

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

KING SOOPERS,

Employer,

and

Case 27-RC-104452

UNITED FOOD & COMMERCIAL  
WORKERS UNION, LOCAL NO. 7,<sup>1</sup>

Petitioner.

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**DECISION AND DIRECTION OF ELECTION**

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The Employer, King Soopers, owns and operates 134 retail grocery stores in Colorado and one in Wyoming. The Petitioner, United Food & Commercial Workers Union, Local No. 7 (Petitioner or Union), filed a petition on May 6, 2013 with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a single location unit of employees employed by the Employer at Store No. 135 located in Lafayette, Colorado.<sup>2</sup> On May 16, 2013, a hearing officer of

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<sup>1</sup> The Petitioner's name appears as amended at the hearing.

<sup>2</sup> The unit described in the petition included: "all employees actively engaged in the handling and selling of merchandise, including part-time workers who work regularly one (1) day or more a week, employed by Employer in the grocery store or stores owned or operated by the Employer at 480 U.S. Highway 289, Lafayette, CO 80026, specifically including the Starbucks Department;" and excluded: "store managers, first assistant managers, associate managers, office and clerical employees, meat department employees, delicatessen department employees, demonstrators, watchmen, guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended." Although the petitioned-for unit stated that the unit included "store or stores," the Petitioner clarified that it was seeking to represent employees at only one store, Store No. 135, located at 480 North Highway 287, Lafayette, Colorado.

the Board held a hearing on the issues raised by this petition. Thereafter, the parties timely filed briefs.

The issues to be resolved in this case relate to the appropriate scope and composition of the unit.<sup>3</sup> The Petitioner seeks only to represent employees at Store No. 135 located in Lafayette, Colorado. The Employer contends that the petitioned-for unit is not an appropriate unit unless it includes employees working in two additional nearby stores (Store No. 13 located in Louisville, Colorado, and Store No. 89 located in Broomfield, Colorado) because these three stores comprise a functionally-integrated geographic grouping used by the Employer for employee staffing purposes. The Employer refers to this three-store grouping as the “Louisville geographic area.” The parties also disagree on the unit placement of the Starbucks coffee shop employees. The Petitioner seeks their inclusion in its petitioned-for unit. The Employer, however, contends that the Starbucks coffee shop employees should be excluded from the bargaining unit because they share a community-of-interest with the delicatessen department employees whom the parties agree should be excluded from the bargaining unit.<sup>4</sup>

Petitioner asserts that the Employer has not rebutted the single-store presumption, and that the Starbucks employees share a sufficient community-of-interest

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<sup>3</sup> At the hearing, the parties stipulated that an appropriate unit should include the following classifications of retail employees: service manager; service clerks (without regard to the product they handle); courtesy clerks; teleshop clerks; fuel clerks; the grocery department, (including the grocery manager, the night crew foreman, and clerks on the night crew without regard to the product they handle); the produce manager; produce clerks; bakery manager; clerks; baker; cake decorator; pharmacy technologists; floral manager; and floral clerks. The parties also agreed that the exclusions from the unit as described in the petition are appropriate, except that the exclusion of “first assistant managers” should more appropriately be stated as “assistant managers.”

<sup>4</sup> The Starbucks coffee shop is alternatively referred to throughout the record as “Starbucks department” or the “coffee shop.” The record establishes that the Starbucks coffee shop employees are employed by the Employer and no party contends that the Starbucks Corporation is in any way involved in the employment of these employees. The Employer employs a coffee lead employee and about four coffee clerks in the Starbucks coffee shop.

with the other petitioned-for employees to warrant inclusion in the bargaining unit. The unit sought by the Petitioner has approximately 118 employees, including the five Starbucks coffee shop employees, while the unit the Employer urges would include approximately 292 employees.

I have considered the evidence and the arguments presented by the parties on each of these issues. As explained below, based on the record and relevant Board precedent, I have concluded that the single-store petitioned-for unit is appropriate, and that the Starbucks coffee shop employees share a sufficient community-of-interest with the other petitioned-for retail employees to warrant inclusion in the unit. Therefore, as set forth below, I shall direct an election in the single-store bargaining unit consisting of the Employer's employees at Lafayette, Colorado Store No. 135.

To provide a context for my discussion of those issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my determinations on the issues.

### **OVERVIEW OF EMPLOYER OPERATIONS**

The Employer has grouped its stores in Colorado and Wyoming into "bargaining units" and "geographical areas." The term "bargaining unit" in this context refers to a store or group of stores where at least some of the employees are already represented by the Petitioner or another labor organization.<sup>5</sup> The term "geographical area" is generally used to describe a certain store or group of stores where the Petitioner does not represent some or all of the Employer's employees.<sup>6</sup>

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<sup>5</sup> While the Petitioner represents the bulk of bargaining units at the Employer's stores, United Steelworkers also represents pharmacists at some of the Employer's Colorado and Wyoming stores.

<sup>6</sup>The terms "bargaining unit" and "geographic area" appear to have a specific meaning, but these terms were used somewhat interchangeably throughout the record.

The Employer's bargaining unit and geographical area groupings include: Boulder, Fort Collins, Greeley, Broomfield, Denver Metropolitan area, Evergreen, Conifer, Parker, Pueblo, Colorado Springs, Castle Rock, and Louisville. The Louisville geographical area (Louisville Area) is the only geographical area at issue in this matter. The Louisville Area encompasses Store No. 135 located in Lafayette (the petitioned-for store), Store No. 13 located in Louisville, and Store No. 89 located in Broomfield. The Employer's three stores in the Louisville Area each include a retail section, meat department, deli department, and coffee shop.

While Petitioner does not currently represent any employees at the petitioned-for Lafayette store, it does represent some of the employees at the other two Louisville Area stores. Specifically, Petitioner represents meat department, deli department, and the Starbucks coffee shop employees at Louisville Store No. 13. Petitioner also represents meat department employees at Broomfield Store No. 89.<sup>7</sup>

The Employer has a corporate office located in Denver, Colorado. The corporate office establishes corporation-wide employment, merchandizing, and marketing policies and procedures. The corporate office also selects all the merchandise vendors and establishes the merchandise distribution system. Each store places merchandise orders that are either delivered directly to the appropriate store or to a warehouse and then the store. These delivery processes are the same for all of the Employer's other stores in Colorado and Wyoming. There are some occasions when a store is short on product, so it attempts to "borrow" product from other stores in its respective bargaining

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<sup>7</sup> It is unclear from the record whether the employees at Store Nos. 13 and 89 are represented by Petitioner in single-store units or are combined with employees outside of the Louisville area.

unit or geographical area. The record does not reveal how often this occurs, or whether product is ever sought from outside of a geographical area or bargaining unit.

As discussed below, the Louisville Area stores interact with the Employer's corporate office in Denver on the same basis and in the same manner common to all of the Employer's stores in Colorado and Wyoming. This interaction includes personnel matters. In this regard, employee personnel files are maintained at the store where the employees work throughout their employment, but are permanently maintained at the corporate office once employment ends. The Employer also maintains corporate office personnel files containing certain employee documents, such as medical records. Grievance files are also maintained at the corporate office.

The record establishes that employees in all of the retail positions in the three Louisville Area stores perform the same functions as employees in those positions perform in every other store in Colorado and Wyoming. The job descriptions for the various retail classifications are established by the corporate office and are the same across all stores. Likewise, the Employer's employment policies and procedures apply to employees at all of its stores in Colorado and Wyoming. Among the stores in the Louisville Area, unrepresented employees in retail positions have the same rates of pay and same benefits as employees in those positions at the Employer's other unrepresented stores. All unrepresented employees, including office employees, have the same benefits administrator. Union represented employees' benefits are administered according to collective-bargaining agreements governing their terms and conditions of employment. The Employer adheres to the grievance and arbitration

procedures contained in the collective-bargaining agreements with the Petitioner or other unions and has a separate grievance procedure for all unrepresented employees.

The Employer's seniority system for the purpose of bumping and transfer rights is the same for all of its Colorado and Wyoming stores. An employee's seniority is determined by comparing employees at all stores in the same bargaining unit or geographical area. In particular, seniority for an employee in the petitioned-for Lafayette store is based on the employee's start date as compared with all employees in the same classification at the three Louisville Area stores. If an employee transfers into a different bargaining unit or geographical area, that employee initially loses his seniority date in the new unit or area, but the original seniority date is restored after the employee has worked more than 30 days in the new geographic grouping.

### **SCOPE OF BARGAINING UNIT ISSUE**

As noted, Petitioner maintains that the petitioned-for single-store unit for Lafayette Store No. 135 is an appropriate unit. The Employer contends that the single-store unit is not an appropriate unit because of its regional administrative grouping system, and that the smallest appropriate unit must include retail employees, excluding coffee shop employees, at all three Louisville Area stores, including Louisville Store No. 13 and Broomfield Store No. 89.

#### **A. Applicable Legal Principles**

The Board has consistently held that a single-facility unit is presumptively appropriate, "unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity." *Hilander Foods*, 348 NLRB 1200, 1200 (2006). "The burden of rebutting this presumption falls on the party arguing in favor of a multi-facility unit." *Id. Hilander Foods*, was cited affirmatively

by the Board in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) for the proposition that a single-facility unit is presumptively appropriate in the grocery industry. *Id.* at fn 16.

The Board in *Specialty Healthcare* also discussed at length the framework for analyzing the appropriateness of a petitioned-for unit:

The Act further declares in Section 9(b) that “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” The first and central right set forth in Section 7 of the Act is employees’ “right to self-organization.” As the Board has observed, “Section 9(b) of the Act directs the Board to make appropriate unit determinations which will ‘assure to employees the fullest freedom in exercising rights guaranteed by this Act.’ i.e., the rights of self-organization and collective bargaining.” *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966). [Footnote omitted.]

The Board has historically honored this statutory command by holding that the petitioner’s desire concerning the unit “is always a relevant consideration.” *Marks Oxygen Co.*, 147 NLRB 228, 229 (1964). See also, e.g., *Mc-Mor-Han Trucking, Co.*, 166 NLRB 700, 701 (1967), (reaffirming “polic[y] ... of recognizing the desires of petitioners as being a relevant consideration in the making of unit determinations”); *E.H. Koester Bakery Co.*, 136 NLRB 1006, 1012 (1962). Section 9(c)(5) of the Act provides that “the extent to which the employees have organized shall not be controlling.” But the Supreme Court has made clear that the extent of organization may be “consider[ed] ... as one factor” in determining if the proposed unit is an appropriate unit. *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 442 (1965). In *Metropolitan Life*, the Court made clear that “Congress intended to overrule Board decisions where the unit determined could *only* be supported on the basis of the extent of organization.” *Id.* at 441 (emphasis added). In other words, the Board cannot stop with the observation that the petitioner proposed the unit, but must proceed to determine, based on additional grounds (while still taking into account the petitioner’s preference), that the proposed unit is an appropriate unit. Thus, both before and after the adoption of the 9(c)(5) language in 1947, the Supreme Court had held, “[n]aturally the wishes of employees are a factor in a Board conclusion upon a unit.” *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 156 (1941).

Based on this framework, the Board held that where, as here, an employer contends that the smallest appropriate bargaining unit must include additional employees or classifications beyond those in the petitioned-for unit, the Board first assesses whether the petitioned-for unit is an appropriate bargaining unit by applying traditional community-of-interest principles. If the petitioned-for unit satisfies that standard, the burden is on the employer to demonstrate that the additional employees it seeks to include share an overwhelming community of interest with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude the employees” at issue from the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11-13.

While the Board has not discussed its *Specialty Healthcare* “overwhelming community-of-interest” analytical framework in a case involving a multi-location scope of unit determination, the Board’s reasoning is instructive in weighing the evidence and analyzing the issues presented herein.

As established in *Hilander Foods*, and the cases cited therein, the Board examines the following factors in determining whether a party has overcome the presumption that a single-facility unit is appropriate: “(1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions, and working conditions; (3) degree of employee interchange; (4) distance between locations; and (5) bargaining history, if any.” *Id.*

#### **B. Central Control over Operations and Local Autonomy**

Stephanie Bouknight is the Employer’s Manager of Employee Relations and works in the Employer’s labor relations department at the Employer’s corporate office, in

Denver, Colorado. Bouknight handles employment policies and procedures for all of the Employer's represented and unrepresented stores, including oversight of seniority applications, promotions, and permanent transfers.

The Employer's stores are organized into districts, which in turn are divided into bargaining units or geographical areas. The district that encompasses the Louisville Area stores is District 3. Richard Zwisler is the District 3 manager. District 3 encompasses Colorado stores in North Denver (from Arvada to Thornton), Northglenn, Boulder, Lafayette, Louisville, and Broomfield. Zwisler oversees stores that are grouped into both bargaining units and geographical areas. Ten of the stores in his district are organized by the Petitioner and ten are either non-union or have varying degrees of union organization. Zwisler primarily oversees the Employer's marketing and merchandising policies and procedures at the 20 stores in District 3, but he does have some involvement in employment matters such as higher level discipline.

Each store has a store manager who is responsible for administering the Employer's employment, merchandizing and marketing policies and procedures. The store managers for the three Louisville Area stores report directly to Zwisler.

Each store manager usually has two assistant managers, one for perishable goods and one for non-perishable goods. Each store also has several department managers who report to the assistant store managers. For instance, the deli, bakery, or meat department managers report to the perishable assistant store manager, and the grocery manager reports to the non-perishable assistant store manager.

The record contains some evidence regarding the division of authority among Bouknight, Zwisler, and the store managers. District Manager Zwisler is usually not

involved for low level discipline such as issuance of a conduct report, or verbal or written warning, but he is usually involved once discipline reaches the suspension level. In that regard, he is usually informed of the suspension and discusses it with the store manager. Zwisler also reviews terminations with the store managers for any employee with less than five years of service. In termination cases for individuals with five or more years of seniority, both Zwisler and corporate manager Bouknight are involved. This practice regarding terminations is the same for every store, whether union or non-union.

Local store managers have autonomy to determine whether department heads may issue low level employee discipline without approval of the store manager or assistant store managers. For example, some store managers may direct their department heads to discipline their employees up to a certain level, such as a written warning, but require that any discipline above that level must be reviewed with the store manager or assistant store manager. Other store managers may be more restrictive in the authority they grant their department heads.

Day-to-day shift and vacation scheduling is done within each store, without involvement from the district manager or corporate office. Employees' work schedules are determined within their store by a process called "Select-a-Shift," which is discussed in more detail below. Store managers also have and exercise the authority to fill temporary shifts as needed. For example, if a store in the Louisville Area needs temporary help due to leaves of absences, sick calls, or family emergencies, the store manager first looks in-store to find a replacement. If no in-store replacement is available, the store manager contacts another store in the Louisville Area to find a replacement. The store manager may also have to seek replacement help from other

bargaining units or geographical areas. Store managers do not have the authority to mandate that employees from other stores work as replacements, but they can require employees at their stores to work at another store. In the event that a disciplinary issue arises while an employee is assigned to another store, the store utilizing the temporary replacement contacts the store manager from the supplying store to inform that manager of the problem. Any disciplinary decision is handled by the manager from the supplying store. This process of finding temporary help occurs without involvement from the district manager or corporate office.

Store managers have autonomy to determine when a store or department is overstaffed and layoffs are necessary. When such situations arise, the store managers notify the corporate office that they need to lay off employees in a particular department or classification. The corporate office verifies the names of employees with the lowest seniority, and the store manager then informs those employees that they are being laid off and explains their layoff options. The layoff options include bumping rights within the bargaining unit or geographic area as discussed in more detail below.

Employees who need medical leave must provide their respective store manager with the appropriate paperwork from their doctor certifying the need for the leave. Finally, the record establishes that store managers are responsible for overseeing the assignment of work within their stores and determining the need for additional employees, or the need for layoffs.

#### *Analysis of Control and Local Autonomy Factor*

Although there is evidence that the Employer has some centralized control over all of its stores in Colorado and Wyoming, I find that there is significant evidence of local

autonomy at the store level for Lafayette Store No. 135 to warrant a finding that the single-facility unit is appropriate. The Employer's corporate office broadly oversees employment policies and procedures, as well as merchandizing and marketing across all of the Employer's stores, but day-to-day employee relations matters are handled at the store level, with input from the district manager or corporate office only for the highest discipline levels. While the store managers are required to follow proscribed reporting procedures depending on the length of service of the employee at issue, the Employer has not provided any evidence establishing that the store managers' suspension and termination decisions are routinely overturned by the district or corporate level managers.

The record also reflects that the individual store managers at Louisville Area stores have independent authority to determine personnel needs, make work assignments within their stores, make work assignments to other stores in their geographic grouping upon request, and to fill temporary vacancies, all without involvement from the district manager or corporate office. Likewise, the individual store managers determine when layoffs are necessary, and while they verify seniority with the corporate office before implementing the layoffs, there is no evidence that the corporate office is involved in the determination of when a layoff is necessary.

These facts regarding local autonomy are similar to the facts in *Hilander Foods*, 348 NLRB 1200, where the Board found that a petitioned-for single store was an appropriate unit based in part on the local autonomy factor. In *Hilander Foods*, the Employer had a similar management structure with a central corporate office and several levels of management within each store, and the store managers were vested

with similar authority to make assignments, set work and vacation schedules, and arrange temporary inter-store transfers. The Board held that evidence of centralization did not rebut the single-store presumption where there was significant local autonomy over labor relations matters. *Id.* at 1203. The Board emphasized that employees performed “day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems.” *Id.*

**C. Similarity of Employee Skills, Functions, and Working Conditions**

As noted, the record establishes that all of the retail positions in the Louisville Area stores perform all the same functions as employees in those positions in every other store in Colorado and Wyoming. The job descriptions for the various retail classifications are also the same across all stores. Among the stores in the Louisville Area, unrepresented employees in retail positions have the same rates of pay and same benefits as employees in those positions at the Employer’s other unrepresented stores.

While the Employer has administratively grouped stores into bargaining units and geographic areas for purposes of certain conditions of employment including integrated seniority, which facilitates the ability of employees to maximize the number of hours they can work in a given week and a store director’s ability to make temporary assignments to other stores in the group, disciplinary matters are handled on a specific store basis even if the employee was temporarily assigned to a different store. Similarly, the number of available vacation slots is determined by each store, and vacations are granted to employees based on the employee’s seniority within their store, not the entire geographical area.

*Analysis of Skills, Functions, and Working Conditions Factor*

With regard to the similarity of employee skills, functions, and terms and conditions, I find that this factor also weighs in favor of finding that the petitioned-for single-store unit constitutes an appropriate unit. The record establishes that employees across all of the Employer's Colorado and Wyoming stores are subject to the same general policies and procedures, thus for the most part, there are no terms and conditions of employment unique to the Louisville Area as apposed to the Employer's employees working at stores in other store groupings. Additionally, the job descriptions and rates of pay for various classifications at stores in the Louisville Area are the same as in all other stores. Finally, non-union employee benefits are uniform across all of the Employer's stores, not just those in the Louisville Area. These facts weigh against the Employer's proposed multi-facility unit. *See, e.g., Hilander Foods*, 348 NLRB at 1203 (although employees at the six stores in the proposed multi-facility unit had same skills and functions, they did not differ significantly from the employer's many other stores).

In reaching this conclusion, I am mindful that the Employer asserts that the smallest appropriate bargaining unit must comprise the three Louisville Area stores because it has a unique area-wide seniority system for the Louisville Area as well as its other administrative groups of stores. I find however, that the Employer has failed to meet its burden of establishing that application of its seniority system requires a finding that the three stores are so functionally integrated as to extinguish their separate store identities.

#### **D. Degree of Employee Interchange**

The Employer's method of scheduling employees in both union and non-union stores is called "Select-A-Shift." This computerized Select-A-Shift process is first performed within each store in the administrative grouping, and then opened to other employees in the grouping to fill any remaining shifts. After the store managers have determined the number and nature of available shifts based on projected customer traffic, employees in the store select their shifts in order of seniority. Full-time employees select shifts in their respective departments up to 40 hours per week. They also select two days off each week. After the full-time employees have selected their shifts, the part-time employees sign up for shifts in their respective stores. These employees may then sign up for additional shifts in other stores in their same bargaining unit or geographic area. If there are open shifts at other stores within the same geographic area, any employee not scheduled for 40 hours may sign up for the remaining shifts up to 40 total hours per week.

The record reflects that the need for temporary transfers among the Louisville Area stores can also occur when one store has an unexpected absence due to illness, in-store events, or other staffing shortages. In such circumstances, the affected store attempts to fill the shift in-store and if it cannot, the store will seek employees from other stores in the geographical area. The employee's hours for that covered shift are attributed to the receiving store. The record reflects that the amount of hours transferred from one store to another in the Louisville Area ranged from 1.9 hours to

43.8 hours per week during the past six months.<sup>8</sup> Such temporary transfers occurred between the Louisville Area stores during approximately nine different weeks within that time period. The record, however, does not reflect how many different employees were involved in such transfers. The record also establishes that stores occasionally “borrow” employees from outside their geographic area, and that some Louisville Area employees have worked outside their geographic area, the record does not establish how frequently this occurs.

The Employer utilizes a “Promotional Pool” process to effectuate permanent transfers between stores in the Louisville Area, and elsewhere. Twice a year, notices are posted in all the stores notifying employees that they have between January 1 and January 15, and July 1 and July 15, to make requests through the Employer’s computer system for promotions, or for advancement from part-time to full-time positions, within their bargaining unit or geographical area. After the application period closes, the Employer’s corporate office collects the employees’ requests for promotions and generates a report called a Promotional Pool for each of the bargaining units and geographical areas. The Promotional Pool lists are maintained at the corporate office and utilized during the applicable six-month period.

Each store submits a “needs list” to the corporate office on a weekly basis listing the positions that the store needs to fill. The corporate office reviews the Promotional

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<sup>8</sup> The Employer introduced Exhibit 9 in an attempt to quantify how many hours employees work in a store other than their own in the Louisville area. There is no record evidence as to the source of the information on Exhibit 9 except for District 3 Manager Zwisler’s testimony that he had the store secretaries look at the “numbers” for the previous six months. The record does not indicate whether the entries on Exhibit 9 represent the number of hours for one employee or multiple employees, and there is no explanation about the circumstances under which employees temporarily transferred from one store to another. Due to this lack of context, the data on Exhibit 9 is of little evidentiary value since the Employer did not introduce evidence about the percentage of temporary hours to the total number of hours worked. Similarly, there is insufficient evidence about the percentage of the total employees involved in temporary interchange.

Pool list for the corresponding bargaining unit or geographical area and selects the employee with the highest seniority out of the entire bargaining unit or geographical area and notifies the applicable store manager of the selection. The manager verifies that the employee is still interested in the requested position and implements the promotion accordingly. If no one has requested a position that becomes available, or the Promotional Pool list is exhausted, the Employer posts the position in the store with the opening. If there is no one to fill the position from that particular store, the position is posted for employees within the bargaining unit or geographical area. Finally, if no one from the bargaining unit or geographical area takes the position, the Employer can post the position for transfers outside the bargaining unit or geographical area, or hires a new employee off the street.

The record establishes that many employees from within the Louisville Area, and elsewhere requested positions in the Louisville Area from January 2011 to present, but that there have only been three employees promoted in the Louisville Area through the Promotional Pool process during that time period. Two of the three employees accepted new positions in their same store and a third employee from outside the Louisville Area accepted a position in the Louisville Area.

The record reflects that there were also approximately four lateral transfers to or from the Lafayette store in 2011, and that one or more such transfers has occurred in most years since 2004.

Aside from the temporary and permanent transfers described above, there is no evidence in the record that employees at the three stores within the Louisville Area

interact for events such as training or employee picnics, as those are held separately within each store.

*Analysis of Employee Interchange Factor*

The evidence does establish that there is some interchange among the Louisville Area stores relating to temporary employee transfers. In this regard, the Employer has devised its geographic Select-a-Shift system to assist the stores in filling temporary staffing needs, which also benefits part-time employees seeking to increase their work hours. The evidence also establishes that the Louisville Area stores with some regularity lend and borrow employees in emergency situations. The record, however, does not establish the number or portion of the unit that is engaged in such temporary transfers. The party arguing for a multi-facility unit bears the burden of presenting sufficient evidence, and “the presumption has not been rebutted where an employer's interchange data is represented in aggregate form rather than as a percentage of total employees.” *New Britain Transportation*, 330 NLRB 397, 398 (1999) (Citations omitted). See also, *Cargill, Inc.*, 336 NLRB 114, 1114 (2001) (instances of interchange between two facilities not supported by documentation or testimony regarding context surrounding the incidents and, therefore, have little evidentiary value). Moreover, I note that these instances of interchange are usually voluntary. Such voluntary interchange is given less weight in determining if employees from different locations share a common identity. *New Britain Transportation*, supra; *Red Lobster*, 300 NLRB 908, 911 (1990). Thus, even if it is determined that there is sufficient evidence to support the frequency and context of such temporary assignments to other stores in the Louisville area, such voluntary assignments are given less weight.

As to permanent transfers, I find that the number of recent permanent transfers among the Louisville area stores is too insignificant to support a finding of significant interchange. See, e.g., *Hilander Foods*, 348 NLRB at 1203 (8 or 9 permanent transfers over a three and a half year period among 550 employees constitutes little permanent interchange). In this regard, while the Employer asserts that its evidence was merely a sample of the permanent transfers involving stores in the Louisville geographic area, as noted above, the Employer bears the burden of proof and has not provided sufficient evidence to establish that there are significant permanent transfers within the Louisville Area to support a finding that the Employer's proposed multi-store unit is the smallest appropriate unit.

**E. Geographical Proximity of Stores in the Louisville Area**

The petitioned-for Lafayette Store No. 135 is located at 480 North Highway 287, Lafayette, Colorado. The Louisville Store No. 13 is located at 1375 South Boulder Road, Louisville, Colorado, which is about three miles southwest of the Lafayette store. The Broomfield Store No. 89 is located at 1150 Highway 287, Broomfield, Colorado, which is about three miles southeast of the Louisville store, and about five miles straight south of the Lafayette store.<sup>9</sup>

*Analysis of Geographic Proximity Factor*

The distance between the three stores in the Louisville Area weighs in favor of the Employer's proposed multi-store unit. The three Louisville Area stores are located only about three miles apart. Although it appears that there are additional stores

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<sup>9</sup> The record establishes that there is another store located in Broomfield, Colorado, Store No. 86. Store No. 86 is not part of the Employer's Louisville Area administrative grouping. Moreover, the evidence establishes that the Petitioner represents the retail clerks and deli department at Store No. 86 in a single unit. The Petitioner also represents the meat department at Store No. 86, as part of a larger Denver area meat department bargaining unit.

located in the same general vicinity as the Louisville Area stores such as Store No. 86 in Broomfield and Store No. 33 in Boulder, this does not diminish the fact that the three stores in the Louisville Area are located in close geographic proximity. See *ITT Continental Baking Co.*, 231 NLRB 326 (1977) (geographic proximity between two bakery thrift stores weighs in favor of two-store unit where the stores are approximately five miles apart and the next closest store is also about five miles away).

#### **F. Bargaining History**

The record reflects that there is no bargaining history between the parties for any employees at Lafayette Store No. 135, which is the petitioned-for unit. There is, however, some bargaining history between the parties for certain employees working at the Louisville Store No. 13 and the Broomfield Store No. 89, the other two stores that the Employer seeks to include in its proposed multi-location unit. Specifically, the Petitioner currently represents employees in the meat, deli, and Starbucks departments at the Louisville store.<sup>10</sup> Petitioner also represents the meat department at the Broomfield store.<sup>11</sup> The record does not establish whether these bargaining units resulted from Board unit determinations, election agreements, or voluntary recognition.

The record also establishes that the parties have bargaining relationships at other stores in Colorado and Wyoming, outside the Louisville Area. As noted, the Petitioner represents two units at Broomfield Store No. 86, which is part of a different administrative grouping. Petitioner also represents two multi-store bargaining units in the Colorado Springs area; one unit is an eight-store retail clerk unit and the second is

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<sup>10</sup> The record evidence is unclear as to whether this unit is a single location bargaining unit. However, the record is clear that the represented unit does not encompass all three stores in the Louisville Area.

<sup>11</sup> Similarly, the record is unclear as to whether the meat department at this Broomfield store is a single location unit, but it is clear that this unit is not coextensive with the three Louisville Area stores encompassed within the multi-location unit sought by the Employer.

an eight-store meat department unit. Similarly, Petitioner represents two multi-store units in the Pueblo, Colorado area. There is no evidence in the record as to whether the above-referenced bargaining units resulted from Board representation proceedings, stipulated elections, or voluntary recognition. Finally, the record establishes that in 2003 a Decision and Direction of Election issued in Case 27-RC-8272, directing an election in a two-store retail unit in Greeley, Colorado, based on a determination that the two stores in that administrative grouping were so functionally integrated as to warrant a determination that the two-store unit was the smallest appropriate unit.

*Analysis of Bargaining History Factor*

The Employer argues that the Region should take into consideration other multi-store bargaining units that are not involved in this proceeding. In *Cargill, Inc.*, 336 NLRB 1114 (2001), the Board stated that “the fact relevant to the analysis” is the bargaining history at the facilities involved in the proceeding. In *Cargill*, the Board found that bargaining history between the parties did not outweigh the single-facility presumption where there was no bargaining history at the two facilities at issue. The Board did not consider it significant that the parties had two-facility bargaining units at other facilities not involved in the proceeding. *Id.*

The evidence is undisputed that there is no bargaining history at the Lafayette store involved in this proceeding. Accordingly, I find that the lack of a bargaining history between the parties for employees is at most a neutral factor insofar as the petitioned-for Lafayette store is concerned. However, since the Employer is seeking a multi-location unit of the three stores that comprise the Louisville Area, the evidence does

establish that the Employer has already acquiesced in collective bargaining units that are not coextensive with the three stores in the Louisville Area.

**G. Conclusion and Finding on Scope of Unit Issue**

Based on the entire record, I find that the Employer has failed to meet its burden of establishing that the three stores comprising the Louisville Area are so functionally integrated as to require a finding that they have lost their separate store identities and, accordingly, comprise the smallest appropriate unit. As noted above, the Board has consistently held that a single-facility unit is presumptively appropriate, “unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *Hilander Foods*, supra. See also, *Specialty Healthcare* supra, at fn 9.

In determining that the Employer has not rebutted the single facility presumption, I have carefully considered the evidence and weighed the various factors that bear on this determination. Applying the traditional factors, I find that geographic proximity weighs in favor of the Employer’s proposed three-store unit. The evidence regarding geographic proximity, however, is insufficient to support a finding that the three Louisville Area stores are so functionally integrated that the Lafayette store does not also constitute “an appropriate unit.” In this regard, the degree of employee interchange established by the Employer and the geographic proximity are outweighed by the fact that the individual store managers are vested with a significant amount of local autonomy regarding day-to-day employment matters. The Employer has also not established that there is a similarity of employee skills, functions and working conditions

unique to the Louisville Area stores as opposed to all of the Employer's 135 stores. While there is no bargaining history involving the Lafayette store in the petitioned-for unit, I find that the bargaining history factor supports the single-store presumption because the Employer has already acquiesced to collective bargaining units that are not coextensive with the three stores in the Louisville Area. In these circumstances, I find that the Employer has failed to establish that the petitioned-for single-facility Lafayette unit has been merged into a more comprehensive unit that must include the two stores located in Louisville and Broomfield.

In reaching this determination, I am mindful the Employer urges me to find functional integration based on an earlier determination in the 2003 Decision and Direction of Election involving the Employer's Greeley, Colorado stores. I am not bound by this 2003 determination. The analytical landscape has changed since that case was decided.

While the Board has not yet discussed its *Specialty Healthcare* analytical framework in a reported multi-facility case, there is no basis to conclude that it would not apply that analysis. Accordingly, I find that even applying such an alternative analysis under the Board's *Specialty Healthcare* framework results in the same determination that the Employer has not met its burden of establishing that the single-store presumption has been rebutted. Thus, the Employer has failed to demonstrate that the additional employees it seeks to include share an "overwhelming community of interest" with the petitioned-for employees, such that there "is no legitimate basis upon which to exclude the employees" at issue. In this regard, the Lafayette store petitioned-for unit constitutes a readily-identifiable group of employees who share a community-of-interest

based on the fact that they work at a single geographic location, under separate supervision of a store manager vested with significant autonomy over their day-to-day terms and conditions of employment. Under this particular analysis, the Employer has not demonstrated that the employees at, Louisville Store No. 13 and Broomfield Store No. 89, the other two Louisville Area stores, share such an overwhelming community of interest with the Lafayette Store No. 135 employees such that the traditional factors “overlap almost completely.” *Id.* at 11-13.

### **UNIT PLACEMENT OF STARBUCKS COFFEE SHOP EMPLOYEES**

The Union seeks to represent a petitioned-for retail unit including employees in the Starbucks coffee shop, but excluding employees in the deli department and meat department. The Employer asserts that the petitioned-for unit is not appropriate because it includes the Starbucks employees along with the other retail employee unit sought by Petitioner. The Employer does not assert that the Starbucks employees do not share a community-of-interest with the retail employees, but instead asserts that because the Starbucks employees share a stronger community-of-interest with the deli department employees, whom the parties agree should be excluded from the bargaining unit, the Starbucks employees should also be excluded.<sup>12</sup>

#### **A. APPLICABLE LEGAL PRINCIPLES**

In *Specialty Healthcare*, supra, the Board, in examining a bargaining unit stated: “the Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board’s inquiry ends.” *Specialty Healthcare*, 367 NLRB at 8 (quoting *Wheeling Island Gaming, Inc.*, 355 NLRB No. 127, slip op. at 1 fn. 2 (2010)). In this first step, the

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<sup>12</sup>As discussed above, in many units where the Petitioner represents deli department employees, the Petitioner also represents Starbucks employees as part of the same unit, which is at odds with the position Petitioner is taking in this proceeding.

Board considers the petitioner's desires concerning the unit (the extent of organization) as a relevant consideration, but not a controlling one. The Board focuses on "whether the employees share a community of interest." *Id* at 9, (internal quotations omitted). To determine if there is a community of interest among employees in the petitioned-for unit, the Board examines the following:

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id*.

Based on these considerations, if the petitioned-for employees share a community of interest, the unit is appropriate and the inquiry ends. The unit sought need not be the *only* appropriate unit, or even the *most* appropriate unit; it must merely be *an* appropriate unit. *Id*. Thus, under *Specialty Healthcare*, in order to prevail on this issue, the Employer must show that "there is no legitimate basis upon which to exclude" the Starbucks department and that they must also be included in the unit in order for the unit to be an appropriate bargaining unit. *Id* at 11.

The Board made clear that the "overwhelming community of interest" examination in *Specialty Healthcare* applies when the Employer seeks a *larger* unit than the petitioned-for unit, where herein, the Employer is arguing for a *smaller* unit by contending that the Starbucks employees share such an overwhelming community of interest with excluded deli employees that the Starbucks employees must be excluded from the petitioned-for unit in order for it to be appropriate. While the Board has not

applied the “overwhelming community of interest” examination in these circumstances, its *Specialty Healthcare* analysis is nonetheless instructive.

## **B. RELEVANT FACTS**

All employees in the petitioned-for unit, in both retail classifications and the Starbucks coffee shop work within the confines of the Lafayette store. The coffee shop is located near the entrance of the store and the deli department is located nearby on the same side of the store. The Starbucks coffee shop is organized administratively as part of the deli department. The Starbucks lead clerk and coffee clerks are directly supervised by the deli department manager. Department heads report to either of two assistant store managers, one who oversees perishable goods and one who oversees non-perishable goods. The record does not establish whether the deli department manager reports to the perishable or non-perishable assistant manager.

Store employees are allowed to transfer into the Starbucks department from other departments. In this regard, at least one employee has transferred to Starbucks from the meat department, and another employee has transferred from the deli department. The record reflects, however, that the coffee shop employees must be certified to work at the Starbucks counter. This certification process includes completing 40 hours of work in the coffee shop. In addition to the five Starbucks clerks, the deli manager and one deli clerk have also obtained their Starbucks certifications. Other retail clerks outside of the deli department were previously certified, but they have lost their certifications because they have not worked at the Starbucks counter for at

least one eight-hour shift during a three-month time period, as required by Starbucks to maintain certification.

The Starbucks employees work in the coffee shop and sell coffee beverages and related products. The coffee shop does not offer other non-Starbucks products, such as store deli products for sale at the coffee counter. However, customers are allowed to purchase other store items at the coffee shop when purchasing Starbucks products. Deli employees are assigned to provide Starbucks counter coverage during breaks and lunches, particularly to allow the Starbucks evening employees to take their breaks. If the deli employees covering for breaks are certified by Starbucks, they can cover the whole coffee counter. If they are not certified, they just stand at the Starbucks counter and tell customers when the Starbucks employees will be back.

There is no evidence that any Starbucks employees currently work in the deli section or cover when deli employees take their breaks. There is evidence that some time ago, a deli employee transferred to a Starbucks position and was frequently asked to work in the deli, but this has not occurred for over a year. While there is no evidence the special certification is required for deli employees, they are specifically trained to operate slicers and receive specialized computer training for processing deli items, which includes learning the product codes for packaged goods to order items they prepare for customers. When an employee transfers from the deli department to Starbucks the employee retains his deli department seniority.

The record is replete with evidence that Starbucks counter employees regularly assist in other store departments on a daily basis, including help with tasks like bagging groceries. Such requests for assistance from Starbucks counter employees are

routinely made by a store manager, head clerk, or so-called “desk operator.” Calls can be placed directly to the Starbucks counter to request the assistance of a specific employee, but sometimes the entire Starbucks department is paged to assist elsewhere in the store retail operations. There is no evidence that deli employees or meat department employees are similarly called out of their department to assist elsewhere in the store.

Starbucks employees are also occasionally asked to perform “scan outs.” A scan out is when an employee goes around the store to see if there are any empty spots on the shelves. One person does this for the perimeter of the store and another person does this in the aisles of the store. It is not clear which specific classification of employee normally performs this task, but it appears to be a retail function. Once the scan out is completed, the Starbucks clerk reports the results to front end head clerk or to upper management.

There are different pay scales within the store based on the department in which an employee works. The Starbucks employees are paid on the deli department pay scale. The wage rates within the entire store range from \$7.54 to \$17.31, and the highest pay rate a deli department or Starbucks employee can achieve is \$14.92.

### **C. ANALYSIS OF UNIT PLACEMENT ISSUE**

As an initial matter, I find that the Starbucks employees at the Lafayette store are a readily identifiable classification of employees that are distinct from the deli employees. First, although the Starbucks employees are administratively under the deli department, they are trained to perform a completely separate function than the deli department employees, namely to prepare coffee and related beverages, and work in a

specific section of the store that is separate from the deli department. The evidence also establishes that there are separate schedules for the Starbucks counter and deli section. Second, while the Starbucks employees are overseen by the deli manager, no party asserts, or presented evidence that, the deli manager possesses Section 2(11) authority. In this regard, the parties stipulated that the various retail department managers do not possess such authority. The next higher authority in the store is an assistant manager, which oversees numerous areas in the store. Thus, there are various lines of supervision within the retail classifications themselves, which no party argues prohibits the classifications from being combined into one unit. Even assuming that there is common supervision specific to the administrative unit called the deli department, this does not negate the separate identity of the Starbucks employees as a readily identifiable classification.

Turning to the traditional community-of-interest analysis, I find that the record establishes that the Starbucks employees share a community of interest with retail employees in the same store. The Employer does not seem to dispute this. The Starbucks employees work in the same location as retail employees and have many opportunities for contact. Although the Starbucks employees are on a different pay scale as retail classifications, the range between the lowest wage rate and the highest wage rate on all pay scales is roughly ten dollars. Also, the Starbucks employees have the same benefits as retail classifications, and all employees in the store. Finally, there is evidence of some functional integration and employee interchange. Starbucks employees can check out customers purchasing other store items at the coffee counter. Additionally, on a daily basis the Starbucks employees are asked to help bag groceries,

which is a function normally performed by the retail classification of courtesy clerk. In these circumstances, the Starbucks employees have a sufficient community-of-interest with the retail employees to constitute an appropriate unit.

While the Employer asserts that the Starbucks employees share a community of interest with the deli department employees, this is true for many of the same reasons that the Starbucks employees share a community-of-interest with the other retail employees. The Starbucks employees and deli employees are located close to each other in the store and have opportunity for contact. The Starbucks employees and deli employees have the same pay scale and enjoy the same benefits, as do all non-union employees. There is also evidence that two deli employees are certified to work in Starbucks, and fill in for employees' breaks. Beyond filling in for breaks, it is not apparent that deli employees regularly cover Starbucks shifts or have other work-related contacts. For all these reasons the Starbucks employees do share a community-of-interest with the deli employees.

However, it is not sufficient for the Employer to show that there may be more than one appropriate unit configuration. It is well settled that a petitioned-for unit need not be the only appropriate unit, or even the most appropriate unit; it need only be *an* appropriate unit. *Specialty Healthcare*, 357 NLRB at 9. In this case, the fact that Starbucks employees also share a community of interest with the deli employees does not diminish the fact that the petitioned-for unit is also an appropriate unit based on the strong community-of-interest the Starbucks employees share with other retail employees.

To the extent that the Employer may seek to apply the *Specialty Healthcare* “overwhelming community of interest” test in this case, although the Board has not applied it in circumstances where the Employer seeks to diminish the petitioned-for unit, I find that the Employer has not established that the community-of-interest shared by the deli department employees is more overwhelming than that shared between the Starbucks and front end retail employees. In order to establish an overwhelming community of interest between Starbucks and deli employees, the Employer must show that in applying the traditional community-of-interest factors to these groups of employees the factors “overlap almost completely.” *Id.* Although the deli employees do cover breaks in the Starbucks department, there is no evidence that the interchange flows the other way and that Starbucks employees temporarily work in the deli for any appreciable amount of time. This may be due to the fact that the deli department requires specific training on slicers and with computer codes that the Starbucks employees do not necessarily have. It is also evident that the deli employees and the Starbucks employees have separate functions. The Starbucks department employees’ main function is to serve coffee beverages and related products, although they can check out customers with other products. The deli department employees operate slicer machines and produce and package deli products for sale in that department. There is no evidence that the deli employees check out customers. Because the deli department functions and Starbucks functions do not significantly overlap, the employees in those departments do not share an “overwhelming community of interest” so that one group must be excluded from the unit along with the other.

I find that the Starbucks employees share a community of interest with the retail employees in the petitioned-for unit. The fact that the Starbucks employees also share a community of interest with deli employees does not diminish the fact that the petitioned-for unit is an appropriate unit. Therefore, I find that the Starbucks employees should not be excluded from the petitioned-for unit.

### **CONCLUSIONS AND FINDINGS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. Specifically, I find that the Employer is a Kansas corporation with multiple facilities and places of business in Colorado, where it is engaged in the business of operating retail grocery stores.
3. During the past twelve months, a representative period, the Employer, in conducting its retail grocery operations, has derived gross revenues in excess of \$500,000 and purchased and received at its Colorado facilities goods valued in excess of \$50,000 directly from points outside of Colorado.
4. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. 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.
6. 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:

**INCLUDED:** All full-time and regular part-time<sup>13</sup> retail employees actively engaged in the handling and selling of merchandise, including: service manager; service clerks (without regard to the product they handle); courtesy clerks; teleshop clerks; fuel clerks; the grocery department, which includes

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<sup>13</sup> The Petitioner petitioned for part-time workers "who work regularly one (1) day or more a week". This description of part-time employee is in the unit description on the petition, but the Employer did not state its position on the issue and no evidence was offered on the matter. It cannot be ascertained the number of hours that are required under the petitioned-for description for a regular part-time employee. I find that there is no basis to deviate from the Board's *Davison-Paxon* formula for eligibility of regular part-time employees. In the absence of express agreement by the parties to a different formula, or any evidence on the matter, this is the appropriate formula to determine eligibility. *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1978).

the grocery manager, the night crew foreman, and clerks on the night crew (without regard to the product they handle); the produce manager; produce clerks; bakery manager; clerks; bakers; cake decorators; pharmacy technologists; floral manager; floral clerks; coffee leads and coffee clerks employed by Employer in Store #135 located at 480 North Highway 287, Lafayette, Colorado.

**EXCLUDED:** All store managers, assistant managers, associate managers, meat department employees, delicatessen employees, demonstrators, watchmen, professional employees, office clerical employees, guards, and supervisors as defined by the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by:

#### **UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL NO. 7**

The date, time, and place (or dates, times, and places) of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Direction of Election.

### **VOTING ELIGIBILITY**

Eligible to vote in the election are those in the unit as described above who were employed by the Employer during the payroll period ending immediately preceding 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 a strike who have retained their status as strikers but who have been permanently replaced, as well

as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) employees engaged in a strike who have been discharged for cause since the commencement of that strike and who have not been rehired or reinstated before the election date; (3) and employees engaged in an economic strike which commenced 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 seven (7) days from the date of this Direction of Election, 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, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Towers, 600 Seventeenth Street,

Denver, Colorado 80202-5433 on or before **July 18, 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 electronic filing through the Agency's website, **www.nlr.gov**,<sup>14</sup> by mail, by hand or courier delivery<sup>14</sup> or by facsimile transmission at (303) 844-6249. The burden of establishing timely filing and receipt of the list will continue to be placed on the sending party.

Since the list is to be made available to all parties to the election, please furnish a total of two (2) copies of the list, unless the list is submitted by facsimile or electronically, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **NOTICE OF POSTING OBLIGATIONS**

According to the Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to 12:01 a.m. 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) of the Board's Rules and Regulations requires an employer to notify the Board at least five (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.

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<sup>14</sup> To file the list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5 p.m. EDT on **July 25, 2013**. *The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>15</sup> but may not be filed by facsimile.<sup>16</sup>*

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.

Dated at Denver, Colorado this 11th day of July, 2013.

/s/Wanda Pate Jones  
Wanda Pate Jones  
Regional Director  
National Labor Relations Board, Region 27  
600 Seventeenth Street  
700 North Tower, Dominion Towers  
Denver, Colorado 80202-5433

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<sup>15</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select **E-File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The process is similar to the process for described above for electronically filing the eligibility list, except on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

<sup>16</sup> 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 utilized in filing the request with the Board.