

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

JAN-CARE AMBULANCE OF RALEIGH COUNTY, INC.

Employer

and

Case 9-RC-097338

NATIONAL EMERGENCY MEDICAL SERVICES ASSOCIATION (NEMSA)

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

**I. INTRODUCTION**

The Employer <sup>1/</sup> operates an ambulance service throughout West Virginia where it provides emergency medical services and medical transportation. The Employer has organized its operation into 10 corporations, including Jan-Care Ambulance Services, Inc., which provides management services for the revenue generating corporations, Jan-Care Maintenance and Supply, which provides maintenance and supply services for the revenue generating corporations and one revenue generating corporation each for Raleigh, McDowell, Wyoming, Cabell, Nicholas, Valley, Fayette, and the North Central Counties (Harrison, Marion and Monongalia Counties). The Petitioner seeks to represent all regular full time and part time emergency medical technicians (EMTs), paramedics and drivers employed by the Employer at or out of the Employer's facilities in Raleigh County, but excluding all office clerical employees, administrators, managers, dispatchers, mechanics, professional employees, guards and supervisors as defined by the Act. The Employer agrees that the job classifications sought by the Petitioner would be included in any appropriate unit; however, it contends that the only appropriate unit must include all of those job classifications in the entire State of West Virginia. There is no history of collective bargaining affecting any of the employees involved in this proceeding. <sup>2/</sup>

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<sup>1/</sup> As will be discussed, *infra.*, I conclude that the Employer's 10 corporations constitute a single integrated enterprise. Thus, I refer to these 10 entities, collectively, as "the Employer" in this decision.

<sup>2/</sup> The Employer represented at the hearing that sometime around 1992 the National Labor Relations Board found that a statewide unit was the smallest unit appropriate for bargaining for these employees. It is undisputed, however, that the Employer was structured differently at that time and that no union was ever certified – thus there is no actual history of collective bargaining. Similarly, based upon the record, the Employer's Total Quality Management Team, in which an employee from each county was sent to meet with management to discuss working conditions, does not appear to reflect a history of collective bargaining.

After considering the record evidence as a whole as well as the arguments made by the parties at hearing and in their post-hearing briefs, I find that a bargaining unit comprised solely of the Employer's Raleigh County EMTs, paramedics and drivers constitutes an appropriate unit for purposes of collective bargaining. In reaching this conclusion, I note that the unit sought by the Petitioner is not arbitrary or artificial and is consistent with how the Employer has organized its operations. My conclusion is also supported by the presence of local supervision, the lack of a high degree of functional integration of operations, and the low level of work related contact among employees of the different locations. In explaining how I came to my determination on these issues, I will first describe the Employer's operations and then analyze the unit issue in relation to applicable Board precedent.

## **II. THE EMPLOYER'S OPERATIONS**

### **A. The Employer's Hierarchy and Corporate Structure:**

As described above, the Employer consists of 10 corporations, which, the Employer asserts were created to insulate the respective entities for liability purposes. All corporations have the same corporate officers, i.e., Richard Cornett II, Joseph Todd Cornett, Edgar Stuart Cornett, and Richard L. Cornett III. There are two non-revenue generating corporations, i.e., Jan-Care Ambulance Services, Inc. and Jan-Care Maintenance and Supply. These corporations provide services such as human resources, information technology support, training, advertising, supplies, and maintenance to the eight revenue generating corporations. There is no set budget for the various revenue generating corporations and they pay Jan-Care Ambulance Services, Inc. and Jan-Care Maintenance and Supply based upon the services they use.

Richard L. Cornett II is the owner/president of the Employer, and J. Todd Cornett is Executive Vice-President. Reporting to J. Todd Cornett are: Director of Accounts Receivable and Director of Communications Rachel Cornett; Director of Compliance Darlene Davis; Director of Operations Paul Seamann; and, Chief of Field Operations CJ Fortner. Payroll, Maintenance and Supply and Information Technology personnel also report directly to J. Todd Cornett. Various billing and communications personnel report to Rachel Cornett in her capacity as Director of Accounts Receivable and Communications. Compliance personnel report to Darlene Davis. The Human Resources Manager, Risk Manager, Education personnel, and Assistant Chief Eugene Endicott, report to Paul Seamann. Endicott, Assistant Chiefs Roger Johnson, Troy Meadows, Donald Lindsey, Jean Harper and Jerry Long, and Captains Andy Wilcox and Nathan Coleman report to CJ Fortner. Assistant Chief Roger Johnson is over Raleigh, McDowell and Wyoming Counties. Captain Butch Mattox is over Wyoming County and reports to Roger Johnson. There is usually a captain over Raleigh County, but this position is currently vacant and Roger Johnson is directly in charge at present. When the Raleigh County captain position is filled, this individual will report to Roger Johnson. Captain Rex Johnson reports to Donald Lindsey and Captain Jack McClung reports to Jerry Long and CJ Fortner.

### **B. The Employer's Operations and Interchange:**

The interviewing and hiring of new employees is usually performed by the chiefs and assistant chiefs, in conjunction with the Employer's Human Resources department. New employees can specify the county that they wish to be assigned to, but the decision as to where the employees are ultimately assigned is made by the Employer.

The captains are under the authority of the chiefs and assistant chiefs. The captains run ambulance calls; recommend scheduling changes to their superiors; ensure inventories and trucks are correct; ensure employees are up to standard; and, recommend discipline. There are lieutenants under Captains Mattox, Johnson, Wilcox and Coleman. Ordinarily there is one lieutenant over each station, but sometimes a lieutenant will have responsibility over multiple stations while vacancies wait to be filled. There are presently 8 lieutenants in Raleigh County over 11 stations. Lieutenants describe and outline policy for policy infractions. If this is unsuccessful, they pass potential disciplinary matters on to their superiors to initiate the disciplinary process.

The Employer has a total of approximately 242 full-time and 20 part-time field operations employees spread over its corporations. Jan-Care Ambulance of Raleigh County, Inc. is the largest division with 11 stations, 22 ambulance units, about 75 full-time employees and 7 part-time employees.

The Employer's paramedics, EMTs and drivers respond to 911 calls and provide medical transportation services on behalf of the general public, primary care hospitals, and healthcare facilities. They also perform services such as providing trainers and medical care for local school districts at sporting events. The paramedics, EMTs and drivers are assigned to home stations throughout the state of West Virginia. A station may have anywhere from 1 to 31 employees assigned to it. The stations in Raleigh County range from 3 to 12 employees. Assistant chiefs, captains and lieutenants put together a schedule for the employees each Saturday. Shifts change at 7:30 a.m. Unless they are working an overtime shift at a different location, employees ordinarily start the day at their home post in their home county. An ambulance crew typically consists of a paramedic and an EMT. Paramedics and EMTs start their shift by verifying and inspecting the equipment and narcotics. They then wait at their stations for an ambulance call from the Employer's central communications center, which dispatches for the entire state. When an ambulance is dispatched, the crew may respond to calls inside or outside of the home county where their station is located and may transport patients inside or outside the county. The closest unit responds to calls regardless of county, but returns to the station located in the home county after the run unless it is immediately dispatched on another call. Patients are moved out of Raleigh County 15-20 times per day by Raleigh County crews. Even if paramedics and EMTs transfer patients out of their home county, such as on a "wait and return" trip, they typically don't interact with the Employer's employees from other counties. The Employer maintains certain protocols that its EMTs and paramedics must follow in various situations and these are the same for all employees, without regard to the county in which they work. The Employer's supplies for all of the various stations are stored centrally and a single runner delivers supplies to the various stations on different days according to a set schedule. Employees needing to call off work do so through a central number, not through their lieutenant or captain. The shift vacancy is posted on the Employer's computer system called "When to Work." The assistant chiefs also notify the local captains and lieutenants of the absence so that they can call employees to cover the shift

In the ordinary course of business, it does not appear that the EMTs and paramedics from a given station interact a great deal with those from other stations either inside or outside their home counties. Most interactions with crews from other stations occur when employees voluntarily sign up to work extra shifts. Employees desiring extra shifts can log on to the "When to Work" system and sign up to work extra shifts in any county. An employee must have the requisite skill set for the overtime shift. If more than one employee desires the same extra shift, it will be awarded based on criteria such as equalization of hours and a determination of who would be most rested for the extra shift. All other things being equal, the employee with the greatest company-wide seniority will be awarded the shift. The testimony conflicted on whether

any additional preference was given an employee requesting an extra shift in his or her home county. Employer-wide, employees pick up shifts outside of their normal counties approximately 50 times per week. Employees who are working an extra shift outside of their home counties may still report work-related problems to the lieutenant in charge of their home station. When employees pick up extra shifts, they are paid by the county in which they are working the extra shift.

The Employer tries to maintain its presence at certain target levels in the various counties that it serves. Sometime in 2012, for instance, there was a shortage of paramedics and EMTs in Raleigh County and the Employer assigned 10 employees per week from Cabell County to work in Raleigh County for a period of about 6 months. Employees have been moved to other stations on the rare occurrences where fire or flood has rendered a station uninhabitable. When employees are temporarily moved to other counties by the Employer under circumstances such as these, they continue to be paid by their home counties. In the Employer's handbook, it reserves the right to assign employees to any duty station at any time.

When necessary, paramedics and EMTs across stations and counties work together to respond to certain rare, major incidents such as weather related disasters and mine disasters. Paramedics and EMTs from other private ambulance companies and fire departments also respond to these incidents, with the highest ranking individual on scene assuming command, without regard to the employing entity. Annually, the Employer is the exclusive contracted provider of medical services for a BASE jumping competition in West Virginia referred to as "Bridge Day." Paramedics and EMTs from across the Employer's operations are required to work this event, without regard to their home county. For certain uncommon critical care calls, units from different counties must work together since these calls require the presence of one driver and two critical care transport paramedics and there are ordinarily just two personnel per truck. Thus, if Raleigh County personnel respond to a critical care transport call, a Fayette County critical care medic will frequently respond with them to provide the required level of staffing.

The Employer's vehicles are titled to the various county based operating corporations, but are transferred freely from county to county by the Employer as needs dictate. There are limited numbers of bariatric trucks and critical care trucks (some with 4 wheel drive and some without) and they are routinely sent to counties outside their home counties as needed. With the exception of certain vehicles that the Employer acquired from a competitor called GEMS (General Emergency Medical Services, Inc), the Employer's vehicles are the same color. None of the vehicles bear any distinguishing markings based on the home county. Jan-Care Ambulance Services, Inc. maintains insurance on all the vehicles.

Job announcements are posted Employer-wide. Employees who desire a permanent transfer must put the request in writing and the decision is made by the assistant chiefs based on need. From about December 23, 2012 to January 14, 2013, seven employees permanently transferred from one county to another, including one out of Raleigh County and one to Raleigh County.

### C. Employee Benefits and Terms of Employment

All employees, regardless of location of their usual work assignment, have similar skills and training. The skills differ by job classifications, i.e. a paramedic in Raleigh County would have the same skill set as a paramedic in Fayette County. Director of Operations Paul Seamann oversees all training from his corporate office in Beckley, West Virginia. Training is provided to

all employees free of charge. New employees attend orientation together and employees train together at least once per year in a central location for a mandatory in-service. Employees are not formally evaluated, but skills are periodically tested and employees are sent for education if their skills are found to be lacking. All employees are covered by the same employee handbook. Pay is uniform for the paramedics and EMTs, based upon their job classifications, largely without regard to the county in which they work (the only exception being certain advanced life support personnel who are paid more for working in the Employer's North Central Region where there is a paramedic shortage). Pay raises are ordinarily given across the board for the various job classifications without regard to county. Payroll is handled centrally and pay periods are the same across counties. Seniority is used to determine the level of benefits and vacation time and is used company-wide, without regard to the county where an employee works. If an employee transfers to a new county, his seniority comes with him. On February 1, 2011, the Employer purchased a competitor called GEMS. These employees still have unique uniforms and drive vehicles with the GEMS markings, but their terms and conditions of employment are otherwise the same as the Employer's other paramedics and EMTs. Otherwise, the Employer's employees all wear the same uniforms with no distinguishing insignia or markings related to the county in which they work.

### III. LEGAL ANALYSIS

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or even the most appropriate unit; the Act requires only that the unit sought be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). Moreover, a union is not required to seek representation in the most comprehensive grouping of employees unless such grouping alone constitutes an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). Although not dispositive, a petitioner's unit desire is a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). Moreover, it is well settled that there is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Despite this, the Board will not find a grouping of employees that is arbitrary or artificial to be appropriate. *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). Thus, I must first examine the unit sought by the Petitioner and determine if it is appropriate. If it is not, I must examine the alternative unit suggested by the Employer, but I retain authority to select a unit that is different from the unit sought by the Petitioner or the alternative unit which the Employer maintains is appropriate. *Boeing Co.*, 337 NLRB 152, 153 (2001).

A single location unit is presumed to be appropriate unless it is so effectively merged into a more comprehensive unit, or so functionally integrated, that it has lost its separate identity. *Hegins Corp.*, 255 NLRB 1236 (1981); *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980). The Board will not grant a labor organization its desired unit in situations where it does not possess a separate community of interest from the Employer's other employees. *Brand Precision Services*, 313 NLRB 657 (1994). In analyzing this issue, I am cognizant of Board precedent which states that "the manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." *International Paper Co.*, 96 NLRB 295, 298 fn. 7 (1951). In determining whether the employees of separate facilities, such as those at issue here, have a distinct community of interest, the Board looks at factors such as the degree of functional integration, frequency of contact with other employees, interchange among the employees, the nature of the employee skills and functions, commonality of wages, hours, benefits and other working

conditions, and shared supervision. *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004). First, given the Employer's structure, I will consider whether the Employer's various corporations constitute a single employer.

#### A. Single Employer Status

I find that all of the Employer's 10 corporations constitute a single integrated enterprise. The record discloses that all of the corporations are commonly owned and share common management. The same individuals are the corporate officers for all 10 corporations. At the middle levels of management (assistant chiefs and captains), the various corporations often have separate managers, but common management need not exist at all levels to find single employer status. Labor matters such as hiring, wages, and benefits are all centrally decided and the Employer has a single human resources department. The Employer has a single employee handbook covering all of its employees and new employees are hired by central management. Thus, the record supports a finding that there is a sufficient amount of common control over labor relations to support a finding of single employer status. The use of common management services and supply services by all of the various revenue generating corporations also supports a finding that the Employer's operations are sufficiently interrelated to constitute a single employer. Despite my conclusion that these entities constitute a single integrated enterprise; I find, as will be discussed in more detail below, that the manner in which the Employer has chosen to organize itself and the presence of local supervision supports my finding that the unit sought by the Petitioner is an appropriate unit for collective bargaining with a distinct community of interest. I note, however, that contrary to the Petitioner's position, no single location presumption is appropriate here since the Employer's Raleigh County employees work at 11 different stations. Additionally, I do not analyze this case under *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) inasmuch as it is not clear that the paramedics, EMTs and drivers employed at the Employer's Raleigh County facilities constitute a readily identifiable group. Thus, the Employer's efforts in its brief to distinguish the instant case from *Specialty Healthcare* are inapposite except to the extent that they have some bearing on the traditional community of interest criteria, in which case, they will be addressed below.

#### B. Functional Integration:

The record does not reflect a high degree of functional integration among the employees at issue. Although all of the disputed employees provide medical services and transportation, they mostly perform these tasks independently of one another as members of two person crews. Most of the employees' day-to-day contact comes from interacting with their fellow crew member and the fellow employees based at their home station while they await calls. Although employees will work together to respond to major incidents and for certain critical care transportations, these are the exceptions, rather than the rule, and ambulance crews mostly function independently of one another, with a single two person crew being sufficient to handle most calls. Although crews are dispatched by a central statewide dispatch center and receive supplies from a common supply center, neither party argues that dispatchers or supply personnel should be included in the unit and I agree that their inclusion would not be required due to the difference between their job functions and those of the paramedics, EMTs and drivers. The work sites are spread all over the state and each station has its own equipment and employees. Although vehicles are transferred from one station to another as needed, it appears that these transfers primarily involve specialized equipment such as critical care trucks and bariatric trucks. The employees of one station do not appear to regularly rely upon or coordinate with the employees of another station to perform their daily duties. Thus, I find that there is a relatively low degree

of functional integration between the Employer's employees located at its various stations, statewide.

C. Frequency of Contact and Interchange:

The relatively low level of functional integration between the Employer's statewide operation results in little work-related contact among the respective employees. Employees wait at their various home stations for calls and then typically respond as members of two person ambulance crews. Although Bridge Day or major disasters may require a response from a number of ambulances and crews, these events are rare. Most contact between employees from different stations and counties occurs when employees voluntarily pick up extra shifts using the "When to Work" system. These temporary transfers based on employee convenience are entitled to little weight. *General Mills Restaurants, Inc. d/b/a Red Lobster*, 300 NLRB 908, 910-11 (1990). Although employees are occasionally assigned to work at stations outside of their home counties, this does not appear to occur with great frequency. Indeed, the testimony of employee witnesses strongly suggests that these mandatory temporary assignments in foreign counties are rare. Although employees from a given county make runs to other counties with some frequency, this does not typically result in contact with the Employer's employees from the other counties inasmuch as the ambulance crew simply returns to the home county after the run or, in the case of a transport, waits at the facility long enough to pick up the patient and return him or her to the home county. This is contrary to the situation in *NLRB v. Al Bryant, Inc.* 260 NLRB 128 (1983) where the movement of employees from facility to facility routinely resulted in contact with other employees. Additionally, a finding that various entities constitute a single employer certainly does not mandate that all of the employees be included in the same bargaining unit. Paramedics and EMTs from across the Employer's operations attend new employee orientation together and annual training together, but, again, these are isolated occurrences.

Unlike the situation presented in *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153 (1980), employee transfers appear to be on a relatively small scale and, as discussed above, are usually temporary in nature and at the request of the employees. Although the Employer presented evidence that seven employees permanently transferred between stations located in different counties in a 3 week period, I find this to be a limited number given the large size of the Employer's operation. Additionally, permanent transfers are entitled to "less weight in . . . determination as to unit scope, inasmuch as it cannot be said that they contribute significantly to the cohesiveness of a multi-location unit." *Bud's Food Stores, Inc. d/b/a Bud's Thrift-T-Wise*, 236 NLRB 1203 at fn. 6 (1978).

D. The Nature of the Employee Skills and Functions:

The paramedics and EMTs across the Employer's operation possess the same skills and use the same kinds of equipment to treat and transport patients regardless of the county in which they work. The fact that all of the employees undergo the similar training, maintain the same state certifications and have the same handbook underscores the similarities between their jobs.

E. Commonality of Wages, Hours, Benefits and Other Working Conditions:

All of the Employer's employees receive the same benefits and are subject to the same work rules and policies. With the exception of certain personnel in the Employer's North Central Division, the pay of the EMTs and paramedics is the same for other employees with equivalent job classifications and experience.

#### F. Shared Supervision:

The record reflects that all employees at issue here are ultimately under the authority of Chief of Field Operations CJ Fortner. Although the Employer may have divided its operation into various county based corporations for purposes of limiting legal liability, this organization is not merely a fiction created for legal purposes. The Employer's hierarchy reflects that management responsibilities are also divided by county. Presently, Roger Johnson is in charge of Raleigh County and two other counties. Significantly, his command responsibilities are county-based. Ordinarily, Raleigh County employees are under a captain with exclusive responsibilities over Raleigh County. The only reason that there is not presently a captain over the Raleigh County employees is that the position is vacant and the record discloses that the Employer intends to fill this vacancy. The parties have stipulated that all of the officials currently holding the position of captain are statutory supervisors.

#### G. Summary:

In weighing all of the relevant factors discussed above in detail, I find that there is not a strong community of interest between the Employer's employees on a statewide basis such as to mandate a statewide unit. The Employer has chosen to organize its operation along county lines in terms of both corporate structure and managerial hierarchy -- not just geography -- and the Raleigh County employees ordinarily have different management over them at the assistant chief and captain levels than the other counties. See *Specialty Healthcare*, supra and *Szabo Food Services, Inc. v. NLRB*, 550 F.2d 705 (2<sup>nd</sup> Cir. 1976). Common management and the Employer's organizational structure distinguish this case from the scenario presented in *Odwalla, Inc.*, 357 NLRB No. 132 (2011) where the disputed employees all had common management. I find that the unit sought by the Petitioner is appropriate for collective bargaining and is not arbitrary or artificial. Although a statewide unit may also be appropriate, I need not decide that issue.

#### IV. THE LIEUTENANTS

The parties disagree about whether the lieutenants constitute statutory supervisors and the record evidence regarding whether any or all of these employees share a community of interest with other employees in the appropriate unit is vague and inconclusive. Accordingly, I shall instruct my agent to challenge the ballots of; Homer Vass, Lydia Bennett, Matt Schors, Rebecca Shuler, Charles Marsh, Natasha Bennett, Eric Hatcher, and John Ashley, should they appear at the poll to vote.

#### V. EXCLUSIONS FROM THE UNIT

The parties agree, the record shows, and I find that the following persons are supervisors within the meaning of Section 2(11) of the Act: Richard Cornett, Owner/President; J. Todd Cornett, Executive Vice President; CJ Fortner, Chief of Field Operations; Jerry Long, Assistant Chief; Jean Harper, Assistant Chief; Donald Lindsey, Assistant Chief; Troy Meadows, Assistant Chief; Roger Johnson, Assistant Chief; Eugene Endicott, Assistant Chief; Jack McClung, Captain; Andy Wilcox, Captain; Nathan Coleman, Captain; Rex Johnson, Captain; and Herman Mattox, Captain.

## VI. CONCLUSIONS AND FINDINGS

Based upon the foregoing and the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. <sup>3/</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. 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.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time emergency medical technicians (EMTs), paramedics and drivers employed by the Employer at or out of the Employer's facilities in Raleigh County, West Virginia, but excluding all office clerical employees, administrators, managers, dispatchers, mechanics, professional employees, guards and supervisors as defined by the Act.

## VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate. The employees will vote on whether they wish to be represented for purposes of collective bargaining by National Emergency Medical Services Association (NEMSA). 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.

## VIII. 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

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<sup>3/</sup> At the hearing, the parties stipulated that during the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000 and during the same representative period, purchased and received goods valued in excess of \$50,000 at its West Virginia facilities directly from points located outside the State of West Virginia. Accordingly, I am satisfied that the Employer's operations meet the Board's statutory standard for asserting jurisdiction.

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.

## **IX. 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). This 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 turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **March 8, 2013**. 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>4/</sup> by mail, or by facsimile transmission at (513) 684-3946. 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.

## **X. 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 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.

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<sup>4/</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

## XI. 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, D.C. 20570-0001. This request must be received by the Board in Washington by **March 15, 2013**. *The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>4</sup> but may not be filed by facsimile.*

Dated at Cincinnati, Ohio this 1<sup>st</sup> day of March 2013.

  
Gary W. Muffley, Regional Director  
Region 9, National Labor Relations Board  
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Cincinnati, Ohio 45202-3271