewis, Kenneth P. 302.275.5069	None on file [not collected by Employer]	1200 N. Orange & 1201 N. Market	2 nd	Maintenance Associate	2207 N. Spruce Street, Wilmington, DE 19802	OK
15. Marshall, Russell P. 302.268.7517	None on file [not collected by Employer]	9 th & French Streets	1st	Maintenance Associate	622 S. Harrison Street, Apt. 2 Wilmington, DE 19805	OK
16. Mason, Jamil P. 302.761.0521	None on file [not collected by Employer]	Multiple locations		Floater	5 Court Drive, Apt. C, Wilmington DE 19805	503 W. 5 th St., Apt. B Wilmington, DE 19801
17. Mayo, Donald P. 302.897.0885	None on file [not collected by Employer]	12 th & Washington	2nd	Lot Attendant	16 Lower Oak Street Wilmington, DE 19805	OK
18. McBride, Carol P. 302.996.0110	None on file [not collected by Employer]	222 Delaware Ave.	1 st	Cashier	122 W. 29 th Street, Wilmington, DE 19802	5 Court Drive, Apt. C, Wilmington DE 19805
19. McQueen, Franklin P. 302.300.2838	None on file [not collected by Employer]	1000 King Street	1 st	Valet Attendant	303 Delamore Place, Wilmington, DE 19805	122 W. 29 th Street, Wilmington, DE 19802
20. Owens, Brandon	None on file	Multiple locations		Floater	4 Cheswold Blvd,	303 Delamore

Employee Name and Phone Number on file	E-mail Address	Work Location	Shift	Job Classification	Address	Correct Address
P. 302.438.1628	[not collected by Employer]				Apt. 3C, Newark, DE 19713	Place, Wilmington, DE 19805
21. Pacheco, Jerry P. 302.563.0521	None on file [not collected by Employer]	711 Orange Street	1 st	Lot Attendant	699 Ferry Cut Off, New Castle, DE 19720	4 Cheswold Blvd, Apt. 3C, Newark, DE 19713
22. Portlock, Anthony P. 302.740.3676	None on file [not collected by Employer]	1000 King Street	2 nd	Valet Attendant	100 Periwinkle Drive, Dover, DE 19904	699 Ferry Cut Off, New Castle, DE 19720
23. Smith, Anita P. 302.482.7945	None on file [not collected by Employer]	510 N. King Street	2 nd	Customer Service	706 Vandever Ave., Wilmington, DE 19802	OK
24. Smith-Teagle, Roameil P. 302.525.6581	None on file [not collected by Employer]	10 th & Washington	1 st	Lot Attendant	107 N. Rodney Street, Wilmington, DE 19805	OK
25. Soul, Syeve P. 302.298.5844	None on file [not collected by Employer]	503 S. Market	1 st	Lot Attendant	727 E. 6 th Street Wilmington, DE 19801	OK
26. Williams, Melanie P. 302.691.8442	None on file [not collected by Employer]	510 N. King Street	1 st	Customer Service	1016 Read Street, Wilmington, DE 19805	OK
27. Blanchett, Neil P. 302.478.7857	<i>None on file [not collected by Employer]</i>	<i>Multiple locations</i>	<i>1st</i>	<i>Lot Auditor</i>	<i>1222 Glenside Ave. Wilmington, DE</i>	<i>OK</i>

Employee Name and Phone Number on file	E-mail Address	Work Location	Shift	Job Classification	Address	Correct Address
					19803	
28. York, Paul P. 610.918.9743	None on file [not collected by Employer]	Maintenance	1 st	Maintenance Associate	922 Dogwood Hill Drive, West Chester, PA 19380	OK

Employee Name	E-mail Address	Work Location	Shift	Job Classification	Address
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EXHIBIT 9

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of: COLONIAL PARKING, Employer, And UNITED FOOD AND COMMERCIAL WORKERS LOCAL 27, Petitioner.	Case No. 04-RC-187843
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The above-entitled matter came on for hearing pursuant to Notice, before JENNIFER SCHULZE, Hearing Officer, at The National Labor Relations Board, Region 4, 615 Chestnut Street, Philadelphia, Pennsylvania on Friday, November 18, 2016, at 10:00 a.m.

A P P E A R A N C E S

1 On behalf of the Employer:

2

3 JOSEPH P. HOFMANN, ESQ.

4 Stevens & Lee P.C.

5 51 South Duke Street,

6 Lancaster ,PA 17602

7 717-399-6643

8

9 On Behalf of the Petitioner:

10

11 GEORGE R. MURPHY, ESQ.

12 Murphy Anderson, PLLC

13 1401 K Street, Suite 300

14 Washington, D.C. 20005

15 202-223-2620

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR</u> <u>DIRE</u>
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(None)

<u>EXHIBIT NUMBER</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
1	<u>E X H I B I T S</u>	
2	Board's	
3	B-1	6
4	B-2	7
5	B-3(a) & (b)	8
6		
7		

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

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P R O C E E D I N G S

(Time Noted: 12:47 p.m.)

HEARING OFFICER SCHULZE: On the record.

We're on the record. The hearing will be in order. This is a formal hearing in the matter of Colonial Parking, Inc., case number 04-RC-187843 before The National Labor Relations Board. The Hearing Officer appearing for The National Labor Relations Board is Jennifer Schulze, S-C-H-U-L-Z-E.

The parties have been informed of the procedures at formal hearings before the Board by service of a description of procedures in certification and decertification cases with the notice of hearing. I have additional copies of this document for distribution if any party wants more. Will counsel please state their appearances for the record? For the Petitioner?

MR. MURPHY: George Murphy, Murphy Anderson.

HEARING OFFICER SCHULZE: For the Employer?

MR. HOFMANN: Joseph Hofmann, Stevens & Lee.

HEARING OFFICER SCHULZE: Are there any other appearances? Let the record show no response. Are there any other persons, parties or labor organizations in the hearing room who claim an interest in this proceeding? Let the record show no response.

I now propose to receive the formal papers. They have been marked for identification as Board's exhibit 1. The exhibit has already been shown to the parties. Are there any objections to the receipt of these exhibits into the record?

1 (Board's B-1 identified)

2 MR. MURPHY: No objection from the Petitioner.

3 MR. HOFMANN: No objections from the Employer.

4 HEARING OFFICER SCHULZE: Hearing no objections the formal
5 papers are received into evidence. Are there any motions to
6 intervene in these proceedings to be submitted to the Hearing
7 Officer for ruling by the Regional Director at this time? Are
8 the parties aware of any other employers or labor organizations
9 at that have an interest in this proceeding?

10 (Board's B-1 received in evidence)

11 MR. MURPHY: Petitioner is aware of none.

12 HEARING OFFICER SCHULZE: Employer?

13 MR. HOFMANN: The Employer is aware of none.

14 HEARING OFFICER SCHULZE: Are there any prehearing
15 motions, for example motions to quash subpoenas, made by any
16 party that need to be addressed at this time?

17 MR. MURPHY: None from the Petitioner.

18 MR. HOFMANN: None for the Employer.

19 HEARING OFFICER SCHULZE: Great. The parties to this
20 proceeding have executed a document which has been marked as
21 Board exhibit 2. That exhibit contains a series of
22 stipulations, including among other items that the Petitioner
23 is a labor organization within the meaning of the Act, there is
24 no contract bar and the Employer meets the jurisdictional
25 standards of the Board. Are there any objections to the

1 receipt of Board exhibit 2?

2 (Board's B-2 identified)

3 MR. MURPHY: No objection from the Petitioner.

4 HEARING OFFICER SCHULZE: Employer?

5 MR. HOFMANN: No objections.

6 HEARING OFFICER SCHULZE: Board exhibit 2 is received into
7 evidence. Are there any petitions pending in other Regional
8 offices involving other facilities of the Employer?

9 (Board's B-2 received in evidence)

10 MR. MURPHY: Petitioner knows of none.

11 MR. HOFMANN: The Employer is unaware of any.

12 HEARING OFFICER SCHULZE: Great. The parties are advised
13 that upon request they shall be entitled to a reasonable period
14 at the close of the hearing for oral argument. Post-hearing
15 briefs shall be filed only upon special permission of the
16 Regional Director. In addition, a party may offer into
17 evidence a brief memo of points and authorities, case citations
18 or other legal arguments during the course of the hearing or --
19 and before the hearing closes.

20 The Employer has completed and I have marked for
21 identification as Board exhibit 3 a statement of position in
22 this matter. The Employer filed an initial statement of
23 position, which has been marked as 3(b) and a first amended
24 statement of position, which has been marked as Board exhibit
25 3(a). Are there any objections to the receipt of this exhibit

1 into the record?

2 (Board's B-3(a) & (b) identified)

3 MR. MURPHY: No objection from the Petitioner.

4 MR. HOFMANN: No objection from the Employer.

5 HEARING OFFICER SCHULZE: Hearing no objection, Board
6 exhibit 3 is received. During off the record discussions and
7 as memorialized in Board exhibit 2, the parties have agreed to
8 the resolution of all issues other than the mechanics of the
9 election. The parties' agreement is reflected in Board exhibit
10 2.

11 As you know, the mechanics of the election is not a
12 litigable issue. We will however allow the parties to set
13 forth their positions and their reasoning for their positions
14 on the record. First, if an election is directed does any
15 party who is entitled to receive the voter list wish to wave
16 the 10 day or any portion of the 10 day requirement?
17 Petitioner?

18 (Board's B-3(a) & (b) received in evidence)

19 MR. MURPHY: Agreed.

20 HEARING OFFICER SCHULZE: You agree to wave the full 10
21 day period or a portion of the 10 day period?

22 MR. MURPHY: I'm not -- state that again, please.

23 HEARING OFFICER SCHULZE: Okay. So if an election is
24 directed does any party who is entitled to receive the voter
25 list, which is the Petitioner, do you wish to wave the 10 day

1 or any portion of the 10 day requirement?

2 MR. MURPHY: Do you have any -- do you want -- you have
3 any position on that? I'm sure I understand totally.

4 HEARING OFFICER SCHULZE: Okay. We'll go off the record.

5 (Whereupon, a brief recess was taken)

6 HEARING OFFICER SCHULZE: On the record.

7 To repeat the question, if an election is directed does
8 any party who is entitled to receive the voter list wish to
9 waive the 10 day or any portion of the 10 day requirement?
10 Petitioner?

11 MR. MURPHY: Not going to wave that 10 day period.

12 HEARING OFFICER SCHULZE: Okay. Great. Has either
13 parties' position changed concerning the election details
14 provided in its petition or the statement of position?

15 MR. HOFMANN: Our position has not changed.

16 HEARING OFFICER SCHULZE: Okay. And --

17 MR. MURPHY: Our position has not changed.

18 HEARING OFFICER SCHULZE: Alright. Mr. Murphy, what is
19 the Petitioner's position concerning the date, type, times and
20 location of the election and the eligibility period, including
21 the most recent payroll ending date in any applicable
22 eligibility formulas?

23 MR. MURPHY: Alright. First of all we want to the most
24 recent payroll ending date.

25 HEARING OFFICER SCHULZE: Okay.

1 MR. MURPHY: That's within the discretion of the Regional
2 Director, whenever he signs it, it -- we would back up to a
3 payroll date of -- what's the date, Nelson (ph)? The 9th? The
4 9th.

5 We don't want to have a situation where we get a lot of
6 people put on the payroll that are not on the payroll today.
7 And the only way we can prevent that is to have the eligibility
8 date the previous payroll --

9 HEARING OFFICER SCHULZE: Okay.

10 MR. MURPHY: -- date, which I understand is the 8th or the
11 9th. Now, are you also asking about the issue of the type of
12 election?

13 HEARING OFFICER SCHULZE: Yes.

14 MR. MURPHY: Well, we would prefer, under these
15 circumstances for this case where you have 10 or more job
16 locations with two or three people at each location, to have a
17 mail ballot. We think that's the best way to get the greatest
18 participation in the election. I do not believe that it is
19 economically feasible for the Board to go from one jobsite to
20 the next.

21 Whether there are 10 or 11, I'm not quite sure. I
22 remember exactly how many. It's just not economically feasible
23 and it has the opportunity to result in not every given -- be
24 given an opportunity to vote. Now, if it's by mail ballot and
25 they receive the mail at their last known home address, clearly

1 they'll then have a right and an opportunity to vote and it
2 seems to me that's the best way to do this, under these
3 circumstances.

4 HEARING OFFICER SCHULZE: Okay. And Mr. Hofmann, what is
5 the Employer's position concerning the date, type, times and
6 locations of the election and the eligibility period, including
7 the most recent payroll ending date and any applicable
8 eligibility formulas?

9 MR. HOFMANN: Let me work backwards. The most recent
10 payroll period ending date is Wednesday, November 9th. If
11 there's a decision and direction of election before Wednesday,
12 December 23rd, then that would be the appropriate cutoff date.
13 The next upcoming payroll ending date is Wednesday, November
14 23rd. If there's a decision and direction of election after
15 that date, then that would be the appropriate date.

16 It's the Employer's position that the election should
17 occur on a Wednesday, the middle of the week. And we, as
18 proposed in the statement of position, suggested December 7th.
19 December 14th would be acceptable as well.

20 Times for the election between 2:00 and 4:00 p.m. And the
21 proposed location is the Employer's conference room located at
22 its office at 715 North Orange Street in Wilmington, Delaware.
23 The Employer's position is that the appropriate method of
24 election in this case would be a manual election.

25 There are 13 facilities. 12 of them are within a 10

1 minute walk of the proposed election location, which is that
2 conference room I just described. That office location is, on
3 various occasions during the course of the year, a location
4 where employees come to either participate in open enrollment,
5 as they are doing today, or training, to receive their
6 Christmas hams and for other activities. So the employees are
7 not unfamiliar with the location or how to get there.

8 And it's the Employer's position that a centralized
9 location of election in this case is functionally no different,
10 given the proximity of the facilities in downtown Wilmington to
11 the office. It's functionally no different than a centralized
12 manual ballot in a large factory or a multi-story healthcare
13 facility. The opportunity therefore would be available to
14 insure that this election is conducted under the appropriate
15 laboratory conditions and that's with a manual ballot in the
16 presence of an agent of the NLRB. Accordingly, the Employer
17 respectfully requests that the Regional Director direct a
18 manual ballot be used in this election. Thank you.

19 MR. MURPHY: May I respond?

20 HEARING OFFICER SCHULZE: I have a quick question.

21 MR. HOFMANN: Yes.

22 HEARING OFFICER SCHULZE: I understand that you prefer a
23 Wednesday, but why does the Wednesday -- why does that matter
24 for it to be the middle of the week? Is that arbitrary?

25 MR. HOFMANN: It's arbitrary. Just the middle of the

1 week. Pay -- you know, paydays don't mean that much anymore,
2 because of direct deposit. They used to. So it's a -- you
3 know, we would certainly prefer that it happened not on a
4 Monday.

5 HEARING OFFICER SCHULZE: Why not on a Monday?

6 MR. HOFMANN: Because the Board has rules that it has
7 adopted over the years that prohibit the Employer from
8 communicating to groups of employees at less than 24 hours
9 before the election. And these employees do not work on
10 Saturdays and Sundays. So this would limit the Employer's
11 ability to communicate with large groups of employees, if we
12 had the election on a Monday.

13 HEARING OFFICER SCHULZE: Okay. So what you're saying
14 though is that the Monday is simply to violate the *Peerless*
15 *Plywood* rule, but Tuesday, Wednesday, Thursday or Friday would
16 work for an election. There's no reason why it couldn't be on
17 any day during the week? It's --

18 MR. HOFMANN: That is correct.

19 HEARING OFFICER SCHULZE: -- just preference that it not
20 be on a Monday?

21 MR. HOFMANN: That is correct.

22 HEARING OFFICER SCHULZE: Okay. Petitioner, what is your
23 position with regard to the Employer's suggested date, time and
24 place?

25 MR. MURPHY: Well, first I'd like -- I'd respond to the

1 question of the eligibility date. Employer's counsel said to
2 use the date of a previous date of payroll, if the Regional
3 Director issued a direction of election by I think he said the
4 --

5 HEARING OFFICER SCHULZE: Before the --

6 MR. MURPHY: -- 23rd or whatever --

7 HEARING OFFICER SCHULZE: Before November 23rd.

8 MR. MURPHY: -- the next date is. I can't imagine where -
9 - in a case where we have stipulated today that the Regional
10 Director can issue a direction of election on Monday or Tuesday
11 of next week, I can't imagine what the situation would be --

12 HEARING OFFICER SCHULZE: Well, the --

13 MR. MURPHY: -- and if --

14 HEARING OFFICER SCHULZE: We have to wait --

15 MR. MURPHY: -- it goes past that date, I don't want the
16 eligibility date to go out further, just because somebody can't
17 sign a document, if there's nothing to do. The direction of
18 election is the basis of the stipulation.

19 As far as the election date is concerned, I have no
20 position on Monday, Tuesday, Wednesday or Thursday. But my
21 concern is, is that it be done in a way where most of the
22 people are given an opportunity to vote. And what I'm
23 concerned about is that it's for a two hour period in the
24 middle of a Tuesday or a Wednesday and these people are spread
25 all over Wilmington, Delaware, albeit everybody within a 10

1 minute walk. I'm not so sure about all of that. But I don't
2 want somebody not being able to get to the polling place,
3 because they're working.

4 HEARING OFFICER SCHULZE: So are you proposing that the
5 poll -- the time be longer?

6 MR. MURPHY: I -- as long as we could possibly have them
7 to insure everybody an opportunity to vote. You know, I've had
8 situations recently where people arrive within seconds of the
9 polling place closing and not being allowed to vote, even
10 though they're there, because the Board's rules are very
11 strict. And I don't want to see that happen. I want the --

12 HEARING OFFICER SCHULZE: So you don't have a number, a
13 timeframe at this point to propose? You just want it to be as
14 long as necessary --

15 MR. MURPHY: I want a mail --

16 HEARING OFFICER SCHULZE: -- for everybody --

17 MR. MURPHY: -- ballot and they're aware --

18 HEARING OFFICER SCHULZE: That's on the record already.

19 MR. MURPHY: -- I don't have to worry about the date. I
20 don't have to worry about the time. I --

21 HEARING OFFICER SCHULZE: I understand.

22 MR. MURPHY: -- don't have to worry about people not --
23 what if someone gets ill on the date that's checked and can't
24 go? What if someone's relative --

25 HEARING OFFICER SCHULZE: I'm going --

1 MR. MURPHY: -- dies?

2 HEARING OFFICER SCHULZE: -- to cut you off right there.

3 MR. MURPHY: Huh?

4 HEARING OFFICER SCHULZE: I'm cutting you off right there.

5 MR. MURPHY: That's fine.

6 HEARING OFFICER SCHULZE: So to recap, you do not have a
7 position with regard to the time, just that it be long enough
8 to allow all the employees to get there and vote. And as far
9 as the date, you don't have a date that does not work in say
10 the next -- let's see. Between December 5th and -- for the
11 sake of the argument, December 5th and December 23rd, there's
12 not a date within those that don't work?

13 MR. MURPHY: Do you have any particular date that you --

14 HEARING OFFICER SCHULZE: And you told me they don't work
15 on the weekends?

16 MR. HOFMANN: They do not work on weekends.

17 HEARING OFFICER SCHULZE: Okay. So the weekends are out.
18 Saturday and Sunday are out.

19 MR. MURPHY: And also -- and Monday, because he doesn't
20 want it to be after --

21 HEARING OFFICER SCHULZE: It's a preference that --

22 MR. MURPHY: -- a time where he can have a captive
23 audience meeting and threatened all the people.

24 HEARING OFFICER SCHULZE: It's a preference that Monday
25 not be used, but ultimately it's up to the Regional Director to

1 determine that.

2 MR. MURPHY: If you do a mail ballot you don't have to
3 worry about any of that.

4 HEARING OFFICER SCHULZE: I understand that, but what I'm
5 asking you right now is, is there any date, for the sake of the
6 -- for the -- if the Regional Director decides to run a manual
7 election, is there any date between December 5th and December
8 23rd that does not work for the Union? A weekday.

9 MR. MURPHY: Any there's a real problem for you?

10 UNIDENTIFIED SPEAKER: No. We'll take December the 5th.

11 MR. MURPHY: We'll take December the 5th.

12 HEARING OFFICER SCHULZE: Okay. So just to be clear,
13 there is no date that does not work for you?

14 MR. MURPHY: That's correct.

15 HEARING OFFICER SCHULZE: Okay. Employer, is there any
16 date between December 5th and December 23rd that does not work
17 for you, other than the Mondays?

18 MR. HOFMANN: Other than I have previously indicted, no.

19 HEARING OFFICER SCHULZE: Okay. And did you have a -- I
20 understand your argument that you want a mail ballot election,
21 but do you have a position -- if the Regional Director decides
22 to have this be a manual election, do you have a position on
23 the Employer's proposed location, which is at its 715 Orange
24 Street facility?

25 MR. HOFMANN: Yes.

1 HEARING OFFICER SCHULZE: I understand that you would
2 prefer a mail ballot, but if --

3 MR. MURPHY: No, I don't have a position and the reason I
4 don't have a position is because this situation cries out for a
5 mail ballot and not an in place ballot.

6 HEARING OFFICER SCHULZE: Understood. Okay.

7 MR. MURPHY: You've got --

8 HEARING OFFICER SCHULZE: Are there any --

9 MR. MURPHY: -- what, 13 locations --

10 HEARING OFFICER SCHULZE: We've already been over this.
11 This is getting to be cumulate. Like this is way too much for
12 you to say the same thing over again, unless you have something
13 new.

14 MR. MURPHY: Well, I understand that these issues are not
15 supposed to be decided on the record, but if you ask me the
16 question do I have a preferred date, I don't have a preferred
17 date, because I think this should be done by mail ballot.

18 HEARING OFFICER SCHULZE: Okay. Are there any other facts
19 that the Regional Director should be aware of, if he decides to
20 schedule a manual election for the earliest practical date in
21 this case, should one be directed? So we've already gone over
22 if you don't have availability. Is there anything else that we
23 should consider that you can think of right now?

24 MR. HOFMANN: I have nothing further.

25 MR. MURPHY: I have nothing further.

1 HEARING OFFICER SCHULZE: Okay. Great.

2 MR. MURPHY: Can you think of anything?

3 HEARING OFFICER SCHULZE: Does any party anticipate the
4 need for the notice of election and ballots to be translated?

5 MR. MURPHY: No. Nothing from the Petitioner.

6 MR. HOFMANN: No. Not from the Employer's perspective
7 either.

8 HEARING OFFICER SCHULZE: Okay. Mr. Hofmann, what is the
9 name, address, email address, facsimile number and telephone
10 number of the Employer's onsite representative to whom the
11 Regional Director should transmit the notice of appear -- the
12 notice of election, if an election is directed?

13 MR. HOFMANN: It would be the name that's indicated on the
14 petition, Jed Hatfield, president. The address that's
15 indicated on the petition is 715 North Orange Street,
16 Wilmington, Delaware. And the phone numbers and email
17 addresses that are indicated on the petition as well.

18 HEARING OFFICER SCHULZE: Okay. Do we have a facsimile
19 number on the petition?

20 MR. HOFMANN: Yes.

21 HEARING OFFICER SCHULZE: Is that the correct number?

22 MR. HOFMANN: Yes.

23 HEARING OFFICER SCHULZE: Okay. Alright. Employer and
24 Petitioner, if an election is directed may the Region
25 communicate with your election observer regarding election

1 procedures and any issues that arise during an election, the
2 pre-election conference and the ballot count?

3 MR. HOFMANN: Yes.

4 MR. MURPHY: Yes.

5 HEARING OFFICER SCHULZE: Great. Alright. We'll take a
6 brief recess. We're going to go off the record.

7 (Whereupon, a brief recess was taken)

8 HEARING OFFICER SCHULZE: Back on the record.

9 During an off the record discussion the Petitioner wished
10 to raise another position or amend its position about the time
11 for the election. Go ahead, Petitioner.

12 MR. MURPHY: Thank you. The Petitioner takes the position
13 that if the election date time is from 2:00 to 4:00 that will
14 be difficult for people who don't get off work until 5:00 to
15 get there to the polling place. And it -- that which is
16 inconsistent with the principal of having everybody given an
17 opportunity to vote. And we want to make -- if there is an in
18 place election, it should at least go until 5:00 O'clock.

19 HEARING OFFICER SCHULZE: Okay. Moving on. The Regional
20 Director will issue a decision in this matter as soon as
21 practical and will immediately transmit the document to the
22 parties and their designated representatives by email,
23 facsimile or by overnight mail if neither an email address nor
24 facsimile number is provided. For the Employer, if an election
25 is directed, the Employer must provide the voter list. To be

1 timely filed -- filed and served, the voter list must be
2 received by the Regional Director and the parties named in the
3 direction within two business days after the issuance of the
4 direction, unless a longer period, based on extraordinary
5 circumstances is specified in the decision and direction of
6 election.

7 A certificate of service on all parties must be filed with
8 the Regional Director when the voter list is filed. The Region
9 will no longer serve the voter list. The Employer must submit
10 the voter list in an electronic format approved by the General
11 Counsel unless the Employer certifies that it does not have the
12 capacity to produce the list in the required format.

13 The list must be filed in common everyday electronic file
14 formats that can be searched. Accordingly, unless otherwise
15 agreed to by the parties, the list must be provided in a table
16 in a Microsoft Word file, either .doc or dot -- or .docx or a
17 file that is compatible with Microsoft Word. The first column
18 of the list must begin with each employee's last name and the
19 list must be alphabetized overall or by department by last
20 name.

21 Because the list will be used during the election, the
22 font size of the list must be equivalent to Times New Roman 10
23 or larger. That font does not need to be used, but the font
24 must be that size or larger. A sample optional form for the
25 list is provided on the NLRB website at www.nlrb.gov.

1 The Board stated that it is presumptively appropriate for
2 the Employer to produce multiple versions of the list, where
3 the data required is kept in separate databases or files, so
4 long as all the links -- as all the lists links the information
5 to the same employees using the same names in the same order
6 and are provided within the allotted time. See 79 Fed --
7 Federal Regulation 74356. If the witness provides multiple
8 lists, the list used at the election will be the lists
9 containing the employees' name and addresses.

10 The list must include the full names, work locations,
11 shifts, job classifications and contact information, including
12 home addresses, available personal email addresses, and
13 available home and personal cellular telephone numbers of all
14 eligible voters. The Employer must also include, in a separate
15 section of that list, the same information for those
16 individuals the parties have agreed will be permitted to vote
17 subject to challenge or those individuals who, according to the
18 decision and direction of election, will be permitted to vote
19 subject to challenge.

20 During an off the record discussion the parties agreed
21 that there is no need to file post-hearing briefs in this
22 matter. I will now permit the parties to make oral arguments
23 if they wish to do so. Would you guys like to do so at this
24 time?

25 MR. HOFMANN: No.

1 MR. MURPHY: No.

2 HEARING OFFICER SCHULZE: Great. You have all the
3 exhibits? Okay. Alright. If there's nothing further the
4 hearing will be closed. Anything further?

5 MR. HOFMANN: There's nothing further from the Employer.

6 MR. MURPHY: Nothing further from the Petitioner.

7 HEARING OFFICER SCHULZE: Great. The hearing is now
8 closed.

9 (Whereupon, at 1:22 p.m. the hearing in the above-entitled
10 matter was closed)

C E R T I F I C A T E

This is to certify that the attached proceedings done before the NATIONAL LABOR RELATIONS BOARD REGION FOUR

In the Matter of:

COLONIAL PARKING,

Employer,

And

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 27,

Petitioner.

Case No.: 04-RC-187843

Date: November 18, 2016

Place: Philadelphia, PA

Were held as therein appears, and that this is the original transcript thereof for the files of the Board

Official Reporter

BURKE COURT REPORTING, LLC
1044 Route 23 North, Suite 206
Wayne, New Jersey 07470
(973) 692-0660

EXHIBIT 10

From: [Hofmann, Joseph P.](#)
To: [Schulze, Jennifer](#)
Subject: RE: Colonial Parking, Inc., 04-RC-187843
Attachments: [04-RC-187843 Employer"s First Amended Statement of Position.msg](#)
[Maps.pdf](#)
[JD Aud Maint.pdf](#)

Ms. Schulze:

I will be calling you momentarily. I have attached a number of documents relevant to my notes below.

1. The employer's position is that the election should be manual. All facilities where employees work are located in a compact area of downtown Wilmington. The proposed election location at the conference room at the employer's central office at 715 North Orange Street is within a 10 minute or less walk from all facilities except 501 South Market. The employee who works there rides a bike to work. 501 S. Market Street is an 11 minute bike ride. See attachment "Maps". The employer proposes a manual election on Wednesday, December 7 from 2:00-4:00 PM.
2. Late this morning I filed an amended statement of position. See attached e-mail sent to Ms. Mann and Mr. Hill after I completed e-filing of the Amended Statement of Position. The Employer now also contends that the position of Lot Auditor a/k/a Auditor should be included in the unit, as well as the cleaning/maintenance employees. Job descriptions for these positions are attached. See attachment "JD Audt Maint"
3. Kenneth Lewis, one of the maintenance employees splits his time between 12th & Orange and 12th & Market. An employee in a position not petitioned for by the Union, "Facility Manager," also works at those facilities. 12th & Orange is an automated facility so there is not an attendant at the pay station as in attended facilities.

Joseph P. Hofmann

STEVENS & LEE

A Stevens & Lee/Griffin Company

51 S. Duke Street | Lancaster, PA 17602

Phone: 717-399-6643 | Internal: 4303 | Mobile: 717-575-1329 | Fax: 610-371-7946

jph@stevenslee.com | www.stevenslee.com

From: Schulze, Jennifer [mailto:Jennifer.Schulze@nlrb.gov]
Sent: Thursday, November 17, 2016 12:55 PM
To: Hofmann, Joseph P.; n.hill@ufcw27.org
Subject: Colonial Parking, Inc., 04-RC-187843

Dear Messrs. Hofmann and Hill,

I hope this email finds you well. As you may know, this case has been reassigned to me for

the time being. In reviewing Agent Mann's notes and the Employer's Statement of Position, it appears we have a few issues to work out. I'd appreciate it if you are able to call or email me to discuss your parties' position on these issues:

1. Manual election vs. mail ballot (please include your parties' position on manual election arrangements – i.e. date, time, location, etc.)
2. The inclusion of the "cleaning and related duties" maintenance employees (is this another name for janitorial employees?)
3. Does an employee that could be included in the unit work at the Employer's 12th Street and Orange Street location?

I look forward to hearing from you. I am hopeful we can reach a stipulated election agreement before the hearing tomorrow. However, I will be out of the office beginning at 2:30pm today.

Very truly yours,

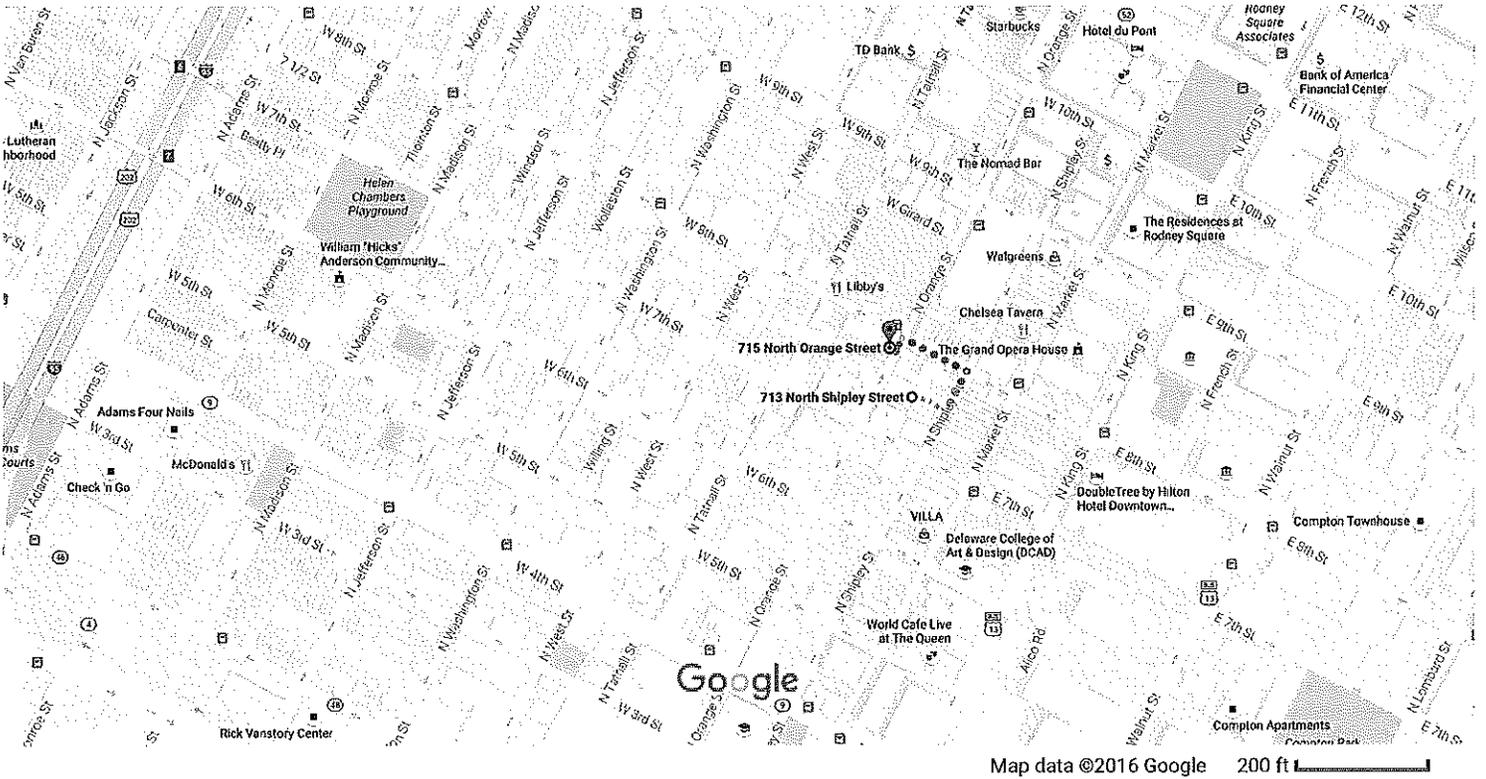
Jennifer Schulze | *Labor Management Relations Examiner* | Region 4 | 215.597.1542
(direct)

[National Labor Relations Board](#) | 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106

Google Maps

713 Shipley Street, Wilmington, DE to 715 N Orange St, Wilmington, DE

Walk 436 ft, 2 min



713 North Shipley Street
Wilmington, DE 19801

Use caution - may involve errors or sections not suited for walking

- ↑ 1. Head northeast on N Shipley St toward W 8th St 154 ft
- ↶ 2. Turn left onto W 8th St 233 ft
- ↶ 3. Turn left onto N Orange St 49 ft
📍 Destination will be on the right

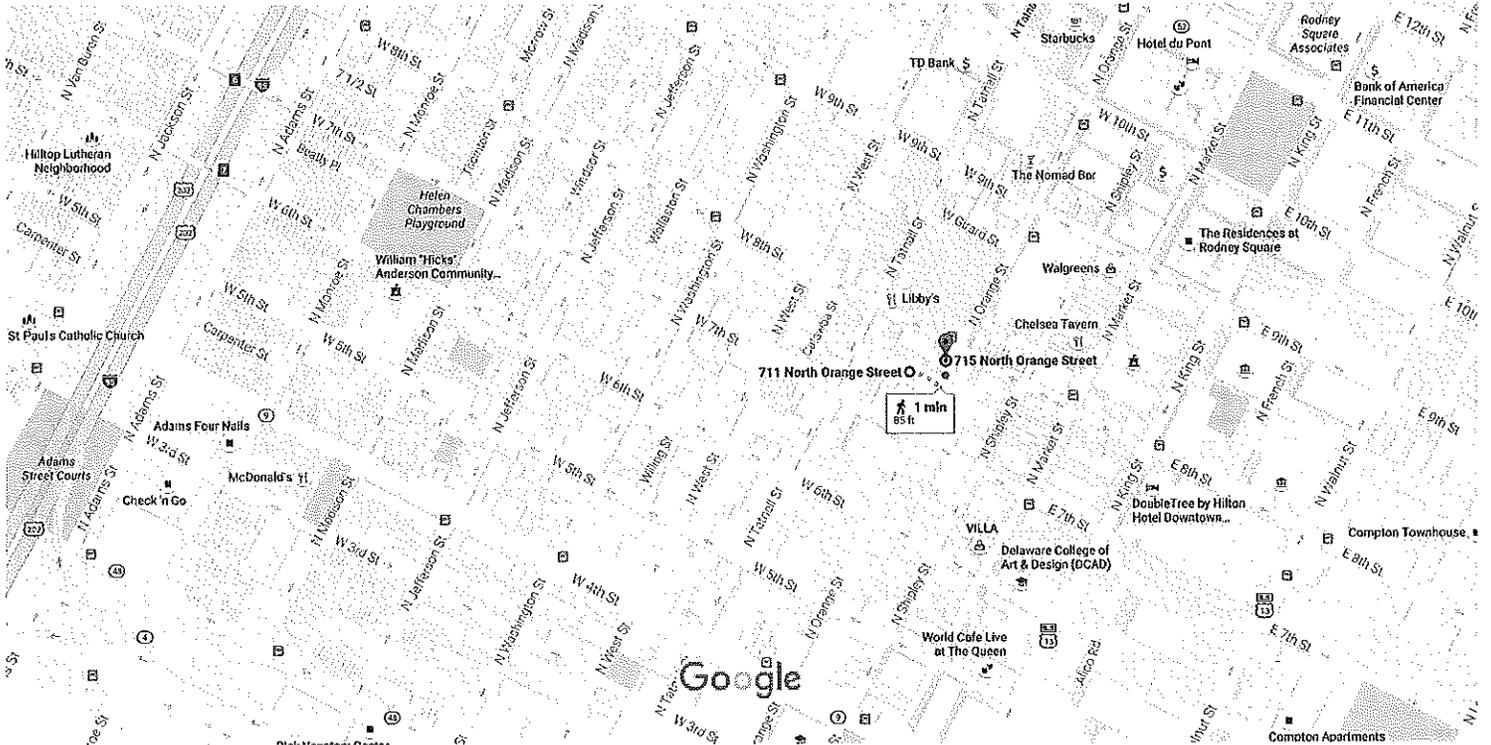
715 North Orange Street
Wilmington, DE 19801

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Google Maps

711 North Orange Street to 715 N Orange St, Wilmington, DE

Walk 85 ft, 1 min



Map data ©2016 Google 200 ft



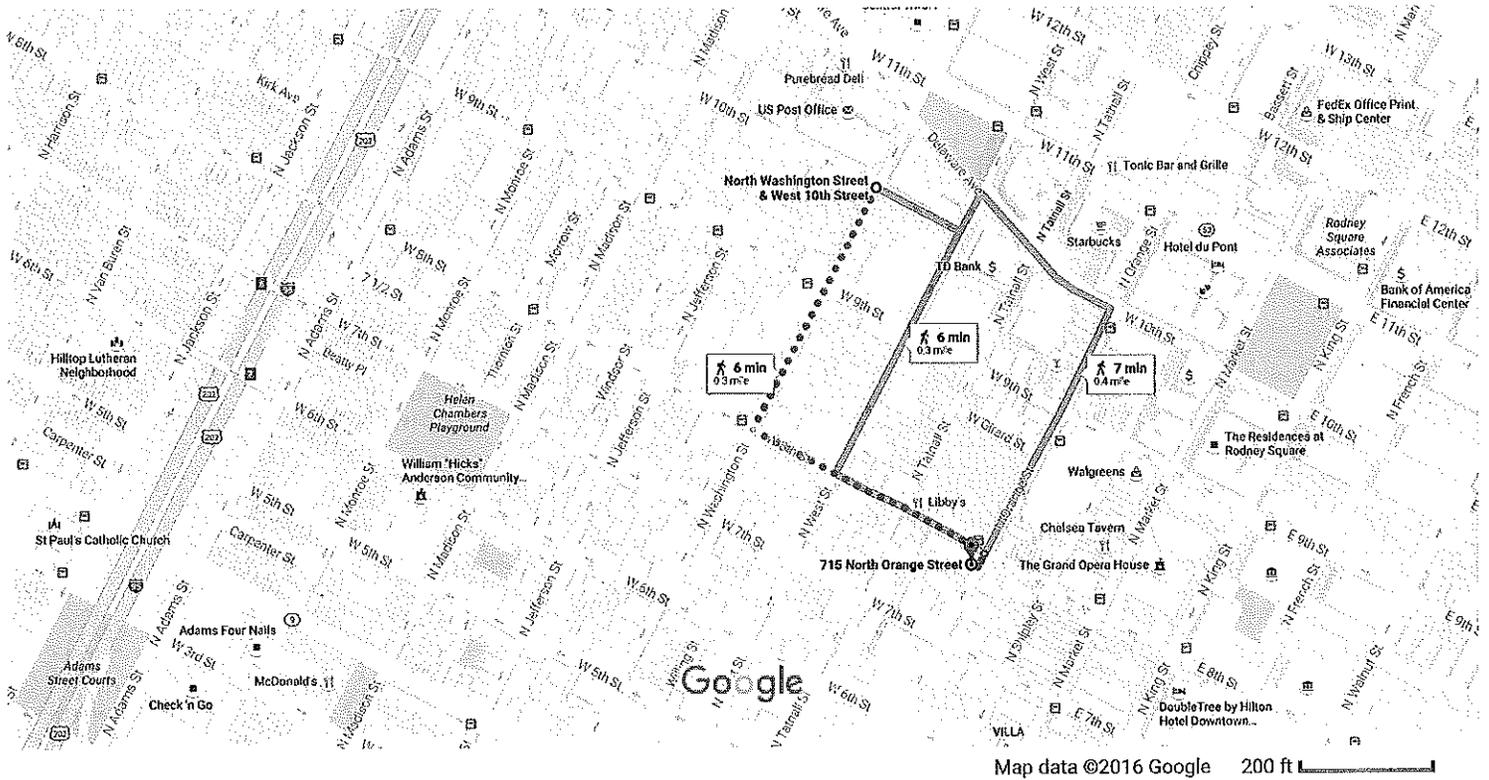
via N Orange St

1 min
85 ft

Google Maps

North Washington Street & West 10th Street to 715 North Orange Street, Wilmington, DE

Walk 0.3 mile, 6 min



via N Washington St and W 8th St

6 min

0.3 mile



via N West St and W 8th St

6 min

0.3 mile



via W 10th St and N Orange St

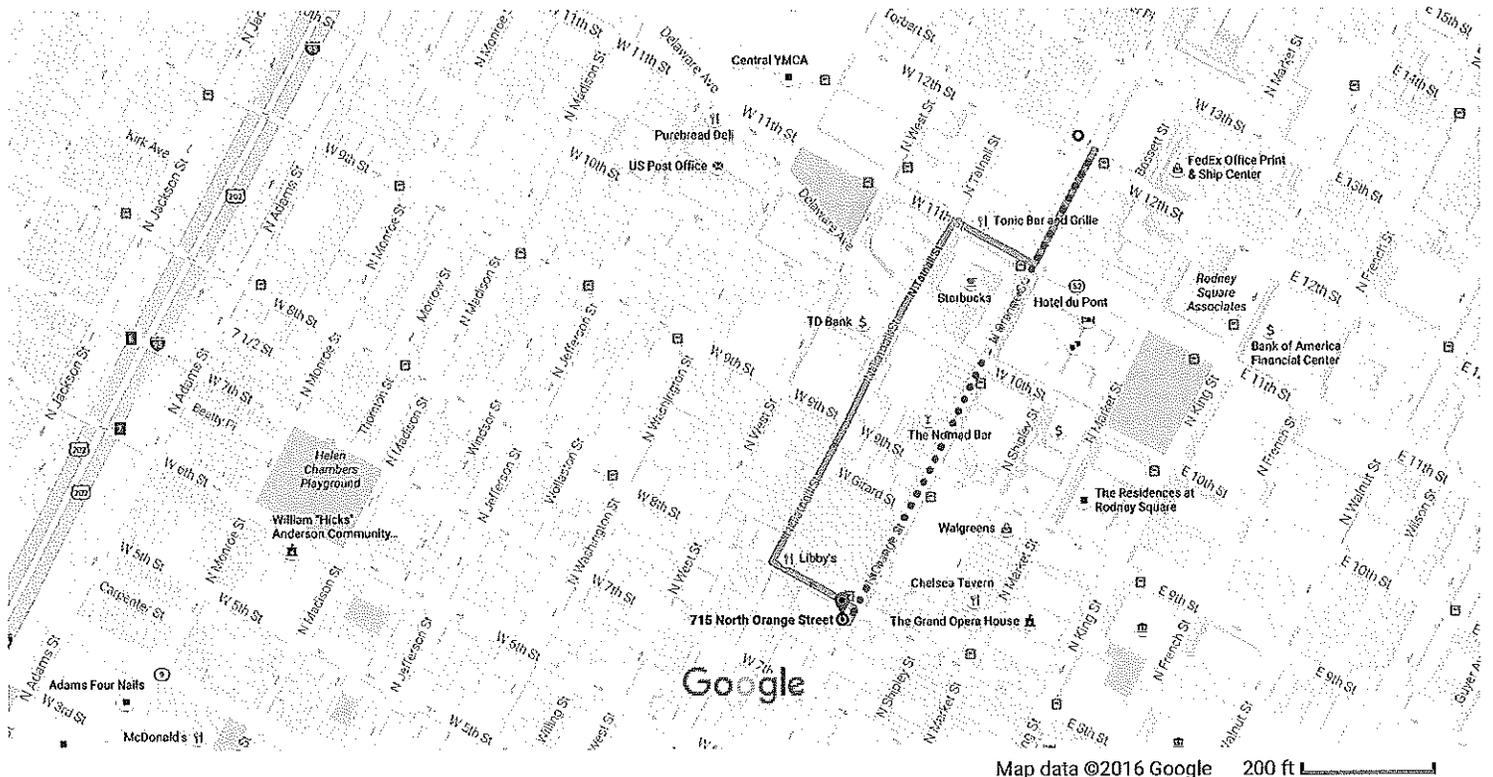
7 min

0.4 mile

Google Maps

1201 North Orange Street to 715 North Orange Street, Wilmington, DE

Walk 0.3 mile, 7 min



via N Orange St

7 min

0.3 mile



via N Tatnall St

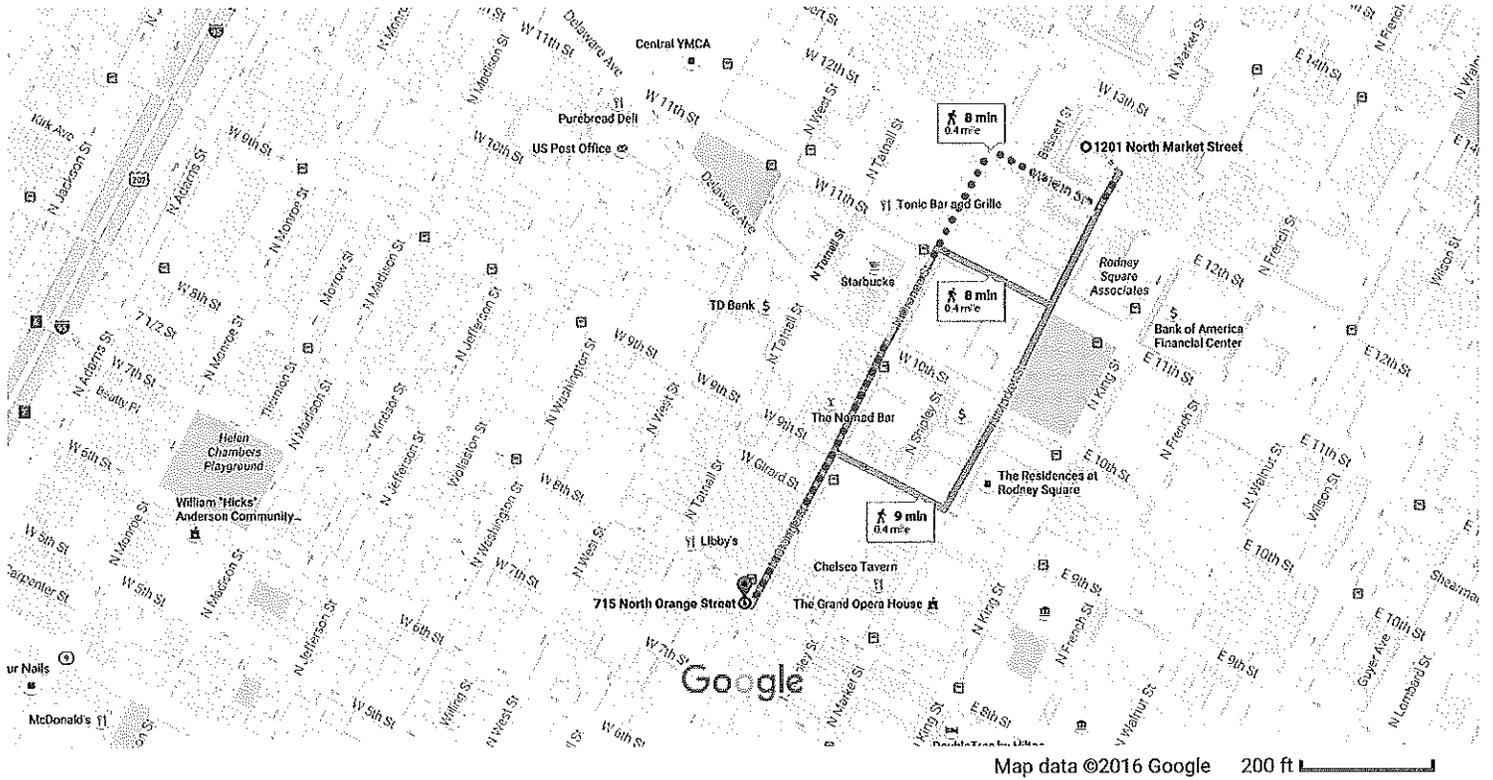
9 min

0.4 mile



1201 North Market Street, Wilmington, DE to 715 North Orange Street, Wilmington, DE

Walk 0.4 mile, 8 min



via N Orange St

8 min

0.4 mile



via N Market St and N Orange St

8 min

0.4 mile



via N Market St, W 9th St and N Orange St

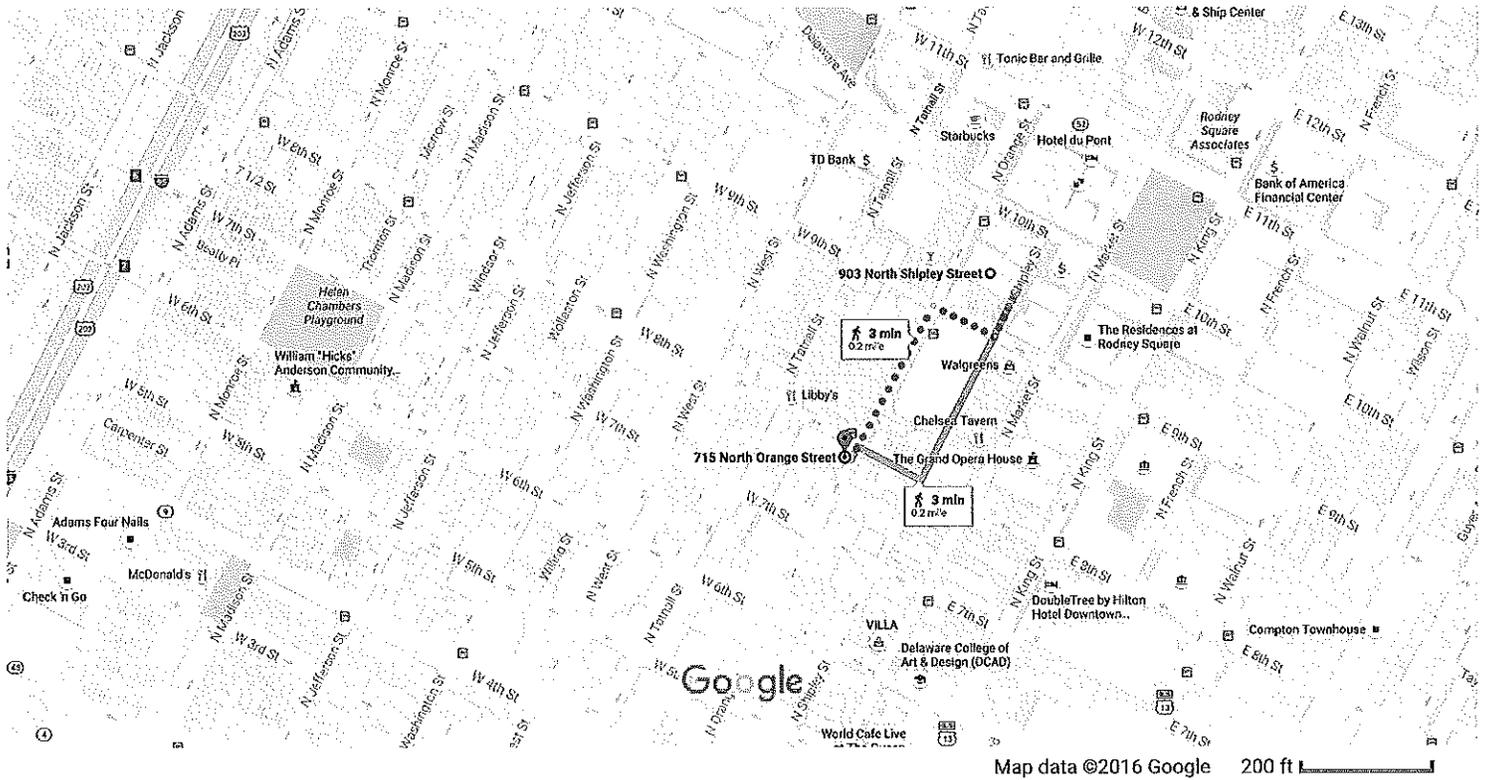
9 min

0.4 mile

Google Maps

903 North Shipley Street, Wilmington, DE to 715 North Orange Street, Wilmington, DE

Walk 0.2 mile, 3 min



via N Orange St

3 min
0.2 mile



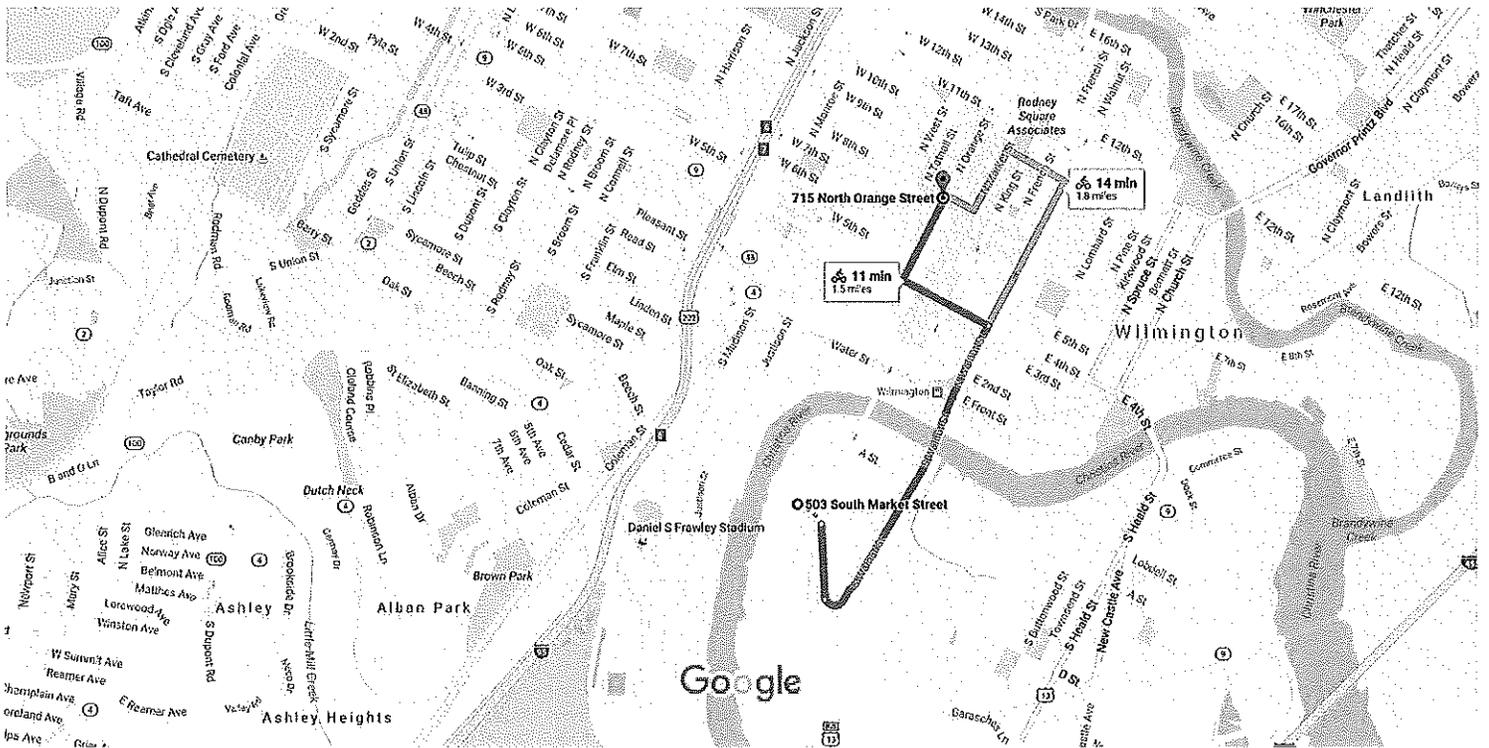
via N Shipley St

3 min
0.2 mile

Google Maps

503 South Market Street, Wilmington, DE to 715 North Orange Street, Wilmington, DE

Bicycle 1.5 miles, 11 min



Map data ©2016 Google 1000 ft



via S Walnut St
↑ 89 ft · ↓ 13 ft

11 min
1.5 miles



82 ft
7 ft



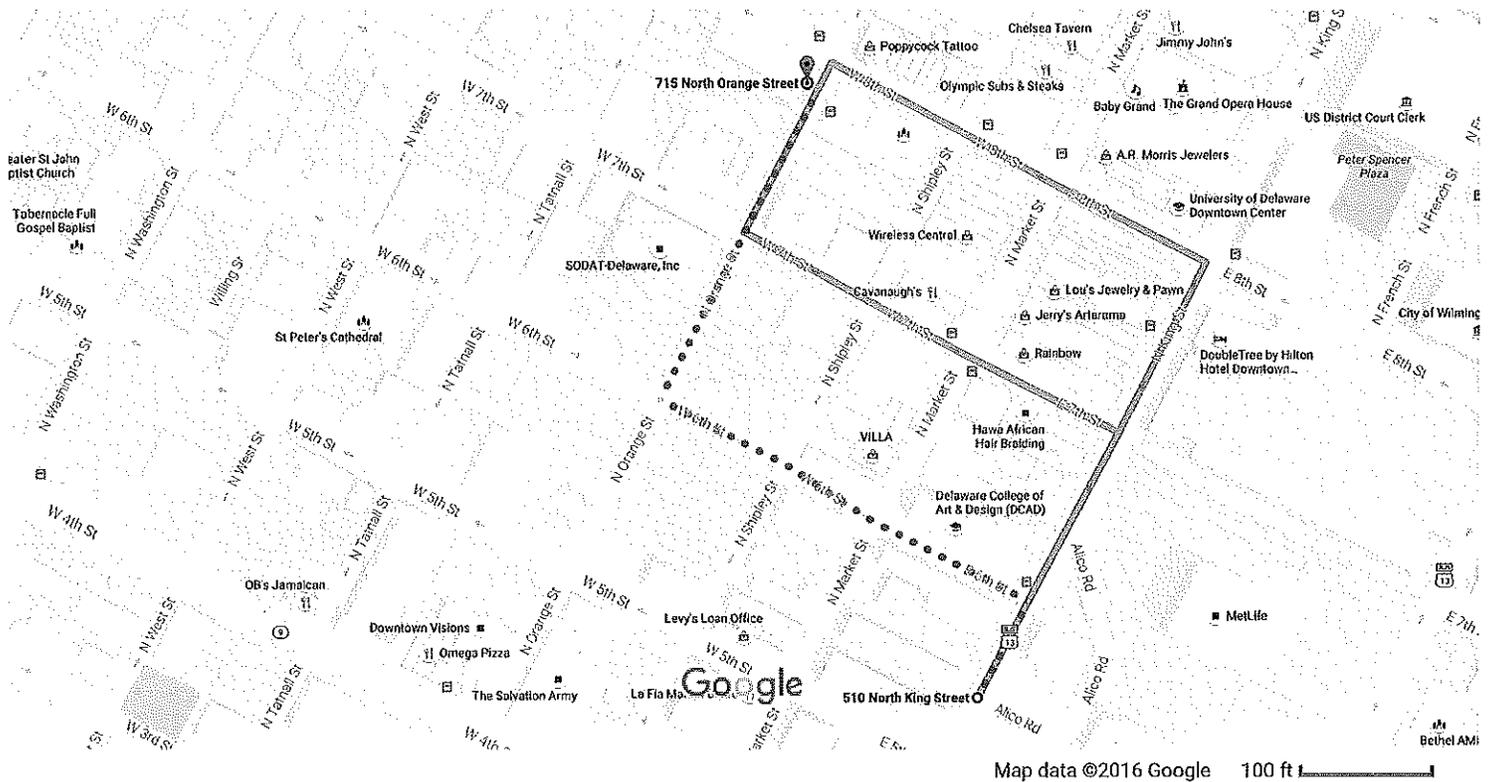
via S Market St and S Walnut St

14 min
1.8 miles

Google Maps

510 North King Street to 715 North Orange Street, Wilmington, DE

Walk 0.3 mile, 6 min



via E 6th St and N Orange St

6 min
0.3 mile



via N King St and E 7th St

6 min
0.3 mile



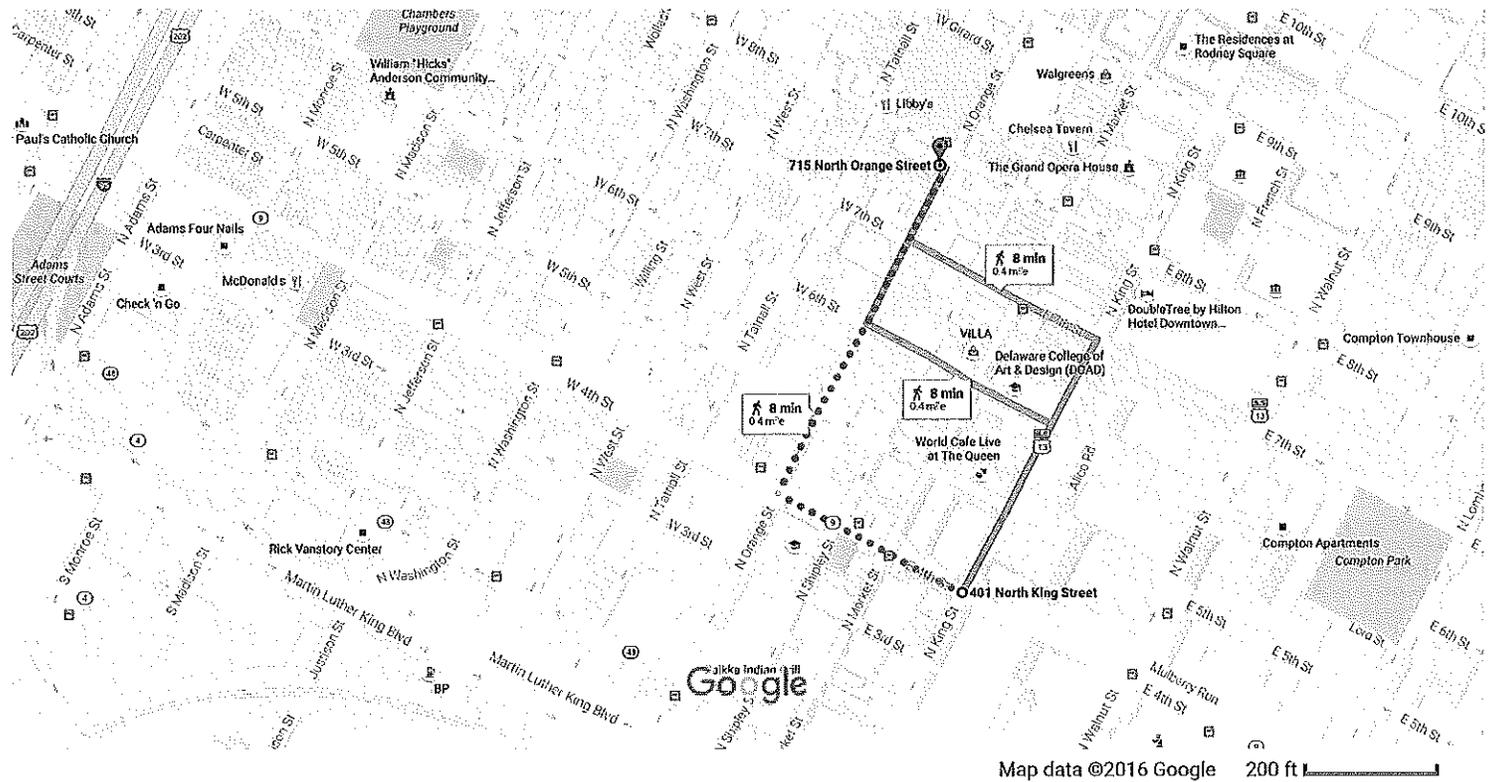
via N King St and E 8th St

6 min
0.3 mile

Google Maps

401 North King Street to 715 North Orange Street, Wilmington, DE

Walk 0.4 mile, 8 min



Map data ©2016 Google 200 ft



via E 4th St and N Orange St

8 min
0.4 mile



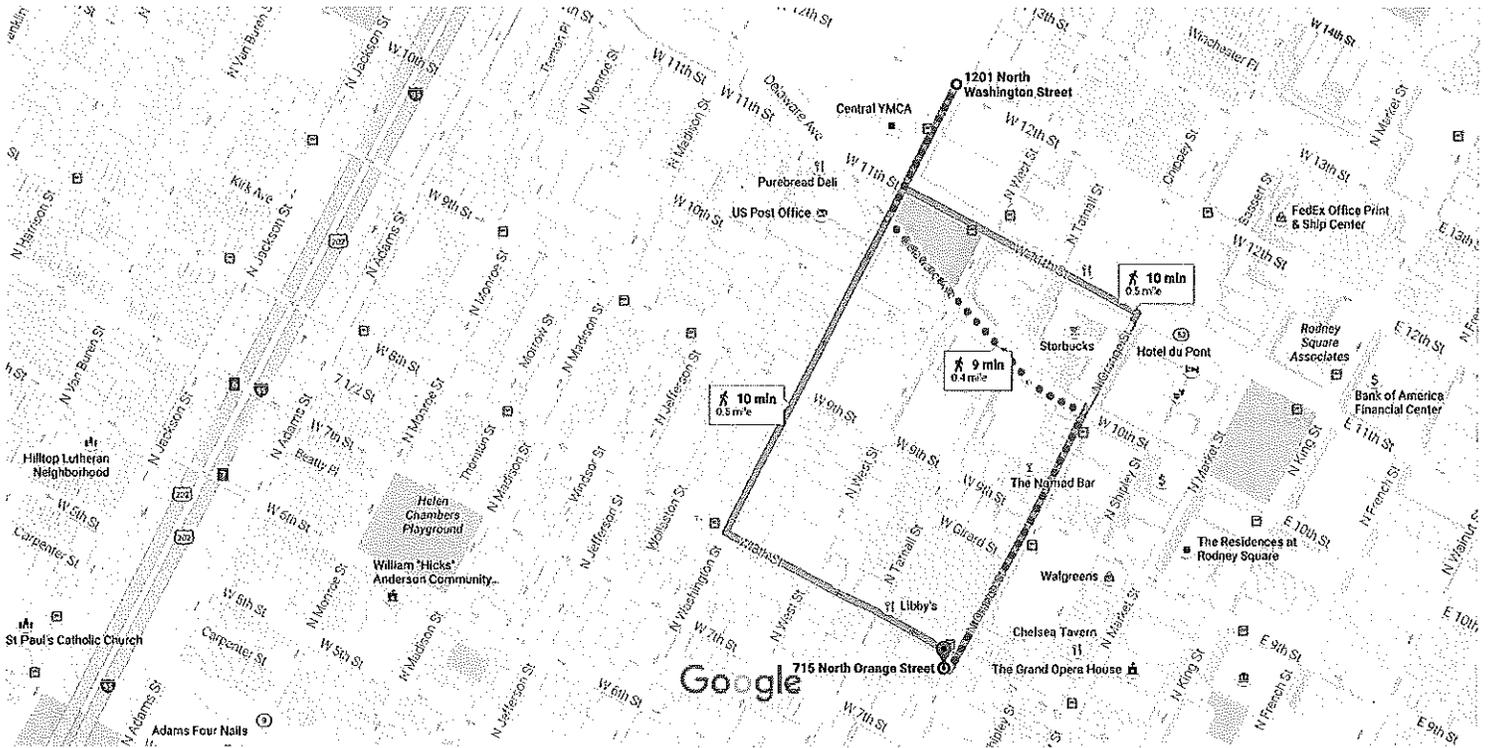
via N King St, E 6th St and N Orange St

8 min
0.4 mile



via N King St and E 7th St

8 min
0.4 mile



Map data ©2016 Google 200 ft



via Delaware Ave and N Orange St

9 min
0.4 mile



via W 11th St and N Orange St

10 min
0.5 mile



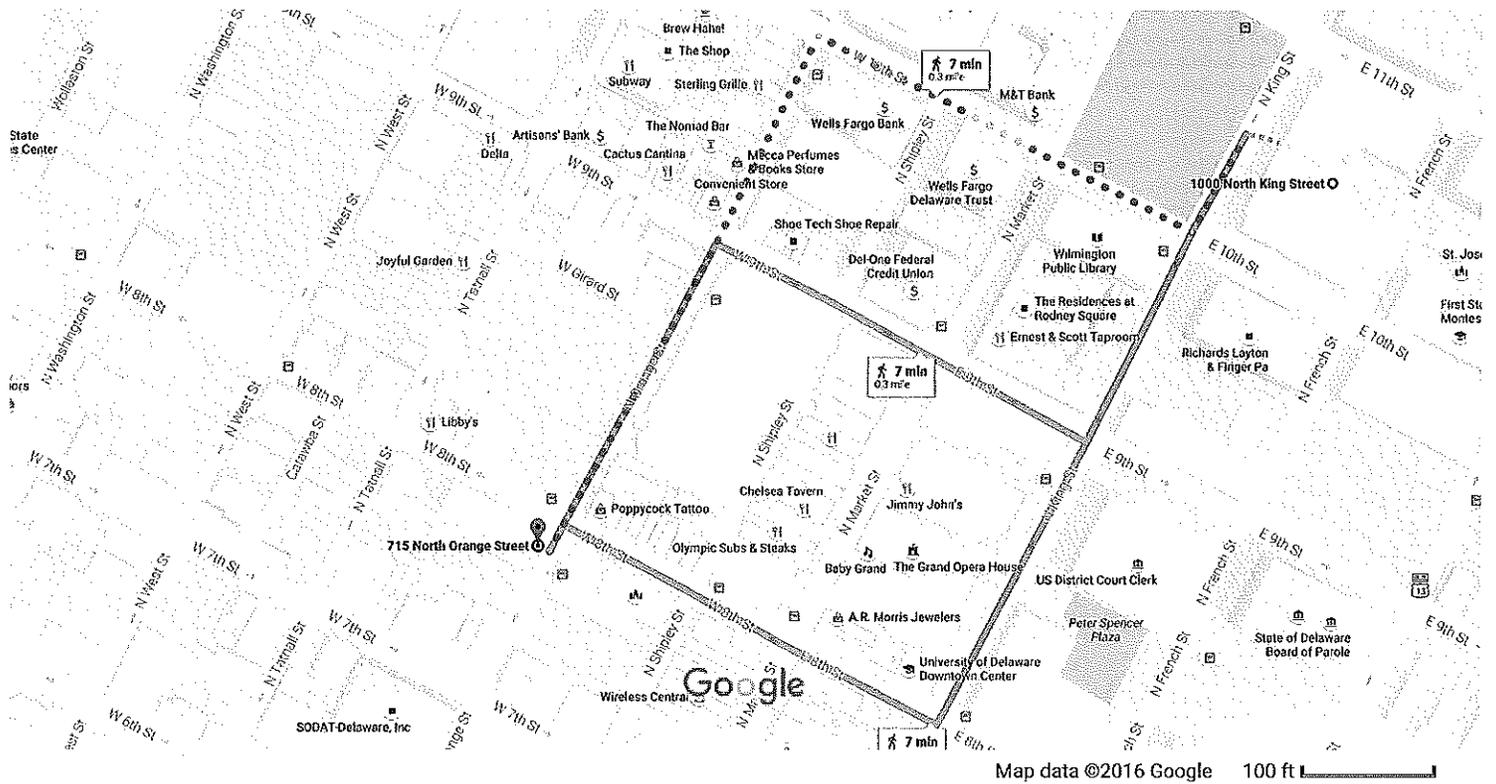
via N Washington St and W 8th St

10 min
0.5 mile

Google Maps

1000 North King Street to 715 North Orange Street, Wilmington, DE

Walk 0.3 mile, 7 min



via E 10th St and N Orange St

7 min
0.3 mile



via N King St and E 8th St

7 min
0.3 mile



via N King St, E 9th St and N Orange St

7 min
0.3 mile

EXHIBIT 11

I received my Election Ballot,
I completed the Ballot, and
placed in my Outgoing Mailbox
2-3 days after receiving it,
Around 12/9/16 - 12/10/16.

A handwritten signature in blue ink, appearing to read "Ch. K." with a large, stylized flourish above the name.

5-10-17.

EXHIBIT 12

Statement Regarding Employee Ballot Not Received at NLRB

On December 28, 2016, I was present at the Region 4 Office of the NLRB for opening and counting of ballots for an election to determine whether UFCW Local 27 would represent certain employees of Colonial Parking.

During the counting process, the NLRB official read the names of Colonial employees from the ballot envelopes that had been received via mail.

The NLB did not receive a ballot from Colonial employee Chris Dineen.

This seemed strange as employee Chris Dineen had strong opinions on the matter.



Chris Hankins

May 10, 2017

EXHIBIT 13

STATEMENT OF JOSEPH P. HOFMANN

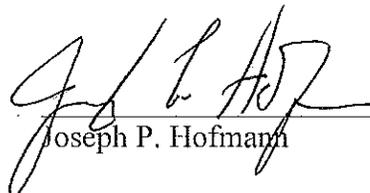
1. My name is Joseph P. Hofmann and I am employed by Stevens & Lee, P.C.
2. I am attorney and am licensed to practice in Pennsylvania.
3. My office location is at 51 South Duke Street in Lancaster, Pennsylvania.
4. I was retained by Colonial Parking, Inc. ("Colonial") to represent Colonial in National Labor Relations Board ("NLRB") Case No. 04-RC-187843.
5. The Regional Director for Region 4 of the NLRB ordered a mail ballot election in NLRB Case No. 04-RC-187843.
6. The mail ballots in NLRB Case No. 04-RC-187843 were opened and counted at the offices of Region 4 of the NLRB, 615 Chestnut Street, Philadelphia, Pennsylvania on December 28, 2016.
7. I was present for the counting of the ballots on December 28, 2016 at the offices of Region 4 of the NLRB in Philadelphia, Pennsylvania.
8. The counting of the ballots in NLRB Case No. 04-RC-187843 was conducted by an employee of Region 4 of the NLRB named Donna Bernini-Martin.
9. Before opening and counting the ballots, Ms. Bernini-Martin told me and the representative of the Petitioner union that the Region had received two different ballots purportedly sent by Colonial employee Jerry Pacheco.
10. Ms. Bernini-Martin represented to me and to the Petitioner representative that Region 4 had received the two ballots purportedly from Mr. Pacheco on different dates and that Region 4 had determined that it would count the ballot purportedly received from Mr.

Pacheco on the date closest to December 28, 2016 and set aside and not count the ballot purportedly received earlier from Mr. Pacheco.

11. Ms. Bernini-Martin afforded the Petitioner representative and me the opportunity to view the purported signatures of Mr. Pacheco on the two different envelopes.

12. I did observe the two signatures on the two different envelopes and it appeared to me that the signatures were clearly different.

13. I am unfamiliar with what Mr. Pacheco's actual signature looks like so I was unable to make a determination as to which of the two signatures was, in fact, the actual signature of Mr. Pacheco.



Joseph P. Hofmann

Dated: May 10, 2017