

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(San Martin, CA)

OS TRANSPORT LLC and HCA MANAGEMENT, INC.

Employer

and

Case 32-RC-5761

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, TEAMSTERS LOCAL  
UNION 350, CTW

Petitioner

**DECISION AND DIRECTION OF ELECTION**

OS Transport LLC, herein called OS Transport, and HCA Management, Inc., herein called HCA, and herein collectively called the Employer, located in San Martin, California, is engaged in the business of hauling waste materials. International Brotherhood of Teamsters, Teamsters Local Union 350, CTW, herein called the Petitioner, filed a petition in Case 32-RC-5761 with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act. The Petitioner seeks to represent a unit composed of all drivers employed at OS Transport's San Martin, California establishment, excluding all other employees. The Employer takes the position that OS Transport's drivers are independent contractors rather than employees, and that it is not subject to the jurisdiction of the Board. The Employer further contends that, even assuming OS Transport's drivers are employees, the petitioned-for unit is inappropriate because it does not include mechanics. A hearing officer of the Board held a hearing in this matter. Prior to the close of the hearing, as part

of the Region's investigation of an unfair labor practice charge against the Employer, a Board agent took the depositions of Employer witnesses Hilda C. Andrade and Oscar M. Sencion, Sr. Thereafter, the parties stipulated that redacted versions of those depositions and related exhibits would be entered into the hearing record for this representation matter, and that the parties did not wish to call any further witnesses or introduce any further evidence into the hearing record. The Employer and the Petitioner both filed post-hearing briefs, which I have duly considered.

The issues before me are: 1) whether OS Transport and HCA constitute a single employer;<sup>1</sup> 2) whether OS Transport, HCA, and/or the Employer is subject to the Board's jurisdiction; 3) whether OS Transport's drivers are independent contractors; and 4) if the drivers are not independent contractors, whether mechanics must be included in the unit of drivers. I have considered the evidence and the arguments presented by the parties on this issue, and I have concluded that OS Transport and HCA constitute a single employer, and that the Employer is subject to the Board's jurisdiction. I have further concluded, in agreement with the Petitioner, that OS Transport's drivers are not independent contractors, and that the petitioned-for unit of drivers is appropriate.

### **OVERVIEW OF THE EMPLOYER'S OPERATIONS**

OS Transport is owned by Hilda Andrade and her two children, Oscar Sencion, Jr., and Crystal Sencion, and was organized as a California limited liability corporation, LLC, in 2006, with Andrade as the managing member. In around 2002, OS Transport

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<sup>1</sup> As discussed more fully below, the record established that OS Transport is a part of a larger organization, HCA, and that the combined entities constitute a single employer. After the hearing, the Petitioner filed an amended and second amended petition asserting, inter alia, an alter ego relationship between OS Transport LLC (NV); OS Transport LLC (CA); HCA Management; OS Management Services, Inc.; Hilda Andrade; and Oscar Sencion. In addition, the Petitioner asserts in its brief that OS Transport, HCA, and Hilda Andrade are alter egos. Given my single employer finding, I find it unnecessary to reach the alter ego issue in this representation proceeding.

was engaged by GreenWaste Recovery Systems, Inc., herein called GreenWaste, an unrelated company, to directly provide it waste hauling services. However, by January 2009, Andrade had formed HCA to engage in the business of contracting subhaulers to transport waste materials, and, in around January 2009, HCA contracted with OS Transport, with HCA taking over the agreement to provide hauling services to GreenWaste. Andrade signed that subhauler contract on behalf of both HCA and OS Transport. In around December 2009, Andrade cancelled the California LLC and organized OS Transport as a Nevada LLC, which completely took over the business of the California LLC.

Andrade is the sole owner of HCA, and she is solely responsible for HCA's operations. HCA has no employees, other than Andrade. HCA is incorporated in Nevada, but it conducts no business there. Andrade runs HCA's operations out of her home in San Martin, California, where she maintains HCA's books and records. HCA's only customer is GreenWaste. GreenWaste has an oral agreement with HCA to perform waste hauling services. As discussed above, HCA contracts with OS Transport to perform those services. HCA also contracts with a number of independent owner-operators who own, operate, and maintain their own vehicles.<sup>2</sup>

Andrade is responsible for all of OS Transport's financial matters, such as recordkeeping and payroll, and she has sole control over its bank accounts. Oscar Sencion, Sr., who is the father of Andrade's children, has assisted Andrade by acting as a yard manager for OS Transport.<sup>3</sup> Oscar Sencion, Jr., assists with duties such as repairing

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<sup>2</sup> The Petitioner does not seek to represent the owner-operators, or contend that they are employees.

<sup>3</sup> Sencion, Sr., is also an independent owner-operator who contracts with HCA. Sencion, Sr. claims he has become less involved with OS Transport since the hearing in this matter began, and it is not clear to what extent he continues to assist Andrade with OS Transport's operations.

tires and picking up parts, and Crystal Sencion assists Andrade with filing and data entry. OS Transport rents a yard in San Martin, California, where it parks its trucks and trailers, and it also maintains a trailer there with a desk inside of it. Andrade does not maintain OS Transport's books and records at the yard. Indeed, there are no filing cabinets, or even a phone at the yard. Presumably, Andrade maintains OS Transport's books and records at her home, along with the books and records for HCA.

OS Transport entered into its current contract with HCA on January 1, 2010. Andrade again signed the contract on behalf of both entities. OS Transport does not provide services for anyone other than HCA. GreenWaste pays HCA for the waste transportation services that OS Transport provides, and HCA in turn pays OS Transport's drivers. Andrade personally distributes paychecks to the drivers and mechanics at the San Martin, California yard. Andrade prepares payroll herself, and she does not withhold employment taxes from the paychecks.

OS Transport employs approximately 18 drivers and 4 mechanics. OS Transport drivers' basic duties are to pick up and haul waste among the various GreenWaste affiliates. Drivers are paid by the load, and receive trip tickets from GreenWaste which they give to Andrade, and which Andrade in turn uses to pay the drivers and to bill for HCA. The drivers operate 3-axle big rig trucks, which are owned and insured by the Employer.<sup>4</sup> If a driver causes any damage at a client's property, the cost of the damage is covered by the Employer's insurance. The Employer also covers the fuel and maintenance costs for the trucks. OS Transport maintains an account with a nearby gas station, to whom it provides a list of drivers who are authorized to fill up under its

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<sup>4</sup> Andrade testified that some OS Transport drivers lease their trucks from OS Transport. OS Transport produced no lease agreements, however, and the record contains none. In any event, Andrade testified that OS Transport pays the fuel costs even for those drivers who lease their vehicles.

account. The Employer also provides the trailers that are used for transporting waste among the various sites. The Employer does not own those trailers, which are on loan from GreenWaste, but it is responsible for the storage and maintenance of the trailers. From around the time of the hearing in this matter, drivers are not allowed to take their trucks home at the end of their workday, but must bring the trucks back to the yard. The trucks say “OS Transport” on the door, and drivers are not permitted to use the trucks to perform work for anybody other than OS Transport.

Drivers arrive to work at the yard at around 6 a.m., Monday through Friday. They do not have a set stopping time. Drivers are required to work rotating Saturdays. The procedure had been that Sencion, Sr., would notify the drivers when it was their turn to work on a Saturday. More recently, senior mechanic Jose Felipe Campos has been notifying the drivers when they are required to work on a Saturday. Although both Andrade and Sencion, Sr. testified that it is up to the individual drivers whether they want to work or not on any given day, the record establishes that the regular practice has been that drivers are required to provide the Employer with written notice before they take a day off. The Employer maintains a list of written work rules that are mandatory for the drivers to follow, and among those rules is the requirement that drivers must communicate to their supervisor if they are going to miss work.

The Employer’s practice has been that when the drivers arrived at the yard in the morning, Sencion, Sr. instructed them which truck to drive, and told them which facility to go to and what materials to load. Sencion, Sr. would coordinate with the drivers throughout the day through the use of Nextel radios.<sup>5</sup> Drivers also coordinate with

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<sup>5</sup> Andrade pays for the radios personally, and she testified that she no longer replaces the radios as they fall into disrepair because they have become too expensive. A number of drivers, however, still have radios.

GreenWaste dispatchers throughout the day regarding which materials to load and where to transport their loads.

The Employer subjects OS Transport drivers to random drug testing, which it contracts with a third party to administer. Drivers are also required to pass a driving skills test, which has been administered by Sencion, Sr. Drivers must possess commercial drivers' licenses. The drivers operate under OS Transport's motor carrier permit, a copy of which is placed in all of its big rig trucks.<sup>6</sup> Because drivers spend most of their time away from the yard, they are not subject to direct oversight by the Employer. When the Employer receives complaints about one of its drivers from GreenWaste or its affiliates, the driver is required to sign and date a written copy of the complaint, and it is placed in a file which is kept for each driver. Andrade explained that if a driver gets too many complaints, she will fire them.

OS Transport mechanics are responsible for maintaining the big rig trucks and inspecting them when the drivers bring them back to the yard at the end of their workday.<sup>7</sup> Mechanics spend most of their time at the yard, but also travel as needed to perform repairs on big rig trucks that have broken down on the road. On such occasions, the mechanics either drive their own vehicles or one of two service trucks that are kept at the yard. Mechanics do not drive big rig trucks, and they are not required to have commercial drivers' licenses. Mechanics own their own tools. Mechanics start work at around 11 a.m., and are paid by the day. According to Andrade, mechanics do not report

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<sup>6</sup> A motor carrier permit is a document issued by the Department of Motor Vehicles as evidence of registration and as verification that the motor carrier has met all of the statutory requirements to commercially operate motor vehicles on California's highways. A motor carrier permit is required for any person or business entity that is paid to transport property in their motor vehicle.

<sup>7</sup> The Employer contends in its brief that the mechanics are independent contractors. Given that the Petitioner does not seek to represent the mechanics, and given my determination that a unit of drivers is an appropriate unit, it is not necessary for me to make a finding on that issue, and I do not.

to anybody, but prioritize their work among themselves. No OS Transport mechanics have ever become drivers, or vice versa. The drivers and mechanics do not fill in for one another, and drivers do not perform any maintenance on the trucks. Neither the mechanics nor the drivers receive benefits from the Employer.

In January of 2009, OS Transport held a meeting with its employees at a pizza restaurant in Morgan Hill, CA. Andrade led the meeting, with the assistance of an attorney. During that meeting, Andrade told the employees, among other things, that the company was going to be closed and that if they wanted to continue to work, they had to become incorporated and work as individual corporations. Andrade presented the employees with incorporation applications during the meeting. All of the drivers elected to sign those documents even though some of the drivers, who could not read English, did not understand what they were signing. OS Transport filed the paperwork on behalf of the drivers and paid all of the costs associated with the filing of the documents. In April of 2009, OS Transport held another meeting with employees at the same restaurant. During that meeting, Andrade, again accompanied by an attorney, gave the drivers binders containing their incorporation forms. As discussed above, in December 2009, OS Transport cancelled its California LLC and organized as a Nevada LLC. Also around that time, OS Transport stopped withholding employment taxes from its paychecks. Other than that change, it appears that all other aspects of the drivers' relationship with OS Transport remained the same.

## ANALYSIS

### **HCA & OS Transport Are a Single Employer**

The Board examines four factors to determine whether two nominally separate employing entities constitute a single employer: 1) common ownership; 2) common management; 3) interrelation of operations; and 4) common control of labor relations. No single factor is controlling, and not all factors need be present to support a finding of single-employer status. Rather, single-employer status depends on all the circumstances and is characterized by the absence of an arms'-length relationship among seemingly independent companies. *Flat Dog Productions, Inc.*, 347 NLRB 1180 (2006); *Dow Chemical Co.*, 326 NLRB 288 (1998).

Applying these principles to the record before me, I find that HCA and OS Transport constitute a single employer based on the factors of common ownership, common management, and interrelation of operations. Andrade is the sole owner of HCA, and a partial owner of OS Transport. Accordingly, common ownership is satisfied. See, e.g., *Naperville Ready Mix, Inc.*, 329 NLRB 974 (1999) (common ownership satisfied where the same individual had a "significant ownership interest" in the companies in question), *enfd.* 242 F.3d 744 (7th Cir. 2001), *cert. denied*, 534 U.S. 1040 (2001). With respect to common management, the record demonstrates that Andrade oversees the day-to-day operations of both entities. In addition to exercising sole authority over HCA's operations, Andrade is also responsible for all of OS Transport's financial matters, including recordkeeping and payroll, and Andrade executes contracts on behalf of both entities. Accordingly, the factor of common management is satisfied. Furthermore, the two operations are heavily interrelated because they are engaged in the

same business, waste transportation, for the same client, GreenWaste. OS Transport provides the labor, and HCA, in turn, bills for the services provided. Although OS Transport maintains a separate facility where it keeps its trucks, the record establishes that Andrade runs the business end of both operations out of her home. Indeed, Andrade testified that she does not even maintain filing cabinets or a telephone at the OS Transport yard. Accordingly, I find that the factor of interrelation of operations is also met.

In finding the single-employer relationship, I do not rely on centralized control of labor relations. Because HCA has no employees, there can be no centralized control of labor relations between the two entities. Typically, the Board accords centralized control of labor relations substantial importance in the single-employer analysis. See, e.g., *Beverly Enterprises*, 341 NLRB 296, 306 (2004). Where, as here, one of the companies has no employees, however, the Board accords less weight to this factor. *Cimato Bros.*, 352 NLRB at 799; *Bolivar-Tees, Inc.*, 349 NLRB 720, 722 (2007), *enfd.* 551 F.3d 722 (8th Cir. 2008); *Three Sisters Sportswear Co.*, 312 NLRB 853, 863 (1993), *enfd.* 55 F.3d 684 (D.C. Cir. 1995), *cert. denied* 516 US 1093 (1996). The absence of centralized control of labor relations here, therefore, does not preclude a finding of single-employer status.

In sum, three of the four relevant criteria are met: common ownership; interrelation of operations; and common management. The only factor that is not present is centralized control of labor relations, and Board precedent establishes that factor should be accorded less weight here because HCA has no employees. Considering the

totality of the circumstances presented in the record, I find that the two companies constitute a single employer.

**The Employer is Subject to the Board's Jurisdiction**

The Employer's primary customer is GreenWaste, a California corporation with an office and place of business in San Jose, California, which is engaged in the collection and disposal of commercial and residential garbage and recycling within the State of California. In the 12-month period preceding the date on which the petition was filed, GreenWaste purchased and received goods valued in excess of \$50,000 directly from points outside the State of California. Accordingly, GreenWaste is an entity engaged in interstate commerce and meets one of the Board's jurisdictional standards other than the indirect inflow or indirect outflow standard.

Andrade stipulated during the deposition that within the past 12-month period, HCA provided services valued in excess of \$50,000 directly to GreenWaste, and purchased and received goods valued in excess of \$5,000 which originated outside the State of California. Accordingly, I find that HCA and OS Transport, a single employer, is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. See *Precision Industries*, 320 NLRB 661, 667 (1996), *enfd.* 118 F.3d 585 (8th Cir. 1997), *cert. denied* 523 U.S. 1020 (1998) (by virtue of the finding that one entity is subject to the Board's jurisdiction, all entities found to constitute a single-employer with that entity are subject to the jurisdiction of the Board).

**The Drivers Are Not Independent Contractors**

The Board applies the common-law agency test to distinguish between independent contractors and employees. *Roadway Package System, Inc.*, 326 NLRB 842

(1998). Here, a number of factors support a finding that OS Transport drivers do not operate independent businesses, but are an essential part of the Employer's operations. A significant factor is that OS Transport drivers have no entrepreneurial opportunity for gain or loss. See *NLRB v. Friendly Cab Company, Inc.*, 512 F.3d 1090 (9th Cir. 2008). In that regard, OS Transport drivers do not own their own trucks,<sup>8</sup> and they are not permitted to use the trucks during their off duty hours, but must return them to the yard at the end of their workday. While the Employer has required its drivers to incorporate, the drivers do business in the name of OS Transport, in trucks that are clearly marked with OS Transport's logo. Compare *Roadway*, 326 NLRB at 851 (noting that although employees were incorporated, they did business under the name of their employer). Indeed, drivers have no proprietary interest in the trucks or the trailers, which remain under the control of the Employer. All equipment-related expenses, including the fueling of the trucks, and the maintenance and insurance of the trucks and trailers, are covered by the Employer. The Employer is also responsible for the costs of any damages that drivers may cause to equipment in the course of their duties. The drivers do not operate under their own motor carrier permits, but under the permit issued to OS Transport. In sum, the drivers have no control over the equipment required to perform their job, and therefore no opportunity to generate income outside of their relationship with the Employer.

Furthermore, the record reveals that OS Transport exercises substantial day-to-day control over the performance of its drivers' duties. Thus, the Employer controls the drivers' scheduling, including requiring drivers to work rotating Saturdays and to provide

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<sup>8</sup> Although Andrade claimed that some OS Transport drivers lease their trucks, she produced no lease agreements, and the record contains none.

written notice when they plan to miss work. The Employer tells the drivers which trucks to operate and where to go in the morning. The Employer also exercises control over the manner in which drivers perform their work by maintaining records of customer complaints that must be acknowledged by the drivers, who may be terminated if they receive too many complaints. Additionally, the Employer has had a practice of checking in with the drivers throughout their workday over Nextel radios, which it still maintains for at least some of its drivers.

Another factor supporting a finding that the drivers are statutory employees is that the Employer establishes, regulates, and controls the rate of pay for the drivers. See *Standard Oil Co.*, 230 NLRB 967 (1977). Drivers are not free to negotiate hauling rates directly with GreenWaste, but must turn their trip receipts over to the Employer, which sets the drivers' per load rate. Moreover, while the Employer has not withheld taxes from the drivers' paychecks, which in some circumstances might have a bearing on deciding an individual's employee status, the Internal Revenue Service (IRS) recently determined that OS Transport drivers are employees, not independent contractors, and that OS Transport is accordingly liable for employment tax withholding.<sup>9</sup> Among other things, the IRS noted that the workers were forced to individually incorporate on threat of discharge; that OS Transport owns, insures, and maintains the vehicles; and that OS Transport had, by such means as the filing of W-2 forms on behalf of the workers, treated them in the past as employees for tax purposes, with there being no substantial change in the workers' services since that time. Given that response by the IRS, I find that the

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<sup>9</sup> I note in that regard that, in November 2010, the IRS issued eight of what it described as "information letters" to OS Transport in response to drivers' requests for a determination regarding their federal employment tax status with respect to services performed for OS Transport. I have taken administrative notice of those letters.

Employer's decision not to withhold taxes on behalf of the drivers at issue here carries no weight for purposes of deciding their employee status.

In sum, for all of these reasons, I reject the Employer's contention that the drivers are independent contractors, and I find that they are employees who may avail themselves of the Act's protections.

**The Petitioned-for Unit is Appropriate**

In assessing the appropriateness of a proposed unit, the Board considers community of interest factors such as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). No single factor has controlling weight, and there are no *per se* rules about including or excluding any particular classifications of employees in a unit. *Airco, Inc.*, 273 NLRB 348 (1984). In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, above. For the reasons discussed below, I conclude that the petitioned-for unit of all drivers, excluding all other employees, is an appropriate unit.

The Employer contends that the petitioned-for unit is not appropriate because it does not include mechanics. While the Employer's drivers and mechanics share some community of interest, such as common management by Andrade and some common working conditions, such as a shared lack of benefits, the record demonstrates that the community of interest between the drivers and the mechanics is limited by several factors. Drivers spend all of their time away from the yard transporting waste, while

mechanics spend the majority of their time in the yard performing maintenance duties. Drivers, who operate 3-axle vehicles, are required to maintain commercial drivers' licenses, while mechanics, who drive either pickup trucks or their own personal vehicles, possess regular drivers' licenses. Accordingly, drivers and mechanics do not share the same skills and functions, and they do not share a common work site. Additionally, there is no interchange between mechanics and drivers, who never perform each other's jobs and who do not transfer from one job to another. There is also limited contact between the two groups, who have different work schedules. Furthermore, the two groups work under different pay structures, with drivers being paid by the load and mechanics being paid by the day. In these circumstances, the drivers share a sufficient community of interest separate and apart from the mechanics to warrant finding them to be a unit appropriate for collective bargaining. I therefore conclude that a unit of drivers alone is an appropriate unit, in accordance with the Board's longstanding practice of permitting truckdrivers to be separately represented. See *Mc-Mor-Han Trucking*, 166 NLRB 700 (1967); *Riteway Motor Parts Corp.*, 115 NLRB 294 (1956).

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, 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 within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its 12835 Monterey Highway, San Martin, California facility, excluding all other employees.

There are approximately 18 employees in the unit.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Teamsters, Teamsters Local Union 350, CTW**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who

have been permanently replaced, as well as their replacements are eligible to vote. 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.

**Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before **January 21, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>10</sup> by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349

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<sup>10</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

(1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **January 28, 2011**. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>11</sup> but may not be filed by facsimile.

Dated: January 14, 2011

/s/ William A. Baudler \_\_\_\_\_  
William A. Baudler, Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5211

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<sup>11</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).