

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

UNITED SITE SERVICES OF
CALIFORNIA, INC.

Employer

and

Case 20-RC-113900

TEAMSTERS LOCAL 315, IBT

Petitioner

DECISION AND DIRECTION OF ELECTION¹

By its Petition, and as clarified during the hearing in this matter, Teamsters Local 315, IBT (Petitioner) seeks to represent a unit of all full-time and regular part-time Service Technicians, Lead Service Technicians, Pick-Up and Delivery Drivers, Mechanics, Laborers, and Fence Installers employed by United Site Services of California, Inc. (Employer) at its 1 Oak Road, Benicia, California facility. Specifically excluded from the unit (Unit) are Dispatchers, supervisors and guards as defined by the Act.²

The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act; the Employer is engaged in commerce within the meaning of the Act; and no collective-bargaining agreement covering employees within the Unit sought exists or serves to bar processing of the Petition. The parties additionally stipulated, and I find,

¹ The parties agreed that, to the extent any formal documents failed to include the proper names of the Petitioner and the Employer, all such documents were to be considered amended so as to reflect their correct names.

² No party sought to include the Dispatcher in the Unit.

that the Unit as sought by Petitioner is appropriate for the purpose of collective bargaining.³

The only issue presented is whether two persons—Salvador Flores and Bobby Owens—are statutory supervisors within the meaning of Section 2(11) of the Act and, as such, should be excluded from the Unit. Both hold the title of Lead Service Technician. The Employer argues the classification should be excluded, and the Union wishes it to be included.

For the reasons explained below, I conclude that the Employer has failed to meet its burden to demonstrate the supervisory statuses of Flores and Owens. The Lead Service Technicians will therefore be included in the Unit.

FACTS

Operational Background: The Employer is an equipment rental and service company servicing primarily construction and agricultural market actors. The Employer operates from offices throughout California, including the Benicia office put in issue by the Petition. The petitioned-for Unit consists of approximately 21 employees excluding the Lead Service Technicians, and approximately 23 with them included. Both the Service Technicians and the Pick-up and Delivery (P&D) Drivers drive vehicles from the Benicia facility to customers in order to perform their duties.⁴

Michael Burt serves as the Employer's Regional Operations Manager and maintains an office in the Benicia facility. Since about late-September 2013, Burt has attended to more localized management of the Benicia location, visiting the facility on a daily basis and taking on the role of Operations Manager. Prior to late-September, the

³ The Unit as stipulated to by the parties on the record did not explicitly include the classification "Lead Service Technician." I find, however, that by its stated positions and advocacy on the record, the Union clearly communicated its desire to include the Lead Service Technicians in the Unit. And, as I ultimately conclude that the Lead Service Technicians are not statutory supervisors and should not be excluded from the Unit, I find it appropriate to include the classification in the Unit description.

⁴ Thus, throughout the record, the Service Technicians and Pick-up and Delivery drivers are often referred to as "drivers." At times, I too will refer to "Unit drivers" as a more generic term for the Service Technicians and Pick-up and Delivery Drivers

Benicia location had an Operations Manager apart from Burt. (The absence of an Operations Manager is expected to be temporary.) Even when an Operations Manager was in place, Burt visited Benicia one to two times a week.

There is also a Dispatcher employed at the Benecia facility. The Dispatcher's duties include assigning and adjusting the Unit employees' routes. The dispatcher also assigns out "extra service" work created by requests by customers for additional service.

According to the Employer's job descriptions, the Operations Manager supervises all "dispatcher/routers, service technicians, P&D drivers, yard personnel, fence crew(s), and shop." The Dispatcher and Service Technician job descriptions explicitly state that they are to have no supervisory responsibilities, whereas the description for Lead Service Technician makes no mention of supervisory responsibility at all.

The Duties of the Lead Service Technicians: Bobby Owens's current title is Lead Service Technician (also referred to throughout the record as Lead Technician and Lead Driver).⁵ He has held this title since around 2005. Salvador Flores is the second Lead employed at the Benecia facility. Flores has held this title since around 2011.

Both the Leads and the Service Technicians and P&D Drivers work four ten hour days per week, with somewhat varying start and end times. Hours of work do not vary based on one's position as a Lead. The Leads and Unit drivers also rotate "on-call" on weekends. There is no difference in the treatment of on-call work as between the Leads and the Unit drivers. Both Owens and Flores have Wednesdays off. The Leads have an office at the Benecia facility, which is used by them to store paperwork, tools, and other equipment utilized by them and the other Unit drivers. In addition, Owens has a Home Depot charge card which, according to Burt, was to be used to buy supplies when needed and when a manager was not present to do so. Owens admitted to being given a Home Depot card, though he testified that he hadn't used it "in so long." Although Flores does not have a Home Depot card, the Unit mechanic does.

As Lead Service Technicians, Owens and Flores are assigned a route to complete every day. This is no different from the other Service Technicians. Flores could not

⁵ For ease, I will refer to the classification as "Lead."

think of a day within the prior six months that he did not perform his normal route; Owens testified it had been three or four years since his normal route was interrupted.⁶ In addition, the Leads may act as a liaison between the mechanic and the Unit drivers to ensure that equipment is repaired as needed. The Leads also obtain tools and equipment that the Unit drivers need. The Leads, in fact, utilize their offices to store these tools and supplies. There is no special end-of-night paperwork for the Leads. Leads are not in any way held responsible for the performance of the Unit drivers or other personnel.

The Lead Service Technician classification is viewed as a promotion but only one of the two leads is compensated at a higher rate than regular Service Technicians or Drivers. Documentary evidence demonstrates that a number of non-supervisory Unit personnel are compensated at a higher rate than one of the two Leads.

The Leads also perform various training tasks. They run weekly tailgate meetings during which safety and other concerns are addressed. Between them, they run these meetings once or twice a month. (Managers also run the meetings, as do non-supervisory Unit personnel.) As described by Flores, whoever runs the meeting is tasked simply with reading information off of a print-out provided to them. All in attendance are required to sign a form attesting to their attendance, and whoever runs the meeting signs off as a “supervisor” at the end of the attendance form. Owens signed off as a “supervisor” on at least one occasion in 2011.

The Leads perform other training tasks relating to quality of service, best route practice and the like, though there were few details provided in the record. Training of drivers performing unfamiliar routes is typically accomplished by a driver who formerly performed the same route—whether the driver is a Lead or not. Flores and Owens were sent to attend a service training in Seattle, though it is unclear when this occurred.

Evidence of Supervisory Indicia: Neither Flores nor Owens was involved with the termination, transfer, suspension, lay-off, or recall of a Unit driver or other employee.

⁶ Burt testified that adjustments may be made to the Leads’ day-to-day activities, based on the Employer’s needs. He failed, however, to recall details or specific instances. Burt did, however, confirm that neither Owens’s nor Flores’s assignments have changed since the departure of the Operations Manager.

There is no evidence that they effectively recommended such action. Record evidence concerning supervisory status can be summarized as follows:

- Route Performance Reviews: At one time, the Employer performed a process entitled “Route Performance Review.” The process was intended to assess whether and to what degree a particular driver was seen performing the various required aspects of his route. The process entailed a ride-along, after which a “Route Performance Review” sheet would be filled out by the assessor. The process was triggered not locally, but from “field operations support.”

The record contains four examples of Route Performance Review sheets filled out by Owens as the “supervisor.” No other Reviews were submitted into the record. The Reviews submitted were completed in 2010 or 2011, with the most recent one dated January 14, 2011. Owens testified that these were the only four he ever completed or was asked to complete. On each occasion, management asked him to conduct the Review. He did so, filled out the sheet, and turned it over to Burt. Neither Burt nor any other management official followed up with Owens regarding the Reviews or otherwise indicated what they would be used for.

Flores testified that he had never performed any Route Performance Reviews.

Burt testified that both he and Owens performed the Reviews. Burt at times indicated that a poor Review may lead to the imposition (by management—not by the Lead) of a performance improvement plan, or to Review scores that may impact the driver’s annual performance appraisal (appraisals, again, issued by managers, not Leads). The Employer did not offer any documentary evidence showing such a linkage between poor Route Performance Reviews and appraisal, and when pressed, Burt admitted that he could not recall a specific situation in which comments on a Review directly impacted a Unit driver.⁷ In addition, when pressed regarding whether and to what degree Route Performance Reviews have been completed within the past two years, Burt could not

⁷ The Employer produced evidence of a single time when, in the process of securing a raise for a Unit driver, the Operations Manager referenced the fact that the driver had received positive compliments from one of the Leads (Flores). The Manager also, however, relied on positive compliments issued by non-supervisory Unit personnel (Juan Romo).

answer with any assurance or specificity. Indeed, Burt testified that the practice had “kind of fell back,” and that the Employer had been seeking someone “to staff . . . just to complete this.”

- **Driver Gate Audits:** According to Burt, the Department of Transportation requires random audits of drivers to ensure that they are properly licensed and otherwise carrying certain required items. Failure to meet certain requirements may preclude the employee, at least temporarily, from driving. Much like the Route Performance Reviews, field operations support would instruct local management when to conduct an audit. The audit is conducted by completion of a Driver Gate Audit form, only one of which was introduced into the record. Dating from January 11, 2013, the audit was filled out and signed by Flores as the “auditor.”

Flores recalled performing this audit, as well as perhaps one or two more on the same day. He testified that he was told by the manager at the time to go out and perform as many as he could that day. Flores simply followed the form, checking whether each listed item was present or not. He then turned the form over to the manager. This is the only occasion that Flores conducted Driver Gate Audits. Owens never conducted such Audits.

- **Driver’s Road Tests:** As part of the post-hiring (“onboarding”) process, the Employer is required by Department of Motor Vehicles to certify that the recent hire is “fit to drive.” A ride-along is required, and certification is documented by filling out a “Driver’s Road Test” form. According to Burt, Leads or managers may conduct the Test and fill out the form, although he testified that he had facilitated many of them. Like the various other forms discussed, there is a list of items that must be checked as satisfactory or unsatisfactory. The items cover basic driving skills, such as the ability to start the engine without difficulty, turning, braking, backing, and parking. Burt testified that unsatisfactory scoring may negate the driver’s hire. At the same time, the document allows for correction of missing items within two days and for the “manager” to access the correction.

The Employer introduced one example of a Road Test form. It was filled out by Flores in April 2012. On this occasion, Flores was instructed by management to perform

the test and to “Just go by the list and see how he does.” This was the only time Flores performed a Road Test. There was no evidence that Owens ever performed one.

- **Involvement in the Hiring Process:** Owens testified that he never attended an interview or otherwise been involved in the hiring process. Flores recalled that, on perhaps two occasions, he was asked by the manager to attend an interview. On both occasions, the potential hire was a Spanish speaker. Being bilingual, Flores was asked to translate. After the interview, Flores recalled being asked by Burt what he thought of the potential hire. The record, however, is devoid of testimony regarding whether and to what degree Flores’s opinion influenced the hiring decisions on these occasions.

- **Adjustment or Assignment of Routes:** In general, each driver has a set route, and adjustments or extra work are assigned by the Dispatcher.

If a Unit driver calls out sick, he is supposed to phone the Operations Manager, then the Leads, and finally the Dispatcher. Currently, Burt is the Manager to be called first. When an ill driver follows this process, Burt will typically call either Flores or Owens and give instruction about route reassignment or how to otherwise proceed. Should Burt not be available, Owens testified that he and Flores may make the reassignment decision themselves.⁸ The decision, however, is limited by virtue of the fact that only one Utility Driver is currently available to cover a route vacated by illness.

According to the record, up to about a year-and-a-half ago, the Employer kept a list of relief drivers. Day to day, the relief drivers performed less important assigned tasks. When a Unit driver called out sick, Owens or Flores would use the relief driver list to reassign the route, which always had priority over the tasks the relief workers were assigned. Layoffs ensued, forcing the relief drivers into normal routes. There remains, however, one driver labeled a Utility Driver who continues to function as a kind of relief driver. Because the Utility Driver’s normal assignment (a “dump run”) always has lesser priority than a service or pick-up route, Owens was instructed by the former Operations Manager to assign routes to the Utility Driver when necessitated by illness and when no manager was present. This remains Owens’ understanding of his authority to date.

⁸ If a driver falls ill in the middle of the day, only the Manager (Burt) has the authority to send him home.

When the Utility Driver is not available, sick drivers must make up their missed routes after returning from illness.

Neither Flores nor Owens testified regarding performing a route readjustment within the recent past. Burt testified that the Leads do not “do it as frequently today, but it has been . . . done . . . in the past.”⁹

- **Discipline:** Owens was never involved in the discipline of a Unit driver or other employee in any capacity. On one occasion in September 2012, Flores was asked to collect statements of drivers involved in an incident. According to Flores, a driver approached him regarding a troubling statement another driver had uttered. Flores reported the matter to Burt, who asked Flores to collect a statement from the driver. The driver was a Spanish-speaker; the statement is in Spanish. Flores did as he was told and turned the statement over to Burt. Flores had no further involvement in this matter and did not discuss it further with Burt. To the best of his recollection, Burt recalled that no discipline came out of this incident.

Flores was similarly involved in another incident, this time one that led to discipline. In March 2012, a Unit driver was issued written discipline for failing to properly service a customer and for falsification of records.¹⁰ According to Burt, a customer had registered a complaint. Burt ran a GPS on the driver’s whereabouts and, in addition, requested that Flores check the customer site to determine whether proper service had been accomplished or not. Flores recalled that he had a short route that day and when he returned from his route, the Dispatcher asked him to check the customer’s service. Flores confirmed the lack of service and reported it to the Operations Manager at the time, who asked Flores to take photos and email them to him. Flores followed the Manager’s instructions. That was the extent of Flores’s involvement in the process, and

⁹ The only other evidence of a Lead affecting a Unit driver’s work schedule came by way of Flores’s recollection of altering another driver’s route on a single occasion—but that was at a time when he was working as a dispatcher.

¹⁰ Burt and/or the Operations Manager at the time filled out this disciplinary form. Burt himself needed approval from corporate HR and a Vice-President to issue the discipline.

he was never asked his opinion about whether or to what degree the driver should be disciplined.

Aside from these two incidents, Flores was never involved in the disciplining of any Unit or other employee.

- Gift Cards: The Employer issues to all its employees gift cards at Thanksgiving and Christmas. In addition, the Employer issues gift cards under a “spot awards” program related to safety-driven issues. Neither of the Leads appears to be involved in these programs.

In late-2012 or early-2013, however, Burt testified that he gave approximately \$50 in McDonalds gift cards (and perhaps some other types of gift cards as well) to Flores to distribute to Unit drivers as he (Flores) saw fit. Burt recalled that Flores had mentioned that he thought it would be a good idea to reward employees who were “stepping up” and “contributing more” than others. Burt agreed and purchased the cards with his own money for Flores to distribute. Burt testified that Flores distributed at least one card to one employee in the context of a group meeting, in the presence of other employees.

Flores did not testify regarding his involvement in gift card distribution. There is no evidence that Owens ever distributed gift cards of his own accord.

ANALYSIS

The term “supervisor” is defined in Section 2(11) of the Act 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.

Pursuant to this definition, individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11); their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and, their authority is held “in the interest of the

employer.” Supervisory status may be shown by demonstrating that the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare Center*, 348 NLRB 747 (2006).

Further, whether an individual is a supervisor is to be determined in light of the individual’s actual authority, responsibility and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). The Act requires “evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority.” *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971); *Chevron, USA*, 309 NLRB 59, 62 (1992). The burden to prove supervisory status is on the party asserting it. See *Oakwood*, supra; *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 n.8 (1999). Moreover, any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 n.8 (1999).

Bobby Owens: The Employer has failed to meet its burden to demonstrate that Bobby Owens functions as a supervisor within the meaning of Section 2(11) of the Act. In fact, the few indicia of supervisory functioning established in the record are of a decidedly “routine or clerical nature” not requiring “the use of independent judgment.” For example, while Owens may at times adjust a route assignment when one is vacated by illness, his options are limited to a single employee: the Utility Driver. Otherwise, Owens has no independent say over drivers’ routes, whether impeded by illness or not. Owens’s involvement in this essentially clerical adjustment of route responsibility is simply insufficient to demonstrate supervisory control over Unit drivers’ assignments. See, e.g., *PECO Energy Co.*, 322 NLRB 1074, 1083 (1997) (“Although [Lead Maintenance Technicians] can assign, on occasion, a technician from another area, this is done solely in order to complete the day’s assigned work and consequently does not require the independent judgment of Section 2(11) but is merely routine.”).

Owens issued four Route Performance Reviews in 2010 and 2011. The link between the Reviews and drivers’ overall performance assessments, however, appears

virtually nonexistent. The authority to evaluate is not indicative of supervisory authority if the evaluation does not affect employee status or tenure. *Volair Contractors, Inc.*, 341 NLRB 673 (2004); *Williamette Industries*, 336 NLRB 743 (2001).

Moreover, these are the only Reviews Owens ever issued; he has not issued one since January 2011; and the record strongly indicates that the Reviews have essentially been abandoned by the Employer. To the extent that Owens was at one point tasked with “evaluating” employees via the Route Performance Reviews, that task appears to have ceased. Inasmuch as his involvement has not completely ceased, at most, Owens has engaged in the Reviews on occasional, isolated instances and has never been instructed that the Reviews are one of his duties—a record insufficient to predicate a supervisory finding. See *Kanawha Stone Co.*, 334 NLRB 235, 237 (2001) (“It is well settled that the exercise of some ‘supervisory authority’ in a merely routine, clerical or sporadic manner does not confer supervisory status.”) (internal quotations and citations omitted).

Commercial Fleet Wash, 190 NLRB 326, 326 (1971) (“While the record does indicate that crewmembers have been transferred from a crew at the request of the leadmen, that at least one crewmember received a commission based upon the recommendation of a leadman, and that two employees were laid off pending investigation when their leadmen reported them for theft, we do not consider these few isolated instances, in view of the record as a whole, to be sufficient to establish” supervisory authority); see also *Oakwood Healthcare, Inc.*, 348 NLRB at 694 (noting in the context of part-time supervisors that, while no numerical definition of a substantiality of worktime dedicated to supervisory tasks has been adopted, 10–15 percent of total worktime is likely sufficient); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004) (“The Board has declined to find individuals to be supervisors based on alleged authority that they were never notified that they possessed and where its exercise was sporadic and infrequent.”).

Nothing else in the record, by itself or in combination, serves to demonstrate Owens’s supervisory status. I therefore find that Owens is not a statutory supervisor to be excluded from the Unit. He will be included in the Unit and allowed to vote in the forthcoming election.

Salvador Flores: I find that the Employer has likewise failed to meet its burden to demonstrate the supervisory status of Flores.

While Flores occasionally performed Driver Gate Audits and Driver's Road Tests, these tasks—much like the Route Performance Reviews performed by Owens—were decidedly “clerical” in nature, consisting of collecting facts specified on a related form. There is no evidence that Flores was involved in any way other than to collect the pertinent data. In addition, Flores's involvement in these processes was extremely limited, about three to four times in three years. In short, Flores's sporadic involvement in the Driver's Road Tests and Route Performance Reviews is insufficient to demonstrate Section 2(11) status.

I view Flores's involvement in the discipline of employees in a similar way. That is, there is no evidence that Flores himself made the decision to issue discipline to any Unit employee or other personnel, recommended such action, or was consulted about whether or to what extent discipline should issue. Rather, his involvement in the disciplinary process was limited to two instances in which he was dispatched to collect facts relevant to the underlying disciplinary issue. “The reportorial function of writing out incident and accident reports does not require the use of independent judgment and does not confer supervisory status” *Springfield Terrace Ltd.*, 355 NLRB No. 168, 2010 WL 3463867, slip op. at *17 (Aug. 27, 2010), citing *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995) and *Ohio River Co.*, 303 NLRB 696, 716 (1991); see also *PECO Energy Co.*, supra (authority “merely reportorial” in nature is not indicative of supervisory authority). To the extent that such acts may even be construed as “discipline,” there is nothing to suggest that Flores exercised independent judgment. The extremely limited and sporadic nature of this activity offers yet another reason why this conduct also fails to establish Flores's Section 2(11) status.

Flores's involvement in the hiring process appears largely to have been as a translator. To the extent Flores was asked about his opinion on the two occasions during which he was present, the record is devoid of evidence suggesting that Flores's answers had any effect on the hiring decision. Flores's involvement in the hiring process simply was not “hiring” as conceived of in Section 2(11) because his opinion seemingly had no

impact on the status or hire of the interviewee. See, e.g., *Volair Contractors, Inc.*, supra; *Williamette Industries*, supra.

Finally, Flores's one-time distribution of at least one gift card to a Unit driver does not confer supervisory status upon Flores. Flores had no involvement in decisions regarding how monetarily large the gifts would be, from what establishments the cards would be purchased, or how many cards would be available for distribution. While Flores exercised independent judgment in deciding who would receive a card, this one-time event is exemplary of occasional and sporadic conduct.¹¹ Because the record is abundantly clear that Flores spends a near-totality of his time at work performing Unit driver duties, this one instance of the exercise of supervisory authority is not sufficient to exclude Flores from the Unit as a statutory supervisor. See, e.g., *Volair Contractors, Inc.*, supra; *Kanawha Stone Co.*, supra; *Commercial Fleet Wash*, supra.

Consideration of the record in its entirety does not alter my conclusion that the Employer has failed in its burden to demonstrate Owens's or Flores's supervisory status. In terms of secondary supervisory indicia, there is no evidence that the Leads enjoy conditions of employment different from the Unit drivers (*Grand Union Co.*, 193 NLRB 525 (1971)) or that the Leads attend management meetings (*Dean & Deluca New York, Inc.*, 338 NLRB 1046 (2003)).¹² Although the ratio of supervisors to employees is arguably supportive of a finding of supervisory status (*Pennsylvania Truck Lines*, 199 NLRB 641 (1972)), it is more telling that the Employer sees fit to schedule both Owens and Flores for Wednesdays off, strongly suggesting that their limited (if any) supervisory functioning is not integral to day-to-day operations. Nor does Owens's and Flores's

¹¹ The record is devoid of evidence as to whether Flores gave out cards on more than the one instance testified to by Burt; whether more than one employee received a card from Flores; and whether Flores's gifting of the cards was instituted as an on-going program. Because this lack of evidence is construed against the Employer, *Elmhurst Extended Care Facilities*, supra, I find that Flores's issuance of the gift cards was a limited, one-time event.

¹² The fact that Owens and Flores were once sent to a training conference does not alter my analysis. The record does not indicate whether the conference was limited to supervisory or managerial employees, and the Employer's training meetings are facilitated by managers, Leads and Unit drivers.

involvement in employee training serve to convey supervisory status (*S.D.I. Operating Partners, L.P.*, 321 NLRB 111, 112 (1996)) and, at any rate, the record shows that non-supervisory Unit drivers, at times, led trainings as well.

Flores's training, reporting, audit, and gift tasks, even when considered together, do not establish his supervisory status. For the reasons articulated above, most of these tasks are not actually "supervisory" as conceived by Section 2(11) and, to the extent they are, Flores has not been explicitly charged with performing these tasks on an on-going, regular basis, and the record establishes merely that he has sporadically and occasionally engaged in these tasks. On this record, the Employer has failed to meet its burden to establish Flores's Section 2(11) status.

Conclusion: The Employer has failed to demonstrate that either Owens or Flores meet the statutory definition of a "supervisor." The record fails to establish that either person individually holds such authority, or that such authority is inherent in the classification Lead Service Technician. See, e.g., *PECO Energy Co.*, 322 NLRB 1074, 1082-83 (1997) (on comparable facts, finding Lead Maintenance Technicians nonsupervisory). Accordingly, the classification Lead Service Technician will be included in the description of the petitioned-for Unit, and Owens and Flores, as Lead Service Technicians, will be allowed to vote in the forthcoming representational election.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

- 1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2) The Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3) Teamsters Local 315, IBT, is a labor organization within the meaning of the Act.

4) A question affecting commerce exists within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5) I find that the following unit is an appropriate unit for collective-bargaining purposes:

All full-time and regular part-time Service Technicians, Lead Service Technicians, Pick-Up and Delivery Drivers, Mechanics, Laborers, and Fence Installers employed by the Employer at its 1 Oak Road, Benicia, California facility, but excluding Dispatchers, supervisors and guards as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 315, IBT, or by no union. 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, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **November 12, 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,¹³ by mail, or by facsimile transmission at (415) 356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

¹³ 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.

Because 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 electronic filing, facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

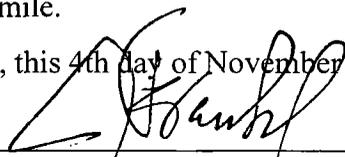
C. Notice of Posting Obligations

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.

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 **November 18, 2013**. The request may be filed electronically through the Agency's web site, www.nlr.gov,¹⁴ but may not be filed by facsimile.

DATED AT San Francisco, California, this 4th day of November 2013.



Joseph F. Frankl, Regional Director
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¹⁴ 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.