

3. The labor organization involved 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 Sections 2(6) and (7) of the Act.

DECISION

I. Overview

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Workers, Allied Industrial and Service Workers International Union and Its Local 13-447 (Petitioner) seeks a self determination election to include four Emergency Response Specialists (ERS) at the Alliance Refinery in Belle Chasse, Louisiana, a facility of ConocoPhillips Company (Employer or Respondent), into an existing unit of about 225 employees. An election for the existing unit was held in 2001 and Petitioner was certified as the collective bargaining representative in April 2002.¹ The existing unit is defined in the current collective bargaining agreement, effective from September 1, 2009 through September 1, 2012², as follows:

...all operators, instrument technicians and analysts, lab technicians, and store employees employed by the Employer at the Alliance Refinery in Belle Chasse, Louisiana, but excluding all salaried employees, operations clerks, office clerical employees, guards, professional employees, and supervisors as defined by the Act.³

Respondent contends that the ERS employees are managers and agents within Section 2(13) of the Act and therefore should not be included in the existing bargaining unit. Respondent further contends the ERS employees do not share a sufficient community of interest with the employees in the current unit to be appropriately included in the bargaining unit as described above.⁴

I find that the ERS employees are not managers or agents within the meaning of the Act and share a sufficient community of interest with the existing unit to be included therein if they so vote.

II. Respondent's Operations

Respondent operates a facility at the Alliance Refinery in Belle Chasse, Louisiana (Alliance Refinery) that engages in the refining of petroleum products including propane, diesel

¹ Tr. 8 at 21-25; Tr. 9 at 1-6.

² Neither party contends that the existing collective bargaining agreement constitutes a bar to this proceeding.

³ J-1, pg 1. Exhibits will be referred to as either J(Joint), B(Board), P(Petitioner), or E(Employer/Respondent) a "--" and then the exhibit number and page number, if necessary.

⁴ In the event that the Regional Director orders the ERS as a stand-alone unit, the Petitioner does not seek to represent them.

fuel, gasolines, and jet fuel.⁵ The Crude unit of the refinery processes up to 260,000 barrels of crude oil per day. The Alliance Refinery includes 1100 acres, 150 acres of which is process area divided between six complexes.⁶

The current bargaining unit consists of about 225 employees and includes operators, instrument technicians, lab technicians, storekeepers, and 3 employees in the Health Safety and Environmental Department (HSE). The vast majority (over 200) of the employees in the bargaining unit are operators and therefore the current unit will be referred to in this decision as “the operator unit” and bargaining unit employees as “operators”.

Gregory Lucchesi is the Plant Manager at the Alliance Refinery. Lucchesi has seven managers who report directly to him, and each manager is responsible for a different department in the refinery. The HSE Manager is Jack Flannery, the Operations Manager is Ray Rigon, and the Human Resources Manager is Bruce Rozek. Flannery supervises Emergency Response Superintendent Brian Duncan who in turn supervises the four ERS positions that are the subject of the petition in this case. The ERS position has been in existence since 1991 and has never before been included in a bargaining unit and has never been the subject of a petition.⁷

III. The ERS Job

The primary duties of an ERS consist of regular maintenance of emergency equipment, conducting training in various areas of emergency response, and acting as “On-Scene Coordinator” in event of an emergency. The four ERS employees work varying shifts so there is typically one ERS on duty at all times. The ERS on duty is the only member of the HSE on site at night and on weekends.⁸ The ERS wear the same uniform as the operators and as most employees at the plant.⁹ The operators’ work duties include operating the refinery both indoors and outdoors, following instructions and operating valves to produce a certain amount of whatever petroleum product is being made in the complex where they are working.¹⁰ The ERS employees are paid a salary, and the operators are paid an hourly rate per their collective bargaining agreement.

ERS employees are charged with monitoring the proper use of safety equipment by other employees and performing inspections of safety equipment to ensure it is in proper working order. If an ERS observes an employee not using the proper safety equipment, they can address that situation with the individual employee or take the issue to the shift superintendent.¹¹ ERS employees perform weekly visual inspections and more in depth monthly inspections of fire extinguishers and air packs.

⁵ E-1.

⁶ Tr. 71 at 1-17.

⁷ Tr. 9 at 7-14.

⁸ Tr. 209 at 5-8.

⁹ Tr. 381 at 1-4.

¹⁰ Tr. 327 at 13-14.

¹¹ Tr. 107 at 11.

A. *First Breaks*

ERS employees sign off on permits for a procedure known as a “first break” or “line break”. Line breaking is “where a joint is opened for the first time in a section of the process where energy or material could accumulate.”¹² As a part of this procedure, pipe is parted or joints are broken. The release of any “energy or material” that had built up in the line could be potentially dangerous. The operators who work near where the line break is to happen work alongside the ERS to ensure the line is safe to open in a particular area. The ERS participates in signing off on “line breaks” as a representative of the HSE.¹³

Respondent has a “Line Breaking Procedure”¹⁴ which instructs employees in detail on the required safety protection, preparation, and procedure for a line break. The author of the Line Breaking Procedure document is listed as “Safety Specialist” and it is “Approved By” the “HSE Manager”. The two current ERS employees who testified at hearing were not involved in the creation of this document, and it was not clear from the evidence presented at hearing the identity of the “Safety Specialist” who authored it, presumably near its “Original Date” of 06/01/2006.

The operators and ERS employees work together to ensure that line breaking is performed safely and according to the Respondent’s procedure. In the Preparation section of the Line Breaking Procedure, an operator is instructed to request the “Safety Representative”, which in most cases would be the ERS on duty, to review and approve the line breaking activity when that operator is done preparing the area. Then the operator and the Safety Representative visit the area to be opened, and the operator demonstrates the equipment is safe to open. The Safety Representative then signs the work permit for the work and applies a tag to the area indicating the permit has been signed by a representative of the Safety Department.

B. *Fire and Confined Space Permits*

ERS employees also participate in the approval of fire permits at the refinery. A fire permit is a document created at the refinery to ensure there is no dangerous material that might combust or explode in an area where fire is going to be used, for example, to perform maintenance work.¹⁵ Operators write fire permits for the complexes in which they are working, and ERS employees have the ability to write fire permits as well.¹⁶ A confined space permit is authorized entry into a space not designed for human entry for the performance of some type of work. Whereas fire permits are authorized by both operators and ERS employees, Respondent’s witness Flannery testified that ERSs have sole authority to execute confined space permits.¹⁷

C. *Incident Response*

¹² E-5.

¹³ Tr. 119 at 1-10.

¹⁴ See E-5.

¹⁵ Tr. 148 at 19-22.

¹⁶ Tr. 121 at 15.

¹⁷ Tr. 123 at 10-15.

ERS employees have a prominent role in the mitigation of unexpected emergencies at the refinery. The operators in a particular area determine whether an incident warrants calling the ERS. Sometimes operators handle minor incidents themselves without contacting the ERS. When an operator contacts the ERS on duty to come to an incident site the ERS becomes the emergency response coordinator at the incident site.¹⁸ In their role as emergency response coordinator, the ERS “coordinates the actions by utilization of operations personnel, trained operations personnel, as fire brigade and/or hazardous material responders.”¹⁹ The ERS is also responsible for organizing various facets of the emergency mitigation, including calls to outside agencies for medical assistance, rescue, and fire suppression.

ERS employees and operations personnel work together in the event of an emergency. The coordination between ERS employees and operators is outlined in Respondent’s document titled “Response to Hazardous Conditions Procedure”²⁰. The Hazardous Conditions Procedure states it was authored by Brian Duncan and approved by HSE Manager. The Accountability/Responsibility section states the role of the Emergency Response Personnel is to “provide input for establishing hot/warm/cold zones” and to “assist in planning and executing the response plan. At hearing, evidence was introduced that hot/warm/cold zones consist of areas surrounding an incident reflecting different levels of danger, where, for example, people may receive medical treatment.

In order to most efficiently mitigate the incident, the ERS coordinates with operations personnel who are trained in the specific emergency response area required by the incident, for example, HAZMAT or First Response.²¹ In this role, during an emergency the ERS gives direct commands to operations personnel based on Respondent’s set procedure.²² Respondent’s Procedure states that “upon discovery of a potentially hazardous condition, supervision must be notified immediately”.²³ The ERS either uses a facility-wide Nextel phone, a cell phone, or land-line to contact supervision. ERS employees are authorized to initiate an emergency chain of command that includes notifying off-duty supervisory personnel and specifically trained non-supervisory personnel in the event they are needed in an emergency situation.

D. Training

ERS employees are trained in various areas of emergency response, as are the operators currently in the bargaining unit. The level of emergency training given to each employee varies, and training falls into specific areas such as fire suppression, HAZMAT, rescue, and first response. An operator or ERS can receive advanced training at corporate training schools paid for by Respondent if that employee elects to further their training education in a particular area. An ERS does not necessarily have more training in a specific area of emergency response than an operator. For example, there may be an operator who has more HAZMAT training than an ERS, and in that case, the ERS will work alongside with the more highly trained operator if a

¹⁸ Tr. 208 at 19-22.

¹⁹ Tr. 210 at 23-25; 211 at 1.

²⁰ E-3.

²¹ Tr. 217 at 5-7.

²² Tr. 245 at 20-24

²³ Tr. 546; E-3.

situation arises on their shift where a HAZMAT trained person is needed. Flannery testified that although the ERS employees may not be the most highly trained people in a specific area at this time, Respondent plans to develop them in the future to be the most highly trained in safety, occupational health, emergency response, environmental and security.²⁴

Respondent presented testimony that it intends to have ERS employees complete Individual Development Plans (IDPs) which would include an outline of the training that ERS would obtain in the future. In an IDP, an ERS employee would work with their supervisor to create a schedule for trainings the ERS would attend and specific areas in which the ERS wished to develop further skills. There is no indication that the IDPs are intended to include a management-training track for the ERS employees. If and when an established managerial position such as that of HSE Superintendent becomes available, that job will be posted and put up for bid and ERS employees would be considered like any other qualified applicants.²⁵

E. IMPACT System

The IMPACT system is a computer system used by Respondent to log any safety incidents or “near-misses” at the refinery. The parties disagree on the ability of the ERS employees to use the IMPACT system as part of their job duties. Flannery testified that ERS employees could use the IMPACT system to log a safety incident but that generally safety was “line responsibility” and therefore the ERS employees would not typically use IMPACT as often as operators on the line. The two ERS employees who testified at hearing were not familiar with logging incidents into the IMPACT system themselves, though they knew of the system and received daily emails summarizing incidents that had been logged for their possible follow-up.

IV. The Positions of the Parties

A. Respondent’s Position

Respondent argued at hearing and in its brief that the four petitioned-for ERS employees can not be lawfully included in the bargaining unit because they are managerial employees and because they lack a shared community of interest with the existing operator unit.

Respondent argues that the ERS employees are an extension of critical health and safety management responsibilities at the refinery.²⁶ On nights and weekends, the ERS on duty is the sole representative of the HSE Department on duty and is therefore tasked with responding immediately to health and safety hazards. The ERS is also responsible for reviewing the safety

²⁴ Tr. 335 at 1-11.

²⁵ Tr. 388 at 17-25.

²⁶ See P-2. In 31-RC-068107, the Petitioner Union sought to add the health and safety shift specialists (HSS specialists) to an existing unit of operators, maintenance, and laboratory employees at Respondent’s Santa Maria refinery. Respondent contended at hearing that the petitioned-for HSS specialists were supervisory employees under the Act and did not share a community of interest with the existing unit. Respondent proceeded to argue in its brief in that case that the HSS specialists were both supervisory and managerial under the Act. The HSS specialists at Santa Maria have similar duties to the ERSs in the instant case. In the Decision and Direction of Election in 31-RC-068107, the Regional Director found that the HSS specialists were not supervisory or managerial and that they shared a sufficient community of interest with the existing unit to be a part of that unit, if they so chose.

compliance of the operators, including ensuring they are wearing proper safety equipment. In the event an ERS notices an operator behaving in an unsafe manner, that ERS must report that to the Shift Superintendent. Respondent is concerned that this reporting responsibility creates a conflict that precludes the ERS employees from being included in a unit with the operators.

According to Respondent, ERS employees formulate health and safety policies and are tasked with developing plans for response to specific types of emergencies as well as coordinating employees in accordance with the plans in the event of an actual emergency. ERS employees are the first HSE Department employees on the scene in the event of a safety incident, and it is critical that the ERS respond quickly and effectively to coordinate the mitigation effort. Outside of the context of an emergency, ERS employees review and authorize permits for line breaks and for confined areas which includes conducting safety tests of the area.

Respondent contends no meaningful community of interest exists between the ERS employees and the bargaining unit employees, and the ERS employees and the operators have job duties too dissimilar for the Board to approve a unit that includes them both. In support of this argument, Respondent notes the bargaining unit is hourly and the ERS employees salaried, they have traditionally been excluded from the bargaining unit, and there is no evidence of transfers between the ERS and operator positions. Respondent also points out that the ERS employees have offices in the Health and Safety building, outside of the process area and are required to travel to any part of the refinery where they are needed to address health and safety issues.

B. Petitioner's Position

The Petitioner argued at hearing and in its brief that the four ERS employees are not managers, and they share a community of interest with the operator unit sufficient to include them in that unit if they so choose.

In its rebuttal of Respondent's contention the ERS employees are managerial, Petitioner points to the lack of evidence in the record of situations where ERS employees work outside of express company policy to make independent managerial decisions. Petitioner points out the Emergency Plan-Program (EPP) identifies the ERS has the "Initial Incident Commander" but notes the title is only relevant until a supervisor can be contacted to direct the mitigation of the incident. Furthermore the ERS is instructed to strictly follow Respondent's established policies, such as the EPP, when coordinating a response to an emergency, leaving little room for them to use discretion and independent judgment.

In support of its contention that ERS employees and operators share a sufficient community of interest, Petitioner argues that the day to day work of the ERS is closely connected to that of the operators. Both the ERS and the operator unit employees are required to know Respondent's Emergency Response Plan (ERP) and Safe Practices and Procedures (SPP). Also both ERSs and operators participate in the Emergency Response Team (ERT), and work together to mitigate an emergency. Petitioner also asserts that the ERS employees and operators work in close physical proximity to each other in the complexes and working areas of the refinery.

Petitioner argues the ERS employees shared community of interest with the operators is demonstrated because the ERS position is closely related to the operators within the structure of Respondent's operations. Specifically, the operators and ERS employees are at the same level in Respondent's managerial structure, and they are all supervised by one of the seven department managers who then reports to Lucchesi. Furthermore, HSE Department manager Flannery supervises the three bargaining unit employees currently working in the HSE Department. Although the ERS employees are salaried whereas the operators are paid an hourly rate, when the ERS salaries are calculated at an hourly rate, the rates of pay are similar.²⁷

V. Analysis

A. *Managerial Status of Emergency Response Specialists*

The Act does not specifically address the status of managerial employees, but it is Board policy to exclude employees properly classified as managerial from the coverage of the Act. *NLRB v. Bell AeroSpace Company, Division of Textron, Inc.*, 416 U.S. 267, 275 (1974). The burden of proving that employees are managerial rests on the party making the claim, in this case with Respondent. See *NLRB v. Kentucky River Community Car, Inc.*, 532 U.S. 706, 711 (2001). A job title itself will not control in determining whether employees are managerial, and the analysis of managerial status must include the employees' job responsibilities, authority, and relationship to management. *Bell Aerospace Co.* 416 U.S. at 290. Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer and have discretion in the performance of their jobs independent of the employer's established policy." *General Dynamics Corp.*, 213 NLRB 851, 857 (1974).

I find that Respondent failed to establish the ERS employees are managerial employees who should be excluded from the coverage of the Act. The duties of the ERS position are strictly controlled by Respondent's company policies and procedures and do not leave sufficient independent discretion to the ERS employees for them to be considered managers under Board policy. Respondent's plans for emergency response as well as its guidelines for such potentially hazardous activities as first breaks are thorough outlines with step-by-step instructions for ERS employees to follow. Although ERS employees may have input into the creation of these plans, witnesses for both parties testified that the ERS would be working in collaboration with their supervisor in order to complete a plan. During a response to an incident, ERS employees work hand in hand with operators who work in the area of the incident or who are trained in a necessary skill, such as HAZMAT or fire suppression. The ERS employees' role of coordinating these skilled operators does not rise to the level of independent judgment to render them managerial employees.

In *Rockspring Development, Inc.*, the Board found a "safety coordinator" at a mine was not a managerial employee because he did not formulate the Employer's safety policy or exercise

²⁷ J-1; J-6. Under the CBA, the hourly rates of pay for bargaining unit employees range from \$19.06/hr to \$38.09/hr. This includes employees who work both 8 and 12 hour shifts. The salaries for the current ERS employees are annually: \$74,304.0 (Turnage), \$70,752.00 (Phillips, Recino, Rosario). The hourly rate for Turnage, assuming 8-hour shifts 5 days a week, is \$35.72, and the hourly rate for the other three is \$34.01.

discretion in the performance of his job independent of that policy. 353 NLRB No. 105, slip op. at 4 (2009). The *Rockspring* safety coordinator “performs underground safety inspections... prepares safety talks... and reviews accident and safety statistics.” *Id.* Like the ERS employees in the instant case, the coordinator checks breathing apparatuses and safety equipment to ensure they are operating properly.

As noted above, after being alerted of an incident, an ERS is required by Respondent’s procedures to report the incident to their supervisor. For a serious incident, the ERS has the authority to phone supervisors, managers, and employees training in particular areas of emergency response at home in their off hours to respond to an emergency at the facility. The requirement that the ERS employees immediately go up the chain of command to notify supervisory personnel is further evidence that they do not have the managerial authority to implement Respondent’s procedures at their independent discretion.

The interests of the ERS employees are not so aligned with management to exclude them from inclusion in a bargaining unit. An employee can be considered to have interests aligned with those of management if that employee takes action or recommends action that effectively controls and implements the policies of the employer. See *District #1, Pacific Coast District Marine Engineers Assn.*, 259 NLRB 1258, 1265 (1982) citing *NLRB v. Yeshiva University*, 444 U.S. 682, 683 (1980). Although there are times when the ERS on duty is the lone representative of the HSE at the facility, the ERS adheres to Respondent’s established operating procedures during nights and weekends and does not have discretion to divert from those procedures. Procedures as described above involve coordinating the bargaining unit employees trained in specific areas of emergency response in the event of an incident and alerting the supervisory chain of command to an incident.

B. *Managerial Trainee Status of Emergency Response Specialists*

In some cases, employees classified as “management trainees” will be considered management employees that fall outside of the protections of the Act under the policy set forth in *Bell Aerospace, supra*. See *Curtis Industries*, 218 NLRB 1447 (1974). The overall analysis of the status of a management trainee will rest on whether the management trainees’ interests are “so aligned with management rather than with the regular employees” that they are a part of management under *Bell Aerospace, supra*. In *Curtis Industries*, the Board found that management trainees were managers and therefore not covered by the Act. The Board relied on the fact that employees in the management trainee track had no other option but to progress into managers or leave that position.

The ERS employees in the instant case should not be considered management trainees and therefore managers under the Act. Respondent presented testimony that ERS employees create individual development plans that may include aspirations of an individual employee to be promoted to a management position. However, this is not a “track” to management as contemplated by the Board in *Curtis Industries*. In the event of an opening in Respondent’s management team, the job would be posted and applicants would be solicited to apply; ERS

employees would be considered for a management position they applied for along with the other qualified applicants, including any operator applicants.

C. *Community of Interest of Emergency Response Specialists and Existing Unit*

It is well-established that a certified unit need only be an appropriate unit, and not the most appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enf. 190 F.2d 576 (7th Cir. 1951). In order to determine the appropriateness of a unit, the Board analyzes whether the employees share a sufficient community of interest. *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). The Board considers “whether employees have comparable or divergent duties, qualifications, compensation, hours, supervision, and conditions of employment.” *International Bedding Company*, 356 NLRB No. 168, slip op. at 2 (2011) citing *id.* The Board will also consider the petitioner’s petition regarding the scope of the unit. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964).

The petitioned-for ERS employees in this case share a wide variety of common bonds with the current bargaining unit. The day to day work of the ERS employees involves frequent contact and coordination with bargaining unit employees. For example, an ERS will visit the sites where a recent line break occurred and discuss how the procedure went with the bargaining-unit operators in that area. The ERS employees are also responsible for the maintenance of safety equipment used by bargaining unit employees including the fire-water system.

The job duties of the ERS employees and the unit employees further overlap because they frequently work together to respond to an incident or emergency. In the event of an incident or emergency, the ERS will be called to the site either by an operator nearby or by the ERS’s supervisor, at which point the ERS will coordinate the operators in their response to the emergency. This coordination involves knowledge of the specific skills of various operators and training they have in HAZMAT, fire suppression, or other categories of emergency response. Often an ERS will not be the most qualified person at the facility in a particular area of emergency response and in that case the more qualified person, which testimony indicates would be a bargaining unit employee, is consulted in order to mitigate the incident.

The training required to be an ERS overlaps to a great degree with the training background of employees in the bargaining unit. Both operators and ERS employees have training in various facets of emergency management, including HAZMAT and fire response. The amount of training an individual has is not determined by their job category but by their background and their interest in furthering their education through attending corporate training school courses in a specific areas. The training courses at the corporate training school are open to operators and ERS employees, and the record indicates that both groups of employees are encouraged by Respondent to attend the trainings.

In *Marks Oxygen*, the Board found the petitioned-for unit of truck drivers and production employees appropriate even when the employees had relatively little contact with each other. The Board noted that the drivers and production employees had an inherent community of interest in the flow of materials at the plant. *Id.* at 230. In contrast to *Marks Oxygen*, the operators and ERS employees have regular and extensive contact with each other which further

indicates that they share a community of interest. ERS employees' regular duties include traveling the refinery and speaking to operators about maintenance work that requires issuing permits as well as checking the safety systems that the operators use. During the event of an emergency, the ERS employees and operators work together to mitigate the incident. Although the ERS employees have office space apart from the complexes where the operators work, their job duties require them to travel throughout the facility and to have regular interaction with the operators.

Although the ERS and bargaining unit employees differ in the way they are paid (salaried vs. hourly), the amount of compensation each classification of employees receives is comparable. The current bargaining unit excludes salaried employees. As stated above, under Board law a unit need only be an appropriate unit, not necessarily the most appropriate unit. *See Morand Bros supra*. I find that the fact that ERS employees are currently salaried, and that salaried employees are specifically excluded in the unit description in the most current CBA does not impact the ability of ERS employees to share a community of interest with the bargaining unit employees sufficient to make them a part of an appropriate unit under the Act.

VI. Conclusion

For the reasons set forth above and based on the record as a whole, I conclude ERS employees are not managerial employees, and they share a sufficient community of interest with the current bargaining unit employees to be included in the bargaining unit.

A self-determination election is appropriate when an incumbent union seeks to add a previously unrepresented group of employees to its existing unit and where no other labor organization seeks to represent the unrepresented employees. If a majority of the petitioned-for employees votes for representation in a self-determination election, the results indicates their desire to become part of the existing bargaining unit. *Warner-Lambert Co.*, 298 NLRB 993, 996 (1990).

I am ordering a self-determination election in which the voting group will be asked to choose between representation in the current unit or for no representation at all. See *Carr-Gottstein Food Co.*, 307 NLRB 1318, 1319 (1992). The employees will not be asked whether they wish to be represented as a unit separate from the current unit because the Petitioner has declined to participate in such an election. *Id.* at 1319. If a majority of employees in the voting group votes in favor of representation as part of the current unit, the Petitioner will have the authority to bargain for those employees as part of the unit.

Accordingly, those in the Voting Group are:

INCLUDED: All Emergency Response Specialists at the Employer's Alliance Refinery in Belle Chasse, Louisiana.

EXCLUDED: All other employees, guards, and supervisors as defined in the Act.

The question on the ballot will be whether the employees in the Voting Group desire representation by Petitioners as part of the current operator unit, or whether they desire to remain unrepresented. If the majority of the votes are in favor of representation, I find the following to constitute an appropriate unit for purposes of collective bargaining:

All operators, instrument technicians and analysts, lab technicians, store employees, and emergency response specialists employed by the Employer at the Alliance Refinery in Belle Chasse, Louisiana.

Dated at New Orleans, Louisiana, this 17th day of April, 2012.

/s/ Sandra L. Hightower

Sandra L. Hightower, Acting Regional Director
National Labor Relations Board, Region 15
600 S. Maestri Place, 7th Floor
New Orleans, Louisiana 70130

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Workers, Allied Industrial and Service Workers International Union and Its Local 13-447**, as part of the existing unit of all operators, instrument technicians and analysts, lab technicians, and store employees at the Employer's Belle Chasse, Louisiana Alliance Refinery. 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 voting group 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. Voting Group 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 **April 24, 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 website, www.nlr.gov,²⁸ by mail, or by facsimile transmission at **504-589-4069**. 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).]

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

²⁸ To file the eligibility list 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 **Regional Office**, and follow the detailed instructions.

must be received by the Board in Washington by **May 1, 2012**. The request may be filed electronically through **E-Gov** on the Board's website, www.nlr.gov,²⁹ but may **not** be filed by facsimile.

²⁹ 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.

ATTACHMENT

There is attached hereto a Waiver (Form NLRB-4480). This waiver is enclosed for the convenience of the parties who wish to waive their right to request a review. Receipt of a waiver from all parties will enable this office to schedule an election at an early date. In the event any party does not wish to waive, and intends to request review of this decision, they are hereby advised that they must file a request for review with the Board in Washington, D. C., within 14 calendar days from the receipt of this decision. See 102.67 of the Board's Rules and Regulations.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

WAIVER

IN THE MATTER OF _____
(Name of Case) *(Number of Case)*

PURSUANT TO SECTION 102.67 AND 102.69 OF THE RULES AND REGULATIONS OF THE NATIONAL LABOR RELATIONS BOARD, THE UNDERSIGNED PARTY WAIVES ITS RIGHT TO REQUEST REVIEW OF OR FILE EXCEPTIONS TO THE REGIONAL DIRECTOR'S AND/OR HEARING OFFICER'S

_____ IN THE ABOVE-
(Name of document or applicable documents)

CAPTIONED MATTER _____ OR CHECK IF DOCUMENT NOT YET ISSUED
(Date of document)

(Name of Party)

BY _____
(Name of Representative)

(Title)

DATE _____