

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

In the Matter of

BECKER COLLEGE

Employer

and

SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 888

Petitioner

Case 01-RC-081265

**DECISION AND DIRECTION OF ELECTION**<sup>1</sup>

Service Employees International Union, Local 888 (Petitioner or Union) filed the petition in this matter, seeking to represent a bargaining unit of all full-time and regular part-time facilities maintenance employees, including grounds department employees,

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<sup>1</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 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 matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 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.

maintenance department employees, housekeeping department employees, and Equestrian Facility employees employed by Becker College (Employer or College).

The parties agree that the following employees are appropriately included in the petitioned-for bargaining unit:

All full-time and regular part-time facilities management employees including grounds, maintenance, housekeeping, and Equestrian Facility employees employed by the Employer at its campuses located in Worcester and Leicester, Massachusetts, and at its equestrian facility located in Paxton, Massachusetts, but excluding the Director of Facilities Management, Facilities Supervisor (Worcester), Assistant Director of Facilities (Leicester), Director of Housekeeping, Assistant Director of Housekeeping (Leicester), Evening Supervisor of Housekeeping (Worcester), Manager for Auxiliary and Safety Services, Director of Equestrian Facility, Assistant Director of Equestrian Facility, and excluding students, office clerical employees, faculty, casual employees, managers, guards, and supervisors as defined in the Act.

The Employer maintains that under *Specialty Healthcare & Rehabilitation Center of Mobile*,<sup>2</sup> the petitioned-for bargaining unit is inappropriate because it does not contain employees readily identifiable as a group who share a community of interest. The Employer argues that even if the petitioned-for employees constituted a readily identifiable group, the unit must include the College's 13 transportation department employees (eight van drivers and five bus drivers) because they share an overwhelming community of interest with the employees in the petitioned-for unit. The Employer also contends that the unit must exclude the supervisor of grounds (Worcester), the barn manager, and the weekend barn manager because they are statutory supervisors.

The Union contends that the unit sought does contain employees readily identifiable as a group, and that the transportation department employees should be excluded from the petitioned-for bargaining unit because they lack an overwhelming

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<sup>2</sup> 357 NLRB No. 83 (2011).

community of interest with the employees in the otherwise appropriate unit. The Union also contends that the unit should include the three positions that the Employer contends are supervisory.<sup>3</sup>

I find, in agreement with the Employer, that the unit sought is inappropriate as it does not contain employees readily identifiable as a group who share a community of interest. Accordingly I find that the unit must include the transportation department employees. I also find that the supervisor of grounds (Worcester), the barn manager, and the weekend barn manager should be included in the petitioned-for unit because the Employer failed to carry its burden of proving that they are statutory supervisors.

## **FACTS**

### *A. Overview*

The Employer operates a college with campuses in Worcester and Leicester, Massachusetts, and an Equestrian Facility in Paxton, Massachusetts. The College employs approximately 45 full-time faculty members and 122 part-time faculty members, and employs approximately 275 non-faculty employees, including those in issue.

College employees are eligible for health, dental, life, and disability insurance benefits, as well as a tuition benefit, provided they work sufficient hours.<sup>4</sup> The Employer maintains an Employee Handbook for Staff and Administration. This handbook, which applies to all employees, includes a code of ethics, a non-discrimination policy, a sexual

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<sup>3</sup> The Union stipulated that in the event the Regional Director directs an election in a unit larger than the unit petitioned for, the Union will proceed to an election.

<sup>4</sup> Full-time employees are eligible for full benefits, while employees who work between 28 and 32 hours per week are considered three-quarters time and are benefits-eligible on a prorated basis. Part-time employees who work fewer than 28 hours per week are eligible to accrue prorated paid personal and sick leave and also qualify for a prorated tuition benefit.

harassment policy, and a drug and alcohol policy. The Employee Handbook for Staff and Administration refers to a progressive disciplinary policy the Employer generally seeks to follow, but advises employees that they are employed on an at-will basis. The Employer does not use a pay grade system setting forth wages, but some positions have associated pay ranges.<sup>5</sup> All employees receive annual performance evaluations, and the Employer uses the same performance evaluation form to appraise all of its non-faculty employees. Copies of completed performance evaluations are forwarded to the College's Associate Vice President for Human Resources, Kathleen Garvey, who keeps them on file. Pay raises are not tied to employees' performance evaluations, but rather, are awarded on an across-the-board percentage basis. These pay raises typically take effect around October 1 each year, and all part-time and full-time employees employed as of July 1 of a given year are eligible to receive them.<sup>6</sup>

Facilities management employees<sup>7</sup> wear uniforms which consist of a light blue shirt with the Employer's emblem on it and dark blue pants. Equestrian Facility employees do not wear uniforms, but wear safety equipment when working with horses.

*B. Facilities Department Employees*

*(i) Organizational Structure*

Donald Rivers is the Employer's Director of Facilities Management. Rivers oversees the maintenance, grounds, housekeeping, and transportation departments at both the Worcester and Leicester campuses. Facilities Supervisor (Worcester) Steven

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<sup>5</sup> The record does not indicate which positions have pay ranges associated with them or what those pay ranges are.

<sup>6</sup> The Employer's fiscal year runs from July 1 through June 30.

Masiello and Director of Facilities (Leicester) Rockwood Hyland oversee maintenance and grounds operations at their respective campuses. Hyland also oversees the maintenance and grounds operations at the Equestrian Facility. They each report to Rivers.

The Employer's Director of Housekeeping, Susan Sirmans, who also reports to Rivers, works on the Worcester campus. The Assistant Director of Housekeeping (Leicester), Jean Kilmer, reports to Sirmans. Diana Johnson is the Employer's Manager for Auxiliary and Safety Services, responsible for managing the transportation department's van and bus drivers and for overseeing training and safety matters.<sup>8</sup> She reports to Rivers. Catriona Baker is the Employer's Director of the Equestrian Facility, as well as the coach of the College's riding team and an adjunct professor in the design department. She reports to Athletic Director Frank Millerick and to the head of the equine academic program, Charlotte Newell.

*(ii) Grounds and Maintenance Department Employees*

The College's five grounds department and six maintenance department employees work full-time, 7 a.m. to 3:30 p.m., Monday through Friday.<sup>9</sup> Grounds and maintenance department employees earn between \$10 and \$11 per hour. Supervisor of

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<sup>7</sup> These include maintenance, grounds, housekeeping, and transportation department employees.

<sup>8</sup> She has conducted trainings for blood-borne pathogens, safe lifting techniques, and safe power tool operating techniques, among others, for maintenance, housekeeping, and transportation department employees.

<sup>9</sup> In the summer, the grounds and maintenance department employees work half-days on Friday.

Grounds (Worcester) Joseph Leger earns \$17.79 per hour.<sup>10</sup> Leger has a turf and agriculture certificate, which he obtained long before becoming grounds supervisor. Maintenance department employees are responsible for indoor and outdoor building upkeep, while grounds department employees are responsible for maintaining the campuses' grounds, including lawn mowing, leaf raking, and snow removal. Grounds department employees also move furniture and perform other miscellaneous jobs.

On the Worcester campus, the grounds and maintenance departments are located in Dalton Hall, which houses the facilities department offices. Grounds and maintenance department employees report there in the morning, as that is where their time clock is located. Masiello and Leger each have a computer in the maintenance office. Leger uses his computer to print out the recycling pick up schedule, to check email, and to make up work orders. On the Worcester campus, grounds and maintenance employees take 15-minute breaks at 9 a.m. and at 2 p.m., and eat lunch from 12 p.m. to 12:30 p.m., at times in the dining hall.<sup>11</sup> Maintenance employee Craig Moreau testified that he has worked through his scheduled lunch in order to finish jobs, and there is no record evidence that he seeks approval from any supervisor or manager before doing so.

On the Leicester campus, the grounds and maintenance departments are housed in the maintenance building located at 77 South Main Street. Leicester campus grounds and maintenance department employees report there in the morning, as that is where their time clock is located. On the Leicester campus, grounds and maintenance department

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<sup>10</sup> Leger received a raise from \$12.50 per hour to \$14.53 per hour when he was promoted to grounds supervisor in 2005, and he also received the three percent across-the-board raise all College employees were awarded that year.

<sup>11</sup> Masiello testified that Leger can and does adjust his lunch and break times if necessary, but the record does not disclose when or why he has done so.

employees also take 15-minute breaks at 9 a.m. and at 2 p.m., and eat lunch in the maintenance shop from 12 p.m. to 12:30 p.m.

The Employer uses a computerized work order system to assign tasks to grounds and maintenance department employees. Work orders may be generated by students or other College employees, though Hyland testified that transportation department employees have never submitted work orders. Masiello reviews each maintenance department work order, approves it, and assigns it to the best-suited employee. Masiello also reviews each grounds department work order, approves it, and leaves it in Leger's folder, which Leger is responsible for checking. Leger typically checks his folder on breaks and at lunch, although he also at times sends a grounds department employee to check his folder.<sup>12</sup> Leger uses a rotation to assign employees to the various work orders that Masiello approves on a given day, e.g., recycling, lawn mowing, running the blowers, and running the weed whackers. Leger has some discretion in prioritizing assignments.<sup>13</sup> Masiello does not instruct Leger whom to assign to a job, though he may instruct him about the timeframe for completing a job.

The record does not include a job description for Leger's position, which Garvey testified the Employer was presently revising. Leger spends between 50 percent and 75 percent of his time performing grounds department work, including occasional snow shoveling. Leger was responsible for directing his ground employees' work on the

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<sup>12</sup> When Leger was promoted to grounds supervisor, he had no prior supervisory experience and received no training from the College with respect to any supervisory responsibilities his new position entailed.

<sup>13</sup> For example, Masiello stated that if a job is not a rush item, Leger can "push it off for a day or two or how he sees fit."

College's most recent commencement day, but the record contains no evidence about what Leger did in this regard. On a given day assignments may come in unexpectedly that need to be completed immediately, requiring Leger to adjust his employees' schedules accordingly.<sup>14</sup> Leger assigned the plowing work he used to perform to another grounds department employee after Leger decided he did not want to do it anymore. The academic buildings and dining halls are priorities, and plowing is done according to a routine, though Leger may instruct an employee, e.g., to plow certain parking lots. Masiello and Leger will tell grounds employees to "go back and hit anything they missed." Masiello recently called Leger to report a complaint about trash not being picked up and Leger assigned two employees to collect it.

After completing a grounds department work order, the assigned employee, Leger, and Masiello each sign off on the assignment slip, though at times employees leave assignment slips for Masiello, in which case he will sign off without routing it to Leger for his signature. As part of this process, Leger is responsible for inspecting the employee's work; if he is not satisfied he can send the employee to redo the job or discipline the employee.

In this regard, Masiello testified that Leger has "absolutely" sent employees back to redo work when Leger is not satisfied, and that Leger disciplined employee Jaime Miranda in 2007, though Masiello was not present at the time. Garvey testified that she witnessed Leger present Miranda's discipline, and that she signed the disciplinary form as

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<sup>14</sup> The record does not include any examples of such assignments.

a witness, which she does any time a written warning is issued.<sup>15</sup> Garvey, who is responsible for keeping a copy of each written warning an employee receives in his or her personnel file, could not recall witnessing any other discipline Leger has issued since the 2007 Miranda warning. Recently Leger sent employees back to clean up leaves they had piled near a ramp outside Davis Hall.

Masiello has observed Leger give employees verbal warnings. According to Masiello, Leger "sometimes uses vulgar language, but he's very verbal with the guys when he wants to be, yes[,] and that employees are not performing to his satisfaction Leger will say "[h]e wants it done. I told you to do this. Go do it." None of these instances has been reduced to writing or placed in the employee's personnel file, but after the fact Leger reports to Masiello when he has issued a verbal warning. Masiello and Leger spoke "a couple of times" to an unnamed employee whom Leger had disciplined. Masiello testified that Leger wanted to send the employee home, but Masiello told him he could not do so without speaking to him or writing him up first. They then called the employee in to the office and explained that if his performance did not improve he would be written up. No notes of the meetings were placed in the employee's personnel file but, according to Masiello, Leger took the initiative at the meetings to explain "what the next steps would be if [the employee] did it again."

Leger does not review or approve grounds employees' time cards, vacation requests, or extended leave requests. Masiello was unsure if Leger prepares employee evaluations. Employees calling in sick leave a message for Masiello on the facilities

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<sup>15</sup> The record includes a copy of the final disciplinary warning Leger issued Miranda on August 6, 2007 for insubordination, failing to complete assigned tasks, and being absent from work without permission.

department's answering machine. Masiello recently gave Leger the answering machine code in order to check messages while Masiello was on leave from work.<sup>16</sup> Leger can approve employee requests to leave early for medical appointments, and he tells Masiello when he has done so. According to Masiello, if Leger leaves early he "just lets me know."

(iii) *Housekeeping Department Employees*

Seventeen housekeeping employees work at the Worcester campus and seven housekeeping employees work at the Leicester campus.<sup>17</sup> According to Sirmans, about half are employed full-time and half are employed part-time (working between 22 and 32 hours per week). Full-time housekeeping employees work 7 a.m. to 3:30 p.m. Monday through Friday. Part-time housekeeping employees work various shifts, such as 7 a.m. to 1 p.m. and 8 a.m. to 2 p.m. Monday through Friday, and 4 p.m. to 12:30 a.m., 5 p.m. to 9 p.m., and 10 p.m. to 6:30 a.m. Thursday through Sunday. Housekeeping employees punch in at a time clock in the housekeeping building at the Worcester campus;<sup>18</sup> on the Leicester campus, the time clock is in Russell House. After punching in, housekeeping employees report to their regularly assigned buildings during the academic year.

Housekeeping employees are paid hourly, starting at \$8.50 per hour on days. There is a night shift pay differential, but the record does not indicate how much it is worth. Full-time housekeeping employees maintain all campus buildings and dormitories, collecting

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<sup>16</sup> There is no record evidence that any employee called in sick during this period, or that Leger had to take any action due to an employee doing so.

<sup>17</sup> According to Director of Housekeeping Susan Sirmans, on occasion Worcester housekeeping employees have worked in Leicester when Leicester was short-staffed, and transportation department van drivers ferried them between the campuses.

<sup>18</sup> This apparently refers to Dalton Hall, where the facilities department offices are housed.

trash, vacuuming, dusting, and washing floors. Part-time housekeeping employees who work evening hours perform those same tasks, and also clean carpets and buff and strip floors. During the summer, housekeeping employees work in groups and go from building to building for wall washing and floor cleaning; additional hours are available for housekeeping employees during the summer. Housekeeping employees have their own lunchroom on each campus.

(iv) *Equestrian Facility Employees*

In addition to caring for the horses stabled at the Equestrian Facility and scheduling and training riders, Equestrian Facility Director Catriona Baker oversees the eight or nine employees who work there. Nikki Layne is the assistant director of the Equestrian Facility and the assistant coach of the riding team. Baker and Layne both work full-time and are salaried.<sup>19</sup> Barn manager Jamie Barry and weekend barn manager Charlotte Ferro report to either Baker or Layne. No one employed at the Equestrian Facility reports to facilities management.

Equestrian Facility employees work part-time, either 8 a.m. to noon or 1 p.m. to 5 p.m. during the week, and 8 a.m. to 4 p.m. on weekends. The barn manager and weekend barn manager work from approximately 8 a.m. to 4 p.m. Monday through Friday and Saturday and Sunday, respectively. There is also a night shift employee who comes in for one hour between 10 p.m. and 2 a.m. to check on the horses. If there is a problem, she contacts either Baker or Layne. In the past, Equestrian Facility employees have worked 10 months of the year, but this summer the Employer will keep the Equestrian

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<sup>19</sup> As noted, *supra*, the parties stipulated that Baker and Layne are properly excluded from the petitioned-for bargaining unit.

Facility open, staffing the same shifts with fewer employees. None of the Equestrian Facility staff has worked elsewhere at the College in previous summers during Baker's four-year tenure as Director of the Equestrian Facility. As noted, *supra*, Equestrian Facility employees do not wear uniforms, but wear safety equipment when working with horses. Equestrian Facility employees have access to a kitchen, which maintenance department employees, but not transportation employees, use at times. Housekeeping employees do not work with Equestrian Facility employees, though grounds and maintenance employees cut the grass and make repairs at the Equestrian Facility.

Equestrian Facility employees earn between \$9 and \$12 dollars per hour and are eligible for the College's across-the-board wage increases. Barry is paid \$10 per hour and Ferro is paid \$12 per hour. Barry and Ferro each received a \$1 per hour raise when made barn manager and weekend barn manager, in 2011 and 2009, respectively. No one from College administration met with them to discuss any supervisory responsibilities their positions entailed. The record does not include job descriptions for either position.

Barry and Ferro have keys to the feed room and office, and ensure that employees start and complete their jobs for the day. Morning Equestrian Facility staff feed the horses, turn out the horses, clean the stalls, and ensure they are healthy. Afternoon Equestrian Facility staff feed the horses, sweep out the hay loft, and prepare the grain. Barry and Ferro also order hay and grain, ensure that horses who have been prescribed medications receive them in their feed, and decide when a veterinarian needs to be called. Baker testified that Barry and Ferro oversee the quality of the employees' work, and

assign them the tasks described above. She also testified that the employees' daily routine is the same every day and "would never get shifted."<sup>20</sup>

Baker and Layne make hiring decisions, although Baker testified that they involve Barry in hiring matters to ensure she likes the individual with whom she will be working. Baker testified that she "listens to [Barry's] input" and that Barry was "in the room" and able to ask questions of the two most recent Equestrian Facility hires. Layne and Barry agreed that they did not like a third recent applicant, who was not hired. When Baker was asked whether she would ever hire an individual over Barry's objection, Baker stated she would "probably not" because "[Barry] has to work with them more than I do."

Baker gave Barry and Ferro the authority to discipline employees when Baker was out of work for an extended period due to an illness. The record contains no evidence that Barry ever exercised this disciplinary authority or that Equestrian Facility employees are aware that Baker vested Barry with such authority. Baker once instructed Ferro to discipline an employee, but Baker does not know what action Ferro took in this regard. Baker does not invite Barry or Ferro to meet with employees whom she is going to discipline, but Baker issued a warning to an employee twice for repeatedly being late, improperly filling out her timecard, and making negative comments about the College to Equestrian Facility users, after Barry and Ferro each "brought it to [Baker's] attention."<sup>21</sup> Only Baker possesses the authority to terminate an Equestrian Facility employee.

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<sup>20</sup> Thus, Baker testified that the horses are always fed and turned out and stalls are then cleaned, and that the only extra duties to consider performing are whether to sweep the hay room and pick up in the paddocks. Barry and Ferro also decide who should bring the horses back in, since some employees perform better than others in this respect, according to Baker.

<sup>21</sup> Baker testified that after learning of these issues, "I spoke to the person and gave them (sic) a warning."

Neither Barry nor Ferro approves employee time sheets or countersigns them. Likewise, neither Barry nor Ferro evaluates Equestrian Facility employees, nor have they assisted Baker or Layne in this regard. If employees finish their duties before their shift ends, Barry or Ferro can let them go early. For reasons which the record does not explain, Ferro may authorize an employee to work beyond his or her shift.<sup>22</sup> Neither Barry nor Ferro can change employees' scheduled hours or change the priority of their assignments. Layne does all scheduling at the Equestrian Facility. If an employee is out sick, he or she calls Layne and/or Barry and Ferro. Baker and Layne use a phone tree Layne prepared to find coverage for absent employees.

(v) *Transportation Department Employees*

As noted above, the Employer contends that the eight van drivers and five bus drivers whom it employs in its transportation department must be included in the petitioned-for unit. Bus drivers must hold a commercial driver's license (CDL) with a passenger endorsement, but van drivers need no such credential. None of the van drivers has a CDL with a passenger endorsement, but bus drivers sometimes drive vans. Starting hourly pay is \$10 for van drivers and \$13.50 for bus drivers. Unlike the maintenance, grounds, and housekeeping department employees, who work year-round, van and bus drivers are seasonal employees who predominantly work during the academic year, which runs from mid-August to mid-May.<sup>23</sup>

During the academic year, van drivers shuttle students between the Worcester and Leicester campuses and between these campuses and the Equestrian Facility in 11-

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<sup>22</sup> Baker testified that Ferro notifies her when she does so and "that's fine."

<sup>23</sup> The College hires additional housekeeping personnel during the summer, when the dormitories are completely cleaned.

passenger vehicles. Van drivers report to either the Worcester or Leicester campus, and pick up their vans 15 minutes prior to their start times.<sup>24</sup> Drivers park their vans at Dalton Hall on the Worcester campus and drivers park their vans at the gymnasium on the Leicester campus. Van drivers record their time on time sheets, which they turn in to Johnson. Johnson is responsible for hiring (sometimes in consultation with Rivers), disciplining, supervising, scheduling hours, and assigning student activities, academic field trips, and athletic events to the van and bus drivers. Johnson does not supervise any employees other than the transportation department employees.

Van drivers are responsible for checking their vehicles' oil and fluid levels, and for cleaning, washing, and vacuuming their vehicles. In this regard, they are supposed to clean their vehicles after every run, and they are supposed to sweep and wash the windows at the end of each shift. Johnson must approve any overtime for van drivers, which most often occurs in the event of an overnight trip; Johnson estimated that this happens no more than once a year.

Unlike maintenance, grounds, and housekeeping employees, van and bus drivers do not get a lunch period, though there is evidence that van drivers eat in the dining hall on the Worcester campus.

None of the van drivers has transferred to the transportation department from another position at the College, although one summer two or three years ago, van driver

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<sup>24</sup> Van drivers work early morning, afternoon, and evening shifts. The record indicates that the early morning shift is from 6:30 a.m. to 11 a.m., but does not indicate the start and end times of the afternoon or evening shifts. On weekdays during the academic year, the van drivers' first run begins at 7:10 a.m. and the last run begins at 11 p.m., while on weekends during the academic year the first run begins at 10 a.m. and the last run begins at 1:15 a.m. Van drivers work between 20 and 25 hours per week during the academic year. The record does not disclose how many hours per week bus drivers work.

Robert Norberg worked in the grounds department and van driver Charles Sirmans has worked in various departments, including housekeeping, during a few summers.<sup>25</sup> The record does not disclose how many hours Norberg or Sirmans worked in these positions. Although Susan Sirmans, who has been the Director of Housekeeping since 1982, testified that other than her husband, she is unaware of any other transportation department employee working summers in the housekeeping department, the record reveals that van driver Sherri Billington worked in the Housekeeping department four hours per day Monday through Thursday in the summer of 2011. None of the College's bus drivers has worked in other departments during the summer, although van and bus drivers are eligible to work elsewhere in the summer.<sup>26</sup>

Drivers are considered laid-off in the summer and are paid only if they work. The Employer does not issue drivers layoff notices at the end of the academic year and automatically rehires drivers in the fall. Drivers may work during semester break because of athletic teams traveling, or during summer break when student orientation is held, but drivers are predominantly seasonal employees.<sup>27</sup>

As noted, *supra*, transportation department employees work part-time and their schedules and shifts vary. They are eligible for prorated personal and sick leave and for prorated tuition benefits while they are working. If a transportation department driver

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<sup>25</sup> Charles Sirmans is Susan Sirmans' husband.

<sup>26</sup> In this regard, Johnson testified that at the end of the academic year drivers may ask her about summer work opportunities and that "we tell them that if we have any work[,] they can work."

<sup>27</sup> Drivers may work as many as a full three weeks if they drive during a summer academic program called Gateways, and, if they drive during summer orientation, they may work an additional six to 10 days in the summer.

worked sufficient hours during the academic year to qualify for health insurance, he or she would have to pay his or her "contributory portion" to the College during the summer to maintain coverage.

According to Garvey, Director of Housekeeping Susan Sirmans or any housekeeping employee with cleaning supplies available may provide them to drivers as needed. Drivers may contact Sirmans directly in this regard. The record contains inconclusive evidence about who repairs the College's vans and buses. Garvey testified that, on occasion, drivers bring their vehicles to Director of Facilities Donald Rivers to have damage examined or to have repairs made, and that repair work is outsourced. Hyland testified that grounds and maintenance department employees do not perform major repairs, "just normal residential stuff," and that "maybe every couple of weeks" van drivers come to the maintenance building for a headlight or mud flap replacement, or a seatbelt or armrest repair, and that he performed an oil change for a van driver.<sup>28</sup> Masiello and maintenance employee Edwin Pickey have fixed grab bars, replaced windshield wipers, and repaired one or two flat tires on vans, work which he described as "just little miscellaneous things." Bus drivers can power wash their buses at the Leicester maintenance building at a station set up for that purpose.

Masiello testified that van drivers are "frequently" in and out of Dalton Hall, that he retrieves keys from Johnson's office for van drivers making early morning runs, and that a bus stop is located at the end of Dalton Hall's driveway. Masiello further testified that maintenance department employees interact with van drivers while eating at the dining hall and that maintenance department employees "socialize" with van drivers.

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<sup>28</sup> The record does not indicate when this occurred, but Hyland testified that it was a one-time event.

Sirmans testified that drivers obtain cleaning supplies from housekeeping employees on close to a daily basis, usually from the housekeeping employee assigned to the student center in Worcester and from the housekeeping employee assigned to the gymnasium in Leicester. However, housekeeper Maribel Santiago, who is assigned to the Worcester campus, testified that other than saying hello to van and bus drivers she has no contact with them, and that she has not coordinated delivering supplies or equipment to them.

Baker testified that van drivers may talk to Equestrian Facility staff when they drop off students, and that Equestrian Facility staff may ask them to wait if a student is late. Van drivers sometimes wait in their vans and sometimes watch students' riding lessons. Baker and Layne have van drivers' cell phone numbers in the event of a schedule change. The record reveals that when drivers go to the Equestrian Facility they may engage in casual conversation with employees there, but have no other interaction with them. According to Hyland, grounds and maintenance department employees talk with transportation department employees in the morning and sometimes give them supplies to deliver to the Equestrian Facility, because grounds and maintenance department employees don't go to the Equestrian Facility every day, but van drivers do. The record indicates that maintenance department employees have driven vans themselves during the summer, but only in connection with their maintenance duties.

## **ANALYSIS**

### *A. Unit Determination: Board Law*

The Act does not require that a petitioner seek representation of employees in the most appropriate unit, but only in an appropriate unit. *Alley Drywall, Inc.*, 333 NLRB

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1005, 1006 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that the employees in the larger unit share an “overwhelming community of interest with those in the petitioned-for unit. *Specialty Healthcare & Rehabilitation of Mobile*, 357 NLRB No. 83, slip op. at 7 (2011).

Thus, the first inquiry is whether the job classifications sought by the Petitioner are readily identifiable as a group and share a community of interest. In doing so, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002); see also *Specialty Healthcare*, *supra*, slip op. at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the plant or facilities and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, 1069 n.5 (1981). However, all relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare, supra*, slip op. at 11-13, and n.28. Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip. op. at 3, n.8 (2011).

*B. Unit Determination: Applying Board Law to the Facts*

Applying the *Specialty Healthcare* framework in this case, I find that the unit sought is a fractured unit that is not readily identifiable as a group. I also find that the Employer has met its burden of proving that the transportation department employees share an overwhelming community of interest with the petitioned-for employees, and I will direct an election in a unit including them.

The unit sought by the Petitioner is a fractured unit, and the Employer has carried its burden of establishing that there is no rational basis for excluding the transportation department employees, while including the classifications sought by the Petitioner in the unit. *Seaboard Marine*, 327 NLRB 556 (1999), quoted in *Specialty Healthcare, supra*, slip op. at 13. Here, none of the Board’s traditional community-of-interest factors suggests that all the employees in the petitioned-for unit share a community of interest that the transportation department employees do not equally share. *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011). In the language of the District of Columbia Circuit in *Blue Man Vegas LLC v. NLRB*, 529 F. 3d 417, 421 (D.C. Cir 2008), there is “no

legitimate basis upon which to exclude” the transportation department employees while at the same time including all the other classifications sought by the Petitioner.

First, the unit sought by the Petitioner does not track any lines drawn by the Employer on the basis of classification, department, or function. In this regard, it is not a classification based unit, because the Petitioner seeks multiple and varied classifications that range from employees that maintain the grounds to employees that feed and care for horses. The Petitioner’s unit is also not drawn along department lines, as it includes employees in three separate departments while seeking to exclude employees in a fourth department. The unit sought by the Petitioner is also not drawn along functional lines. While many of the employees in the maintenance and housekeeping department are involved in the general function of maintenance and upkeep of the premises of the College, most employees in the equestrian department do not perform that function. *Odwalla, supra*, slip op. at 5.

The petitioned-for unit is not drawn on lines that reflect employee work locations or the Employer’s facilities structure. Thus, the unit sought covers employees at two separate campuses of the Employer (Worcester and Leicester) and at a third location at the Equestrian Facility in Paxton. The drivers report to work at one of the two campuses, and then they go to each of these locations when performing their job duties.

Nor is the unit sought by the Petitioner structured along lines of supervision. Garvey, the Associate Vice President for Human Resources, maintains a centralized personnel record keeping system. Director of Facilities Management Rivers oversees employees the Petitioner seeks to be included (maintenance, grounds, housekeeping) and employees that the Employer seeks to include (transportation department); he does not

oversee employees in the equestrian department that the Petitioner also seeks to represent. Importantly, the three departments the Petitioner seeks to be included have their own immediate supervision, as does the transportation department. There is no common supervision at the department level. In this regard, the transportation department employees have as much or as little in common with the departments included in the Petitioner's unit as those three departments have with each other. *Odwalla, supra*, slip op at 5. Additionally, Johnson, the supervisor of the transportation employees, also conducts training sessions that employees of maintenance and housekeeping departments attend.

The unit sought is not drawn along lines of different methods of compensation, benefits, working conditions, or hours of work. The employees in all the departments at issue are paid hourly, share a common Employee handbook, are eligible for the Employer's across-the-board annual pay raises, and receive the same benefits. Although the transportation department employees largely work part-time schedules, so do many other employees in the petitioned-for unit; indeed, all Equestrian Facility employees and about half of the employees in the housekeeping department are employed on a part-time basis. Similarly, although the transportation department employees are mostly seasonal in nature and are not employed in the summer, the Equestrian Facility employees have also not been employed during the summers.<sup>29</sup> The transportation department employees wear the same uniforms as grounds, maintenance, and housekeeping employees

Although there is little evidence of interchange between the transportation department and the other departments, the same is true among the three departments the

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<sup>29</sup> The Employer indicated that it will keep the Equestrian Facility open this summer, but with fewer employees; presumably some equestrian employees will still be seasonal in nature.

Petitioner seeks. Similarly, work-related contact between some departments, such as housekeeping and equestrian, is similar to the work related contact between the transportation department employees and the Equestrian Facility employees.

I recognize that there are some differences cited by the Petitioner between the group it seeks and the employees that the Employer seeks to add, but these differences are insufficient when compared to the facts that demonstrate the petitioned-for unit is a fractured unit. Accordingly, I find that there is no rational basis for excluding the transportation department employees. I also find that the Employer has carried its burden of demonstrating that the transportation department employees share an overwhelming community of interest with the employees in the petitioned-for unit because none of the traditional bases for drawing unit boundaries supports excluding the transportation department employees.

*C. The evidence fails to show that the Supervisor of Grounds (Worcester), the Barn Manager, or the Weekend Barn Manager are statutory supervisors.*

Pursuant to Section 2(11) of the Act, the term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather,

possessing any one of them is sufficient to confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985).

The burden of proving supervisory status rests on the party alleging that such status exists. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). A supervisor's status under the Act is determined by an individual's duties, not by his title or job classification. *New Fern Restorium Co.*, 175 NLRB 871 (1969). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992).

In *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), the Board refined its analysis of the terms “assign,” “responsibly direct,” and “independent judgment” in assessing supervisory status. The Board announced that it construes the term “assign” to refer to “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Id.* at 689.

With respect to “responsible direction,” the Board explained in *Oakwood* that, if a person has “men under him” and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both “responsible” and carried out with independent judgment. For direction to be “responsible,” the person directing the oversight of the employee must be accountable for the performance of the task by the other. To establish accountability, the evidence must show that the employer delegated to the putative supervisors authority to direct the work

and take corrective action, if necessary. There must also be a prospect of adverse consequences for the putative supervisors if they do not take these steps. *Id.* at 689-692.

Finally, the Board held in *Oakwood* that to establish that an individual possesses supervisory authority with respect to any of the statutory functions, the individual must also exercise independent judgment in exercising that authority, which depends on the degree of discretion with which the function is exercised. “[T]o exercise independent judgment, an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id.* at 693. “[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Ibid.* The Board also stated that the degree of discretion exercised must rise above the “routine or clerical.” *Ibid.*

Applying the foregoing principles, I find that the record fails to support the Employer's contentions that the supervisor of grounds (Worcester), the barn manager, and the weekend barn manager are supervisors within the meaning of Section 2(11) of the Act.

*(i) Supervisor of Grounds (Worcester)*

Prior to being promoted to supervisor of grounds (Worcester), Leger had no supervisory experience and there is no evidence the College has provided him with any supervisory training. The record does not include a job description for Leger's position, which Garvey testified the College is currently revising.<sup>30</sup>

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<sup>30</sup> Under settled Board law, this lack of evidence must be construed against the Employer. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 n.8 (1999).

Although Leger can adjust his break times, the record does not contain even a single example of when or why Leger has done so. It is well settled that testimony utterly lacking in specificity does not meet the Employer's burden of establishing supervisory status. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). See also *Dean & Deluca New York*, 338 NLRB 1046, 1048 (2003) (any lack of specific evidence is construed against the party asserting supervisory status). Moreover, maintenance employee Craig Moreau has also worked through his scheduled lunch and there is no record evidence that he seeks approval from any supervisor or manager before doing so. This inconclusive evidence fails to advance the Employer's argument that Leger is a statutory supervisor. *Custom Mattress Mfg.*, 327 NLRB 111, 112 (1998) (internal citations omitted).

Leger assigns work orders to employees using a rotation, although Masiello may instruct him about the timeframe in which a particular job must be completed.<sup>31</sup> The record reflects that plowing -- work which Leger no longer wished to perform -- is done by routine and that there are standing orders that academic buildings and the dining hall are priorities, though Leger may instruct an employee to plow a particular parking lot and may instruct grounds department employees to "go back and hit anything they missed." The record also indicates that when Leger learned of a complaint about trash that had not been picked up, he assigned two employees to collect it. However, none of this evidence establishes that Leger's directions to grounds employees amounts to anything other than routine and clerical instruction, and fails to support the Employer's contention that Leger is a supervisor. *Oakwood, supra*, at 693.

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<sup>31</sup> Masiello also testified that if a job is not a rush item, Leger can "push it off for a day or two or how he sees fit."

Although the record indicates that Leger directed grounds department employees at the College's most recent commencement, there is no record evidence establishing what Leger did in this regard. And, although the record reveals that on a given day rush assignments may come in unexpectedly, requiring Leger to adjust his employees' schedules accordingly, the record contains no evidence to support this contention. As noted, *supra*, testimony utterly lacking in specificity does not meet the Employer's burden of establishing supervisory status. *Avante at Wilson, Inc.*, 348 NLRB at 1057; *Dean & Deluca New York*, 338 NLRB at 1048.

Leger does not review or approve employee timecards or vacation requests. In any case, the Board has consistently held that such authority is routine and clerical and is not an indicator of supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 730 n.10 (2006); and *Los Angeles Water & Power Employees' Assn.*, 340 NLRB 1232, 1234 (2003). While Leger can approve employee requests to leave early for medical appointments, nothing in the record establishes that Leger's authority in this regard is anything more than routine and clerical. *Oakwood, supra*, at 693.

There is no evidence that Leger evaluates or appraises grounds department employees. As noted, above, under settled Board law, this lack of evidence is construed against the Employer. *Elmhurst Extended Care Facilities, supra*. Although Masiello provided Leger with the code to the facilities' department's answering machine in order to check messages from grounds employees calling in sick, there is no evidence that any employee did so, or that Leger had to take any action in this regard. Moreover, the Board has held that receiving absence reports is clerical. *Dico Tire, Inc.*, 330 NLRB 1252, 1253 (2000).

The record indicates that Leger has sent employees back to redo unsatisfactory work. However, there is no evidence that any such instructions Leger has issued -- like instructing employees to clean up a leaf pile -- are more than routine and clerical in nature. *Oakwood, supra*, at 693.

Although Leger issued a final disciplinary warning to employee Jaime Miranda in 2007, the record contains no evidence that Leger has, at any time since being promoted to grounds supervisor in 2005, issued any other written discipline. It is well settled that the isolated or sporadic exercise of authority is insufficient to establish supervisory status. *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997), citing *Bowne of Houston*, 280 NLRB 1222, 1223 (1986). And, while there is evidence that Leger has issued employees verbal warnings, the Board has long held that mere authority to issue verbal reprimands is too minor a disciplinary function to constitute disciplinary authority. I find that Leger's authority to issue this sort of verbal correction on the spot, i.e., a verbal reprimand that is not reduced to writing, is too minor to establish his supervisory status. *Ohio Masonic Home*, 295 NLRB 390, 394 (1989); *Passavant Health Center*, 284 NLRB 887, 889 (1987). Accordingly, I find that this evidence does not establish that Leger possesses supervisory authority.

For all of the foregoing reasons, I find that the Employer has failed to satisfy its evidentiary burden that Leger is a supervisor within the meaning of Section 2(11) of the Act. I find, therefore, that the petitioned-for unit properly includes the position of supervisor of grounds (Worcester).

(ii) *Barn Manager and Weekend Barn Manager*

The Employer contends that barn manager Jamie Barry and weekend barn manager Charlotte Ferro are supervisors who must be excluded from the petitioned-for unit. I find, however, that the record evidence fails to support the Employer's contention.

Initially, I note that there is no evidence that the Employer met with either Barry or Ferro to discuss any supposed supervisory responsibilities their positions entailed when each was promoted. Regarding hiring, it is clear Director of the Equestrian Facility Baker and her assistant, Layne, make hiring decisions. Although there is evidence that Barry was present in the room when the two most recent Equestrian Facility employees were hired, this does not establish that Barry is a statutory supervisor. The Board has long held that, where admitted supervisors participate in the interview process, it cannot be said that employees whose status is at issue have authority to effectively recommend hiring merely because they are involved in the process. *Ryder Truck Rental*, 326 NLRB 1386, 1387 n.9 (1998), citing *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989). Moreover, Baker's equivocal and speculative testimony that she would "probably not" hire an applicant over Barry's objection is of little, if any, value. See generally *Custom Mattress Mfg.*, *supra* (Board will not find that supervisory status has been established based on inconclusive evidence concerning particular indicia of supervisory authority).

Regarding discipline, although there is evidence that Baker gave Barry and Ferro the authority to discipline employees when Baker was out of work, there is no evidence that Barry has ever exercised her purported authority, or even that employees were aware that she had been vested with such authority. Such temporary authority would in any case be insufficient to elevate them to supervisory status. Moreover, while Baker on one

occasion instructed Ferro to discipline an employee, the record does not reveal what, if any, action Ferro took in this regard and what affect it would have had on the employee. In any case, where the initiation of the discipline came from the suggestion of Baker, it I find that the record fails to support the Employer's contention that the barn manager and the weekend barn manager have authority to issue discipline employees. See generally *Byers Engineering Corp., supra*.

There is also insufficient record evidence to show that Barry or Ferro even effectively recommend discipline. Although Barry and Ferro brought to Baker's attention an Equestrian Facility employee's performance-related issues, this evidence falls well short of establishing that either Barry or Ferro effectively recommended that the employee be disciplined; rather, the record reveals that Baker discussed these issues with the employee herself and determined that discipline was warranted. *Children's Farm Home*, 324 NLRB 61, 61 (1997) ("The Board has consistently applied the principal that authority effectively to recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.") (internal citations omitted).

To the extent the record establishes that Barry and Ferro oversee the Equestrian Facility staff, the record also makes clear that employees perform the same tasks in the same order every day. There is no evidence of the use of independent judgment by Barry or Ferro in the assignment of duties. Similarly, there is no evidence that Barry and Ferro exercise responsible direction of other employees, and no evidence that they are in any way held accountable for the tasks employees in this department perform. In all, I conclude the evidence establishes that Barry's and Ferro's authority to direct the

Equestrian Facility employees' work is of a routine and clerical nature and does not establish that they are supervisors. *Oakwood, supra*, at 693.

Neither Barry nor Ferro approves Equestrian Facility employee time sheets,<sup>32</sup> evaluates Equestrian Facility employees, or schedules Equestrian Facility employees. Moreover, neither Barry nor Ferro can change employees' scheduled hours or change the priority of their assignments. Although Barry and Ferro may receive calls from absent employees, this evidence does not advance the Employer's argument that Barry and Ferro are statutory supervisors.<sup>33</sup>

To the extent that Barry and Ferro can allow employees to leave work early or require employees to stay beyond their scheduled shifts, the record fails to disclose that they use any independent judgment in making such decisions, since the Equestrian Facility employees' duties never vary. Thus, any decisions Barry and Ferro make in this regard are purely routine and clerical.

For all the foregoing reasons, I find that the Employer has failed to satisfy its evidentiary burden that Barry and Ferro are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I find that the unit properly includes the positions of barn manager and weekend barn manager.

Therefore, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>32</sup> As noted above, the Board has consistently held that such authority is, in any case, routine and clerical and is not an indicator of supervisory authority. *Golden Crest Healthcare Center and Los Angeles Water & Power Employees' Assn., supra*.

<sup>33</sup> As noted, above, the Board has found that receiving absence reports is clerical. *Dico Tire, Inc., supra*.

All full-time and regular part-time facilities management employees including grounds, maintenance, housekeeping, transportation, and equestrian facility employees, including the supervisor of grounds (Worcester), the barn manager, and the weekend barn manager, employed by the Employer at its campuses located in Worcester and Leicester, Massachusetts, and at its Equestrian Facility located in Paxton, Massachusetts, but excluding, the Director of Facilities Management, Facilities Supervisor (Worcester), Assistant Director of Facilities (Leicester), Director of Housekeeping, Assistant Director of Housekeeping (Leicester), Evening Supervisor of Housekeeping (Worcester), Manager for Auxiliary and Safety Services, Director of Equestrian Facility, Assistant Director of Equestrian Facility, and excluding students, office clerical employees, faculty, casual employees, managers, guards, and supervisors as defined in the Act.

### **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 Service Employees International Union, Local 888. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

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

employees in the military services of the United States may vote if they appear in person at the polls.

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

### **Employer to Submit List of Eligible Voters**

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

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). 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.). This list may initially be used by me to assist in determining whether there is an adequate showing of interest. 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 June 29, 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>34</sup> by mail, or by facsimile transmission at 617-565-6725. 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, 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 **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.

### **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 at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received

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<sup>34</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by July 6, 2012. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>1</sup> but may not be filed by facsimile.

Issued in Boston, Massachusetts  
this 22<sup>nd</sup> day of June, 2012

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
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