

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

In the Matter of

CRANWELL MANAGEMENT CORP.

Employer¹

and

UNITED PROFESSIONAL & SERVICE
EMPLOYEES UNION , LOCAL 1222

Petitioner

Case 01-RC-130362

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a bargaining unit of approximately 33 massage therapists employed by the Employer, Cranwell Management Corp. (Cranwell), in the spa located within its resort. Cranwell takes the position that the smallest appropriate unit must also include estheticians, cosmetologists, and fitness instructors who are also employed in the spa. The Petitioner also seeks to include on-call massage therapists, while Cranwell contends that they should be excluded from the unit on the ground that they are casual employees. I find that the petitioned-for unit of massage therapists is appropriate, and I shall include on-call employees in the unit as regular part-time employees to the degree that they meet the Board's standard test for regularity of employment.

The petition in this case was filed under Section 9(c) of the Act. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing

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

officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

I. FACTS

A. APPROPRIATE UNIT

Cranwell operates a resort in Lenox, Massachusetts. The resort includes various buildings used for guest lodging, restaurants, a golf course, pro shop, tennis courts, an outdoor pool, and a spa with a salon, indoor pool, and fitness center.

Carl Pratt is the General Manager of the resort. Spa Director Christine Mariconti, who oversees spa operations, reports to Pratt. Four managers who report to Mariconti oversee the employees at issue in this case: A massage supervisor oversees the massage therapists, an esthetics supervisor oversees the estheticians, a salon manager oversees the cosmetologists (hair stylists and nail technicians),² and a fitness supervisor oversees the fitness instructors.³ The spa employs about 33 massage therapists, including 11 on-call massage therapists, 12 estheticians, 13 cosmetologists, and 15 fitness instructors. These employees are collectively referred to as “service providers.”

In addition to the spa employees at issue in this case, Cranwell employs numerous other employees in the spa as well as in other parts of the resort. In the spa, there are front desk agents, spa shop attendants, housekeepers, laundry attendants, and locker room attendants. Outside of the spa, the Food and Beverage Department employs cooks, hostesses, wait staff, bellmen, bartenders, and the like. The Rooms Department employs front desk employees, operators, housekeepers, laundry workers, bellmen, and concierges. The Golf Department employs golf pros and retail shop employees. The

² Cranwell’s organizational chart indicates that three separate classifications report to the salon manager: hair stylists, nail technicians, and manicurists/pedicurists, and the record reflects separate licensing requirements for hairdresser/cosmetologists and manicurists. Nonetheless, the job description for the disputed position indicates that the job title at Cranwell is “Cosmetologist (Nail Tech, Hair Stylist),” and it appears that the cosmetologists at the spa perform both types of work.

³ The parties have stipulated, and I find, that the following individuals are statutory supervisors who shall be excluded from any unit found appropriate: Spa Director Christine Mariconti, Massage Supervisor Krystian Zebrowski, Esthetics Supervisor Amy Mannix, Salon Supervisor Jessicah Kissel-Brock, Fitness Supervisor Shannon Lasora, and Spa Manager Maura Stanton.

Grounds Department employs maintenance employees. The Controller's Office and Marketing Office employ various clerical employees as well as sales and marketing employees. No party seeks to include any of these employees in the unit.⁴

The spa is in a separate building on the resort campus. It has a centrally located spa desk, where front desk employees help clients schedule appointments and check in for appointments. There is a retail shop in the vicinity. Nearby there are two locker rooms, one for each gender. Off the locker rooms are darkened "Quiet Rooms," where guests relax while waiting for their service providers. All of the service providers – massage therapists, estheticians, cosmetologists, or personal trainers - pick up their clients from the Quiet Room and return them to the Quiet Room after their appointments. The massage therapists and estheticians work in a back hallway that includes 16 treatment rooms. The back hallway includes separate rooms for massages, which are interspersed with rooms used by the estheticians for facials and body scrubs. The back hallway also has a prep room for supplies that is used by both massage therapists and estheticians. The cosmetologists work in a salon, a separate area toward the front of the spa. It is noisier and has upbeat music. The fitness center where the fitness instructors work is in a separate location a half level up from the main floor. It has a studio where classes are taught and an area with weights and cardio equipment for guests' use. The spa also has an indoor pool. Finally, the basement level of the spa has a large break room and locker room that is available to all spa employees.

The petitioned-for massage therapists perform various types of body massages for guests. They are required to maintain a current Massachusetts Massage License as well as CPR and First Aid certifications. In order to obtain a license, massage therapists are required to complete a course of study at a licensed massage school that includes 550 hours of academic courses, including anatomy and physiology of the body; pathology; kinesiology; supervised classroom massage theory and technique; and ethics, professionalism and business practices. To obtain a license they must also complete 100 hours of unpaid and supervised clinical or internship experience.

The estheticians administer facials, waxing services and body treatments. They are required to maintain a current Massachusetts esthetician's license, which requires completion of a three-month course at an approved esthetics

⁴ Cranwell employs seasonal employees in the busy summer season, typically high school or college students. They generally work in departments other than the spa, such as the Golf, Grounds, Food and Beverage, and Rooms Departments. Cranwell seeks to exclude seasonal employees from the unit. As it is unclear that there are any seasonal employees who work in the spa, as there is no evidence that seasonal employees have an expectation of recall, and as the Union did not contest Cranwell's assertion that seasonal employees should be excluded, I shall exclude them from the unit.

school, including 300 hours of training in esthetics. Their course work includes physiology and biology related to skin care. They must pass a practical and written exam.

The cosmetologists provide hair styling and nail treatments, such as manicures and pedicures. They are required to maintain a current Massachusetts cosmetology license as well as CPR and First Aid certifications. The entry level hairdresser/cosmetologist license requires successful completion of a six-month course, including 1000 hours of professional training in an approved cosmetology school. The course work includes physiology. The cosmetologists must pass a practical and written exam.⁵ With two years of experience, cosmetologists may obtain a higher level license that permits them to provide services unsupervised.

Fitness instructors are responsible for leading a variety of prescheduled group fitness classes. In addition, they work as personal trainers for individual guests, upon request.⁶ No license is required for the job, but fitness instructors must be certified to teach the particular type of class they teach, e.g., aerobics, yoga or Zumba classes, by any one of a number of organizations that offer such training. Their course work includes physiology and kinesiology. Continuing education is required to maintain these certifications. Fitness instructors are also required to be certified in CPR and First Aid.

The spa is open from 6:30 a.m. to 9 p.m. Massage therapists, estheticians, and cosmetologists do not start work until at least 9 a.m., the earliest time that salon services, massages, and facials are offered. Fitness instructors start work as early as 6:30 a.m., when classes and personal training sessions may be offered.

Guest appointments with massage therapists, estheticians, cosmetologists, and fitness instructors who are acting as personal trainers are booked using a common software system called SpaSoft.⁷ The service providers indicate their availability on a given day. A reservationist or front desk employee books the appointments, and the software system selects a service provider

⁵ The Commonwealth of Massachusetts also licenses manicurists, who must complete only a one-month course of at least 100 hours of training and pass an exam. It is unclear from the record whether Cranwell's cosmetologists are also required to hold a manicurist's license. The job description for Cranwell's cosmetologists appears to require only the more comprehensive cosmetology license, which, according to the state regulations, permits cosmetologists to practice manicuring.

⁶ Cranwell's organizational chart indicates separate classifications for fitness instructors and personal trainers, but it appears that fitness instructors perform both roles.

⁷ Fitness classes are not booked through SpaSoft. The schedule of classes is posted and guests who wish to participate in a class simply show up.

randomly, unless the guest requests a particular provider. The appointments are generally booked on the hour. There are computer monitors at various locations within the spa where service providers may check the schedule for their upcoming appointments.

Massage therapists, estheticians, and cosmetologists are paid pursuant to a common system. They are paid a commission for each service they provide, i.e., a certain percentage of the value of the service. The precise percentage is determined according to a tier system under which more experienced providers are paid a higher percentage commission. For example, there are six tiers for massage therapists, with the least experienced therapists starting at Tier 1. In addition to receiving a commission, all service providers automatically receive a 20 percent gratuity for each service. Fitness instructors also receive a commission for each personal training session, which varies depending on experience, as well as a gratuity. They are paid a flat fee for each class they teach, which also varies depending on their experience.

Service providers are not generally paid for waiting time. For example, if service providers indicate that they are available for appointments from 9 a.m. to 2 p.m. on a given day, but they have no appointments until 10 a.m., they need not arrive until 10 a.m. If there is a gap in their appointments during the course of a shift, they are free to leave the spa during the gap, but they are not paid for that un-booked time. If service providers have not been booked for the first hour of their shift, they are asked to keep checking throughout the day to see if they are booked and to call early enough to make sure they can arrive at the spa in time for their next appointment. In some cases, if the Spa Director thinks the spa will be busy, she asks service providers to come in or stay even if they do not have an appointment booked, in which case Cranwell pays them minimum wage for waiting, even if they do not get a booking. All providers are paid a \$25 cancellation fee if a guest cancels at the last minute and they have made themselves available. Other employees at the resort are paid on an hourly basis and punch a time clock or are salaried.

Human Resources Director Stephanie Kinstle facilitates the hiring process, termination process, disciplinary process, benefits administration, workers compensation claims, and unemployment compensation claims for all employees at Cranwell. This includes screening all applicants for massage therapist, esthetician, cosmetologist, and fitness instructor positions, before sending them to be interviewed by the relevant supervisor. The record reveals little about the relative authority of the massage therapist supervisor, spa director, and human resources director in the hiring, firing, discipline, and performance review process. Unlike other resort employees, the service provider candidates are required to do a "practical", i.e., to demonstrate that they are able to perform a massage, administer a facial, style hair, give a pedicure, teach a fitness class, etc.

All resort employees are evaluated yearly by their immediate supervisor. The performance reviews are then reviewed by the relevant department head and the human resources director before being presented to the employees by the immediate supervisor. Unlike the other resort employees, spa service providers are required to give a practical demonstration of their skills as part of their performance review, so the performance review form used for them is different from that used for the other resort employees. The supervisor for the massage therapists, as well as the supervisors for the other spa providers, is the first point of contact for discipline.

Because of the licensure/certification requirements, fitness instructors, cosmetologists, and estheticians may not perform massage therapy, and the massage therapists may not perform the work of the other spa service providers. Two spa employees, Alex Demos and Florence Arnold, have dual licenses in massage therapy and esthetics and work in both areas. One spa employee, Tracy Kipp, has both a cosmetology and esthetics license and works in both of those areas. Finally, there has been one permanent transfer between the groups in that a former fitness instructor, Heidi Brandt, became a massage therapist after obtaining her massage therapy license.⁸

All Cranwell employees, resort-wide, are subject to the policies set forth in the same employee handbook. In addition, all of the service providers in the spa are subject to an addendum to the handbook that sets forth Cranwell's policies concerning matters such as their availability, booking procedures, appointment cancellations, tipping, holiday pay, breaks, uniforms, and the like. All full-time service providers, regardless of position, receive the same full benefits, such as paid time off and medical insurance, while all part-time service providers receive only limited benefits.⁹ All Cranwell employees, resort-wide, are eligible to use the resort's fitness center, indoor pool, tennis courts, driving range, and golf course and are eligible for various employee discounts.

Massage therapists, cosmetologists, and estheticians all wear a smock and a name tag. There are different color smocks for each position. Fitness instructors wear fitness gear.

All new hires at Cranwell attend a common orientation for new employees. The National Melanoma Association recently made a presentation to help the spa service providers identify suspicious skin conditions and encourage guests with such conditions to see a dermatologist. The event was opened up to the

⁸ Kipp no longer works as a fitness instructor.

⁹ Service providers at the spa must be available for work for a minimum of 26 hours per week to be deemed full-time employees. Other employees at the resort, including spa employees who are not service providers, must work at least 32 hours per week to be considered full-time employees.

entire resort. The spa service providers have also attended events off campus, at which Cranwell brings massage therapists, estheticians, cosmetologists, and fitness employees to demonstrate their services.

B. ON-CALL EMPLOYEES

As noted above, Cranwell employs about 33 massage therapists, 11 of whom are on-call employees. On-call massage therapists fill in for massage therapists when needed, if they are available. Cranwell requires on-call massage therapists to work at least one shift per month, although they have not always held them to that minimum. On-call employees receive no benefits.

The hours worked by on-call employees varies over the course of the year. Their peak usage occurs during winter and spring break periods, during which they typically work ten to twelve hours over the course of a two-week period. An exhibit submitted into evidence by Cranwell shows the hours worked by its 11 on-call massage therapists during a 14-week period from March 2, 2014 through June 7, 2014. Seven on-call massage therapists worked from zero to 3.5 hours, one worked 8.5 hours, and two worked 21 to 25 hours over that 14-week period.

II. ANALYSIS AND CONCLUSIONS

A. APPROPRIATE UNIT

In *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), the Board reiterated its traditional principles of unit determination. The Board examines the petitioned-for unit first. If that unit is an appropriate unit, the Board proceeds no further. Employees may seek to organize a unit that is appropriate – not necessarily *the* single most appropriate unit. In making the determination of whether the proposed unit is an appropriate unit, the Board focuses on whether the employees share a community of interest. In determining whether employees in a proposed unit share a community of interest, the Board examines:

[W]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id., slip op. at 9, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

In *Specialty Healthcare & Rehabilitation*, the Board further set forth the standard to be applied when an employer contends that the smallest appropriate unit contains employees who are not in the petitioned-for unit. When a petitioned-for unit consists of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills or similar factors), and the Board finds that the employees in the group share a community of interest after considering the traditional criteria, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the group could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an overwhelming community of interest with those in the petitioned-for unit. *Id.*, slip op. at 12-13. The Board noted that the D.C. Circuit has held that the proponent of the larger unit must demonstrate “an overwhelming community of interest” such that there “is no legitimate basis upon which to exclude certain employees” from the unit because the traditional community-of-interest factors “overlap almost completely.” *Id.*, slip op. at 11, citing *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008).

I find that the petitioned-for unit of massage therapists, consisting of only one job classification, is composed of employees who are readily identifiable as a group and share a traditional community of interest. The massage therapists are separately supervised by a massage supervisor, who interviews them for purposes of hiring, conducts their performance reviews, and is involved in their discipline. They all perform the same massage duties, and are all required to possess a State license that may be obtained only upon completion of a specialized course of study at a licensed massage school. They are all paid pursuant to the same compensation system, consisting of commissions and fees, they are all subject to the policies and procedures set forth in the addendum to the employee handbook for service providers, and they all wear the same color smock as their uniform.

Having found that the massage therapists are readily identifiable as a group, I turn to the issue of whether the estheticians, cosmetologists, and fitness instructors share such an overwhelming community of interest with the massage therapists that there is no legitimate basis to exclude them from the unit. I find that, although a unit composed of all of the spa service providers might also be appropriate, the additional spa service providers do not share such an overwhelming community of interest with the massage therapists that there is no legitimate basis to exclude them.

Thus, certain factors support the appropriateness of the unit of spa service providers sought by Cranwell. All of the spa service providers work in the spa and share common second-level supervision. They are all required to be licensed or certified in their field. They share a common method of payment consisting of commissions and gratuities, share a common booking system for

their clients, and are all subject to the policies in the spa service provider addendum. As for contact, the massage therapists and estheticians work near one another in the back hallway and share a prep room, and all of the spa service providers share a common break room and attend occasional events together. All of the spa service providers enjoy the same benefits and employee discounts. They are all required to wear a uniform of some kind.

Nonetheless, the community-of-interest factors do not overlap almost completely. The massage therapists are separately supervised from the other spa service providers at the first level. The massage therapists perform different duties from those performed by the other spa service providers and are required to meet unique training and licensure requirements. Because of the unique qualifications for each service provider position, there is no temporary interchange between the massage therapists and employees in the other three positions, with the limited exception of two massage therapists who have dual licenses in massage therapy and esthetics.¹⁰ There has been only one permanent transfer between the massage therapists and the other service providers. The massage therapists wear a uniform that is different from that of the fitness instructors and different in color from that of the estheticians and cosmetologists.

In post-*Specialty Healthcare* cases, the Board has declined to find an overwhelming community of interest in circumstances where the petitioned-for employees, as here, report to a different managerial chain, perform different job functions that require specialized skills and training, and have only limited interchange with other classifications. *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151, slip op. at 6 (2013); *Hall Chevrolet, LLC*, 05-RC-126386 (unpublished order denying Employer's Request for Review). The fact that the petitioned-for employees share common upper-level supervision with other classifications does not outweigh the other factors supporting the appropriateness of the petitioned-for unit. *Grace Industries, LLC*, 358 NLRB No. 62, slip op. at 6 (2012).

In support of its position, Cranwell cites *Hotel Services Group*, 328 NLRB 116 (1999), in which the Board held that a petitioned-for unit of massage therapists at a resort spa was inappropriate due to their community of interest with estheticians, nail technicians, and hairstylists/cosmetologists. The Board relied on the fact that the broader unit urged by the Employer consisted only of licensed spa personnel, that most of licensed spa personnel performed similar work, that they all were licensed after successful completion of many hours of training/schooling, that their method of compensation was similar, that 10 of the 42 massage therapists were licensed as estheticians and performed 25 percent of the estheticians' facial work, and that estheticians and nail technicians

¹⁰ The fact that one employee has both a cosmetology and esthetician's license and works in both of those areas does not demonstrate any temporary interchange with the petitioned-for massage therapists.

performed some massage work, albeit limited to different parts of the body (hand, foot, facial, neck and shoulder massage). The Board found that the separate supervision of the massage therapists was not dispositive, especially as there was some evidence of limited central control over the hiring and firing of employees exercised by the employer.

I do not find *Hotel Services Group* to be dispositive, as it was decided before *Specialty Healthcare* and thus did not apply the current test. See *DGT Operations, Inc.*, 357 NLRB No. 175, slip op. at 6, fn. 23 (2011), in which the Board declined to rely on certain pre-*Specialty Healthcare* cases cited by the employer, noting that none of those cases considered whether the disputed employees shared an *overwhelming* community of interest with the unit employees. (emphasis original).¹¹

Finally, Cranwell argues that approval of any unit composed of less than all of the service providers will result in a residual unit, which the Board seeks to avoid. This argument has no merit. In the context of an unorganized facility, when fashioning a large or overall unit, the Board is reluctant to leave a small group as a residual unit where they could be included in the larger grouping. *Huckleberry Youth Programs*, 326 NLRB 1272 (1998). There is no danger of that here as there are numerous unorganized employees remaining at the resort.

B. ON-CALL EMPLOYEES

In determining whether on-call employees should be included in the bargaining unit, the Board considers whether the employees perform unit work and those employees' regularity of employment. The Board has found that regularity can be satisfied when an employee has worked a substantial number of hours within the period of employment prior to the eligibility date. Under the Board's most widely used test for voting eligibility, an employee is found to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if the employee regularly averages four or more hours of work per week for the last quarter prior to the eligibility date. *Trump Taj Mahal Casino*, 306 NLRB 294, 295 (1992), citing *Davison-Paxon Co.*, 185 NLRB 21, 23-24 (1970); *Columbus Symphony Orchestra, Inc.*, 350 NLRB 523, 524 (2007).

Accordingly, those on-call massage therapists who have averaged four or more hours of work per week during the last quarter prior to the eligibility date shall be deemed regular part-time employees and shall be eligible to vote.

¹¹ I also note that *Hotel Services Group* is distinguishable in that there was more temporary interchange. There, 10 out of 42 massage therapists (24 percent) were also licensed estheticians and performed 25 percent of the facial work at the spa. Here, only 2 of the 22 massage therapists (9 percent of the massage therapists who are not on-call) perform some unknown amount of the esthetician's work. Further, in *Hotel Service Group*, unlike the instant case, there was evidence that estheticians and nail technicians performed some massage work, albeit on different areas of the body.

Accordingly, I find that 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 massage therapists employed by the Employer at its Lenox, Massachusetts facility, but excluding all other employees, seasonal employees, guards and 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 **United Professional & Service Employees Union, Local 1222**. 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.

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 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.

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 whether there is 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 on or before July 16, 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,¹² by mail, or by facsimile transmission at 617-565-6725. 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. 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 **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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 nonposting of the election notice.

¹² To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

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 July 23, 2014. The request may be filed electronically through the Agency's website, www.nlrb.gov, but may not be filed by facsimile.

DATED: July 9, 2014



Jonathan B. Kreisberg, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072