

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

KM PLANT SERVICES, INC.¹

Employer

and

Case 07-RC-114607

**LOCAL 324, INTERNATIONAL UNION OF
OPERATING ENGINEERS (IUOE), AFL-CIO²**

Petitioner

and

**INTERNATIONAL UNION OF PAINTERS AND
ALLIED TRADES OF THE UNITED STATES AND
CANADA (IUPAT), AFL-CIO³**

Intervenor

APPEARANCES:

Fred A. Hayes, Attorney, of LaGrange, Illinois, for the Employer.

Amy Bachelder, Attorney, of Detroit, Michigan, for the Petitioner.

J. Douglas Korney, Attorney, of Farmington Hills, Michigan, for the Intervenor.

DECISION AND DIRECTION OF ELECTION

The Employer provides on-site industrial cleaning services to customers throughout the U.S. This case implicates the Employer's Midwest operations only.

The Petitioner seeks to represent a unit of approximately 45 full-time and regular part-time operators, field tech employees, and maintenance employees working out of the Employer's Allen Park, Michigan facility.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The name of the Intervenor appears as amended at the hearing.

The Intervenor and the Employer contend that the petition is barred by their 2012 to 2015 collective bargaining agreement (herein 2012 CBA) covering the Employer's Midwest operations. Petitioner contends that its petition was timely filed, and that there are no bars to an election.

As discussed below, based on the record and relevant Board law, I find that the Employer and Intervenor have not met their burden to establish that the 2012 CBA is a bar to the instant petition. While there are some factors that would tend to support the position that the employees working out of the Allen Park facility are an accretion to the existing bargaining unit represented by the Intervenor (herein existing bargaining unit), such as similarity in skills and job functions, and some centralization of management and administrative control, such factors are wholly insufficient to outweigh other factors present, such as the lack of interchange of employees, absence of common day-to-day supervision, and limited integration of operations, which establish that the Allen Park employees are not an accretion to the existing bargaining unit. The evidence overall fails to demonstrate that the Allen Park employees share a sufficient community of interest with the existing bargaining unit employees represented by the Intervenor to warrant their accretion without the opportunity to indicate whether they want to be represented for the purposes of collective bargaining, and by the labor organization of their choice.

I. OVERVIEW

The Employer's corporate headquarters are located in Highland, Indiana. In addition to Highland, the Employer maintains six facilities in its Midwest operations: Channahon and Pekin, Illinois; South Bend and Crawfordsville, Indiana; Chislm, Minnesota; and Allen Park, Michigan. The Highland, Channahon, and Pekin facilities primarily service customers located in Indiana and Illinois. They also provide services to a few customers located in Granite City, Missouri; Owensville and Drakesville, Kentucky; Cincinnati, Ohio; and Iowa. The existing bargaining unit, represented by the Intervenor, covers approximately 855 employees working out of these facilities, exclusive of the Allen Park facility.

Will Colon is the President of the Employer. Brian Rosenbaum is a Corporate Division Manager, in charge of all Midwest operations, as well as the lead collective bargaining representative in collective bargaining negotiations with the Intervenor. Dan Carey is the Human Resources Manager, in charge of labor relations, contract compliance, and training and hiring for the Midwest operations, as well as the second chair collective bargaining representative.⁴ Colon, Rosenbaum and Carey work at the Highland facility. Carey reports to Rick Napier, head of Corporate Safety and Health. The record is silent regarding Napier's office location.

⁴ The parties stipulated that Brian Rosenbaum and Dan Carey are supervisors within the meaning of Section 2(11) of the Act, based on their authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline, and responsibly direct employees.

Justin Cagle is the Regional/Division Manager and Mark Marosi is the Sales Manager for the Allen Park facility. Cagle reports directly to Colon and Rosenbaum. Marosi reports directly to Justin Cagle, as does Mike Miller, Health-Safety Director at the Allen Park facility.⁵ Cagle, Marosi, and Miller work out of the Highland Park facility.

Since at least 2003, the Employer and Intervenor have been parties to successive collective bargaining agreements covering the Employer's Midwest operations. The 2012 CBA, effective from May 1, 2012 through April 30, 2015, recognizes the Intervenor as the sole and exclusive bargaining representative with respect to wages, hours, and other terms and conditions of employment for all employees in the employment of the Employer, on any and all work covered by the 2012 CBA. The scope of work addendum clause in the 2012 CBA provides that it applies to all bargaining unit employees employed at or out of the Employer's Highland, Indiana, and Channahon and Pekin, Illinois facilities. The same clause also specifically excludes non-union employees permanently employed by the Employer working at the Nucor plant located in Crawfordsville, as well as United Steelworkers-represented employees working at U.S. Steel plants in Gary, Indiana.

In about October 2012, the Employer commenced industrial cleaning operations in Michigan with one customer, Severstal Steel.⁶ A few months later, in about May 2013, the Employer acquired another Michigan customer, U.S./Great Lakes Steel. The petitioned-for employees currently work at these two customer facilities. Limited record evidence indicates that the Employer has also serviced one other Michigan customer, Consumers Energy, located in Olive, Michigan, but currently no employees are working there. In September 2013, the Employer opened its Allen Park facility. Prior to that, the Employer conducted its Michigan operations without a separate, stand-alone office.

II. ANALYSIS

A. Board Law

1. *Contract Bar*

When a petition is filed for a representation election among a group of employees who are covered by a collective-bargaining agreement, the Board must decide whether the asserted contract exists in fact and whether it conforms to certain requirements. If the Board finds that the contract does exist and that the requirements are met, the

⁵ The parties stipulated that Justin Cagle is a supervisor within the meaning of Section 2(11) of the Act, based on his authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, discipline, and responsibly direct employees. The parties did not take any position on the supervisory status of Mark Marosi and Mike Miller. Rather, the Petitioner does not seek to represent them, and the parties agree that Marosi and Miller should not be included in the petitioned-for unit.

⁶ The Employer provided industrial cleaning services at another location in the state of Michigan in 2005, which is discussed below.

contract is held a bar to an election. *Hexton Furniture Co.*, 111 NLRB 342, 343-344 (1955) (cited in *UMass Memorial Medical Center*, 349 NLRB 369, 370 fn 7 (2007)). In order to satisfy the threshold inquiry of the contract bar doctrine, the agreement must be written, signed before a petition is filed, contain substantial terms and conditions of employment, encompass the employees involved in the petition, and cover an appropriate unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161-1164 (1958); *Seton Medical Center*, 317 NLRB 87, 87 (1995). The burden of proving that a contract is a bar is on the party asserting the doctrine. *The Lane Construction Corporation*, 222 NLRB 1224, 1225 (1976); *Roosevelt Memorial Park*, 187 NLRB 517, 517 (1970).

The Board has defined an accretion as “the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity.” *Ryder Integrated Logistics, Inc.*, 329 NLRB 1493, 1499 (1999) (citing *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992)). In determining whether the new employees share sufficient common interests with the existing bargaining unit employees, the Board weighs various factors including similarity of working conditions, skills and functions; integration of operations and interchange of employees; centralization of management and administrative control and common control of labor relations; geographic proximity; and collective bargaining history. *Ryder Integrated Logistics*, supra at 1499 (other citations omitted). However, the Board has also stated that because the accretion process fails to accord employees any representational choice, it will follow a restrictive policy in its application. *Ryder Integrated Logistics*, supra at 1499 (citing *Dennison Mfg. Co.*, 296 NLRB 1034, 1036 (1989)); *Safety Carrier, Inc.*, supra at 969 (citing *Towne Ford Sales*, 270 NLRB 311, 311 (1984)). Thus, the accretion doctrine is not applicable where the employees in question constitute an appropriate separate unit. *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994); *Beverly Health and Rehabilitation Services, Inc.*, 322 NLRB 968, 972 (1997).

An important factor within the community of interest determination is whether the day-to-day supervision of employees is the same for the two groups of employees. *Safety Carrier, Inc.*, supra at 969; *Passavant*, supra at 1218; *Save-It Discount Foods*, 263 NLRB 689, 693-694 (1982); *Weatherite Co.*, 261 NLRB 667, 669-670 (1982). This is particularly significant, because, as the Board has noted, the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location. *Safety Carrier, Inc.*, supra at 969 (citing *Renzette's Market*, 238 NLRB 174, 174-176 (1978)).

In *Pullman Industries, Inc.*, 159 NLRB 580 (1966), the Board held that a contract which expressly covers employees to be hired at newly acquired facilities would not act as a bar to a rival union petition seeking such new employees unless it is

found that they are an accretion to the existing bargaining unit. Id. at 582-583 (citing *General Extrusion Company, Inc.*, 121 NLRB 1165 (1958); other citations omitted).

B. Application of Board Law to this Case

In reaching the conclusion that the processing of this petition is not barred by the 2012 CBA between the Employer and Intervenor, I rely on the following analysis and record evidence.

1. Similarity of Working Conditions, Skills and Functions, Including Day-to-Day Supervision

The employees working out of the Allen Park facility⁷ perform the same industrial cleaning duties using the same equipment (hydroblast vacuum equipment, including low and high volume water pressure vacuum trucks) as the existing bargaining unit employees at the other Midwest facilities. All employees are similarly trained to use this equipment. While these factors are notable in demonstrating similarities between the Allen Park and existing bargaining unit employees and may weigh in favor of accretion, they do not outweigh the totality of other factors present demonstrating the lack of similarities between these groups of employees.

Most notably, the Allen Park employees are separately supervised on a day-to-day basis. The Allen Park operators and field techs report directly to hourly supervisors Anthony Barthauer and Rickie Cagle,⁸ who report directly to Miller, Justin Cagle and Marosi. Such supervision includes Justin Cagle making an initial determination as to whether and to what extent employee discipline is appropriate and recommending such action to Carey's office. Cagle testified that he is independently authorized to issue written warnings to the Allen Park employees. There is no interaction between the Allen Park supervisors and any other Midwest supervisors. These factors weigh against finding an accretion. See *Safety Carrier*, supra at 969-970. The Employer's argument that the Allen Park and existing bargaining unit employees share common supervision via the centralized human resources department which oversees hiring, training, collective bargaining, and discipline is rebutted by the record evidence that established a complete lack of shared day-to-day supervision. See, *Passavant*, supra at 1218-1219 (in reversing the Regional Director and finding the single facility unit appropriate, the Board noted that although both groups of employees had common upper-level supervision, it was insignificant where day-to-day control and supervision of matters was exercised exclusively by one local program director).

⁷ The Employer also recently hired a salaried mechanic, Michael Miller, Sr., the father of Mike Miller, at the Allen Park facility. The parties agree that he should not be included in any unit found to be appropriate herein.

⁸ The parties did not stipulate or take any position on the supervisory status of hourly supervisors Barthauer and Rickie Cagle. There is no indication that the Petitioner seeks to represent them or that the Employer seeks to include them in any unit found appropriate herein.

The Employer's primary customers at the Allen Park facility are two steel plants, while the existing bargaining unit employees perform work for a variety of industries, including steel, grain, and power. The existing unit employees represented by the Intervenor are paid union scale under the 2012 CBA between the Employer and Intervenor. The wages for the Allen Park employees, determined by Justin Cagle and Rosenbaum, are above union scale and can be adjusted at any time. The Employer requires the existing bargaining unit employees, as well as the Allen Park employees, to be available to work at all times, based on the needs of its customers. While the record is silent regarding the specific hours of work and the scheduling of existing bargaining unit employees, it is clear that Justin Cagle is solely responsible for the scheduling of the Allen Park employees. See, *Safety Carrier*, supra at 970 (Board found no accretion based, in part, on differences in employees' wages, hours and working conditions).

2. *Integration of Operations and Interchange of Employees*

The record references three occasions in which equipment was transported between the Allen Park facility or its customers' sites and the Highland facility. On one occasion, a unit employee from the Highland facility delivered a piece of specialized equipment to the Michigan U.S./Great Lakes Steel facility and briefly trained Allen Park employees to use the equipment. On another occasion, existing bargaining unit employees delivered two vacuum trucks to the Allen Park facility. On a third occasion, two Allen Park employees delivered two vacuum trucks to the Highland facility. Besides these three examples, the work of the Allen Park employees is in no way integrated with the work performed by the existing bargaining unit employees, who service separate, numerous, and various customers. I conclude there is an absence of regular functional integration between Allen Park and the Employer's other facilities. See, *Pullman Industries*, supra at 581-582; *North Hills Office Services*, 342 NLRB 437, 444 (2004). See also, *Ryder Integrated Logistics*, supra at 1499 (where there was minimal and rare contact between the two groups of employees in question, the Board stated that "the real question [regarding whether functional integration exists] is whether integration of operations effectuates an integration of employee interests").

The record is clear that, despite their similar industrial cleaning duties, there has been no exchange of employees between the Allen Park facility and the Employer's other Midwest facilities. All of the Allen Park employees were hired at that location. No existing bargaining unit employees have been transferred to the Allen Park facility. The absence, or infrequency, of interchange of employees is one factor most commonly relied upon by the Board in finding no accretion. That it could be feasible for the employees to engage in such interchange based on their similar job duties is not material. *Combustion Engineering, Inc.*, 195 NLRB 909, 912 (1972) (citing *Essex Wire Corp.*, 130 NLRB 450, 453 (1961), in which the Board found no accretion, noting that although the jobs at the two operations involved were virtually interchangeable, there was in fact no

interchange). See also, *Pullman Industries*, supra at 582 (the petitioned-for employees did not interchange with the intervenor-represented employees, and they were separately supervised by supervisors at the petitioned-for facility).

The Employer's reliance on *Prince Telecom*, 347 NLRB 789 (2006) is misplaced. In *Prince Telecom* the Board examined the same community of interest criteria applied in accretion cases, and found that the employer rebutted the single-facility presumption based on the significant presence of employee interchange. Such evidence of employee interchange is not present in this matter.

3. *Centralization of Management and Administrative Control, and Common Control of Labor Relations*

The Employer administers its corporate policies, including benefits and training policies from its corporate headquarters in Highland. Nation-wide, all employees are subject to the same work rules, policies, and procedures, including standards of conduct, code of safe practices, call-in policy, and the use of electronics and jewelry policies. Payroll and purchasing for all of the Midwest facilities is processed out of the Highland corporate headquarters.

The Employer argues that it controls the hiring of all Midwest industrial cleaning employees from its corporate headquarters in Highland. As such, the Employer contends that Human Resources Manager Carey is solely responsible for the hiring of all Allen Park employees. In this regard, Division Manager Rosenbaum testified that although Regional Manager Justin Cagle provides and reviews job applications at the Allen Park facility, engages in discussions with job applicants about the nature of work, and makes recommendations to Carey regarding hiring, it is Carey who is responsible for drafting and posting all employment ads, final review of all applications, performing background checks, scheduling drug tests, and ultimately hiring all employees. The Employer essentially argues that all Allen Park employees are hired out of its Highland facility, and thus are subject to the CBA in question.

However, the record demonstrates that in October to December 2012, Justin Cagle was responsible for the hiring of five initial Allen Park employees who started up operations at the Employer's then-only customer, Severstal Steel. Justin Cagle knew these five individuals, having worked with each of them in the past. He provided them with job applications and forwarded their applications to Carey, who hired them without further discussion. One of these applicants, Michael Moore, was hired as a supervisor. Rickie Cagle was hired by Justin Cagle as an operator and later became a supervisor. The record additionally indicates that some time in December 2012, another operator, Ronnie Jackson, was hired by Miller and Justin Cagle within a day of submitting his application, without any involvement of Carey, and later in February and May 2013, additional operator and field tech employees were hired collectively by Carey and Justin

Cagle through job fairs held in Southfield, Michigan. In this regard, the overwhelming record evidence indicates that although Carey might have had the final say on these hirings, Justin Cagle provided significant input and recommendations. See *Safety Carriers*, supra at 969 (while the employer's president exercised central authority over policy and direction of the enterprise from the employer's corporate headquarters, a number of facts regarding the establishment and functioning of the non-represented facility demonstrated the separate, autonomous nature of its operation, including local interviewing, training, and hiring of employees).

4. *Geographic Proximity*

The distance from the Allen Park facility to the Highland facility is approximately 440 miles, to the Pekin facility approximately 418 miles, and to the Channahon facility, approximately 297 miles. The Employer argues that there is similar distance from its other Midwest facilities located in Indiana and Minnesota to the Highland, Pekin, and Channahon facilities. Geographic proximity is but one factor in the accretion analysis. I conclude that despite the argument raised by the Employer that all of the Midwest facilities share similar distances from each other, this factor is outweighed by the factors of different working conditions, lack of common daily supervision, and lack of functional integration and interchangeability. See, *Passavant*, supra at 1218-1219; *North Hills Office Services*, 342 NLRB 437, 444 (2004); *Pullman Industries*, supra at 581-582; *Ryder Integrated Logistics*, supra at 1500.

5. *Collective Bargaining History*

My finding that the 2012 CBA herein does not bar the instant petition is further supported by the history of the Employer in the state of Michigan. In 2005, the Employer provided industrial cleaning services to a plant located in Ecorse, Michigan. Petitioner filed a petition, Case 07-RC-022891, to represent those employees, and the Intervenor herein sought to intervene. The Employer and Intervenor argued that their then-existing CBA, with terms covering 2003 to 2005, barred the petition. The petition was placed in abeyance pending the investigation of an unfair labor practice charge, Case 07-CA-048804, filed by the Petitioner against the Employer. An unfair labor practice complaint issued, alleging that the Employer unlawfully granted recognition to the Intervenor and applied the contract to the employees employed at the Ecorse facility, in violation of Section 8(a)(1), (2) and (3) of the Act. The unfair labor practice matter was resolved, which included the Employer withdrawing recognition from the Intervenor. Subsequently, the Employer voluntarily recognized the Petitioner as the collective-bargaining representative of the Ecorse employees based on a showing of majority status and petitioner withdrew its petition. Thereafter, the Employer closed its Ecorse facility before any CBA was reached on behalf of the Ecorse employees.

Regarding the 2012 CBA, HR manager Carey provided testimony, without detail, that the CBA was applied to the Allen Park employees at the time the Allen Park operations commenced in 2012, with the employees signing dues check-off authorization forms provided by the Employer. Justin Cagle testified that the CBA was applied to the Allen Park employees in about January 2013, when he and safety director Mike Miller advised the employees of its existence, provided them with dues check-off authorization forms and union membership cards included in a pre-hire packet of forms, collected the executed forms and cards, and forwarded them to Carey at the corporate offices in Highland. Cagle also testified that Intervenor Business Agent Jim Loftis subsequently came to the Allen Park facility to provide these items to employees and explain the 2012 CBA terms and conditions. All of the 54 dues checkoff authorization forms in the record are dated May to October 2013, at least seven months following the commencement of the initial hiring of employees at the Allen Park facility.

Additionally, Carey testified that grievances have been filed by the Intervenor on behalf of employees working out of Allen Park and all settled at Step One of the grievance procedure set forth in the 2012 CBA. But the record demonstrates that none of these were written and processed in accordance with the contractual provisions.⁹ Rather, each of these grievances were verbally presented and informally resolved.

I do not find that any of this bargaining history compels a finding of accretion regarding the two groups of employees.¹⁰

6. Conclusion regarding Contract Bar

Applying these principles and factors to the instant facts, I find that the Employer and Intervenor have not met their burden that the 2012 CBA is a bar to the instant petition. I find that the evidence fails to demonstrate that the Allen Park employees share a sufficient community of interest with the existing bargaining unit employees to warrant their accretion into that unit. The unit of operators, field techs, and maintenance employees working in Michigan at or out of the Allen Park facility sought by the Petitioner is appropriate.^{11 12}

⁹ Step One requires that grievances be timely filed in writing with the General President of the Intervenor's office and the Employer.

¹⁰ The record also contains the impartial umpire's Article XX determination in the instant matter, in which contract bar and accretion arguments were raised by the Employer and Intervenor. The Employer cites *Weathervane Outerwear Corporation, Inc.*, 233 NLRB 414 (1977), in arguing that the umpire's determination that the 2012 CBA did not act as a bar to Petitioner's petition has no probative value, and should be rejected. I do not rely on that umpire's decision regarding the Article XX proceedings in making my findings herein.

¹¹ No party argued for an *Armour-Globe (Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942)) self-determination election.

¹² The Intervenor was not asked whether it wished to participate in an election in the petitioned for unit. Therefore, Intervenor must advise the undersigned in writing, of its intent, if any, to proceed to an election in the appropriate unit found, within 7 days from the date of this Decision and Direction of Election.

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record,¹³ I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time operators, field tech employees, and maintenance employees employed by the Employer at or out of its facility at 17100 Southfield Road, Allen Park, Michigan; but excluding office-clerical employees, technical employees, professional employees, managerial employees, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 20th day of May 2014.

(SEAL)

/s/ Terry Morgan

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300

¹³ The Employer and Petitioner timely filed briefs, which were carefully considered. The Intervenor did not file a brief.

Detroit, Michigan 48226

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

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE), AFL-CIO

or

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES OF THE UNITED STATES AND CANADA (IUPAT), AFL-CIO¹⁴

or

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, 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 quit or 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

¹⁴If the Intervenor declines to participate in the election, only the Petitioner's name will appear on the ballot.

began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). 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 on or before **May 27, 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,¹⁵ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the

¹⁵ 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, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term “working day” shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

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 **June 3, 2014**. The request may be filed electronically through the Agency’s website, **www.nlr.gov**,¹⁶ but may **not** be filed by facsimile.

¹⁶ To file a Request for Review electronically, go to the Agency’s website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.