

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 20**

WOODLAND SKILLED NURSING FACILITY INC.,  
d/b/a WOODLAND SKILLED NURSING FACILITY,<sup>1</sup>

Employer

and

Case: 20-RC-18211

NATIONAL UNION OF HEALTHCARE WORKERS,

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION,  
UNITED HEALTHCARE WORKERS-WEST,

Intervenor/Incumbent

**DECISION AND DIRECTION OF ELECTION**

Woodland Skilled Nursing Facility Inc. d/b/a Woodland Skilled Nursing Facility, (Employer), operates a skilled nursing facility in Woodland, California. By the instant petition, National Union of Healthcare Workers (Petitioner) seeks to represent the Employer's employees in the following unit:

All housekeeping, maintenance, laundry, licensed vocational nurses (LVN), psychiatric technicians, therapy aides, certified nurses aides, nursing aides, aides, orderlies, rehabilitation aides/orderlies; excluding: physicians, registered physical therapists, registered nurses, dietary service supervisors, activity director, consultants, office clerical employees, watchmen, guards and supervisors, as defined in the National Labor Relations Act.

The instant petition was consolidated for hearing with petitions filed by the Petitioner in the following cases: *Cottonwood HC, Inc. d/b/a Cottonwood Healthcare Center (Cottonwood)*,

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<sup>1</sup> The Employer's name appears as corrected at the hearing.

Case 20-RC-18208, and *Pacifica Linda Mar, Inc. d/b/a Linda Mar Care Center (Linda Mar)*, Case 20-RC-18223. Service Employees International Union, United Healthcare Workers-West (Intervenor) is the incumbent union and has intervened in each of these cases. The petitioned-for unit in the instant proceeding is identical to that represented by the Intervenor in the most recent collective-bargaining agreement between the Intervenor and Employer, effective May 1, 2007 through June 15, 2008 (Agreement). There are about 74 employees in the petitioned-for unit. The record reflects that the Intervenor has represented the employees of the Employer for several years.<sup>2</sup>

The Intervenor contends that the Board lacks jurisdiction in the instant proceeding because the Employer is not “in commerce,” and that the petitioned-for unit is inappropriate. The Intervenor asserts that the only appropriate unit is a single unit that includes employees of the Employer, Cottonwood, Linda Mar as well as Valley Skilled Nursing Facility (Valley).<sup>3</sup> In the alternative, the Intervenor asserts that the only appropriate unit consists of the employees of the Employer, Cottonwood and Linda Mar. The Intervenor also contends that the LVNs and psychiatric technicians in the petitioned-for unit are professional employees who must be accorded a *Sonotone*<sup>4</sup> election. In the alternative, the Intervenor asserts that if the LVNs and psychiatric technicians are not found to be professional employees, they must be placed in a separate unit because they possess a community of interest distinct from the other petitioned-for employees. The Employer and Petitioner take a contrary position to that of the Intervenor on these issues.

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<sup>2</sup> I take administrative notice that on April 20, 2001, in *Woodland Healthcare*, Case 20-RD-2307 and 20-RM-2835, the Board certified the Intervenor’s predecessor, Healthcare Workers Union, Local 250 (Local 250), as the exclusive collective-bargaining representative of employees in the following unit:

All registered nurses, medical assistants, receptionists, licensed vocational nurses, librarians and clerical employees employed by the Employer at its clinics in Woodland and Davis, California; excluding diagnostic imaging department and laboratory department employees, optometrists, audiologists, physicians, all other employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

<sup>3</sup> I take administrative notice that there is no petition pending for Valley.

<sup>4</sup> 90 NLRB 1236 (1950).

For the reasons set forth below, I find the Intervenor's contentions are without merit: the petitioned-for unit is an appropriate unit for collective-bargaining purposes, and the Board may properly assert jurisdiction over the Employer.

### **FACTS**

The Employer operates a skilled nursing facility in Woodland, California. It contracts with North American Healthcare, Inc. (North American), a separate corporation from the Employer, to provide various support services, including payroll, banking, finance, accounts payable/receivable, legal, labor representation, insurance acquisition, regulatory compliance, IT and maintenance. North American's Senior Vice President of Operations, Stephen Shipley, oversees North American's service contracts in Northern California, which also include service contracts with Cottonwood, Linda Mar and Valley.<sup>5</sup> Pursuant to these service contracts, Shipley served as a spokesperson for the Employer, Cottonwood, Linda Mar and Valley, in bargaining each employer's most recent collective-bargaining agreements with the Intervenor, and signed a collective-bargaining agreement on behalf of each employer. According to Shipley, the collective-bargaining agreements for the Employer, Cottonwood and Linda Mar were bargained separately with the Intervenor. Shipley was the only witness to testify at the hearing and he testified on behalf of the Employer, Cottonwood and Linda Mar.<sup>6</sup>

Shipley testified that that the Employer, North American, Cottonwood, and Linda Mar are each a separate corporation with separate stockholders, corporate officers, governing bodies, bank accounts and separate bookkeeping.<sup>7</sup> Payroll is handled separately for each corporation. Each corporation handles its own workers' compensation and unemployment compensation without any involvement by North American. According to Shipley, none of the corporations owns any property in common with the others, and there is no evidence that they share

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<sup>5</sup> North American has service contracts with approximately 35 health care providers in California, Utah, Arizona and Washington; in Northern California, it has 12 such contracts, including those with the Employer, Cottonwood, Linda Mar and Valley.

<sup>6</sup> Shipley generally declined to testify about Valley because there was no petition pending for Valley in this case; however, his testimony does include some evidence regarding Valley.

<sup>7</sup> Shipley testified that North American issues checks on accounts payable from the separate bank account of the Employer after the approval of such expenditures by the Employer's administrator. A similar process is used with regard to Cottonwood and Linda Mar.

equipment or personnel. There are no transfer rights for employees among the Employer, Cottonwood, Linda Mar or Valley.

The record reflects that the Employer has its own administrator, who is employed by the Employer, and not by North American, Cottonwood, Linda Mar or Valley. The Employer's administrator directs and controls the Employer's day-to-day operations and employees. The administrator makes hiring and firing decisions and approves purchasing decisions on behalf of the Employer. According to Shipley, Cottonwood and Linda Mar also employ their own separate administrators who are not employed by North American and have similar authority over their day-to-day operations. The administrator of each corporation participated in bargaining its respective collective-bargaining agreement with the Intervenor.<sup>8</sup> Shipley testified that the Employer has its own separate employee handbook, as do North American, Cottonwood and Linda Mar.

I take administrative notice that the bargaining unit certified by the Board at the Employer's facility is separate from and not identical to the bargaining units certified by the Board at Linda Mar and Valley.<sup>9</sup> Likewise, the bargaining unit set forth in the most recent Agreement between the Intervenor and the Employer is separate from and not identical to the

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<sup>8</sup> Shipley testified that the administrator of each facility generally reports directly to a North American regional administrator. According to Shipley, both the facility administrator and regional administrator participated with him in bargaining the collective-bargaining agreements for the Employer, Cottonwood and Valley. However, only the facility administrator participated with him in bargaining the Linda Mar agreement because North American does not have a regional administrator for Linda Mar.

<sup>9</sup> I take administrative notice that in Case 20-RC-17221, *Regency Health Services d/b/a Linda Mar Health Care and Rehabilitation Center*, the Board certified Local 250 on July 17, 1997, in the following unit:

All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), dietary employees, laundry employees, and housekeeping employees; excluding all other employees, managerial employees, professional employees, and contract employees, guards and supervisors as defined in the Act.

I take administrative notice that in Case 20-RD-2308, *VSNF, Inc. d/b/a Valley Skilled Nursing Facility*, the Board certified Local 250 on May 8, 2001, in the following unit:

All full time and regular part time housekeeping and maintenance employees, laundry, dietary and nursing department employees, including certified nursing aides, registered nursing assistants, nurses aides, aides, orderlies, and rehabilitation aides/orderlies employed by the Employer at its Sacramento, California location; excluding all other employees, guards and supervisors as defined in the Act.

bargaining units set forth in the most recent collective-bargaining agreements between the Intervenor and Cottonwood, Linda Mar and Valley.<sup>10</sup> The Cottonwood, Linda Mar and Valley facilities are all geographically separate from the Employer's facility and from each other. I take administrative notice of the mileage among these facilities. The Cottonwood facility is located about a mile from the Employer; the Valley facility is located about 23 miles from the Employer; the Linda Mar facility is located about 100 miles from the Employer; and North American is headquartered at Del Mar, California, which is located about 500 miles from the Employer. Shipley works in a satellite office of North American, located in Santa Rosa, California, about 87 miles from the Employer.

LVNs and Psychiatric Technicians. Shipley testified that all LVNs are required to be 17 years of age; have a high school degree; train to become an LVN; take examinations; be certified by the State of California; and fulfill continuing education requirements. According to Shipley, the duties of the LVNs at the Employer's facility differ from those at other facilities as a result of the different nature of care provided at each facility, for example, post-acute rehabilitation or convalescent care.

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<sup>10</sup> The record contains a collective-bargaining agreement effective May 1, 2007 to June 15, 2008, between the Intervenor and Cottonwood covering the following unit:

All housekeeping, maintenance, laundry, dietary, janitor, nursing assistant, certified nurses assistant, restorative aide, cook, relief/Prep cook, and licensed vocational nurse.

The record contains a collective-bargaining agreement, effective May 1, 2007 to June 15, 2008, between the Intervenor and Linda Mar covering the following unit:

All full-time and regular part-time, casual and temporary service employees, as defined by the decisions of the NLRB, including non-certified nursing assistants, certified nursing assistants, cooks, dietary aides, restorative aides, physical therapy aides, housekeeping, laundry and janitorial employees employed by the Employer at its facility located at 751 San Pedro Road, Pacifica, California; excluding department heads and supervisors, as defined by the Act.

Lastly, the record includes a collective-bargaining agreement between the Intervenor and Valley, effective May 1, 2007 through June 15, 2008, covering the following unit:

All housekeeping, maintenance, laundry, dietary and nursing department employees, including: certified nursing aides, registered nursing assistants, nurses aides, aides, orderlies, rehabilitation aides/orderlies, and excluding physicians, registered physical therapists, registered nurses, dietary service supervisor, activity director, consultants, office clerical employees, watchmen, guards and supervisors as defined in the NLRA, as amended.

Shiple testified that the Employer does not employ any psychiatric technicians and has not done so since he became involved with the Employer. He testified that psychiatric technicians would also be required to have State certifications. The record contains no other specific evidence regarding LVNs or psychiatric technicians employed by the Employer, Cottonwood, Linda Mar or Valley. The record reflects that CNAs, who are included in the unit, are also required to obtain State certifications.

### **ANALYSIS**

A. Single Employer: The Intervenor contends that the employees of the Employer, Cottonwood, Linda Mar and Valley must all be included in the same unit because they are all a single employer controlled by North American. The Employer and Petitioner take a contrary view.

The Board determines single employer status by considering the following factors: (1) common ownership; (2) common management; (3) centralized control of labor relations; and (4) interrelation of operations. See *Mercy General Health Partners Amicare Homecare*, 331 NLRB 783, 784, 784-785 (2000) The fundamental inquiry is whether there exists overall control of critical matters at the policy level. *Proctor Express Inc of New Jersey*, 322 NLRB 281, 289-290 (1996); *Pathology Institute, Inc.*, 320 NLRB 1050, 1063 (1996) enf'd 116 F3d 482 (9<sup>th</sup> Cir 1997). The party asserting the existence of a single employer relationship has the burden of proof on this issue. *Dow Chemical Co.*, 326 NLRB 288, fn 4 (1998).

In the instant case, the Intervenor has not established that the Employer, Cottonwood, Linda Mar and Valley are a single employer based on common control over their operations by North American. The record does not establish that any of the facilities at issue are owned by North American or that North American controls their day-to-day operations or exerts overall control over labor or other policy matters for these corporations. The record shows that each of these corporations is a separate and distinct entity with separate officers and governing bodies and separate day-to-day administration over labor matters, including hiring and firing. While the record reveals that North American provides support services, including labor representation, for the Employer, as well as for Cottonwood, Linda Mar and Valley, it does not establish that North American controls or exercises decision-making authority over labor relations and other policy

matters for any of these corporations. The Intervenor carries the burden of establishing the existence of a single employer relationship among these corporations, and it has failed to do so.

Accordingly, I do not find that the Employer, Cottonwood, Linda Mar and Valley are a single employer, or that the Employer, Cottonwood and Linda Mar are a single employer. In any event, even if two or more of these entities were found to be a single employer, the question of whether they constitute a single unit must be separately addressed. South Prairie Construction v. Operating Engineers, 425US 800(1976).

B. The Unit. It is longstanding Board policy that a unit need only be an appropriate unit for collective-bargaining. There is no requirement that a unit be the *most* appropriate unit. Overnite Transportation, 322 NLRB 723 (1996) citing Black & Decker Mfg., 147 NLRB 825, 828 (1964). When an issue of the appropriateness of unit is raised, the Board begins with the petitioned-for unit and considers alternate proposals for units only if the petitioned-for unit is deemed inappropriate for collective-bargaining purposes. Overnite Transportation, *supra*, citing P.J. Dick Contracting, 280 NLRB 150, 151 (1988). The Board generally applies a “community of interest” analysis to determine whether employees in a petitioned-for unit constitute an appropriate unit. Such an analysis includes reviewing such factors as the skills and functions of employees, supervision, employee interchange, working conditions and bargaining history to determine the appropriateness of a petitioned-for unit. Overnite Transportation, *supra* at 724; Canal Carting, 339 NLRB 969 (2003). It is well-settled that the existence of bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging such a unit bears the burden to show that such a unit is no longer appropriate. See Ready Mix, Inc. 340 NLRB 946 (2003); Canal Carting at 970. Lastly, it is well established that a single-facility unit in the health care industry is presumptively appropriate and that a party opposing a single facility unit carries a heavy burden to overcome this presumption. Catholic Healthcare West, 344 NLRB 790 (2005); Manor Healthcare Corp., 285 NLRB 224 (1987).

In the instant case, the Petitioner seeks to represent employees in a historical unit of employees at the Employer’s single facility. The Intervenor represented employees in this petitioned-for unit under a collective-bargaining agreement (Agreement) with the Employer as recently as 2008. North American was involved in the bargaining of that Agreement and the Intervenor has not produced any evidence to undermine the appropriateness of the unit under that

Agreement, which is the same as the unit petitioned-for herein.<sup>11</sup> The employee classifications in the petitioned-for unit are the same as those covered under the Agreement and they work under the Administrator of the Employer's facility. The Employer's facility is separated geographically from each of the other facilities that the Intervenor argues must be included in the unit. There is no evidence that any of the facilities at issue share personnel or equipment.

In sum, setting aside the issues raised with regard to the LVNs and psychiatric technicians, which are addressed below, the Intervenor has not met its burden of showing that the petitioned-for unit is not an appropriate unit for collective-bargaining purposes.

C. LVNs and Psychiatric Technicians. The Intervenor contends that the LVNs and psychiatric technicians at issue are professional employees who must be given a Sonotone election. In the alternative, the Intervenor argues that they must be represented in a unit separate and apart unit from that of other petitioned-for employees. Petitioner and the Employer take an opposite view.

Section 2(12) of the Act defines a professional employee in terms of job content and responsibilities that the individual performs, rather than the individual's academic or technical training, job title or compensation.<sup>12</sup> See *Virtua Health, Inc.*, 344 NLRB 604, 609 (2005);

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<sup>11</sup> The Intervenor sought to elicit evidence at the hearing regarding the collective-bargaining history post-dating 2008, involving the Employer, Cottonwood, Linda Mar and Valley, which was the subject of unfair labor practice charges filed by the Intervenor against the Employer, Cottonwood, Linda Mar, Valley and Petitioner, alleging violations of the Act by an alleged agreement by each employer to recognize Petitioner as the exclusive collective-bargaining representative of their respective employees. I take administrative notice that the unfair labor practice charges filed against the Employer and Petitioner (20-CA-34373 & 20-CB-13284), Cottonwood and Petitioner (20-CA-34371 & 20-CB-13281), and Linda Mar and Petitioner (20-CA-34372 & 20-CB-13282) were resolved by individual informal settlements and these cases were closed on January 25, 2011. I also take administrative notice that the unfair labor practice charges filed against Valley and Petitioner (20-CA-34370 & 20-CB-13283) were dismissed by the Region on November 16, 2010. At the hearing in the instant case, the Intervenor asserted that evidence about the bargaining that took place between Petitioner and these employers alleged to be unlawful in the foregoing unfair labor practice cases is relevant to the issue of the scope of the unit herein. The hearing officer refused to permit evidence about the alleged unfair labor practices to be introduced in the record in this proceeding and I affirm her ruling.

<sup>12</sup> Section 2(12) of the Act defines a professional employee as meaning:

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of

*Aeronca, Inc.*, 221 NLRB 326 (1975); *Loral Corp.*, 200 NLRB 1019 (1972); *Chesapeake Telephone Co.*, 192 NLRB 483 (1971); *Westinghouse Electric Corp.*, 163 NLRB 723, 726 (1967). All circumstances relevant to the inquiry must be examined. See *Express News Corp.*, 223 NLRB 627 (1976).

The only evidence presented by the Intervenor to support the status of the LVNs and psychiatric technicians as professional employees is the testimony of the Employer's representative about certification requirements for such classifications and that the duties of the LVNs may vary depending on the type of facility at which they work. The existence of State certification requirements is not sufficient to establish that the employees in these classifications are professional employees and the Intervenor produced no other evidence to support a finding of their professional status. In this regard, I note that the Board has consistently held that LVNs and psychiatric technicians are technical employees. See *Virtua Health, Inc., supra*, 344 NLRB at 610; *Park Manor Care Center, Inc.*, 305 NLRB 872, 876 n. 22 (1991) (and cases cited therein). The Intervenor has produced no evidence to support a different conclusion. Therefore, I find that the LVNs and psychiatric technicians are not professional employees within the meaning of Section 2(12) of the Act and need not be accorded a *Sonotone* election.

The record contains no evidence to support separating the LVNs and psychiatric technicians from the other employees in the petitioned-for unit, which has historically included them. In this regard, the Intervenor produced no evidence to show that these employees lack a community of interest with other unit employees. Accordingly, I decline to place the LVNs and psychiatric technicians into a separate unit and I find that they are properly included in the petitioned-for unit.<sup>13</sup>

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higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (b) any employee, who has completed the courses of specialized instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

<sup>13</sup> Although Shipley testified that he was not aware of there being any psychiatric technicians employed by the Employer, I decline to omit this classification from the petitioned-for historical contractual unit.

For all the forgoing reasons and based on the record as a whole, I find that the petitioned-for unit is an appropriate unit for collective-bargaining purposes.

### **CONCLUSIONS AND FINDINGS**

Based upon the record, I conclude and find as follows:

1) The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.<sup>14</sup>

2) I find that the Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction in this case. In this regard, the record reflects that North American provides services for the Employer, which include the processing of accounts receivable and payable, and that the Employer earned in excess of \$250,000 gross revenue during the calendar year ending December 31, 2010, based on the Employer's reimbursement from Medicare and Medi-Cal for its services to patients. The record further reflects that the Employer purchased between \$10,000 and 20,000 per month in supplies used at its facility, including medical supplies, mattresses, over-bed tables, night stands, etc, from a variety of different vendors, including Medline, Twinmed, Joerns and Hill-Rom. At least \$5,000 of such supplies originated from points outside the State of California for the calendar year ending December 31, 2010. Based on such evidence, I reject the Intervenor's arguments that the record is insufficient to establish the Board's jurisdiction over the Employer. See *East Oakland Community Health Alliance, Inc.*, 218 NLRB 1270, 1271 (1975).<sup>15</sup>

3) The Petitioner is a labor organization within the meaning of the Act.

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<sup>14</sup> As noted above, the Intervenor contends that the hearing officer erred by sustaining the Petitioner's objection to the Intervenor's attempt to elicit testimony about negotiations between Petitioner and the Employer, Cottonwood, Linda Mar and Valley, which were the subject of unfair labor practice charges filed by the Intervenor. As noted above, I agree with the hearing officer's ruling in this regard and do not find that her ruling constituted error, prejudicial or otherwise.

<sup>15</sup> With respect to jurisdiction, the Intervenor argues only that the Employer is not "in commerce." However, there can be little doubt that the Employer is "in commerce" within the meaning of the Act. *NLRB v. Reliance Fuel Oil Corp.* 371 US 224, 226 (1963) ("[i]n passing the National Labor Relations Act, Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause.").

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

5) The following employees of the Employer constitute an appropriate unit for the purposes of collective-bargaining within the meaning of the Act:

All full-time and regular part-time housekeeping, maintenance, laundry, licensed vocational nurses (LVN), psychiatric technicians, therapy aides, certified nurses aides, nursing aides, aides, orderlies, rehabilitation aides/orderlies; excluding: physicians, registered physical therapists, registered nurses, dietary service supervisors, activity director, consultants, office clerical employees, watchmen, guards and supervisors, as defined in the National Labor Relations Act .

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by National Union of Healthcare Workers or by Service Employees International Union, United Healthcare Workers-West, or by no union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, eligible to vote are those employees who worked a minimum of fifteen (15) days during either of the quarters immediately preceding the date of this Decision. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

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

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **March 4, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>16</sup> by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

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<sup>16</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.

Because the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by electronic filing, facsimile or e-mail, 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 at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **March 11, 2011**. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>17</sup> but may not be filed by facsimile.

DATED AT San Francisco, California, this 25<sup>th</sup> day of February 2011.

*/s/ J Frankl*

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Joseph F. Frankl, Regional Director  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, California 94103-1735

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<sup>17</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select *File Case Documents*, enter the NLRB Case Number, and follow the detailed instructions.