

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**TITO CONTRACTORS, INC.**

**Employer**

**and**

**Case 05-RC-117169**

**INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES, DISTRICT COUNCIL 51,  
AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held on December 2, 2013 before a hearing officer of the National Labor Relations Board, herein called the Board. The Employer, Tito Contractors Inc. (hereinafter “Employer”) and the Petitioner International Union of Painters and Allied Trades, District Council 51, AFL-CIO (hereinafter “Petitioner”) appeared at the hearing.

Petitioner seeks to represent employees in the following unit of the Employer:

All employees employed by the Employer, excluding all project managers, recycling supervisors, clerical employees, managerial employees, professional employees, guards, and supervisors as defined by the Act.<sup>1</sup>

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<sup>1</sup> Petitioner originally petitioned for a unit of all full-time and regular part-time employees employed by the Employer at transfer and recycling stations currently located at 10275 Beaver Dam Road, Cockeysville, MD 21030 and 16105 Frederick Road, Derwood, MD, and all full-time and regular part-time employees performing carpentry, painting, drywall, floors, and other construction work, excluding all guards, professional employees, office clerical and supervisors as defined by the Act. During the hearing, the petition was amended by the parties to include all employees employed by the Employer, excluding all clerical employees, management, guards, and supervisors as defined by the Act. Later during the hearing, the parties amended this unit by stipulating that project managers, recycling supervisors, and professional employees should also be excluded from the unit. I find that these amendments do not constitute a new petition, as the record evidence demonstrates that all employees of Employer were contemplated by, and identified with reasonable accuracy in, the original petition for “all full-time and regular part-time employees employed by the Employer at transfer and recycling stations” and by “all full-time and regular part-time employees performing carpentry, painting, drywall, floors, and other construction work.” Additionally, there is no evidence suggesting that these amendments substantially enlarge the character or size of the unit or the

There are approximately 88 employees in the petitioned-for unit.

### **I. ISSUES**

The Employer raised two issues in this proceeding: (1) whether the employees share a community of interest and therefore whether the petition states an appropriate unit under the Act; and (2) whether certain employees are supervisors under Section 2(11) of the Act and therefore should be excluded from the unit.

### **II. POSITIONS OF THE PARTIES**

The Employer contends that the unit is not appropriate because the employees do not share a community of interest. It also contends that certain employees, who are listed in the Employer's Exhibit 1 at numbers 25 through 34 and who have the title of Supervisor, are supervisors under Section 2(11) of the Act and should be excluded from the unit. Petitioner contends that the unit it seeks is appropriate, and that those individuals listed at numbers 25 through 34 are not supervisors as defined in the Act and should therefore be included in the unit.

### **III. CONCLUSION**

For the reasons that follow in this Decision, and after careful consideration of the entire record of evidence and the Employer's post-hearing brief,<sup>2</sup> I find that the petitioned-for single unit of all employees employed by the Employer, excluding all project managers, recycling supervisors, clerical employees, managerial employees, professional employees, guards, and supervisors, as defined by the Act, is appropriate. Additionally, I find that the employees listed on Exhibit 1 at numbers 25 through 34 are not supervisors as defined under Section 2(11) of the

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number of employees covered. See *Postash Co. of America*, 88 NLRB 234, 237 (1950); *Brown Transport Corp.*, 296 NLRB 1213 (1989) (citing *Centennial Development Co.*, 219 NLRB 1284, 1285 (1975)).

<sup>2</sup> Petitioner did not file a post-hearing brief.

Act and are therefore are to be included in the petitioned-for unit and allowed to vote at the election.

#### **IV. FACTS AND ANALYSIS**

##### **A. The Employer's Business Operations**

The Employer provides general contracting, construction, painting, and recycling services. As part of its offer of proof, the Employer stated that it operates two permanent facilities. One is an office on Georgia Avenue in northwest Washington, D.C., where two mechanics perform routine maintenance work on company vehicles. These mechanics do not perform contracting services, are full-time employees, and receive benefits and vacation time. The Employer's managerial and administrative personnel also work at this office, including its president, executive vice president, general manager, comptroller, accounts payable person, accounts payable assistant, payroll person, secretary-treasurer, purchasing manager, superintendent, president's assistant, receptionist, and two administrative workers/estimators.

The other facility is a warehouse located in Kensington, Maryland that the Employer leases. At this location, the Employer employs one individual: a full-time warehouse employee. That employee is responsible for coordinating deliveries and organizing the warehouse. The Employer maintains that this employee does not do other types of work and is the only employee located in the warehouse. However, Jose Bautista, who works for the Employer under the title of Supervisor, testified that this warehouse employee had worked with Bautista about a month and a half ago on a project located at the Arlington County jail. Thus, it appears that the warehouse employee sometimes assists with other projects of the Employer besides the warehouse work.

Outside of these two locations, the Employer also employs laborers who work at assigned job sites of the Employer's customers. These laborers perform various tasks, including masonry, tile and floor installation, carpentry, painting, building repair, and snow removal. Their hours of work are often affected by weather conditions and by requirements set by the customers. The Employer's customers are typically state and local government entities, such as Arlington County, Fairfax County, and Baltimore City. On rare occasions, the Employer also performs residential work. The laborers typically report directly to the customer location where they will be working. The contracts with the customers often require the laborers to meet specific criteria. For example, some customers require that the laborers pass background checks or that they be licensed mechanics. Certain customers often request specific laborers because they are familiar with those employees and prefer their work. At times, customers have even delayed the Employer from beginning work on a contract until the Employer can provide a crew of employees that the customer prefers.

In addition to the laborers, the warehouse employee, and the mechanics, the Employer also has employees who work at one of three recycling facilities. Two facilities are located in Montgomery County, Maryland and are referred to herein as the Derwood facility and the Dickerson facility. The third facility is located in Cockeyville, Maryland. For the work it performs at these three facilities, the Employer is party to three separate contracts (Cockeyville; general labor at Derwood and Dickerson facilities; sorting services at the Dickerson facility), each with a government entity.

The recycling employees report to their respective facility for work. The recycling employees stationed at the Dickerson facility bag compost, stack bags on a palletizer, wrap pallets, monitor temperature, and perform grounds-keeping, among other tasks. The recycling

employees who are stationed at the Derwood facility and who work under the same contract as the Dickerson facility provide traffic control, clean equipment, perform grounds-keeping, and monitor temperature, plus additional tasks. The recycling employees stationed at a different building of the Derwood facility who work under a different contract sort recyclable material on a conveyor belt and perform some custodial services. As for the recycling employees at the Cokesville facility, these employees provide sorting services, bag compost, stack bags, perform grounds-keeping, and conduct litter control activities. The Employer represented that the supervisors at each of these facilities do not interchange with one another. Further, the Employer represented that the employees at the Cokesville facility do not interchange with the other recycling employees due to the geographic distance between the facilities. There is no evidence of any interchange between the recycling employees, or between the recycling employees and any other classification of employee.

Each of the contracts for the recycling facilities sets certain terms that the Employer must meet, including minimum rate of pay, number of employees, and number of hours each employee works. The contracts for the Dickerson and Derwood facilities also require the Employer to offer its eligible employees medical and dental insurance. The contract for the Cokesville location sets a minimum rate of pay, but does not require the employees be offered medical and dental insurance. Weather may affect hours of work for the employees who work at the Dickerson facility, as well as the employees who work at the Derwood facility on non-sorting work. Weather does not usually affect the hours of the Derwood facility employees who perform sorting services because their work is generally inside the building.

**B. Appropriateness of the Employer-Wide Unit**

The Employer objected to the appropriateness of the employer-wide unit that Petitioner seeks, stating that its employees do not share a community of interest. The hearing officer informed the Employer that the unit sought by Petitioner was presumptively appropriate and consequently required the Employer to submit an offer of proof regarding its objection to the appropriateness. The Employer provided an offer of proof and also objected to the procedure of being required to submit an offer of proof. The hearing officer noted the objection in the record, received the offer of proof into the record, and did not permit further testimony on this issue.

The hearing officer based her decision to not allow testimony on this issue on the holding in *Mariah, Inc.*, 322 NLRB 586 (1996). That case held that a hearing officer properly exercised her authority in permitting the employer to submit an offer of proof but excluding irrelevant evidence. *Id.* at fn. 1; *see also Laurel Associates, Inc.*, 325 NLRB 603 (1998). The employer in *Mariah, Inc.* declined to take a position on whether the presumptively appropriate unit was appropriate. Notably, the Employer in this matter did not state during the hearing or in its post-hearing brief what unit or compilation of units it believes would be appropriate. It simply stated that its employees do not share a community of interest. Based on the record evidence, I find that the hearing officer here, like the hearing officer in *Mariah, Inc.*, properly exercised her authority in allowing the Employer to submit an offer of proof as to the appropriateness of the unit and refusing further testimony on the matter.

As the hearing officer noted, the petitioned-for employer-wide unit is presumptively appropriate. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998)(finding employer-wide unit covering 15 to 20 different state locations presumptively appropriate); *Montgomery County Opportunity Board*, 249 NLRB 880 (1980). In fact, the Act itself indicates that an employer-

wide unit is presumptively appropriate. *See* 29 U.S.C. § 159(b); *In re Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83, fn. 16 (2011). If the petitioned-for unit is appropriate, as the employer-wide unit is here, the inquiry into appropriate units ends. *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, fn. 2 (7<sup>th</sup> Cir. 1997). Nothing in the Act requires that the unit for bargaining be the only appropriate unit or the most appropriate unit. Rather, to be appropriate, the Act requires that the unit insure to employees in each case “the fullest freedom in exercising the rights guaranteed in the Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Morand Bros Beverage Co.*, 91 NLRB 409, enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). I find, based on the record evidence, including the Employer’s offer of proof, that the Employer has failed to overcome the presumption of appropriateness of an employer-wide unit in this matter.

### **C. Supervisory Status of Certain Employees**

The Employer raised an issue of supervisory status of the individuals listed on Exhibit 1 at numbers 25 through 34.<sup>3</sup> These employees have the title of Supervisor and work on the laborer side of the Employer’s business. They perform the same work as the laborers on their crews, along with other duties detailed herein. An employee may become a Supervisor based on his skill sets and the length of time he has honed those skill sets. He may also become a Supervisor based on references that show he oversaw a crew in his past employment. The Employer’s general manager, Kenneth Brown, stated that certain Supervisors have training on small tools, lead abatement certification, or manufacturer certification on certain flooring or

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<sup>3</sup> Those employees are the following: (i) Milton Antezana, (ii) Norberto P. Araujo, (iii) Roberto Ayala, (iv) Henry Castellon, (v) Hector R. Delgado, (vi) Giovany Garza, (vii) Hernan M. Latapy Haro, (viii) Jose M. Lopez Bautista, (ix) Manuel Medrano, and (x) Jorge L. Ramos. Two other individuals, Manuel B. Alarcon and Fermin D. Rodriguez, appear at numbers 24 and 35 respectively on Exhibit 1 and are also listed as Supervisors. The parties stipulated during the hearing that these two individuals are supervisors under the Act.

paint. For example, five Supervisors have been trained in how to perform coating work.

However, not all of the Supervisors hold special certifications; Supervisor Jose Bautista testified that he does not hold any special certifications. The Employer expects the Supervisors who receive certifications to then educate their crew on how to perform that work.

A project manager provides the Supervisor with the specifications for the job that the Supervisor is assigned to. Those specifications outline the details of the job, such as how many hours it has been allotted, the materials to be used, and the description of what has to be performed. These specifications are created and determined by the project manager and customer, or by professional architects and engineers. The Supervisors are not involved in determining the specifications for the work or the scope of the work.

The Supervisor is generally onsite at his assigned location on a full-time basis, while the project manager is not onsite at each location all the time. The Supervisor is also generally the onsite point of contact for the customer. Supervisors do not select the employees on their crew, or which jobsite they are assigned to. Rather, the project managers and Fermin Rodriguez, who has the title of Supervisor and who the parties have stipulated to be a supervisor under the Act, make these decisions. If a Supervisor wants to change his crew, he has to request that it be changed. Supervisors do not have authority to terminate or hire anyone, nor do Supervisors have the ability to directly discipline any member of their crew. Additionally, the Supervisors do not have the authority to take corrective action if a project falls behind on schedule. Instead, the general manager or the project manager deals with the problem. If a laborer on a Supervisor's crew has to call out of work, the laborer contacts the Supervisor to let him know, but the Supervisor cannot directly assign another laborer to cover that person's work. Rather, the Supervisor has to request extra coverage from his project manager. Further, while laborers had

brought complaints about overtime to Supervisor Bautista, Bautista testified that he has no authority to do anything about those complaints. He says the laborers must bring their complaints directly to the Employer's owner or to the other managers.

The Supervisor does not determine the schedule for a project, hours of access to a jobsite, or when a project is complete. The schedule is determined by the project manager and the customer. The hours of access are generally set by the contract terms, and the customer's project manager typically is onsite to monitor whether the Employer's crew arrives on time. A Supervisor could allow the crew of laborers to leave early if they complete their work early and also tells the laborers when they will be taking a break or lunch. If a crew finishes early, the project manager will determine if there is another location he can assign the crew to and will send the crew to the new location if there is one. The completion date of a project is generally set by the schedule that is given to the Supervisor, and the Supervisor has no discretion to alter that completion date. Once a project schedule is complete and the Supervisor notifies the Employer that he believes they are complete, the customer and project manager walk the site with the Supervisor to determine whether the project is complete.

While working onsite, the Supervisors generally make sure the laborers are performing their work correctly and on time, and they direct the laborers on what tasks to do according to the job specifications. The Supervisors assign different tasks to different laborers based on the Supervisors' knowledge of each laborer's particular skills. The Supervisors are also required to meet the safety criteria at a given jobsite and hold safety meetings with their crew to tell them what the safety requirements are for that specific job. The safety requirements of a job are set by the customer, but the Employer's general manager will also hold meetings to go over safety requirements for specific projects. If the Employer is using subcontractors on the job, those

subcontractors also look to the Supervisor for what is expected of them. Neither General Manager Brown nor Supervisor Bautista could give a specific example of a time in which a Supervisor was disciplined for not meeting a time target, work done incorrectly by the crew, or not meeting safety standards.

Regarding company benefits, Supervisors are allowed to participate in the company healthcare plan unlike the laborers. Supervisors are also provided with vacation time and holidays, unlike the laborers. Supervisors are provided with a company vehicle, cell phone, facsimile machine with which to transmit the crew's daily timesheets, and a company credit card. The laborers generally are not given any of these, though Supervisor Bautista testified that at least one laborer, Manuel Rodriguez, also drives a company vehicle. Supervisors record the time that laborers on their crews work every day, and Supervisors submit that time information to the Employer's office every week. Bautista testified that he either faxes these forms to the Employer using a customer's fax machine, or he and another laborer drive to the Employer's facility to drop them off. Although the Supervisors are provided with company facsimile machines, they do not typically use them because the Supervisors tend not to have the landline telephone connections needed to operate the facsimile machine. Rather, Supervisors typically send the timesheets by e-mail, by a customer's facsimile machine, or by delivering them to the Employer's office. Supervisors are also allowed to make purchases for the job site with a company credit card, but the card has a dollar limit set by the Employer's purchase order for that job, which the Supervisor cannot exceed. If a Supervisor tries to make a purchase that exceeds the allotted amount, the store receives a notification that it must contact the Employer's office for permission. The purchase will not be allowed until the Employer's office reviews the purchase

for accuracy and then gives permission. Two of the Supervisors do not have credit cards yet since they have only been with the Employer for a short time.

Analyzing the record evidence described above, I find that the Employer has not established that the employees with the title of Supervisor are supervisors under the Act. Section 2(11) of the Act defines a “supervisor” as someone who has

authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust grievances, or effectively 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.

The burden of establishing supervisory status rests on the party asserting that status, which in this case is the Employer. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-12 (2001).

Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, fn. 8 (1999). While these individuals carry the title of Supervisor, it is their job duties, not job titles, which determine their supervisory status. *Dole Fresh Vegetables, Inc.*, 339 NLRB 785 (2003).

The evidence shows that the Supervisors do not have any independent authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances of the members of their crew. The evidence also shows that the Supervisors cannot pick the members of their crew, cannot set the laborers’ hours of work, cannot assign overtime hours to the laborers, cannot grant the laborers time off, and cannot set rates of pay for the laborers. Rather, all of this authority lies with the project managers or the general manager, or is set out in the contract between the Employer and its customer. Further, neither the general manager nor Supervisor Bautista could identify any instance in which an employee was disciplined based on

complaints by a Supervisor, or an instance in which a Supervisor was disciplined for laborers not performing up to standards.

The only possible supervisory roles that these Supervisors have is that they direct the laborers as to which duties to perform on a job, inform the laborers of the safety requirements for a given job, and sometimes provide training on certain tasks. There is no evidence that when a Supervisor trains laborers on certain tasks or informs them of the safety requirements that he is evaluating the laborers' performance, making recommendations to the Employer, or otherwise exercising independent judgment. *See Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989). There is also no evidence that the Supervisors responsibly direct the laborers. Rather, the evidence shows that the Supervisors exercise authority that "involves routine decisions typical of leadman positions and other minor supervisory employees that are found by the Board not to be statutory supervisors." *Byers Engineering Corp., Local 1049*, 324 NLRB 740, 742 (1997); *see also Chrome Deposit Corp.*, 323 NLRB 961 (1997). All of the tasks for a job are given to the Supervisor by a project manager, and the Supervisor simply tells each laborer which of the tasks to perform. The Supervisors exercise no independent judgment regarding what tasks need to be done, which is a prerequisite for supervisory status. Additionally, Supervisor Bautista testified that he gives little direction to laborers in completing their tasks. Consequently, the evidence shows that the Supervisors are merely experienced employees who know which employee can better perform certain tasks on a job. Their use of this information does not support a finding of supervisor status. *Sears, Roebuck & Co.*, 292 NLRB at 755.

Therefore, based on the record evidence and relevant case law, I find that the Employer has not met its burden of establishing that the Supervisors at issue are supervisors as defined by

the Act. Consequently, the Supervisors listed in Employer's Exhibit 1 at numbers 25 through 34 should be included in the unit and allowed to vote in the election.

## V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, 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.<sup>4</sup>
3. The International Union of Painters and Allied Trades, District Council 51, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.<sup>5</sup>
5. 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.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(a) of the Act:

All employees employed by the Employer, excluding all project managers, recycling supervisors, clerical employees, managerial employees, professional employees, guards, and supervisors as defined by the Act.

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<sup>4</sup> The parties stipulated that the Employer is a Maryland corporation with a principal office and place of business in the District of Columbia, and that is engaged in the business of providing general contracting, construction, painting and recycling services. The parties also stipulated that within the past twelve months, the Employer purchased and received goods valued in excess of \$50,000 directly from points located outside the District of Columbia.

<sup>5</sup> The parties stipulated that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and that there is no history of collective bargaining between the parties for the petitioned-for employees.

7. The following employees are not supervisors within the meaning of Section 2(11) of the Act and are therefore included within the petitioned-for unit and able to vote at the election: (i) Milton Antezana, (ii) Norberto P. Araujo, (iii) Roberto Ayala, (iv) Henry Castellon, (v) Hector R. Delgado, (vi) Giovany Garza, (vii) Hernan M. Latapy Haro, (viii) Jose M. Lopez Bautista, (ix) Manuel Medrano, and (x) Jorge L. Ramos.

## **I. 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 Painters and Allied Trades, District Council 51, AFL-CIO. The date, time, and manner 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 strikes, 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.

Also eligible to vote are all employees in the unit if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters.

### **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 seven 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). This 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, National Labor Relations Board, Region 5, Bank of America Center -Tower II, 100 South Charles Street, Suite 600, Baltimore, Maryland 21201, on or before **December 20, 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 by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, 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 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 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 non-posting of the election notice.

### **RIGHT TO REQUEST REVIEW**

***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, you may obtain review of

this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

***Procedures for Filing a Request for Review:*** 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 close of business on December 27, 2013 at 5 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.<sup>6</sup> 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](http://www.nlr.gov). Once the website is accessed, select **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

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<sup>6</sup> 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.

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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.

Issued at Baltimore, Maryland this 13<sup>th</sup> day of December 2013.

(SEAL)

/s/ Steven L. Shuster

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Steven L. Shuster, Acting Regional Director  
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