

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

In the Matter of  
  
THE WATERBURY HOSPITAL  
  
Employer<sup>1</sup>  
  
and  
  
CONNECTICUT HEALTHCARE  
ASSOCIATES, NUHHCE, AFSCME,  
AFL-CIO  
  
Petitioner

Case 01-RC-105956

**DECISION AND DIRECTION OF ELECTION**

This case arises out of a petition filed under Section 9(c) of the National Labor Relations Act, as amended (the Act). The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

Petitioner (the Union) seeks to represent a bargaining unit of technical employees employed by the Employer at its hospital facility located in Waterbury, Connecticut (the Hospital). The Hospital asserts that medical technologists (MTs) should be excluded from the unit as professional employees and that MT

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

team leaders should be excluded both as professionals and as statutory supervisors. The Union asserts that the MTs and MT team leaders should be included in the unit as non-supervisory technical employees. In the alternative, should I find that the MTs and MT team leaders are non-supervisory professionals, the Union seeks a *Sonotone* election<sup>2</sup> in which the MTs and MT team leaders would be permitted to vote whether or not they wish to be included in the unit of technical employees. Finally, the Employer asserts that four lead technologists in the Hospital's Radiology Department should be excluded from the unit as statutory supervisors, while the Union would include them as non-supervisory employees.

For the reasons set forth below, I find that the MTs and MT team leaders should be excluded from the unit as professional employees, and that it would not be appropriate to direct a *Sonotone* election at this time. Having determined that the MT team leaders should be excluded from the unit as professionals, I need not reach the issue of their supervisory status. I further find that because the Hospital has failed to meet its burden of establishing the supervisory status of the lead technologists in the Radiology Department, I shall include them in the unit.

I. **Professional status of the MTs and MT team leaders**

A. **Facts**

One of the Hospital's departments is a laboratory (lab), which performs diagnostic testing on human specimens, including blood, urine, serum, sputum, bodily secretions, and biopsied cells. The lab operates 24 hours per day, 365 days per year.

Anne Lemelin, who is the assistant director of the lab, reports to Director of Diagnostic Services Loraine Shea, an administrative director for various departments.<sup>3</sup> The lab also has a medical director, a pathologist or Ph.D. who ensures that the lab complies with applicable regulations.

The lab has four departments or areas: chemistry, microbiology, hematology, and blood bank/serology. Each of the four departments employs a team leader who is an MT. The lab employs about 45 or 46 MTs and six medical laboratory technicians (MLTs).<sup>4</sup> There are MTs employed in all four areas, while

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<sup>2</sup> *Sonotone Corp.*, 90 NLRB 1236 (1950).

<sup>3</sup> Lemelin provided the only testimony about the MTs and MT team leaders. The Union presented no witnesses at the hearing.

<sup>4</sup> There are four MLTs in the main lab and two part-time MLTs who work at a draw station where blood is drawn and some testing is done.

the MLTs at the main lab work only in hematology and chemistry. The lab also employs a fifth team leader and various MTs who work on the evening and night shifts. The team leader and MTs who work on the evening/night shift each work in two or three of the four areas.

MTs generally perform testing on human specimens for diagnostic or therapeutic reasons. The testing may be performed manually or may be performed using analyzers. All of the MTs must evaluate the integrity of the specimens they test, and determine whether the results make sense in light of the patient's documented conditions, whether quality control samples are in control, and whether there are performance issues with the instruments they use.

MTs in the chemistry department conduct various tests, including urinalysis, coagulation tests, and blood gas analyses. Some of the tests are automated, but there is also some manual testing performed with microscopes.

MTs in the hematology area perform blood tests to determine, for example, if a patient has leukemia or a parasitic disease. The tests they run include white cell counts, hemoglobin, hematocrit, and blood cell differentials. Some of the testing is manual. These MTs identify cells, and determine whether the value makes sense and whether additional testing or review by a pathologist is needed.

MTs in the blood bank/serology area identify and cross match blood and ensure that blood to be used for transfusion, surgery, or therapeutic reasons is compatible with the patient's blood. There may not be a perfect match for a patient's blood, so these MTs choose the blood type that is most compatible. These MTs make the initial judgment about compatibility on their own but may refer some samples to a pathologist for secondary approval.

MTs in the microbiology area grow specimens to identify bacterial infections, parasitic infections, fungal infections, or tuberculosis. Once they identify the source of an infection, they perform susceptibility testing to find the most appropriate antibiotic. This is one of the least automated departments.

MTs are required, pursuant to federal regulations, to have a bachelor's degree with a certain number of semester hours in various science courses.<sup>5</sup> MTs typically complete an accredited medical technology program. A certification from the American Society of Clinical Pathologists or a comparable certification is either required or preferred, depending on the department. New MTs are paired with another MT for about six months of training before they are deemed competent to work independently in all lab areas.

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<sup>5</sup> One MT who did not have a bachelors degree at the time these regulations went into effect in 1988 was "grandfathered in" based on her on-the-job training, but she now has a bachelor's degree.

MT team leaders are MTs by background and work as MTs, performing many of the same tests. They have additional years of lab experience compared to MTs and most of them have an additional certification or advanced degree beyond the MT certification, such as a certification in chemistry, blood bank, hematology, or microbiology. In addition to testing work, they create budgets, write procedures, participate in the purchase of new lab equipment, create training checklists for employees, and ensure that competency tests are performed and reviewed.

It appears that both parties agree that MLTs should be included in the unit. MLTs are required to have an associate's degree. The Hospital typically hires MLTs who have passed an MLT certification exam. Although MLTs perform many of the same tests performed by MTs, MLTs do not work in the microbiology or blood bank areas where much of the highly complex testing is performed. Nor do MLTs review tests from the previous day in an "exception" report to make sure that critical results were reported out correctly and that the lab has followed up on any testing that requires a recheck. MLTs are not responsible for secondary reviews of abnormal results or quality control. MLTs also do not make up periodic competency exams.

## **B. Analysis and Conclusion**

As noted above, the Union seeks to include the MTs and MT team leaders in the unit as technical employees, while the Hospital asserts that they must be excluded from the unit as professional employees.

Under Section 2(12) of the Act, in order to qualify as a professional, an employee must perform work of a predominantly intellectual and varied character, involving the consistent exercise of discretion and judgment. The work must be of such a character that the output produced cannot be standardized in relation to a given period of time, and it must require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. *Avco Corp.*, 313 NLRB 1357 (1994). The Act defines a professional employee in terms of the work performed rather than in terms of individual qualifications. Although educational background does not control, the Board examines educational background for the purpose of deciding whether the work of the group satisfies the "knowledge of an advanced type" requirement. If a group of employees consists primarily of individuals with professional degrees, the Board may presume that the work requires "knowledge of an advanced type." Conversely, if few in the group possess the appropriate degree, it follows that the work does not require the use of advanced knowledge. *Id.*

In *Group Health Assn.*, 317 NLRB 238 (1995). The Board found that, notwithstanding an increase in automation in the medical technology field, the work of medical technologists at that HMO, and of medical technologists in general, meets the professional requirements regarding the intellectual nature of the work, the need for discretion and independent judgment, and knowledge of an advanced type. The Board determined, therefore, to apply a rebuttable presumption in the future that medical technologists are professional employees under the Act. Any party seeking to rebut this presumption must carry the burden of establishing that the medical technologists in question do not engage in the duties customarily assigned to this classification of employees. *Id.* at 244.

The duties and qualifications of the Hospital's MTs are essentially the same as the medical technologists deemed professionals by the Board in *Group Health Assn.* The Union asserts that the Hospital's MTs are not professionals because the position only requires a bachelors degree rather than a prolonged course of specialized intellectual instruction in an institution of higher learning, and the majority of the MTs' time is spent utilizing mechanical devices to test samples that are reviewed by a pathologist. Because these factors were also true of the medical technologists found to be professionals in *Group Health Assn.*, they are insufficient to rebut the presumption.

The Union also asserts that MTs are not professionals because the duties of the MTs and MLTs overlap and that, although the MTs perform more sophisticated work, the duties of the two classifications are in essence the same. I find that, although there is some overlap in duties, the MTs perform additional duties not performed by MLTs that demonstrate their professional status. In this regard, only MTs and not MLTs work in the microbiology or blood bank areas where much of the highly complex testing is performed. MTs and MT team leaders, but not MLTs, review tests from the previous day in an "exception" report to make sure that critical results were reported out correctly and that the lab has followed up on any testing that requires a recheck. MTs and MT team leaders, but not MLTs, do a secondary review of abnormal results and quality control. MTs and MT team leaders in each area, but not MLTs, make up periodic competency exams. I find that these duties are predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment, and that the existence of some overlap in the duties of the two classifications is insufficient to rebut the presumption that medical technologists are professionals.

Having found that both MTs and MT team leaders should be excluded from the technical unit as professionals, I need not reach the issue of the supervisory status of the MT team leaders.

## **II. Appropriateness of a *Sonotone* election**

Section 9(b)(1) of the Act grants professional employees the right to decide by majority vote whether they wish to be included in a unit with nonprofessional employees. The Union asserts that, should I find that MTs and MT leaders are professionals, they should be permitted to vote whether or not they wish to be included in the technical unit by means of a *Sonotone* election, the procedure adopted by the Board to effectuate the purposes of Section 9(b)(1). Such an election would afford the MTs the options of being represented in the same unit as the technical employees, being represented in a separate unit of MTs, or remaining unrepresented.

I take administrative notice that the Hospital is an acute care hospital and therefore subject to the Board's Rulemaking establishing appropriate units in the health care industry. 29 C.F.R. §103.30; 284 NLRB 1579, 1597 (1989). Under the Rulemaking, there are only eight appropriate units in acute care hospitals, including a unit of all professionals, except for registered nurses and physicians, and a unit of all technical employees. The Rule also permits various combinations of those eight units if sought by a labor organization.

I take administrative notice that the Hospital employs other types of professionals in addition to MTs. As a result, a *Sonotone* election might result in a stand-alone unit of MTs, i.e., a subset of all professionals, which would clearly violate the Rulemaking. Moreover, *Pontiac Osteopathic Hospital*, 327 NLRB 1172 (1999) does not support the Union's claim that the Board will permit a unit of some but not all professionals. Accordingly, I decline to direct a *Sonotone* election at this time and under these circumstances.

## **III. Supervisory status of the Radiology Leads**

### **A. Facts**

The Hospital's Radiology Department provides imaging and therapeutic services in various modalities, including nuclear medicine, ultrasound, computerized tomography (CT), interventional radiology, diagnostic radiology, and mammography.

Director Juris Patrylak heads the Radiology Department. Patrylak reports to Director of Diagnostic Services Loraine Shea. The Radiology Department employs about 57 employees in the classifications of staff radiologic technologist, staff interventional technologist, ultra stenographer, staff CT technologist, and staff nuclear medicine technologist. The various technologists in the Radiology Department perform imaging studies as ordered by a physician. The Department operates 24 hours a day, and the technologists work in numerous shifts.

Four Radiology Leads (the leads) report to Patrylak and oversee the employees in their respective areas: a lead ultrasound technologist,<sup>6</sup> lead CT technologist, lead DX technologist,<sup>7</sup> and lead interventional radiology technologist. These positions were created in April 2012 as part of a reorganization of the Radiology Department.

The leads are working technologists who perform the same type of imaging studies as the technologists whom they oversee. They work during the day shift, and there are other shifts during which there are no leads. The leads are all registered and certified technologists who are usually more knowledgeable than the technologists in their respective areas. The leads train technologists in new procedures or techniques.

With respect to their role in hiring, Patrylak testified that the leads are part of the interview process for their area. Patrylak and the relevant lead give candidates a tour of their area. The leads make a recommendation to Patrylak as to who is the better candidate. The physician involved in that area also “takes a look at” the candidates and has the final say in hiring decisions. The Radiology Department has hired only one technologist since the lead position was created in April 2012, but the record does not reveal whether the lead’s recommendation was followed in that instance.

Patrylak testified that the leads assign cases to the technologists based on their work load. The leads are the “first pass” for vacation requests, which are handled in conjunction with Patrylak. The leads arrange schedules so there is adequate coverage for patient care. If a technologist calls in sick, the lead first tries to find a replacement within their unit. If they are unable to find a replacement, they contact Patrylak or the other leads to seek help from one of the other areas, as some of the technologists are trained in more than one area.

The leads prepare evaluations, and the Hospital submitted all of them into evidence.<sup>8</sup> At least one of the evaluations was prepared by the lead in consultation with Patrylak. Patrylak sat in on all the meetings at which the evaluations were presented to employees, because the leads are new. There is no evidence that the evaluations are tied to pay raises.<sup>9</sup>

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<sup>6</sup> The lead ultrasound technologist position is currently vacant and the Department has been unable to fill it due to a hiring freeze.

<sup>7</sup> It appears that the term “DX” refers to diagnostic radiology and nuclear medicine.

<sup>8</sup> There were no evaluations prepared by the lead interventional radiology technologist.

<sup>9</sup> Patrylak did not testify one way or the other on this point, but Lemelin, testifying about the role of the MT team leaders in performance evaluations, testified that performance reviews are not tied to pay raises at the Hospital.

Patrylak testified that all of the leads may discipline employees. In cases of severe misconduct, Patrylak and the lead would consult with the Hospital's Human Resources Department before issuing discipline. Three leads have not yet issued any discipline. The Hospital submitted into evidence four verbal warnings issued by lead DX technologist Robert Aviles. All four discipline forms were signed by both Patrylak and Aviles. In one case, a radiologist complained to Patrylak that a nuclear medicine technologist had failed to have images reviewed by a radiologist before the patient was discharged. Patrylak followed through with Aviles and the employee and collaborated with Aviles in preparing the discipline form. In two instances employees were given a verbal warning for failing to show up for work or call in. Patrylak attended one of the two disciplinary meetings. In the fourth case, a radiologist and an emergency room physician complained to Aviles about a poor image taken by a radiologic technologist. Aviles recommended the issuance of a verbal warning because the technologist had been counseled about the same issue before, and Patrylak attended the disciplinary meeting, although he did not view the images himself.

The leads and the technologists in the Radiology Department are all hourly workers. The leads earn about \$30 to \$35 per hour, while the technologists earn less than \$28 per hour. The leads were all sent to an eight-hour "management" seminar within the last year.

## **B. Analysis and Conclusion**

It is well-established that the burden of proof rests upon the party alleging that an individual is a supervisor. *Oakwood Healthcare Inc.*, 348 NLRB 686, 694 (2006); accord *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Oakwood Healthcare Inc.*, supra. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. *Id.*, at 688; *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995). The Board has found that whenever the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, supervisory status has not been established on the basis of that indicia. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Indeed, a lack of evidence is construed against the party asserting supervisory status. *The Wackenhut Corp.*, 345 NLRB 850, 854 (2005).

Based upon the foregoing and the record as a whole, I find that the Hospital has failed to satisfy its burden of establishing that the leads possess and

exercise supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the undisputed absence of any evidence that the leads have the authority, in the interest of the Employer, to transfer, suspend, lay off, recall, promote, discharge, or reward other employees, or to adjust their grievances, or to effectively recommend any of these actions using independent judgment. Thus, the only arguable basis for finding that the Leads are supervisors is their assignment and direction of work, and their involvement in hiring, evaluating, and disciplining employees.

### **1. Assigning and Directing Work**

The leads' assignment of cases to technologists based on their workload does not demonstrate supervisory authority, as the Board has held that assignments made solely to equalize the quantity of workloads are routine and do not require independent judgment. *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 9 (2006). Nor does the leads' role in arranging schedules or vacation time confer supervisory status, in the absence of any evidence as to the types of judgments they are required to make in doing so. As for the leads' role in finding replacements when employees call in sick, there is no evidence that the leads have the authority to order off-duty employees to fill a shift. Authority merely to request volunteers to fill a vacancy on a shift does not confer supervisory status. *Heritage Hall, E.P.I. Corp.* 333 NLRB 458, 459 (2001). Training employees, without more, does not establish supervisory status. *F.A. Bartlett Tree Expert Co., Inc.*; 325 NLRB 243, 243 fn. 1 (1997); *Sears Roebuck and Company*, 292 NLRB 753, 754 (1989). Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the leads either assign or responsibly direct other employees utilizing independent judgment to warrant the conclusion that they are supervisors under Section 2(11).

### **2. Hiring**

The radiology leads have no authority to hire on their own. Mere participation in the hiring process, absent authority to effectively recommend hire, is insufficient to establish supervisory authority. *North General Hospital*, 314 NLRB 14, 16 (1994). As for the leads' authority to effectively recommend the hire of employees, there is no evidence that, on the one occasion in which a lead participated in the hiring process, the lead's recommendation was followed. Further, where admitted supervisors participate in the interview process and thus independently assess the candidates' suitability, it cannot be said that the employees whose status is at issue have authority to effectively recommend hiring. *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1387 fn. 9 (1998). Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the leads involvement in the hiring process warrants the conclusion that they are supervisors under Section 2(11).

### **3. Evaluating**

Nor does the role of the radiology leads in completing performance evaluations establish their supervisory authority. Because Section 2(11) does not include authority to evaluate as a supervisory function, the Board has held that when an evaluation does not, by itself, affect the wages and/or job status of the employees being evaluated, the individuals performing such an evaluation will not be found to be statutory supervisors. *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002). Here, there is no evidence that the evaluations performed by the leads are linked to merit raises or have any other impact on the job status of the employees being evaluated. Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the leads involvement in the evaluation process warrants the conclusion that they are supervisors under Section 2(11).

### **4. Disciplining**

Finally, the Hospital has failed to meet its burden of establishing that the leads' role in the disciplinary process demonstrates that they are statutory supervisors. I note that three of the radiology leads have never issued any discipline. To the degree that one lead has participated in the disciplinary process and that other leads may do so in the future, it is well established that the exercise of disciplinary authority must lead to personnel action without independent investigation or review by other management personnel. *Franklin Home Health Agency, Id.* at 830. In the case of at least one of the verbal warnings issued by Aviles, the disciplinary process was clearly initiated and approved by Patrylak, who had himself received a complaint from a radiologist about a technologist's failure to have images reviewed by a radiologist before the patient was discharged. Nor does the record establish that any of the other warnings were issued without any independent investigation or review by Patrylak.

Further, the Board has held that verbal warnings, coachings, and reprimands are only forms of discipline if they lay a foundation for future disciplinary action against the employee. *Oak Park Nursing Care Center*, 351 NLRB 27 (2007), *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004), enf'd. in pertinent part 206 Fed Appx. 405 (6<sup>th</sup> Cir. 2006); *Progressive Transportation Services*, 340 NLRB 1044, 1046 fn. 7 (2003). Here, the Hospital has failed to establish that the verbal warnings in evidence in this case have any effect on the technologists' job status or tenure. Thus, there is no evidence that the Hospital maintains a progressive discipline system or that the leads or any higher level supervisors have ever actually relied on any previous verbal warning issued by a lead as a foundation for subsequent discipline under such a system. Nor do the discipline forms mention a consequence in the event of further violations. Cf. *Wedgewood Healthcare*, 267 NLRB 525, 526 (1983) and *Oak Park Nursing Care Center*, supra, in which warnings by LPNs contained

notations that the next violation would result in suspension or termination. Accordingly, I find that the Employer has failed to satisfy its burden of establishing that the leads involvement in the disciplinary process warrants the conclusion that they are supervisors under Section 2(11).

### **5. Secondary Indicia**

The Employer's reliance on certain secondary indicia of supervisory status cannot confer supervisory status on the leads in the absence of the primary indicia of supervisory status enunciated in Section 2(11) of the Act. See *Golden Crest*, supra, at n. 10; *DIRECTV*, supra, slip op. at 4; *Ken-Crest Services*, 335 NLRB 777, 779 (2001).

Accordingly, I find that 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 technical employees employed by the Employer at its Waterbury, Connecticut facility, but excluding the outreach technologist (med tech 2), per diem employees, guards, and professional employees and supervisors as defined in the Act.

### **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 **Connecticut Healthcare Associates, NUHHCE, AFSCME, 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.

### **Voting Eligibility**

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

### **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.). This list may initially be used by me to assist in determining whether there is an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before July 2, 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>10</sup> by mail, or by facsimile transmission at 617-565-6725. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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.

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<sup>10</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

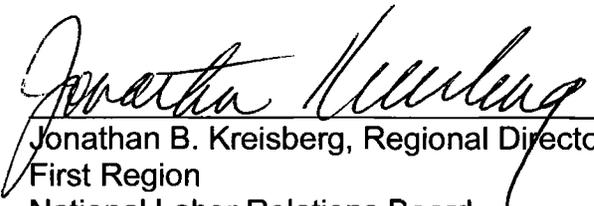
## Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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

**DATED:** June 25, 2013

  
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