

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATION BOARD
REGION 9

ACCURATE ELECTRIC CONSTRUCTION, INC. ^{1/}

Employer

and

Case 9-RC-17989

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 575

Petitioner

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

I. INTRODUCTION

The Employer is an electrical contractor on residential, commercial and public construction projects. At the time of the hearing, the Employer had about 60 active jobsites at various locations throughout the State of Ohio. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's electricians employed on its Portsmouth, Ohio City School Projects (Portsmouth Middle School/High School, Portsmouth Elementary School and East Elementary), including all helpers, apprentices, intermediate journeymen, and journeymen, excluding all other employees, and all guards, managers and supervisors as defined in the Act. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

At the time of the hearing, there were 35 employees in the proposed bargaining unit who were employed by the Employer at the three Portsmouth City School projects. There are also an undetermined number of employees who are in the unit and eligible to vote pursuant to the Board's *Daniel* formula. *Daniel Construction Company, Inc.*, 167 NLRB 1078 (1967); *Steiny and Company, Inc.*, 308 NLRB 1323 (1992). The parties agree that the *Daniel/Steiny* formula should be used to determine eligibility in any unit found appropriate.

The two issues in dispute are: (1) whether a unit of electrical employees limited to the Portsmouth City School projects is appropriate for purposes of collective bargaining; and

^{1/} The name of the Employer appears as amended at the hearing. The petition was also amended during the hearing to reflect that the Employer is the sole employer of the petitioned-for employees and to delete the putative joint representative status of Employee Management Services.

(2) whether the Employer's three foremen and one superintendent should be excluded from the unit as supervisors within the meaning of Section 2(11) of the Act. Contrary to the Petitioner, the Employer asserts that the only appropriate unit is one consisting of all of its employees who perform electrical work throughout the State of Ohio and in neighboring states.^{2/} Additionally, the Employer asserts that its job foremen and the superintendent over the Portsmouth City School projects must be included in any unit found appropriate while the Petitioner asserts that they are statutory supervisors and must be excluded from the unit. As more fully explained below, I find that the unit sought by the Petitioner limited to the Portsmouth City School projects is appropriate for purposes of collective bargaining. Additionally, I find that the evidence establishes that Superintendent Michael Boggs is a supervisor within the meaning of the Act and is appropriately excluded from the unit found appropriate. Finally, I find that the record evidence with regard to the supervisory status of Foremen Randy Schneider, Rob Burford, and Earl Newton is equivocal, thus I am unable with any degree of certainty to make a finding as to their unit placement. Accordingly, they will be permitted to cast their ballots, should they choose to vote, subject to challenge by my agent.

In reaching my determination on these issues, I have considered not only the arguments made by the parties at the hearing, but also those contained in their post-hearing briefs.^{3/} In explaining how I came to my determination on these issues, I will first describe the Employer's operations and then the dispositive facts governing the nature of the employment relationship. The facts will be followed by an analysis of the issues in relation to the applicable legal precedent.

II. OVERVIEW OF OPERATIONS

The Employer currently has about 60 job locations in the State of Ohio. The Employer apparently has projects in neighboring states, but the record does not set forth the locations of any such projects. However, the record does disclose that the nearest active job to the three Portsmouth projects is a Wal-Mart jobsite in Chillicothe, Ohio located about 50 miles from Portsmouth. Additionally, follow-up work is still being performed by the Employer on an elementary school job in Wellston, Ohio, which is also about 50 miles from Portsmouth. The next closest job is the Pickaway County Jail located about 85 to 90 miles from Portsmouth.

The Employer employs about 190 field electricians classified as helpers, apprentices, intermediate journeymen, and journeymen. Helpers and intermediate journeymen may have extensive field experience but lack the formalized training obtained by apprentices and journeymen. The record does not disclose the number of employees in the various classifications at the Portsmouth projects or on a statewide basis.

^{2/} During the hearing, the Employer initially declined to take a position as to what an appropriate unit would be. Only when pressed by the hearing officer, did the Employer assert that a statewide unit was appropriate.

^{3/} The Employer filed a Motion to Strike the "attachments and factual allegations" filed by the Petitioner on the basis that the attachments and certain factual allegations were not presented at the hearing in this matter and that reliance thereon would be improper. I agree. Accordingly, the Petitioner's attachments and purported factual information that was not presented at the hearing are hereby stricken. None of the stricken information has been considered or relied on in reaching my decision in this matter.

The Employer's corporate headquarters is located in Reynoldsburg, Ohio, a suburb of Columbus, Ohio, which houses the offices of the Employer's president and part-owner, Robert Beal; vice-president and part-owner Ralph Stout; Human Resources Manager and Safety Director, Kevin Ledy; eight project managers/estimators; Operations Manager Bill Hess; and, a warehouse manager. The eight project managers have responsibility over different departments or divisions. Project Managers Dwayne Bagent and Brian Balsimo are in charge of the residential department and Rick Gates is in charge of the service department. Project Managers Tony Evans, Dan Nussbaum, Tom Sherro, Pete Brockelsby, and Frank Hall share responsibilities over the Employer's public and commercial departments and may be assigned to projects in either department. Ultimately, the decision as to which project manager will be assigned to a particular project is made by Beal. The Employer concedes that the project managers are supervisors but would still include them in a statewide or wall-to-wall unit if such was found to be appropriate.

The Portsmouth projects are headed by Superintendent Mike Boggs, who has an office at a jobsite trailer at Portsmouth Middle/High School. However, Boggs travels to the other two Portsmouth sites from time-to-time. Each individual job has a foreman on site. The East Elementary jobsite is headed by Foreman Rob Burford. The Portsmouth Elementary School jobsite is headed by Foreman Randall Schneider, and the Portsmouth Middle/High School jobsite is headed by Foreman Earl Newton. Record testimony discloses that the Employer may also use other employees as foremen on these jobsites as the jobs progresses, but there is no specific timetable or plan to do so. The two elementary school jobsites and the middle school/high school project are under separate contracts with the City of Portsmouth. The electrical work, which is the Employer's component, is slated for completion at all three sites in June 2006.

At the time of the hearing, there were about 16 employees at the Portsmouth Middle/High school site, excluding Boggs and Newton. There were about 12 employees on the Portsmouth Elementary School site, and about 8 employees on the East Elementary jobsite, excluding the foremen and Dave Inscore, a fire alarm specialist, who works at all three jobsites, as needed.

III. EMPLOYMENT FACTS

The record discloses that in some instances the same employees work for the Employer at projects located at different geographic areas within Ohio and, in limited instances, neighboring states. Other employees work for the Employer only on projects in the vicinity of their homes and decline to work for the Employer on projects in other parts of the state. In some instances, the Employer recalls or rehires employees when new projects arise in the home locale of these employees. The fact that an employee may have previously declined to work for the Employer at a jobsite away from his or her home is not held against the employee by the Employer in determining whether a recall or rehire offer should be extended. In this regard, many of the employees working on the Portsmouth projects live in the Portsmouth vicinity and some of them have previously worked for the Employer. The record discloses, however, that employees hired by the Employer are advised that the job entails travel and that they must be willing to travel to various locations.

Some employees in the proposed unit who have worked or are working, for the Employer on one of the Portsmouth projects have worked at other locations and returned to Portsmouth when jobs there become available. However, approximately 24 of the 35 employees currently on the job are recent hires who apparently started for the Employer at one of the Portsmouth projects. Conversely, the record reflects that as of the time of the hearing 44 of the 61 employees who have worked at one time or another on one or more of the Portsmouth projects have also worked on other projects for the Employer in different parts of the state. The Employer attempts to accommodate employees' requests for transfers and, in many instances, these requests are made and granted to enable employees to work on projects closer to home.

Generally, the employees on the three Portsmouth projects have similar skills and abilities in comparison to the Employer's other field employees. The record reflects, however, that there are an unspecified number of employees with specialized skills. Thus, there are certain employees who are adept at installing sound systems and others who possess the skills and the requisite license to install fire alarm systems. On the Portsmouth projects these employees work between all three jobsites depending on when there is a need for their specialized skills.

All of the Employer's field employees, including foremen and superintendents, are hourly paid while the project managers/estimators are salaried employees. The Employer's field employees receive varying wages that are purportedly merit based and which are determined by corporate management. All field employees are eligible to receive the same benefits regardless of the project to which they are assigned. Labor relations is coordinated by the corporate office and all significant human resource issues, including discharges, layoffs, recall and reassignments, are handled by Human Resources Manager Ledy and the Employer's two owners.

The Employer's job foremen spend between 50 and 90 percent of their time performing hands on work. The remainder of their work time is spent making job assignments, ordering materials, completing time keeping records and daily job reports, and overseeing the work on the jobsite for which they are responsible. Although the testimony on this point is not clear, it appears that Superintendent Boggs performs hands on work for possibly 10 to 20 percent of his work day.

Job foremen have the authority to issue verbal and written warnings to employees. These warnings are sent to the Employer's corporate headquarters where they are "reviewed" by Human Resources Manager Ledy. On some occasions, the Employer's corporate officials may determine that additional action on a warning is required. Although specific examples are lacking ^{4/}, Owner Beal testified that the decision of whether to issue a verbal, written warning or to discipline at all is, in some instances, left to the discretion of the individual job foremen. ^{5/} Beal states he is uncertain as to whether the Employer has a progressive discipline policy, but Ledy confirmed the existence of such a policy. Foremen are authorized to send employees home from the jobsite if they determine that unspecified disciplinary issues warrant such action and

^{4/} I note that the job foremen did not testify at the hearing.

^{5/} Beal's testimony was couched in hypothetical terms and was not specific as to the specific foremen assigned to the Portsmouth sites.

there is generalized testimony that foremen are responsible for evaluating and assessing the work of the other electricians. The record does not disclose how often such evaluations are performed, whether foremen make written evaluations, or whether they recommend wage increases or promotions as part of the evaluation process.

Neither the foremen nor Boggs can hire or fire. Like the foremen, Boggs can issue written warnings. The foremen typically attend weekly job status meetings conducted with the job's construction manager and amongst other contractors on the project. Job foremen and Boggs determine on a daily basis whether work can proceed on a particular day or whether to shut the job down due to inclement weather. Boggs has the additional authority to approve change orders for the customer without the need to seek prior approval from Beal or other personnel in the corporate office. Job foremen have the authority to approve employees' vacation requests, but they have to ensure that the requesting employee is eligible to take vacation time.

On the Portsmouth jobs it appears that disciplinary action flows through Boggs in at least some instances. Ledy testified that he had not seen any disciplinary warnings issued by the Portsmouth foremen during his 7-month tenure as human resources manager, but Boggs issued a written warning to one employee, who was subsequently suspended and then discharged for absenteeism. On another occasion, Boggs issued a verbal warning to an employee for lack of production and has apparently issued other warnings during Ledy's tenure, but there are no specific details in the record concerning such discipline.

IV. THE LAW AND ITS APPLICATION

The first issue that must be resolved is whether a unit limited to the Employer's electricians employed on its Portsmouth School projects is an appropriate unit for purposes of collective bargaining. In determining whether a multi-site unit is appropriate, "the Board considers relevant the following criteria: bargaining history, functional integration of operations, the similarity of skills, duties, and working conditions of employees; central control of labor relations and supervision, and interchange and/or transfers of employees among construction sites." *Oklahoma Installation Company*, 305 NLRB 812 (1991), citing *Dezcon, Inc.*, 295 NLRB 109 (1989); *P.J. Dick Contracting*, 290 NLRB 150 (1988). The inquiry is not whether the proposed unit is the most appropriate or comprehensive unit, but simply whether it is an appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950).

Here, there is no bargaining history among the employees in the unit sought by the Petitioner. The Portsmouth projects are under the common supervision of Superintendent Boggs, who coordinates the work being performed on all three projects. The three job foremen report to Boggs who is responsible for addressing the needs of the customer and for overseeing certain personnel issues, including the issuance of verbal and written warnings to employees on the Portsmouth projects. Most personnel issues, however, are centrally controlled from the Employer's Reynoldsburg headquarters, including review of attendance records, disciplinary action and the setting of hourly wage rates for individual employees.

For the most part, employees on the three projects possess similar skills and perform similar duties under similar working conditions. Specialists in sound system and fire alarm installation work between and on all three projects. However, the number of specialists and degree of interchange between the three projects is unspecified on the record. The Portsmouth projects form a geographically distinct grouping as they are in relatively close proximity to each other in the Portsmouth metropolitan area while the closest project outside of Portsmouth is located about 50 miles away. The geographic clustering of the Portsmouth projects and their isolation in relation to other of the Employer's projects, while not dispositive, contributes to the substantial community of interest among the employees working on the Portsmouth projects and militates in favor of the appropriateness of the proposed unit. See, e.g., *Texas Instruments, Inc.*, 145 NLRB 274, 278 (1963).

Based on the common supervisory structure over the three projects, evidence of regular employee interchange between the projects, the coordination of work required to satisfy a common customer, the geographic proximity of the three projects in relation to each other, the fact that employees are hourly paid, their wages being based on merit, and have similar skills and abilities, and the lack of a bargaining history in a more comprehensive unit, I find that a unit of electricians employed by the Employer at the three School projects in Portsmouth, Ohio sought by the Petitioner constitutes an appropriate unit for the purposes of collective bargaining. Accordingly, I will direct an election in such unit.

In making my finding above, I find unpersuasive the Employer's argument in its brief that a unit limited to the Portsmouth projects is inappropriate because of the changing nature of its workforce. The concern raised by the Employer would appear to be resolved by the utilization of the *Daniel* eligibility formula that will serve to enfranchise those employees who have regularly worked on the Portsmouth projects. Thus, the Employer appears to argue that any election should include employees who have worked at the Portsmouth School projects or will work at those jobsites.

There remains for consideration the resolution of the putative supervisory status of Foremen Burford, Schneider, and Newton and of Superintendent Boggs. Section 2(11) of the Act defines the term supervisor as:

Any 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.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only 1 of the 12 specific indicia listed, or the authority to effectively recommend such action. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). Thus, the exercise of "supervisory

authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997); *Feralloy West Corp.*, 277 NLRB 1083, 1084 (1985).

Possession of authority consistent with any of the indicia set forth in Section 2(11) of the Act is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1999); *Fred Meyer Alaska*, 334 NLRB 646, 649 at fn. 8 (2001). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See, *Michigan Masonic Home*, 332 NLRB 1409, 1410 (2000); *Chevron U.S.A.*, 308 NLRB 59, 61 (1992).

In considering whether the foremen and superintendent here possess any of the supervisory authority set forth in Section 2(11) of the Act, I am mindful that in enacting this section of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Thus, the ability to give “some instructions or minor orders to other employees” does not confer supervisory status. *Id.* at 1689; *George C. Foss Co.*, 270 NLRB 232, 234 (1984). Such “minor supervisory duties” are not to deprive such individuals of the benefits of the Act. *NLRB v. Bell Aerospace Co.*, 416 NLRB 267, 280-281 (1974), quoting Sen. Rep. No. 105, 80th Cong. 1st Sess., at 4. In this regard, the Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

The burden of proving supervisory status lies with the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Arlington Masonry Supply*, 339 NLRB No. 99, slip op. at 2 (2003); *Michigan Masonic Home*, 332 NLRB at 1409. As a general matter, I observe that for a party to satisfy the burden of proving supervisory status, it must do so by “a preponderance of the credible evidence.” *Star Trek: The Experience*, 334 NLRB 246, 251 (2001). The preponderance of the evidence standard requires the trier of fact “to believe that the existence of a fact is more probable than its non-existence before [he] may find in the favor of the party who has the burden to persuade the [trier] of the fact’s existence.” *In re Winship*, 397 U.S. 358, 371-372 (1970). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. See, *Williamette Industries, Inc.*, 336 NLRB 743 (2001); *Michigan Masonic Home*, 332 NLRB at 1409. Moreover, “[w]henver the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that the supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Consequently, mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Clearly, neither Boggs nor the job foremen have the authority to hire, fire, lay off or recall employees. Moreover, there is no evidence that they effectively recommend such action. Additionally, there is no evidence that the job foremen on the Portsmouth projects have the

authority to suspend, promote, and reward employees or to adjust their grievances. However, they may send employees home from the jobsite for unspecified disciplinary infractions. The record does not reflect whether this has ever occurred or to what extent independent judgment, in a statutory sense, is utilized. The record discloses that job foremen make daily job assignments on the jobs that they oversee and are responsible for ensuring that the work is performed on the job. However, the record fails to disclose the nature of these assignments or the type of directions that the job foremen might give to employees. Thus, the record evidence is not sufficient to enable me to determine whether job foremen use independent judgment in assigning and directing the work of unit employees on their respective jobsites. Although job foremen may issue “verbal” or written warnings to employees, the record discloses that all discipline issued by the foremen is reviewed by the Employer’s human resources manager. The record does not disclose definitively whether such discipline issued by foremen always, sometimes, or never leads to further disciplinary action. Accordingly, it is not clear whether job foremen make even effective recommendations in this area. Although the record reflects that job foremen on the Portsmouth projects possess the authority to issue verbal and written warnings to employees, they have not done so within the 7-month period preceding the hearing and there is no evidence that they had issued such warnings prior to that time.

With regard to Superintendent Boggs, the record discloses that he is responsible for coordinating the work on all three jobsites. In this regard sound system specialists and fire alarm specialists move between the three jobsites as needed, but Boggs’ role in effectuating these transfers between the Portsmouth projects is not described in the record. Boggs specifically assigns and directs work on the middle/high school project that he works from.

Unlike the foremen, Boggs has clearly exercised disciplinary authority by issuing written warnings to employees for issues such as attendance and a purported lack of production. Human Resource Manager Ledy indicated that Boggs’ disciplinary actions have been adopted by the Employer and that employees have received more severe discipline, including discharge, as a result of a progression based on discipline initially issued by Boggs. Moreover, I note that if neither Boggs nor the Portsmouth projects foremen are statutory supervisors, the Employer is left without a statutory supervisor on a daily basis for approximately 35 employees. Indeed, the nearest supervisor would be at the Employer’s corporate headquarters in Reynoldsburg.

Based on the above and the record as a whole I conclude that Superintendent Mike Boggs is a supervisor within the meaning of Section 2(11) of the Act. In reaching this conclusion I rely particularly on his authority to discipline employees with the use of independent judgment. I further note that he clearly has more authority than the job foremen on the Portsmouth projects and if he were found not to be a statutory supervisor the Employer would be left without any daily supervision over the three Portsmouth projects. Accordingly, I will exclude him from the unit found appropriate. I find, however, that I am unable to reach a conclusion based on the record evidence with regard to the supervisory status of Foremen Randy Schneider, Rob Burford, and Earl Newton. Accordingly, I shall permit the job foremen on the Portsmouth projects to cast their ballots subject to the challenge of an agent should they chose to vote. ^{6/}

^{6/} In view of my determination to allow the foremen to vote under challenge, I found it unnecessary to discuss the Employer’s case authority cited in its brief.

V. SUPERVISORY EXCLUSIONS FROM THE UNIT

The record shows, and I find that the following persons are supervisors within the meaning of Section 2(11) of the Act and will exclude them from the unit: President and Part-Owner, Robert Beal; Vice-President and Part-Owner Ralph Stout; Human Resources Manager and Safety Director, Kevin Ledy; and Superintendent Mike Boggs. In apparent agreement with the parties, I also find that the project managers are statutory supervisors and contrary to the Employer's position, I will based on their supervisory status, exclude them from the unit.

VI. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. 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.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All electrical employees employed by the Employer on its Portsmouth, Ohio City School Projects (Portsmouth Middle School/High School, Portsmouth Elementary School and East Elementary), including all helpers, apprentices, intermediate journeymen, and journeymen, but excluding all other employees, and all guards, the project managers; job superintendent and all other supervisors as defined in the Act.

VII. 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 International Brotherhood of Electrical Workers, Local 575. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Also eligible to vote are all employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months preceding the eligibility date for the election or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

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.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

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

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **May 26, 2005**. 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 by facsimile transmission at (513) 684-3946. Since the list will be made available to all parties to

the election, please furnish **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date 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.

VIII. 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., EDST on **June 2, 2005**. The request may **not** be filed by facsimile.

Dated at Cincinnati, Ohio this 19th day of May 2005.

/s/ Gary W. Muffley

Gary W. Muffley, Regional Director
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