

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

**KLOCHKO EQUIPMENT RENTAL  
COMPANY, INC.<sup>1</sup>**

**Employer**

**and**

**Case 07-RC-104929**

**LOCAL 324, INTERNATIONAL UNION  
OF OPERATING ENGINEERS, AFL-CIO<sup>2</sup>**

**Petitioner**

**APPEARANCES:**

Aaron D. Graves, Attorney, of Grand Rapids, Michigan, for the Employer.

Amy Bachelder, Attorney, of Detroit, Michigan, for the Petitioner.

**DECISION AND DIRECTION OF ELECTION**

The Employer sells, rents and services construction equipment, and operates three facilities located in Melvindale, Saginaw, and Fairhaven, Michigan. Petitioner currently represents a bargaining unit of mechanics and truck drivers working at the Employer's Melvindale facility. The collective bargaining agreement between the Employer and Petitioner covering these employees is effective from January 1, 2012 to December 31, 2015.

Petitioner seeks an *Armour-Globe*<sup>3</sup> self-determination election to add the lone mechanic employed at the Saginaw facility to its existing unit, sometimes referred to herein as the Melvindale unit.

As discussed below, based on the record and relevant Board law, I find that the Saginaw mechanic possesses a sufficient community of interest with the Melvindale unit to vote in a self-determination election as to whether to be included in that unit. In reaching that conclusion, I considered that if the Saginaw mechanic was not permitted to vote in a self-determination election, he would be denied an opportunity to be represented for collective bargaining.

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

<sup>2</sup> The name of Petitioner appears as amended at the hearing.

<sup>3</sup> *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

## A. Board Law

The issue to be determined is whether the petitioned-for addition of one mechanic to an existing unit including mechanics is appropriate. An *Armour-Globe* self-determination election permits employees sharing a community of interest with an already represented unit of employees, who constitute an identifiable distinct segment so as to comprise an appropriate voting group, to vote whether to join that unit. *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990); *Armour & Co.*, supra at 1336; *Globe Machine & Stamping*, supra at 299-100; see also *NLRB v. Raytheon Company*, 918 F.2d 249, 251 (1<sup>st</sup> Cir. 1990).

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *International Bedding Company*, 356 NLRB No. 168, slip op. at 2 (2011), citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). See also *Boeing Co.*, 337 NLRB 152, 153 (2001) (“If [the petitioned-for] unit is appropriate, then the inquiry into the appropriate unit ends.”)

A primary consideration in determining an appropriate unit is whether there is a shared community of interest between the employees that would require their inclusion in the unit. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490 (1985). The Board looks to a variety of factors to determine whether a community of interest exists, including, *inter alia*, the nature of employee skills and functions; common supervision; the degree of functional integration; interchangeability and contact among employees; work sites; general working conditions and fringe benefits; and bargaining history. *International Bedding Company*, supra, slip op. at 2; *Boeing Co.*, supra at 153; *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163, 167 (3<sup>rd</sup> Cir. 1984); *Rinker Materials Corp.*, 294 NLRB 738, 738-739 (1989). The petitioner’s position regarding the scope of the unit is also a relevant consideration. *International Bedding Company*, supra, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *E.H. Koester Bakery & Co.*, 136 NLRB 1006, 1012 (1962). However, that issue is not dispositive with regard to what constitutes an appropriate unit, and certain proposed units, such as those based on an arbitrary, heterogeneous, or artificial grouping of employees will be found to be inappropriate. See *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973).

Likewise, the Board determines whether a multi-location or single location unit is appropriate based on its evaluation of the community of interests among employees working at the different locations, including: (1) similarity in employee skills, duties, and working conditions; (2) centralized control of management and supervision; (3) functional integration of the business, including employee interchange; (4) geographical separation of facility and extent of union organization; and (5) employee choice. *Capital Coors Co.*, 309 NLRB 322, 325 (1992), citing *NLRB v. Carson Cable TV*, 795 F.2d 879 (9<sup>th</sup> Cir. 1986).

Finally, the Board has long held that it is contrary to Board policy to certify a representative for bargaining purposes in a unit consisting of only one employee. *KCAL-TV*, 331 NLRB 323, 325 (2000), citing *Sonoma-Marin Publishing Co.*, 172 NLRB 625, 626 (1968) and *Mount St. Joseph’s Home for Girls*, 229 NLRB 251, 252 (1977). But one employee voting whether to be included in an existing unit does not run afoul of such policy, inasmuch as the choice is for representation in an appropriate unit or no representation. See *Warner Lambert*, supra at 995.

## **B. Application of Board Law to this Case**

In reaching the conclusion that the overall similarity of skills and functions, commonality of supervision, contact and interchange between employees, and functional integration of the operations between the represented employees and the petitioned-for employee establishes a sufficient community of interest among them to warrant a finding that the Saginaw mechanic can appropriately be included in the represented unit, I rely on the following analysis and record evidence.

### ***1. Layout of Facilities and Common Supervision***

The approximate 10,000 square foot Melvindale facility consists of a 5,000 square foot equipment repair shop, a yard where equipment and trucks are housed, and office space. Employer President Robert Klochko oversees all of the Employer's operations. General Manager Timothy Korthals, Vice President of Equipment T. Klochko, and Controller D. Hernandez report to Robert Klochko. Service Manager Frank Snyder and Rental Fleet Operations (RFO) Manager Wayne Moore report directly to General Manager Korthals.<sup>4</sup> Based on the Employer's organizational chart, three non-unit sales employees work at and out of the Melvindale facility: Rental Sales Coordinator (RSC) Paul Nabozny, who reports directly to RFO Manager Moore, and two area field representatives (AFRs), B. Staggs and J. Mianecke, who apparently report to Korthals.

Petitioner represents six mechanics and two truck drivers who work at and out of the Melvindale facility.<sup>5</sup> Two of the senior unit mechanics, classified as field service and/or class A mechanics, predominantly work off-site at customer locations. The four remaining unit mechanics, classified as class B, class C, or preventative maintenance (PM) mechanics, predominantly work at the Melvindale equipment repair shop. All of the mechanics report directly to Service Manager Snyder. The unit truck drivers, who deliver equipment to customer job sites and facilities, and Employer facilities, report directly to RFO Manager Moore.

The Saginaw facility opened in 2010, and is smaller than the Melvindale facility, with approximately 100 square feet of shop area, and 400 square feet of office space. Two employees work at and out of the Saginaw facility: AFR Paul Daugharty and mechanic Brian Miller, the disputed employee herein. The organization chart indicates that Daugharty reports to General Manager Korthals. Miller has been employed as a Saginaw mechanic since about August 2012, and reports directly to Service Manager Snyder, via telephone communication. Although the Employer's organizational chart indicates that Snyder and RFO Manager Moore jointly supervise Miller, Employer General Manager Korthals testified that Miller does not report directly to Moore. However, Miller has had some contact with Moore regarding rental customer sales as described below.

The Employer operates a third site in Fairhaven, Michigan. The Fairhaven facility is a small leased rental office staffed by RSC Tim Alwardt, who reports directly to RFO Manager Moore.

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<sup>4</sup> The parties stipulated, and I find, that Robert Klochko, Timothy Korthals, T. Klochko, D. Hernandez, Frank Snyder, and Wayne Moore are supervisors within the meaning of Section 2(11) of the Act, based on their authority to hire, discipline, and discharge employees.

<sup>5</sup> Petitioner was certified by the Board in 2005 in Case 7-RC-22877.

The parties stipulated, and I find, that the sales employees (RSCs and AFRs) do not possess any community of interest with the employees in the bargaining unit or the Saginaw mechanic, and are not at issue in this proceeding.

## ***2. Similarity of Skills and Functions***

The Melvindale facility is capable of handling heavy repairs, such as engine tear-downs and rebuilds. The two Melvindale unit mechanics classified as either field service or class A mechanics spend the majority of their time on the road performing off-site repairs of construction equipment. The equipment being repaired can be Employer-owned, rented equipment; customer-owned equipment; or, re-rented equipment which the Employer has obtained for a customer from a third party. The mechanics drive company trucks to their work assignments. The other four unit mechanics, classified as class B, class C, or PM mechanics, service equipment in the equipment repair shop for mechanical repairs and rental readiness. They also perform yard work, including checking rental equipment in and out, and some limited preventative maintenance on the Employer's fleet trucks. The PM mechanics are the least skilled mechanics and perform routine maintenance jobs, such as oil changes and readying the Employer's fleet trucks.

The mechanics are assigned jobs by Service Manager Snyder. He holds a meeting each morning with the mechanics to go over jobs for the day as listed on the request log and service call log, discussed below. Snyder communicates with the field mechanics by telephone throughout the day as he dispatches them from one job to the next.

For both the Melvindale and Saginaw facilities, when customers call in requesting equipment service/repair in the field, information regarding the equipment and repair is logged into a "service call log" on a computer via *GoogleDocs*. The service call log notes time of customer call, repair request, unit number of equipment, time of mechanic dispatch to the job, and time of repair completion. In Melvindale, Service Manager Snyder monitors the service call log throughout the day in order to assign and dispatch the field mechanics. In Saginaw, Miller utilizes a desktop computer with access to the service call log through *GoogleDocs* and communicates with Snyder via telephone about the Saginaw field repair jobs. Miller can log in service calls received at the Saginaw facility into the service log from his computer. The Melvindale unit mechanics only use a computer to log in their daily work time and do not log in service calls.

When customers call in for equipment rentals and in-shop equipment service/repair at Melvindale, the service call and equipment request is logged into a "request log" which is displayed on a television monitor located in the back of the shop. All of the Melvindale customer calls go directly to Service Manager Snyder. The request log color codes the rental requests regarding service required and order of priority for readying the equipment for rental. The request log is continually monitored throughout the day by Snyder, as well as the shop mechanics. The mechanic pulls the equipment and paperwork, gets any parts necessary, and performs the necessary mechanics to make the equipment rental ready. The request log television monitor displays jobs at all of the Employer's facilities.

There is limited record evidence regarding who is responsible for logging in rental requests from the Saginaw and Fairhaven facilities into the request log. The record indicates that AFR Daugharty receives a majority of the phone calls at the Saginaw facility. The Employer also has a toll-free phone number which, it appears, directs calls to Snyder at the Melvindale facility. The

information displayed on the request log is available to Miller at the Saginaw facility on his computer via *GoogleDocs*. Regarding Fairhaven rentals, if the equipment ordered is located in Fairhaven, it will be readied by either a local Employer-leased mechanic, or Snyder will dispatch a Melvindale unit mechanic to the Fairhaven facility to perform the work.

Like the Melvindale unit mechanics, Miller performs off-site field repair jobs, services equipment in the Saginaw repair shop for mechanical repairs and rental readiness, and performs check-in/check-out of equipment and preventative maintenance. All of these jobs are assigned by Service Manager Snyder via telephone. Miller possesses the mechanical skills to perform all of the repairs performed by the Melvindale unit mechanics. However, most of his repair jobs are light repair jobs due to limited equipment in Saginaw to perform heavy repair jobs. In this regard, a heavy repair job at the Saginaw facility will be sent to Melvindale, and the equipment will be transported by either an Employer-leased or Melvindale unit driver.

In addition to his mechanic duties, the Employer claims that Miller is responsible for performing some inside sales work limited to executing rental contracts for walk-in customers seeking to rent equipment. In this regard, the Employer would argue that Miller performs the work of an RSC, as well as mechanic. However, the Employer acknowledges that Miller performs such work only if the Saginaw AFR, Daugharty, is not available. Moreover, the record demonstrates that Miller has actually assisted a customer in renting equipment only one time since he was hired in August 2012. In that instance, at the direction of Melvindale RFO Manager Moore, Miller executed a rental contract with the customer by obtaining an equipment unit number and draft contract form from Moore via computer. This entire process took about one-half hour. For the most part, Miller refers all customer calls at the Saginaw facility to Daugharty.

Overall, about 55 per cent of Miller's time is spent performing off-site field repair jobs, 40 per cent of his time is spent performing repair work in the Saginaw repair shop, and five per cent of his time is spent performing inside sales work, such as assisting walk-in customers as described above.

### ***3. Geographical Proximity and Functional Integration, including Contact/Interchange Among Employees***

The Saginaw facility is 111 miles north of the Melvindale facility. While Service Manager Snyder is based in Melvindale and occasionally visits the Saginaw facility, he and Miller have regular daily phone contact with each other, up to three times a day, regarding Miller's work assignments and job-related questions and issues. Miller also has regular brief telephone contact with the Melvindale unit mechanics for job-related questions, and with parts employee Tim (last name unknown) when Miller telephones Tim to request a part for a repair job.<sup>6</sup> When he was first hired, Miller trained for a week at the Melvindale facility. A portion of the week he spent training with a unit mechanic, and the rest he spent training on computer systems and the Employer's paperwork practices.

The Melvindale facility maintains an inventory of parts for mechanic repair jobs, while the Saginaw facility only maintains parts on its single repair truck. Consequently, a majority of parts

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<sup>6</sup> The parts employee, who reports to Service Manager Snyder, is not at issue in this proceeding. The unit description in the collective bargaining agreement does not list a parts employee classification in the unit.

used by Miller at the Saginaw facility for his repair jobs come from the Melvindale facility. In this regard, the parts from Melvindale will either be sent to Miller at the Saginaw facility via overnight-mail, or a Melvindale driver will transport the parts to Saginaw.

Before Miller was hired, the Melvindale unit mechanics were dispatched to the Saginaw area to perform all mechanic work there. Since Miller has been hired, the Melvindale mechanics have continued to perform work at or out of the Saginaw facility. A Melvindale unit mechanic traveled to Alpena, Michigan to assist Miller with an off-site repair job, and another Melvindale unit mechanic traveled to a Saginaw General Motors plant to assist Miller with an extensive two-person repair job. Additionally, the Melvindale unit mechanics are dispatched to the Saginaw facility to perform any on or off-site jobs that Miller is not available to perform due to vacation time, sick leave, layoff, etc. For example, when Miller was laid off for about 90 days from January to March 2013, due to a seasonal slow-down of business, the work at the Saginaw facility was performed by the Melvindale unit mechanics out of the Melvindale facility, and by Miller on an on-call basis.

#### ***4. Similarity of Working Conditions and Fringe Benefits***

All mechanics are hourly. The Melvindale unit mechanic wage rates range from \$16.31 per hour for a PM mechanic to \$24.54 per hour for a senior field service mechanic. Miller earns \$18.08 per hour at the Saginaw facility. All of the mechanics work the same hours from 7:30 a.m. to 4:00 p.m., plus overtime if necessary. Melvindale unit employees receive benefits per their collective bargaining agreement, such as health care, pension and retirement and profit-sharing plans, and sick and vacation leave. Although Miller does not receive any health insurance, he has sick and vacation time, and paid days off, similar to the unit mechanics. All of the Employer's employees are subject to the same personnel policies and receive the same employee handbook. However, the Melvindale unit employees are primarily subject to the terms of their collective bargaining agreement.

Miller drives the same company truck as the Melvindale mechanics, bearing the Employer's name, logo, Melvindale address and toll-free telephone number on the side. According to the collective bargaining agreement, the Employer's represented mechanics wear Employer-provided uniforms, including jackets which are laundered at the Employer's expense. The record does not indicate whether Miller is provided or wears the same uniform.

Miller was interviewed for his position by Korthals, Snyder, and Daugharty. They discussed the mechanic skills required for the job and mechanic job duties, including field service calls, shop repair work, yard work (checking equipment in and out), and the ability to handle customer calls and process rental contracts when Daugharty was not available. The Employer asserts that the "Saginaw Mechanic/Rental Sales Coordinator Position – Job Description" and a *Craigslist* job advertisement for "Branch Rental Coordinator (Saginaw)" establish that Miller performs the sales work of a rental sales coordinator, as well as mechanic, unlike the Melvindale mechanics. The job description indicates that the Saginaw position includes "[s]hop mechanic, field mechanic, yardman, inside sales and customer contact for service and repair work." The job advertisement includes in the responsibilities of the position "equipment check-in, rental contract preparation, outbound customer contact phone calls and maintaining equipment inventory." However, the record demonstrates that the Employer did not issue the job description to Miller and his first time seeing it was at the hearing. Moreover, as noted, Miller's inside sales-related duties are significantly limited and are not to the degree noted on the job description proffered by the Employer. Job titles, job descriptions, or similar documents are not given controlling weight and

will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Chevron U.S.A., Inc.*, 309 NLRB 59, 62 (1992).

### 5. *Bargaining History*

Prior to the Board's 2005 Section 9(a) certification of the Petitioner as the collective bargaining representative of the Melvindale unit, the Employer and Petitioner were parties to successive Section 8(f) contracts for about 30 years at the Melvindale facility. The recognition agreement in the current contract provides: "[t]he Company recognizes and acknowledges that the Union will be the exclusive representative in collective bargaining with the Company of those classifications of employees hereinafter listed: Lead Mechanic, Field Service, Welders, Mechanics, Utility Person, Truck Driver and Trainee working at the Company's Equipment Repair Shop located at 2782 Corbin, Melvindale, Michigan 48122."

The Employer argues that any petition to add employees to the existing bargaining unit is inappropriate because the parties expressly agreed in writing to limit the existing bargaining unit to those classifications of employees listed in the unit description who are working at the Melvindale facility. In support of this argument the Employer cites *Briggs Indiana Corporation*, 63 NLRB 1270 (1945) and *Lexington House*, 328 NLRB 894, 896-897 (1999). In *Briggs Indiana*, the employer and petitioner/union were parties to a collective bargaining agreement covering all production and maintenance employees employed at the employer's Evansville and Detroit plants. Unlike the instant matter, the collective bargaining agreement specifically provided that the petitioner/union would not accept for membership certain classifications of employees, including plant-protection employees. Thereafter, during the life of the agreement the union filed a petition with the NLRB to represent the plant protection employees. The Board dismissed the petition, holding the petitioner union to its agreement with the employer. *Supra* at 1271-1273. In *Lexington House*, *supra*, the Board extended *Briggs Indiana* to a situation where there is an "express promise" between the parties not to seek representation of certain employees, as opposed to a written contract provision. In so doing, the Board clarified its holding in *Cessna Aircraft*, 123 NLRB 855 (1959), that a promise not to represent a classification of employees must be express, albeit it does not have to be contained in a collective bargaining agreement. *Lexington House*, *supra* at 896. Such a promise will not be inferred from the exclusion language in a unit description in a collective bargaining agreement, as the Employer herein urges. I do not find either *Briggs Indiana* or *Lexington House* applicable to the case at bar. The evidence of single-unit bargaining history at the Employer's Melvindale facility does not require a different result. *Capital Coors Co.*, 309 NLRB 322, 325 (1992), citing *Esco Corp.*, 298 NLRB 837, 839 (1990).

### C. **Conclusion Regarding Community of Interest**

Based on the community of interest between the Melvindale unit mechanics and the Saginaw mechanic, I find that the Saginaw mechanic should be included in the unit currently represented by Petitioner. The Employer's reliance on *Avis Rent-A-Car*, 260 NLRB 955 (1982), and *Clover Fork Medical Services*, 200 NLRB 291 (1972), does not persuade me otherwise. In *Avis* the Board determined that there was little interchange between the employees at the employer's different locations and their working conditions were dissimilar. In *Clover Fork*, relied upon by the *Avis* Board in rejecting the larger, multi-facility unit, the Board found that the single facility unit was appropriate because of the distance between the other two facilities and the lack of employee interchange between those facilities. In the instant case, multiple factors support finding

sufficient community of interest between the petitioned-for mechanic and represented mechanics, including not only the presence of employee interchange and similar working conditions, but also common supervision and a notable degree of functional integration, as well as similar fringe benefits.

I also note that if the petition for the self-determination election to add the Saginaw mechanic to the existing unit is found not to be appropriate, then Miller would be denied the opportunity to be represented in collective bargaining because there are no other employees at the Saginaw facility which would constitute an appropriate separate unit. The Board does not favor such a resolution. *Vecellio & Grogan*, 231 NLRB 136, 136-137 (1977); *MDS Courier Services, Inc.*, 242 NLRB 405, 406 (1979). See also, *KCAL-TV*, 331 NLRB 323, 325 (2000), citing *Sonoma-Marin Publishing Co.*, 172 NLRB 625, 626 (1968), and *Mount St. Joseph's Home for Girls* 229 NLRB 252, 253 (1977).

### **CONCLUSIONS AND FINDINGS**

Based on the foregoing discussion and on the entire record,<sup>7</sup> I find and conclude as follows:

1. The hearing officer's rulings 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.
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. A self determination election is appropriate for the following voting group:  
  
All full time and regular part-time mechanics employed at the Employer's equipment repair shop located at 1250 North Outer Drive, Saginaw, Michigan; but excluding all other employees, and supervisors and guards as defined in the Act.

If a majority of valid votes is cast for Petitioner, they will be taken to have indicated the employees' desire to be included in the existing unit of employees in the classifications of Lead Mechanic, Field Service, Welders, Mechanics, Utility Person, Truck Driver and Trainee, as described in the parties' collective bargaining agreement, and currently represented by the

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<sup>7</sup> The Employer timely filed a brief, which was carefully considered.

Petitioner, working at the Employer's equipment repair shop located at 2782 Corbin, Melvindale, Michigan. If a majority of valid ballots is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

Dated at Detroit, Michigan, this 27th day of June 2013.

(SEAL)

*/s/ Terry Morgan*

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Terry Morgan, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS, 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. Voting Eligibility**

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon 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). 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.). 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 **July 5, 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>8</sup> by mail, or by facsimile transmission at **313-226-2090**. 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.

### **C. Posting of Election Notices**

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

### **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 **July 11, 2013**. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>9</sup> but may **not** be filed by facsimile.

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<sup>8</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, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

<sup>9</sup> To file a Request for Review electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.