

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

**BREAD OF LIFE, LLC<sup>1</sup>**

**Employer**

**and**

**Case 07-RC-072022**

**LOCAL 70, BAKERY, CONFECTIONERY,  
TOBACCO WORKERS AND GRAIN MILLERS  
INTERNATIONAL UNION, AFL-CIO, CLC**

**Petitioner**

**APPEARANCES:**

Donald P. Lawson, Attorney, of Grand Rapids, Michigan, for the Employer.  
John J. Price, of Kensington, Maryland, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are 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.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The Employer and Petitioner timely filed briefs, which were carefully considered.

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.

### **Overview**

The Employer owns and operates 17 Panera Bread cafés in Michigan, as well as Panera Bread cafés throughout southern California.

Petitioner seeks to represent the Employer's full-time and regular part-time bakers, lead bakers, and lead training bakers who work in the I-94 Corridor district, but excluding all other non-bakery employees, clerks, managers, supervisors, and guards. The I-94 Corridor includes the six cafés described as the Kalamazoo, Gull Road, Portage, Battle Creek, Jackson, and St. Joseph locations.<sup>3</sup> The Employer argues that the only appropriate unit would include all seventeen cafés that it owns in Michigan, which it refers to as its West Michigan Market.

After considering all the evidence in the record, including the contact and interchange of employees, common supervision, and geographic proximity, I find that a unit of bakers in the I-94 Corridor district to be appropriate. The Employer has not established an overwhelming community of interest among the larger unit it proposed, and I direct an election in the unit as petitioned-for by the Petitioner.

### **Employer's Operations**

The Employer is one of four franchisees owned by Manna Development. The Employer's corporate offices are in California. In Michigan, the Employer operates 17 Panera Bread cafés, referred to as its West Michigan Market. The Employer acquired the Michigan cafés as well as five cafés in Ohio from Trigo Bread Company (Trigo) in August 2011. In December 2011, the Employer sold the Ohio cafés. Since acquiring the cafés from Trigo, the Employer has been evaluating its cafés and management structure. The Employer is considering adding retail locations in Michigan City, Indiana; Mt. Pleasant, Michigan; and in northern Michigan, but did not provide any addresses or potential dates as to the opening of these cafés.

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<sup>3</sup> The addresses for the cafés in the I-94 Corridor district are followed by the description used by the Employer: 5119 West Main Street, Kalamazoo, Michigan (Kalamazoo, but also referred to as West Main in the record); 5627 Gull Road, Kalamazoo, Michigan (Gull Road); 5970 South Westnedge Avenue, Portage, Michigan (Portage); 2810 Capital Avenue SW, Battle Creek, Michigan (Battle Creek); 1285 Boardman Road, Jackson, Michigan (Jackson); and 3260 Niles Road, St. Joseph, Michigan (St. Joseph).

## Supervisory Hierarchy and Labor Relations

Greg Collins is the Employer's director of operations for the West Michigan Market. Collins reports to the Employer's owners, Patrick Rogers and Paul Saber. The Employer has divided its West Michigan Market into three retail districts, I-94 Corridor, Grand Rapids and Lakeshore. Each district is assigned a district manager, who reports to Collins.

The I-94 Corridor district includes six cafés located along Interstate 94 and is managed by Chad Kirkpatrick. The Grand Rapids district includes six cafés clustered around the City of Grand Rapids<sup>4</sup> and is managed by Rick Burger. The Lakeshore district includes five cafés near Grand Rapids and along the shore of Lake Michigan from Holland north to Muskegon<sup>5</sup> and is managed by Alex Lindholm.<sup>6</sup> The West Michigan Market also has a marketing manager who reports to Collins.

Each retail location has a general manager,<sup>7</sup> two to three assistant managers and shift supervisors.<sup>8</sup> Some general managers direct the baking process and direct bakers to perform additional duties such as assisting with coffee preparation. Baker labor costs are included in determining the bonuses for district managers.

The bakery operations are organized through a different hierarchy from the retail operations. David Griego is the director of baking operations for Manna Development.<sup>9</sup> He works in California and reports to Rogers and Saber. Rodney Alman is the bakery market manager (BMM) for the West Michigan Market and reports to Griego and Collins.<sup>10</sup> Alman hired all of the bakers in the West Michigan Market. He signs off on bakery disciplinary decisions and approves schedules. He opens all new cafés. Alman

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<sup>4</sup> The addresses for the cafés in the Grand Rapids district are followed by the description used by the Employer: 3150 Alpine Avenue, Grand Rapids, Michigan (Alpine); 6080 28<sup>th</sup> Street SE, Grand Rapids, Michigan (Cascade); 1699 Marketplace, Caledonia, Michigan (Gaines Township); 3770 28<sup>th</sup> Street, Kentwood, Michigan (Kentwood); 2044 Celebration Drive, Grand Rapids, Michigan (Knapps Corner) and 4400 Lake Michigan Drive, Grand Rapids, Michigan (Standale). Although the record did not provide the cities for each of these locations, I have taken administrative notice of the complete addresses through [www.whitepages.com](http://www.whitepages.com).

<sup>5</sup> The addresses for these locations are 32 44<sup>th</sup> Street SE, Grandville, Michigan (Grandville); 1099 S. Beacon Boulevard, Grand Haven, Michigan (Grand Haven); 3067 West Shore Drive, Holland, Michigan (Holland); 1710 E. Sherman Avenue, Muskegon, Michigan (Muskegon); and 3700 Rivertown Parkway, SW, Grandville, Michigan (Rivertown). Although the record did not provide the cities for each of these locations, I have taken administrative notice of the complete addresses through [www.whitepages.com](http://www.whitepages.com).

<sup>6</sup> I find that Greg Collins, Chad Kirkpatrick, Rick Burger, and Alex Lindholm are supervisors within the meaning of Section 2(11) of the Act based on their authority to responsibly direct and evaluate employees. I also note that there is no evidence in the record contrary to this conclusion.

<sup>7</sup> I find that the general managers, including Phillip Decker, are supervisors within the meaning of Section 2(11) of the Act based on their authority to responsibly direct the retail workforce, and, in some instances, exercise disciplinary authority over the bakers. I note that the record reflects that Decker disciplined a baker.

<sup>8</sup> The record is silent with respect to the 2(11) status of the assistant managers and shift supervisors.

<sup>9</sup> I find that David Griego is a supervisor within the meaning of Section 2(11) of the Act.

<sup>10</sup> I find that Rodney Alman is a supervisor within the meaning of Section 2(11) of the Act based on his authority to responsibly direct, evaluate, and hire employees.

communicates labor relations concerns to Griego or to a human resources representative located in California.

Currently, the Employer's organization structure provides for two bakery training specialists (BTS)<sup>11</sup> who report to and assist Alman. The BTS' primary job is to manage the day-to-day bakery operations which include filling in for bakers at cafés, training and coaching bakers, recommending disciplinary action, filling out evaluations, assisting on human resources issues, drafting schedules, and ensuring that the baking equipment is properly maintained. A BTS also fills in for Alman when he is unavailable. According to Collins, the authority of a BTS is similar to that of an assistant manager or shift supervisor in the retail operation. A BTS is a salaried position, which differs from the hourly baker positions.

April Kibby is the BTS who primarily oversees the bakers working in the Lakeshore and Grand Rapids districts. The BTS position that primarily oversees the I-94 Corridor district is currently vacant. Tresa Mauric was the most recent BTS for the I-94 Corridor. Before Mauric, Trudy Grownin was the BTS for the I-94 Corridor district as well as having responsibility for the Grand Haven and Holland cafés.<sup>12</sup> The Employer is considering hiring a third BTS. Because of the BTS vacancy in the I-94 Corridor district, the bakers in the I-94 Corridor report directly to Alman.

For purposes of tracking the bakery product at each café, the Employer utilizes "calibration sheets." The calibration sheets are completed, in conjunction with the baker, by either the BTS or the BMM. They are shared with the specific café's general manager, the district manager, and the operations manager. The I-94 Corridor district employee calibrations list the I-94 Corridor as its own market. Each café also maintains a daily checklist so that the retail managers can determine how the baker evaluated the "bake" and review the bakery cleaning schedule. Each café keeps its own records of product orders.

Employees follow the same employee handbook. In addition to the above-noted calibration sheets and checklists, the bakers are annually appraised by the BMM. The Employer keeps personnel documents online. Payroll is centrally processed in California. There is no history of collective bargaining in the West Michigan Market.

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<sup>11</sup> Because neither the Petitioner nor Employer seek to include the bakery training specialists in the unit, it is unnecessary to make a determination as to their supervisory status under Section 2(11) of the Act, although there is some testimony in the record regarding the extent of the BTS' responsibility and authority relative to the bakers.

<sup>12</sup> The record does not indicate when Grownin was a BTS, provide clear dates when Mauric served as BTS, or how long the I-94 Corridor district BTS position has been vacant.

## **Wages, Benefits, and Working Conditions of Bakers**

The Employer employs approximately 43 bakers in Michigan of whom 17 are employed in the cafés in the I-94 Corridor district. The cafés operate 362 days a year. Each café employs bakers who work from 10:00 p.m. until 6:00 a.m., scheduling one or two bakers during the shift depending on the café's volume. The retail store at each location is open from 6:00 a.m. to 9:00 p.m. When first hired, bakers are classified as trainee bakers until they complete a six-to-eight week training program. The Employer recertifies bakers each year. Four lead training bakers, six lead bakers and seven bakers currently work in the I-94 Corridor.

Bakers bake the bread and other baked goods that are sold in the cafés in which they work. They bake the same product in each café, although the volume of the specific items varies by the needs of each café. Bakers do not prepare the other food that is sold in the cafés and do not interact with the cafés' retail customers. Job duties are virtually identical for all of the bakers in the Employer's Michigan cafés.

Each night the baker meets with the retail manager or supervisor of the café to discuss what baked goods the café needs. Each morning at the end of the shift the retail manager or supervisor reviews the goods the baker produced. The retail manager reviews the work as if he is buying the bread for his café. The manager and the baker record these meetings on the baker area checklist and bakery product form, which are kept at each location. Bakers have only passing interactions with the district managers.

Bakers do not make the product from scratch. In about half of the cafés, the general manager orders the dough and in the other half, the lead training baker or lead baker orders the dough. The general manager and the baker determine who performs this task. The general manager always orders the sweets. The bread dough is delivered daily, from the fresh dough facility, and the sweet dough is delivered twice weekly from Dawn Foods. Each of the districts takes delivery from a separate delivery truck. The Jackson café product is delivered separately from the other cafés in the I-94 Corridor district.

All bakers in the West Michigan Market are subject to the same wage structure and receive the same benefits. The Employer provides three bonuses for the top three performers in each baking classification across the West Michigan Market.

The bakers' schedules in the West Michigan Market are set forth along geographic lines. The bakers in the I-94 Corridor district are included on one schedule, and the bakers in the Grand Rapids and Lakeshore districts are on another schedule. Openings for lead and training bakers in the I-94 Corridor district are posted in all of the I-94 Corridor stores, but not in the Grand Rapids or Lakeshore districts stores. Openings for lead and training bakers in the Grand Rapids and Lakeshore districts are generally not posted in the I-94 Corridor. Similar openings for the Grand Rapids and Lakeshore

Districts are generally posted in both of those districts. The open BTS position has been posted in the entire West Michigan Market.

### **Interchange**

The Employer makes nightly calls to each store to determine if the bakers have come to work and if there are any problems with the dough or equipment. BMM Alman frequently delegates the nightly calls to lead bakers including Daniel Wood who works at the Kalamazoo café in the I-94 Corridor district. Wood calls each café in the I-94 Corridor. If there is a problem, Wood refers the issue to Alman because the BTS position is vacant. Wood also has a list of contact numbers for all of the bakers in the I-94 Corridor district which the Employer provided to him.

The Employer permanently assigns bakers to work in a specific café. However, bakers are assigned to work in other cafés sporadically when vacations, illness and injury require coverage. Although this coverage usually comes from cafés within the district, during the past year, about 15 employees who typically worked in the Grand Rapids or Lakeshore districts worked in the I-94 Corridor district or the reverse. Gary Clinger, a Holland (the Lakeshore district) café employee, worked in the St. Joseph (I-94 Corridor) café for eight months three years ago. A few employees have split shifts between two cafés and some between cafés in the Grand Rapids and Lakeshore districts or within the I-94 Corridor, but not between the I-94 Corridor district and another district. Bakers in one café bake product for another café only in cases of emergency.

The Employer hosts three “celebration meetings” five times per year where the Employer disseminates information to the bakers regarding menu changes and other issues. The Employer hosts a single meeting for the Grand Rapids and Lakeshore district bakers. The bakers who work in I-94 Corridor district attend one celebration meeting, with the exception of the bakers who work at the Jackson café who attend a meeting solely for their café. Recently, Patrick Rogers, co-owner/operating partner, held a meeting only for the bakers of the I-94 Corridor district.

### **Geographic Proximity**

Each café in the I-94 Corridor district is accessible from I-94. The I-94 Corridor district, crossing several counties, comprises the Employer’s southern-most cafés of the West Michigan Market. The Employer grouped the I-94 cafés together for convenience. The distance between the St. Joseph and Jackson cafés (in the I-94 Corridor) is greater than the distance between the Kalamazoo cafés (Kalamazoo and Gull Road in the I-94 Corridor) and cafés in other districts. However, each of the I-94 Corridor cafés is separated from the Grand Rapids and Lakeshore cafés by at least 49.6 miles.

## Analysis

It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Overnight Transportation Co.*, 322 NLRB 723, 723 (1996); *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-23 (4<sup>th</sup> Cir. 1963), *cert. denied*, 375 U.S. 966 (1964). The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry. *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001). Recently, the Board clarified the standard to be applied in cases where a party contends that a petitioned-for unit containing employees who share a community of interest is nevertheless inappropriate because it does not contain additional employees. *Specialty Healthcare*, 357 NLRB No. 83 (August 26, 2011). The Board held that in these situations, the burden is on the party contending that the unit is inappropriate to demonstrate that the excluded employees share an overwhelming community of interest with the included employees. *Id.* at 14. The Board in part relied on an analysis by the D.C. Circuit Court in *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417 (D.C. Cir. 2008), where the Court stated that an overwhelming community of interest occurs where there is "...no legitimate basis upon which to exclude certain employees..." and where traditional community of interest factors "overlap almost completely." *Specialty Healthcare* at 11, citing *Blue Man Vegas, LLC v. NLRB* at 422.

For a unit to be appropriate, the key question is whether the employees in that unit share a sufficient community of interest. Community-of-interest factors include: (a) similarity of employee skills, qualifications, and training; (b) degree of functional integration; (c) frequency of contact and interchange among employees; (d) commonality of supervision; (e) similarity in benefits, hours, and other terms and conditions of employment; and (f) bargaining history. *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F.3d 328 (7<sup>th</sup> Cir. 1995); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). A union's desire is always a relevant, but not dispositive, consideration. *E.H. Koester Bakery & Co.*, 136 NLRB 1006 (1962). In determining if a multifacility unit is appropriate, the Board reviews community of interest factors. *Bashas', Inc.*, 337 NLRB 710, 711 (2002). Geography and administrative groupings are significant considerations as well. *Laboratory Corporation of America Holdings*, 341 NLRB 1079 (2004).

Petitioner seeks to represent the bakers who work in the six cafés in the Employer's I-94 Corridor district. They share common skills, job duties, and working conditions, and produce the same product. The first level of supervision for the bakers is

the bakery training specialist assigned to the district. Due to the current BTS vacancy in the I-94 Corridor district, the bakers report directly to bakery market manager Rodney Alman. The bakers in the Grand Rapids and Lakeshore districts report to BTS April Kibby. In the absence of the BTS, BMM Alman frequently assigns Daniel Wood, a lead baker in the Kalamazoo café, to make the nightly calls to each of the cafés in the I-94 Corridor district to ascertain that the bakers have reported to work and whether there are any production issues.

The bakers in the I-94 Corridor district have contact with each other at the celebration meetings and during the nightly calls. Some employees work split shifts between cafés in the I-94 Corridor. The schedules for the bakers for I-94 Corridor district are posted together. Postings for lead baker positions within the I-94 Corridor district are posted throughout the I-94 Corridor district, but not in the Grand Rapids or Lakeshore districts. While there are some cafés in the I-94 Corridor district that are closer to cafés in the other districts than to each other, the area is definable and has been treated as such by the Employer. The petitioned-for I-94 Corridor unit is consistent with the Employer's administrative grouping of employees. See *Laboratory Corporation*, supra at 1082 (Board found petitioned for unit of seven patient service centers of twenty-nine inappropriate because, inter alia, the seven did not comport with the employer's administrative groupings). Accordingly, I find that the bakers who work in the I-94 Corridor possess a sufficient community of interest to comprise a unit appropriate for collective bargaining.

The Employer asserts that the West Michigan Market is the only appropriate unit. While it is undisputed that the employees in the West Michigan Market share the same job duties, terms and conditions of employment, and a bonus plan, the record does not establish that there is an overwhelming community of interest among the bakers in the Employer's West Michigan Market. Interaction between the bakers in the I-94 Corridor district and the other districts is minimal. Postings for lead baker positions are not posted in the entire West Michigan Market, but rather in the I-94 Corridor district or the Grand Rapids and Lakeshore districts, depending where the opening occurs.

The Employer's reliance on *Sleepy's, Inc.*, 355 NLRB No. 21 (2010), *Laboratory Corporation*, supra, and *Bashas'*, supra, is misplaced. In each case the petitioned-for unit did not coexist with the employer's organizational structure as it does here. In *Sleepy's* and *Laboratory Corp.* the record evidence established that the employer frequently changed its administrative structure and supervisory assignments. Here, there is only speculation that management may change the make up of the I-94 Corridor district at some unknown time and in some unknown way in the future. See *Funky, Inc.*, 254 NLRB 372, 374 fn. 3 (1981). In *Sleepy's* and *Laboratory Corp.*, interchange between the employees in the petitioned-for unit and the excluded locations was frequent, rather than the occasional baker coverage that occurs between the I-94 Corridor district and the Grand Rapids and Lakeshore districts herein. Additionally, the petitioned-for employees

in *Laboratory Corp.* also attended regular meetings with employees from the excluded facilities, which does not occur between the I-94 corridor district bakers and the Grand Rapids and Lakeshore districts bakers.

Based on the foregoing, I find that the I-94 Corridor district is a defined area in theory and in practice. The Employer has failed to establish that a bargaining unit consisting of all bakers in the 17 cafés in the West Michigan Market shares an overwhelming community of interest compared with the petitioned-for unit, as required by the Board in *Specialty Healthcare*. Supra at 18.

## **Conclusion**

5. For the above stated reasons, and based upon the record as a whole, I find 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 bakers, lead bakers, and lead training bakers employed by the Employer at its facilities located at 5119 West Main Street, Kalamazoo, Michigan; 5627 Gull Road, Kalamazoo, Michigan; 5970 South Westnedge Avenue, Portage, Michigan; 2810 Capitol Avenue SW, Battle Creek, Michigan; 1285 Boardman Road, Jackson, Michigan 49202; and 3260 Niles Road, St. Joseph, Michigan; but excluding all clerks, baker training specialists, confidential employees, managers and guards and supervisors as defined in the Act and all other bakery/café employees.

Dated at Detroit, Michigan, this 24th day of February 2012.

(SEAL)

*/s/ Dennis R. Boren*

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Dennis R. Boren, Acting Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

## **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 **LOCAL 70, BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC**. 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. 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 quit or 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.

### **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.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **March 2, 2012**. 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>13</sup> by mail, or by facsimile transmission at **313-226-2090**. 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 **two** copies of the list, 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.

### **C. Posting of Election Notices**

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

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<sup>13</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

### **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, DC 20570-0001**. This request must be received by the Board in Washington by **March 9, 2012**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,<sup>14</sup> but may **not** be filed by facsimile.

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<sup>14</sup> To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.