

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

**ILLINOIS HARLEY DAVIDSON
SALES, INC.**

Employer

and

Case 13-RC-113245

**LOCAL 701, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, AFL-CIO,**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, on September 25, 2013, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board, hereinafter referred to as the Board has delegated its authority in this proceeding to the undersigned Regional Director.¹

I. Issues and Parties Positions

The issues presented during the hearing were whether the petitioned-for unit of full time and regular part time mechanics also referred to as service technicians constitute an appropriate unit for purposes of collective bargaining and whether Service Advisor Edgar Orellana was a Supervisor under Section 2(11) of the Act.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO ("the Petitioner") is a labor organization within the meaning of the Act.
- d. The Petitioner claims to represent certain employees of the Employer.
- e. There is no collective-bargaining agreement covering any of the employees in the unit sought in this petition and the parties do not contend that there is any contract bar to this proceeding.
- f. 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.

At the hearing, the Employer took the position that the petitioned-for unit was not an appropriate unit without the inclusion of the service advisors. The Employer's argument is that in addition to the mechanics, the service advisors work together in a highly integrated fashion to service and repair customer motorcycles and thus, the smallest appropriate unit must include this additional classification.

The Union argued that one of the employees, in the service advisor unit, Edgar Orellana, was a Supervisor within the meaning of the Act. However, the Union provided minimal evidence in support of its position and in its brief indicated that the sole issue was whether the four (4) service advisors should be included in the petitioned-for unit. In any event, there was insufficient evidence as to why Orellana would be considered a Supervisor within the meaning of the Act.

II. Decision

For the reasons discussed in detail below, I find the petitioned-for unit to be appropriate without the inclusion of the service advisors recommended by the Employer. I also find that the Union did not meet its burden in proving Orellana to be a Supervisor under the Act. Therefore, the Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

All full time and regular part time mechanic employed by the Employer at its facility currently located at 9950 Joliet Road, Countryside, IL; but excluding service advisors, service writers, parts department employees, porters, estimators, managerial employees, office clerical employees, guards, professional employees, and supervisors as defined by the Act.

III. Statement of Facts

A. Service Department Description

The Employer operates a Harley-Davidson motorcycle dealership that sells and services new and used motorcycles and is located at 9950 Joliet Road, Countryside, IL. The employees at the service center are the only ones at issue herein. Carole Ferguson is the General Manager and oversees the entire operation of Illinois Harley Davidson ("the Employer"). Reporting to Ferguson is Service Manager Robert Barry who oversees the service center and monitors the mechanics and service advisors.

The Service Department consists of seven mechanics² and four service advisors³. In operational terms, when a client comes into the service center, he or she is greeted by

² During the hearing the Union referred to an additional mechanic, however, there is a pending Unfair Labor Practice charge regarding his termination. The Hearing Officer informed the parties that this employee's charge would not be addressed in the hearing and therefore will not be addressed in this decision.

a service advisor whose job it is to listen to the customer's description of the problems with the motorcycle and create a repair order. The repair order includes the customer's stated concerns and any work recommended. The service advisor then checks to see if there are any recalls through the Harley Davidson Net system. The service advisor will sometimes make sure the necessary parts are available for the repair and then either the service manager or the service advisor assigns the repair order to the mechanic. Either the service advisor or the mechanic moves the motorcycle to the shop area. The mechanic then performs the necessary work based on the repair order. The mechanic finally records the repairs done and how long it took to complete the work performed on the repair order.

B. Section 2(11) Supervisor status of Edgar Orellana

Service advisor Edgar Orellana splits up his work time by doing all the warranty billing, extended service billing, billing for mechanics tickets, and writing up repair orders for customers if there isn't a service adviser available. In billing for mechanic tickets, Orellana helps with the billing off the back of the repair order for actual time and does not bill book time. Barry will sometimes give Orellana a list for billing. Also, Orellana in conjunction with Barry handle the scheduling for the service department employees. However, if someone calls off or if there is a problem with the schedule, employees discuss this with Barry.

Orellana does not have the authority to hire, fire, discipline, counsel, suspend, transfer, and recommend termination of employees. Orellana has never even recommended discipline for any employees and, according to Ferguson, is not even allowed to tell an employee they "better shape up" if there are performance issues. Barry and Ferguson are the only ones that hold that responsibility. There was no evidence presented as to whether Orellana ever complained about any employee. Orellana does not fill in for Barry when he's absent and instead employees must contact Ferguson.

Orellana does share an office with Barry, but other service advisors frequently go in and out of this office. Orellana sits and works out of the warranty desk since he mainly deals with the warranty issues.

All vacation and sick leave requests go through Barry and/or Ferguson. In Barry's absence, only Ferguson can approve this type of leave. When an employee calls in sick and Barry is unavailable, the employee must speak to Ferguson.

Mechanic Bradley Adkins testified that to his knowledge, Orellana cannot hire, fire, transfer, suspend, layoff, recall, promote, fire, reward, discipline, and/or adjust any grievances on behalf of employees.

³ Service advisors are also known as service writers.

Daily work assignments for the mechanics are given by Barry or the other service advisors. To the extent Orellana has the authority to assign work, whichever service advisor prepared the repair order also assigns work to a mechanic. Adkins testified that Orellana, like other service advisors hands out the next repair order to the mechanics. Orellana can also ask that a certain job be done before another. The Union admits they are not alleging the remaining service advisors are Supervisors under Section 2(11) of the Act.

C. Service Advisors

Service advisors report to Service Manager Robert Barry. Most of their job functions involve interactions with customers when they drive into the service department by obtaining a description of the motorcycle's problem and to make additional recommendations to customers based on maintenance schedules or recall notices. The service advisor then communicates with the mechanic to monitor the status of the repairs. In terms of interaction with the mechanics, the service advisor completes the repair order which is attached to the motorcycle. If there are any unusual service items, the service advisor and mechanic discuss the scope of the work and the service advisor then contacts the customer to obtain approval for the requested repairs. Once approved, the service advisor then informs the mechanic who then performs the requested repairs and/or maintenance. The mechanic informs the service advisor the work has been completed so that the service advisors can contact the customer. However, service advisors and mechanics do not work together on repairs. Rather, service advisors work in a separate area from the mechanics, separated from the mechanics by a sliding glass door.

Some service advisors are paid a salary; others are paid an hourly wage, plus an incentive based upon the service department's sales. Upon hiring, service advisors earn \$13.00 per hour, do not get any type of incentive-based compensation, and are reviewed after 90 days. After those 90 days they are paid a percentage on customer-paid labor. Therefore, the greater the service department's revenues, the more they get paid. General Manager Ferguson determines these compensation rates and makes her decision based on the service advisor's skill level, experience and performance. After the 90 days, all employees receive health benefits, a 401(k) plan, vacation and holiday pay, discounts for parts and services. There is no common seniority list for service advisors and mechanics.

There is no requirement that service advisors have motorcycle mechanical skills or training. Occasionally, a service advisor will change a battery or windshield wipers. Service advisors' training consists of on-line training regarding customer relations and the basics of writing repair orders. Service advisors are not required to take technical classes. Where mechanics may take classes based on a motorcycle, service advisors may take classes based on writing up a repair order. Mechanics do not fill in for absent service advisors, except for a few minutes at a time during exceptionally busy periods, and service advisors do not fill in for any of the mechanics as they do not have the

necessary skills and do not use tools on the job. The service advisors purchase their uniform shirts at \$30 each. The mechanics uniforms are under the rental program because they are laundered and a minimal amount is taken out of their paycheck to cover this service. Service advisors also work on desks.

The service department is open from Monday through Friday 9:00 am to 8:00 pm, Saturday 9:00 a.m. to 6:00 p.m., and Sunday 10:00 a.m. to 4:00 p.m. The mechanics and service advisors all cover these hours but their schedules vary.

D. Mechanics

Mechanics repair motorcycles and diagnose the client concerns with their motorcycles. Currently, the Employer employs approximately seven mechanics. They are also supervised by Service Manager Robert Barry. The mechanics work the same hours as the service advisors, also with varying schedules.

To be hired, mechanics must complete a factory authorized training program such as Mechanical Motorcycle Institute Service School or equivalent work experience. They need both basic and special tools to properly diagnose and service products. Mechanics are required to own a set of tools within 10 days of hire and are provided with their own toolboxes by the Employer. Once hired, mechanics mentor one another. Master mechanics will work with new mechanics. Mechanics are required to take Harley Davidson University classes and then are required to go to school in Milwaukee, WI to take some of the technical classes. Master mechanics must maintain the requirements for the master level mechanic recognition annually through Harley Davidson.

In terms of daily work, mechanics spends most of their time performing manual repair work on motorcycles with minimal discussions with the service advisors and retrieving motorcycles for their next repairs. No employees from other classifications can fill in for a mechanic since no one else is qualified to do their work.

Mechanics are all paid an hourly rate plus an incentive based upon the service department's sales. They are paid a percentage on customer-paid labor. Therefore, the greater the service department's revenues, the more they get paid. General Manager Ferguson determines these compensation rates and makes her decision based on skill level, experience, and performance. Upon hiring, mechanics, like service advisors earn \$13.00 per hour without any type of incentive-based compensation. They are reviewed after 90 days, and after those 90 days become eligible for three levels of compensation based on their proficiency, productivity, and efficiency, and the overall performance of the service department compared to pre-established financial goals.

Mechanics also wear different uniforms from the service advisors. The mechanic's uniforms are pants and shirts which are rented and laundered by a vendor, but

the service advisors purchase their own shirts. Mechanics do not work at desks and only work in the shop.

IV. Analysis

There are two issues presented in this case. The first is whether service adviser Edgar Orellana is a Supervisor under Section 2(11) of the Act. The second is whether the unit sought by the Petitioner constitutes an appropriate unit without the inclusions recommended by the Employer.

Section 2(11) of the Act defines a "supervisor" as:

Any 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 merely of a routine or clerical nature, but requires the use of independent judgment.

Thus, individuals are deemed "statutory supervisors if: 1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in the interest of the employer." *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). With respect to the power to effectively recommend one of the of the 12 supervisory indicia, the Board defines it as existing when "the recommended action is taken with no independent investigation by superiors." *ITT Corp.*, 265 NLRB 1480, 1481 (1982).

The Board holds that the burden to prove supervisory authority is on the party asserting it. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *NLRB v. Kentucky River*, supra at 711-712. In addition, although the Act demands only the possession of Section 2(11) authority, not its exercise, the evidence still must be persuasive that such authority exists. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). As a result, purely conclusionary evidence is not sufficient to establish supervisory status. Instead, the Board requires evidence that the individual actually possesses supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995)(conclusionary statements without specific explanation are not enough). Accordingly, job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Golden Crest*, supra at 731, citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

The Union fails to overcome its burden that service advisor Edgar Orellana is a supervisor under Section 2(11) of the Act. The Union's only argument is that Orellana's

ability to set the schedules for the employees in the service department makes him a supervisor . However, by the Union’s own witness, Mechanic Bradley Adkins, the employees’ schedules are always the same and the only person’s schedule that may change is Mechanic Tim Broadnax, who had childcare issues. Adkins further testified that all vacation and sick leave requests went through Barry and/or Ferguson. In addition, if someone called off to work on the same day and Barry was unavailable, the employees would have to inform Ferguson.

There was no evidence presented that Orellana can hire, fire, transfer, suspend, layoff, recall, promote, fire, reward, discipline, and/or adjust any grievances on behalf of employees.

As for the authority to assign work, daily work assignments for the mechanics are given by Barry or the other service advisors. Here, there is simply no evidence that the Orellana exercises independent judgment in assigning the repair orders as other service advisors also assign them in the order they come in. The Board defined the authority to assign work as the "act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks to an employee." *Oakwood*, supra at 689. However, the party seeking to establish supervisory authority must also show that the claimed supervisor has the ability to require that a certain action be taken. The mere ability to request that the action be taken is not enough. *Golden Crest*, supra at 729-30. In this case, there was no evidence presented to show that Orellana or any other service advisors could require mechanics to perform the tasks assigned to them.

If the evidence establishes that the alleged supervisor has the authority to responsibly direct or assign other employees, it must then be demonstrated that doing so requires the use of independent judgment. *Oakwood*, supra at 693. In *Croft Metals*, supra at 721, the Board summarized the definitions of “independent judgment” as set forth in its decision in *Oakwood* as follows:

[T]o exercise ‘independent judgment,’ an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or valuation by discerning and comparing data.” “[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” “On the other hand, the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices.” Explaining the definition of independent judgment in relation to the authority to assign, the Board stated that “[t]he authority to effect an assignment . . . must be independent [free of the control of others], it must involve a judgment [forming an opinion or valuation by discerning and

comparing data], and the judgment must involve a degree of discretion and arises above the ‘routine or clerical.’” (Internal citations omitted).

Although Orellana may ask that a certain job be done before another, there were not enough facts to determine whether this was done in order to satisfy a customer’s request or whether Orellana was instructed to prioritize that particular repair order. Accordingly, the record did not establish that his assignment of work required the use of independent judgment.

Second, in addressing the appropriateness of the unit, Section 9(b) of the Act only requires that a unit be appropriate in order to insure the “fullest freedom in exercising the rights guaranteed by this Act.” A unit for collective bargaining need only be appropriate, it does not have to be the most appropriate unit, the largest appropriate unit, or the ultimate appropriate unit. *Morand Beverage Co.*, 91 NLRB 409, 418 (1950) enf’d. 190 F.2d 576 (7th Cir. 1951); *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnight Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

This means there is often more than one way in which employees of a given employer may be grouped into appropriate units for purposes of collective bargaining. *Rothstein Corp.*, 233 NLRB 545, 547 (1977). In defining an appropriate unit for collective bargaining, the Board focuses on whether the employees in the unit share a “community of interest” that is distinct from other employees that arguably could be included in the unit. *Overnite Transportation Co.*, supra at 724; *The Boeing Co.*, 338 NLRB 152, 153 (2001). The Board considers the following community of interest factors: method of wages or compensation, hours of work, employment benefits, whether the employees have common supervision, the degree of similar or dissimilar qualification, training and skills, job functions, interchangeability and contact among employees, work sites, and other working terms and conditions of employment. *Kalamazoo Paper*, 136 NLRB 134, 137 (1962).

In defining an appropriate unit, the Board first examines the petitioned-for unit. See e.g. *The Boeing Co.*, supra at 153 (2001). If there is a presumption that a petitioned-for unit is appropriate, such as all production and maintenance employees at a single facility, or some evidence that the petitioned-for unit is appropriate, the burden is on the party challenging the unit’s appropriateness to show that it is inappropriate. *Allen Health Care Services*, 332 NLRB 1308 (2000). As a petitioned-for unit does not have to be the most appropriate unit, it is insufficient for the party challenging that unit to show that a different, larger, or smaller grouping of employees constitutes an appropriate unit. Rather the party challenging the petitioned-for unit must demonstrate that unit is inappropriate because it constitutes an arbitrary grouping of employees that either do not share a community of interest or have no separate identity from other employees. Conversely, where the petitioned for unit is appropriate under traditional community of interest standards and the employer contends it is inappropriate because it excludes

certain employees, the employer must show that the excluded employees share an overwhelming community of interest with the employees in the otherwise appropriate unit. *Specialty Health and Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at p. 17 (August 26, 2011). *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (2011).

Applying the foregoing principles to the instant case, I find that the petitioned-for unit of mechanics constitutes an appropriate unit. The mechanics have a substantial separate community of interest from the service advisors. This separate community of interest is perhaps most distinct in the vast difference in their job functions. The mechanics work on motorcycles with tools, they do not interact with the public. The job functions of the service advisors, by contrast, are to interact with the public in performing their customer relations and service functions. This results in other differences such as the lack of interchange in job functions between the mechanics and the service advisors or job progression between the two positions. Types of equipment operated and utilized by mechanics are not used by service advisors. Mechanics and service advisors never work together on the repair of a motorcycle. There is no substitution(s) from mechanics to service advisors. Mechanics have continuous training on motorcycle repair; service advisors perform no repair work, nor are they trained to do so. Mechanics are experienced in motorcycle repair prior to being hired in order to achieve employment; such experience is not needed to be a service advisor.

In addition, the pay structure between the service advisors to that of the mechanics is different. Some service advisors are salaried and some are hourly like the mechanics. All receive some sort of incentive based-compensation, however, the most notable difference is that in addition to service department revenues, the mechanics incentive pay is also based upon their proficiency, productivity and efficiency.

There are significant differences with the work areas of the service advisors to those of the mechanics. The service advisors work space includes counters where they meet with customers and desks where they can do additional work. In the adjacent room, separated by a sliding door is the shop where the mechanics work with hoists and equipment necessary to perform their duties. The uniform requirements between the service advisors are different from those of the mechanics. The mechanics are required to rent and pay for the laundering of their uniforms which consists of a shirt and pants, whereas service advisors are only required to purchase the same shirt and pay a onetime fee of \$30 for the shirt. Mechanics are all hourly employees, whereas service advisors are both salaried and hourly employees.

Admittedly, the service advisors, the Employer seeks to include in the unit do share some community of interest factors with the mechanics. For example, they receive the same benefits, such as healthcare coverage, a 401(k) plan, vacation and holiday pay. They work similar schedules, including Sundays. There also appears to be daily interaction between service advisors and the mechanics. All employees are subject to the

same rules of the Employer. The two groups share common supervision, by being supervised by Service Manager Robert Barry. All hourly employees punch in and out through the ADP ezLabor which is accessible on a number of PC computers. But the mere fact that employees are in communication with one another during the work day or share some isolated working conditions does not create sufficient community of interest such that they must be included in the petitioned for unit. Mechanics shares a distinct separate community of interest from service advisors in that they largely work in a separate distinct area of the facility. They also work mostly with tools which service advisors and other employees do not work with on a regular basis. Mechanics also possess unique skills which are required to be hired and must participate in further specialized training programs geared to their skills. In other words, the community of interest shared by the service advisors with the technicians is not so great or overwhelming that without these disputed categories the petitioned-for unit is an arbitrary grouping of employees.

Contrary to the Employer's contention, I find that its mechanics do constitute a distinct and homogeneous group of craftsmen. The mechanics herein are much like the mechanics in *Dodge City of Wauwatosa, Inc.*, supra, which the Board found constituted an appropriate craft unit. Thus, like the mechanics in *Dodge City of Wauwatosa, Inc.*, the Employer's mechanics: (1) are required to attend Mechanical Motorcycle Institute service school and have additional specialized training and certifications; (2) provide their own tools, which constitute a considerable investment; (3) engage in skilled functions and tasks that only they perform; (4) are paid on a different basis from other employees based on proficiency, productivity, and efficiency; (5) their positions are not interchangeable with other employees – there have been no transfers of service advisors into mechanic positions or transfers of mechanics to service advisor positions; and (6) mechanics do not perform any of the job duties of the service advisors, nor do the service advisors perform any of the skilled mechanical duties of the mechanics. See also, *Fletcher Jones Las Vegas*, 300 NLRB 875 (1990).

While the Employer's mechanics share some community of interest with service advisors with regard to supervision and contact such that a broader unit as proposed by the Employer may also be appropriate, I do not find that these factors satisfy the Employer's burden of demonstrating that there is an overwhelming community of interest of interest between the included and excluded employees. *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 17. Put differently, the community of interest factors between the mechanics and service advisors do not "overlap almost completely." *Id.*, slip op. at 16, quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008). Quite simply the Employer's mechanics perform distinct skilled mechanical functions that are not performed by any other employees, their jobs are not interchangeable with other employees, other employees have not transferred to mechanic positions and mechanics have not transferred to other positions. Further, their craft status and functions has resulted in significant differences from service advisors with regard to pay rates and the heavy investment that mechanics must make in obtaining their own tools.

I do not find the limited occasional mechanical tasks of short duration performed by the service advisors, such as changing batteries or wiper blades constitute the exercise of mechanical skills to a degree such as to blur the distinct demarcation of job functions performed by the mechanics from those performed by other employees as was found in *Austin Ford*, 136 NLRB 1398 (1962).

V. Conclusion

Based on the foregoing and the entire record herein, I have found that the petitioned-for unit is an appropriate unit and it is appropriate to conduct an election therein.

VI. 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 Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

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 **November 6, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁴ by mail, or by facsimile transmission at 312-886-1341. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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

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.

VII. 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,

⁴ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570.
This request must be received by the Board in Washington by **November 13, 2013**.

DATED at Chicago, Illinois this 30th day of October 2013.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region Thirteen
209 S. LaSalle Street, Suite 900
Chicago, Illinois 60604