

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 21**

WINDSOR TWIN PALMS HEALTHCARE  
CENTER, LLC D/B/A WINDSOR PALMS  
CARE CENTER OF ARTESIA

Employer

and

Case 21-RC-084117

SEIU-ULTCW, SERVICE EMPLOYEES  
INTERNATIONAL UNION, UNITED LONG  
TERM CARE WORKERS

Petitioner

**DECISION AND DIRECTION OF ELECTION**

On June 27, 2012, the SEIU-ULTCW, Service Employees International Union, United Long Term Care Workers, herein called the Petitioner or Union, filed a petition seeking an election in a bargaining unit consisting of certain employees of Windsor Twin Palms Healthcare Center, LLC d/b/a Windsor Palms Care Center of Artesia, herein called the Employer.<sup>1</sup> Specifically, the Petitioner seeks a unit including: All full-time and regular part-time licensed vocational nurses employed at the Employer's facility located at 11900 East Artesia Boulevard, Artesia, California; excluding all other employees, assistant MDS coordinators, case manager, infection control nurse, director of staff development, office clerical employees, guards, supervisors, professional employees, managerial employees, and confidential employees as defined in the Act.<sup>2</sup>

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

<sup>2</sup> The unit description appears as amended at the hearing.

The Employer contends that the petitioned-for unit is inappropriate because its full-time and regular part-time Licensed Vocational Nurses, herein LVNs, are supervisors within the meaning of the Act. The Petitioner responds that the Employer has failed to demonstrate that the LVNs are supervisors within the meaning of the Act.

On July 10 and 11, 2012, a hearing in this matter was held before a hearing officer of the National Labor Relations Board, herein called the Board. Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, herein called the Act, the Board has delegated its authority in this proceeding to the undersigned.<sup>3</sup>

**I. THE ISSUES**

The sole issue to be determined herein is whether the Employer has met its burden of demonstrating that the LVNs are supervisors within the meaning of the Act.

**II. SUMMARY AND CONCLUSION**

Based upon the record, the post-hearing briefs filed by the parties, and the evidence as a whole, I find that the petitioned-for unit is an appropriate unit within the meaning of the Act:

All full-time and regular part-time licensed vocational nurses employed at the Employer's facility at 11900 East Artesia Boulevard, Artesia, California; excluding all other employees, assistant MDS coordinators, case manager, infection control nurse, director of staff development, office clerical employees, guards, supervisors, professional employees, managerial employees, and confidential employees as defined in the Act.

Accordingly I shall direct an election in the above-described unit.

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<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

### **III. THE FACTS**

#### **A. The Employer's Operation<sup>4</sup>**

The Employer operates a 24-hour skilled-nursing facility located in Artesia, California, the only facility involved herein.<sup>5</sup> The 296-bed facility provides skilled-nursing services to seniors and other patients in need of rehabilitation. The facility is divided into five separate units named Palm Grove, Palm Court, Palm Garden, Palm Terrace East, and Palm Terrace West. Each of these units is housed in a separate building with the exception of Palm Terrace East and Palm Terrace West, which are housed in the same building. The facility operates around the clock within three shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m.

The facility is run by Administrator John Ryan, herein Ryan. Reporting to Administrator Ryan is Director of Nursing Evelyn Bagaybagayan, herein Bagaybagayan, who is charged with overseeing overall nursing operations at the facility including, the registered nurses, herein RNs; LVNs; the Restorative Nursing Assistants, herein RNAs; and the Certified Nursing Assistants, herein CNAs.<sup>6</sup> Also reporting to the Administrator is Director of Staffing Development Yolanda De Guzman, herein De Guzman. De Guzman is responsible for overseeing the hiring, staffing, orientation, and scheduling of the CNAs at the facility.<sup>7</sup>

There are two RN Supervisors assigned to the 7:00 a.m. to 3:00 p.m. and 3:00 p.m. to 11:00 p.m. shifts, and one RN Supervisor assigned to the 11:00 a.m. to 7:00 p.m. graveyard shift. The RN Supervisors oversee nursing operations during their assigned shifts for all five units. For

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<sup>4</sup> There is no history of collective bargaining at this facility.

<sup>5</sup> The parties stipulated that the Employer is engaged in commerce within the meaning of the Act, and subject to the jurisdiction of the Board. The parties further stipulated that the Employer, a California limited liability company, is engaged in the business of operating a nursing home, and that during the past 12 months, a representative period, the Employer derived gross revenues in excess of \$100,000 and purchased and received goods valued in excess of \$5,000, which goods were shipped to the Employer's Artesia, California facility directly from points outside the state of California. The parties likewise stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) the Act.

<sup>6</sup> I will refer to CNAs and RNAs collectively as "CNAs" throughout the remainder of this document.

<sup>7</sup> De Guzman was not called to testify at the hearing.

each shift there are one to two LVNs and three to seven CNAs assigned to each of the five units. The ratio of LVNs and CNAs assigned to each unit seems to be dependent upon the shift and the need in the particular unit. Typically one LVN will be assigned to a unit with five or fewer CNAs assigned, and two LVNs will be assigned to a unit with six or more CNAs assigned. The Employer currently employs five RN Supervisors, 46 to 47 LVNs,<sup>8</sup> and 136 CNAs.<sup>9</sup>

LVNs, because they are licensed, are able to administer medications and treatments to patients and contact doctors regarding changes in the patients' conditions. CNAs are unable to perform these tasks as they lack the requisite license. The Employer produced the LVNs' written job description, dated August 2011, which states in part that an LVN:

Directs and supervises day-to-day functions of assigned personnel and ensures that policies and procedures are followed. Conducts employee performance appraisals and is responsible for coaching, counseling and disciplining staff. Makes recommendations to Supervisor concerning wage and salary adjustments, hiring, promotion, termination, transfers, etc.

B. Assignment and Direction of Employees

DON Bagaybagayan testified generally about the duties and responsibilities of the LVNs.<sup>10</sup> She testified that the LVNs are responsible for assigning the CNAs to specific patients and making reassignments in that regard where necessary. Bagaybagayan testified that in making their assignments, the LVNs have to take into account the nature of the station needs, the activity level of the patients, the acuity level of the patients, and the skill level of the CNAs in order to determine which CNA will be assigned a particular type of resident.

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<sup>8</sup> Forty-two of the LVNs are classified as LVN Charge Nurses while 4 are classified as LVN Treatment Nurses. The treatment nurses specialize in treating pressure ulcers, skin tears, cuts, and other wounds. The treatment nurses are also responsible for charting, documentation, and making rounds. The record is unclear as to whether the treatment nurses otherwise hold the same responsibilities as the regular LVNs.

<sup>9</sup> There are six RNAs employed by the Employer that are included in this number.

<sup>10</sup> The Employer did not produce any LVN witnesses to testify as to their duties and responsibilities.

Moreover, DON Bagaybagayan testified that the LVNs assign specific tasks to the CNAs in connection with the care that is required for the particular patient. Specifically, she stated that the LVNs will explain to the CNAs the particular care required for each patient and may assign the CNAs to assist the patients with ambulating, feeding, and providing the patients with specific equipment to assist with walking. On cross-examination, however, DON Bagaybagayan admitted that the CNAs are assigned to the same block of rooms each day and are not tied to any specific patients.

DON Bagaybagayan testified that when CNAs call off of work or come into work late, the LVNs are charged with locating a replacement CNA to fill those duties. If a replacement is not found, then the LVN has to reassign patients to different CNAs. DON Bagaybagayan testified that the LVNs have the authority to excuse the CNAs from work early. She also testified that LVNs are responsible for training the CNAs on specialized care required for the patients.

The Union produced several LVN witnesses who essentially disputed the majority of the information testified to by DON Bagaybagayan. LVNs Roderick Valiente and Rochelle Meza testified that it is the RN Supervisor who handles calls from employees who aren't going to be able to make it into work or are going to be late to work. They stated that it is the RN Supervisor that is responsible for calling around to find a replacement. When a CNA has to leave early because they are sick or for an emergency, the LVNs instruct them to contact the RN Supervisor. Moreover LVN Rochelle Meza testified that training of the CNAs is done by DSD De Guzman or by a more experienced CNA, but that she herself does not train the CNAs. Both Valiente and Meza testified that they don't have the authority to grant overtime.

C. Disciplinary Authority

DON Bagaybagayan testified that the LVNs have the authority to issue verbal and written warnings to the LVNs. She testified that any further disciplinary actions such as potential suspensions or terminations should be referred to her. The Employer produced records of eight corrective-action memorandums issued to CNAs by LVNs in 2011 and 2012.<sup>11</sup> Three of the eight memos produced on the record were completed by the same LVN.

RN Supervisor Ning Tian, herein Tian, who supervises some of the LVNs who issued those corrective action memos, testified that the LVNs did not consult with her or seek approval prior to issuing those corrective-action memos; and that she typically doesn't require the LVNs she supervises to consult with her prior to issuing corrective-action memos.<sup>12</sup>

LVNs Valiente and Meza, testified that they have never issued a corrective-action memo to a CNA and that they have never been told that they have the power to discipline CNAs. LVN Valiente testified that on one occasion he wrote up an incident report regarding conduct by a particular CNA. Afterward, his RN Supervisor did some additional investigation into the incident and instructed Valiente to issue the CNA a write-up. LVN Valiente testified, however, that he did not issue the write-up.

LVN Joy Baldovino, herein Baldovino, who has worked at the facility for 4 years testified that she has only issued a corrective-action memo to a CNA on one occasion 2 years ago. On that particular occasion LVN Baldovino was instructed by her RN Supervisor to issue the corrective-action memo, and she was assisted by that supervisor in completing the corrective-

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<sup>11</sup> Neither the LVNs who issued the corrective-action memos nor the CNAs who received them were called to testify.

<sup>12</sup> RN Supervisor Tian also testified on direct examination that she did not permit the LVNs she supervised to issue written warnings without consulting with her.

action memo. Similarly, LVNs Florencio Besana and Ericson Roxas testified that they have never issued any corrective-action memos to CNAs.

The LVNs who testified at the hearing testified in essence that when problems or concerns arise as to the CNAs, they report those problems to their RN Supervisors who then attempt to resolve those issues. Employer witness RN Supervisor Tian testified that when LVNs come to her with problems regarding CNAs, it is her practice to try to resolve those problems.

#### D. Performance Evaluations

It is undisputed that the LVNs complete annual performance evaluations for the CNAs that they work with. DON Bagaybagayan testified that the RN Supervisors may also complete these evaluations at times for the CNAs. The Employer produced several evaluations of CNAs completed by LVNs in 2011 and 2012. DON Bagaybagayan testified that the performance evaluations are then used in determining whether the CNAs are eligible for a wage increase.<sup>13</sup> Hanita Hoffman, herein Hoffman, Human Resources Director for CPEHR, the outsourced human-resource company that contracts with the Employer and its sister facilities, testified that those employees who receive positive annual performance evaluations receive raises. She testified, however, that merit-based increases are subject to some discretion by the administrator of the facility.<sup>14</sup>

Although it was undisputed at the hearing that LVNs do complete performance evaluations for CNAs, the testimony with regard to the logistics in which those evaluations are completed varied from witness to witness. For instance, DON Bagaybagayan testified that after the performance evaluation has been completed it is submitted either to an RN Supervisor or to

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<sup>13</sup> On cross-examination, DON Bagaybagayan denied any firsthand knowledge as to what weight the performance evaluations are given in determining whether a wage increase is warranted. She testified that Administrator Ryan is responsible for decisions with respect to wage increases. She also testified that she did not know whether the CNAs had gotten a wage increase in the last 6 months other than an across-the-board wage increase.

<sup>14</sup> Administrator Ryan was not called to testify at the hearing.

DON Bagaybagayan herself<sup>15</sup> and then the evaluations are placed in the CNA's personnel file.<sup>16</sup> She testified that she did not know whether the LVNs met with the CNAs regarding their performance evaluations.

RN Supervisor Emma Abaya initially testified that she has observed the LVNs discussing the performance evaluations with the CNAs. But she later testified on cross-examination that she has never been present when LVNs have discussed performance evaluations with the CNAs and has no knowledge of the content of those conversations. LVNs Valiente and Meza testified that they do not discuss the evaluations with the CNAs, nor are they responsible for collecting a signature from the CNA on the evaluation form. They stated that they complete the forms, give them to their RN Supervisors, and that their involvement in the evaluation process ends there.

#### **IV. ANALYSIS**

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *Youville Health Care Center, Inc.*, 326 NLRB 495 (1998). Section 2(11) of the Act provides that a supervisor is one who possesses, "authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." Under Board and Supreme Court precedent, in order to be a statutory supervisor, an individual must have the authority to effectuate or effectively recommend at least one of the

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<sup>15</sup> RN Supervisor Emma Abaya testified that the completed evaluation forms may also be given to DSD De Guzman.

<sup>16</sup> DON Bagaybagayan testified that the LVNs' annual evaluations are completed by the RN Supervisors and then passed onto DON Bagaybagayan who then reviews them, speaks with the LVNs herself, makes comments to them about their evaluations and then places the evaluations in the LVNs' personnel files.

supervisory indicia enumerated in Section 2(11) of the Act, using independent judgment in the interest of the employer. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001)).

Supervisory status must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, supra at 694. Lack of evidence is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1048 (2003). “[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia or supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). Further, job descriptions and job titles are only paper authority and are not given any controlling weight by the Board. *Avante at Wilson, Inc.*, id.; *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

In the instant case, the Employer has failed to meet its burden in establishing the supervisory status of the LVNs. During the course of the hearing the Employer did not present any LVNs to testify with respect to their day-to-day duties. Nor did it present any CNAs as witnesses to testify regarding the duties of the LVNs to whom they allegedly report. The record in general is devoid of detailed evidence as to the responsibilities and duties of the LVNs. Instead the Employer relied largely on its LVN written job description and general conclusionary statements made by the Director of Nursing and other supervisory employees—statements which were largely disputed by the LVN witnesses presented by the Union.

Of the several indicia of supervisory authority listed in Section 2(11) of the Act, the only indicia on which the Employer produced evidence included the assignment and direction of the CNAs and the discipline of the CNAs. The Employer also produced some evidence of a secondary indicia of supervisory status—the LVNs’ appraisals or evaluations of the CNAs. Although the Employer produced some evidence on the record with regard to these categories, that evidence was insufficient to establish the supervisory status of the LVNs.

A. Assignment and Direction

The Employer’s written job description and the Director of Nursing’s general testimonial description of the LVNs’ duties with respect to the assignment and direction of employees discussed above lack the requisite detail and specific examples necessary to prove that the LVNs carry out this indicia of supervisory authority. *Golden Crest Healthcare Center*, supra at 731; *Avante at Wilson, Inc.*, supra at 1057. Although the Director of Nursing listed a number of ways in which the LVNs assign and direct the work of the CNAs, on cross-examination she was unable to provide specific examples and lacked personal knowledge of the details involved in carrying out these tasks.

Moreover the Employer failed to present testimonial evidence from LVNs or other employees who could corroborate these statements and provide specific examples. The LVNs who did testify at the hearing contradicted the evidence provided by the Employer. For instance the LVNs testified that it is the RN Supervisors who handle matters when the CNAs report to work late or call off work. The LVNs’ testimony also suggested that it is DSD De Guzman, and not the LVNs, who schedules and trains the CNAs. Accordingly, the evidence presented by the

Employer is insufficient to establish these indicia. *Phelps Community Medical Center*, supra at 490. Thus, the Employer has not shown that the LVNs assign or direct employees.

B. Discipline

As above, the Employer's evidence with respect to the LVNs' authority to discipline the CNAs is insufficient to establish that the LVNs hold this indicia of supervisory authority. The Employer relies on its job description, the general testimony of DON Bagaybagayan and its RN Supervisors, and eight corrective-action memos, three of which were issued by the same LVN, in order to establish that the LVNs discipline employees. First, the Employer witnesses' general and conclusionary statements and lack of specific examples are insufficient to establish that the LVNs discipline employees. This is particularly so when paired with the record testimony of the LVNs who denied holding the authority to discipline employees, have never issued corrective-action memos, or were only directed by their own supervisor to do so, and did not independently decide to issue a corrective-action memo. *Golden Crest Healthcare Center*, supra at 731; *Avante at Wilson, Inc.*, supra at 1057; *Phelps Community Medical Center*, supra at 490.

Second, of the four-dozen LVNs at the facility, the Employer's production of only a handful of corrective action memos written by just a few of the LVNs is unpersuasive particularly when coupled with the testimonial evidence of the LVNs denying that they have the authority to issue such memos or denying ever having written these memos. Moreover, the Employer did not produce as witnesses any of the LVNs who purportedly issued the corrective-action memos or any of the CNAs who received those memos. And the Employer's witnesses who discussed the memos on the record lacked personal knowledge with respect to those memos.

Accordingly without context and explanation, I cannot find that the LVNs who issued those memos had the requisite authority under the Board law to do so.

Finally, assuming *arguendo* that the Employer had established that the LVNs have the authority to issue corrective-action memos, I would still find that the Employer has failed to meet its burden of establishing this indicia of supervisory authority because the Employer has failed to prove that those corrective-action memos were a basis for further disciplinary action against the employees. “For the issuance of reprimands or warnings to constitute statutory authority, the warning must not only initiate, or be considered in determining future disciplinary action, but also it must be the basis of later personnel action without independent investigation or review by other supervisors.” *Phelps Community Medical Center*, 295 NLRB at 490. The record fails to establish that the corrective-action memos issued to the CNAs led to any further discipline or adverse action against the employees. In light of the above, the Employer failed to establish that the LVNs have the authority to discipline employees.

### C. Evaluations

Secondary indicia, without more, are insufficient to establish supervisory status. *International Transportation Service, Inc.*, 344 NLRB 279, 285 (2005), *enf. denied* on other grounds 449 F.3d 160 (D.C. Cir. 2006); *Ken-Crest Services*, 335 NLRB 777, 779 (2001). The ability to evaluate is not one of the indicia of supervisory status set out in Section 2(11) of the Act. *Williamette Industries*, 336 NLRB 743 (2001). Accordingly, when the evaluation does not, by itself, affect the wages or job status of the employee being evaluated, the individual performing the evaluation will not be found to be a statutory supervisor. *Id.* In order to establish

that the LVNs' evaluations of CNAs show their supervisory status, the Employer has to prove that those evaluations affect the wages or job status of the CNAs.

Although the record establishes that the LVNs do appraise or evaluate the CNAs, the record is unclear as to whether and how the evaluations the LVNs complete are considered in determining the CNAs' raises. DON Bagaybagayan, the LVNs, and the RN Supervisors all testified differently as to whom the completed evaluations are submitted, what is done with the evaluations after they are submitted, and whether or not the LVNs discuss the evaluations with the CNAs.

Both DON Bagaybagayan and HR Director Hoffman admitted that wage increases are given at the discretion of the Administrator. The Employer did not call Administrator Ryan to testify as to whether and how the annual evaluations are used in determining whether a wage increase is warranted for the CNAs. The record establishes that DSD De Guzman has at least some oversight over the CNAs, yet she was not called to testify with respect to the manner in which the LVNs' evaluations are used in determining the CNAs' wage increases. In essence the record created a disconnect between the completion of the evaluations and how those evaluations are used in determining the CNAs' wage increases. Where there is inconclusive evidence, the party asserting supervisory status has failed to meet its burden. *Dean & Deluca New York, Inc.*, 338 NLRB at 1048. Accordingly the Employer has failed to establish that the LVNs authority to evaluate employees proves their supervisory status.

## V. CONCLUSION

Based on the evidence and the entire record, I find that the following is an appropriate unit and I shall direct an election in this unit:

All full-time and regular part-time licensed vocational nurses employed at the Employer's facility at 11900 East Artesia Boulevard, Artesia, California; excluding all other employees, assistant MDS coordinators, case manager, infection control nurse, director of staff development, office clerical employees, guards, supervisors, professional employees, managerial employees, and confidential employees as defined in the Act.

There are approximately 47 employees in the Unit.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposed of collective bargaining by the **SEIU-ULTCW, Service Employees International Union, United Long Term Care Workers**. The date, time, and place of the election will be specified in the notices of election that the Board's Regional Office will issue subsequent to the Decision.

#### **A. Voting Eligibility**

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

replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have 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 Co.*, 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 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 an adequate showing of interest. I shall, in return, 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 **August 17, 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>17</sup> by mail, or by facsimile transmission at (213) 894-2778. 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 **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which only **one** copy need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of 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 copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops 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 14<sup>th</sup> Street, N.W., Washington DC 20570-0001. This request must

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<sup>17</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **Cases & Decisions** tab. Then click on the **File Case Documents** link on the menu, and follow the detailed directions.

be received by the Board in Washington by **August 24, 2012**. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>18</sup> but may not be filed by facsimile.

DATED at Los Angeles, California, this 10<sup>th</sup> day of August, 2012.

/s/Olivia Garcia  
Regional Director, Region 21  
National Labor Relations Board

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<sup>18</sup> To file the request for review electronically go to [www.nlr.gov](http://www.nlr.gov) and select the **Cases and Decisions** tab. Then click on the **File Case Documents** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located on the Agency's website, [www.nlr.gov](http://www.nlr.gov).