

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

R & R PROPERTY MANAGEMENT GROUP, LLC

Employer

and

Case 06-RC-110910

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 668**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer is a service corporation engaged in property maintenance at a single jobsite in Beaver, Pennsylvania, where it employs six employees. The Petitioner, Service Employees International Union, Local 668, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full time and regular part time maintenance employees, including the head grounds employee, employed at the Employer's Van Buren Homes, Beaver, Pennsylvania jobsite, and excluding all office clerical employees, and guards, professional employees and supervisors as defined in the Act, and all other employees.¹ A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the inclusion in the unit of three employees, Mike Edmiston (the alleged head grounds employee), Randy Ramsey, and Dustin Winkle, and also disagree concerning the alleged supervisory status of Project

¹ The unit is described as amended at the hearing.

Manager Tom Shearer. The parties are in agreement as to the unit eligibility of maintenance employees David Gosseck and Todd Richards.

The Employer disagrees that Edmiston is the head grounds employee. Rather, the Employer asserts that Edmiston, Ramsey and Winkle are all members of the grounds crew and all three employees are either independent contractors or seasonal employees. Although the Employer contends that all three of these employees should be excluded, the Employer alternately asserts that if Edmiston is included in the unit, Ramsey and Winkle should also be included. The Employer further contends, contrary to the Petitioner, that Shearer is not a supervisor and should be deemed an eligible voter in any election to be directed.

The Petitioner contends that Shearer is a supervisor within the meaning of Section 2(11) of the Act as he has, inter alia, the authority to hire employees and to responsibly direct their work. The Petitioner further contends that Edmiston is a regular full-time employee and should be included in the proposed bargaining unit while Ramsey and Winkle are casual or temporary employees who should be excluded from the unit.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that none of the employees at issue are independent contractors and that the maintenance employees and the grounds crew comprise an appropriate unit for the election to be directed herein. I have also concluded that Ramsey and Winkle are temporary seasonal employees who should not be included with the bargaining unit of regular employees. I have further concluded that Edmiston is not a seasonal employee but a regular full-time employee and that he thus should be included in the petitioned-for unit. However, I have not concluded that Edmiston is the “head grounds employee” as there is no evidence that such a position exists and, more importantly, any resolution as to his precise title is neither necessary nor dispositive to my determination of Edmiston’s status as a member of the appropriate bargaining unit.² Finally, I have determined that Shearer possesses supervisory

² I note that neither party contends that Edmiston is a supervisor within the meaning of the Act or that he possesses any special status in the Employer’s organization.

indicia within the meaning of Section 2(11) of the Act and thus I will exclude him from the bargaining unit.

Accordingly, I have directed an election in a unit that consists of approximately three employees.

To provide a context for my discussion of the 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 conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer is a Florida corporation with its headquarters in Altamonte Springs, Florida, and its sole worksite located at the Van Buren Homes, Inc. housing cooperative ("Van Buren") in Beaver, Pennsylvania. At this location, the Employer is contracted to provide interior and exterior maintenance to Van Buren's grounds and facilities. At the time of the hearing, the Employer employed six employees: Project Manager Thomas Shearer, and employees David Gosseck, Todd Richards, Mike Edmiston, Randy Ramsey, and Dustin Winkle.

The Employer was formed in 2011 when it received the contract for year-round general maintenance and grounds keeping of the approximately 400 housing units located on 66 acres that comprise Van Buren.³ Van Buren is governed by a Board of Directors which is composed of a number of its shareholders (residents/owners). Prior to the Employer's involvement, Van Buren employed its own maintenance staff which consisted of at least four full-time employees. Gosseck and Richards appear to be the only current employees of the Employer who were also employed by Van Buren.

The overall operations of the Employer are the responsibility of its manager Nathan Roesling, who is also involved in other business ventures and divides his time between various endeavors in both Pennsylvania and Florida. Reporting directly to Roesling is Van Buren

³ The record does not indicate the term of the Employer's contract other than it apparently began in late 2011.

Project Manager Thomas Shearer who began working at the Van Buren site when the Employer took over the maintenance work.⁴ Roesling regards Shearer as his on-site leader and facilitator of corporate policies and information. Reporting to Shearer are all five of the current employees.

II. FINDINGS OF FACT

Shearer is the Project Manager at Van Buren.⁵ He began to work there when the Employer contracted for the maintenance work but there is some indication that he may have been previously employed in another capacity by Roesling. Roesling considers him the on-site lead employee. Roesling asserted that Shearer has no authority to hire, fire, or discipline employees as he reserves that authority for himself, and is involved in the day-to-day affairs at Van Buren although the record indicates that he divides his time between other business ventures in both locally and in the State of Florida. He is constantly available to Shearer by telephone and the men speak several times a day. Shearer and Roesling share an office that contains two desks in the maintenance building where the time clock used by the other employees is located. Some employee personnel records are maintained in the office and some are kept in Florida.

Shearer has day-to-day contact with the employees. He gives them their work orders for each day. The employees request time off from and call off work to Shearer. Shearer provides the employees with any paperwork that needs to be signed for the Employer. Shearer is responsible for training the employees in the Employer's methods and he inspects their work. He also verbally comments on their work, both complementing and criticizing their efforts. Shearer has sent employees home early if there is no work to be done or during inclement weather.

⁴ The record does not specify if Shearer has been employed by another Roesling-affiliated entity, as opposed to the Employer, prior to early 2012. The record does reveal an instance of the transfer of employees among Roesling enterprises as an unidentified employee from another Roesling entity worked at the Van Buren jobsite mowing the grass early in 2013. Further, one of the employees testified that Roesling and Shearer came to Van Buren "together."

⁵ Shearer did not testify at the hearing.

The maintenance employees telephone Shearer many times throughout the day as they start and complete each work order so that there is an accurate record of their time used for their tasks. Additionally, all employees, except Ramsey and Winkle, fill out a daily log sheet which Shearer collects and faxes to Roesling's main office in Florida. Shearer collects the employees' time cards and distributes paychecks to the employees. Shearer provides input into the evaluation of employees since Roesling is not on site to observe the employees. Shearer signs the written annual evaluations as "supervisor." Shearer also discusses the evaluations with employees and tells them how he rated them and why.

Shearer does not punch the time clock in the maintenance building but reports in via the computer in his office. He has an email address within the Employer's electronic mail system and an Employer-provided cell phone. Shearer's rate of pay is more than \$7.00 per hour more than the next highest paid employee and it appears that he is a salaried employee, rather than hourly. He works from 8:00 a.m. to 5:00 p.m., but could stay longer, depending on the needs of the property. In this respect, the record does not reveal if he is paid overtime. He receives similar benefits to those given the maintenance employees. He wears golf shirts with the Employer's logo on them but not a uniform. Shearer sometimes leaves the property during the work day but the record does not reveal his activities during those times.

Shearer is responsible for communications with the shareholders on behalf of the Employer. He collects the work requests which he allocates to the maintenance employees. There is no evidence in the record that Shearer performs work orders or any type of maintenance work. He spends the majority of his time in his office.

Gosseck and Richards primarily perform interior maintenance work. The record reveals that they spend 90% of their work time inside the housing units performing various tasks that are considered to be Van Buren's responsibility, as opposed to that of the shareholders. These apparently include routine scheduled maintenance (such as to windows, doors, and roofing) as well as emergency repairs to the mechanical systems of the buildings, including the plumbing, electrical and heating systems. They also perform minor maintenance and repairs such as

fixing leaky faucets, unclogging drains, and repairing running toilets. The Employer's work does not include items which would be classified as capital improvements, painting or redecorating the interior spaces, or any issue which is attributed to an action of the shareholder. Van Buren also subcontracts specialized items, such as pest control, with other service providers. As noted above, both Gosseck and Richards were employed at Van Buren for many years prior to the advent of the Employer at the site.

Both Gosseck and Richards are paid hourly; Gosseck earns \$15.59 per hour but Richards' wage rate is unknown. They generally work 8:30 a.m. to 5:00 p.m., Monday through Friday. They are both on-call for emergencies during the evenings and on weekends. Gosseck and Richards rotate the on-call duty and share an Employer-provided cell phone for this purpose. They receive overtime for emergency calls, and get a two hour minimum for these call outs. If an emergency call is received, Gosseck or Richards call Shearer, who makes the decision during that phone call whether the call should be answered immediately or postponed until the next scheduled regular workday. If they are authorized by Shearer to take the call, Gosseck and Richards must call Shearer again after the work is concluded. Gosseck and Richards receive certain fringe benefits, including health insurance, vacation, sick days, and some holidays.

At the beginning of each regular workday, Gosseck and Richards meet with Shearer who provides them with "work orders" for the day. Work orders are for requested jobs which are generated by the shareholders and forwarded to Shearer.⁶ Gosseck and Richards call Shearer as they finish each order and are starting on the next one. The men also complete a daily log which states what they did and how long it took. They leave the log each day in their individually identified mailboxes which are located on a table outside of Shearer's office. If a shareholder directly requests an additional service from Gosseck or Richards that is not on a

⁶ The record does not reveal Shearer's role, if any, in assessing the appropriateness of these work requests from the shareholders to be performed by the Employer under the contract.

work order, they are to direct the shareholder to call Shearer.⁷ Gosseck and Richards wear uniforms that are supplied by the Employer under a contract which dates back to the time when they were Van Buren employees and which is still in effect.

Edmiston, Ramsey, and Winkle primarily work on the exterior areas of the property. The Employer is responsible for general maintenance of the exterior of the buildings as well as the grounds, which include the immediate areas around the residences and the common areas, such as a picnic pavilion. These employees mow the grass, and trim and edge the landscaping. They mulch the beds and trim shrubs and trees. They cut and remove tree branches as necessary. The mowing work is weather-dependent and limited to the grass-growing season, from about late April or early May until late September, October, or early November. Other work performed by the Employer is not necessarily limited to the warmer months. The Employer is also responsible for snow removal and grounds crew employees have performed this work in the past.⁸ The Employer's employees also paint the outside areas of the shareholders' residences, including curbs, porches, windows, and other exterior areas.

Edmiston, Ramsey and Winkle work from 8:00 a.m. to 4:30 p.m. They are hourly paid and receive no benefits. These three employees each signed an agreement stating that they are independent contractors with the Employer. There is no evidence that any of these employees have any type of licensing, contractor's insurance, or equipment of their own that they utilize in the Employer's behalf. They are required, while working, to wear T-shirts and hats that are provided by the Employer and bear its logo.

⁷ In this regard, shortly before the hearing Gosseck was directed by Shearer to document the fact that he had lubricated a louver door at the request of a shareholder, because that work was not on the work order he was performing at the time. While it does not appear that this was considered a formal discipline, Gosseck said he had never had to do such a thing before.

⁸ The extent of this work is not clear as it is not specified if the Employer's work is limited to sidewalks and parking areas, or if the roads of the complex are maintained by Van Buren (through the Employer) or some local government entity.

Ramsey is presently a high school senior.⁹ He worked for the Employer full time during the summer of 2012. Ramsey was interviewed by Shearer in 2012, and Shearer hired him on the spot at the interview. No one else was present. The record reveals that in 2012, the Employer had 5 or 6 students working for the summer but the record does not reveal the hiring process for these individuals. After school started in the fall, Ramsey worked after school for a few hours for a couple of weeks but soon had to quit due to his school workload. The record indicates that there was at least one employee who continued to work into the snow removal season after Ramsey quit in 2012, until that employee quit to attend a trade school.

None of the 2012 employees returned to work with the Employer except Ramsey. In 2013, Ramsey contacted Shearer about summer work. During that phone call, Shearer told him that he could start to work for a few hours after school, but Ramsey could not recall if he actually did so.¹⁰ Ramsey was already working when Winkle was hired. Ramsey testified that he is capable of running a backhoe and tractor as he lives on a farm and learned to do so at home, but seldom operates this equipment at work. Winkle cannot operate this machinery.

Ramsey and Winkle receive \$8.00 per hour and have no benefits. If it rains, they do not work. Ramsey has cell phone numbers to contact Shearer and Roesling if necessary, and has been instructed to call Shearer if he needs a day off. Ramsey has never received a formal performance appraisal, or gotten a raise, formal discipline or any type of reward. He does not work overtime.

Shearer told Ramsey that Edmiston is in charge during his [Shearer's] absences. According to Ramsey, Shearer tells Edmiston what to do and Edmiston tells Ramsey and Winkle. Ramsey and Winkle usually work together. They rotate the mowing and weed whacking duties, but essentially mow and trim everything on the property each week. Shearer

⁹ The record reveals that Winkle is also a student.

¹⁰ No payroll records were produced by the Employer.

makes rounds once or twice a day to inspect their work. Ramsey does not complete a daily log although he sometimes does shareholder work orders, such as cutting a shrub or tree branch. Ramsey works with Edmiston only once or twice a week. According to Ramsey, Edmiston performs the more difficult projects, runs the heavy machinery, and maintains the Employer's equipment while he and Winkle cut grass.

Edmiston was referred to the Employer and Shearer contacted him to come in for an interview. At the interview, Shearer hired Edmiston and said he wanted Edmiston to oversee the grounds work and the high school kids. After the grass stopped growing for the season, Shearer said that Edmiston would do maintenance with Gosseck and Richards and plow snow during the winter. Shearer further told Edmiston that if his work was satisfactory, he would then be put on the payroll with benefits. According to Edmiston, he was never told that the Employer considered him to be a seasonal employee until the day before the instant hearing.¹¹ Gosseck testified that Shearer told him, in about late June, that Edmiston was going to be kept on after the grass mowing season to learn and assist him and Richards.

Edmiston's employment with the Employer began in late April 2013. Initially, he earned \$10.00 per hour. After 30 days of employment, he received a favorable verbal evaluation from Shearer and also received an increase of \$1.00 per hour. Shearer told Edmiston he would be evaluated again after 90 days but, as of the date of the hearing, that had not yet occurred. Edmiston does not receive benefits.

Edmiston worked on Memorial Day along with Gosseck and Richards, as that day is not considered a holiday for the Employer's regular employees. Ramsey and Winkle did not work on Memorial Day. Edmiston has worked during inclement weather when Ramsey and Winkle either did not come in or were sent home early. In addition to the grounds maintenance work, Edmiston maintains the Employer's equipment. He changes mower blades, repairs tires,

¹¹ When confronted on cross-examination with the Independent Contractor agreement that he had signed early in his employment, Edmiston testified that after he had worked for several weeks, Shearer told him he had to sign it in order to be paid for the time he had already worked. The agreements signed by all three grounds crew employees are included in the record as Employer exhibits 1(A), 1(B), and 1(C).

changes oil, does tune-ups, and performs other general service work in the garage. Edmiston estimated that he spends 25-30% of his time maintaining equipment. He has also done some exterior painting work (scraping, caulking and repainting) of porches and window sills. The record indicates that Gosseck and Richards also do this type of painting work but Ramsey and Winkle do not.¹²

Edmiston worked with Gosseck and Richards to do prep work for a water line repair. Edmiston operated the backhoe and the other two employees helped dig the trench as they exposed the pipe so it could be repaired by an outside contractor. Edmiston also worked with Gosseck and Richards to replace the flashing on the roofs of four units. The men removed the old flashing, cleaned the mortar joints and nails, and installed new aluminum. Edmiston has worked alone to clean gutters and he also rebuilt a maintenance trailer that was falling apart. He worked in the maintenance garage to tear down the trailer completely, to the bare frame, and then welded brackets for shelves to be used as storage on the inside. He then re-covered the outside of the trailer. Ramsey assisted Edmiston with this project a few times by holding up large boards for Edmiston to drill and connect to the sides of the trailer.

Edmiston fills out a log each day to track his time and completed tasks. Like Gosseck and Richards, he deposits his log in the mail box that bears his name which is located outside of Shearer's office. Ramsey and Winkle are not required to maintain logs and do not have mail boxes. Edmiston wears a T-shirt and hat bearing the Employer's logo which was provided by the Employer.

The Employer's five employees all utilize the Employer's equipment and tools for their work. These items include power lawn mowers, push mowers, weed whackers, a backhoe, a tractor, a Bobcat, snow blowers, and a snow plow.¹³ Gosseck, Daniels, Edmiston, Ramsey and Winkle report to the same location and they punch in at the same time clock. They share a

¹² Ramsey and Winkle have painted curbs but not any part of any buildings or structures.

¹³ Not all of the employees use all of these implements.

common lunchroom in the basement of the maintenance building. They work substantially the same working hours.

III. LEGAL STANDARDS AND ANALYSIS

A. Scope of the Unit

In *Boeing Co.*, 337 NLRB 152, 153 (2001), the Board described its policy with respect to determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees as long as the unit requested is an appropriate one. *Overnite Transportation Co.*, *supra*.

A major determinant in an appropriate unit finding is the community of duties and interests of the employees involved. When the interests of one group of employees are dissimilar from those of another group, a single unit is inappropriate. *Swift & Company*, 129 NLRB 1391 (1961). But the fact that two or more groups of employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient

community of interest among all these employees. *Berea Publishing Company*, 140 NLRB 516, 518 (1963).

Many considerations enter into the finding of a community of interest, including: the degree of functional integration, common supervision, the nature of employee skills and functions, interchangeability and contact among employees, work situs, general working conditions, and fringe benefits.

The Petitioner here seeks a unit of two maintenance employees and only one ground crew employee designated as the “head” of that crew, and would not include the remainder of the grounds crew or the Project Manager. The Employer asserts that all three current ground crew employees should be included in the unit if they are not found to be independent contractors, and that the Project Manager should also be included in the unit.¹⁴

The pertinent determination is whether the grounds crew shares a community of interest with the maintenance men, the agreed-upon members of the bargaining unit, so as to be appropriately included with them in the bargaining unit. I find that the ground crew employees do share such an interest.

This is a unit which is bound by its functional integration and common interests within a small complement of employees at a single small facility, not by its identical job content criteria among the job classifications of the various employees. See *United Gas, Inc.*, 190 NLRB 618 (1971). All of the Van Buren employees have common supervision, reporting to Project Manager Shearer, or to Roesling himself. While there is no evidence of permanent interchange between the grounds crew and maintenance employees, nor evidence of transfers, it is clear that all of the Van Buren employees serve a single purpose in servicing the Van Buren shareholders and maintaining their joint property, even with slightly distinguishable functions.

¹⁴ This issue and other eligibility issues will be discussed below.

There is a high degree of integration between maintenance employees and the grounds crew in enhancing customer service, as evidenced by the fact that the Employer's employees all work in areas where shareholders are likely to be found. All employees are similarly instructed on appropriate interaction with the shareholders and told to be proactive in assuring customer satisfaction.

The record establishes that there are also similarities and overlap in certain job duties. Both groups paint the property and engage in snow removal. The employees work together on projects as needed, such as in the case of the installation of the flashing on the roofs and the trench work for the water line. The employees all utilize the Employer's tools and equipment and sometimes these are interchanged. Further, Edmiston, a grounds crew employee, services equipment that may be used by the maintenance employees.

The jobs of the two maintenance employees require minimal skills and they do not need any type of license in order to perform their work, similarly to the grounds crew. The maintenance employees and the grounds crew all spend the majority of their time outside of the maintenance building, albeit some work in crews and some work alone. The petitioned-for employees all report to the same facility where they are under the control of the same Project Manager. All employees wear a uniform of one kind or another. All employees other than Shearer punch a time clock. All employees except Ramsey and Winkle are required to account for their time by completing a similar daily time log. All are paid hourly wages and they share common holidays. While at the facility, all employees share the same lunch area.

In summary, I have considered the functional integration of work duties of the employees involved in the maintenance process, the degree of interaction and many similarities in working conditions and skills between the grounds crew and the other employees in the petitioned-for unit, and I find that the grounds crew shares a sufficient community of interest with those employees in the petitioned-for unit which warrants their inclusion in that unit, assuming they are otherwise eligible for inclusion. This is particularly true in light of the small employee

complement under consideration and the relatively limited nature of the duties performed by the employees at the Employer's Van Buren jobsite.

Based on the foregoing, I shall include both maintenance employees and the eligible grounds crew employees in the appropriate unit for the election to be directed herein. *Overnite Transportation Co.*, 331 NLRB 662 (2000).

B. Eligibility Issues

Despite my findings concerning the scope of the unit, that does not end the inquiry here as several eligibility issues have been raised by the parties. I will discuss them separately below and set for the reasoning for my conclusions.

1. Independent Contractors

The Employer asserts that Edmiston, Ramsey and Winkle are all independent contractors and not regular employees of the Employer. Agreements to that effect which were signed by these three individuals are included in the record as evidence of their status.

Section 2(3) of the Act excludes from the definition of "employee," as spelled out in that section, "any individual having the status of an independent contractor." The major principle, regularly enunciated by the Board and the courts in such cases, is that the appropriate test to apply in determining whether certain individuals are independent contractors or "employees" is the common law of agency. *NLRB v. United Insurance Co.*, 390 U.S. 254 (1968). *Ace Doran Hauling Co. v. NLRB*, 462 F.2d 190 (6th Cir. 1972); *Gary Enterprises*, 300 NLRB 1111, 1112 (1990); *Portage Transfer Company, Inc.*, 204 NLRB 787 (1973); *Associated General Contractors*, 201 NLRB 311 (1973).

Under this test, an employer-employee relationship exists when the employer reserves the right to control not only the ends to be achieved, but also the means to be used in achieving such ends. See *Lakes Pilots Assn.*, 320 NLRB 168 (1995). On the other hand, when control is reserved only as to the result sought, an independent contractor relationship exists. *Gold Medal Baking Co.*, 199 NLRB 895 (1972). The Board does not regard as determinative the fact that

the written agreement defines the relationship as one of “independent contractor.” *National Freight Inc.*, 153 NLRB 1536 (1965); *Big East Conference*, 282 NLRB 335, 345 (1986). The party asserting independent contractor status bears the burden of establishing that status. *Community Bus Lines*, 341 NLRB 474 (2004). I find that the Employer has not sustained its burden here.

In *Pennsylvania Academy of the Fine Arts*, 343 NLRB 846 (2004), the Board found that artists models were independent contractors. In doing so, the Board relied on the facts that these models could choose the classes before which they would model, that they were paid by the class and not by the hour, that they supply their own robes and that they can work for other schools or independent artists.

In *Lancaster Symphony Orchestra*, 357 NLRB No. 152 (2011), a Board majority reversed a Regional Director’s conclusion that symphony orchestra musicians are independent contractors. The Board found that the orchestra, not the musicians, controls the manner and means by which performances are accomplished and that the musicians do not have any entrepreneurial risk of loss.

A factor in arriving at a finding that “auto shuttlers,” also known as “car transporters,” were employees and not independent contractors was that no opportunity existed for the individual “to make business decisions affecting his profit or loss.” *Avis Rent-A-Car System*, 173 NLRB 1366, 1367 (1968) citing *A. Paladini, Inc.*, 168 NLRB 952 (1967); See also *Avis Rent-A-Car System*, 173 NLRB 1368 (1968).

Based on the above and the record as a whole I conclude that Edmiston, Ramsey, and Winkle are not independent contractors. I am not persuaded by the written agreements purported to be Independent Contractor agreements signed by the employees as such documents are not controlling.¹⁵ *National Freight*, supra; *Big East Conference*, supra. Further,

¹⁵ See footnote 11.

those agreements do not establish that the three employees at issue have any autonomy regarding their work product.

Here, the evidence is clear that the Employer retains control not only over the end result of the employees' daily work, but also as to the manner and means by which that work is accomplished. The employees do not set their own hours; they are told when to report for work, what time to eat lunch, and when to stop working. They are instructed as to which tasks to perform on a daily basis. They use the Employer's equipment and wear uniforms provided by the Employer. There is no evidence in the record that they make any decisions at all, much less ones which are entrepreneurial in nature. I therefore find that Edmiston, Ramsey, and Winkle are employees within the meaning of Section 2(3) of the Act.

2. Ramsey and Winkle

As previously stated, the Petitioner asserts that Ramsey and Winkle are casual or temporary employees while the Employer takes the position that they, as well as Edmiston, are seasonal employees. The Petitioner would exclude them from the unit while the Employer would include them.

Both Ramsey and Winkle are high school students regularly scheduled to work 40 hours per week during the summer. Ramsey also worked for the Employer during the summer of 2012 and worked a few hours after school several days in the fall until his academic schedule increased and he quit. Ramsey then returned to work during the summer of 2013 after school ended. Winkle first started to work in June after school was over and there is no evidence that he will continue to work beyond the beginning of the fall semester.

At the time of the hearing, Ramsey and Winkle had worked full time for approximately ten weeks. They worked as grass cutters but were not hired for the entire season as it is clear that the grass cutting season began before they started working and it will continue beyond the time they return to school. In this regard the record reveals that Edmiston and another Roesling

employee were cutting the grass in the spring of 2013 and Edmiston was told by Shearer that he would continue to do so in the fall.

The Board generally excludes summer employees from the appropriate unit. However, such employees may be deemed eligible to vote if, upon returning to school, their employment evidences regular part-time status, and not “a pattern of intermittent, sporadic employment.” *Crest Wine & Spirits, Ltd.*, 168 NLRB 754, 754 (1968). See also *Beverly Manor Nursing Home*, 310 NLRB 538, fn. 3 (1993).

Temporary or casual seasonal employees are excluded from a unit which includes regular part time employees. *L & B Cooling Inc.*, 267 NLRB 1 (1983); *Post Houses*, 161 NLRB 1159, 1172–1173 (1966); *The Root Dry Goods Co.*, 126 NLRB 953, 955 at fn. 10 (1960); *F. W. Woolworth Company*, 119 NLRB 480 (1957). Regular seasonal employees are those who have a reasonable expectation of reemployment in the foreseeable future. If so, they are included in the bargaining unit. *Flat Rate Movers Ltd.*, 357 NLRB No. 112 (2011); *L & B Cooling*, supra; *P. G. Gray*, 128 NLRB 1026 (1960); *Musgrave Mfg. Co.*, 124 NLRB 258 (1959); *California Vegetable Concentrates, Inc.*, 137 NLRB 1779 (1962); *Baumer Foods*, 190 NLRB 690 (1971); and *Knapp-Sherrill Company*, 196 NLRB 1072, fn. 2 (1972).

Guided by the foregoing, I cannot conclude that Ramsey and Winkle are part-time employees who should be included in the bargaining unit as urged by the Employer. There is no evidence that, upon returning to school in the fall, either of them will continue to work on a regular part time schedule for the Employer. *Crest Wine & Spirits*, supra. In fact, Ramsey did not do so in 2012.

In assessing the expectation of future employment for seasonal employees for purposes of voting eligibility and unit placement, the Board considers the following factors: the size of the labor force from which the seasonal employees are recruited, the stability of the employer's labor requirements and the extent to which the employer is dependent upon seasonal labor, the

actual season-to-season reemployment, and the employer's preference or recall policy regarding reemployment of seasonal employees. *L & B Cooling*, 267 NLRB at 2.

Initially in this analysis I note that there is scant history available in this case as the Employer has only existed for two “seasons.” The pertinent labor force appears to be students, which are plentiful as the Employer is located in a well-populated area. However, the fact that these employees are students makes it unlikely they would contemplate long term seasonal employment as they will soon graduate or secure permanent employment. The Employer’s labor requirements appear to vary widely as significantly more grass cutters were hired in 2012 than in 2013. The Employer asserts that it prefers to recall past employees but that is based on one year’s experience and only one employee from 2012 returned in 2013.¹⁶

Based on the circumstances present here, I cannot conclude that Ramsey and Winkle, as students who are just beginning their working lives, have a reasonable expectation of seasonal reemployment in the foreseeable future with the Employer. The record is devoid of evidence that they wish to, and I have no basis upon which to infer that they would, even if they were recruited to do so.

Therefore, I find that Ramsey and Winkle are not regular seasonal employees but are temporary seasonal employees. *L & B Cooling*, supra. Accordingly, I shall exclude them from the bargaining unit found appropriate herein.

3. Edmiston

As stated above, the Petitioner asserts that Edmiston is the “head grounds employee” and a regular full-time employee. The Petitioner would include him from the unit while the Employer would exclude him from the unit, unless the two other grounds crew employees were included as well.

¹⁶ While not determinative, Ramsey testified that he did not plan to return to work for the Employer next summer after he graduates.

As a threshold matter, I cannot conclude that Edmiston is the head grounds employee as there is no evidence that such a formal title exists. The Petitioner apparently bases its argument on testimony that, when he was hired, Shearer told Edmiston that he needed someone to watch over the high school students who cut grass. However, the Board does not consider job titles determinative of supervisory status or management status. See *Marukyo U.S.A., Inc.* 268 NLRB 1102 (1984); *Bell Aerospace Co.*, 416 U.S. 267, 289 at fn. 19 (1974). That reasoning is equally applicable here. I find a determination of job title is neither necessary nor dispositive of Edmiston's inclusion or exclusion in the unit petitioned-for herein.

The Employer asserts that Edmiston is a seasonal employee. I do not agree. Edmiston was hired in April, before Ramsey and Winkle finished school for the summer and began working. Edmiston was not told he was seasonal at the time he was hired and the record reveals that Edmiston and another Roesling employee were cutting the grass in the spring of 2013 and that Edmiston was told by Shearer that he would continue to do so in the fall. Further, one of the maintenance employees was told by Shearer that Edmiston would help with maintenance when the grass cutting work was completed. I find this evidence to be persuasive and inherently probable due to other facts in the record.

First and most importantly, Edmiston performed significantly more varied duties than Ramsey and Winkle and those duties were such as there would be an ongoing need for them. The record indicates that Van Buren formerly employed four full-time maintenance employees. Therefore, it does not seem unreasonable that the Employer foresaw a need for assistance for Gosseck and Richards. In view of the fact that Gosseck and Richards share 24-hour on-call duties for emergencies, it is likely that the Employer foresaw a need for another employee to share this duty, in the event of the unavailability or incapacity of either Gosseck or Richards. I am not persuaded by the fact that Edmiston has no formal accreditations as it appears that Gosseck has little formal training and the record is silent as to Richards' background. The job description for maintenance employees does not require any post-high school training. Further,

many of the jobs performed by the agreed-upon members of the unit appear to be “handyman” functions which require no special skills, only experience, such as replacing leaky faucets and lubricating louver doors.

I am also not dissuaded in my conclusion by the Employer’s argument that Edmiston is substantially similar to Ramsey and Winkle, except slightly older. As I have indicated, he did not begin to work for the Employer exclusively during his summer vacation from another endeavor, he performed other duties beyond cutting grass, was paid at a higher wage rate (\$11.00 per hour) than Ramsey and Winkle (\$8.00 per hour), and received a verbal evaluation and hourly wage increase after 30 days of employment. In this regard I note that Ramsey made \$8.00 per hour in 2012, and was rehired in 2013, again at \$8.00 per hour. Ramsey has never received a performance evaluation or a wage increase during his entire employment.

I therefore find Edmiston to be a regular employee of the Employer who has consistently been scheduled for 40 hours per week so that he should properly be considered a full-time employee. He works in a position classification that I previously found was included in the appropriate unit. Therefore, I shall include him in the appropriate bargaining unit for the election to be directed herein.

C. Supervisory Status of Shearer

1. The Applicable Standard

The Petitioner, contrary to the Employer, asserts that Shearer must be excluded from the unit found appropriate herein because he is a statutory supervisor. Before analyzing the specific duties and authorities of the Project Manager, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, an individual need possess only one of the twelve specific criteria listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Michigan Masonic Home*, 332 NLRB 1409 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, supra, at 1409. Mere inferences or conclusory statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Fred Meyer Alaska*, 334 NLRB 646, 649 at fn. 8 (2001); *Pepsi-Cola Co.*, 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See *Michigan Masonic Home*, supra, at 1410; *Chevron U.S.A.*, 309 NLRB 59, 61 (1992). The Board and the Courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than a fellow employee or because he gives some instructions or minor orders. *Byers Engineering Corp.* 324 NLRB 740 (1997); *Chicago Metallic Corp.*, 273 NLRB 1677 (1985).

With regard to whether Shearer possesses any of the twelve indicia of supervisory status listed in Section 2(11) of the Act, it is noted that the Petitioner does not contend that Shearer has the authority to transfer, suspend, layoff, recall, promote, discharge or reward employees, or adjust their grievances. Rather, the Petitioner's position during the hearing and in its brief, focused on the involvement of Shearer in assigning and responsibly directing other employees and by both hiring and disciplining employees. Each of the statutory indicia relied upon by the Petitioner is discussed below, as well as other factors which I have either considered or relied upon in my conclusion regarding Shearer.

2. Assignment and Responsible Direction

The Board has addressed "assigning" work to employees and "responsibly directing" employees, or effectively recommending such actions, in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), *Croft Metals, Inc.*, 348 NLRB 717 (2006), and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006). In accordance with the Board's decisions in these three cases, if the record establishes that the purported supervisor satisfies the Board's stated definitions for either assigning or responsibly directing other employees, or effectively recommending such actions, then and only then must it be determined whether they do so using the Board's stated definition of "independent judgment." *Oakwood Healthcare*, supra, at 693.

In *Oakwood Healthcare*, the Board defined "assign" as the act of designating an employee to: a place such as location, department or wing; or a time such as shift or overtime; or a task which must involve "significant overall duties," not ad hoc instructions to perform a discrete task. supra, at 689.

In *Oakwood Healthcare*, the Board defined "responsibly to direct" as the act of directing what job shall be done next or who shall do it, provided that the direction is both "responsible" and carried out with "independent judgment." supra, at 691. "Responsible" means "accountable," which requires a showing that the person directing the performance of a task must be held accountable for the performance of that task, and must have the authority to

correct any errors made. In other words, there must be a prospect of adverse consequences to the person directing the work if the work is not performed properly or no corrective action is taken. *supra*, at 691-692. Additionally, there must be evidence of actual accountability, i.e., more than a merely paper showing that there is a prospect of adverse consequences. *Golden Crest*, *supra* at 731.

In *Oakwood Healthcare*, the Board explained that "independent judgment" means to act free of the control of others and form an opinion or evaluation by discerning and comparing data, provided that the act is "not of a merely routine or clerical nature." *supra*, at 693.

In the present case, the maintenance and ground employees are given daily work assignments by Shearer. The grounds employees' instructions appear to be verbal, basically designating an area of the facility to be maintained. The two interior maintenance employees are given paper work orders, which originate with the residents, by Shearer for completion. It appears that Shearer performs this task independently and without any input from Roesling. However, the record does not reveal the process utilized by Shearer in making this distribution and assignment of work or determinative factors, if any, that he must take into account before deciding which work order to give to which employee.

Based on the above, the record evidence does not establish that Shearer exercises independent judgment in the assignment and direction of employees. There are a limited number of available employees to perform these tasks and there is no record evidence to support an assertion that, within a job category, these employees are not fungible for these purposes. When Shearer "assigns" a maintenance man a work order, or a grounds employee to mow a particular section of the property, he is choosing one of a few employees who appear to be equally qualified, to do the task, assuming equal availability. Thus, the decision becomes one of logistics and availability based on other job duties. This does not reflect the use of independent judgment but only a routine selection process which does not evidence supervisory authority within the meaning of the Act.

Further, the record does not establish that Shearer arguably responsibly directs the work of employees. Although the record indicates that he makes “rounds” of the grounds several times each day, the record is silent as to whether in this manner he monitors the performance of the employees’ work. While there is some evidence that Shearer compliments and criticizes the work performance of employees, the missing element is the requirement that in carrying out the oversight of employees, the putative supervisor must be held accountable by the Employer for the performance of those being directed.

As the Board has stated in seminal cases setting forth the Board’s current standard for responsible direction of others, “[F]or direction to be ‘responsible’, the person performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed are not performed properly.” *Croft Metals*, supra, at 721, quoting *Oakwood Healthcare*, supra, at 691-692. There is no evidence in the record that would support the conclusion that the Project Manager is held accountable for directing the Van Buren employees or that he is subject to possible adverse consequences for any improper performance of his duties. Therefore, the Petitioner has, by an absence of proof on a necessary element of the responsible direction function, failed to carry its burden of proving the supervisory status of Shearer based on the responsible direction of others.

Thus, I cannot find that Shearer assigns work or supplies responsible direction to employees using independent judgment as a supervisor within the meaning of Section 2(11) of the Act. *Brusco Tug and Barge*, 359 NLRB No. 43 (2012), relying on *Oakwood Healthcare*, supra.

3. Recommending Discipline

The record also fails to establish that Shearer has any authority to issue discipline or effectively recommend the issuance of discipline as contended by the Petitioner. Rather, the record indicates that he merely relays information to Roesling who then decides the course of

action to be taken. There is no evidence in the record that Shearer has or could initiate any sort of disciplinary action without consultation with Roesling. I further note that there is no evidence that any formal discipline has ever been issued at this jobsite.

One anecdote noted in the record involved Shearer telling an employee to write up an “incident report” concerning work that he had performed which was beyond that listed on the work order. While apparently unusual, at least in the employee’s experience, it is unclear that this was any type of discipline. The other circumstance described involved several employees being counseled as to their poor work performance by Roesling and Shearer together. While it may be assumed that Shearer would have had to initiate employee work performance issues, as Roesling is seldom at the jobsite to witness the work itself,¹⁷ the fact that a discussion of some type was held with both Roesling and Shearer present does not indicate that Shearer effectively recommended the issuance of discipline. I note again there is no evidence of any formal discipline ever occurring.

It therefore appears that the limited role of Shearer in the disciplinary procedure is simply reportorial and it is well established that the mere exercise of a reporting function which does not automatically lead to further discipline or adverse action against an employee does not establish disciplinary authority. *Lakeview Health Center*, 308 NLRB 75, 78-79 (1992), citing *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). The record indicates that the limited participation of Shearer in the disciplinary process does not require the use of independent judgment and does not render him a supervisor within the meaning of the Act. *Esco Corporation*, 298 NLRB 837, 839 (1990).

4. Granting Overtime

Although not raised by the Petitioner, the record reveals that Shearer may arguably authorize overtime for the on-call maintenance employees when emergency calls are received.

¹⁷ I note that Roesling visits the jobsite only 8 – 10 times a month and some of these occasions are after working hours when he would not see the employees at work.

As mentioned above, in this situation, the designated on-call employee must call Shearer, either at night or during the weekend, and inform him of the emergency call. Shearer then authorizes the employee, during the call and without consultation with anyone else, whether or not the employee should make the emergency visit.

However, the record does not reveal the underlying factors which Shearer must evaluate in making these decisions. The record does reveal that the employee is paid time and a half for overtime, for a minimum of two hours, when answering emergency calls. As Shearer did not testify, the record is devoid of evidence of his considerations at such times. It may be that Shearer is simply monitoring, prior to any action being taken, that the requested work is in fact the responsibility of the Employer under its contract with Van Buren. If so, the decision is not whether or not to grant overtime but whether the Employer should be performing the work at all. Moreover, there is no evidence as to the number of times that these calls occur or whether permission is usually granted or withheld, and the accompanying circumstances. Importantly, the record contains no evidence of any occasion where Shearer directed employees that they must work overtime.¹⁸

Based on the above, I cannot find that Shearer has been authorized by the Employer to independently approve overtime as an additional factor in ascertaining his status. See *St. Francis Medical Center-West*, 323 NLRB 1046 (1997); *Esco*, supra, at 839; *G.E.S. Inc., d/b/a Big Star*, 258 NLRB 300 (1981).

5. Hiring Employees

Based on the record evidence set forth above, I find that Shearer is a supervisor within the meaning of the Act based on his authority to hire or effectively recommend the hiring of employees. I shall elaborate on that finding below and address why I reject the Employer's contention that Shearer does not possess this indicia of supervisory status.

¹⁸ The Board has held that the ability to "request" a certain action, rather than "require" that a certain action be taken, does not constitute supervisory authority. *Golden Crest*, 348 NLRB at 729.

The record contains at least three instances when Shearer hired employees, those being the initial hires of Ramsey in 2012, and Edmiston in 2013, as well as the rehiring of Ramsey in 2013, following his resignation in the fall of 2012. While there was conflicting testimony from Roesling that Shearer does not possess such authority, I find the three situations cited which involved two different witnesses persuasive. To the extent that it may be viewed that three examples are insubstantial, I note the short history of the Employer and lack of past practice here. The record reveals that the Employer has not experienced any suspensions, lay offs, recalls, or formal disciplines, so only a handful of new hires does not seem unusual.

Prior to the summer of 2012, Ramsey interviewed with Shearer for a grass cutting position. No one else was present for the interview and Shearer hired him on the spot. He subsequently worked for the next several months. There is no evidence that Ramsey underwent any further interviews or reconsideration. After school started in the fall, Ramsey worked after school for a few hours for a short while but soon had to quit as he did not have enough time for his studies. He resigned.

In 2013, Ramsey contacted Shearer to inquire about working during summer vacation. During that phone call, Shearer told Ramsey that, if he wanted, he could start to work for a few hours after school and continue for the summer. It is unclear if Ramsey ever worked after school but he did report for work when school was over. There is no evidence that there were any additional considerations to the decision to rehire Ramsey which was made by Shearer on the telephone.

During Edmiston's initial interview, Shearer told Edmiston that he was hired. Shearer said he wanted Edmiston to oversee the grounds work and the high school kids and, after the grass stopped growing, Edmiston could do maintenance work with Gosseck and Richards and plow snow during the winter. Edmiston did not meet Roesling until after he had been working for several weeks. Again, there is no evidence of any additional vetting process or investigation by anyone other than Shearer in the Employer's decision to hire Edmiston. In this regard I note

that Shearer was not produced to testify and thus did not refute the testimonies of Ramsey and Edmiston regarding these situations.¹⁹

Therefore, based on the testimony of all the witnesses and the record as a whole, I find that the Petitioner has met its burden of establishing that Shearer is a statutory supervisor under Section 2(11) of the Act. Shearer has been vested by the Employer with the authority to hire employees in some cases, and in other cases he, at a minimum, provided effective recommendations to hire which were accepted without additional investigation. *Fred Meyer Alaska*, supra, 334 NLRB at 649, and cases cited therein; *Olympia Plastics Corp.* 266 NLRB 519, 530 (1983); See also, *Sheraton Universal Hotel*, 350 NLRB 1114 (2007). Accordingly, I shall exclude the Project Manager from the unit found appropriate herein.

IV. FINDINGS AND CONCLUSIONS

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 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 matter.
3. The Petitioner 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:

¹⁹ The Employer declined to provide the payroll records showing the rate of pay and benefits of Shearer and the maintenance employees and the job description for the Project Manager. (T. 185) I therefore take an adverse inference that the requested payroll and benefits evidence would not be favorable to positions taken by the Employer. *RCC Fabricators, Inc.* 352 NLRB 701, fn. 5 (2008).

All full time and regular part time maintenance and grounds keeping employees employed by the Employer at its Van Buren Homes, Beaver, Pennsylvania jobsite, excluding all office clerical employees, temporary seasonal employees, the Project Manager, and guards, professional employees and supervisors as defined in the Act, and all other employees.

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 purposes of collective bargaining by Service Employees International Union, Local 668. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

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

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

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

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

To be timely filed, the list must be received in the Regional Office on or before September 23, 2013. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing, by mail, or by facsimile transmission at 412-395-5986. To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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

C. Notice of Posting Obligations

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

VI. 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 September 30, 2013. The request may be filed electronically through the Agency's website, www.nlr.gov,²⁰ but may not be filed by facsimile.

DATED: September 16, 2013

/s/Robert W. Chester

Robert W. Chester, Regional Director
National Labor Relations Board, Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

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177-8501-0000	177-8540-0000
177-8520-0800	177-8560-0000

²⁰ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.