UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Twenty-First Region

THE AMERICAN BOTTLING COMPANY Employer and GENERAL TRUCK DRIVERS, OFFICE, FOOD AND WAREHOUSE UNION, TEAMSTERS LOCAL 952 Petitioner	Case 21-RC-098454

<u>DECISION AND DIRECTION OF ELECTION</u>

Petitioner seeks to represent a unit of all full-time and regular part-time account managers and relief account managers employed by the Employer at its Orange, California facility. The Employer maintains that the unit sought by Petitioner is not appropriate and that the petition must be dismissed because the account managers and relief account managers are supervisors within the meaning of Section 2(11) of the Act. Based on the record and relevant Board cases, including its decisions in *Oakwood Healthcare, Inc.,* 348 NLRB 686 (2006) and *Croft Metals, Inc*., 348 NLRB 717 (2006), I find that the Employer has failed to meet its burden of proving that the account managers and relief account managers are supervisors, and therefore, I conclude that the unit sought by Petitioner is appropriate for collective bargaining.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[1]

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. This decision begins with an overview of the Employer's operations, including the relevant supervisory hierarchy. Second, the decision describes the primary responsibility of account managers for sales, as well as the working relationship between the account managers and the merchandisers, who are the employees ostensibly supervised by the account managers. The decision next summarizes the job description of account managers insofar as the description suggests that account managers are supervisors, and compares the job description to the testimony presented at the hearing. Finally, the decision analyzes Board precedent and its applicability to the facts of this case.

The Employer's Operations and Supervisory Hierarchy

The Employer is a nation-wide company involved in the sales and distribution of sodas, juices, teas and water. Among the brands sold by the Employer are 7-Up,

[1] The Employer, The American Bottling Company, is a Delaware corporation with an office and place of business located in Orange, California, where it is involved in the sales and distribution of soft drink products. During the past 12 months, the Employer sold products valued in excess of $50,000 directly to customers located outside the State of California.

A & W, Sunkist, Squirt, Snapple Teas, Fuji Water and Vita Coco. The Employer's Orange, California operation, which is the subject of the instant petition, is part of a region that includes nine Employer facilities. The Orange facility is the Employer's fifth-largest branch, with a total of 210 employees. The Orange branch covers a geographical area consisting of all of Orange County, as well as parts of Los Angeles, San Bernardino, and Riverside Counties, all located in the State of California. In the year 2012, the Orange branch sold and distributed 6.3 million cases of product.

The Orange, California facility is headed by Branch Manager Mike Miller. In evidence is the Employer's organization chart—but only for employees involved in sales. Heading the sales side of the organization is Miller. Reporting to Miller are six district managers. The six district managers head the six sales divisions of the Employer. The Employer and Union stipulated that district managers are supervisors within the meaning of Section 2(11) of the Act. In addition, the Employer employs a merchandising manager on weekends. While there is little record evidence regarding the duties of the merchandising manager, Branch Manager Miller testified that the merchandising manager is the sole management presence at the Orange facility on weekends. It does not appear that either party contends that the merchandising manager should be included in the unit.

Directly beneath the district managers on the organization chart are the account managers. There are a total of 29 account managers—thus, on average, five account managers report to each district manager. In addition, there are three relief account managers. The record contains virtually no testimony regarding what the relief account managers do, or what their duties are. Presumably, based on their title, the relief account managers fill in for account managers who are absent. Finally, according to the

Employer's sales organization chart, merchandisers (also called display stockers in the record) report to the account managers. There are a total of 80 merchandisers, and according to the Employer, on average, three merchandisers report to each account manager.

The Employer and Petitioner are not strangers to one another. Petitioner currently represents a unit of employees employed by the Employer, including, among others, drivers; mechanics; warehouse; shipping and receiving; machine operators; electricians; janitors; and the merchandisers, who as described above, are part of the sales operation. The Employer and Union recently negotiated (but have not finalized) their third collective-bargaining agreement covering the existing unit. Among the exclusions from this unit are the account managers who are the subject of the instant petition.

Record Testimony Regarding the Duties of Account Managers and Their Working Relationship with Merchandisers

Sales Responsibilities

Both the job description for account managers and record testimony are clear that their primary job is to generate sales. In fact, according to Branch Manager Miller, the account managers are "our piece of management" at the Employer's customers. What this means is that the account managers are responsible for building rapport with customers, and for providing information on advertisements of Employer product, on special promotions, and on new brands and products. The customers being serviced by account managers are retail stores, ranging from convenience stores to large independent grocery stores. Account managers do not deal with mass merchandisers or liquor stores—rather, those customers are the responsibility of the district managers.

Account managers are hourly paid, but also receive commissions based on the volume of product they sell. In selling product, the account managers have some discretion on the pricing of product. While the record is not entirely clear on this point, it appears that at least part (and perhaps all) of that discretion is governed by the willingness of the customer to reduce the price the shopper will pay for the product, as well as the willingness of the customer to use certain signage. Of course, the higher the margin between the Employer's cost and the price the customer is willing to pay, the greater the income for both the Employer and the account manager.

A specific geographical area is assigned to each account manager. On average, each account manager services 65 accounts. Account managers are in the field every day and spend 90 percent of their time selling product. Account managers do not visit every account every day—rather, the accounts visited vary from day to day.

As part of their job duties, account managers attend monthly sales meetings. The Employer points out that merchandisers do not attend these monthly sales meetings. There is little evidence regarding what is discussed at the monthly sales meetings, other than updating attendees on the Employer's special promotions, special packaging and what is going on in the branch. Recently, the Employer announced at one of these meetings that it had purchased distribution centers in Reno, Chico and Boise. According to Branch Manager Miller, some of this is "proprietary information" not shared with the merchandisers, although he did not explain what is proprietary about these subjects.

Relationship of Account Managers to Merchandisers

Merchandisers service the stores where account managers make sales. Thus, merchandisers stock store shelves, build displays, manage their parts of store backrooms (keeping them neat and organized), and check with store managers regarding any other concerns they have. Product is delivered by drivers employed by the Employer. The order in which a merchandiser visits stores on any given day is dictated by the delivery schedule. The goal is that the merchandiser will be at the store when the driver delivers product.

Merchandisers are hourly paid and do not receive commissions. Some benefits may differ when comparing the merchandisers to the account managers. However, there is no record evidence explaining what (if any) those differences are. The Employer contends that account managers can reward merchandisers for doing a good job by taking them out to lunch as a "thank you" (which of course has no long-term impact on their terms and conditions of employment), or by submitting to the Employer some type of evaluation form stating a "great job" was done. The Employer then hands the merchandiser a "recognition card." The significance (if any) of the recognition card is not otherwise explained. Furthermore, it appears that any employee can submit such a form to the Employer on behalf of any other employee who goes "beyond the call of duty."

The Ostensible Supervisory Authority of Account Managers as Set Out in Their Job Descriptions, and Record Testimony Regarding that Authority

The Employer contends that account managers provide "first-line" supervision of merchandisers. Moreover, the wording of their job description suggests that account managers have a great deal of discretion in supervising merchandisers. This section of the decision will summarize the content of the job description with regard to supervisory responsibilities and compare the content of the job description with record testimony.

Authority to Hire and Promote

One of the duties set out in the job description is that account managers assist with hiring of customer service and display stocker (a/k/a merchandiser) personnel and give effective recommendations on employee promotions. There is no record evidence concerning customer service personnel, including whether the position even exists. Moreover, there is no record evidence that account managers recommend employees for promotion. On the other hand, there is record evidence that account managers have a limited role in the hiring process. While the Employer contends that the evidence establishes that account managers "recommend" who should be hired, in fact the record is clear that account managers do not participate in interviewing prospective employees or in selecting the successful applicant from among a pool of applicants. Rather, account managers are free to suggest names of potential employees for the Employer's consideration. One account manager testified that he has suggested names of individuals employed by competitors who appear good at their jobs, having observed them at the stores of customers. However, his testimony is limited insofar as he suggested these individuals as potential account managers for the Employer. There is no testimony that he ever suggested the name of an individual to be hired as a merchandiser.

Authority to Discipline and Discharge

The job description also states that account managers "use independent judgment and discretion" concerning employee development,[2] discipline and retention. With regard to retention, the only account manager to testify stated he has no role in the

[2] With regard to "employee development," I consider this function later in the decision under assignment and direction of work.

layoff or recall of employees, or in whether employees are discharged; and the Employer presented no evidence contradicting this testimony. Moreover, there is no evidence that account managers have any role in deciding the pay of any employees, in deciding whether to transfer employees, or in adjusting employee grievances.

The record does reveal, however, that account managers have a limited role in the discipline of merchandisers. Again, there is no evidence that account managers issue discipline, sign off on discipline, or decide on the level of discipline. In fact, the Employer acknowledges that account managers have no access to personnel files and therefore do not know whether a particular employee has ever been disciplined.

It is clear that if an account manager believes that a merchandiser is not performing his/her job properly and cannot convince the merchandiser to do so by informal discussion, the account manager reports the matter to his/her district manager. Branch Manager Miller testified that the account manager prepares a “statement” describing the problem, and that sometimes the account manager will also take photographs showing the problem. This statement is turned over to the district manager. The district manager determines whether discipline is warranted, as well as the level of discipline. The precise role of the account manager, beyond preparing the statement, is not clear. To quote the branch manager, the Employer “could . . . call the merchandiser in with the district manager, sit down and talk about what they’re not doing.” There is no question that the account manager’s statement and photographs (if any) are part of what the district manager considers when deciding to issue discipline. However, the record suggests that the district manager conducts further investigation by meeting with the offending merchandiser.

The Employer placed one statement from an account manager in the record. It is dated June 24, 2010. The statement itself is quite revealing. It is clear that the account manager involved in an incident with a merchandiser did not handle the incident on his own. Rather, he contacted his district manager, who indicated he was on his way to assist. The account manager then let the merchandiser know that the district manager was on the way, "and that he needed to speak with him regarding the matter." From the statement it is clear that when the district manager arrived, he handled the issue and eventually instructed the merchandiser to go home and to report to the district manager's office in the morning.

Assigning and Directing Work, Authorizing Overtime and Training

The job description contains a number of statements relating to account managers assigning and directing work. Specifically, the job description states that account managers train merchandisers on customer service, merchandising and schematic placement techniques; schedule work; confirm approval for time off; notify and direct merchandisers on work schedule changes; and direct delivery drivers on adjustments in schedules. Record evidence significantly expands on some of these responsibilities, but is silent as to others. For example, there is no evidence that account managers schedule work[3], have any role in requests for time off, or direct delivery drivers regarding adjustments in their schedules.

Branch Manager Miller testified that account managers "control the merchandiser as to the timing of his stops." However, this is not entirely accurate. Rather, the record is clear that the order of customers serviced is determined by the delivery schedule

[3] Contrary to the Employer's post-hearing brief, there is no evidence that account managers schedule hours of work for merchandisers. On the other hand, there is limited evidence that account managers are involved in rescheduling work, which is discussed later herein under assignment and direction of work.

prepared for drivers. While the record does not disclose who prepares the delivery schedule, it is clear that account managers do not. What account managers do is use the delivery schedule to convey to merchandisers the order of their visits to customers. There is no record evidence that account managers have the authority to change the delivery schedule or to tell a merchandiser to deviate from the order set out by the delivery schedule.

In addition to advising the merchandisers of the order of stops, the account manager also tells the merchandiser what he/she needs to do at each stop. For example, an account manager might tell a merchandiser to build a two-liter display or some other special promotion. To quote the branch manager, “It’s very store specific as to what needs to be done.” The account manager who testified explained that he determines what special instructions to give “by communicating with store management on an everyday basis.” For example, store management might ask that the shelves be cleaned or that the back room be reorganized. There is no record evidence that account managers decide to build a special display or to change the presentation of product at a store based on their own judgment. Rather, it is the customer that drives any special requests conveyed by the account managers to the merchandisers.

Account managers review how merchandisers perform their work by observing the special displays and product placement on shelves. In doing so, the account managers utilize (as do the merchandisers when performing the work) a “company standards” book. This book contains instructions and photographs regarding the Employer’s expectations on how special displays and product on shelves will look. Based on a review of the book, which is in evidence, it appears that each product line has its own set of expectations. There are even separate instructions for marketing at

Hispanic stores compared to other stores. According to the record, when account managers are telling merchandisers what special display to build, they use the company standards book to point out the sample in the book. There is no evidence that account managers have the authority to instruct merchandisers to deviate from the company standards, except that an account manager might tell a merchandiser that a special display should be built bigger or smaller based on the size of the retail store. However, a merchandiser who testified stated that any adjustments to displays are conveyed not by account managers, but by the store manager. In fact, according to the merchandiser, if the account manager said one thing and a store manager said something different, merchandisers are to do what the store manager wants. The merchandiser will then report the discrepancy to the account manager or, if the request is particularly "outlandish," to the district manager.

Merchandisers are in daily contact with accounts managers--mostly by telephone. One issue that can arise during the day is a merchandiser running late, and therefore unable to meet the next scheduled delivery. This might happen when a store manager asks the merchandiser to perform work that has not been anticipated. Other than notifying the account manager that he/she is running late, the record is unclear what happens as a result. There is no suggestion in the record, for example, that the account manager ever countermands the store manager and instructs the merchandiser to leave in accordance with the delivery schedule.

Account managers cannot authorize overtime for merchandisers. If merchandisers believe that they need to work overtime, they call their account managers, who in turn call their district managers and explain why the overtime is needed. According to the account manager who testified, his district manager "always says yes to my recommendation." However, according to a merchandiser who testified, the Employer has repeatedly made clear that the district manager must personally convey any authorization for overtime to merchandisers--the merchandisers cannot rely on an okay from the account manager.

According to Branch Manager Miller, account managers "may move" a merchandiser from one store to another in the event there is a conflict between the store manager and the merchandiser. However, this "wouldn't be considered disciplinary, because you know, we would investigate that to find out if there is truly an issue." Miller provided no examples of when an account manager has moved a merchandiser from one store to another.

When a merchandiser is hired, he/she undergoes some sort of training conducted by someone other than account managers, although the specifics are not in the record. However, account managers engage in ongoing development of merchandisers by reviewing their work and assisting them in developing their expertise in merchandising. The record does not reflect what judgment is involved in this ongoing training as displays and product placement are regulated by the company guidelines book.

With regard to the question of how merchandisers' work is scheduled, merchandisers bid on which division headed by a district manager they wish to work. Merchandisers also bid on which days they get off. The district manager assigns which merchandisers work for each account manager. According to the account manager who testified, he decides what stores merchandisers go to, and he does so based on their ability to build displays. The account manager did not explain why abilities differ, given the detailed instructions in the company guidelines book. In addition, this testimony is inconsistent with the testimony of a merchandiser, as well as a weekly schedule in evidence. According to the merchandiser, the district manager prepares the weekly schedule, which assigns the merchandiser both to an account manager and the stores to be visited.

There is no evidence that an account manager has ever been held accountable for the work performance of merchandisers assigned to the account manager. Account managers' commissions are based on product sold--not the work performance of merchandisers. In response to a leading question, the account manager who testified stated that he could be held accountable, although he also acknowledged he never had been.

Board Law and Its Application to the Facts

Overview of Board Law

As was made clear to the parties at the hearing, the party alleging that an individual is a supervisor has the burden of proof. *NLRB v. Kentucky River Community Care*, 121 S.Ct. 1861, 1866-1867 (2001). In order to prove supervisory status, the party alleging it must prove that the individual "possess(es) one or more of the indicia set forth in Section 2(11) of the Act and exercise(s) that authority in a manner which is not merely routine or clerical in nature." *Williamette Industries, Inc*., 336 NLRB 743, 743 (2001). Any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999). Purely conclusionary evidence is not sufficient to establish supervisory status. *Volair Contractors*, 341 NLRB 673, 675 (2004). Moreover, the fact that a job description delineates 2(11) authority is insufficient if the record fails to establish actual exercise of that authority. *Atlantic Scaffolding Company*, 356 NLRB No. 113, slip op. at 30 (2011).

A common problem in cases involving issues of supervisory status, including this case, is the degree of discretion afforded the alleged supervisor. This is important because an individual who exercises some "supervisory authority" only in routine, clerical or perfunctory manner will not be found to be a supervisor. *Browne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). "The Board must judge whether the record proves that an alleged supervisor's role was other than routine communication or instructions between management and employees without the exercise of any significant discretion." *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). See also *Azusa Ranch Market*, 321 NLRB 811 (1996).

With regard to the direction and assignment of work, the Board further clarified the standard to be applied in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), and *Croft Metals, Inc.*, 348 NLRB 717 (2006). In considering the direction and assignment of work, I am to consider whether the account managers (1) assign work to, or (2) responsibly direct the work of, the merchandisers, using independent judgment--that is, judgment that is not dictated or controlled by detailed instructions, or is not obvious or self-evident, or is not routine or clerical in nature. If the instruction is controlled by detailed instructions, or is obvious or self-evident, or is routine or clerical in nature, then even if made free of the control of others, it is not independent. *Oakwood Healthcare*, supra, at 693-694.

Oakwood also addresses the differences between assignment of work and direction of work. The duty to "assign" refers "to the act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. tasks to an employee." Id. at 689. On the other hand, "If a person on the shop floor has men under him and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' . . . and carried out with independent judgment." Id. at 691.[4]

Account Managers Do Not Have the Authority to Hire, Transfer, Suspend, Lay Off, Promote, Discharge or Reward Merchandisers, or to Adjust Grievances, or Effectively to Recommend These Actions

There is no evidence that account managers transfer, suspend, lay off, promote or discharge merchandisers or any other employees, or effectively recommend these actions. Moreover, there is no evidence that account managers adjust or effectively recommend the adjustment of grievances. While the Employer contends that account managers effectively recommend the hire of employees, there is no evidence that an account manager has ever suggested the name of a person for hire as a merchandiser. Instead the record only establishes that account managers have suggested the names of individuals who might be considered for vacant account manager positions. In any event, account managers are not involved in interviewing applicants for any position, are not involved in the selection of an applicant from a pool of applicants for any position, and are not in any other way consulted during the hiring process itself for any position. An employee's suggestion of persons for employment does not establish effective recommendation. *Electric by Miller, Inc.*, 244 NLRB 266, 270 (2005), *Adscon, Inc.* 290 NLRB 501 (1994).

While the Employer also contends that account managers reward merchandisers, there simply is no record evidence to support this contention. Taking a

[4] In determining that account managers and relief account managers are not supervisors I have not considered, as suggested by Petitioner, evidence that Region 21 determined similarly situated employees at the Employer's San Diego location were not 2(11) supervisors. There is inadequate record evidence to support Petitioner's argument that the account managers in this case are similar to the sales employees in the prior case.

merchandiser out to lunch as a “thank you” does not alter his/her terms and conditions of employment. Moreover, the record fails to establish that filling out a form so that a merchandiser gets a recognition card for going above the call of duty constitutes a reward within the meaning of the Act. In addition, the record does not contain even one example of an account manager either taking a merchandiser out to lunch or filling out a form for a recognition card.

Account Managers Do Not Discipline Employees or Effectively Recommend the Discipline of Employees

There is no record evidence that an account manager has ever disciplined an employee. That is, no disciplines have been written by account managers, signed by account managers, or even initiated by account managers. In fact, there are no disciplines in the record at all, although there is Employer testimony that disciplines have been issued to merchandisers. On the other hand, there is evidence that the Employer relies on account managers to provide negative feedback on the performance of merchandisers, in the form of statements and in some cases photographs of poor displays or product placement. However, the single statement written by an account manager in evidence clearly establishes that the account manager merely recorded what he observed or heard. The statement does not constitute discipline; does not recommend discipline; and most importantly makes clear that the district manager, rather than the account manager, handled the issue by coming to the jobsite and dealing with the merchandiser. When an individual does “little more than report employee infractions to management,” such action does not constitute either discipline or the recommendation of discipline. *Williamette Industries*, supra, at 744, and cases cited therein.

Account Managers Do Not Assign Work to Employees

Using the Board's definition of assignment of work as set out in *Oakwood*, it is clear that account managers do not assign work to merchandisers or any other employees. In this regard there is no evidence that account managers assign merchandisers their work hours during the day. Moreover, account managers cannot authorize overtime--all overtime worked by merchandisers must be approved by the district manager. It is also clear that account managers do not assign merchandisers to their work locations. Rather, merchandisers determine by bid in which division they will work, which in turn determines which group of 65 accounts they will work on. While an account manager testified that he determines which stores each merchandiser working with him will service, this is contradicted by documentary evidence consisting of a schedule prepared by a district manager setting forth which stores each merchandiser will service in a given week. Finally, there is no evidence that the account managers assign overall duties to merchandisers. Rather, the duties of merchandisers are the same, while discrete tasks may vary from store to store. *Alternate Concepts, Inc*., 358 NLRB No. 38 (2012).

To the extent that the account manager's testimony that he decides which stores each merchandiser he works with will service is accurate with regard to that account manager, I note that the account manager also testified in a conclusionary fashion that he takes into account the abilities of the merchandisers. However, he failed to explain what abilities he takes into account, in view of the very detailed company guidelines book that leaves no room for a merchandiser to decide on his/her own how to display product. Even the account manager cannot stray from the company guidelines. Thus, even if the account manager who testified designates the merchandisers' place of employment, there is no explanation, and therefore no evidence, that he uses independent judgment when doing so. "(T)he authority to effect assignment . . . must be independent, . . . it must involve a judgment (forming an opinion or evaluation by discerning or comparing data), and the judgment must involve a degree of discretion that rises above the 'routine or clerical.'" *Croft Metals, Inc*., 348 NLRB 717, 721 (2006), quoting *Oakwood*. See also *Alternate Concepts, Inc.*, supra; *Entergy Mississippi, Inc*., 357 NLRB No. 178 (2011); and *Shaw, Inc*., 350 NLRB 354 (2007).

Account Managers Do Not Responsibly Direct the Work of Employees

The record clearly establishes that account managers direct the work of merchandisers. However, the record fails to establish that account managers use independent judgment when directing merchandisers' work, and it also fails to establish that the direction is "responsible."

Account managers convey to merchandisers in what order they will visit Employer customers. However, the record is clear that this involves no independent judgment, as the order is determined by the delivery schedule, which is not prepared by account managers. Account managers also convey to merchandisers what special displays or extra assignments they are to complete at customer locations. However, the record is clear that the special displays and extra assignments are determined by the Employer's customers--not by the account managers. That is, account managers do not form an opinion or evaluation by discerning and comparing data in deciding what special displays to use or what extra assignments to perform. Rather, account managers convey what the customer wants or has agreed to. Even the appearance of product placement and displays involve no independent thought on the part of the account managers--or the merchandisers for that matter--as they are significantly regulated by the company guidelines book. The lack of independent judgment is particularly evident from a merchandiser's testimony that he would ignore the instructions of an account manager to the extent those instructions were inconsistent with what the customer wanted. Moreover, while it is clear that merchandisers are to be in contact with account managers throughout their work days, particularly if problems arise or merchandisers are delayed at a particular stop, the record does not explain what account managers do with this information. The call appears to be no more than a courtesy to let account managers know when a merchandiser might not arrive on time at the next location when a delivery is made. While there is also testimony that an account manager could remove a merchandiser from a store if the merchandiser and store management were not getting along, there is no evidence this has happened. More importantly, there is no evidence that the account manager would exercise discretion by deciding on some occasions not to remove the merchandiser from the store. *Shaw Inc.*, supra.

In addition, there is no evidence that account managers are accountable for the work performed by merchandisers. While the account manager who testified responded to a leading question that he probably would be held accountable for the work of merchandisers, this testimony--with nothing more--is too vague, and therefore insufficient to establish that there is an actual prospect of adverse consequences for account managers should merchandisers not perform their work as expected. Evidence of actual accountability must be presented to prove responsible direction. *Alstyle Apparel*, 351 NLRB 1287, 1287 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006).

The following employees of The American Bottling Company, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time account managers and relief account managers employed by the Employer at its Orange, California facility, excluding, all other employees, office clerical employees, managerial employees, and guards and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the Regional Director of Region 21 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. 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. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons 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.[5]

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **General Truck Drivers, Office, Food and Warehouse Union, Teamsters Local 952.**

B. Employer to Submit List of Eligible Voters

To file the eligibility list electronically, go to the Agency's website at www.nlrb.gov, select ***File Case Documents***, enter the NLRB Case Number, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **March 25, 2013**.

[5] To ensure that all eligible voters 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 Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Region 21 Regional Director within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director for Region 21 shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Los Angeles Region 21 Office, 888 South Figueroa Street, 9th Floor, Los Angeles, CA, 90017-5449, on or before close of business **March 18, 2013**. No extension of time to file this list may be granted by the Regional Director 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 request may be filed electronically through the Agency's website, www.nlrb.gov,[6] *but may not be filed by facsimile.*

Signed at Minneapolis, Minnesota, this 11th day of March, 2013.

/s/ Marlin O. Osthus

Marlin O. Osthus, Acting Regional Director
National Labor Relations Board – Region 21
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

[6] To file the request for review electronically, go to www.nlrb.gov, select ***File Case Documents***, enter the NLRB Case Number, and follow the detailed instructions.