

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

AMERICOLD LOGISTICS, LLC<sup>1</sup>

Employer

and

Case 04-RD-109029

DAVID ROJAS II

Petitioner

and

TEAMSTERS LOCAL UNION NO. 429<sup>2</sup>

Union Involved

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

Voluntary recognition of a union as the representative for a unit of employees bars the filing of a representation petition for a period of not less than six and not more than 12 months from the time the parties begin negotiating a contract. The precise length of the bar is determined by whether there has been a reasonable period for bargaining.

In this case, the Petitioner, David Rojas II, filed a decertification petition more than seven months after the onset of negotiations and more than 12 months after the date of voluntary recognition. The Union, Teamsters Local 429, contends that the petition is barred because the parties have not had a reasonable chance to bargain a contract. The Petitioner and the Employer, Americold Logistics, contend that in the circumstances of this case, there has been a reasonable period for bargaining, and in any case, a recognition bar should never extend more than 12 months.

I find that there has been a reasonable opportunity to bargain, because the negotiations have not involved complicated issues and the parties do not appear to be near agreement despite having had 10 bargaining sessions in more than seven months. Moreover, the petition was filed

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

<sup>2</sup> The Union Involved's name appears as amended at the hearing. For convenience, this decision will refer to the Union Involved as the "Union."

more than 12 months after recognition was granted. Accordingly, I find that there is no bar to processing the petition, and I shall direct an election.

## **I. THE RECOGNITION BAR DOCTRINE**

Lawful voluntary recognition based on a demonstration of majority support entitles a union to a reasonable time for bargaining without challenge to its continued majority status. *Keller Plastics Eastern, Inc.*, 157 NLRB 583, 597 (1966). Once rightfully established, a bargaining relationship “must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed.” *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705 (1944). No petition can be filed raising a question concerning representation until the recognized union has been given a reasonable chance to “prove its mettle” in negotiations so that when its representative status is questioned, employees can make an informed choice about whether they wish to retain it as their representative. *Lee Lumber and Building Material Corp.*, 334 NLRB 399, 405 (2001), *enfd.* 310 F.3d 209 (D.C. Cir. 2002).

In *Lamons Gasket Co.*, 357 NLRB No. 72 (2011), slip op. at 10, the Board set parameters for determining the length of the reasonable period for bargaining following voluntary recognition. The Board decided that this period would be “no less than 6 months after the parties’ first bargaining session and no more than 1 year.” In determining whether a reasonable period has elapsed, the Board indicated it would apply the same five-factor analysis set out in *Lee Lumber*, *supra*, for use in cases involving Board-ordered bargaining following the commission of unfair labor practices. The five factors are: “(1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties’ bargaining process; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse.” *Lamons Gasket Co.*, *supra*, slip op. at 10, fn. 34. The burden is on the party asserting a bar to show that further bargaining should be required. *Lamons Gasket Co.*, *supra*, slip op. at 10.

## **II. FACTS**

The Employer operates temperature-controlled warehouses at a number of locations throughout the United States, including a facility in Leesport, Pennsylvania. Employees at some of the Employer’s facilities are represented by affiliates of the Teamsters Union. The Employer and the Teamsters International Union have developed a model contract which can be used to facilitate initial bargaining at locations where employees become represented by the Teamsters.

On July 8, 2012, the Employer recognized the Union as the representative for the roughly 60 warehouse associates working at the Leesport facility. Recognition was granted after a card check in which the Union demonstrated majority status.<sup>3</sup>

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<sup>3</sup> No party contends that recognition was improperly granted.

Union representatives met with employees on July 14 to begin formulating contract proposals. By letter dated July 26, Union Business Agent Kevin Bolig requested the Employer to provide information needed to begin bargaining by August 13. The Employer provided the information between August 14 and August 31.

Bolig held a second meeting with unit employees on September 15 to finish preparing the Union's proposals. On October 4, he asked the Employer to begin bargaining, proposing dates for negotiations between October 31 and November 8. The Employer's chief negotiator, Michael Nelson, countered by suggesting that the parties meet on November 13, 14, and 15. Bolig responded that he was not available on November 13 and had limited availability on November 14. He proposed starting negotiations on November 27, 28, and 29. The two sides eventually agreed to begin bargaining on December 4, 5, and 6.

Each side presented initial proposals on December 4. Both sets of proposals were based primarily on the model Teamsters contract. By the end of the session on December 6, the parties had reached agreement on the language of 17 of the 32 sections contained in the model agreement and portions of an 18<sup>th</sup> section. The December meetings generally lasted from about 8 a.m. to 4 p.m., as did most of the parties' subsequent sessions. At the conclusion of the December 6 meeting, the parties made arrangements to meet again from January 29 through 31. They did not set earlier dates because of Nelson's schedule.

The January sessions were rescheduled to February 18, 19, and 20 because Nelson had a family emergency. Bolig cancelled the February 18 meeting at the request of the employees on his bargaining committee. At the sessions on February 19 and 20, the parties reached agreement on seven additional sections of the contract.

The parties agreed to resume bargaining on April 15, 16, and 17. Again, earlier dates were not available due to Nelson's schedule. At these sessions, the parties reached agreement on the remaining non-economic provisions of the contract. They also made proposals and reached agreement on some economic issues. At the conclusion of the meeting on April 17, they agreed to meet again on June 5. Nelson's schedule once again acted as an impediment to an earlier date.

The parties met on June 5 without reaching agreement on any additional issues and set July 18 as the date for their next meeting. The July 18 meeting ran for only half a day because the Union's employee negotiator needed to leave early. The delay in meeting between June 5 and July 18 was attributable mostly to Bolig's unavailability for three weeks in late June for medical reasons. The decertification petition was filed on July 18. Another meeting was set for August 22. Both parties were unavailable for portions of the period between July 18 and August 22.

Beginning with the April sessions, the parties' discussions have primarily focused on five disputed economic issues – overtime, vacations, holidays, health insurance, and wages. They have not been able to reach final agreement on any of these subjects, as discussed below.

### *Overtime*

The disagreement concerns whether employees should be paid double time if they work more than a certain number of hours in a week. In its initial December 4 proposal, the Union asked that employees receive double time after 50 hours of work in a week. On February 19, it modified this stance to request double time after 56 weekly hours, and it has not since changed this proposal.

Throughout bargaining, the Employer has refused to agree to any double time provision. Rather, the Employer has consistently proposed that all hours over 40 per week be paid at one-and-a-half times an employee's hourly rate.

### *Vacations*

Both parties began bargaining by agreeing that employees should receive 40 hours of paid vacation after one year of service, 80 hours after two years, 120 hours after five years, and 160 hours after 15 years. They disagreed as to employees with even greater seniority; the Union requested 200 hours of vacation for employees with more than 20 years of service, while the Employer would not agree to any additional vacation.

The parties also disagreed over which employees would be eligible for vacation. The Union initially proposed that any employee who had worked more than 1040 hours in the preceding year would receive the full allotment of vacation, while employees with fewer hours would be credited with 1/12<sup>th</sup> of their vacation for each month in which they worked more than 86 hours. The Employer proposed requiring employees to work more than 1900 hours in the preceding year to be entitled to full vacation and to require employees with fewer annual hours to work 158 hours in a month to receive credit for 1/12<sup>th</sup> of their vacation.

The parties gradually modified their positions over the course of the April and June sessions with the Employer offering, and the Union accepting, 200 hours of vacation for employees with more than 30 years of service. The Union also gradually altered its position on the number of hours required for vacation eligibility, finally adopting the Employer's proposals of 1,900 hours in a year and 158 hours in a month at the session on July 18. The Union insisted, however, that time spent on workers' compensation leave be counted as time worked for purposes of vacation eligibility, a position the Employer was unwilling to accept.

On July 18, the Employer modified its position, abandoning its earlier proposals on vacation eligibility and amounts in favor of a contractual provision which would simply state that unit employees were to receive whatever vacation benefits the Employer's non-unit employees earned. Since the record does not indicate the vacation benefits earned by non-unit employees, it is impossible to say how this compares to earlier Employer offers.

### *Holidays*

The Union's December 4 proposals called for 10 paid holidays and sought to have employees who normally work 10-hour days paid for 10 hours if a holiday falls on a day on

which they are not scheduled to work. The Employer offered seven holidays and eight hours pay for all employees not scheduled to work a holiday.

The Union eventually dropped its request that certain employees receive 10 hours pay for holidays which fall on their days off and agreed to accept seven holidays if employees were given one additional day as a personal day and if the Employer agreed to grandfather employees who were currently receiving more than seven holidays. The Employer agreed to grant one personal day, but refused to grandfather employees receiving more than seven holidays. As of the conclusion of the July 18 session, the only issue separating the parties in this area was the question of whether employees currently receiving more than seven holidays would continue to be granted that benefit.

### *Health insurance*

Both sides have agreed throughout bargaining that unit employees should continue to receive the same health insurance coverage as non-unit employees; the sticking point has concerned the amount that unit employees should pay in co-premiums. The Employer has insisted on requiring unit employees to pay the same co-premiums paid by non-unit employees, currently about 35 to 40 percent of premiums. The Union began bargaining demanding that unit employees pay no co-premiums, but repeatedly modified its position at the April bargaining session, first offering to have unit employees pay 10 percent, then 20 percent, and finally 25 percent of premiums. The Union has not altered its stance since that date. Thus, since April 17, the Union has demanded a 25 percent co-premium cap, while the Employer has insisted on a contractual provision stating that unit employees will pay whatever co-premiums non-unit employees pay.<sup>4</sup>

### *Wages*

The Employer's Leesport employees currently earn between \$14.28 and \$18 per hour depending on their classification. The Employer has proposed a wage scale which would reduce the rates assigned to each classification. Employees currently earning more than the assigned rates (over scale employees) would continue to be paid at their current rate, but would receive future wage increases as a lump-sum payment rather than an increase in their hourly rates. The Employer's first wage proposal called for \$.20 per hour increases in the scale rates in each year of a five-year contract with over scale employees receiving 50 percent of the increase amount as a lump sum.<sup>5</sup> By the end of the last session on July 18, the Employer had upped its offer to \$.25 per hour increases in the first three years of a five-year contract, \$.30 per hour increases in the

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<sup>4</sup> The Employer has collective-bargaining agreements at other locations which include provisions allowing covered employees to receive the same insurance benefits as unrepresented employees but with co-premium caps of about 20 to 30 percent. According to Nelson, the Employer has avoided including caps in contracts covering employees organized in the recent past.

<sup>5</sup> A \$.20 per hour increase would, assuming a 40-hour workweek, increase an employee's gross earnings by \$8 per week or \$416 per year. Under the Employer's initial proposal, over scale employees would have received 50 percent of the \$416 increase as a single lump-sum payment of \$208.

last two years of the contract, and yearly lump-sum payments for over scale employees equal to 80 percent of the amount of the increases.

Throughout bargaining, the Union has proposed a three-year agreement rather than a five-year agreement and has rejected the Employer's attempt to reduce the wage scale. The Union initially asked for \$.90 per hour increases in each year of a three-year contract with the increases added to existing hourly rates. By July 18, it had reduced its demands and was seeking increases of \$.45 per hour in each year of a three-year deal.

The parties are also at loggerheads over the issue of shift differentials. The Employer has consistently proposed a \$.25 per hour differential for second-shift and third-shift hours. The Union is willing to agree to a \$.25 per hour differential for second-shift hours, but wants a \$.50 per hour differential for hours worked on the third shift.

Neither party claims that bargaining is currently at impasse. Union representative Bolig testified that the parties would most likely be able to reach agreement on a contract in one or two more bargaining sessions. Employer representative Nelson testified that they were "awful close" to impasse.

### **III. ANALYSIS**

As discussed above, following voluntary recognition a union's status is immune from challenge during the first six months following the start of negotiations. Challenges are permitted during the period between six and 12 months after the onset of negotiations, but only after a reasonable period for bargaining has elapsed. The question of whether there has been a reasonable period for bargaining is determined by application of the five-factor *Lee Lumber* test. *Lamons Gasket Co.*, supra, 357 NLRB No. 72, slip op. at 10.

Although the Union was recognized as the representative for Leesport employees on July 8, 2012, bargaining for a contract did not begin until December 4, 2012. The petition was filed on July 18, 2013, more than seven months following the start of bargaining. Since the petition was filed more than six months after bargaining commenced, the Union's representative status is not automatically immune from challenge. The question therefore is whether, applying the *Lee Lumber* factors, a reasonable period for bargaining has elapsed. If the parties have had a reasonable opportunity to conclude their negotiations, then the Petitioner is entitled to challenge the Union's status. If, on the other hand, there has not been a reasonable period for bargaining, the petition must be dismissed. As set forth above, the *Lee Lumber* factors are: "(1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining process; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse." *Lamons Gasket Co.*, supra, slip op. at 10, fn. 14, citing *Lee Lumber & Building Materials Corp.*, 334 NLRB 399, 402 (2001). I will discuss how each of these factors applies.

*Whether the parties are bargaining for an initial contract*

In *Lee Lumber*, supra, at 403, the Board noted that initial bargaining is likely to take longer than bargaining for a successor agreement for several reasons: it sometimes occurs after an acrimonious organizing campaign; it can involve inexperienced negotiators; and it generally requires parties to establish basic bargaining procedures and core terms of employment. As a consequence, initial contract bargaining is normally a factor that weighs against finding that a reasonable time has elapsed. The parties here are bargaining an initial contract.

This case does not, however, fit the typical profile of initial contract negotiations as discussed in *Lee Lumber*. Since the Employer voluntarily recognized the Union, there was no acrimonious organizing effort leaving an atmosphere of hard feelings likely to inhibit progress in negotiations. Both the Employer and Union chief negotiators are experienced at collective bargaining. And, perhaps most significantly, the parties worked from the model contract created by the Employer and the Teamsters International Union and were not required to create basic contract terms and language from scratch. In short, although the parties are negotiating a first agreement, some of the factors which normally extend the duration of negotiations are not present.

Nonetheless, as in virtually all recognition-bar cases, the parties were bargaining for an initial contract. They had not previously negotiated with each other and did not have an established relationship. Despite working from the model agreement, the parties needed a number of sessions to work out contract language and were not able to agree on all of the contract's non-economic terms until sometime in April 2013. The parties have also had some difficulty settling on the framework for certain economic terms such as wages and health insurance. On balance, I find that this factor supports finding that a reasonable time for bargaining has not elapsed, although not as strongly as might be the case in differing circumstances.

*Complexity of the issues and the procedures for bargaining*

As the Union concedes in its post-hearing brief, the bargaining in this case has not been particularly complex. None of the issues are unusual or difficult to comprehend, and the parties have worked from the model contract in drafting appropriate language. Further, they appear to have used standard negotiating procedures and have not adopted a bargaining process likely to slow negotiations.

The Union contends that some of the bargaining delay was caused by its desire to involve employees in the process. On two occasions prior to the start of bargaining, the Union met with unit employees to secure their assistance in formulating proposals, which may have delayed its request for negotiations. The Union also asked to cancel one session in February and truncate a second session on July 18 so that employees could be present during bargaining.

At most, however, the participation of employees in these negotiations has been limited and does not appear to have significantly complicated bargaining. This is not a case such as *MGM Grand Hotel*, 329 NLRB 464 (1999), in which the parties adopted a complex bargaining

procedure to maximize employee participation in setting terms of employment. In this case, the issues and procedures are not complex, and this factor therefore weighs in favor of finding that the parties have had a reasonable time to bargain an agreement.

*Passage of time and number of bargaining sessions*

The parties have held 10 bargaining sessions, and all but one of the sessions lasted for a full day. Over the course of the 10 sessions, they reached agreement on most elements of a contract and have made multiple proposals in most of the areas where they have been unable to agree. The last two or three sessions have been devoted almost entirely to the five remaining issues which separate the parties. Thus, there have been enough sessions to allow the parties to fully explore all aspects of a potential agreement. There has also been sufficient bargaining to give employees a reasonable opportunity to observe the Union in action and to make an informed decision about whether they wish to continue with Union representation.

As both the Employer and the Petitioner point out in their briefs, the Board took pains in *Lamons Gasket* to make clear that it was not equating "the processes of voluntary recognition and certification following a Board conducted election." *Lamons Gasket*, supra, at 10. The representative status of a union certified pursuant to a Board election cannot be challenged for a year from the date of certification.<sup>6</sup> Where the start of bargaining is delayed, the possibility exists for a recognition bar which could extend well beyond a year following recognition and which would effectively grant a voluntarily recognized union greater rights than it would have achieved through Board certification. This would, in my view, be an anomalous result.

It is true that a literal application of the *Lamons Gasket* framework allows for this possibility because the recognition bar established in that case does not begin to run until the parties actually start bargaining. In contrast, the bar created by a union victory in a Board-conducted election dates from the time of certification.

At the very least, however, the amount of time elapsed since the date of recognition should be considered in analyzing the portion of the five-part test dealing with the passage of time and number of bargaining sessions. Absent special circumstances, a year from the date of recognition should be sufficient time to bargain a contract, and the passage of more than a year from the time of recognition in this case is a strong indication that negotiations have been given a reasonable time to succeed.

The Union contends that bargaining has been unreasonably delayed as a result of scheduling problems attributable to Employer chief negotiator Michael Nelson. According to the Union, these scheduling issues have "marred the bargaining process with substantial delay and disruption" and undermine the argument that a reasonable period of time had passed at the time the petition was filed. There are two problems with this argument.

First, the delays in bargaining are not attributable solely to the Employer. Several meetings were delayed because of Nelson's scheduling issues and a family emergency. But the

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<sup>6</sup> *Ray Brooks v. NLRB*, 348 U.S. 96 (1954).

Union also caused some delays. The Union waited three weeks following recognition before requesting information from the Employer. Although all of the information was provided by August 31, 2012, the Union did not contact the Employer to request bargaining until October 4, at which point it proposed meeting nearly a month later on October 31. When the Employer countered by suggesting November 13 as the date to begin negotiations, the Union indicated that it was not available. The Union subsequently cancelled a session on February 18, and was unavailable for a significant portion of the time between June 5 and July 18 when there was no bargaining. In short, while the Employer bears significant responsibility for bargaining delays, the Union also bears some responsibility.

More importantly, the scheduling problems highlighted by the Union have not prevented the parties from fully exploring the possibilities for reaching agreement. As noted above, the Employer and the Union have agreed on most provisions of a contract and have had an opportunity to make proposals and counterproposals in those areas where they have not been able to reach agreement. There has been enough time to bargain an agreement. Thus, this factor strongly supports a finding that there has been a reasonable time for bargaining.

*Progress in negotiations and proximity to agreement*

Where the parties have made considerable progress, are close to reaching an agreement, and appear likely to conclude a contract in the near future, this factor supports a finding that a reasonable time for bargaining has not passed. If, on the other hand, parties have bargained for at least six months and made progress but are not close to reaching agreement, then giving them slightly more time is unlikely to enable them to reach agreement on a contract and this factor will weigh in favor of deciding that a reasonable time to negotiate has elapsed. *Lee Lumber & Building Materials Corp.*, supra, at 404-405. This case fits into the second category.

Although the Employer and Union have made considerable progress in bargaining and resolved most of their issues, several key issues remain, and their inability to reach agreement on some of these issues turns on fundamental differences about how the subjects should be handled. The Union seeks increases in employee wage rates, a cap on health insurance co-premiums, a separate third-shift differential, and double time for certain overtime hours. The Employer proposes lump-sum payments rather than wage increases for most employees and is unwilling to agree to co-premium caps, double time, or a third-shift differential. Additionally, the Employer currently seeks to give unit employees the same vacation benefits as non-unit employees while the Union's vacation proposals are not tied to non-unit employees. Although each side has modified its positions on some of these issues at recent sessions, neither side has been willing to abandon its framework for their resolution.

As of the date the petition was filed, no breakthrough appeared imminent, and the prospects for a speedy resolution to the parties' negotiations seemed dim. In short, the parties have engaged in extensive negotiations and made considerable progress but do not appear close to agreement. This factor favors finding that a reasonable time for bargaining has elapsed.

### *Impasse*

An impasse in bargaining indicates that further progress is unlikely and supports a finding that parties have had a reasonable time to negotiate an agreement. The absence of impasse, in contrast, allows for the possibility of further progress and suggests that parties should be given additional time. *Lee Lumber & Building Materials Corp.*, supra, at 404.

The Employer and the Union agree that bargaining was not at impasse when the petition was filed. As a consequence, this factor tends to support a finding that a reasonable time for bargaining has not passed. However, the significance of this factor is somewhat diminished by the fact that the parties have focused solely on the five remaining issues since their sessions in April and did not reach final agreement on any of these matters. The parties' positions have not been immutable, but such movement as has occurred has not brought them significantly closer to agreement. The absence of deadlock leaves open some chance for agreement, but the possibility for a breakthrough appeared remote as of the time the petition was filed.

#### **A. Conclusion**

To summarize, three of the *Lee Lumber* factors – complexity of negotiations/processes, passage of time/number of sessions, and proximity to agreement - support finding that a reasonable time for bargaining had elapsed at the time the petition here was filed. Two factors – initial contract bargaining and absence of impasse – weigh in favor of a conclusion that bargaining should be given more of a chance to succeed before the Union's representative status is put into question. But, the significance of both of the factors favoring a bar is somewhat diminished in the context of this case. Moreover, a finding in favor of the Union would result in a recognition bar of a longer duration than the one-year certification-bar period. On balance, I find that the evidence tilts strongly in favor of finding that the parties have had a sufficient opportunity to bargain, and the Union has clearly not met its burden to show that additional bargaining should be required. I shall therefore process the petition and direct an election.

## **IV. CONCLUSIONS AND FINDINGS**

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union Involved is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse associates employed by the Employer in Leesport, Pennsylvania including maintenance, warehouse and sanitation associates, **excluding** all office clerical associates, confidential associates and guards and supervisors as defined in the Act.<sup>7</sup>

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Teamsters Local Union No. 429**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the 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 were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

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

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list

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<sup>7</sup> The parties stipulated to this unit.

of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Friday, August 30, 2013**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of three (3) copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

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

## **VI. RIGHT TO REQUEST REVIEW**

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

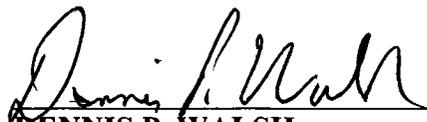
Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Friday, September 6,**

**2013, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.<sup>8</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.

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

Signed: August 23, 2013

at Philadelphia, PA



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**DENNIS P. WALSH**

Regional Director, Region Four  
National Labor Relations Board

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<sup>8</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 that utilized in filing the request with the Board.