



**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

ASR INTERNATIONAL CORPORATION <sup>1</sup>	)	
	)	
Employer	)	
	)	Case No. 29-RC-11092
UNITED ASSOCIATION OF WORKERS OF AMERICA, LOCAL NO. 528, affiliated with NOITU-IUJAT	)	
	)	
Petitioner	)	

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

ASR International Corporation, herein called the Employer, provides inspection, auditing, quality control, IT, engineering and related services to various clients, including the United States Postal Service, herein called USPS. United Association Of Workers Of America, Local No. 528, affiliated with NOITU-IUJAT, herein called the Petitioner, filed a petition with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent a bargaining unit consisting of all full-time and regular part-time quality control clerk I and quality control clerk II employees employed by the Employer at its facility located at 91 Hartland Blvd., Deer Park, New York, herein called its Long Island facility, but excluding all office clerical employees, quality process auditors, guards and supervisors as defined in Section 2(11) of the Act.<sup>2</sup>

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The unit description appears as amended at the hearing.

A hearing was held before Henry Powell, Hearing Officer of the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

The Employer takes the position that the single-location unit sought by the Petitioner is inappropriate, and that the smallest appropriate unit would be a nationwide unit embracing all locations performing services pursuant to a contract between the Employer and USPS, which took effect on March 1, 2005. Further, the Employer contends that its quality control clerk II employees are supervisors as defined in Section 2(11) of the Act. The Petitioner maintains that the single-location unit it seeks is appropriate, and that the quality control clerk II position is non-supervisory.

The parties stipulated that the quality process auditors, herein called QPAs, should be excluded from the unit.

As its witness, the Employer called Ken Nevor, Director of Operations. No other witnesses testified at the hearing.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the single-location unit sought by Petitioner is appropriate. Further, I have concluded that the quality control clerk II employees are not supervisors. The facts and reasoning that support my conclusions are set forth below.

## **FACTS**

### **Introduction**

The Employer provides quality inspection support services to the United States Postal Service, herein called the USPS, at 22 facilities throughout the United States. It has been performing this work since March 1, 2005, pursuant to a contract with the USPS. The work involves monitoring the performance of operating contractors who

inspect and repair the equipment and materials used by the USPS to transport mail. The contract was previously performed by a company known as “SCIC,” or “Scientific Controls.”

When the Employer took over the contract on March 1, 2005, it hired the SCIC employees who had been performing the contract previously. In addition, since March 1, 2005, the Employer has hired approximately 20 new employees, of whom three or four are employed at the Long Island facility. The Employer’s total employee complement consists of about 225 employees, of whom about 170 employees are servicing the USPS contract.<sup>3</sup> At its Long Island facility, it employs one quality control clerk II, five quality control clerk I’s, and one quality process auditor or “QPA.”

#### **Geographical Relationship Among the 22 Facilities**

The facilities which the Employer seeks to include in the bargaining unit, in addition to the Long Island facility, are located in Los Angeles and San Francisco, California, Philadelphia and Pittsburgh, Pennsylvania, Atlanta, Georgia, Chicago, Illinois, Cincinnati, Ohio, Dallas, Texas, Denver, Colorado, Des Moines, Iowa, Detroit, Michigan, Front Royal, West Virginia, Greensboro, North Carolina, Jacksonville, Florida, Kansas City, Kansas, Memphis, Tennessee, Minneapolis, Minnesota, Seattle, Washington, Springfield, Massachusetts, St. Louis, Missouri, and an unspecified location in New Jersey.

#### **Employee Transfers, Interchange and Contacts**

Nevor acknowledged that there is a complete absence of interchange or contacts among the quality control clerks at the 22 sites.

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<sup>3</sup> The Employer did not provide a specific breakdown of the work locations of the approximately 55 employees who are not performing work for USPS.

### **The Employer's Headquarters in Hauppauge, New York**

The Employer's headquarters is located at 315 Owser Avenue, Hauppauge, New York. Working out of the Hauppauge facility are the departments of human resources, payroll, administration, operations, engineering and customer service/support. When asked, "Do these departments oversee the operations at all 22 sites?" Nevor replied in the affirmative. The Employer's headquarters also has oversight responsibilities for the employees, approximately 55 in number, who do not perform work for USPS.

The Employer does not seek to include its Hauppauge, New York, facility in the bargaining unit.

### **Centralized Personnel Policies**

The record reflects that a single set of personnel policies is applied to all employees, including those at the 22 sites performing the USPS contract. These personnel policies include such matters as the Employer's time-off, attendance, tardiness, early leaving and disciplinary policies, in addition to the Employer's procedures for everything from hiring new employees to filling out time sheets and reporting workplace injuries. Documents pertaining to these various personnel policies, and forms completed by employees and/or supervisors pursuant to these policies, are issued by the Employer's headquarters in Hauppauge, and distributed to the 22 sites that service the USPS contract. Personnel files for the 22 sites are maintained at the Hauppauge facility.

### **Skills and Functions of Quality Control Clerks I and II**

Nevor testified that the quality control clerks I and II make the initial assessment on whether repair work is needed on USPS equipment. When the repair work is completed, they verify whether it has been done properly. In addition, the quality control

clerks perform computerized data entry functions. The clerks at all 22 facilities use the same computer system.

Nevor acknowledged that the quality control clerks I and II “do a lot of the same work,” although most of the final inspections are performed by the quality control clerk II’s.

The Employer’s contract with USPS requires that quality control clerks have a “minimum of High School graduation equivalence and experience using office machines and calculators,” as well as “the ability to use computer keyboards and bar code scanning equipment” and the ability “to resolve minor problems through reference to written instructions.”

#### **Skills and Functions of the Quality Process Auditors (“QPAs”)**

At each individual site, the Employer employs one or two quality process auditors, herein called QPAs. Nevor testified that the QPAs are “responsible for everything going on, on the site.” The record reflects that the QPAs engage in both supervisory and non-supervisory tasks. According to the official job description set forth in the service contract, the QPAs “conduct audits, monitor contractor performance, direct activities of the Quality Clerks and verify data and processing activities. They will also assure that Quality Clerks are cross trained in all three Quality Clerk areas.” The record does not disclose what percentage of the QPAs’ time is devoted to supervisory duties, and what percentage of their time is allocated to non-supervisory duties.

According to Nevor, the QPAs “move people around,” assign work to the clerks, and ensure that their work is being done properly. In addition, the QPAs make recommendations with respect to hiring and disciplinary decisions, discuss unsatisfactory

work performance with employees, and approve or disapprove of sick leave and vacation requests. Nevor indicated that the QPAs' hiring recommendations have been followed 19 times out of about 21. At the Long Island facility, all of the QPA's hiring recommendations have been followed. The QPAs also train newly hired quality control clerks at each separate facility, using a standardized training manual provided by USPS.

The Employer's contract with USPS requires that the QPAs have "a minimum of four (4) years of experience in the field of quality assurance and/or quality system auditing" and "auditing experience in ISO 9000 or other relative quality system," as well as "the ability, knowledge, and understanding to provide direction and guidance to USPS management in assessing quality systems and recommending improvement options." Qualifications deemed "desirable" include "an engineering, mathematics, or other scientific degree," and "proof of training as an ISO 9000 Lead Assessor."

#### **"Filling In" for Absent QPAs**

Nevor testified that when a QPA takes a vacation, or is out for a period of more than three days, the Employer makes "arrangements through headquarters and the quality manager to move another QPA there, to fill in while he's gone." For example, when a QPA named "Diane" was on vacation for four or five days, another QPA filled in for her. When a QPA in California was "out," a QPA or quality manager filled in for him.

However, Nevor maintained that a quality control clerk II may also fill in for a QPA. According to Nevor, if a quality control clerk II is "on the floor, a lot of times, the QPA may be in his office, and if there's any movement in the shop that has to be, where people have to be moved, the clerk II can move the people in that area." In addition, Nevor asserted that "if the QPA is out, the clerk II will act as the QPA." With regard to

the functions performed by the quality control clerk II when substituting for the QPA, Nevor testified as follows:

Q: Would the quality clerk II be the point person for the operating contractor?

A: At that point, yes.

Q: And the operating contractors on site know who the clerk II's are?

A: Yes.

Q: At that point in the situation where the QPA is absent, would the quality clerk II give the quality clerk I's their daily assignments?

A: Yes.

Q: Would they assign them to work locations?

A: Yes.

Q: Would they become the team leader?

A: Yes.

Q: When a QPA is off site, does a quality clerk I [sic] become responsible for the work of the quality clerk I's?

[Objection overruled.]

A: He's responsible for making sure that things are moving, there's no bottlenecks.

Nevor testified that upon reviewing the time records<sup>4</sup> for the Long Island facility, he found that the QPA was "off site" for about 50 hours during the period from March 1 until July 22, 2005. During those 50 hours, according to Nevor, the quality control clerk II at that facility took over the QPA's responsibilities. The record does not disclose what percentage of the QPA duties performed by the quality clerk II during those 50 hours was supervisory, and what percentage was non-supervisory. Further, the record does not reveal whether the QPA's 50-hour absence was a one-time occurrence, or alternatively, whether the 50 hours were distributed evenly over the full five-month period from March 1 to July 22, 2005. Nevor did not know how often the quality control clerk II's at the other facilities substitute for the QPAs.<sup>5</sup>

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<sup>4</sup> The time records are not in evidence.

<sup>5</sup> Some of the other facilities have more than one quality control clerk II. For example, the Denver facility employs five quality control clerk II's, and no quality control clerk I's.

### **Quality Assurance Managers**

The Employer employs one quality assurance manager, whose office is at the Cincinnati site, and one assistant quality assurance manager, who works at the Chicago site. Nevor stated that the QPAs at the 22 sites “report to the quality manager or the assistant quality manager, you know, for duties like time sheets that he overloads [sic] and then they report to me...everything goes through the quality manager and everything goes through me.”

For example, a QPA would follow up with the quality assurance manager after discussing unsatisfactory work performance with an employee. Subsequently, “the quality manager will refer to me [i.e., Nevor, the operations manager] and HR.” Written disciplinary warnings are signed by both the QPA and the quality assurance manager.

Once a week, the quality assurance manager conducts a conference call with the QPAs at the 22 sites, to discuss issues that have arisen at the sites. If necessary, the QPAs may communicate with the quality assurance manager on a more frequent basis.

### **Hiring Procedures**

The human resources department at the Employer’s Hauppauge facility checks job candidates’ references and administers the required drug test. Then, for each opening, several candidates are sent to the individual facility to be interviewed by the QPA. After determining whether the candidates can perform the job, and making a subjective evaluation of their relative likeability, the QPA completes the Employer’s standard scoring sheet, and makes a recommendation to headquarters. Of the approximately 21 prospective employees recommended by the QPAs since March 1,

2005, 19 have been hired. There is no evidence that quality clerk II's have ever been involved in the hiring of employees.

### **Wages and Benefits**

Nevor testified that employees' minimum wage rates are determined in accordance with the Service Contract Act, and are set forth in the contract between the Employer and USPS. Because of cost of living differentials, the wage rates differ among the 22 sites at issue. In the counties of Nassau and Suffolk, Long Island, where the Long Island facility is located, the minimum hourly wage rates for quality control clerks I and II are \$11.76 and \$13.22, respectively. The minimum hourly wage rates for quality control clerks employed at the Employer's other facilities were not disclosed. Further, the Employer did not disclose the QPAs' rate or rates of pay, or whether they are paid on an hourly or salaried basis.

The employees' minimum benefits are also set forth in the contract, pursuant to the Service Contract Act. Accordingly, employees at the 22 sites receive the same vacation, health and welfare benefits.<sup>6</sup> Other than Good Friday (which is the 11th paid holiday for some of the Employer's facilities, but not for others), the employees at all of the facilities are given the same 10 paid holidays. Although additional benefits are not required by the contract, employees at the 22 sites are also offered disability and life insurance, vision benefits and a 401(K) plan.

### **Extent of Organization and Bargaining History**

Another labor organization, District Lodge 60, International Association of Machinists and Aerospace Workers, AFL-CIO, recently filed a petition in case number

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<sup>6</sup> The record reflects that the Long Island, Seattle and Cincinnati facilities participate in a different health and welfare policy from that pertaining to the other facilities. However, the policies for all facilities are administered by the same insurance company.

7-RC-22901, seeking to represent employees in the Employer's Detroit, Michigan, facility. The latter petition is being processed by Region 7 of the Board, in Detroit, Michigan. Currently, the 22 facilities servicing the USPS contract are operating on a non-union basis.

## **DISCUSSION**

### **Single Or Multi-Location Bargaining Unit**

Section 9(b) provides that the Board “shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.” In deciding whether a petitioned-for unit is appropriate, the Board starts with the premise that “the plain language of [Section 9(b) of] the act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit.” *See Overnite Transportation Co.*, 322 NLRB 723 (1996). Accordingly, it is well-established that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enfd*, 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

The criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer's organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other

working conditions, work location, degree of centralized control over the employer's day-to-day operations and personnel policies, the extent of organization, and previous bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). By weighing these various factors, the Board determines whether the employees in the proposed unit "share a sufficiently distinct community of interest from other employees as to warrant a separate unit," *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766.

The same considerations apply to unit determinations involving multi-location employers; additional factors include the geographical relationship among the facilities involved and the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald's Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961). In determining whether a single-facility bargaining unit is appropriate, the Board places great weight on employee interchange, transfers and contacts, as well as separate local supervision and the distances among facilities. *See Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Esco Corporation*, 298 NLRB

837, 840 (1990); *see also St. Luke's Health System, Inc.*, 340 NLRB No. 139 (2003). A petitioned-for single-facility unit is presumptively appropriate, and the burden is on the party opposing that unit to present evidence overcoming the presumption. *J & L Plate*, 310 NLRB 429 (1993). To overcome the single-facility presumption, the evidence must establish that multiple facilities have been so effectively merged, or that the facilities are so functionally integrated, as to have lost their separate identities. *New Britain Transportation Co.*, 330 NLRB 397 (1999).

In the instant case, the Employer has not met its burden of establishing that the Long Island facility has been so effectively merged with the other facilities as to have lost its separate identity. On the contrary, there is no evidence of any interchange or contacts between the quality control clerks at the Long Island facility and those at the other 21 sites. Most of these other sites are geographically remote. The employees at each site are separately supervised and trained, by the QPAs, and their rates of pay vary. Although there is just one quality assurance manager, one assistant quality assurance manager, and one operations director, there is no evidence of any direct interaction between these management officials and the quality control clerks. Further, although the 22 sites use the same computer system, there is no evidence that operations among the various sites are coordinated, or interdependent. The factors emphasized by the Employer, such as uniform job functions, benefits and personnel policies, a single human resources

department,<sup>7</sup> and the performance of work for a single customer, are insufficient to overcome the presumption that a single-facility unit is appropriate. The evidence fails to establish that the Long Island facility has been so effectively merged into the other facilities, or that it is so functionally integrated with the other facilities, as to have lost its separate identity. Accordingly, I conclude and find that the single-facility unit sought by the Petitioner is appropriate.

### **Alleged Supervisory Status of Quality Control Clerk II's**

In enacting Section 2(11) of the Act, Congress intended to distinguish “between true supervisors who are vested with ‘genuine management prerogatives,’ and ‘straw bosses, lead men, and set-up men’ who are protected by the Act even though they perform ‘minor supervisory duties.’” *S. Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1947)*, quoted in *Providence Hospital*, 320 NLRB 717, 725 (1996). Accordingly, employees are statutory supervisors only if (1) they hold the authority to engage in one of the twelve supervisory functions set forth in the Act, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of *independent judgment*,” and (3) their authority is held “in the interest of the employer.” See *Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1867 (2001)(emphasis added). The burden of proving that an

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<sup>7</sup> As the Board observed in *Omni Dunfey Hotels, Inc.*, 283 NLRB 475 (1987):

Our dissenting colleagues concede the existence of separate immediate supervision, but point to the existence of common procedures for interviewing and hiring new employees. To the extent that our colleagues may suggest that hiring procedures are of equal weight with the identity of day-to-day supervision, we believe they have lost sight of the question before us—determining employees' community of interest as to the terms and conditions of their employment. Surely the fact that the engineering department employees work under the direction of, and would likely address their immediate grievances to, someone different from those under whom other employees immediately work has greater bearing on collective-bargaining interests than the procedures by which the employees were interviewed for entry into the work force in the first place.

*Omni Dunfey Hotels, Inc.*, 283 NLRB at 475 n. 1.

employee is a statutory supervisor is on the party alleging such status. *Kentucky River*, 121 S.Ct. at 1866. In light of the exclusion of supervisors from the protection of the Act, this burden is a heavy one. See *Chicago Metallic*, 273 NLRB 1677, 1688, 1689 (1985). When “there is inconclusive or conflicting evidence on specific indicia of supervisory authority, the Board will find that supervisory status has not been established with respect to those criteria.” *Property Markets Group, Inc.*, 339 NLRB 199, 205 (2003).

The exercise of “some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner,” or through giving “some instructions or minor orders to other employees,” does not confer supervisory status. *Chicago Metallic*, 273 NLRB at 1689; see *Kanawha Stone Company, Inc.*, 334 NLRB 235 (2001). The use of “independent judgment” must be demonstrated through evidence of “particular acts and judgments,” *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995), rather than through “general, conclusory claims.” *Crittenton Hospital*, 328 NLRB 879 (1999). Independent judgment must be established with respect to each and every supervisory function exercised by the alleged supervisor. *Property Markets*, 339 NLRB at 204.

Proof of independent judgment in the assignment of employees entails the submission of concrete evidence showing how assignment decisions are made. See *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999). The Board and federal courts “typically consider assignment based on assessment of a worker’s skills to require independent judgment and, therefore, to be supervisory,” except where the “matching of skills to requirements [is] essentially routine.” *Brusco Tug & Barge Co.*, 247 F.3d 273, 278 (D.C. Cir. 2001) (citing *Hilliard Development Corp.*, 187 F.3d 133, 146, 161 LRRM 2966 (1<sup>st</sup> Cir. 1999)). By contrast,

the assignment of tasks in accordance with an Employer's set practice, pattern or parameters, or based on routine or obvious factors, does not require a sufficient exercise of independent judgment to satisfy the statutory definition. See *Express Messenger Systems*, 301 NLRB 651, 654 (1991); *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1075 (1985). Such routine duties as "shifting employees around to get projects done," asking off-duty employees to fill in for absent employees, or adjusting meal break schedules, do not require independent judgment, and are thus non-supervisory. See *Los Angeles Water and Power Employees' Association*, 340 NLRB No. 146, slip op. at 3 (2003); *Health Resources of Lakeview, Inc.*, 332 NLRB 878, 879 (2000); *Hexacomb Corporation*, 313 NLRB 983, 984 (1994). Serving as a conduit for management's instructions or for the assignment of predetermined tasks, without more, does not elevate an employee into the supervisory ranks. See *McCullough Environmental Services*, 306 NLRB 1565, 1566 (1992); see also *Quadrex Environmental Co.*, 308 NLRB 101 (1992).

Similarly, the degree of independent judgment required to direct employees in the performance of routine, repetitive tasks is correspondingly reduced. See *Loyalhanna Health Care Associates*, 332 NLRB 933 (2000); *Ten Broeck Commons*, 320 NLRB 806, 811 (1996); *Maui Medical Group, Inc.*, 2002 WL 561329, 37-RC-3982 (ALJD 2002). For example, in the health care field, preparing a care plan and directing other employees to carry it out does not generally require the use of independent judgment. See *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890, 891, 891 n.5 (1997); *Ten Broeck Commons*, 320 NLRB at 811, 811 n. 10 (1996). Such a care plan has been held to be a mere "check list" of routine job duties, or "a recipe of discrete tasks to be performed by an aide who is adequately trained in performing the work defined in the recipe." *Franklin Hospital*, 337

NLRB 826, 831 (2002)(citing *Meridian Home Care Services*, Case 22-RC-12098 (2002)(review denied in an unpublished decision)). In addition, whether direction is “responsible” as required by Section 2(11) depends “on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs.” *Schnurmacher Nursing Home*, 214 F.3d 260, 267 (2<sup>nd</sup> Cir. 2000). Such accountability and responsibility can be established through evidence of disciplinary warnings and evaluations specifically holding supervisors accountable for their failure to direct and delegate work to subordinates. *Schnurmacher*, 214 F.3d at 266-67.

Further, acting as a substitute or temporary supervisor does not establish 2(11) status unless the exercise of supervisory authority is both regular and substantial. *Health Resources of Lakeview, Inc.*, 332 NLRB 878 (2000); *Hexacomb Corporation*, 313 NLRB 983 (1994). For example, in *N & T Associates, Inc.*, 270 NLRB 838 (1984), relied on by the Employer herein, craps dealers at a gambling casino were found to be statutory supervisors because they were regularly scheduled to substitute for stipulated supervisors, as part of the casino’s established, routine practice. *N & T Associates*, 270 NLRB at 839, 840. When serving as substitute supervisors, they possessed the same authority and enjoyed the same wage rates as the supervisors for whom they substituted. *N & T Associates*, 270 NLRB at 839.

By contrast, *Health Resources of Lakeview, Inc.*, 332 NLRB 878 (2000) involved an employee who had served as an acting supervisor for a five-month period. The Board held that even though she may have temporarily possessed statutory supervisory authority during those five months, she did not continue to possess supervisory authority after a

permanent supervisor was hired. *Health Resources*, 332 NLRB at 878. In light of the lack of evidence that she exercised independent judgment in her current position, she was found to be a statutory employee. *Health Resources*, 332 NLRB at 879.

In *Hexacomb Corporation, supra*, certain alleged supervisors “substitute[d] for their undisputed supervisors only when the supervisors [were] sick or on leave, which...occurred approximately 8-10 percent of the time. Therefore, even if all the [alleged]...supervisors exercised supervisory authority when substituting, their assumption of supervisory duties [was] irregular and sporadic, e.g., during vacation periods or on other unscheduled occasions, and therefore [was] insufficient to establish supervisory authority.” *Hexacomb*, 313 NLRB at 984.

Based on these precedents, I have concluded that the Employer herein has failed to meet its burden of proof with respect to the alleged supervisory status of the quality control clerk II at the Long Island facility. Although there is some evidence that this individual assigns work to other employees from time to time, the record does not establish that he or she uses independent judgment when doing so. The record does not disclose how this individual makes assignment decisions, and whether such decisions are based on an assessment of employees’ skills. See *Brusco Tug & Barge Co.*, 247 F.3d 273, 278 (D.C. Cir. 2001); *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). Rather, it appears from the record that the quality control clerk II merely “shifts employees around to get projects done,” a function deemed non-supervisory by the Board. See *Los Angeles Water and Power Employees’ Association*, 340 NLRB No. 146, slip op. at 3 (2003); *Hexacomb*, 313 NLRB at 984. Similarly, it appears that the quality control clerk II’s “direction” of employees merely pertains to routine, repetitive tasks for

which they have been adequately trained. *See Loyalhanna Health Care Associates*, 332 NLRB 933 (2000); *Ten Broeck Commons*, 320 NLRB at 811 (1996); *Franklin Hospital*, 337 NLRB at 831. The job description for quality control clerks I and II, requiring that they have the ability “to resolve minor problems through reference to written instructions,” is consistent with my conclusion that the quality clerk II lacks independent judgment. Moreover, there is no specific evidence that the quality clerk II has ever been “held fully accountable and responsible for the performance and work product” of the quality control clerk I’s. *See Schnurmacher Nursing Home*, 214 F.3d at 267.

Further, the record does not establish that the quality control clerk II at the Long Island facility substitutes for the QPA on a regular or substantial basis. Although Nevor testified that the QPA was absent for a total of 50 hours between March 1 and July 22, 2005, and that the quality control clerk II substituted for the QPA during these 50 hours, the record does not reveal whether the 50 hours were evenly distributed over this five-month period, or whether the assumption of QPA duties by the quality clerk II was regularly scheduled as part of an established, routine practice. *See N & T Associates*, 270 NLRB at 840. Even if the 50 hours were evenly distributed, they would average out to a mere 10 hours per month, fewer than the two days per month deemed sufficient to establish supervisory status in *N& T Associates*, 270 NLRB at 840, and far less than the “8-10 percent of the time” deemed inadequate in *Hexacomb*, 313 NLRB at 984. Significantly, the record does not reveal what percentage of the QPA’s time (or the quality clerk II’s time when substituting for the QPA) is devoted to supervisory duties, and what percentage is allocated to non-supervisory duties. Finally, it is not clear, on this record, whether the quality control clerk II will continue to substitute for the QPA in the

future. *See Health Resources*, 332 NLRB at 878. I further note the lack of evidence that the quality control clerk II is paid differently when substituting for the QPA. *See N & T Associates*, 270 NLRB at 839.

Accordingly, I find that the quality control clerk II is not a statutory supervisor, and should be included in the unit. Because I have concluded that the single-facility unit sought by the Petitioner is appropriate, I will direct an election in the petitioned-for bargaining unit.

### **CONCLUSIONS AND FINDINGS**

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

2. The parties stipulated that ASR International Corporation, herein called the Employer, is a domestic corporation with its principal office located at 315 Oser Avenue, Hauppauge, New York, and various places of business across the United States, including a place of business located at 91 Hartland Blvd., Deer Park, New York, herein called its Long Island facility, where it has been engaged in the business of quality control engineering and related services. During the past twelve month period, which period is representative of its operations in general, the Employer, in the course and conduct of its business operations, performed services valued in excess \$50,000 for the United States Postal Service and other entities, each of which is directly engaged in interstate commerce.<sup>8</sup>

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<sup>8</sup> A revised commerce stipulation was received into evidence as Board Exhibit 3, after the hearing closed.

Based upon the stipulations of the parties, and the record as a whole, I find 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 herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The labor organization involved herein claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a)(1) of the Act:

All full-time and regular part-time quality clerk I and quality clerk II employees employed by the Employer at its facility located at 91 Hartland Blvd., Deer Park, New York, herein called its Long Island facility, **but excluding** all office clerical employees, quality process auditors, guards and supervisors as defined in Section 2(11) of the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding 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. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by United Association of Workers of America, Local No. 528, affiliated with NOITU-IUJAT, or by no labor organization.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list

must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **August 19, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### **NOTICES OF ELECTION**

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### **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, D.C.  
20570-0001. This request must be received by the Board in Washington by 5 p.m., EST  
on **August 26, 2005**. The request may be filed by electronic transmission through the  
Board's web site at NLRB.Gov but **not** by facsimile.

Dated: August 12, 2005, Brooklyn, New York.

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Alvin P. Blyer  
Regional Director, Region 29  
National Labor Relations Board  
One MetroTech Center North, 10th Floor  
Brooklyn, New York 11201