

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

JONES LANG LASALLE AMERICAS, INC.¹

Employer

and

Case 20-RC-111031

INTERNATIONAL UNION OF OPERATING
ENGINEERS, STATIONARY ENGINEERS
LOCAL NO. 39, AFL-CIO,

Petitioner

DECISION AND DIRECTION OF ELECTION

Jones Lang LaSalle Americas, Inc. (the Employer) is a corporation with a place of business in San Carlos, California, engaging in providing real estate and property management services, including engineering services, for corporate clients. By its petition of August 12, 2013,² International Union of Operating Engineers, Stationary Engineers Local No. 39, AFL-CIO (Petitioner) seeks to represent a unit comprising the positions of Chief Engineer, Assistant Chief Engineer, Engineer, Apprentice Engineer and Utility Engineer employed by the Employer at Novartis, Inc., located at 150 Industrial Road, San Carlos, California (the Facility or San Carlos Facility). The Employer contends that in order to be an appropriate unit, the petitioned-for unit must exclude the Chief Engineer due

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

² All dates herein refer to 2013 unless otherwise noted.

to that position's alleged Section 2(11) supervisory status and include two additional classifications: Electrician and Planner/Scheduler. The Employer also argues that it has plans to hire nine more employees in both current and additional classifications, making the petition premature. Petitioner takes a contrary position. For the reasons discussed below, I find that the petitioned-for unit is an appropriate unit, with the inclusion of Chief Engineer. Accordingly, I shall direct an election among the employees in that unit.³

I. The Employer's Operation

The Employer employs 45,000 employees globally and provides engineering services for at least three of Novartis' Northern California locations. At the San Carlos Facility, where the Employer has contracted with Novartis for two and one-half years, the engineering employees are responsible for the maintenance and repair of utilities equipment, including electrical systems, lighting, plumbing, HVAC,⁴ boiler, and steam operations. The Engineers' qualifications include vocational school training plus a completed apprenticeship or, alternatively, three or more years of experience, including two years of troubleshooting industrial mechanical and electrical systems.

When the petition was filed on August 12, the Employer employed two Engineers and one Assistant Chief Engineer at the Facility. In addition, the Employer employs a Facility Manager who oversees all of the Employer's

³ I note that the Utility Engineer and Apprentice Engineer positions, included in the petitioned-for unit, were not staffed at the time of the hearing on September 24, nor were they filled when the petition was filed on August 12. However, neither party disputes their inclusion in the petitioned-for unit.

⁴ HVAC refers to heating, ventilation and air conditioning systems.

operations at the Facility, and a Regional Manager, who oversees the Facility Manager and the managers of two other Novartis locations. When fully staffed, engineers at the Facility will work one of three shifts: 7 AM – 3-3:30 PM; 3 PM - 11 PM; or 11 PM – 7 AM, with the Assistant Chief Engineer staggering his hours. Engineers are paid between 36 and 45 dollars per hour. The Assistant Chief Engineer is paid 44 dollars per hour. All of the employees at the Facility are subject to the same Code of Conduct, health safety policies and benefit plans.

Petitioner and the Employer agree that the classifications of Assistant Chief Engineer and Engineer⁵ are appropriately included in the petitioned-for bargaining unit. The only contested positions are the Chief Engineer, which the Employer contends should be excluded as a supervisory position, and Electrician and Planner/Scheduler, both of which the Employer asserts should be included.

Employer's Plans to Hire Additional Engineers

In June, Novartis issued a contract change request (CCR) to the Employer to add Engineers at the Facility due to an increase in operations to 24 hours a day, seven days a week. After receiving the CCR to add Engineers, the Employer created job postings for four Engineers: two grave-shift Engineers; one day-shift Engineer; and one swing-shift Engineer. The Employer conducted interviews for the engineering positions and issued offer letters to three

⁵ The parties appear to refer to this classification interchangeably as "Engineer," "Stationary Engineer," "Maintenance Engineer," and "Maintenance Mechanic," and "Operating Engineer."

applicants as of the date of the hearing. Two of the three had accepted their offers, with start dates of October 3 and November 11. The third offer was outstanding as of the date of the hearing. The Employer would like to fill all four positions by the end of this year.

Employer's Plans to Create New Positions

The Employer submitted a CCR to Novartis on July 19 to add the position of Planner/Scheduler at the Facility.⁶ The Employer envisions that the Planner/Scheduler will work closely with the Engineers to plan and schedule non-emergency work. The Planner/Scheduler is expected to have engineering experience and to perform engineering work using the tools of the engineering trade when there is a shortage of Engineers. The job description for Planner/Scheduler states that this person will need seven to ten years of experience in maintenance/operations of facilities or utilities, with experience as a journeyman engineer and with strong skills in building automation systems, life safety systems, and the use of Microsoft Office. The Planner/Scheduler is also expected interact with outside engineers, contractors and architects. The Employer anticipates paying the Planner/Scheduler 40 to 45 dollars per hour.⁷

The Employer next submitted a CCR to Novartis on September 10 to add the position of Technical Research and Development (TRD) Engineer. In

⁶ The Employer does not employ a Planner/Scheduler at any of the other Novartis facilities.

⁷ Novartis employees at the San Carlos Facility currently perform many of the functions of the proposed Planner/Scheduler, including managing the testing and repair of life safety systems; monitoring and analyzing utility usage; reviewing and prioritizing requests for work; estimating the labor required for completion of work orders; and estimating and reviewing work order bills of materials, non-stock materials, purchase requisitions, and external resources required for the completion of work orders.

addition, the Employer plans to submit CCRs for a Water Resource Engineer, Rotating Shift Engineer and Electrician. There is no dispute that the proposed TRD Engineer, Water Resource Engineer and Rotating Shift Engineer would be included as Engineers in the petitioned-for bargaining unit,⁸ but the Employer contends that the Electrician position should be included as well, based upon the projected job duties of the position.

As envisioned by the Employer, the basic job duties of the Electrician would be similar to those of the Engineers, but it also anticipates that the Electrician will have a license to perform electrical work and to focus primarily on electrical equipment and electrical systems. Otherwise, the responsibilities of the Engineers and the proposed Electrician, as defined by the job descriptions, are virtually identical. The Engineers at the San Carlos Facility currently perform electrical work, and their ability to do so is based on experience. The Assistant Chief Engineer, whose engineering job functions are the same as the Engineers, testified that the Engineers perform all of the electrical work on the units that they maintain, including the operation of the motors and compressors. The Assistant Chief Engineer has performed work on the lighting systems, including outlet power and circuit work.

Based on the evidence presented, the Electrician position, as proposed, appears to be an engineering position with a focus on electrical work; however, no such position has yet been requested or authorized. From the submission of

⁸ In these circumstances, the unit classification of 'Engineers' would clearly comprehend both of these two classifications if and when Novartis authorizes the Employer to post the positions and to fill them.

a CCR to the final approval, the process for obtaining authorization to add new positions and staff can take anywhere from two weeks to three months or more. After the Employer receives final approval, it posts for the positions, conducts interviews, makes offers, and awaits acceptances. Offer letters indicate a start date that is anywhere from a few days to more than one month after the offer. As of the hearing on September 24, Novartis had not yet approved the Employer's CCR for the Planner/Scheduler, submitted on July 19, nor its CCR for TRD Engineer, submitted on September 10. Moreover, as noted above, at the time of the hearing, the Employer had not yet requested authorization for an Electrician, Rotating Shift Engineer or Water Resource Engineer.

Chief Engineer's Duties

In each of the collective-bargaining agreements between the Employer and Petitioner covering other facilities, the chief engineer position is included in the bargaining unit with the engineers and is covered by the terms of the applicable contract. At the San Carlos Facility at issue in this proceeding, the Employer hired Bart Greim as Chief Engineer on August 12, the same day the petition was filed and six weeks prior to the September 24 hearing.⁹ Neither Greim nor the Facility Manager testified at the hearing. However, the Regional Manager, who oversees the San Carlos Facility as well as two other facilities, testified that the Chief Engineer's duties include overseeing the Engineers, consulting with the Engineers on engineering issues and assisting the Engineers

⁹ Prior to August 12, the facility did not have a Chief Engineer.

with work assignments.¹⁰ The Chief Engineer has not hired, fired, disciplined, evaluated, or promoted employees; however, the Employer asserts that the Chief Engineer will have that authority.

The Regional Manager testified that Greim will have hiring authority and has sat in on interviews of three job applicants. The Regional Manager further testified that if Greim had strong feelings that a candidate should not be offered a position, the Employer would not extend the offer. There is no evidence, however, about either the extent of Greim's participation in the interviews or the influence of his recommendations, if any. In addition to Greim's attendance at job interviews, the evidence shows that the Assistant Chief Engineer has also attended job applicants' interviews. However, the record clearly establishes that the interviews were conducted by the Facility Manager, and the four recent offer letters were signed by the Facility Manager, even though Greim was already working as the Chief Engineer. In addition to new hires, promotions are also granted by the Facility Manager. The Employer concedes that the Facility Manager has ultimate hiring authority at this Facility.

At the San Carlos facility, work assignments are given by Novartis employees to individuals or groups of individuals, as required to complete the work. Novartis employees coordinate the teamwork schedule to ensure the most effective use of team resources and timely completion of all pre-planned and corrective work. In addition to Novartis employees, the Employer's Facility

¹⁰ The Regional Manager further testified, in general terms, that the Chief Engineer will supervise the anticipated positions of Planner/Scheduler and Electrician.

Manager has also performed daily work scheduling, and the Chief Engineer has assigned corrective maintenance work. The Assistant Chief Engineer also manages the daily tasks of the engineering staff.

The testimony of the Assistant Chief Engineer indicates that employees have brought workplace concerns to the Chief Engineer, such as the desire to have their work hours reduced from 50 hours per week to 40 hours and to receive their work assignments from the Employer instead of from Novartis. The Assistant Chief Engineer further testified that some of the Engineers' concerns are being addressed. For example, the Chief Engineer is beginning to communicate Novartis' work assignments to the Engineers directly, rather than Novartis giving them directly to the employees. However, the Assistant Chief Engineer had no knowledge of Greim's role, if any, in addressing the issues or whether Greim's authority permits him to resolve such issues independently. The record is void of evidence as to whether the Chief Engineer took action to address employees' concerns independently or at the direction of the Facility Manager or Regional Manager.

Overtime does not need to be requested by employees, nor granted by someone with higher authority. Likewise, employees do not need to seek permission for time off. Rather, they merely inform the Chief Engineer and Facility Manager, and the Chief Engineer then arranges the schedule to accommodate the change in staffing.

II. Analysis

Petitioner seeks to represent of unit of Engineers, including the Chief Engineer, Assistant Chief Engineer, Engineers, Utility Engineers, and Apprentice Engineers. The Employer contends that the Chief Engineer should be excluded from the unit due to Section 2(11) supervisory status. It also argues that the petition is premature because it is in the process of expanding the proposed bargaining unit and adding two job classifications that will share an overwhelming community of interest with the petitioned-for unit, and because it does not yet employ a substantial and representative complement of employees in the unit. Based on the record evidence, and for the reasons that follow, I find that the petitioned-for unit, as defined below, is an appropriate unit for purposes of collective bargaining.

1. Community of Interest

In *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011); *enfd. Kindred Nursing Ctrs. E. LLC v. NLRB*, 6th Cir., No. 12-1027 (August 15, 2013), the Board set forth the allocation of evidentiary burdens in cases where, as here, a party contends that the smallest appropriate bargaining unit must include additional employees or job classifications beyond those in the petitioned-for unit. First, the petitioner must show that the unit sought is an identifiable group and that it is *an appropriate unit* under the Board's traditional community-of-interest principles. *Id.*, slip op. at 8-9. The burden then shifts to the proponent of the larger unit to demonstrate that the petitioned-for unit shares an "overwhelming" community of interest with the additional employees that it

seeks to include, such that there "is no legitimate basis upon which to exclude certain employees from" the larger unit because the traditional community-of-interest factors "overlap almost completely." *Specialty Healthcare*, supra, slip op. at 11-13, and fn. 28, quoting *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417, 421, 422 (D.C. Cir. 2008). See also *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 (July 3, 2013); *Fraser Engineering Company, Inc.*, 359 NLRB No. 80 (March 20, 2013); *DTG Operations, Inc.*, 357 NLRB No. 175 (Dec. 30, 2011); *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163 (Dec. 30, 2011).

In the instant case, I find that the employees in the petitioned-for unit are readily identifiable as a distinct group and share a substantial community of interest with each other so as to constitute an appropriate unit. The evidence shows that the Engineers, Assistant Chief Engineer and Chief Engineer perform the same job duties, including performing the building audit, determining the actions needed to fulfill engineering work orders, completing engineering work assignments, and identifying and following the relevant operational safety requirements. There is no dispute that the TRD Engineer, Rotating Shift Engineer and Water Resource Engineer positions, if and when filled, should be included in the bargaining unit as engineers, but their addition appears highly hypothetical.

By contrast, the parties do not agree on the appropriateness of inclusion of the proposed Electrician classification in the petitioned-for unit. The Employer's evidence of the anticipated job duties and skills required of the

proposed Electrician indicates that such a position, if eventually authorized and staffed, would share a substantial community of interest with the bargaining unit found appropriate herein. However, no distinct Electrician classification currently exists. As of the date of the hearing, Novartis had not authorized an Electrician position, nor had the Employer even requested authorization for such a position. In *Bekaert Steel Wire Corp.*, the Board declined to include the employer's proposed new job classifications in the bargaining unit description because the "[e]vidence relative to the new classifications was vague and the classifications themselves were admittedly tentative." *Bekaert Steel Wire Corp.*, 189 NLRB 561, 562 (1971). Here, the Electrician classification is similarly tentative, at best. Accordingly, I find that the proposed Electrician position remains too speculative to be included as a separate job classification in the bargaining unit found appropriate herein.

Regarding the proposed Planner/Scheduler, the evidence indicates that the job duties of this position would not include engineering work, except in rare occurrences. Instead, the Planner/Scheduler would direct work resources, review and prioritize work requests, communicate with the work requester, coordinate and schedule maintenance work, and be a contact person for the client. According to the Employer, the Planner/Scheduler position would require more experience, different skills, additional duties, such as interacting with architects, and the use of tools not required of the Engineers, such as Microsoft Office. Although the Employer anticipates that the Planner/Scheduler and Engineers will have common supervision, share work space, and have

similar benefits and comparable wages, the community-of-interest factors do not "overlap almost completely." *Specialty Healthcare*, supra; *Guide Dogs for the Blind*, supra. The evidence does not establish a substantial, much less an overwhelming, community of interest between the petitioned-for unit of employees and the proposed Planner/Scheduler.

I find that the unit composed of Chief Engineer, Assistant Chief Engineer, Engineers, Utility Engineers, and Apprentice Engineers is readily identifiable, shares a substantial community of interest and thus constitutes an appropriate unit for the purposes of collective bargaining. I further find that the evidence fails to show that an overwhelming community of interest exists between the above-noted unit classifications and the proposed Planner/Scheduler that would require the inclusion of the Planner/Scheduler in the bargaining unit.

2. Supervisory Status of the Chief Engineer

Section 2(11) of the National Labor Relations Act (the Act) defines a "supervisor" as any person:

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

Individuals who possess the authority defined in Section 2(11) are statutory supervisors and can be held to be supervisors even if the authority has not yet been exercised. *Fred Meyer Alaska, Inc.*, 334 NLRB 646 fn. 8 (2001). *U.S. Gypsum Co.*, 93 NLRB 91 (1951), and *Wasatch Oil Refining Co.*, 76 NLRB 417

fn. 17 (1948). The burden of proof regarding the issue of supervisory authority rests with the party that asserts the existence of such authority. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). Here, the Employer relies upon Board cases when chief engineers have been deemed supervisors in the building maintenance industry. See *Mar del Plata Condominium Association, Inc.*, 282 NLRB 1012 (1987); *Greenhoot, Inc.*, 205 NLRB 250 (1973). However, in neither of these cases was there a facility manager, or other supervisor with higher authority, present at the same facility where the chief engineer was deemed a supervisor. *Mar del Plata Condominium Association, Inc.*, 282 NLRB at 1016; *Greenhoot, Inc.*, 205 NLRB at 250-251. In the instant case, the evidence fails to establish that the Chief Engineer will have independent authority to make decisions related to hiring, transferring, suspending, laying off, promoting, rewarding, disciplining, or adjusting grievances absent the oversight and ultimate decision-making of the Facility Manager, or to exercise any other actions that would render him a supervisor.

Instead, at the San Carlos Facility, the Facility Manager, with input from the Regional Manager, conducts interviews, extends job offers, hires, and promotes. The Chief Engineer has attended interviews of job applicants, but so has the Assistant Chief Engineer, whose inclusion in the bargaining unit is not disputed. Although the Employer asserts that it would not hire an applicant if the Chief Engineer recommended against it, there is no evidentiary support for this assertion. Moreover, the Board has determined that an effective hiring

recommendation based on an assessment of an applicant's technical skills does not indicate hiring authority. *Aardvark Post*, 331 NLRB 320 (2000).

As described by the Employer, the primary duties of the Chief Engineer include conducting performance evaluations, working with other engineers to troubleshoot engineering problems, and completing engineering work assignments.

As discussed above, however, the evidence fails to show that the Chief Engineer has actually conducted performance evaluations, and all of the engineers work with each other to solve engineering problems and complete work assignments. Although the Chief Engineer arranges work schedules to accommodate employees' absences, this duty seems merely ministerial, as employees are not required to obtain his permission to take time off. Moreover, the evidence failed to establish that the Chief Engineer adjusted employees' grievances, or made any recommendations for adjusting the grievances, regarding the engineers' work hours and receipt of assignments.

The Employer's only evidence of the Chief Engineer's supervisory status is the Regional Manager's conclusory testimony that the Chief Engineer *will have* supervisory authority. The Board has held that the mere issuance of a directive to alleged supervisors setting forth supervisory authority is not determinative of their supervisory status. *Connecticut Light & Power Co.*, 121 NLRB 768, 770 (1958). Moreover, conclusory assertions of supervisory authority, unsupported by specific evidence, are insufficient to prove supervisory status. The Employer did not present the Chief Engineer to testify regarding his specific job duties, his

exercise of authority, or his understanding of the extent of his authority. I find that the Employer has failed to meet its burden to prove that the Chief Engineer should be excluded from the bargaining unit based on supervisory status.

3. Substantial and Representative Employee Complement

The Board will direct an immediate election, notwithstanding an employer's asserted plan to expand its workforce, when the current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future. *Toto Industries*, 323 NLRB 645 (1997); *General Cable Corp.*, 173 NLRB 251 (1968). The Board finds an existing complement of employees to be substantial and representative when at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Shares, Inc.*, 343 NLRB 455, fn. 2 (2004).¹¹ In *Toto Industries*, the Board considered multiple factors in determining whether an Employer's expansion plans should preclude an immediate election. 323 NLRB at 645. Of those factors, the most relevant here are the speculative nature of the Employer's expansion plans and the timing of the proposed expansion. As of the dates of the petition and hearing, there were four employees in the petitioned-for unit: the Chief Engineer; one Assistant Chief Engineer; and two Engineers. Of the nine positions the Employer anticipates adding, the Employer has received approval from Novartis to add four engineering positions, and the Employer has so far made job offers to three Engineers. These four employees, if or when they

¹¹ I reject the Employer's argument that the 30/50 rule applies only to contract-bar cases. The rule has been applied to petitions for imminent election. *Yellowstone Intl. Mailing, Inc.*, 332 NLRB 386 (2000); *In re MJM Studios of New York, Inc.*, 336 NLRB 1255 (2001).

are employed, will most likely be members of the bargaining unit. The fact, however, that they had not begun to work as of the date of the hearing does not render the petition premature, because four unit employees, or 50% of the total hiring in which Novartis had authorized the Employer to engage, were nonetheless already on the Employer's payroll.¹²

Although the Employer has submitted CCRs to hire the Planner/Scheduler and the TRD Engineer as of the date of the hearing, it has not yet received Novartis' approval to create and fill those positions. The evidence indicates that the amount of time required actually to fill those positions, if approved, could be three months or more. Moreover, the Employer had not even submitted CCRs to Novartis for the positions of Electrician, Water Resource Engineer or Rotating Engineer. Thus, any determination as to when, if ever, the Employer might hire these three additional employees would require significant speculation. I find these hiring plans to be too uncertain to warrant delay of a representation election. See *Bekaert Steel Wire Corp.*, 189 NLRB 561 (1971); *Gerlach Meat Co.*, 192 NLRB 559 (1971); *In re Laurel Assoc., Inc.*, 325 NLRB 603, 604 (1998).

Even if I were to find, as the Employer argues, that its proposed unit expansion within a seven to nine month period is "in the near future,"¹³ only the two Engineers, Assistant Chief Engineer and Chief Engineer currently employed, along with the four additional Engineers that Novartis has already approved and,

¹² Addition of the TRD Engineer that the Employer has proposed but that Novartis had not approved at the time of the hearing would change the then-current complement to 36%, which still exceeds the Board criterion of 30%.

¹³ Citing *Gerlach Meat Co.*, 192 NLRB 559 (1971); *Some Industries*, 204 NLRB 1142 (1973).

arguably, the one TRD Engineer that the Employer has already requested but whose hire Novartis had not yet approved, would constitute the representative complement. If one assumes the addition of these five Engineers to the current bargaining unit of four Engineers, at the time of the hearing the Employer employed 44 percent of the eventual employee complement in more than 50 percent of the job classifications included in the bargaining unit found appropriate herein. I find that the current employee complement is both substantial and representative of the potential workforce due to the number of employees employed in more than 50 percent of the job classifications envisioned.¹⁴

Accordingly, I am ordering an election in the petitioned-for unit.¹⁵

CONCLUSIONS AND FINDINGS

Based upon the entire record, 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, 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. The Petitioner is a labor organization within the meaning of the Act.

¹⁴ The 50% threshold would be satisfied even in the event that the requested but not yet approved TRD Engineer were added as a separate classification.

¹⁵ In reaching this conclusion, I have carefully considered the positions and arguments of the parties. To the extent they are at odds with my findings and not discussed herein, I find them unavailing and discussion of them unwarranted.

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

5. The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of the Act:

All full-time and regular part-time chief engineers, assistant chief engineers, engineers, utility engineers, and apprentice engineers employed by the Employer at 150 Industrial Way, San Carlos, California; excluding all other employees, guards and supervisors 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 International Union of Operating Engineers, Stationary Engineers Local No. 39, AFL-CIO. The date, time and place of the election will be specified in the notice of election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the Voting Group 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. Employees in the Voting Group 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 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 December 2, 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,¹⁶ by mail or by facsimile transmission to (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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 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

¹⁶ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select E-File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.

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 December 9, 2013. The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,¹⁷ but may not be filed by facsimile.

DATED AT San Francisco, California, this 25th day of November 2013.



Joseph F. Frankl, Regional Director
National Labor Relations Board, Region 20
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San Francisco, California 94103-1735

¹⁷ To file the request for review electronically, go to www.nlr.gov, select E-File Case documents, enter the NLRB Case Number, and follow the detailed instructions.