

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

**FOLEY ELECTRIC, INC.**

**Employer**

**and**

**Case 20-RC-123999**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL UNION 332,  
AFL-CIO**

**Petitioner<sup>1</sup>**

**DECISION AND DIRECTION OF ELECTION**

By its Petition, and as clarified during the hearing in the matter, International Brotherhood of Electrical Workers, Local Union 332, AFL-CIO (Petitioner) seeks to represent a unit of all full-time and regular part-time electricians and electrical apprentices employed by the Employer. Specifically excluded from the unit sought are parts and/or delivery employees, office clerical employees, guards, and managers or supervisors as defined in the Act.

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

This matter presents two issues. First, the Employer posits that the Petitioner has jurisdiction to represent employees only in Santa Clara County, California,<sup>2</sup> and that the

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<sup>1</sup> The parties agreed that to the extent that any formal documents failed to include the proper names of the Employer and Petitioner, all such documents were to be considered amended so as to reflect their correct respective names as they appear in the caption of this Decision.

description of the appropriate bargaining unit (also called Unit) should reflect this limitation. Secondly, Petitioner argues for the exclusion of general foremen<sup>3</sup> Michael Hanson (Hanson) and Jack MacDonald (MacDonald) from the Unit as statutory supervisors within the meaning of Section 2(11) of the Act. Hanson and MacDonald are the only two general foremen employed by the Employer.

I conclude that Board law is well settled that the jurisdiction of a union is not a factor in determining an appropriate Unit.<sup>4</sup> For the reasons explained below, I also conclude that the Petitioner failed to meet its burden to demonstrate that Hanson is a supervisor, but carried it with regard to MacDonald.

At the hearing, a stipulation was proposed by the Employer that the Unit be defined as follows:

All regular full-time and part-time persons employed by the Employer in the County of Santa Clara, engaged in or assisting in the performance of commercial, low voltage service, and/or residential electrical work, including but not limited to general foreperson, forepersons, lead persons, journeypersons, electricians, trainee electricians, apprentice electricians, service technicians, and material handlers, excluding office clerical guards and supervisors as defined in the Act.

Petitioner took issue with the proposed Unit description in only two regards. It opposed the limitation to employees working in Santa Clara County, and favored the exclusion of general forepersons, understood here to mean Hanson and MacDonald. In light of my findings, I shall modify the Employer's above-proposed Unit to eliminate the geographical limitation to work

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<sup>2</sup> The Employer's facility is located in Redwood City, which is in San Mateo County to the immediate north of Santa Clara County. All these locations are in California.

<sup>3</sup> From the record, it does not seem that the Employer routinely uses the term "general foreman" as the official title of Hanson and MacDonald. However, throughout the hearing, the term was used to distinguish their roles from the role of an electrician serving as a foreman on a particular job. For the purpose of this decision, supervisorial status, as evidenced by the actual duties and responsibilities exercised by general foremen, is at issue, rather than the title under which they perform those functions.

<sup>4</sup> In any event, the record evidence does not support the Employer's contention that the Petitioner has jurisdiction only in Santa Clara County.

performed within Santa Clara County, to specify the inclusion of the residential general foreperson, and to specify the exclusion of the commercial general foreperson.<sup>5</sup>

### **FACTS**

Operational Background: The Employer is an electrical contractor owned by John Philpott (Philpott) and Scott Zeltmann (Zeltmann). Philpott serves as the Employer's Treasurer and Zeltmann serves as the Employer's President. Working from its office and shop in Redwood City, the Employer has both residential and commercial operations. The residential side is under the direction of Philpott and involves everything from small repairs to rewiring homes. The commercial side, run by Zeltmann, involves work on new building construction, tenant improvement projects, full-service repair work, and low voltage work. In recent years, the Employer's business has been fairly evenly split between residential and commercial work.

Hanson is considered the general foreman of the residential operation and reports directly to Philpott. MacDonald is the general foreman of the commercial operation and reports to Zeltmann.

The Employer employs approximately twelve (12) journeymen electricians including the general foremen at issue in this case and other electricians who serve as foremen on jobs. The Employer also employs approximately twelve (12) electrical trainees who are in the process of seeking full certification from the State of California. Additionally, the Employer employs two material handlers and three employees in administration.

### **Jurisdiction of Petitioner:**

Petitioner has collective-bargaining agreements with individual employers and multiemployer associations, but does not use the term "master agreement" within its organization. It has contracts that cover the entire San Francisco Bay Area. There is no evidence to suggest that Petitioner's representation of employees is limited to any specific county in general, or to Santa Clara County in particular.<sup>6</sup>

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<sup>5</sup>Additionally, for the sake of comprehensiveness, I shall add "all other employees" to the exclusion.

<sup>6</sup> During the hearing, the Employer issued a subpoena duces tecum to Petitioner for the production of the Petitioner's "Master Agreements." On the record, the Employer explained that it intended to show the Petitioner's jurisdictional area by way of the subpoenaed documents. Petitioner made an oral motion to quash, which was granted on the grounds that the documents were not relevant to the issue of an

### **The Duties of General Foremen Hanson and MacDonald:**

There is no written job description for the job title of general foreman nor are there job descriptions specifically for the individuals Hanson and MacDonald.

#### **Michael Hanson:**

Hanson, who works primarily on the residential side of the company's operations, has responsibilities on both construction projects and service jobs. He spends an estimated 60% of his working week in the field working with tools. Of that, the great majority of his work is made up of residential service calls. Residential service work generally results from a call by a customer whose home needs repair.

When the Employer receives a residential service call, together Hanson and Philpott decide whom to dispatch for the call, typically selecting the candidate on the basis of the proximity of his current location to the address of the caller. If no employee in the field is proximate, Hanson usually handles the call himself. If possible, Hanson makes the repair immediately on-site. If it proves to be a more involved repair, he will make arrangements to schedule the repair with the necessary time and personnel.

On a service call, Hanson gives residential service customers an estimate before performing the work based on the company's hourly rate and the length of time the job will likely take. Hanson is not the only electrician from the company to make residential service calls and he noted that any electrician would use the same calculation and give a customer an estimate. However, in most circumstances, Hanson can give the estimate with no prior approval. Other electricians on a residential service call will get approval of their estimate from Hanson before quoting it to the customer.

On a construction project, Hanson's involvement begins with drafting the bid. It is rare for a bid to require other approval before it is submitted to a customer. On occasion, if the job is particularly large, Hanson will seek approval for a bid from Philpott. As part of the preparation for a construction job, Hanson will determine the number of employees needed and the time the project will take. He coordinates with Philpott on the issue of manpower, including getting Philpott's approval for the number of electricians to place at a work site, and usually works with

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appropriate unit I hereby uphold the Hearing Officer's ruling. In any event, I note that testimonial evidence by Petitioner's organizer, David Bini, established that the Petitioner's jurisdictional area is wider than argued by the Employer.

the same team of two or three journeypersons. On a construction job, Hanson will also obtain the building permit, coordinate with the electrical supplier, meet general contractor of the project, check in with the employees throughout the job, and order materials. Hanson's purpose in checking in with the employees on the jobsite is to ensure that the job is running on time and to conduct his own electrical inspections of the work.

Jack MacDonald:

While he has no official, written title, MacDonald currently considers himself to be a foreman. He previously held the position of Project Manager from about 2005 - 2009.<sup>7</sup> He testified that his job responsibilities as foreman have not changed in the last twelve (12) months.

MacDonald works primarily on the commercial side of the business and considers Zeltmann to be his boss. His work entails new construction, tenant improvement work, and service calls to commercial locations. He estimates that the majority of his time on the job is spent on tenant improvement work. He spends approximately four days of a five-day work week in the field going from jobsite to jobsite. MacDonald typically deals with three or four jobsites concurrently.

MacDonald gets involved in new commercial projects at various starting points. He could begin his work on the project by setting up the job after it has been planned and the company won the bid. He may start at an earlier point on the project by drafting the bid (i.e. the "take-off"). At times, the Employer receives a call from a contractor looking for additional electricians for a construction project, and MacDonald may get involved in making arrangements to accommodate that request.

Setting up a job to begin once the bid has been won and the job planned involves taking a journeyman to the jobsite and identifying the work to be performed. MacDonald does not have to tell a journeyman how to perform the work because a journeyman has the training and experience sufficient to hold state certification. Nevertheless, as a construction job progresses, MacDonald will check the site on a near daily basis to ensure that the specifications are being met.

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<sup>7</sup> According to Zeltmanns' and MacDonald's respective testimony, when the economy faltered several years ago, the Employer cut the position of Project Manager and MacDonald was demoted to his current position of general foreman. Recently, the Employer reinstated the Project Manager job, but did not reinstate MacDonald to that position. No party raised an issue regarding the status of that position.

When MacDonald begins his involvement with a job by drafting the take-off, he will send it directly to the customer if the valuation is less than \$10,000. If it is more, he submits it to Zeltmann first, who may alter it before submitting it to the customer.

MacDonald also has the responsibility to determine how many foremen will be needed for each particular area of a large job and how large a crew is required, although Zeltmann has the final say on the crew size. Once the job is underway, MacDonald makes sure that the safety meetings are taking place, that the materials are ordered, and that the paperwork for the job is maintained.

As for commercial service projects, MacDonald may get the call directly from the customer or it may come through the office. In quoting a service price to the customer, MacDonald confines himself to general "ballpark" figures so that the job is unlikely to go over his estimate. Once he knows the repair required, MacDonald will call Zeltmann to make a proposal to the customer if it is a lengthy job that may require overtime. For a simpler job, MacDonald may give a "not to exceed" number to a customer that is more like an estimate, but the final pricing still comes through Zeltmann.

In his current capacity as a foreman, MacDonald works with tools a very small percentage of the time. He occasionally works with tools when an extra pair of hands is needed on a job or when his expertise may be needed for troubleshooting or working with specialized equipment.

### **Evidence of Supervisory Indicia**

As noted, Hanson's duties entail the residential side of the Employer's operation, and he reports to Philpott. MacDonald work involves the commercial side of the Employer's business, and he reports to Zeltmann. The record disclosed that their respective authority differs significantly. To reflect this material difference, I shall regard Hanson as *residential general foreperson* and MacDonald as *commercial general foreperson*.

- **Hiring Employees:**

Neither Hanson's nor MacDonald's name appears on any documents related to the hiring of employees.

Hanson testified that he has no involvement whatsoever in the hiring of new employees and has never participated in the interviewing of potential employees or recommended an employee for hire.

MacDonald, on the other hand, is called in by Zeltmann to participate in the interviews of state-certified electricians seeking employment with the Employer. Interviews such as these happen every three or four months. In these interviews, MacDonald asks technical questions to determine the applicant's ability, and he administers a 10-question questionnaire that he created. Since he became a foreman several years ago, he has spoken approximately twice with an applicant alone. This occurred when Zeltmann was running late or had to leave an interview early. When alone with an applicant, MacDonald asked only general questions. Since MacDonald has been a foreman, no applicant has been hired without Zeltmann meeting the candidate. MacDonald is not typically involved in the hiring of electrical trainees.

- Disciplining, Suspending, and Terminating Employees:

Hanson testified that he has never orally warned an employee, issued a written warning or suspension, or terminated an employee. Hanson has never recommended any such action and does not believe that he has the authority to take any of those actions. While his testimony contained no specific examples of such an occurrence, if Hanson witnessed employee misconduct, he would report it to Philpott.

Where MacDonald's disciplinary authority is concerned, Zeltmann testified that about one week prior to the hearing, there was an incident on a jobsite in which two employees got into an argument. It was Zeltman's recollection that MacDonald called him and asked how he should handle the situation. Zeltmann instructed MacDonald to write, essentially, an incident report. The record is unclear as to whether discipline was issued to either employee as a result of MacDonald's incident report. Zeltmann testified, however, that MacDonald had authority to issue oral warnings and written warnings without consulting Zeltmann in advance, provided that the written warning did not mete out discipline beyond issuance of the warning itself.

MacDonald testified to giving "verbal [oral] warnings" to employees without any prior approval. His procedure is to issue the warning, inform the office administrator that he has done so, and record the incident in his day book. MacDonald testified that he will also tell Zeltmann "what the situation is and take direction from him on what he wants to do." He had not issued any written warning to an employee since becoming a foreman and, did not believe that his authority to warn without first consulting with Zeltmann encompassed written warnings.

MacDonald has never suspended or terminated an employee as a foreman and does not believe he has the authority to do so independently.

- Recommending Raises and Promotions:

The record is silent on whether the Employer has a regular system of raises and promotions for eligible employees.

Hanson has no involvement in setting wage rates. He has never recommended a raise or promotion for any other employee.

The record evidence does show an informal system whereby employees who work with MacDonald may request to be considered for a raise. MacDonald takes such a request to Zeltmann, and, on occasion, expresses an opinion about whether it should be granted. Zeltmann estimated that MacDonald makes such recommendations, which do not usually include a suggested amount, no more than three times a year. Zeltmann explained that he is not in the field to see employees perform and so, in considering a request to raise wages, he asks MacDonald a number of questions about the performance of the employees involved. Zeltmann follows MacDonald's recommendation about half of the time. MacDonald echoed Zeltmann's testimony regarding the informal performance evaluation that will follow an employee's request for raise.

The record is somewhat vague about MacDonald's role in promoting electricians. Zeltmann indicated that he generally allows MacDonald to "try" giving an employee greater responsibility. Zeltmann recalled one unnamed employee in particular whom he recently promoted to foreman based on MacDonald's recommendation, but that soon thereafter it became clear that the employee was not in fact capable of "running projects."

- Evaluating Employees: The Employer does not have a formal procedure for evaluating employees.

No evidence was presented that Hanson has any responsibility for evaluating employees.

In regard to MacDonald, for various purposes, including increasing wages as discussed above, Zeltmann and MacDonald discuss the performance of the employees in the field. However, those discussions are not exclusive to Zeltmann and MacDonald. Zeltmann also discusses the performance of employees with other foremen and journeymen. In each case, they discuss and informally evaluate the performance of less experienced employees.

- Granting or Denying Time Off: The procedure for requesting time off is relatively informal. Hanson testified that although he makes arrangements to manage his jobsites if any employee is out, he refers all time-off requests to Philpott for approval.

While Zeltmann does not believe he has vested MacDonald with the authority to grant time off requests, MacDonald's testimony suggests that he approves time-off requests on his own. The circumstances, procedure, or frequency of such requests was not developed on the record.

- Granting Overtime: Both Hanson and MacDonald may approve overtime under certain circumstances and within reason, but their liberty in this regard differs greatly.

Hanson testified that there is a general outline of the overtime he is permitted to grant unilaterally. He referred to them as "rules," but they do not exist in writing. Rather, if he judges that one hour or less of overtime would enable an employee to finish a particular job, he may authorize it on his own. Otherwise, the employee must return the following day to complete the work.

MacDonald has more authority than Hanson to grant overtime, and describes three pertinent circumstances. McDonald testified that he may authorize up to two hours of overtime on any given day if he deems that's necessary to keep a job on schedule, and that Ziltmann had granted him the power to make these calls. If a situation, such as an emergency, will require more than two hours of overtime, MacDonald contacts Zeltmann to recommend the additional work, and recalled that very rarely had Zeltmann withheld approval. Zeltmann, on the other hand, stated in his testimony that MacDonald could authorize up to about four hours of emergency overtime without seeking approval. If a customer asks that employees work regularly for more than eight hours per day on a project, MacDonald consults with Zeltmann before proceeding.

- Transferring Employees:

Hanson testified that he has the authority to move employees among jobs that he is overseeing. If he has employees he does not have work for, he will not independently make the decision to send them home. He will report the situation to Philpott.

Similarly, MacDonald may move employees among jobs that he is running as the work requires, but noted that Zeltmann has overruled him when Zeltmann judged that the employee had something more pressing to do. The record does not reflect the frequency with which MacDonald's decisions have been overruled.

- Laying Off and Recalling Employees:

Hanson testified that he has no involvement in determining if a lay off is needed or its extent, and Hanson has no responsibility in deciding who will be laid off or who will be recalled and when.

It is MacDonald's practice that, when he no longer needs as many employees on a job, he informs Zeltmann, who will decide whom he wants to keep and whom he will lay off. MacDonald plays no role in the recall of employees following a lay-off.

- Management/Manpower Meetings:

The Employer considers the members of management to be Zeltmann, Philpott, Project Manager Michael Dougherty, and an unnamed Office Manager. The Employer does not typically hold meetings of management personnel only. The Employer holds what it refers to as "manpower meetings." The purpose of these meetings is to determine how employees will be distributed among different jobs and whether additional people will be needed. Generally, manpower meetings are attended by Zeltmann, Philpott, MacDonald, and Hanson. On occasion, a foreman from a specific project will also join the meeting, but that is fairly rare.

Somewhat at odds with the description above, Hanson estimated that he has only attended two manpower meetings during the last five years. The meetings usually occur where there are multiple projects happening at the same time and they are called for the purpose of determining how personnel will be distributed. Hanson did not believe that he and MacDonald attend the meetings because they are more familiar with the abilities of the employees than Zeltmann and Philpott. Rather, he opined that he and MacDonald participated to contribute to the discussion regarding which employees were available and who among them might be spared from his current assignment.

MacDonald concurred that the manpower meetings are held with the sole purpose of distributing the Employer's available manpower among multiple jobs.

- Compensation and Benefits of MacDonald and Hanson:

Hanson and MacDonald are paid hourly rates. They record their hours on the same type of timesheet used by the other employees in the company. Their hourly wage rate is slightly under that of the top journeymen electricians in the company, which is approximately \$45.00 per hour. The Employer grants incentive pay -- similar to a fiscal year-end bonus -- at its discretion, and MacDonald and Hanson are eligible along with any other employee.

Hanson and MacDonald are both eligible to receive health insurance benefits through the Employer, as are all other employees who meet the eligibility requirements. They are eligible for the same vacation and paid holidays as the other employees. Hanson and MacDonald, like all other employees with at least three years of employment with the Employer, are eligible to participate in its retirement program.

- Offices, Company Vehicles, Uniforms:

While they each spend a significant amount of time in the field, each has an office that is considered to be his. There is evidence of some shared use of the offices that are considered to be MacDonald's and Hanson's.

Hanson, MacDonald, and the other journeyman electricians have company vehicles. MacDonald has two – a company truck and an Audi car.

Hanson, MacDonald, and all other electricians adhere to the company dress code, which includes a shirt that bears the company logo.

## ANALYSIS

### Jurisdiction of the Union

I find no merit to the Employer's position that Petitioner's purported territorial jurisdiction constrains it from representing employees except when they perform work in Santa Clara County. A union's jurisdiction and limitations do not generally affect the determination of an appropriate unit. *Groendkye Transport*, 171 NLRB 997, 998 (1968); *Building Construction Employers Association*, 147 NLRB 222 (1964); *John Sundwall & Co.*, 149 NLRB 1022 (1964); and *Paxton Wholesale Grocery Co.*, 123 NLRB 316 (1959). Even if the Petitioner's jurisdiction could impact the appropriate unit, the record evidence establishes that Petitioner has jurisdiction in all relevant geographic areas.

### 2(11) Status of Hanson and MacDonald:

The term "supervisor" is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Pursuant to this definition, individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11); their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and, their authority is held "in the interest of the employer." Supervisory status may be shown by demonstrating that the putative supervisor has the authority either to perform a

supervisory function or effectively to recommend the same. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare*, 348 NLRB 727 (2006).

Further, an individual's supervisory status depends upon the individual's actual authority, responsibility and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8<sup>th</sup> Cir. 1976). The Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971); *Chevron, USA*, 309 NLRB 59, 62 (1992). The burden to prove supervisory status falls on the party asserting it. See *Oakwood, supra*, *Willamette Industries, Inc.*, 336 NLRB 743 (2001); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 n. 8 (1999).

Hanson: Petitioner failed to meet its burden to demonstrate that Hanson, as the residential general foreperson, functions as a supervisor within the meaning of Section 2(11) of the Act.

The record establishes that Hanson works primarily on the residential side of the operation with a majority of his time spent on service calls. Overall, he spends more than half of his time working with tools in the field. Hanson works somewhat more independently than other residential employees (e.g., he may quote some repair estimates without prior approval) and purportedly has a duty to ensure the quality of the work being performed by other electrician, but none of his activity evinces the discretion and impact characteristic of a supervisor.

In particular, the record provides no evidence that Hanson has any involvement in hiring or firing. He may not discipline or suspend. He may move employees among job sites, but there is no indication that this involves more than the exercise of routine judgment on his part as to how much work remains to be done, or that it affects employees' compensation. Hanson has no authority to transfer, lay off, or recall employees. There is no evidence that Hanson recommends wage increases or promotions for other employees. He does not grant time off requests without prior approval from his superior. He may approve overtime, but only up to one hour and only if doing so will allow for completion of the job on that date. Accordingly, Hanson's authority in that regard is so limited and entails so little discretion that it does not constitute supervisory authority. See *Kanawha Stone Co.*, 334 NLRB 235, 237 (2001) ("It is well settled that the exercise of some 'supervisory authority' in a merely routine, clerical or sporadic manner does not confer supervisor status.") (internal quotations and citations omitted).

Accordingly, I find that Hanson, in his role as residential general foreperson, lacks supervisory authority, and I shall include him in the Unit.

MacDonald: I find that Petitioner met its burden to show that MacDonald, as the commercial general foreperson, exercises authority that renders him a supervisor under the Act.

The record demonstrates that MacDonald spends the majority of his time on tenant improvement projects on the commercial side of the Employer's operations. He has responsibility to ensure that work meets specifications and, accordingly, will check the work of other electricians on his projects. He makes recommendations to Zeltmann to increase other employees' wages with which Zeltmann concurs about half of the time, demonstrating that MacDonald "effectively recommends" raises. MacDonald testified that he approves time off requests independently. Usually in the presence of Zeltmann, he has participated in interviews of applicants for employment, who must complete a questionnaire that MacDonald devised, to assess their technical acumen. Most importantly, the record establishes that MacDonald has broad authority to use his independent judgment to authorize overtime. In this regard, he has liberty to grant at least twice as many hours of overtime as Hanson. Moreover, unlike Hanson, who may okay overtime only quickly to finish a job, MacDonald may do so whenever he judges that the additional work is needed to keep the project on schedule. Finally, he effectively recommends overtime in order to deal with emergencies.

Section 2(11) of the Act is read in the disjunctive, and possession of any one of the indicia listed therein is sufficient to establish supervisory authority. I find that the Employer has vested MacDonald, in his position of commercial general foreperson, with the authority to exercise at least one of the twelve supervisory indicia set forth in Section 2(11) as embodied in his independence to direct overtime work. In this circumstance, I need not address the remaining indicia. Accordingly, I find that MacDonald, in his role as commercial general foreperson, is a supervisor under the Act, and shall exclude him from the Unit.

### **CONCLUSIONS AND FINDINGS**

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

- 1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2) The Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3) International Brotherhood of Electrical Workers, Local Union 332, AFL-CIO, is a labor organization within the meaning of the Act.

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

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

All regular full-time and part-time persons employed by the Employer, engaged in or assisting in the performance of commercial, low voltage service, and/or residential electrical work, including but not limited to the general foreperson for residential work, forepersons, lead persons, journeypersons, electricians, trainee electricians, apprentice electricians, service technicians, and material handlers; **excluding** all other employees, office clericals, guards, the general foreperson for commercial work and other supervisors as defined in 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 Brotherhood of Electrical Workers, Local Union 332, AFL-CIO, or by no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not

been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employee engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit a 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, I hereby direct that within seven days of the date of this Decision, the Employer must submit to this 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 April 10, 2014. 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](http://www.nlr.gov),<sup>8</sup> by mail, or by facsimile at (415) 356-5156. The burden of establishing the timely filing and receipt of the list will be placed on the sending party.

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

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working dates 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 objection based on the non-posting 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 14<sup>th</sup> Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by April 17, 2014. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>9</sup> but may not be filed by facsimile.

DATED at San Francisco, California, the 3rd day of April 2014.



Joseph F. Frankl, Regional Director  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103-1735

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<sup>8</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

<sup>9</sup> To file the request for review electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.