

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

SANDS BETHWORKS GAMING, LLC d/b/a
SANDS CASINO RESORT BETHLEHEM¹

Employer

and

Case 4-RC-21833

LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION

Petitioner

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

The Employer, Sands Casino Resort Bethlehem, operates a casino and hotel in Bethlehem, Pennsylvania. The Petitioner, Law Enforcement Employees Benevolent Association, 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 security guards. The Employer contends that the Petitioner is disqualified from representing security guards under Section 9(b)(3) of the Act because it is affiliated with other labor organizations that admit nonguards to membership. Additionally, in the event that an election is ordered, the Employer would include the locksmith in the unit, while the Petitioner would exclude that position. The petitioned-for unit includes about 84 security guards.

A Hearing Officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties, and, as discussed below, I have concluded that the Petitioner is not disqualified from representing a unit of security guards and that the locksmith should not be included in the unit. Accordingly, I have directed an election in a unit of security guards, excluding the locksmith.

In this Decision, I will first address the question of the Petitioner's status under Section 9(b)(3) of the Act by discussing its connections with two other organizations, Putnam Nurses Association (PNA) and Steelworkers Local 2599, and setting forth the relevant legal analysis.

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

Then I will present the significant facts concerning the locksmith and explain the reasoning that supports my conclusion..

I. THE PETITIONER'S STATUS UNDER SECTION 9(b)(3)

Because the Petitioner seeks to represent a unit comprised of security guards, the Petitioner must comply with Section 9(b)(3) of the Act, which provides in pertinent part that: "... no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." The noncertifiability of a guard union must be shown by *definitive evidence* so that the rights of guards to be represented by a union and of guard unions to represent guards would not be seriously undermined. *Burns International Security Services, Inc.*, 278 NLRB 565, 568 (1986). The Board has consistently ruled that a guard union is "affiliated indirectly" with a nonguard union where the extent and duration of the guard union's dependence upon the nonguard union indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action. *Wells Fargo Guard Services*, 236 NLRB 1196 (1978); *The Magnavox Company*, 97 NLRB 1111, 1113 (1952).

The Employer contends that the Petitioner cannot be certified to represent the petitioned-for bargaining unit of security guards under Section 9(b)(3) because: (1) it is directly affiliated with PNA, a labor organization which admits nonguards to membership; and (2) it has accepted assistance from a second nonguard union, Steelworkers Local 2599, creating a disqualifying indirect affiliation. The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

FACTS

Putnam Nurses Association (PNA)

The Petitioner's founder and President is Kenneth Wynder.² Wynder testified that the Petitioner was established in 2002 and has been found eligible for certification to represent guards under Section 9(b)(3) of the Act in two prior Board cases.³ He stated that, together with the Petitioner's Benefits Coordinator, Drew Brown,⁴ he founded the PNA seeking to become the collective-bargaining representative of nonguard employees at Putnam Hospital in Putnam County, New York. Wynder would have served as the President of the PNA had that organizing campaign progressed. He testified, however, that no employees signed authorization cards for the PNA, the PNA has no members, and the organizing drive is no longer active. Wynder

² Mr. Wynder's name is spelled incorrectly as "Winder" throughout the transcript.

³ *Brink's U.S.*, Case 29-RC-11291 (2006); *Sea Gate Association*, Case 29-RD-1096 (2008).

⁴ Mr. Brown's wife was an employee of Putnam Hospital and assisted in the founding of the PNA.

testified, in summary, that the PNA “never materialized.” The record does not disclose when the failed organizing effort occurred.⁵

In support of its campaign, the PNA created a website which remained on line at the time of the hearing in this matter. The website lists “Affiliate Unions” of the PNA, and the Petitioner is included on this list. Among other things, the website also states that PNA seeks “to effectively manage and represent the interests of employee members . . . through direct member involvement” The website additionally features a message from “President Wynder” and identifies as PNA’s counsel the same attorney that represents the Petitioner in the pending case. Wynder testified that despite the organization’s inactivity, the website was never taken down.

United Steelworkers Local 2599

As part of its organizing efforts in this case, the Petitioner held two meetings at the Steelworkers Local 2599 union hall in Bethlehem. According to Wynder, a rank-and-file member of Local 2599 arranged for the use of the hall without charge to the Petitioner. He further testified that he had no contact with Local 2599’s officers concerning the arrangements for the use of the hall, but he met Local 2599’s President at the second meeting. While officers and/or members of Local 2599 may have been present in the union hall when the organizing meetings took place, no one from Local 2599 attended the meetings. The Petitioner provided the refreshments for the meetings.⁶

An article dated May 18, 2011 in the *Express-Times*, a local newspaper, described the Petitioner’s organizing effort at the casino. In the article, the President of Local 2599 was quoted as stating that he hoped that the Petitioner was successful in its organizing efforts, because that “could open doors for us.” The article noted that Local 2599 tried unsuccessfully to organize the Employer’s employees in 2009. Wynder testified that this newspaper article was generated by a press release issued by the Petitioner, and the Petitioner had no contact with Local 2599 concerning either the press release or the subsequent article.

ANALYSIS

Putnam Nurses Association

The PNA’s website states that the Petitioner is affiliated with the PNA, and Wynder confirmed that he intended to become the President of PNA and that the PNA intended to represent nonguards. Had the PNA succeeded in becoming a labor organization under Section 2(5) of the Act and remained affiliated with the Petitioner, such an affiliation would preclude the Board from certifying the Petitioner as the collective-bargaining representative for a unit of security guards. *Wells Fargo Guard Services*, above; *The Magnavox Company*, above.

⁵ In its brief, the Employer estimates that PNA was formed in 2009 based on the website notation: “content copyright 2009-2011,” but Wynder’s record testimony does not address the chronology of the PNA’s activities and there is no other evidence on this point.

⁶ The Petitioner’s only offices are located in New York State, about three hours’ driving time from the Employer’s casino hotel in Bethlehem.

However, the testimony establishes that the PNA that never attained the status of a labor organization within the meaning of the Act. While the requirements necessary to meet the definition of “labor organization” under Section 2(5) do not include formal steps, the Board requires that a labor organization satisfy two criteria at a minimum: “first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment.” *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851 (1962). Accord: *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002). The PNA was established with the intent to represent Putnam Hospital employees and bargain with their employer concerning terms and conditions of employment. However, the uncontroverted testimony establishes that PNA never had any members and never represented any employees. The only evidence of the PNA’s current viability is the continuing existence of the website, but there is no evidence that any representative of the Petitioner recently operated this website, and Wynder testified that he simply forgot to remove it from cyberspace. The presence of the website is insufficient to show that PNA is or ever has been a functioning labor organization. In short, the evidence of labor organization status adduced at the hearing does not meet the standard of “definitive evidence” set forth in *Burns*, above, that is required to establish that a guard union should not be certified. I therefore find that the PNA is not a labor organization within the meaning of Section 2(5) of the Act, and the Petitioner was not affiliated with any labor organization within the meaning of Section 9(b)(3).⁷ Furthermore, even if that the PNA had once acquired employee members and satisfied the definition of a nonguard union for purposes of Section 9(b)(3), since it is no longer in existence, there is no current disqualifying affiliation between two labor organizations which bars the Petitioner from being certified to represent a unit of guards.

United Steelworkers Local 2599

The Employer also asserts that the Petitioner should be disqualified from certification under Section 9(b)(3) based on an indirect affiliation with Steelworkers Local 2599. The Board has held that a union is indirectly affiliated with another union if it is “not free to formulate its own policies and decide its own course of action independently.” *International Harvester Co.*, 145 NLRB 1747 (1964). In that case, the Board further stated:

The Board has refused to find indirect affiliation where, on the record, it appeared that the assistance and advice once received by the guard union from the nonguard union had, in fact, terminated. The Board explained that mutual sympathy, common purpose, and assistance between such unions was “not, without more, indicative of 'indirect affiliation' within the meaning of Section 9(b) of the Act.” Thus, a mere showing that the guard union had used the

⁷ Respondent cited several cases in support of its assertion that the Petitioner should be disqualified under Section 9(b)(3), including, inter alia, *Wells Fargo Guard Services*, 236 NLRB 1196,1197 (1978); *Stewart-Warner Corp.*, 273 NLRB 1736 (1985); and *Mack Manufacturing Corp.*, 107 NLRB 209 (1953). As these cases all involve situations where the allegedly disqualifying relationship existed between two active and viable organizations, these cases are distinguishable.

meeting hall of a nonguard union rent-free; that assistance was provided to the guard union in its organizational stage; or that the nonguard union had recommended an attorney and mimeographed membership cards for the guard union, was found insufficient to establish that the guard union was not free to formulate its own policies and decide its own course of action independently. Such facts alone will not necessarily support a finding of indirect affiliation within the meaning of Section 9(b)(3).

Id. at 1749. [footnotes omitted]. Thus, the issue here is whether the Petitioner is connected to or relying upon the Local 2599 to such an extent that it lacks the necessary independence to act on its own.⁸

Local 2599 provided only minimal assistance to the Petitioner by allowing the Petitioner to use its hall without charge for two organizing meetings with the Employer's guards. The Board has held that the mere use of a union hall does not establish affiliation. *International Harvester Co.*, above, 81 NLRB at 376. Local 2599 representatives did not attend the meetings, and the only contact between officials of the two organizations was a brief contact between Wynder and Local 2599's President at the hall on the date of the second meeting, and the record does not indicate the nature of their conversation at that time.⁹

Additionally, Local 2599's President informed a local newspaper that he hoped the Petitioner's organizing campaign would be successful, but this statement was nothing more than an expression of common purpose, insufficient under Board law to establish an affiliation within the meaning of Section 9(b)(3). *The Midvale Co.*, 114 NLRB 372, 374 (1955); see also *International Harvester Co.*, above, 81 NLRB at 376. In sum, there is no evidence of involvement by Local 2599 in the Petitioner's organizing drive other than the loan of the union hall as a meeting place, and no other evidence of indirect affiliation. I therefore find that the Petitioner is not indirectly affiliated with the Local 2599 and is not disqualified from representing a unit of guards under Section 9(b)(3) of the Act. *Wells Fargo Guard Services*, above.

II. THE LOCKSMITH

FACTS

The Employer's Internal Security Operations

The Employer opened its casino in May of 2009. At the time, the casino offered only slot machines, but in January of 2010, the casino added table games, including blackjack, craps,

⁸ The Employer correctly notes that the Petitioner has been in existence for several years and is not in a formative phase during which some level of assistance might be permitted. Cf. *International Harvester Co.*, 81 NLRB 374 (1949).

⁹ The Employer asserts in its brief that that Local 2599 "obtained signed cards from some of the guards before LEEBA was introduced to them," but the record contains no factual support for this assertion.

baccarat, and poker. A newly-built hotel was scheduled to open on the premises at the end of May, 2011.

Security is an overriding concern at the casino, and in addition to the Employer's internal security force, the Pennsylvania Gaming Control Board (PGCB) maintains a daily presence in the casino and an office on site, and Pennsylvania state police are also regularly present at the casino. Local police have some responsibility for maintaining order in the non-gaming areas of the casino.

Fred Kraus, the Vice President and General Counsel for the Employer's operating company in Las Vegas and chairman of the Employer's corporate compliance committee, has oversight responsibility for regulatory compliance with state and federal gaming regulations, including, inter alia, the Bethlehem casino's compliance with PGCB regulations. Kraus testified that the casino's transport and accounting methods for cash, chips, dice, and cards are tightly monitored by the Employer and also come under the direction and control of the PGCB. The standard means of securing these assets requires a dual key system such that individuals from two different departments within the casino must cooperatively unlock the dual controls in order to access the assets. In most instances, the dual key system requires the use of keys maintained within the Security Department. Use of these keys is closely controlled with sign-out procedures and/or limited access locking cabinets. According to Kraus, the dual key control system is critical to securing the casino's assets and complying with various regulatory mandates intended to protect both the customer's interests in the integrity of the gaming process and the state's interest in tracking taxable revenue derived from gambling enterprises.

The overarching concern in collecting and transporting assets to and from the casino floor is to assure that no single individual has the opportunity to commit a fraud. Therefore, dual key controls are used in various secured areas, including the counting room and the cashier's "cage" or main storage area for cash, chips and other assets. The cage area must be accessed through two successive secured doors, each unlocked separately by employees who work in two different departments, one of which is the Security Department. Within the cage, additional security systems are in place to permit and track access to chips, dice, and cards, and these systems also involve the security guards. The security guards are responsible for staffing the "Drop Teams" that collect assets from the casino floor at established intervals. The Drop Teams use "trolleys" to collect and replace revenue "drop boxes" on the casino floor, at the gaming tables, and in the slot machines. These drop boxes are secured by individual locks to the trolley as they are retrieved and replaced. At the gaming tables, there is a lock securing the drop box to the gaming table and a dual lock securing the contents of the drop box. Within the slot machine drop boxes are microprocessors, which control the basic operation of the slot machines, and bill validators. Either hard keys or plastic swipe cards are used to gain access to these additionally secured components within the machines, and these keys are controlled by the Finance Department.

A number of other storage and collection points with dual lock access are on the casino floor. These include gaming kiosks and automated redemption machines for customers' use. There are also pit stands at each gaming table for storing extra supplies of dice and cards, and each table also has a "float" box in which the chips are locked during intervals when the table is

closed, as well as a separately locked tip box. The Security Department is designated as one of the two departments with key access to these supplemental collection points.

The Employer also uses paper document control records in its revenue security system such as: electronic tracking records of the employee key swipes under the dual key system; "fill slips" jointly signed when chips are delivered to the gaming tables; gaming table opening and closing slips completed at shift changes; and electronic "ticket-in/ticket-out" records generated within the slot machines when they are opened. These paper documents are generally deposited in the drop boxes as part of the revenue control system and are thus subject to the dual lock safeguards.

The Locksmith's Duties and Responsibilities

The locksmith was hired in approximately March of 2009, and the same individual has continued in this position since his initial hire. He was not called to testify at the hearing, nor was his supervisor.

The job description for the locksmith indicates that the position is part of the Security Department, and the locksmith reports directly to the Director of Security, who is responsible for the Employer's overall internal security operations. The locksmith maintains the same gaming license as the security guards, in compliance with state regulations requiring a gaming license for all personnel with access to revenue on the casino floor. The job description sets forth the position's purpose as follows:

The primary responsibility of the locksmith is to provide lock services to ensure the safety and protection of guests, team members, and company property. Anticipates potential problems and seeks ways to prevent disruption, injuries, and prohibited conduct from occurring on company premises. Responds to emergency situations as requested and takes appropriate steps to rectify problems and at the same time minimize hotel liability. All duties are to be performed in accordance with departmental and Sands Bethlehem policies, practices, and procedures.

The position requires three years of experience in "installing all types of commercial hardware." The listed "position responsibilities" that are specific to the locksmith position include: "the opening of locks; the use of key cutting machines and all common locksmith tools; install/repair/maintain access control and electro-magnetic locking systems; use computer programs for keying and specification writing;" and "maintain and repair safes, including combination changes."

The locksmith is responsible for the maintenance of all locks and keys and for the initial distribution of all keys to individuals on an access list. The distribution of keys is tightly controlled, with very few employees having keys to the most sensitive areas. Licensed key stock manufacturers provide the unique material utilized to make many of the keys so as to minimize, if not eliminate, the risk of unauthorized duplication. The key stock for the locks is kept in a

shop used by the locksmith. The locksmith cuts hard copies of keys and maintains and distributes electronic keys. If a key is lost, the locksmith is responsible for changing it and distributing the new key to the designated key holders or to the secured cabinets where the keys are stored. By necessity, the locksmith has access to every key and lock on the Employer's premises. He works alongside other employees, usually security personnel, when repairing locks on the floor of the casino and may need to be escorted within certain controlled areas by someone with a higher-level gaming license. The locksmith has no post and may be called to any area of the casino, or to the hotel, to work on a malfunctioning lock. The Employer considers the locksmith to be part of its essential security operations.

The Locksmith Position's Similarities to and Differences from the Security Guards

The locksmith works five days a week from 7 a.m. to 3 p.m. and may be called in during his off-hours as needed. Security guards are assigned to one of three shifts for round-the-clock coverage. The locksmith reports directly to the Director of Security. The security guards are supervised by any of six shift supervisors, who report to three shift managers, and they report to the Director of Security. The starting wage rate for the locksmith is 50 percent higher than the wage rate for entry-level security guards; benefits are the same for employees in both positions. Prior law enforcement or security industry experience is preferred for security guards but not required, and the physical aspects of the position requirements included in the locksmith job description are slightly less demanding than those of the security guards. The locksmith attends daily pre-shift meetings with other Security Department employees.

The locksmith wears Employer-issued pants and a light blue polo shirt with the company logo and the designation "locksmith." The same apparel is worn (without the locksmith designation) by the casino floor Drop Team, but the other security guards wear a long-sleeve dark blue shirt with a logo.

The security guards function as authorized dual key operators for multiple access procedures on the gaming floor, as well as in non-public areas such as the cashier cage. The locksmith has no such responsibilities and only enters secured areas when called upon to do so in connection with lock maintenance

The locksmith keeps a log. The contents of his log were not described on the record, but it is reasonable to expect that the log details distribution, repair, and replacement of keys for security control purposes. The security guards maintain a security log.

The Employer's witnesses testified that the locksmith is authorized to fill in as a security guard, but were unable to say whether he has ever done so since his hire in 2009. There is no contention that security guards can fill in for the locksmith.

Although all security guards are trained in the use of force, the Employer's witnesses did not know whether the locksmith also received such training. The security guards do not carry handcuffs or nightsticks, but they have been called upon to evict individuals from the casino and as a result occasionally have been engaged in physical scuffles. There is no suggestion that the locksmith has been involved in such incidents or is responsible for evicting unruly customers.

Both the security guards and the locksmith have been trained to administer CPR and furnished with hand-held scanners to check the identification of patrons suspected of being underage. The locksmith and the security guards carry radios for dispatch purposes.¹⁰

A few specific functions may be performed by either the security guards or the locksmith. For example, if a casino patron triggers an alarm by attempting to open a secured exit door, any security guard or the locksmith can silence the alarm. The locksmith and security guards may open the hotel room door for a guest whose lock is malfunctioning, and they may open a room safe if the guest has forgotten the combination. There is guest-services training for all personnel in identifying and dealing with underage and/or intoxicated guests as well as general instruction on positive guest interaction.

ANALYSIS

Section 9(b)(3) of the Act defines a guard as “any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” The Board has stated that in determining whether employees are guards, it is primarily concerned with the nature of the employees’ duties and that employees are guards if they are charged with “guard responsibilities” that are not a minor or incidental part of their overall responsibilities. *The Boeing Co.*, 328 NLRB 128, 130 (1999); *J.C. Penney Co.*, 312 NLRB 32 (1993). The employees in question must be engaged “directly and substantially” in the protection of their employer’s property or the property of their employer’s customers in order to be found to be statutory guards. *Courier Dispatch Group*, 311 NLRB 728, 733 (1993); *Purolator Courier Corp.*, 300 NLRB 812, 814 (1990). The Board has defined guard responsibilities as those typically associated with traditional police and plant security functions such as: the enforcement of rules directed at other employees; the authority to compel compliance with those rules; training in weapons and security procedures; possession of weapons; participation in security rounds or patrols; monitoring and controlling access to the employer’s premises; and wearing guard-type uniforms or displaying other indicia of guard status. *The Boeing Co.*, above, citing *Wolverine Dispatch, Inc.*, 321 NLRB 796, 798 (1996); *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993); *Burns Security Services*, 300 NLRB 298, 300 (1990), enf. denied, 942 F.2d 519 (8th Cir. 1991). See also *Madison Square Garden*, 333 NLRB 643 (2001).

I find that the locksmith position does not meet these standards. The evidence does not show that the Locksmith enforces casino rules directed at other employees or compels other employees’ compliance with casino rules. The locksmith does not carry weapons, and the record does not show that he is trained in the use of force. Unlike the guards, the locksmith is not

¹⁰ During the hearing, the Petitioner briefly asserted that the locksmith was a supervisor and offered into evidence a list entitled “Security Management Contact Information” which included the locksmith’s name. The Petitioner did not renew this assertion in its brief. There was no further evidence offered to suggest that the locksmith was a supervisor, and the contact list itself is insufficient to sustain this contention.

expected to physically evict customers from the casino. The locksmith does not do rounds or patrols of the premises, or cover security posts. Although his gaming license technically allows him to fill in for security guards, the record does not show that he has ever done so. The locksmith does not wear a traditional guard uniform, and his shirt is clearly marked "locksmith." In contrast to the security guards who transport revenue, including chips and other assets with cash value, the record does not disclose any circumstances in which the locksmith would become part of the chain of custody of the Employer's revenue.

The principal responsibility of the locksmith is to assure that locks and keys are functioning and properly replaced and distributed. This is unquestionably a critical function that furthers the Employer's security interests and compliance with PGCB requirements. Access to certain areas is very tightly controlled, making the locksmith function as a crucial component within the security system. Nonetheless, the service he provides is essentially to fabricate and repair the equipment which safeguards property. The locksmith's primary duty is not to guard the Employer's assets per se, but to enable access to those employees directly responsible for securing those assets. He provides a service comparable to individuals responsible for maintaining protective equipment, as opposed to protecting the property itself or the persons on the premises. The Board has held that such individuals are not guards, and I therefore find that the locksmith is not a guard within the meaning of the Act. *American District Telegraph Co.*, 160 NLRB 1130, 1138 (1966).

Finally, the Employer urges that the locksmith shares common interests with the security guards and should be included in the unit so as to avoid being the only non-supervisory employee within the Security Department who is excluded from the bargaining unit. However, it is unnecessary to reach the issue of whether he shares a community of interest with the security guards because the locksmith does not meet the statutory definition of guard and therefore cannot be included in a guard unit. I shall therefore exclude the locksmith from the petitioned-for bargaining unit of security guards.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth 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 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 following employees of the Employer 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 security guards employed by the Employer at its 77 Sands Boulevard facility, **excluding** the locksmith, all other employees, and supervisors as defined in the Act.

IV. 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 the purposes of collective bargaining by **Law Enforcement Employees Benevolent Association**. 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.

A. Eligible Voters

The eligible voters shall be unit employees 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 were 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, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees who are 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 after the designated payroll period for eligibility; (2) employees engaged in a strike 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 engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. 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). The 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Tuesday, June 28, 2011**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the 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 2 copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. 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 date 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 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 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Tuesday, July 5, 2011, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and

Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹¹ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED: June 21, 2011

Dorothy L. Moore - Duncan

DOROTHY L. MOORE-DUNCAN

Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street, 7th Floor
Philadelphia, PA 19106

¹¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.