

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

MHM SERVICES, INC.

Employer

and

Case 04-RC-100225

DISTRICT 1199C, NATIONAL UNION
OF HOSPITAL AND HEALTH CARE
EMPLOYEES, AFL-CIO

Petitioner

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

The Employer, MHM Services, provides mental health services at correctional institutions, psychiatric hospitals, and other community health facilities in 14 states, including Pennsylvania. The Petitioner, District 1199C, NUHHCE, filed a petition to represent a unit of full time and regular part-time Registered Nurses (RNs) employed by the Employer at various facilities on a prison campus in Philadelphia. The Employer contends that this unit is inappropriate because it excludes RNs who work on a per-diem basis, who are known as PRNs.¹

A Hearing Officer of the Board held a hearing, and the parties filed briefs. I have considered the evidence and the arguments presented by the parties, and I conclude, in agreement with the Employer, that a unit of RNs which excludes the PRNs is inappropriate. In this Decision, I will first provide an overview of the Employer's operations. Then, I will set forth the legal standards to be applied in resolving the eligibility and community-of-interest issues presented in this case. Finally, I will present the facts and reasoning which support my conclusions.

I. OVERVIEW OF OPERATIONS

Since about 2004, the Employer has been providing mental health services at six medical buildings on the Philadelphia prison campus, offering inpatient, outpatient, and transitional services for inmates. RNs are employed by the Employer at three of the six buildings.

¹ The record does not indicate what the "P" stands for in this acronym, and the parties use "PRN" to denote all per-diem employees, including employees in non-RN classifications.

The Employer's Medical Director has overall responsibility for its operations on the campus. Physicians and Nurse Practitioners report directly to the Medical Director, as do two Assistant Program Managers. The Director of Nursing (DON) supervises the work of RNs and Psychiatric Technicians and reports directly to one of the Assistant Program Managers.

The Employer employs a total of 29 RNs in these three facilities, 15 regular full-time RNs and 14 PRNs. They work on three shifts: day shift from 7:00 a.m. to 3:24 p.m.; evening shift from 3:00 p.m. to 11:24 p.m.; and night shift from 11:00 p.m. to 7:24 a.m.

At one of the facilities, the Detention Center (DC), the Employer operates a 63-bed hospital unit for inmates with psychiatric illnesses. The staff at this building includes two RNs on the day shift, one or two RNs on the evening shift, and one RN on the night shift.

The Employer also operates transitional mental health facilities at two campus buildings for inmates who have completed hospital stays or require services at a level beyond outpatient care. Two 90-bed transitional units, both serving male inmates, are housed at the Philadelphia Industrial Correction Center (PICC). These units are staffed, inter alia, by two RNs on the day shift, one to two RNs on the evening shift, and one RN on the night shift.

Female inmates receive transitional care at a 115-bed unit at the Riverside Correctional Facility (RCF). At the RCF transitional unit, there is one RN on the day shift and one RN on the evening shift.²

II. THE RELEVANT LEGAL STANDARDS

A. The Eligibility of Per-Diem Employees

In determining whether per diem or on-call employees should be included in a unit with regular full-time employees, the Board considers the similarity of the work performed and the regularity and continuity of employment. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1193 (1994); *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 295 (1992). The Board's objective in deciding the eligibility of per diem nurses is "to distinguish 'regular' part-time employees from those whose job history with the employer is sufficiently sporadic that it is most accurately characterized as 'casual.'" *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990). The Board has included per-diem RNs in a single bargaining unit with regularly scheduled RNs when they performed the same work and were regularly employed. *Id.* To determine whether they are regularly employed, the Board has utilized the eligibility formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970). To be eligible to vote under this formula, per-diem employees must work an average of four or more hours per week in the 13 weeks preceding the election eligibility date. *S.S. Joachim & Anne Residence*, supra; *Sisters of Mercy Health Corp.*, supra; see *George L. Mee Memorial Hospital*, 348 NLRB 327, 354 fn. 11 (2006). The Board has generally not found that per-diem RNs have a separate community-of-interest warranting a unit separate from other RNs at a single medical facility. See *S.S. Joachim & Anne Residence*, supra; *Sisters of Mercy Health Corp.*, supra.

² No RNs are currently employed by the Employer at the other campus facilities.

B. Community of Interest

The Act does not require that the unit for bargaining be the only or even the most appropriate unit. Rather, it requires only that the unit be *an* appropriate one. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). Procedurally, the Board examines the petitioned-for unit first. If that unit is appropriate, the inquiry ends. *Wheeling Island Gaming, Inc.*, 355 NLRB 637 (2010); *Bartlett Collins Co.*, 334 NLRB 484 (2001). It is only where the petitioned-for unit is not appropriate that the Board will consider alternative units which may or may not be units suggested by the parties. *Bartlett Collins Co.*, *supra*; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7th Cir. 1969), *cert. denied* 396 U.S. 832 (1969).

In determining whether a proposed unit is appropriate, the focus is on whether employees share a community of interest. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985). To make this determination, the Board examines such factors as common supervision, employee skills and job functions, contact and interchange, similarities in wages, hours and other terms and conditions of employment, functional integration, and bargaining history, if any. *Publix Super Markets, Inc.*, 343 NLRB 1023 (2004); *Home Depot USA, Inc.*, 331 NLRB 1289 (2000); *United Operations, Inc.*, 338 NLRB 123 (2002); *Bartlett Collins Co.*, *supra*.

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 10-13 (2011), the Board modified the framework to be applied in making certain unit determinations. Pursuant to this decision, the Board first looks at whether the petitioner seeks a unit consisting of employees “who are readily identifiable as a group” based on job classifications, departments, functions, work locations, skills, or similar factors, and whether these employees share a community of interest. If the Board finds a community of interest in a readily identifiable group, then the party seeking a broader unit must demonstrate “that employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit.” [Emphasis added]. Additional employees share an overwhelming community of interest with petitioned-for employees only where there is no legitimate basis upon which to exclude them from the unit because the traditional community-of-interest factors overlap almost completely. See also *Fraser Engineering Company, Inc.*, 359 NLRB No. 80, slip op. p. 1 (2013); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (2011). On the other hand, the Board will not approve a petitioned-for fractured unit that seeks “an arbitrary segment” of what would be an appropriate unit. *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011); *Specialty Healthcare*, *supra*, slip op. at 13; *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999).

III. FACTS

Skills, Job Duties, and Working Conditions

DON Sharon Monaco testified that the Employer uses a combination of regular full-time RNs and PRNs to staff the facilities. The RNs perform the same nursing duties whether they are full-time RNs or PRNs, using standard nursing equipment and supplies, including thermometers, blood pressure cuffs, stethoscopes, syringes, and penlights for neurology checks. Their duties include implementing physicians' orders for patient care, updating patient progress reports, recording laboratory test results, and ordering medications from the prison pharmacy. RNs are responsible for recording any unusual events in the patients' progress notes, and they interact with social workers and other personnel involved in patient care. Shift hours are the same for full-time RNs and PRNs, and employees in both categories exchange information during the overlap periods at the beginning and end of their shifts. There is no difference in job duties between the full-time RNs and the PRNs, and these duties are specified in a job description that is common to both groups. Full-time RNs and PRNs share the same supervision.

Monaco makes the hiring decisions for all of the RNs, and the process is the same for both full-time RNs and PRNs. As part of the hiring process, she reviews the applicants' resumes, licensing status, experience, and qualifications. Newly-hired RNs are required to have a tuberculosis screening test and up-to-date CPR qualifications, as well as a security clearance. They must also complete training and orientation for work within the prison.

Monaco personally started working for the Employer as a PRN in early 2009 and became a full-time RN after about five months. There is no other evidence as to employees moving from one category to the other.

Full-time RNs and PRNs are subject to the same dress code and use common parking areas and breakrooms. All RNs also use the Employer's KRONOS timekeeping system.

Work Hours, Scheduling, and Wages and Benefits

DON Monaco testified that full-time RNs work a minimum of 32 hours per week on a regular schedule, while PRNs' hours fluctuate. According to Monaco, PRNs typically work at least four hours per week, and most of them work from 16 to 40 hours per week. They are not guaranteed a minimum number of hours, and some of them have other jobs.

Monaco prepares RNs' schedules a few weeks in advance. She first assigns the full-time RNs to their regular shifts, taking into account scheduled absences such as vacations. She posts the schedules online, using scheduling software which displays shifts that are unfilled and available for bids.³ Once these schedules are posted, PRNs interested in working open shifts can enter their bids online. Some regular shifts are not assigned to full-time RNs and are routinely

³ At the time of the hearing on March 28, schedules for both March and April were posted online and at bulletin boards at the facility.

left open for bid by PRNs. Full-time RNs may also bid to work these open shifts, but they are considered only if opportunities for PRN coverage for those openings have been exhausted.

PRNs are paid at a higher rate than full-time RNs, although the record does not indicate the exact rates. Full-time RNs accrue 8.62 hours of paid days off for every two-week pay period, and they also receive six paid holidays per year. Full-time RNs may be scheduled to work holidays, for which they are paid time-and-a-half. PRNs do not accrue paid days off nor receive paid holidays, and the record does not disclose if they receive time-and-a-half pay for working on a holiday. In addition, full-time RNs have the option of receiving health insurance coverage, but PRNs do not have this option. The record does not disclose whether full-time RNs contribute to their health insurance premiums, and it is unclear whether either the RNs or the PRNs receive retirement benefits.

Bargaining History

Prior to 2004, another contractor, Prison Health Services (PHS), provided mental health services and other medical care for inmates at the Philadelphia prison campus, and the Petitioner represented two units of PHS employees, a unit of RNs and a unit of other medical services employees. In 2004, the Employer became the contractor for mental health services, while PHS retained the contract for other medical care. Since that time, the Petitioner has continued to represent two units of medical services personnel employed by PHS.⁴ In addition, pursuant to a 2007 recognition agreement, the Petitioner currently represents a unit of mental health personnel comprised of the Employer's LPNs, medical records clerks, activity therapists, social workers, data entry clerks, psychiatric technicians, and administrative assistants at the campus. When the Employer took over in 2004, it did not hire a majority of PHS's RNs, so the Petitioner was not recognized as the representative of the Employer's RNs.

In an election conducted in 2007 among the Employer's RNs pursuant to a petition filed by the Petitioner, PRNs were not included in the bargaining unit. In that election, RNs voted as to whether they wished to be included in the existing non-RN unit which excluded PRNs, and whether they wished to be represented by the Petitioner.⁵ At the pre-election hearing, no issue was raised by either party with respect to the PRNs, and the Region's Decision and Direction of Election did not mention them. RNs voted against representation by the Petitioner, and the RNs have not been represented by any labor organization since 2004.

Peter Gould, the Petitioner's Executive Vice President, testified that there are "as-needed" employees in many of the classifications covered by the three current bargaining units represented by Petitioner at the prison campus, but these employees have historically been excluded from the existing contractual bargaining units.

The recognition agreement executed in 2005 by the Petitioner and the Employer for the non-RN unit expressly excludes PRNs, and the parties have continued to maintain this exclusion in the non-RN unit in successive bargaining agreements.

⁴ PHS is now known as Corizon Healthcare.

⁵ The election was an *Armour-Globe/Sonotone* self-determination election.

IV. ANALYSIS

A. Eligibility of Per-Diem Employees

The PRNs perform identical work to the full-time RNs, and according to Monaco they all work at least four hours per week and generally work between 16 and 40 hours per week. Accordingly, based on Board precedent, they should be permitted to vote if they meet the requirements of the *Davison-Paxon* formula. *S.S. Joachim & Anne Residence*, supra; *Sisters of Mercy Health Corp.*, supra.

B. Community of Interest

The Petitioner contends, however, that based on *Specialty Healthcare*, supra, the petitioned-for unit of full-time and regular part-time RNs is an appropriate unit although it excludes the PRNs. The Employer asserts that the PRNs must be included in the petitioned-for RN unit.⁶

In making unit determinations pursuant to *Specialty Healthcare*, it is initially necessary to determine whether the petitioned-for employees constitute a “readily identifiable group” that shares a community of interest. *Id.*, slip op. at 12 (2011). If so, the unit will be found appropriate unless a party contending that only a larger unit may be appropriate demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit.

The Board indicated that the determination of whether the employees in the proposed unit are readily identifiable as a group is to be based on their “job classifications, departments, functions, work locations, skills, or similar factors.” *Id.* In this case, the PRNs share all of these factors with the full-time RNs. Employees in both categories work side-by-side, and there is no difference as to their job duties and supervision. Thus, the full-time RNs are not readily identifiable as a group that is separate from the PRNs, and the petitioned-for unit which excludes the PRNs is not an appropriate unit.

Moreover, even if the regular full-time RNs were found to be a readily identifiable group, the record shows that the PRNs share an overwhelming community of interest with them. It is undisputed that the qualifications, training, hiring process, supervision, and day-to-day work performed by both full-time RNs and PRNs are identical, and that either a PRN or a full-time RN can cover any RN shift opening. Full-time RNs and PRNs may work side by side on shifts where two RNs are assigned, and they all regularly communicate with the RNs on adjacent shifts, sharing information and continuously updating commonly managed records. In short, there is a complete functional integration of the two groups.

⁶ The Board’s acute-care hospital rules do not apply in this case because the Board specifically excluded psychiatric hospitals from their coverage. 54 Fed.Reg. 16336, 16348; 284 NLRB 1580, 1597 (1989). See *Charter Hospital of Orlando South*, 313 NLRB 951, 954 fn. 8 (1994).

The principal difference between full-time RNs and PRNs is that the former have regularly-established schedules and guaranteed hours, while the PRNs have varying hours and can only bid on shifts that remain open after full-time RNs have been scheduled. Additionally, the PRNs are paid at a higher rate than the full-time RNs and, unlike them, do not receive benefits or paid days off.

I find that these differences in scheduling and compensation are not significant enough to justify a finding that the full-time RNs share a community of interest separate from PRNs. In *Specialty Healthcare*, which involved a unit of Certified Nursing Assistants (CNAs), the Board reaffirmed the settled principle that employees inside and outside a proposed unit share an overwhelming community of interest when the proposed unit is a fractured unit. The Board defined a fractured unit as “‘an arbitrary segment’ of what would be an appropriate unit,” slip op. at 13, citing *Pratt & Whitney*, 327 NLRB 1213, 1217 (1999), and “combinations of employees that are too narrow in scope or that have no rational basis,” citing *Seaboard Marine*, 327 NLRB 556, 556 (1999). The Board stated that, “if the proposed unit consisted of only selected CNAs, it would likely be a fractured unit: the selected employees would share a community of interest but there would be no ‘rational basis’ for including them but excluding other CNAs.” [Footnote omitted]. Hypothesizing a situation in which night-shift CNAs were excluded from a proposed unit of other CNAs, the Board found that this would be a fractured unit, noting that “some distinctions are too slight or too insignificant to provide a rational basis for a unit’s boundaries.”⁷ Similarly, there is no rational basis for excluding a portion of the Employer’s RN contingent. As the PRNs’ work is essentially identical to the full-time RNs, the differences in their scheduling and compensation are not significant enough to warrant separate units. See *Odwalla Inc.*, 357 NLRB 132, slip op. at 5 (2011); *Wheeling Island Gaming, Inc.*, 355 NLRB 637, fn. 1 (2010).

The Petitioner asserts that the bargaining history at the Philadelphia prison campus supports the continued exclusion of PRNs from the proposed unit, noting that bargaining units of employees of the Employer and other employers have traditionally excluded PRNs in many classifications from established bargaining units. I do not find, however, that the experience in other units is pertinent to the issue in this case, especially since there have not been any Board decisions as to whether PRNs should be included. In this connection, the Board has held that it is not bound by prior unit stipulations when making unit determinations. *Fraser Engineering*, supra, slip op. at 1.

The Petitioner further notes that PRNs were not included in the bargaining unit in the 2007 election involving the Employer’s RNs in which the employees voted against representation. That history is not relevant, however, because no party in that case had contended that PRNs should be included in the unit. Thus, there is no basis on which to find that there is a bargaining history of separating the RNs and PRNs on community-of-interest grounds.⁸

⁷ Night-shift CNAs presumably would have received premium pay that was not received by employees on other shifts.

⁸ The Petitioner cites *Robert Wood Johnson University Hospital*, 328 NLRB 912 (1999) because in that case, per-diem nurses were excluded from a unit of regular full-time employees. However, *Robert Wood Johnson* involved a unit clarification petition in which the Board found that the per-diem nurse classification had been in existence when the parties established the

In sum, I find that the petitioned-for RNs do not constitute a readily identifiable group, and the PRNs share an overwhelming community of interest with them. Accordingly, I shall direct an election in a unit of full-time and regular part-time RNs and all PRNs. Voter eligibility shall be determined based on the formula set forth in *Davison-Paxon*, supra.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which 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. The following employees of the Employer 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 Registered Nurses and all PRN Registered Nurses⁹ employed by the Employer at the Philadelphia prison campus facilities on State Road, Philadelphia, Pennsylvania, **excluding** all other employees, managerial employees, Quality Assurance Director, Quality Assurance Coordinator, Psychiatrists, Nurse Practitioners, Psychologist Staffing Coordinator, guards and supervisors as defined in the Act.

6. The Petitioner's showing of interest may now be inadequate due to the additional employees included in the unit as a result of this Decision. As the Petitioner indicated at the hearing in this matter that it wished to proceed to an election in any unit found appropriate, the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if

bargaining unit and was historically excluded from the unit. The Board's decision was based on reasoning peculiar to unit clarification cases and is inapposite for purposes of determining whether to include the PRNs in a new unit.

⁹ PRN Registered Nurses are eligible to vote if they worked an average of four or more hours of work per week in the 13 weeks preceding the election eligibility date.

necessary. See NLRB Casehandling Manual (Part Two), Representation Proceedings, Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car*, 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **District 1199C, National Union of Hospital and Health Care Employees, AFL-CIO**. 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.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, 2) 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 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced. Additionally, unit employees who are in the military services of the United States may vote if they appear in person at the polls.

B. Employer to Submit List of Eligible Voters

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

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Monday, April 29, 2013**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlrb.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to 12:01 a.m. on the date 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 five (5) 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 non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Monday, May 6, 2013, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern**

Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹⁰ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Signed: April 22, 2013

at Philadelphia, PA



JOHN D. BREESE

Acting Regional Director, Region Four
National Labor Relations Board

¹⁰ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.