

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

JASPERS FOODS MANAGEMENT, INC.

Employer

and

**BAKERY, CONFECTIONERY, TOBACCO
WORKERS, & GRAIN MILLERS UNION
LOCAL 114**

Case 19-RC-088681

Petitioner

DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under §9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of §3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.¹

I. SUMMARY

The Employer employs four retail clerks at Doozy's delicatessen and video lottery lounge in Wilsonville, Oregon (Doozy's). Doozy's is one of 37 similar facilities operated by the Employer in Oregon under a variety of names. Petitioner has filed the instant petition seeking to represent the retail clerks employed by the Employer at Doozy's in a bargaining unit (Unit).

The Union maintains the petitioned-for Unit of all employees at a single facility is an appropriate unit for collective bargaining. The Employer asserts the petitioned-for Unit is inappropriate, in that the only appropriate Unit includes all 115 retail clerks employed at all 37 of its locations. At hearing, the Employer further asserted the Unit sought was inappropriate because the employees were employed jointly with a second, separate entity. Record evidence was introduced addressing this issue. By its brief, however, the Employer withdraws this contention in light of the record evidence.

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of §9(c)(1) and §§2(6) and (7) of the Act.

I have carefully reviewed and considered the record evidence and the arguments of the parties at both the hearing and in their post-hearing briefs.² Based on the evidence and the Board's well-established standards, I find the petitioned-for Unit is an appropriate bargaining unit. I further find the Employer has not overcome the single facility presumption. Accordingly, I have directed an election in the Unit sought by Petitioner.

Below, I have set forth the record evidence from the pre-election hearing in this case, as well as an analysis of the Board's multi-facility unit standard and a section applying this standard to the record evidence. In conclusion, I have addressed the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE³

A. BACKGROUND

The Employer operates a chain of 37 facilities that have a retail element (selling alcohol, tobacco, and food) and a gaming element (access to video lottery games operated by the State of Oregon). The Employer employs a total of 115 retail clerks at these 37 locations. The operation of each location is essentially the same. One retail clerk staffs the facility at a time: selling the retail products, cashing out winnings, and performing minor food preparation. These 37 facilities are organizationally grouped by the Employer into Regions, whose operations are generally overseen by a designated Regional Manager.

Unit employees do not have an on-site supervisor, but report to a designated Regional Manager, who is the first level of supervision. The Regional Managers report to the Employer's Director of Operations Susan Herzog. Regional Manager Tezra Kong supervises seven locations in the Portland, Oregon, metropolitan area: the Doozy's location at issue; three locations in Portland; and locations in Beaverton, Aloha, and Tigard, Oregon. Until recently, Kong worked with an Assistant Regional Manager, Chanelle Boyce. The record indicates no history of collective bargaining at any of the Employer's locations.

The Employer's retail clerks are classified as either a guest service specialist or an administrative assistant (referred to collectively as "retail clerks" in this decision). The primary duties and responsibilities of these positions are the same, operating a cash register and ticket validation machine. Administrative assistants additionally perform tasks such as filling the safe, ordering, and conducting inventory. The record does not indicate how much time administrative assistants dedicate to these additional tasks relative to their customer service responsibilities. Both positions are paid the applicable minimum wage, but pay increases may be granted to any employee based on performance. Neither party disputes the composition of the Unit; that is, it should include both the guest service specialists and the administrative assistants.

² The Employer and Union respectively filed timely post-hearing briefs.

³ The Employer called Director of Operations Susan Herzog as a witness; Petitioner called employee Michael Badden.

B. RELEVANT FACTORS

1. Control Over Daily Operations and Labor Relations

Employee Michael Badden was the only witness who testified regarding the daily operation of Doozy's. Specifically, Badden testified that he typically opens the store at 8:00 a.m., and then operates the cash register until his shift is completed, usually at 1:00 p.m. At that time, employee Tammy Trexler or Lucio Reyes typically relieves Badden, and Trexler or Reyes works until 8:00 p.m. Employee George Jennings usually works the shift that begins at 8:00 p.m. and continues until the store closes at midnight or 1:00 a.m.

According to Badden, Regional Manager Kong posts a schedule in the workplace, and, if an employee is sick or otherwise needs to request time off, these requests are submitted to Kong. Badden testified he recently was on a medical leave, and that during this period his shifts were covered by Trexler, Reyes, and Jennings, or by Regional Manager Kong or Assistant Regional Manager Boyce. Badden testified that, in his experience, when a store cannot cover an open shift, Kong will contact other stores and see if a retail clerk at a nearby store will volunteer to cover the shift. Badden provided the specific example of July 4th this year, when he volunteered to work a shift at the Tigard location after Kong solicited volunteers. Badden testified he has always been asked if he wanted to volunteer for a shift, and that in the past he has turned down such opportunities.

In regard to labor relations, there is no contention that any decision making takes place on the store level. Rather, the record reveals that each Regional Manager has the authority to hire employees for locations within the region. Herzog testified that the Regional Managers also effectively recommend wage changes, promotions, and terminations, although these decisions require Herzog's ultimate approval. The Employer employs six Regional Managers who supervise between two and ten locations. However, the record does not reveal how often a Regional Manager visits a store or how much time they spend at any given location.

2. Employee Interchange or Contact

It is not disputed that the Employer maintains policies that allow it to transfer employees between stores, both permanently and temporarily. Herzog testified that, recently, the Employer permanently transferred an employee with a performance issue at a high-volume Eugene location to a different store to address the employee's performance. Herzog further testified that another employee with performance issues was involuntarily transferred between stores in the Portland area. However, the Employer subsequently allowed this other employee to transfer back to his original location after he had moved closer to his original location and requested a transfer. Regarding temporary transfers between stores, Herzog testified that employees frequently cover open shifts at other locations to accommodate staffing needs, due to vacations or sick days.

Other than the two performance related transfers covered by Herzog's testimony, the Employer did not enter evidence into the record quantifying involuntary transfers or transfers of any kind involving locations other than Doozy's. However, the Employer did introduce evidence regarding temporary transfers by the Doozy's employees, specifically the hours the four employees had worked at other locations in approximately the last year.

The Employer's evidence revealed that between September 6, 2011, and September 6, 2012, Badden worked approximately 1574 hours at Doozy's and 14 hours at the Employer's Tigard location. Employee George Jennings worked 1937 hours at Doozy's and 152 hours at three different locations. Employee Lucio Reyes worked 1371 hours at Doozy's and no hours at any other location. The Employer's records further show that Tammy Trexler worked approximately 1355 hours at Doozy's, and 562 hours at other locations, including 165 hours at the Tigard location and almost 300 hours at a location identified as "Raleigh West."

The record reveals that Trexler permanently transferred to the Doozy's facility about 6 months prior to the pre-election hearing in this case after an employee had quit working at that facility. However, it is not clear whether Trexler's 562 hours at other locations account for the time prior to her transfer to Doozy's and whether those hours constitute permanent and/or temporary interchange. In this regard, I note the Employer did not specify the date of Trexler's permanent transfer to Doozy's.

Employee Badden testified that Doozy's employees normally cover open shifts among themselves, with possible assistance from the Regional Manager or Assistant Regional Manager. Badden acknowledged employees do cover shifts at other locations, but that it is rare; Badden testified that to his knowledge no employee from another location had worked at Doozy's in at least 6 months. The Employer presented no testimonial or documentary evidence to rebut Badden's testimony in this regard.

There is no evidence of contact outside of temporary interchange. Further, it is not clear from the record whether temporary interchange at other locations results in any significant contact between employees, as the record indicates employees work alone during their respective shifts.

3. Geographic Distance

The record contains the location of each of the Employer's stores. The following table contains the approximate distances between Doozy's and the metropolitan area where the other 36 locations operated by the Employer are located.

Geographic Location	Number of Stores	Distance (in miles)
Tigard	1	10
Beaverton	2	15
Portland	3	18
Aloha	4	18
Hillsboro	2	25
Salem/Keizer	5	30
Albany	1	53
Eugene/Springfield	9	93
Cottage Grove	1	111
Bend/Redmond	6	156
Roseburg	2	160

Most of the Employer's locations, including the Salem and Eugene clusters, are located south of Portland along Oregon's Interstate 5 corridor. The Bend and Redmond locations are located in Eastern Oregon.

III. ANALYSIS

The Act does not require that a unit for bargaining be the only appropriate unit or the most appropriate unit; it need only be *an* appropriate unit. *Barron Heating and Air Conditioning, Inc.*, 343 NLRB 450, 452 (2004), citing *American Hosp. Ass'n v. NLRB*, 499 U.S. 606, 610 (1991); *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, in determining whether a unit is appropriate, the Board first examines the petitioned-for unit, and if the petitioned-for unit is *an* appropriate unit, the inquiry ends. *Barlett Collins, Co.*, 334 NLRB 484, 484 (2001).

Here, the Employer argues the petitioned-for Unit is not an appropriate unit in terms of its scope because it fails to also include the 111 retail clerks employed at all of the Employer's remaining 36 locations. In short, the Employer is arguing that an employer-wide unit including all 115 employees at all 37 facilities is the only appropriate unit in the circumstances of this case. In the following section I have applied the Board's traditional multi-facility test utilized in determining unit scope.

The Employer further argues the 115 retail clerks share an overwhelming community of interest, and that the petitioned-for Unit inappropriately fractures the employees inconsistent with the Board's recent holding in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10 (2011). I have addressed this argument in the concluding section of my analysis.

A. SINGLE FACILITY PRESUMPTION AND THE MULTI-FACILITY TEST

The Board has long held that a single facility bargaining unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees in another facility (or facilities) as to cause the single facility unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003); *New Britain Transportation Co.*, 330 NLRB 397 (1999). The Board considers a number of factors in assessing whether the single facility retains its separate identity, including: (1) control over daily operations and labor relations; (2) employee skills, functions, and working conditions; (3) employee interchange or contact; (4) bargaining history; and (5) distance between facilities. *Trane*, supra; *Alamo Rent-A-Car*, 330 NLRB 897 (2000). The Board has articulated these factors in different ways, separating supervision of daily operations from overall control of labor relations for example, but the test is substantively the same regardless of how the factors are articulated.

Even if there are some factors supporting a multi-location unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.*, 151 NLRB 383, 384 (1965). Indeed, the single facility presumption applies even where a larger, more comprehensive unit might also be found to be appropriate. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). Rather, in weighing these factors, a heavy burden is on the party

opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). Here, that burden rests with the Employer.

The record before me reveals no differences in the wages, benefits, skills, functions, or working conditions among any of the Employer's retail clerks at its 37 locations. Thus, this factor weighs in favor of the Employer's proposed employer-wide unit. On the other hand, the record contains no evidence of a history of collective bargaining on either a single or multi-facility basis. Thus, this factor favors neither party's position. I now turn to analyzing the three remaining factors.

1. Control Over Daily Operations and Labor Relations

This factor compares the autonomy of local supervision at an employer's various locations to the control of a centralized management structure. Frequently this is a question of whether front line supervisors have discretion to address employee problems, grant requests for time off, issue verbal discipline, participate in the hiring process, or whether decisions regarding these matters are controlled by upper management. *Rental Uniform Service Inc.*, 330 NLRB 334, 335 (1999); *Bowie Hall Trucking*, 290 NLRB 41, 43 (1988). For example, in *New Britain*, supra, significant local autonomy was found where local dispatchers scheduled employees, approved time off, and conducted training on a site-by-site basis, thus, favoring the petitioned-for single facility unit.

Here, the first line of supervision for the petitioned-for employees is Regional Manager Kong. The record indicates Kong schedules employees and approves time off, as in *New Britain*. Kong also has the authority to hire and effectively recommend wage changes, promotions, and terminations. Because Regional Managers are responsible for multiple locations, they also arrange temporary transfers between locations.

Herzog's control of labor relations, at all the Employer's locations, covers issuing work rules and policies, and ultimate approval of Regional Managers' recommendations. However, the record does not indicate whether Herzog independently investigated or assessed the Regional Managers' recommendations.

The Employer cites to *Basha's Inc.*, 337 NLRB 710 (2002), and *Alamo Rent-a-Car*, supra at 898, in support of its contention that Herzog's centralized control of labor relations favors the Employer in overcoming the single facility presumption. In *Basha's*, the petitioner sought to represent a unit at 17 of the employer's 26 stores. In finding such a grouping inappropriate, the Board gave weight to the employer's common labor relations policies and centralized management over all 26 stores. *Id.* at 711. In *Alamo*, the Board concluded a petitioned-for unit at only 2 of the employer's 4 locations was inappropriate, in part because all 4 locations shared the same supervision. However, neither case involved the single facility presumption.

Thus, the instant case neither falls squarely within the fact pattern in *Basha's* nor in *New Britain*. Rather, it is more akin to the fact pattern in *Alamo* – immediate supervision exists not at the facility level but higher at an intermediate level. However, it bears repeating, again, neither *Basha's* nor *Alamo* involved a petitioned-for single facility unit. In light of the above and record as a whole, I find this factor is of limited support to the

Employer in overcoming the single facility presumption in favor of its argued employer-wide unit.

2. Employee Interchange or Contact

The Employer argues employees are not guaranteed that they will only work at their home store, and that the Employer has the right to permanently or temporarily transfer employees between locations as needed. The Union does not contest the Employer's rights in this regard, but instead argues that the Employer's actual practice is far different from its asserted right.

Regarding temporary transfers, the Employer's evidence reveals that during the last year, Lucio Reyes worked 100 percent of his hours at Doozy's, Badden worked 99.1 percent, and George Jennings worked 92.7 percent. Trexler worked only about 60 percent of her hours at Doozy's. However, Badden's testimony that Trexler permanently transferred to Doozy's only 6 months prior to the hearing is not contested by the Employer, limiting the comparative value of Trexler's hours working at locations other than at Doozy's. Further, the Employer introduced no evidence detailing temporary transfers of the other employees working at other locations, which the Employer asserts must be included in an Employer-wide unit.

Regarding permanent transfers, the only examples in the record are the two referenced in Herzog's testimony. While permanent transfers are generally accorded less weight than temporary transfers, the existence of permanent transfers or lack thereof is relevant to the consideration of employee interchange. *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1021 fn. 4 (1994).

Herzog testified the two permanent transfers she described were involuntary. However, Badden testified that all the temporary interchange that he has been involved in at Doozy's has been voluntary, and that Trexler's permanent transfer was voluntary. Voluntary interchange has traditionally been given less weight than involuntary interchange in assessing a community of interest. *New Britain Transportation* at 398, citing *D&L Transportation*, 324 NLRB 160, fn. 7 (1997).

The evidence of temporary and permanent interchange in this case is minimal given the size of the Employer's workforce. In *New Britain*, supra, the Board stated "the [single facility] presumption has not been rebutted where the Employer interchange data is represented in an aggregate form rather than as a percentage of total employees." *Id.* at 398. The Board recently repeated the importance of analyzing interchange as a percentage of overall hours in *DTG Operations*, 357 NLRB No. 175 (2011). In *DTG Operations*, the employer made an analogy to *United Rentals*, 341 NLRB 540 (2004), a case where a few employees "pitching in" outside their classification constituted significant interchange. The Board in *DTG Operations* rejected an analogy noting the small number of employees, 18, involved in *United Rentals*. *Id.* However, with a significantly larger number of employees at issue in *DTG Operations*, 109 employees, a few instances of cross-department work only constituted limited and infrequent interchange, and the Board reiterated limited and infrequent interchange was not a barrier to finding a smaller unit appropriate. *Id.* slip op. at 8, fn. 25. Here, the Employer has introduced no evidence of transfers at the vast majority of locations it asserts are properly included in an Employer-wide unit.

The record also contains minimal evidence of employee contact at Doozy's; employees work alone and only interact during shift changes. The record contains no evidence of contact between employees at different locations, absent a temporary transfer. When working at another location on a temporary basis, again the only contact with other employees is on a shift change. In short, the record reveals evidence of insignificant contact between employees.

Thus, with respect to the factor of interchange and contact, the Employer has not met its burden to introduce evidence overcoming the single facility presumption. Rather, the record reveals that the three employees (Reyes, Badden, and Jennings), permanently assigned to Doozy's during the past year, have worked about 3 percent of their hours at other locations. I find this is not a significant amount of interchange, particularly in view of Badden's hours at other locations were voluntary. Further, the record reveals insignificant contact between employees working at the Employer's 37 facilities, largely because of the lack of transfers and, transfers aside, because employees work alone during their assigned shifts.

3. Geographic Distance

The distance between Doozy's and the Employer's 36 other facilities ranges widely. Specifically, Doozy's is located at the southern end of the Portland metropolitan area, and a number of other Employer facilities are less than 20 miles away, either north of Portland or south along the I-5 Highway corridor. However, approximately half of the 36 locations are over 90 miles from Doozy's, a significant distance. The Board has found a single facility appropriate where the physical separation was 6 to 12 miles apart. *New Britain*, supra. See also *Hilander*, 348 NLRB 1200, 1204 (2006) (8 to 13 mile distance).

The Employer cites to *Dattco*, 338 NLRB 49 (2002), and *Waste Management of Washington*, 331 NLRB 309 (2000), in support of its position concerning this factor. In *Dattco*, the Board found an employer operating 9 bus terminals in 8 cities in Connecticut had rebutted the single facility presumption covering a Hartford, Connecticut, location. However, in *Dattco*, all 9 bus terminals, including Hartford, were located within 55 miles of the employer's New Britain, Connecticut, headquarters. Here, at least half of the facilities are located further than 55 miles apart. Moreover, the Board noted in a subsequent unrelated decision that the critical factor in *Dattco* was the employer's "complete integration of its terminals." *Dean Transportation*, 350 NLRB 48, fn. 3 (2007). In *Dean*, the Board specifically stated,

The facility in *Dattco* was completely integrated with a network of other facilities, fully one-third of the bus drivers in *Dattco* were shuttled from their home facilities to other terminals on a daily basis, depending on the scheduling needs determined at a central headquarters. Upon arriving at the new facility, drivers were supervised by managers based at that other facility.

Unlike *Dattco*, the record here clearly reveals that the petitioned-for unit of employees has not been merged into a more comprehensive unit by bargaining history. The record further reveals insufficient evidence establishing that the Doozy's facility has been so integrated with the employees at the other 36 locations, as to cause the single facility unit to lose its separate identity.

Turning to *Waste Management of Washington*, the petitioned-for unit involved two facilities 42 miles apart. 331 NLRB at 309. There, the Board acknowledged this distance supported the single facility presumption, but concluded the evidence of functional integration - as well as centralized control; identical skills, duties, and other terms and conditions of employment; and the evidence of interaction and coordination - outweighed the two factors favoring a single facility presumption: the 42-mile distance between the facilities and minimal interchange. *Id.* The facts of *Waste Management of Washington* bear some similarity to the instant case where the strongest support for the single facility presumption was minimal contact and interchange, and significant geographic distance. However, the record before me contains no evidence of the functional integration, interaction, or coordination that was present in *Waste Management of Washington*.

In sum, I do not find the cases cited by the Employer support its position. Rather, those cases highlight that functional integration is a critical part of determining whether the single facility presumption has been overcome. Here, the Employer has demonstrated no integration, and approximately half the geographic distances involved are greater than any case cited by the Employer. In light of the above and the record as a whole, I conclude this factor does not support the Employer in overcoming the single facility presumption.

4. Conclusion Regarding Single Facility Presumption

The Employer has presented some evidence in support of overcoming the single facility presumption. Specifically, there is no difference in the wages, benefits, skills, functions, or working conditions among the Employer's retail clerks. However, I have found that the factors of central control of labor relations and bargaining history do not favor the Employer in overcoming the single facility presumption. Moreover, the record reveals minimal interchange and contact between employees, and very significant distances between independently operating locations - these factors weigh in favor of the petitioned-for single facility Unit and against the Employer's arguments for an employer-wide unit.

In sum, I find that the evidence presented does not establish that the Doozy's facility has been so effectively merged into the Employer's other 36 facilities, or that all 37 facilities are so functionally integrated that they have lost their separate identities to the point where the presumptive appropriateness of the petitioned-for Doozy's Unit has been rebutted, such that the only appropriate unit is one including employees from all locations. Thus, the Employer has failed to meet its burden of establishing that the petitioned-for single facility unit is inappropriate in the circumstances of this case.

B. OVERWHELMING COMMUNITY OF INTEREST

Where a party objects to the petitioned-for unit on the basis it is too small, that the smallest appropriate unit must contain additional employees, it is insufficient for the objecting party to merely show the employees share a community of interest with other employees, or even that there is a more appropriate unit. Instead, the objecting party must show the petitioned-for unit is "clearly inappropriate." *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10 (2011). Demonstrating that a petitioned-for unit is clearly inappropriate requires demonstrating included and excluded employees share an overwhelming community of interest. *DTG Operations*, 357 NLRB No. 175, slip op. at 5 (2011); *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011);

Specialty Healthcare at 11-13, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008) (on a Venn diagram an overwhelming community of interest exists when the community of interest factors “overlap almost completely”). An overwhelming community of interest exists where the unit sought “fractures” an appropriate unit, seeking only an “arbitrary segment” of that appropriate unit where there is no rational basis for including some, but excluding others. *Odwalla* at 5; *Specialty Healthcare* at 13.

On brief, the Employer argues *Specialty Healthcare* applies to the petitioned-for Unit vis-à-vis the retail clerks at its other locations. Specifically, all of the Employer’s retail clerks share an overwhelming community of interest, and to select only a single location, as Petitioner has done, inappropriately fractures a cohesive group such that it is clearly inappropriate. As an initial matter, I note that *Specialty Healthcare*, as well as its progeny, involved a single facility and questions of unit composition; that is, which classifications at the facility were properly included in the bargaining unit. Here, parties do not dispute the composition of the Unit or what classifications should be included in the Unit. Rather, the Employer disputes the scope of the unit; namely, a single facility unit is inappropriate and that an Employer-wide unit determination is warranted in the circumstances of this case.

While issues raised in *Specialty Healthcare* did not involve the Board’s multi-location standard, the Board, in dicta, did address the statutory basis for finding certain units appropriate at length in its decision. *Id.* at 10-12. There, the Board specifically cited the single facility presumption, and nothing in *Specialty Healthcare* calls into question the continuing application of this presumption. *Id.* at 11, fn.16. Because here there is no dispute regarding unit composition, and because *Specialty Healthcare* did not raise any issue regarding the continuing application of the single facility presumption, I find *Specialty Healthcare* is not particularly instructive in resolving the case before me. While I do recognize that the fracturing addressed in *Specialty Healthcare* is always a concern in finding a unit appropriate, I find the Board’s traditional multi-facility test, applied above, addresses such a concern.

IV. CONCLUSION

I find the Employer has not overcome the single facility presumption, and as such the petitioned-for Unit of guest service specialists and administrative assistants employed at the Employer’s Doozy’s location constitutes an appropriate unit.

For these reasons, and in view of the record evidence, I shall direct an election in the following appropriate Unit:

All full-time and regular part-time guest service specialists and administrative assistants employed at the Employer’s Wilsonville, Oregon location; excluding guards and supervisors as defined by the Act.

There are approximately 4 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit at the time and place set forth in the notice of election to be issued

subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding 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 that 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. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Bakery, Confectionery, Tobacco Workers, & Grain Millers Local Union 114.

A. LIST OF VOTERS

In order to assure 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 that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for SubRegion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The SubRegion shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the SubRegional Office, 601 SW Second Ave., Suite 1910, Portland, OR 97204-3170, on or before **October 18, 2012**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. NOTICE POSTING OBLIGATIONS

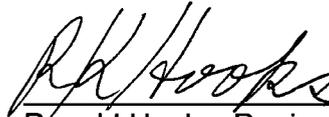
According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations 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 estops employers from filing objections based on nonposting of the election notice.

C. 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 NW, Washington, DC 20570. This request must be received by the Board in Washington by **5:00 p.m. (ET) on October 25, 2012**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.⁴

DATED at Seattle, Washington on the 11th day of October, 2012.



Ronald Hooks, Regional Director
National Labor Relations Board, Region 19
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⁴ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Regional office's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab.