

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

SINGER EQUIPMENT COMPANY, INC.¹

Employer

and

Case 04-RC-115229

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION LOCAL UNION 19²

Petitioner

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

The Petitioner seeks a three-person unit of the Employer's kitchen equipment installers, but the Employer contends that one of these three employees, the Installation Manager, is a statutory supervisor. Because the Employer failed to meet its burden to establish that the Installation Manager holds supervisory authority, I find that this position is properly included in the unit.

The Petitioner, Sheet Metal Workers Local 19, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. Thereafter, a Hearing Officer of the Board held a hearing, and the parties filed briefs.

To provide a context for my discussion, I will first present an overview of the Employer's operations and the parties' contentions. Then, I will review the factors that must be evaluated in determining whether the Installation Manager is a supervisor within the meaning of the Act. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS AND PARTIES' CONTENTIONS

The Employer, Singer Equipment Company, is a commercial food service equipment dealership, structured in two divisions, Distribution and Contract Sales. The Distribution Division is not at issue in this case.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

The Contract Sales Division sells equipment to commercial customers from its headquarters in Elverson, Pennsylvania, and is headed by Vice President of Contract Sales Mark Woolcock. This Division employs Sales employees, Kitchen Designers, Administrative Assistants, Project Managers, CAD Designers,³ and the three employees who install kitchen equipment, Andrew Dravk, Keith Eichelberger, and Keith Seidel. Dravk recently was promoted to the position of Installation Manager. The equipment includes heavy ovens, sinks, and walk-in refrigerators, and it may be installed in newly constructed or existing commercial kitchens.

The Employer contends that Dravk has the authority to effectively recommend employees for hire, and to lay off, recall, discipline, discharge, reward, assign work to, and/or responsibly direct employees, and that he is a supervisor within the meaning of Section 2(11) of the Act. The Petitioner disputes the Employer's claim that Dravk is a statutory supervisor.

II. FACTORS RELEVANT TO DETERMINING SUPERVISORY STATUS

Supervisors are specifically excluded from coverage under the National Labor Relations Act. The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 695 (2006). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (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. See *NLRB v. Kentucky River*, supra at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory indicia for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Kentucky River*, supra at 713; *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994); *Juniper Industries*, supra at 110. The authority effectively to recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See *DirectTV U.S. DirectTV Holdings LLC*, 357 NLRB No. 149, slip op. at 3-4 (2011); *Children's Farm Home*, 324 NLRB 61, 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1, 2 (1970). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the

³ CAD is an acronym for Computer-Aided Design.

employee rights that are protected under the Act. *Oakwood Healthcare, Inc.*, supra at 688 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001); *Gaines Electric*, 309 NLRB 1077, 1078 (1992).

In its decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), *Croft Metals, Inc.*, 348 NLRB 727 (2006), and *Golden Crest Healthcare*, 348 NLRB 727 (2006), the Board clarified the circumstances in which it will find that individuals exercise sufficient discretion in performing two of the functions listed in Section 2(11) – assignment and responsible direction of work – to justify their classification as statutory supervisors. As defined in *Oakwood Healthcare*, the term “assign” refers to 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 Healthcare* at 689-690.

In *Oakwood Healthcare*, the Board explained “responsible direction,” as follows: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible . . . and carried out with independent judgment.’” “Responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks as opposed to overall duties. *Oakwood Healthcare* at 690-692. But, an individual will be found to have the authority to responsibly direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Ibid.*

Assignment or responsible direction will, as noted above, produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood Healthcare*, supra at 693; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008). Independent judgment requires that the decision “rise above the merely routine or clerical.” *Ibid.*

III. FACTS

Until September 26, 2013,⁴ the Employer employed a single individual, Steve Artley, to serve as both Senior Project Manager (SPM) and Installation Manager. Before Artley, several

⁴ All dates are in 2013 unless otherwise indicated.

other individuals served in this capacity. Artley reported to Vice President of Contract Sales Woolcock. When Artley left the company in September, his duties were split between Project Manager Keith Roberts and Installer Andrew Dravk, who was given the title of Installation Manager. Roberts assumed Artley's Project Manager responsibilities, but no one currently holds the title of SPM. As the Employer contends that the Installation Manager assumed supervisory responsibilities held by the SPM before that position was eliminated, I will review the evidence concerning the duties of the SPM.

SPM/Installation Manager Duties and Responsibilities

Among his other duties, the SPM, a salaried employee, was responsible for taking requests from Project Managers or Contract Sales employees for installation work, creating a schedule, and assigning the work to one of the three or four Installers, using a company computer. If the SPM was personally involved in performing work on a particular installation project, he would oversee the quality of the installers' work. If there was a problem on a job, the Installers would notify the SPM. The SPM attended project meetings and maintained an office.

The SPM interviewed applicants for Installer positions and recommended Installers to Woolcock for hire, but Woolcock conducted his own interview of the applicants. The SPM gave input to Woolcock for Installers' employment reviews, including completing a form assessing their performance, and Woolcock wrote the final reviews using that information as well as input from Contract Sales employees and other staff members. The SPM was present when employment reviews were presented to the Installers. The employment reviews generally resulted in wage increases that were based in part on employee performance.

Former SPM Rick Shuler on two occasions wrote "reports" that were maintained in one Installer's personnel file concerning Shuler's dissatisfaction with his work. Shuler once recommended to Woolcock that an Installer be discharged. Thereafter, the employee was discharged, and Shuler requested that Human Resources employee Darlene Heffner place an advertisement for a replacement Installer. The record does not reflect whether Woolcock conducted any independent investigation before discharging the employee.

Each Installer maintains a handwritten timesheet showing the jobs on which he works and the hours that he spends at each job; the timesheets are used for both customer billing and payroll purposes. The SPM was responsible for reviewing the Installers' timesheets and submitting them to the Employer's payroll office. The SPM scheduled Installers' time off, though if Installers called out sick, they called Heffner.

On one occasion, former SPM Artley called Woolcock and said he was going to conduct a "rotation layoff" of the Installers. Woolcock testified that Artley could "make that recommendation" for layoff at any time, and that it had been Artley's "decision." The record does not indicate the reasoning behind Artley's recommendation, whether employees were actually laid off, or the extent of any layoff.

Communications with Dravk about his new role

Woolcock testified that he notified Dravk at the time of his May 2013 performance review that he would be “overseeing the installers” in the future.

Later, by email dated September 11, Woolcock notified Dravk that he wanted to discuss a possible expansion of his role because SPM Artley had decided to leave the company. When they discussed the matter, Woolcock told Dravk that he wanted him to “manage the schedule,” including taking requests to schedule installation projects, and that he would be “responsible for scheduling the installers and all of their time.”

Dravk testified that Woolcock told him he would “be accountable” for the Installers, but did not explain what that meant. Dravk has no written job description. He was not advised that he would be responsible for performance reviews, layoffs, promotions, rewarding, or discipline of employees, nor that he would be evaluated based on the Installers’ performance.

By email on September 27, Woolcock gave Dravk a list of employees who should regularly receive the weekly installation schedule. Woolcock held a meeting on September 30 to announce changes in project management and installation scheduling, but did not invite Dravk.

Dravk’s Duties and Responsibilities as Installation Manager

After Artley’s separation from the company, Dravk began managing the schedule for installation work. Dravk spends about an hour a week on this function, and for the remainder of his time he personally performs installation work. The scheduling process is initiated by the particular project’s Construction Manager or General Contractor, who tells the Employer when the installation work needs to be completed. The Employer’s Project Managers or Sales employees then email a request to Dravk for Installers using a Microsoft Outlook scheduling program. These emails propose specific dates and times for installation projects and include a request for between one and three Installers to perform the work. If there is an opening in the schedule at the proposed time, Dravk “accepts” the request, and the Outlook program automatically inserts the proposed job in the schedule. If not, he “denies” the request, and the Project Manager is notified. On some occasions, Sales employees, Project Managers, or Woolcock send regular email requests, rather than using the Microsoft Outlook program, for Dravk to schedule or reschedule an Installer for a job. Dravk notifies the requesting person whether an Installer is available and schedules dates for the work or suggests that they subcontract the work. In performing the scheduling functions, Dravk does not have a company computer or an office; the record does not indicate what device he uses to perform his scheduling duties.

Woolcock testified that he has never given Dravk any direction about how to assign the installation work. Dravk stated that he assigns the work to himself, Eichelberger, or Seidel based on which of the three is available and geographically closest to the particular job at any given time.

There are differences in skill levels between the three Installation employees. Dravk and Eichelberger both have universal refrigeration certifications, but Dravk is more familiar with that

work. Seidel can do refrigeration piping, but not “start up” work;⁵ Dravk and Eichelberger can perform start up work, though Eichelberger is slower. Only Dravk can weld. There was no evidence that these differences have been considered in making work assignments. Dravk testified that when all three of them are working on the same job, they each work pursuant to their preference or specialty without any direction.

Woolcock testified that it is ultimately Dravk’s responsibility to make sure the work is done correctly, but provided no details in support of this assertion. On October 9, Dravk asked Woolcock if he, Eichelberger, and Seidel could take the day after Thanksgiving off, and Woolcock told him, “Yes, that’s fine, do as you see fit.” At the same time, Dravk asked Woolcock for pay increases for Eichelberger and Seidel. Woolcock told him he would look into it, and possibly give them “gift cards.”

On October 21, Dravk emailed Woolcock to ask if he knew of any work for the Installers for November, and Woolcock suggested he ask the Project Managers if they had any work; Dravk did so by email of October 31. Dravk does not attend project meetings. Dravk, Eichelberger, and Seidel generally call Darlene Heffner if they want to request a day off. Employees do not need prior approval to work overtime.

Early in his tenure as Installation Manager, Dravk reviewed Seidel’s and Eichelberger’s timesheets to make sure that the Installers had worked at the correct location and then forwarded their timesheets, along with his own, to Project Manager Keith Roberts for customer billing purposes and to Heffner for payroll purposes. Both Eichelberger and Seidel have more recently been sending timesheets directly to Roberts and Heffner because of technological problems getting them to Dravk, and this has not caused any problems with their pay. Dravk has never made any correction to the timesheets.

Dravk wears the same uniform that Eichelberger and Seidel wear. He is paid \$27.50 per hour, while Eichelberger makes \$19.60 per hour, and Seidel’s hourly rate is \$20.77. Dravk received a raise of \$1.50 per hour when he became Installation Manager.⁶

IV. ANALYSIS

Andrew Dravk’s Supervisory Status

Although Dravk is responsible for assigning and scheduling the installation work to Eichelberger and Seidel, the evidence was insufficient to establish that these tasks require the exercise of independent judgment sufficient to establish that he assigns or responsibly directs work within the meaning of *Oakwood Healthcare*.

⁵ The record does not indicate the definition of “start-up” work.

⁶ Dravk received an additional pay increase in May 2013, but the record is inconclusive as to the reason for this increase.

In assigning work, Dravk functions principally as a conduit for scheduling requests from others. For most of these requests, Dravk merely agrees to the requested time and date; for others, he chooses a day on which an Installer is available. In making the assignments to Installers, Dravk uses routine considerations of geographic proximity and availability. If no one is available, Dravk notifies the person requesting the installation work, and the installation work is subcontracted out. There is no discretion involved in this process and thus it does not confer supervisory authority. See *Entergy Mississippi, Inc.*, 357 NLRB No. 178, slip op. at 9-10 (2011); *Shaw, Inc.*, supra, 350 NLRB at 355; *Golden Crest Healthcare Center*, supra at 730 fn. 9.

An individual must normally consider relative employee skill and ability when making assignments in order to be deemed a supervisor, *Pacific Coast M.S. Industries*, supra at 1422; *Network Dynamics Cabling, Inc.*, 351 NLRB 1423, 1425 (2007); *Lynwood Manor*, supra, 350 NLRB at 490. There was no evidence in the record that Dravk has relied on distinctions in skill level in making assignments thus far, and the Board has held that hypothetical situations are insufficient in this context to establish supervisory status. *Brusco Tug & Barge, Inc.*, 359 NLRB No. 43 slip op. at 9 (2012). However, to the extent that he may, in the future, rely on the well-known differences in the certifications or other abilities of the Installers in making routine assignments, such distinctions would be insufficient to establish the use of independent judgment. *CHS, Inc.*, 357 NLRB No. 54, slip op. at 1 fn. 3 (2011); *Armstrong Machine*, 343 NLRB 1149, 1150 (2004).

Similarly, the evidence of his scheduling responsibilities, which require only about an hour a week of his working time, is also insufficient to establish that Dravk responsibly directs the Installers. Direction is “responsible” only where “the person directing...” is “accountable for the performance of the tasks by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Oakwood Healthcare*, supra at 691-692. Though Dravk testified that Woolcock told him he was “accountable” for the Installers, he did not explain what he meant, and there was no evidence that Dravk is “accountable” within the meaning of *Oakwood*. That is, the evidence did not establish that Dravk has any authority to take corrective action, or would be subject to discipline, if there is a problem with the Installers’ work. *Lynwood Manor*, supra at 490-491 (2007); cf. *Croft Metals*, supra, 348 NLRB at 722. As for his past approvals of Eichelberger and Seidel’s timesheets, there was no evidence suggesting this is more than the mere confirmation that they worked the hours recorded, not requiring the use of independent judgment. *Pacific Coast M.S. Industries*, supra at 1422 fn. 13.

Dravk requested a pay increase for Eichelberger and Seidel on October 9, 2013, and Woolcock responded that he would “look into it” and possibly give them “gift cards.” There was no evidence establishing that either pay increases or gift cards were granted based on Dravk’s recommendation. This evidence is insufficient to establish that Dravk was making this recommendation “in the interest of the employer,” rather than merely as a request on behalf of co-workers he felt were underpaid, as he had no reason to believe he had any authority over their pay rates. Moreover, by saying he would look into it, Woolcock made clear that he would not simply agree to Dravk’s suggestion but would independently evaluate it.

Though the Employer contends that Dravk has the authority to discharge, discipline, hire, lay off, and evaluate Installers, there was simply no evidence that he has been so advised, that he has exercised this authority, or even, as discussed below, that his asserted predecessors did so in a fashion that would warrant their classification as supervisors within the meaning of Section 2(11) of the Act. The Board generally declines to find supervisory status based on alleged authority that the putative supervisors were not notified they possessed. *Golden Crest Healthcare Center*, supra at 730 fn. 9.

The fact that Dravk earns higher wages than Eichelberger and Seidel is a secondary indicium of supervisory status and does not, standing alone, confer supervisory status in the absence of any evidence that he possesses at least one of the statutory indicia. *Pacific Coast M.S. Industries*, supra at 1422 fn. 13. For similar reasons, I reject the Employer's argument that the Board uses a "relaxed" standard to assess supervisory status where a facility would lack supervision absent finding the disputed classification supervisory. Much of Dravk, Eichelberger, and Seidel's work is conducted solo, and the lack of a higher authority's presence does not mandate a finding of supervisory status in the absence of any of the statutory indicia. Rather, this is merely another secondary indicium. *Golden Crest Healthcare Center*, supra at 730 fn. 10. Further, a significant secondary indicium which cuts against finding supervisory status is the ratio of supervisors to non-supervisory employees. If Dravk were found to be a supervisor, the result would be an improbable ratio of one supervisor to two non-supervisory employees. *Avante at Wilson, Inc.*, supra, 348 NLRB at 1058 fn. 4.

Accordingly, I find that the Employer has not met its burden to show that Installation Manager Andrew Dravk is a supervisor within the meaning of Section 2(11) of the Act. *Pacific Coast M.S. Industries, Ltd.*, supra; *Lynwood Manor*, supra.⁷

Supervisory Status of Former SPM/Installation Managers

The Employer asserts that Dravk will have the same authority to effectively recommend discharge, discipline, hiring, layoff, and rewarding of Installers as the former Senior Project Manager and Installation Managers. The record, however, does not establish that Dravk assumed any of the SPM duties other than scheduling, and as I have found, this responsibility is insufficient to establish Dravk's supervisory status. Dravk was never informed as to the extent of other asserted duties either verbally or in writing. See *Golden Crest Healthcare*, above at 730 fn. 9. In any event, the evidence is insufficient to establish that the SPM was a supervisor within the meaning of Section 2(11) of the Act.

With respect to hiring, there was no evidence that the SPMs ever decided which employee to hire, but only that SPMs sometimes recommended and/or interviewed candidates for Woolcock's consideration. The sole evidence as to discipline is that former SPM Shuler

⁷ The Employer cites *Liquid Transporters, Inc.*, 250 NLRB 1425 (1980) for the proposition that shift leaders who spend much of their time performing unit work are nevertheless Section 2(11) supervisors if they "use their own discretion" in making work assignments. In the instant case, in contrast, there was no evidence that the Installation Manager uses discretion in making work assignments.

wrote “reports” about his dissatisfaction with one Installer’s work and had recommended that the individual be discharged. Although the employee was discharged, there was no evidence concerning whether or how Shuler’s recommendation was evaluated or to what extent Woolcock conducted an independent investigation. With respect to layoff, on one occasion, former SPM Artley contacted Woolcock to notify him that he wished to conduct a “rotating layoff” of the Installers. Woolcock testified that Artley was empowered to make that “recommendation” at any time, implying that Artley was merely recommending the layoff, with no evidence concerning the extent or impact of the layoff on the Installers, except that “[t]here were some guys who were going to take some time off.”

The burden of establishing supervisory status rests on the Employer as the party urging that finding. The evidence cited concerning hiring, discipline, discharge, and layoff was conclusory and lacking in detail, and is insufficient to assess whether the former SPMs’ recommendations were implemented without independent investigation, and thus fails to establish that the former SPMs exercised independent judgment in the exercise of the purported authority. *Sanctuary at McAuley*, 359 NLRB No. 162, slip op. at 5 (2013); *G4S Regulated Security Solutions*, 358 NLRB No. 160, slip op. at 2-3 (2012).

The evidence is similarly insufficient to show that any role played by the SPM in evaluating other employees requires a finding that the SPM was a statutory supervisor. Section 2(11) does not list “evaluate” in its enumeration of supervisory functions. As a consequence, an individual will not be found to be a supervisor based on the completion of evaluations unless the evaluations directly affect the wages or job status of other employees, *Pacific Coast M.S. Industries, Limited.*, supra at 1422 fn. 13 (2010); *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1335 (2000). The SPMs here did not complete the Installers’ evaluations, but were merely a source of information for Woolcock when he prepared them. In this connection, the form the SPMs completed to provide input on the reviews to Woolcock does not contain any request to provide a specific recommendation concerning pay increases. Moreover, although employees’ wage increases appear to have coincided with the evaluations, there was no evidence how, if at all, they correlated. Accordingly, I do not find this evidence sufficient to establish the supervisory status of the former SPMs.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization that claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Installers and Installation Manager employed by the Employer from its facility located at 150 South Twin Valley Road, Elverson, Pennsylvania, **excluding** all other employees, guards, and supervisors as defined in the Act.

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 the purposes of collective bargaining by **Sheet Metal Workers International Association Local Union 19**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Eligible Voters

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

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **Friday November 29, 2013**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at **www.nlr.gov**. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of 2 copies unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

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

VII. RIGHT TO REQUEST REVIEW

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

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive

Secretary of the Board in Washington, DC by the close of business on Friday, December 6, 2013, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

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

DATED: November 22, 2013



DENNIS P. WALSH
Regional Director, Region Four
National Labor Relations Board

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.