

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

BERGMAN BROTHERS STAFFING, INC.

Employer¹

and

Case 05-RC-105509

CONSTRUCTION AND MASTER LABORERS'
LOCAL UNION 11, a/w LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA (LIUNA)

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board. Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (LIUNA), herein the Petitioner or the Union, filed the petition seeing to represent a unit of all full-time and regular part-time licensed or certified asbestos abatement employees, including asbestos abatement of mechanical systems employed by the Bergman Brothers Staffing, Inc., herein the Employer, in Maryland, excluding office clerical employees, managerial employees, professional employees, guards, and supervisors as defined in the Act. The petition asserts there are approximately six employees in the proposed unit. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that there is no history of collective bargaining between the parties for the petitioned-for employees.

¹ The petition was amended at the hearing to remove Waco, Inc. as a joint employer.

ISSUE AND POSITIONS OF THE PARTIES

The central issue in dispute is whether the employees in the petitioned-for unit are temporary employees. The Employer contends that the employees are temporary employees because they do not have any expectation of continued employment, and thus, are ineligible to vote. The Petitioner contends that the unit employees have a reasonable expectation of recall for further employment with the Employer, and thus are not temporary employees.

Based on the record as a whole, and careful consideration of the arguments of the parties at hearing and in brief, I find the petitioned-for employees of the Employer constitute a unit appropriate for the purposes of collective bargaining.

TEMPORARY STATUS OF EMPLOYEES

The record shows that the Employer provides employees to perform asbestos abatement services on a project basis for its clients. The Employer seeks out new clients through various means, including unsolicited phone calls, flyers, faxes, and emails. Upon forming a relationship with the Employer, the client signs a two-page temporary employment agreement which, among other things, lists the responsibilities of the Employer and its client. This agreement provides that the Employer will provide employees to its client for a minimum period of four hours, and that their hourly rates will be in effect for four months. The Employer provides all of the employees' compensation, including the employer portion of payroll taxes, and requires its clients to acknowledge they will be billed for overtime pay for non-exempt employees when applicable. The agreement also recites that the Employer "expends considerable time, effort, and expense in recruiting, screening, and training temporary employees who fill CLIENT positions." (emphasis in original)

The agreement provides that the Employer's client is responsible for the "direction and supervision" of employees dispatched by the Employer to the client's jobsite, for recording the time worked by each employee, and for verifying the accuracy of the amount of hours shown on each employee's timecard.

In most cases, the Employer and its client will sign another agreement (labeled as an exhibit to the temporary employment agreement) at the start of a specific job. This exhibit includes details about the specific project and the hourly rates for the employees dispatched to that job. Employer CEO and President Gilberto Bergman testified that the Employer's average project lasts a week to two-and-a-half weeks, though the record shows some jobs can be as short as a few hours and some as long as five-and-a-half weeks.

The Employer recruits employees through advertisements in newspapers, radio stations, word of mouth, flyers, community gatherings, and other means. After concluding that an employee is qualified, the Employer maintains a database of employees, which includes records such as the employee's contact information, tax information, and states in which the employee is licensed. The hearing record shows that employees sign a one-page application and a two-page "Standards of Performance for Bergman Brothers Staffing," in which an employee states that he or she agrees not to accept employment from clients of the Employer until the employee has completed working 120 days or 688 hours through the Employer. The Employer's agreement with its clients has a similar restriction on its clients hiring the Employer's employees directly or through a competing temporary staffing agency. However, Bergman testified that "all" of the Employer's employees perform work for competing temporary staffing companies.

Bergman testified that employees will sometimes continue working for the Employer past the conclusion of their assignment if the Employer has upcoming projects to which to reassign

them. The Employer's application requires employees to acknowledge that "[w]hen any assignments with [the Employer] end, I agree to contact [the Employer] immediately for further assignments, and I understand that if I fail to contact [the Employer] I may be considered to have left work voluntarily without cause and unemployment benefits may be denied." The "Standards of Performance for Bergman Brothers Staffing" provides in part:

I am an employee of Bergman Brothers staffing (BBS)...I understand that I am an employee of BBS and only BBS or I can terminate my employment. As a condition of employment, I understand that I must contact BBS for available work by reporting to BBS within 24 hours of the conclusion of each work assignment.

Consistent with the statement on the application, Bergman testified that at the conclusion of an assignment, employees are supposed to contact the Employer and report if they're available for additional work. The Employer will use these employee reports, its extant database of employees, and any new applicants to fill upcoming jobs for its customers. When a job arises, employees are told the type of job, location, the rate of pay, and other details. If the employee accepts the job, he or she reports to the jobsite, and the on-site supervision is performed by the Employer's client.

According to Bergman, the end of the job is usually obvious to the employees because the work they were assigned is completed. In some cases, a project may end early, for example, if there are intervening problems at the site. Similarly, a project may last longer than what employees were initially told. At the project's conclusion, employees are released directly by the Employer's client. Bergman testified that if the Employer doesn't immediately dispatch employees for additional work, they are not fired, but are laid off until there's more work.

The test for determining the eligibility of individuals designated as temporary employees is whether they have an uncertain tenure. *Marian Medical Center*, 339 NLRB 127 (2003). If the tenure of the disputed individuals is indefinite and they are otherwise eligible, they are permitted

to vote. *United States Aluminum Corp.*, 305 NLRB 719 (1991); *Lloyd A. Fry Roofing Co.*, 121 NLRB 1433 (1958); *Personal Products Corp.*, 114 NLRB 959 (1955); *NLRB v. New England Lithographic Co.*, 589 F.2d 29 (1st Cir. 1978). On the other hand, where employees are employed for one job only, or for a set duration, or have no substantial expectancy of continued employment and are notified of this fact, and there have been no recalls, such employees are excluded as temporaries. *Owens-Corning Fiberglas Corp.*, 140 NLRB 1323 (1963); *E. F. Drew & Co.*, 133 NLRB 155 (1961); *Indiana Bottled Gas Co.*, 128 NLRB 1441 fn. 4 (1960); *Sealite, Inc.*, 125 NLRB 619 (1959).

I find that the unit employees are not temporary employees under Board law. Generally, the Board considers temporary employees ineligible to vote because they do not share a sufficient community of interest with the Employer's regular, permanent workforce. But here, the record shows that all of the unit employees are permanent employees of the Employer (though they may work fluctuating and inconsistent hours); their employment is only temporary vis-à-vis the Employer's clients, who are not named in the amended petition. Thus, while the employees' work for the Employer's clients may be for a specific project or set duration, their employment with the Employer is indefinite. The evidence shows that employees have a reasonable expectation of future employment with the Employer on future jobs as the Employer looks to its employee database to fill future client orders. In fact, the Employer *requires* its employees to contact it for future work at the conclusion of any project, and places contractual restrictions on their freedom to work directly for its clients and competitors. Indeed, the Employer's agreement with its clients recites that it undertakes significant efforts and costs to recruit, screen, and train its employees, and, therefore, insists on compensation when a client seeks to lure the Employer's employees away. Thus, rather than showing that the unit

employees are short-term, transient workers with no interest in future working conditions, the record shows that the Employer expects an ongoing relationship with these employees beyond the client's immediate project. This conclusion is further buttressed by Employer CEO/President Bergman's testimony that at the conclusion of a project, employees are laid off, and not terminated.

SOLE/JOINT EMPLOYER ISSUE

At the hearing, the parties stipulated that there was no joint employer relationship between the Employer and Waco, Inc. and the hearing officer received that stipulation.² As explained below, I decline to accept this stipulation because it appears to contradict the weight of the record evidence and because it is unnecessary to decide this case.

The joint employer concept recognizes that two or more business entities are in fact separate but that they share or codetermine those matters governing the essential terms and conditions of employment. *N.K. Parker Transport*, 332 NLRB 547, 548 (2000); *Capitol EMI Music*, 311 NLRB 997, 999 (1993), enfd. mem. 23 F.3d 399 (4th Cir. 1994); *NLRB v. Browning-Ferris Industries* 691 F.2d 1117, 1122 (3d. Cir. 1982). In its post-hearing brief the Employer asserts "it is clear that [the Employer] and its clients are joint employers of the workers who are placed by [the Employer] with its clients." The evidence in the record as a whole tends to support the Employer's assertion. I find, however, a remand on this issue is unnecessary.

The evidence shows that the Employer and its clients each handle essential aspects of employees' terms and conditions of employment. The Employer handles matters such as

² In their briefs, the Employer and Petitioner assert the parties stipulated that there was also no joint employer relationship between the Employer and Colt Insulation, Inc. or between the Employer and Versitech, Inc. Those stipulations are not contained in the hearing record; however, as described herein, I find it unnecessary to decide whether any joint employer relationship existed between the Employer and any of its clients on a since-completed project. The Petitioner further claims in its brief that the parties stipulated that the unit would be a "single-employer unit." I read Petitioner's statement to mean "sole" employer, as opposed to a "single" employer relationship where two nominally separate entities are treated as a single integrated enterprise. See *NLRB v. Browning Ferris Industries* above. Regardless, the record does not contain such a stipulation, and I therefore do not consider Petitioner's claim.

recruitment, hiring, setting wage rates, and determining which projects employees are assigned to. The clients are responsible for the direct supervision of the employees and recording their hours worked. The evidence shows that the particular relationships between the Employer and each of its clients (Waco, Inc., Colt Insulation, Inc., and Versitech, Inc.) discussed at the hearing are consistent with the Employer's joint-employer business model. I acknowledge and agree that Board policy favors parties reaching stipulations to save time and expense, but I decline to accept a stipulation that appears contrary to the evidence in the hearing record.

Although I decline to accept a stipulation regarding the *absence* of a joint employer relationship between the Employer and its clients, I find it unnecessary to conclude whether, in fact, they were joint employers for the projects at Dickerson power plant, Morgantown power plant, or Dundalk high school. These projects are complete, and thus, it is unnecessary to decide whether the parties were joint employers on those jobs. In determining the appropriateness of the petition and the bargaining unit, the relevant inquiry is the jobs employees will be working on in the future and their terms and conditions of employment on those projects, as these are the subjects which the parties will be obligated to bargain should the unit employees select the Petitioner to represent them.³

In its brief, the Employer argues that the petition should be dismissed under *Oakwood Care Center*, 343 NLRB 659 (2004), because the Union did not name the Employer's clients in the amended petition. I find that the *Oakwood* decision does not require such a result in this case. In *Oakwood*, the Board held that petitions seeking bargaining units that combine employees who are solely employed by a user employer and employees who are jointly employed by the user employer and a supplier employer are multiemployer units, and may only

³ Because I find it unnecessary to decide if a joint-employer relationship existed between the Employer and Waco, Inc. on the completed project, there is no need to re-open the record to accept evidence or argument about whether there was such a relationship.

be appropriate with the consent of the parties. 343 NLRB at 659. The Board found that combining such employees into one unit contravenes Section 9(b) by requiring *different employers* to bargain together regarding employees in the same unit. (emphasis added) *Oakwood*, 343 NLRB at 663. At the outset, I find that the unit in this case does not violate the holding of *Oakwood* because the petition names only the Employer and not any of its clients. Thus, the Petitioner is not seeking to impose a bargaining obligation on different employers, and there is no requirement for any of the Employer's clients to consent.

The Employer, however, argues that the Board's ruling in *Oakwood* indicates that a petition naming only one employer of a joint-employer relationship is inappropriate and diminishes employees' Section 7 rights. *Oakwood*, 343 NLRB at 663. Commenting on what it characterized as dicta in *M.B. Sturgis*, 331 NLRB 1298 (2000), the *Oakwood* Board wrote that petitions naming only one joint employer "create additional bargaining difficulties for employees" explaining that "...a petition that names only the user employer potentially saddles the jointly employed employees with a representative that will be unable to bargain with the [supplier] employer that controls their wages." *Id.* at 663. It is somewhat of a paradox, then, that the Board's statements about dicta in *Sturgis* is, in fact, dicta in *Oakwood* because the issue before the Board in *Oakwood* was the propriety of a petition that named both joint employers, not one of them. Moreover, the Board in *Oakwood* did not overrule or modify any of its prior decisions holding that even where an employer does not exercise control over the entire employment relationship, its employees are still entitled to select a representative to bargain on their behalf regarding the working conditions that are within the employer's control. See *Volt*

Technical Corp., 232 NLRB 321 (1977); *All-Work, Inc.*, 193 NLRB 918, 919 (1971).⁴ See also, *People Care, Inc.*, 311 NLRB 1075, 1077 fn.1 (1993).

My conclusion here affords employees the greatest opportunity to exercise the rights guaranteed by Section 7 of the Act, specifically, by allowing the unit employees to determine for themselves whether they wish to select the Petitioner to represent them. Were I to conclude that *Oakwood* requires any petition to name both joint employers, the employees herein would effectively be denied any opportunity to exercise their statutory rights. The Employer receives little advance notice of when its clients will need employees, and those client projects typically are of relatively short duration.⁵ Even assuming a labor organization could file a petition simultaneously with the Employer securing the project from its client, it is unlikely that the Board would be able to conduct an election before the project was complete, let alone engage in any meaningful bargaining. Moreover, this futile process would have to be repeated for each of the Employer's clients, despite that the same employees of the Employer may immediately transition from Client A's jobsite to Client B's jobsite. The result would be a fleeting and ultimately illusory opportunity for the Employer's employees to exercise their rights to bargain collectively. In reality, it would leave them permanently unable to organize. Instead, by focusing on the employees' broader and ongoing relationship with the Employer, their Section 7 rights are not lost by focusing on the narrow and brief duration of each client assignment – rightly keeping the forest more prominent than its trees.

⁴ The Employer argues that there are no workers in the unit because the projects discussed in the record are winding down, and it currently has no other client projects in Maryland. I conclude this does not make the unit inappropriate. The Employer presented evidence that its jobs typically arise on short notice, so the absence of work today does not mean there will not be work in the foreseeable future. Moreover, the Employer presented no evidence that there has been a fundamental change in the nature of its operations, or that it was ceasing to look for future work in Maryland. *Fish Engineering & Construction*, 308 NLRB 836 (1992).

⁵ As noted above, the longest Employer project in evidence is five weeks, the average is two and one-half weeks, and the shortest is less than one day.

ELIGIBILITY FORMULA

In its brief, the Employer asserts that it is not an employer engaged in the building and construction industry because the North American Industry Classification (NAIC) system does not include “asbestos abatement services” or “asbestos abatement contractors” under the construction code, because the three job sites discussed in the record were not “construction sites,” and because the Employer does not control labor relations at its clients’ jobsites, citing *Carpenters Local 623 (Atlantic Exposition Services, Inc.)*, 335 NLRB 586 (2001).

That case was an unfair labor practice case alleging violations under Section 8(e) of the Act, which is material distinction here. The underlying policies and language of Section 8(e) and Section 8(f) are different. Section 8(f) regulates employers primarily engaged in the “building and construction industry” by permitting pre-hire agreements so the parties in this industry can minimize industrial strife by negotiating terms and conditions of employment in advance. Section 8(e), on the other hand, is not conditioned on the employer being primarily engaged in the construction industry; rather the employer must simply perform construction work, and its proviso applies to work at “the site of construction.” See *Carpenters Local 623*, 335 NLRB at 591 and cases cited therein.⁶

While the judge in *Carpenters Local 623* relied on NAIC codes in his determination of whether the employer was engaged in the construction industry, on appeal, the Board found it unnecessary to determine whether the employer was engaged in the construction industry. 335 NLRB at 586. *A fortiori*, the Board did not conclude that NAIC classifications are dispositive in

⁶ This distinction between Section 8(e) and 8(f) also means that it is unnecessary to determine whether unit employees perform work at “the site of construction” or whether the Employer controls labor relations at its clients’ jobsites. Moreover, the Board has not held that an employer must control *all* aspects of labor relations at its clients’ sites. The Board has expressly rejected this standard, and found it sufficient where an employer “has control over some of the most important aspects of the employer-employee relationship” including wage rates. *All-Work, Inc.*, 193 NLRB 918, 919 (1971). As discussed above, I find that the Employer does control significant terms and conditions of the unit employees’ employment.

determining whether an employer is engaged in the building and construction industry. Rather, the Board's decision in *U.S. Abatement, Inc.*, 303 NLRB 451, 451 fn.1, 456 (1991) holds that employers engaged in asbestos abatement work are employers primarily engaged in the construction industry within the meaning of Section 8(f), and based on that ruling and the record evidence in this case, I conclude that the Employer is an employer primarily engaged in the building and construction industry.⁷

The Board held in *Steiny & Co.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable to all construction industry elections unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB 1 (1999). Here, the Employer's unit employees are engaged in the construction industry and the parties did not stipulate that the *Daniel/Steiny* formula should not be applied. Accordingly, I find that the *Daniel/Steiny* formula, as set forth below, is that appropriate eligibility formula to be applied in this case.

The *Daniel/Steiny* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267

⁷ The Employer's brief appears to be the first instance where evidence of NAIC codes was raised. I need not consider whether evidence concerning NAIC codes should have been introduced into the record at the hearing, or whether it is appropriate to take administrative notice of NAIC codes. Assuming this evidence is properly part of the record, for the reasons stated herein I find NAIC codes are not controlling.

(1961), modified by 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

CONCLUSIONS AND FINDINGS

1. Except as noted herein, 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.
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. The Employer, a North Carolina corporation with an office and place of business in Charlotte, North Carolina, is a temporary staffing agency engaged in the business of environmental remediation, including asbestos remediation. During the past 12 months, a representative period, while performing the services described herein, the Employer has performed services valued in excess of \$50,000 in states other than the State of North Carolina. The parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of the Act. I further find that the Employer is primarily engaged in the building and construction industry.

6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁸

All full-time and regular part-time licensed or certified asbestos abatement employees, including employees performing asbestos abatement of mechanical systems, working in the State of Maryland of whom the Employer is an employer, excluding office clerical employees, managerial employees, professional employees, guards, and supervisors as defined in the Act.

I. 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 purposes of collective bargaining by the Construction and Master Laborers' Local Union 11, a/w Laborers' International Union of North America (LIUNA). The date, time, and manner 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 unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes, who have retained their status as strikers but who have been permanently replaced, as well as

⁸ As discussed herein, the Employer's business model (at least with respect to the unit employees) involves successive joint employer relationships with its clients. There is no suggestion that the Employer is, or has any intent, to perform asbestos abatement work itself as a sole employer. Therefore, my decision here does not implicate the Board's concerns in *Oakwood* where one group of employees has its terms set by A and another's by A/B. 343 NLRB at 662.

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 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.

Also eligible to vote are all employees in the unit if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters.

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 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election. To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before **June 27, 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 by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, 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 3 working days prior to 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 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

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, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: 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 close of business on **July 5, 2013** at 5 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.⁹ 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, select **File**

⁹ 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.

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.

(SEAL)

/s/ Wayne R. Gold
Wayne R. Gold, Regional Director
Bank of America Center -Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

Dated: June 20, 2013