

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 20

MINERAL RESOURCES, LLC

Employer

and

Case 20-RC-125608

OPERATING ENGINEERS LOCAL
UNION 3, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

Petitioner²

DECISION AND DIRECTION OF ELECTION

By its Petition, and as amended during the hearing in this matter, Operating Engineers Local Union 3, International Union of Operating Engineers, AFL-CIO (Petitioner) seeks to represent a unit of all full-time and regular part-time equipment operators, plant operators, mechanics, plant laborers (who perform general labor, utility work, welding, lube tech work, and other duties as assigned), lead men and “on-site mining operations” (including on-site hauling and removal of overburden), employed by Mineral Resources, LLC (Employer), at its 1342 Cherokee Road, Oroville, California 95965 facility. Specifically excluded from the sought-after unit (Unit) are office clericals, guards, sales

¹ Also referred to as Board.

² The parties stipulated that, to the extent any formal documents failed to include the proper names of the parties, all such documents were to be considered amended so as to reflect the parties' correct names.

persons, plant managers, “off-site hauling” operations, and supervisors as defined by the Act.³

The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act; the Petitioner claims to represent the Unit employees, and the Employer declines to recognize the claim; there is no collective-bargaining agreement covering any of the employees within the Unit, and thus no contract bars this proceeding; and the Employer is engaged in commerce within the meaning of the Act.

The respective supervisory status of the Day Shift Leadperson and Night (also called Evening) Shift Supervisor positions constitutes the sole issues in this matter.⁴ James Doering served as the Employer’s Day Shift Leadperson during 2014 until April, when he became Night Shift Supervisor. The Employer argues that the individual whom it employs as Day Shift Leadperson and Night Shift Supervisor are statutory supervisors within the meaning of Section 2(11) of the

³ The parties stipulated that any appropriate unit should include equipment operators, plant operators, mechanics, and plant laborers, and should exclude office clericals, guards, sales persons, plant managers and individuals engaged in “off-site hauling” operations.

As already indicated, the Union amended its Petition to include “on-site mining operations (including on-site hauling and removal of overburden).” However, the Employer seeks to exclude the overburden-removal work from the Unit. Testimony on the record established that overburden consists of dirt, rock and clay sitting atop the hills that the Employer excavates. Once or twice a year, the Employer utilizes outside contractors to perform a major overburden excavation. Otherwise, its own employees stipulated to be in the Unit perform small-scale overburden removal and shifting. Notwithstanding the Employer’s asserted past practice and the parties’ competing claims, the Board has long held that certifications are not granted on the basis of specific work tasks, types of machines operated, or jurisdictional claims but, rather, are granted in terms of employees’ classifications and their community of interest. See, e.g., *Ross-Meehan Foundries*, 147 NLRB 207, 209 (1964). Thus, I decline to define the Unit by specific work tasks and shall confine inclusions and exclusions to job classifications and their community of interest, or lack thereof

⁴ Much of the testimony during the hearing addressed the duties and authority of Carey Neely. Neely served as a Leadperson, apparently on the day shift, from September – December 2013, and then as Night Shift Supervisor until the Employer terminated his employment about April 1, 2014. Petitioner, as Charging Party, has alleged in Case 20-CA-125798 that the Employer violated Section 8(a)(3) of the Act by firing Neely, and the Region’s investigation in that matter is pending. As the Employer no longer employs Neely, I need not address here the role that he played because his eligibility to vote will not turn on such a determination, and, as noted below, supervisory authority that the Employer may have vested in Neely has not necessarily passed to his successor.

Act and, as such, should be excluded from the Unit.⁵ Petitioner posits that neither position is supervisory, and that the individuals so assigned should be deemed employees in the unit who are eligible to vote. The Employer also argued on the record that both Neely and Doering actively organized on behalf of Petitioner and gathered Petitioner's authorization cards. Thus, the Employer argues that Petitioner's petition is tainted and must be dismissed.⁶

For the reasons explained below, I conclude that the Employer has failed to meet its burden to demonstrate that the the Day Shift Leadperson classification at any time amounted to a supervisory position within the meaning of Section 2(11) of the Act. Therefore, I shall explicitly include that classification in the Unit description. I also conclude that the record is insufficient to allow me to make a determination as to Doering's supervisory status in his current role of Night Shift Supervisor. Therefore, I shall allow Doering to vote in the election subject to challenge.

FACTS

⁵ The record is somewhat inconsistent regarding precisely what job titles Neely and Doering held. It suffices to note that the supervisory status of Doering, first in his former role as Day Shift Leadperson and now in his current role as Night Shift Supervisor, constitute the crux of the issues to be resolved.

⁶ On the first day of hearing, Employer counsel argued that the participation of Carey Neely and James Doering in pro-Union organizational activities tainted the Union's showing of interest and required dismissal of the Petition. In a letter dated April 21, 2014, the Employer reiterated its argument, alluding only to the purported participation of Neely. I informed the Employer that the Regional Director denied its request to postpone the resumption of the hearing, but that the Region would instigate an administrative investigation of the alleged taint, if appropriate, after examining the record. The Employer did not submit supporting evidence within seven days, and thus arguably failed to meet its obligation under *Globe Iron Foundry*, 112 NLRB 1200 (1955). The Region nevertheless investigated and carefully considered the Employer's claim of taint. On the basis of that administrative investigation, I have concluded that dismissal of the Petition is not warranted. In this regard, the Employer's citation of *In re Dejana Industries, Inc.*, 336 NLRB 1202 (2001), is inapposite inasmuch as the administrative investigation revealed no evidence that either individual had directly solicited authorization cards. Additionally, the investigation showed that, to the extent if any that either Neely or Doering were involved in pro-Union organizational activities, their participation was not of the type and nature "that may be found to have deprived employees of the opportunity to exercise free choice in selecting a collective-bargaining representative." *The Waldinger Corp.*, 331 NLRB 544, 545-46 (2000); see also *Harborside Healthcare, Inc.*, 343 NLRB 906, 909, 911 (2004). Finally, the Union's showing of interest remains sufficient in any circumstance to support the question that its petition raised concerning representation.

Background: The Employer is engaged in the mining and processing of sand. Production entails mining sand out of hills and then processing the sand to product-ready completion. The Unit operators, mechanics and laborers engage in various aspects of the mining and preparation of the sand, most of which appears to occur in or around what is known as the “Wet Plant.” The pertinent operational staff numbers between 14 and 16.

Currently, the Employer operates its Oroville facility 24 hours-a-day by way of two 12-hour shifts, and is operating seven days a week. The second 12-hour night shift was added in around April 2013.

The day shift is staffed with between five to eight Unit employees. The night shift is staffed with between two to five Unit employees per shift. There is a Leadperson on the day shift who reports to a Plant Manager. The Plant Manager, in turn, reports to a General Manager (GM) and the President of the company. Plant Manager Michael Butler supervises the day shift directly, and also currently handles or delegates any duties that might fall to the Day Shift Leadperson position because at the time of the hearing, it remained vacant.

The night shift is staffed with between two and five Unit employees per shift. Instead of an evening Leadperson, the night shift employs an Evening Shift Supervisor. Like the Leadperson on days, the Evening Supervisor reports to the Plant Manager.

Travis Hoiseth is the Employer’s GM, and has occupied this position for approximately five years. Ted Hale served the Employer as its Plant Manager from sometime in about 2011 through about September 2013. In fact, Hale served for a time as Plant Manager for both the plant at issue and a related operation known as the Sierra Silica “Dry Plant.”⁷ Hale remains Plant Manager for the Dry Plant. Ray Briseno took on the Plant Manager role from about

⁷ No party sought to include in the Unit employees employed by the Sierra Silica Dry Plant operation.

October 1, 2013, through March 22, 2014.⁸ Briseno no longer works for the Employer or its related operations.

As GM, Hoiseth is present at the Employer's facility two to three times a week. The Plant Manager is present five days a week. Their physical presence at the plant, however, is generally limited to the day shift. The record also demonstrates that the Plant Managers are generally reachable by phone and text message at all hours.

The "Loader Operator" on shift will typically operate the loader machine exclusively. The remainder of the Unit employees are generally cross-trained and may fill in on the various jobs as needed. The record describes the work as rather routine and repetitive, with the employees understanding the operation and their roles in it. But for special projects that may be required from time to time, the goal every day is to process as much sand as possible.

Operators tend to make hourly wages of between \$15 and \$20 per hour. Other Unit employees' wage rates vary between \$10 and \$13 per hour.

The Employment History of Doering:

Doering has worked for the Employer for about nine years. From approximately April 2013 through April 9, 2014, Doering served as the Employer's Day Shift Leadperson. Doering was moved to the Evening Shift Supervisor position beginning April 10, 2014—a move necessitated by Neely's termination. This move resulted in a \$2 per hour raise, from \$19.00 to \$21.00 per hour.

Roles of the Day Shift Leadperson and the Evening Shift Supervisor:

No party introduced job descriptions for the classifications at issue. Hoiseth and Hale testified in generalized terms that the Leadperson and Night Shift Supervisor have responsibility over the operations and production, and over the Unit employees themselves. Doering and Neely testified in general terms that they have (or had) no such authority in these positions.

⁸ Keith Tubandt appears to have worked in an acting-Plant Manager capacity in 2014 between Briseno and Butler.

Further testimony revealed that, as Day Time Leadpersons as Evening Shift Supervisors, both Doering and Neely spent a majority of their time engaging in operational work with the Unit employees. Both would fill in where needed, shifting themselves to different tasks as required. They were responsible for some additional duties as well, such as the fueling of certain equipment and the securing of machine parts and other equipment from time to time.

Although Doering and Neely denied having any position of significance, claiming that they were the equals of the other Unit employees, the record revealed that both serve(d) as a conduit for management and, at the very least, guide(d) the Unit employees in their daily tasks. For example, Doering testified that during the day, Plant Manager Butler or another manager would instruct him (Doering) when some special project or work task was required. He would then instruct the Unit employees regarding the same. When there is a no-show and the operation is short, the Leadperson is tasked with figuring out how to get the job done with the personnel present. When a task needed to be performed that another employee was unfamiliar with, Doering would instruct the employee how to perform the task.

Doering also testified to having regular contact with the Plant Manager and others regarding shift operations and any problems that arise, including significant telephone contact with the Plant Manager—sometimes as many as ten calls during a day. On both the day and the night shifts, the Leadperson and Shift Supervisor engage in group texts with the Plant Manager, the GM, and sometimes additional management personnel. Doering testified that group texting will occur when something has broken and the plant may need to be shut down.

Primary Supervisory Indicia Relating to Doering:

There is scant record evidence regarding Doering's asserted authority, as either a Day Shift Leadperson or as the Evening Shift Supervisor, to hire, discipline, terminate, direct, or perform any of the other enumerated Section 2(11) indicia. Doering denied ever having exercised such authority, and that the Employer had ever informed him that he possesses such authority. With specific

regard to his move to Evening Shift Supervisor, Doering testified that Keith Tubandt⁹ told him that his duties as Day Shift Leadperson would not change as a result of moving to nights.

The record contains testimony regarding two events that followed Doering's move to Evening Shift Supervisor that bear directly on resolution of his alleged supervisory status. First, Doering sought to have a Unit employee cover for him on his days off by moving that employee from the day shift to the night shift. Doering requested that Plant Manager Butler make the switch, but Butler declined to do so without explanation. According to Doering, the Employer has not yet assigned a permanent substitute to fill in for him on his days off, and as far as he is aware, operations on the night shift nonetheless proceed as usual.

In the second instance, Doering was involved in a disciplinary discussion regarding Richardson, an employee who failed to notify the Employer in advance that he would not report for work. A few days before the hearing opened in this matter, GM Hoiseth arrived at the facility prior to the beginning of the evening shift and told Doering that he intended to discharge the employee. He showed Doering the discharge document that bore Doering's typewritten name and blank fields to be completed. Hoiseth, Butler and Doering later met with the employee, who produced a doctor's note and convincingly explained that he had a medical excuse. After excusing Richardson, the three discussed the employee's reasons for not reporting his absence, and Hoiseth ultimately decided not to discharge the employee after all. It is uncontroverted that Doering never recommended for or against disciplining Richardson. Sometime during or after the discussion, Doering told Hoiseth that he did not feel comfortable having his name appear on a disciplinary document or being in the position of having to fire someone. Despite this comment, Hoiseth neither assuaged his concerns, nor affirmed that Doering has such authority and must be prepared to exercise that responsibility independently in his new position as the Evening Shift Supervisor.

⁹ The record does not disclose Tubandt's precise position, but from all appearances, he is an agent of the Employer who served formerly as a plant manager. He signed as "Supervisor" the paperwork promoting Doering to Evening Shift Supervisor.

Secondary Indicia as to Doering's Putative Supervisory Status:

The record contains testimony regarding secondary indicia that bear on Doering's supervisory status. That evidence may be summarized as follows:

- **Compensation:** Although hourly-paid like other Unit employees, Doering made \$21 per hour, more than any other Unit employee but less than the \$26 per hour paid to Plant Manager Butler. No other hourly employee made more than \$18.50 per hour, and a majority made \$15 per hour or less. For the year 2013, Doering made \$65,876. The next highest paid Unit employee made close to \$50,000.
- **Bonuses:** At the end of 2013, most employees received a one-time bonus of \$100. Doering earned \$250. The Plant Manager at the time (presumably Briseno) earned \$1,000.
- **Use of Personal Vehicles / Reimbursement of Expenses:** As Leadperson and then as Evening Shift Supervisor, Doering utilized his personal vehicle to visit different parts of the Employer's campus and to secure parts, fuel and other items. He was reimbursed for fuel costs. There is also some evidence that other Unit employees occasionally used their vehicles in similar fashion and likewise received reimbursement for the related expense.
- **Responsible for MSHA Purposes:** As of late-2012, the Employer had designated Doering to the Mine Safety and Health Administration (MSHA) as a person responsible in relation to certain aspects of the MSHA's authority. Doering and Unit employee Robert Otis were designated as competent to train in Plant Operation and Welding Fabrication, respectively.

ANALYSIS

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

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

Pursuant to this definition, individuals are statutory supervisors if they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11); their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and, their authority is held “in the interest of the employer.” Supervisory status may be shown by demonstrating that the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare Center*, 348 NLRB 747 (2006).

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

Day Shift Leadpersons: The Employer has failed to meet its burden to demonstrate that the functions of the Day Shift Leadpersons are supervisory within the meaning of Section 2(11) of the Act. In fact, the record is devoid of evidence that either Neely or Doering exercised any of the Section 2(11) functions when they filled the Day Shift Leadperson position.

The record makes abundantly clear that much of their time as Leadpersons was spent performing Unit employee work. To the extent that either or both of them directed the work of their colleagues, that direction was of a decidedly “routine or clerical nature” not requiring “the use of independent judgment.” In this regard, the record shows that the day-to-day plant tasks were routine and well-known to the employees, and that most employees were cross-

trained and could fill in where needed. Shifting one's self or even others around, and otherwise providing guidance on assignments and priorities, when such direction is routine, is insufficient to demonstrate responsible direction under Section 2(11) of the Act. See, e.g., *PECO Energy Co.*, 322 NLRB 1074, 1083 (1997) ("Although [Lead Maintenance Technicians] can assign, on occasion, a technician from another area, this is done solely in order to complete the day's assigned work and consequently does not require the independent judgment of Section 2(11) but is merely routine."); see also *Armstrong Machine Co.*, 343 NLRB 1149, 1149-50 (2004) (senior employee who answered questions regarding work tasks and made work assignments based on a priority listing provided by management was not a supervisor).

The secondary indicia relating to Neely's and Doering's functions as Leadpersons cannot change the result. First, secondary indicia cannot be dispositive of a supervisory question. See, e.g., *General Security Services Corp.*, 326 NLRB 312, 312 (1998). Second, evidence relating to reimbursement of personal expenses and responsibilities in relation to MSHA requirements shows involvement by Unit employees beyond Neely and Doering and, with regard to Neely in particular, there is no evidence that his more intricate involvement continued after his move from Foreman to Day Shift Leadperson. See also *Rockspring Development, Inc.*, 357 NLRB No. 178 (2011) (two-member panel) (mine safety coordinator not a supervisor when there was no evidence that the coordinator was "accountable" for his action in relation to mine safety matters). Although the greater compensation and bonuses received by Neely and Doering in the last quarter of 2013 militate toward supervisory status, as already noted, this secondary indicia cannot be dispositive. Finally, the physical presence on-site of the Plant Manager and (on at least some days each week) of the GM during the day shift tends to discount the importance of the Leadpersons' role. Cf. *Pennsylvania Truck Lines*, 199 NLRB 641, 642 (1972) (noting that non-supervisory holding as to disputed employees would leave employer with no supervisory coverage on weekends and no more than three supervisors at any single terminal).

Nothing else in the record, by itself or in combination, serves to demonstrate the supervisory status of the Day Shift Leadperson. I therefore conclude that neither Neely nor Doering constituted a supervisor within the meaning of Section 2(11) of the Act when filling the role of Day Shift Leadperson, and that the Employer has otherwise failed to establish the supervisory authority of the Day Shift Leadperson. The Day Shift Leadperson classification is properly included in the Unit description.

Doering as Evening Shift Supervisor: As noted above, Doering had only filled this role for only two weeks or so as of the dates of the hearing, and evidence about what Doering had actually done on the job was consequently thin. The evidence regarding his duties and authority creates some tension. In sum, the record is simply insufficient to allow me to render a final determination regarding his supervisory status.

For example, Doering testified that he was told that his powers as Day Shift Leadperson - powers decidedly lacking in Section 2(11) authority - would not change on his move to nights. He also attempted to effect the transfer of one Unit employee from days to nights, and was rebuffed without explanation. And while his interaction with Hoiseth regarding employee Richardson suggested that Doering may be viewed by upper management as having authority to discipline or terminate employees, the termination did not in fact occur. Doering expressed uneasiness about having such authority, and made no recommendation regarding the matter.

Because testimony regarding Doering's role as Evening Shift Supervisor is so limited, I cannot render a decision as to his status in that position as a Section 2(11) supervisor, or as to the status of the Evening Shift Supervisor classification itself. Instead, the classification will neither be included nor excluded from the Unit, and Doering will be allowed to vote in the forthcoming election subject to challenge. See, e.g., *Southern Minnesota Supply Co.*, 116 NLRB 968, 971 (1956) (declining to render a decision on the status of a particular classification, where the testimony was limited to the powers of a former occupant of the position); *Springfield Terrace LTD*, 355 NLRB 937, 2010 WL 3463867, at *5

(2010) (declining to render a conclusion on a disputed but then-vacant classification, and allowing for any incumbent hired into the role by the time of the election to vote subject to challenge); *Aeronca, Inc.*, 221 NLRB 326, 330 (1975) (same).

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) Operating Engineers Local Union 3, International Union of Operating Engineers, 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 unit is an appropriate unit for collective-bargaining purposes:

All full-time and regular part-time equipment operators, plant operators, mechanics, plant laborers (who perform general labor, utility work, welding, lube tech work, and other duties as assigned), and Day Shift Leadpersons employed by Mineral Resources, LLC, at its 1342 Cherokee Road, Oroville, California 95965 facility; excluding office clericals, guards, sales persons, plant managers, "off-site hauling" operations, 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 Operating Engineers Local Union 3, International Union of Operating Engineers, 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 who worked an average of four or more hours per week during the calendar quarter preceding the end date of the above-referenced payroll period are eligible to vote. See *Davison-Paxon*, 185 NLRB 21 (1970). Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. In addition, and for the reasons stated above, James Doering will be allowed to vote subject to challenge.

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 May 9, 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,¹⁰ by mail, or by facsimile transmission at (415) 356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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

¹⁰ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

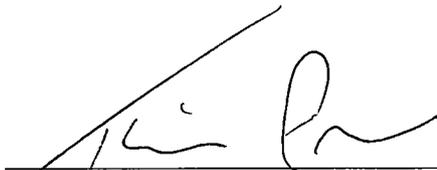
C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on 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 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by May 16, 2014. The request may be filed electronically through the Agency's web site, www.nlr.gov,¹¹ but may not be filed by facsimile.

DATED AT San Francisco, California, this 2nd day of May 2014.



Tim Peck, Acting Regional Director
National Labor Relations Board, Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

¹¹ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.