

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

ITHACA COLLEGE

Employer

and

Case 3-RC-11534

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 241**

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this case is whether Rickey Blake, who holds the position of supervisor of mechanics-electrical, is a supervisor within the meaning of Section 2(11) of the Act. Ithaca College, herein called the Employer or the College, contends that Blake is a statutory supervisor. International Brotherhood of Electrical Workers, Local 241, herein called the Petitioner, takes the position that Blake is not a supervisor. For the reasons explained more fully below, I have concluded that Blake is a supervisor within the meaning of Section 2(11) of the Act, and he shall therefore be excluded from the Unit and ineligible to vote in the election that I direct herein.

The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, as amended. A hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, and having considered the briefs submitted by the parties, I find that:

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

2. The parties stipulated that the Employer is a private nonprofit New York State corporation with offices and a principal place of business in Ithaca, New York, where it is engaged in the operation of a college. Annually, the Employer, in conducting its business operations, derives revenues in excess of \$1,000,000 and purchases and receives at its new York facility, goods and services valued in excess of \$50,000, directly from points located outside the State of New York.

Based on the parties' stipulation and the record as a whole, I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act. The Petitioner claims 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.

At the hearing, the Petitioner amended its petition to include all full-time and regular part-time

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electricians, including master mechanics-electrical and master technicians-electrical, excluding all office clerical, managerial and professional employees, guards and supervisors as defined in the Act.

At the hearing, the parties stipulated that the Unit sought in the petition, as amended at the hearing, is appropriate, and I so find. The parties also stipulated that employees in the MM and

[2]

MT classifications are eligible to vote.

FACTS

The College is governed by a Board of Trustees, to whom the College President is responsible. Among several Vice-Presidents is the Vice-President for Finance and Administration, who is in charge of, among other things, the Physical Plant. Rick Couture is the director of Physical Plant, which is comprised of four departments: Construction Planning and Design, Facilities Services, Grounds and Transportation, and Facilities Maintenance. The petitioned-for employees are among the approximately 46 employees in the Facilities Maintenance department. Assistant Director of Physical Plant Bill Drake is responsible for Facilities Maintenance, which in turn is divided along craft lines. Four individuals, variously titled supervisor of mechanics-structural, supervisor of mechanics-HVAC, supervisor of mechanics-plumbing, and supervisor of mechanics-electrical, report to Drake. The individual whose status is at issue here, Blake, is the [\[3\]](#) supervisor of mechanics-electrical.

The electricians perform a wide range of electrical work. They are responsible for the maintenance and preventive maintenance of the College's electrical systems, including the electrical substation on campus. They install new equipment, wire or rewire computer labs, troubleshoot circuits and change light bulbs. During 2004, approximately 1,500 service requests were handled by the electricians.

Blake has held his current position as supervisor of mechanics-electrical since 1995. The position has existed since about 1978, when one position was split into the four supervisor of mechanics positions that exist today. The 1978 job description for supervisor of mechanics-electrical and the current job description are in evidence. The current job description was most recently revised in 2001, when the Physical Plant was administratively reorganized. Cindy Reckdenwald, the Employer's Director of Compensation and Organizational Design, testified that the job

description was revised to clarify the supervisory responsibilities of the position.

The 1978 job description generally described the position as “supervis(ing) and coordinat(ing) the work of an assigned group of maintenance personnel.” More specifically, the job description provided that the incumbent would, among other things:

“Schedule and assign work; inspect completed work to ensure compliance with established standards or required specifications,”

“Train and instruct new employees; monitor work performance to evaluate completeness and accuracy,”

“Maintain work order and time records and submit appropriate payroll information to management personnel,” and

“Supervise various personnel actions to include, but not limited to, promotions, transfers, vacation schedules and dismissals.”

The current job description reiterates the above, and additionally states that “This position will provide day-to-day guidance, direction and supervision to various levels of Facilities

Maintenance personnel...” Among the “essential duties” listed are:

“Train, promote and enforce good safety and housekeeping practices among subordinates,” and

“Monitor and approve activities of contract personnel and services...authorize payment for contracted services in accordance with College and departmental procedures.”

The current job descriptions for the other three supervisors of mechanics are also in evidence.

They are substantially the same as Blake’s.

Blake has an office, as do the other supervisors of mechanics. The electricians do not have offices. If Blake is not at his desk, the electricians may use the office if, for example, they need to make a telephone call. Blake and the other three supervisors of mechanics substitute for Drake in rotation. Drake testified that he is on vacation, attending seminars or absent for other reasons,

approximately six to eight weeks each year. Most of the electricians work from 7:30 a.m. to 4:00 p.m., as does Blake. Like the electricians, Blake punches a time clock and is exempt from the overtime provisions of the Fair Labor Standards Act. To cover emergencies and other situations that may arise outside of normal working hours, there is an on-call rotation. Blake is not in the rotation, but he takes on-call on a back-up basis, if an electrician is unable to be on call. For example, Blake took on-call when an electrician on call had a death in the family over a weekend.

There is some conflicting evidence as to exactly how the process works, but the record reveals that requests for service are directed to Physical Plant, which in turn generates work orders. As a general rule, work orders are transmitted electronically or by hard copy to Blake. However, Blake testified that the administrative staff in Physical Plant transmits work orders directly to electricians at least once or twice each day, while he personally relays a half-dozen to a dozen work orders on a daily basis. In general, Blake routes work orders to a particular electrician according to a rotating “building” system. That is, he divides up the College’s 83 buildings among his staff, and assigns electricians to handle work orders in certain buildings. By Blake’s estimate, approximately 90 percent of the work is assigned this way. Several times during the course of a year, the building assignments are rotated. The system was in place when Blake assumed his current position, and he has used it since. From time to time, it becomes necessary to depart from the “building” system. For example, two electricians were recently assigned to work with the Construction Design group. Blake reassigned their buildings to other electricians.

There is also conflicting evidence as to the percentage of time Blake spends working with the tools of the trade, alongside the electricians. Drake testified that Blake spends approximately 5 percent of his time in this manner; Blake himself testified that 40 percent was more accurate.

Drake is not an electrician, and does not work alongside the electricians nor does he check their work for quality or completeness. It is undisputed that Blake is responsible for seeing that the electricians' work is performed and performed correctly.

Drake does not become involved in the day-to-day assignment of electricians' work, [4] except in Blake's absence, when either Drake or MT Dick Westbrook stand in. If MMs or MTs need guidance or direction during the work day, or when on call, they look to Blake. The record reveals that when a job calls for more than one electrician, Blake decides which electrician will go to help out, and who will cover his buildings. When there are multiple work orders for a group of buildings covered by one electrician, Blake prioritizes the work. Recently, when two electricians had to be assigned to work with the Construction Design department, Blake assigned the ones he thought could best handle the job. Drake directed Blake to assign two electricians to the renovation of the Physical Plant building, but Blake decided which electricians would work on the project.

Only one electrician, Marc Passalugo, and one plumber, Kyle McFall, have been hired in Facilities Maintenance during the past five years. In each case, the College's Human Resources department screened potential applicants and forwarded the applications of those having the minimum qualifications to Drake. Those applications are reviewed by Drake and the craft supervisor (e.g., Blake, if the position was an electrician). Together, they decide which applicants will be interviewed. Three candidates were interviewed for the positions to which Passalugo and McFall were ultimately hired.

Drake and Blake jointly decided which candidates would be interviewed for the electrician's position in 2002. There was no disagreement between them as to who should be interviewed. Fred Vanderburgh, Assistant Director of Physical Plant at the time, participated in

the interviews. The interviews were conducted jointly by Vanderburgh, Drake and Blake. The interviews were followed by a discussion among the three of them. This discussion resulted in the hiring of Passalugo. Drake testified that Blake participated in the interview and recommended Passalugo for hire. At the time, Vanderburgh held the position now held by Drake.

[5]

Therefore, Vanderburgh would have been the one to accept or reject such a recommendation.

The same process was followed in hiring McFall, a plumber. Drake, Blake, supervisor of mechanics-plumbing Jim Brill and supervisor of mechanics-HVAC George Goodwin participated in the interviews that resulted in McFall's hire. Drake testified that he involved Blake and Goodwin because the trades within Facilities Maintenance often work side by side, and he wanted the benefit of their experience. There may have been some disagreement among the group as to who should be hired. Brill questioned whether McFall was the best candidate. In the end, McFall was both the consensus choice and Blake's choice. Drake listened to the three supervisors discuss the "pros and cons," gave his impressions, and decided.

Forms called "Equal Employment / Affirmative Action Hiring Proposal," in regard to each of the two hires, are in evidence. These forms are developed by Human Resources. They show, among other things, who participated in the interviews, describe how the final decision was

[6]

reached, the successful candidate and the reasons for selection, and the non-selected candidates and the reasons that they were not selected. The hiring proposals in evidence do not have signatures, or signature lines. The completed forms are turned in by Drake to Human Resources.

The Employer has a salary grade system consisting of 27 grades, with grade 27 being the highest. All four of the supervisors of mechanics, including Blake, are at salary grade 12. The range of hourly wages in grade 12 is from \$17.02 to \$25.52. Blake currently earns \$24.58 per

hour. Most of the employees in Facilities Maintenance are at grades 10 or 11; a few are at grade 9. The two MTs, Steele and Walters, are at grade 11. The wage range for grade 11 is from \$15.76 to \$23.63. The three MMs are at grade 10. The wage range for grade 10 is \$14.59 to \$21.88. After Blake, the highest-paid electrical employee earns \$21.96 per hour; the lowest-paid [\[7\]](#) electrical employee earns \$16.59 per hour.

There is a three-level system of benefits. The benefit levels are according to salary grade. Those employed in salary grades 1 through 9 have one level of benefits. Those employed in grades 10 through 16 have a different level of benefits. Those employed in grades 17 through 27 have a separate level of benefits as well. Blake enjoys the same level of benefits as the MTs and MMs, whose salary grades are within the same benefit level as his salary grade.

For several years, the College has a system of annual salary reviews. Near the end of each fiscal year, faculty, staff and administrators receive a detailed outline, setting forth the categories of increases that may be granted and the range of percentage increases within each category. There are general merit increases, additional merit increases, and one-time payments.

General merit increases are based on the supervisor's assessment of performance during the previous fiscal year. Effective with the fiscal year beginning June 1, 2004, employees were eligible to be awarded a full increase of 2.75 percent of base salary. Lesser increases, ranging between 1.25 percent and 2.25 percent could also be awarded, or an employee could receive no increase at all.

Additional merit increases may be awarded to employees for exceptional performance. To be eligible, the employee must have received the full merit increase, and be nominated by his or her supervisor for the additional merit increase. Amounts ranging from \$300 to \$1,800 could be added to base salary.

One-time increases are given in recognition of significant contributions in support of a project, or to recognize extraordinary efforts by the employee. One-time increases for the fiscal year ending May 31, 2004, ranged from \$250 to \$2,500.

Drake testified that he solicits recommendations for salary increases from each of the supervisors of mechanics, for the employees in their respective crafts. At the end of the last fiscal year, according to Drake, Blake recommended all five of the electricians for the full general merit increase and one for an additional merit increase. Drake testified without contradiction that he has followed all of Blake's recommendations each year that the salary reviews have been conducted. Blake, a witness for the Petitioner, generally denied that he has authority to reward employees.

Blake completes and signs performance evaluations for the electricians. The evaluation instruments, some of which are in evidence, objectively rate employees on such attributes as productivity, work habits and responsibility. They also contain narrative remarks by Blake. Although the salary reviews and performance evaluations are separate processes, it is clear that the supervisors' recommendations for pay increases are based on an assessment of an employee's performance.

ANALYSIS

Section 2(11) of the Act defines a "supervisor" as:

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

As the Board has noted in numerous cases, the statutory indicia outlined in Section 2(11) are listed in the disjunctive, and only one need exist to confer supervisory status on an individual.

See, e.g., Phelps Community Medical Center, 295 NLRB 486, 489 (1989); Ohio River Co., 303

NLRB 696, 713 (1991); Opelika Foundry, 281 NLRB 897, 899 (1986); Groves Truck & Trailer, 281 NLRB 1194, n. 1 (1986). However, mere possession of one of the statutory indicia is not sufficient to confer statutory status unless such power is exercised with independent judgment and not in a routine or clerical manner. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981).

Section 2(11) of the Act sets forth a three-part test for determining supervisory status. Employees are statutory supervisors if they hold the authority to engage in any 1 of the 12 listed supervisory functions; their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and their authority is exercised "in the interest of the employer." NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. See Kentucky River, supra, 121 S.Ct. at 1866, 167 LRRM at 2167-2168; Michigan Masonic Home, 332 NLRB 1409, 1409 (2000). Lack of evidence is construed against the party asserting supervisory status. See Michigan Masonic Home, supra, at 1409. "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, supra, at 490. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. See Sears, Roebuck & Co., 304 NLRB 193 (1991).

The Employer argues that Blake is a supervisor because he exercises independent judgment in making effective recommendations for pay increases, in effectively recommending candidates for hire, and in assigning and responsibly directing the work of the electricians. The Petitioner argues that Blake does not possess supervisory authority in any of these areas. There is no contention by any party that Blake has authority to transfer, suspend, lay off, recall, promote or discharge employees, to discipline them, or to adjust their grievances.

Effective recommendation of pay increases for employees.

Where the evidence demonstrates that an individual's recommendations regarding personnel actions, including wage increases, are routinely followed, the Board will find that individual to be a supervisor. Bayou Manor Health Center, 311 NLRB 955 (1993); Delta Carbonate, Inc., 307 NLRB 118, 120 (1992); The Atlanta Newspapers, 306 NLRB 751, 756 (1992). Here, the evidence supports the conclusion that Blake exercises independent judgment in deciding, within a defined range, the amounts of the wage increase he recommends for each employee. Blake also exercises independent judgment as to whether an employee is deserving of additional merit increases or one-time payments. Blake's recommendations have been effective in every case.

[8]

Blake's perfunctory testimony did not address the more specific testimony of Drake. Thus, Drake's testimony about the effectiveness of Blake's recommendations stands uncontradicted.

The cases cited in Petitioner's post-hearing brief are distinguishable from this one. The RN charge nurses in Coventry Health Center, 332 NLRB 52 (2000), were found non-supervisory because their limited participation in the evaluation process did not call for the exercise of independent judgment. In Green Acres Country Care Center, the employee who relied on clear management guidelines in sending another employee home, where the latter was suspected of drinking, exercised no genuine discretion. The record evidence did not establish that the evaluations performed by the alleged supervisor in Pillsbury Chemical Co., 317 NLRB 261 (1995), amounted to effective recommendations for promotions or wage increases. The diet clerk alleged to have been a supervisor in Medical Arts Hospital of Houston, 221 NLRB 1017 (1975), was consulted by the dietary supervisor in regard to evaluations and pay increases. But so were other employees who were not alleged as supervisors. While the leadman in Cast-A-Stone Products, 198 NLRB 484 (1972), recommended a wage increase for the other members of his

crew, he was also seeking the same increase for himself. Rather than exercising supervisory authority, the leadman exercised his right to engage in protected concerted activity. In Howard Johnson's, 174 NLRB 1217 (1969), the evidence showed that it was the plant manager who granted wage increases, and not the individual whose supervisory status was asserted. The evidence in Heckert Engineering, 117 NLRB 1395 (1957), did not establish that the alleged supervisor's recommendations were effective.

I find, on the basis of his authority to effectively recommend pay increases, that Blake is a supervisor within the meaning of Section 2(11) of the Act.

Effective recommendation of candidates for hire.

Drake's uncontradicted testimony establishes that there were two instances in which Blake made a recommendation to Drake, in regard to hiring, and in each case his recommendation was followed. Blake was called as a witness for the Petitioner, but he was not questioned about his role in the hiring of Passalugo and McFall. Blake denied, perfunctorily, that he had authority to hire. The record evidence does not support a finding that Blake has authority to hire. But the precise issue before me is whether Blake is a supervisor because he effectively recommends hiring. Queen Mary, 317 NLRB 1303, 1304 (1995). I find that he does.

Contrary to the Petitioner, Blake's role was something more than making suggestions about hiring. Cf. Kenosha News Publishing Corp., 264 NLRB 270, 271 (1982). ^[9] While Blake's recommendations were not the only ones made, and the process is a collaborative effort between the supervisors of mechanics and the Assistant Director of Facilities Maintenance, these facts do not preclude a finding of supervisory status. In Detroit College of Business, 296 NLRB 318 (1989), the Board found department coordinators to be supervisors where they and the associate dean jointly interviewed candidates, a "joint decision" was made and, although the

associate dean actually made the final decision, she followed the coordinators' recommendations in all but two instances. The evidence thus establishes that Blake is a supervisor, based on his ability to effectively recommend hiring.

Assignment and responsible direction of work.

In NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001), the Supreme Court held that the judgment used by registered nurses when directing less skilled employees to deliver services in accordance with employer-specified standards, cannot automatically be precluded from the definition of independent judgment simply because such judgment is "professional or technical." *Id.* at 713. The Supreme Court did not hold that every exercise of professional or technical judgment is necessarily an exercise of independent judgment. The Court recognized the Board's right to determine the degree of "independent judgment" necessary to meet the statutory threshold of supervisory status, and further noted that, where an individual assigns or directs work based on orders or regulations issued by the employer, the degree of judgment may be circumscribed to such an extent that it falls below the statutory threshold for a finding of supervisory status. *Id.* at 713 – 714.

In Arlington Masonry Supply, Inc., 339 NLRB 817, 817-818 (2003), the Board found that a maintenance supervisor was a supervisor within the meaning of Section 2(11) of the Act. The Board concluded that he exercised independent judgment to assign work based on his authority to prioritize work assignments, discretion to assign work to specific employees of his choosing and where the maintenance supervisor was identified as the only one making such assignments on a daily basis.

In the instant case, Blake relies primarily on an established "building" system to assign work to the electricians. The degree of independent judgment exercised by Blake is somewhat circumscribed by this procedure. Nevertheless, the discretion Blake exercises is significant, and

his assignment of the electricians' work is not merely routine or clerical in nature. Blake prioritizes work orders and reassigns electricians when the need arises.

Similarly, Blake exercises independent judgment in directing the work of the electricians. Drake does not involve himself in the day to day work of these employees. During the regular work week, or when on call, the electricians contact Blake if they have problems with, or questions about their work. While evaluating employees, in itself, does not make one a supervisor, Blake's evaluation of the electricians, in categories such as productivity, work habits and responsibility, as well as his narrative comments, clearly show that he is in charge of their work. Both Drake and Blake testified that Blake is responsible for seeing that the work is

[\[10\]](#)
performed correctly.

I find that the record supports the conclusion that Blake is a supervisor on the basis of his assignment of work to, and his direction of, other employees.

Secondary indicia of supervisory status.

Absent evidence that an individual possesses one or more of the primary indicia of supervisory status listed in Section 2(11), secondary indicia are insufficient by themselves to support a finding of supervisory status. Ken-Crest Services, 335 NLRB 777, 779 (2001). Since I have found that Blake is a supervisor, based on the statutory indicia described above, I have considered the evidence as to secondary indicia. Some of this evidence supports a finding of supervisory status.

[\[11\]](#)
The difference in pay scale between Blake and the other electricians is significant. In this regard, the record simply does not support Petitioner's assertion that the difference is merely the result of Blake's having received more merit increases.

Although Blake and the other supervisors of mechanics punch a time clock, this is by

choice and is a matter of convenience for them. MMs and MTs are required to punch the clock.

I also find significant Blake's authority to use a credit card to purchase up to \$15,000 per month in material and supplies for the Employer. Electrical Specialties, Inc., 323 NLRB 705, 707 (1997), cited by Petitioner on brief, is not to the contrary. In that case, the administrative law judge found no evidence that the two individuals in question satisfied any of the primary indicia. The decision only mentions that they ordered materials and signed purchase orders, but does not reveal the regularity with which they did so, or the amounts that they were authorized to spend.

If Blake was not found to be a supervisor, the direct supervisor of the MMs and the MTs would be Drake. As noted, Drake is not an electrician. Assuming for the sake of discussion that the other three supervisors of mechanics were found to be non-supervisory, the ratio of employees to supervisors in Facilities Maintenance would be approximately 46:1, which seems unreasonable, given the nature of the operation.

Finally, Blake attends regular meetings with Drake and the other supervisors of mechanics, and has attended a training regarding the supervisors' manual.

Accordingly, based on the above, I find that the Employer has met its burden of proving that the supervisor of mechanics-electrical is a supervisor within the meaning of Section 2(11) of the Act. Therefore, I shall exclude this position from the unit found appropriate herein..

The following employees 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 electricians, including master mechanics-electrical and master-technicians-electrical; excluding the supervisor of mechanics-electrical, all office clerical, managerial and professional employees, guards and supervisors as defined in the Act.

There are approximately 5 employees in the bargaining unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, 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 those 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 an 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 replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person 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 who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 241**.

LIST OF VOTERS

In order to insure 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 lists of voters and their addresses which 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); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list,

containing the full names and addresses of all eligible voters, shall be filed by Ithaca College with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before **March 21, 2005**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **March 28, 2005**.

DATED at Buffalo, New York this 14th day of March, 2005

RHONDA P. ALIOUAT, Acting Regional Director
National Labor Relations Board – Region Three
Thaddeus J. Dulski Federal Building
111 West Huron Street - Room 901
Buffalo, New York 14202

[1]

For ease of reference herein, MMs and MTs, respectively, and collectively, “electricians.”

[2]

The record reveals that there are currently 2 MTs, (Bill Steele and Dave Walters) and 3 MMs (Rod Martin, Marc Passalugo and Dave Walters).

[3]

There is no evidence in the record that the other three supervisors of mechanics are represented by any labor organization and the Petitioner does not seek to represent them herein.

[4]

Drake is not an electrician.

[5]

Regarding current procedure, Drake testified that he has the last word on hiring for Facilities Maintenance. Vanderburgh did not testify.

[6]

Though not in any detail; the names of those who participated in the interviews are simply reiterated, without any narrative.

[7]

The Employer does not contend that salary grade 12 necessarily indicates supervisory status.

[8]

On direct examination, Blake was asked whether he gives the same increase recommendation for all the men. The witness asked counsel whether he meant “the additional raise over what they normally get,” to which counsel replied affirmatively. It is not clear whether the witness was testifying about the general merit increase or the additional merit increase. Regardless, his answer (“No”) is consistent with the testimony of Drake and the documentary evidence, both of which show that in determining the amount of an increase within the three categories, Blake exercises independent judgment.

[9]

Also contrary to the Petitioner, there is no evidence that Drake undertook further, independent investigation of the candidates after conducting the interviews and receiving recommendations.

[10]

Consistent with this testimony, the job description for the supervisor of mechanics-electrical states that the supervisor is responsible for monitoring work performance for completeness and accuracy.

[11]

Blake is paid \$24.98 per hour. The electricians in Blake's department are paid \$16.59 to \$21.96 per hour.