

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**SYSCO SOUTH FLORIDA, INC.**

**Employer**

**and**

**Case 12-RC-205024**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION NO. 769**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

Petitioner seeks to represent a unit of all warehouse employees including checkers, forklift operators (let down), loaders, receivers, selectors, slot coordinators, short chasers and short runners, but excluding all other employees including drivers, mechanics, clerical, inventory control, supervisors and guards as defined in the Act. The Employer raises two issues concerning the sought after unit. First, it contends that the slotting coordinator classification sought by Petitioner should be excluded from the unit because it is a confidential employee position. As discussed below, based on the record and relevant Board law, I find that the slotting coordinator is not a confidential employee.

Second, the Employer contends that, in addition to the employees sought by the Petitioner, the unit should also include the following classifications: outbound warehouse clerk, yard spotter, returns putaway, cycle counter, driver check-in, QA inspector, safety coordinator, will call associate, maintenance coordinator, and material handling technician. <sup>1/</sup> At the hearing, the Union agreed that the outbound warehouse clerk, yard spotter, and returns putaway classifications should be included in the petitioned-for unit. Consequently, the only classifications over which a dispute still remains are the following: cycle counter, driver check-in, QA inspector, safety coordinator, will call associate, maintenance coordinator, and material handling technician classifications. <sup>2/</sup> As discussed below, I find that the dispute regarding

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<sup>1/</sup> In its Statement of Position, the Employer also initially asserted that the maintenance utility worker technician and sanitation technician classifications should be included in the unit. Petitioner took the position that those classifications should not be included. At the hearing, the Employer agreed with the Petitioner that those classifications should not be included in any unit found appropriate by the Regional Director.

<sup>2/</sup> Regarding the will call associate classification, the Union agreed at the hearing that it should be included in any unit found appropriate by the Regional Director. However, the Employer took the position that the will call associate position should only be included in the unit if the other inventory control classifications are also included.

these classifications need not be resolved before the election is conducted because the resolution of these issues would not significantly change the size or character of the unit.

## **II. CONCLUSIONS AND FINDINGS**

### **A. The slotting coordinator is not a confidential employee.**

#### **1. Facts.**

William Vasquez works for the Employer as the slotting coordinator. He reports directly to the Director of Warehouse. The Director of Warehouse is responsible for overseeing the inbound and outbound side of the shipping and receiving departments, which includes managing the receivers, putaway forklift operators, letdown forklift operators, loaders, and selectors, all undisputedly included in the petitioned-for unit. The Director of Warehouse reports to Eric Clinton Smullen, the Employer's Director of Operations.

The slotting coordinator's main responsibilities include "slotting" inbound products that do not already have a set location in the building prior to being received and ensuring that the "pick path," the order in which the products are stored in the warehouse, is arranged in the most efficient manner possible with the high volume products being slotted towards the front of the pick path. He, thus, is required to regularly determine if any products need to be relocated in the building in order to maximize the efficiency of the pick path. This includes relocating like products away from each other, and deciding whether products currently slotted on the second-level are too heavy and need to be relocated to a lower space. The slotting coordinator is also involved in the receiving process. When a new item is brought into the warehouse, he inputs into the system whether the product is date tracked. He also is supposed to make changes to products that need to be date tracked.

In performing his daily functions, the slotting coordinator has access to the Employer's Sysco Warehouse Management System (WMS) that, among other things, dictates how orders are batched or built onto pallets (by the selectors), how the select method, i.e. order in which items are picked, is put together and what areas are pulled together. Very few employees have access to this system and no other employee classification discussed herein has access to this system. As a result of the role he plays in setting the select method and the pick path using the WMS, the slotting coordinator's work has a tangential effect on the pay of the other employee classifications included herein. In this regard, the select method and the corresponding build batches impact how much time it will take for an employee to perform the given tasks. Certain classifications, including receivers, forklift operators, selectors, and loaders, are enrolled in the Warehouse Incentive Pay wherein they receive higher wages if they perform their work faster than the allotted time for each task.<sup>3/</sup> Thus, their incentive pay may rise or fall based on the build batches and select methods.

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Given that this Decision and Direction of Election, as explained in detail below, is not resolving the inclusion of the classifications sought by the Employer, I will treat the will call associate classification as being in dispute  
<sup>3/</sup> The Employer has commissioned time studies to determine the appropriate length of time it should take employees to complete various tasks

Based on his access to the Employer's WMS, the slotting coordinator has access to employee transaction screens which lay out everything an employee has done for the day; including how long it took them to complete assigned tasks. Each assignment is a transaction, and the slotting coordinator has access to every employee's transactions throughout the day. He has the ability to edit an employee's transaction time by accessing the system, which could be a benefit (or detriment) to the employee given that the length of time that it takes to complete a transaction governs the pay for the employee.

The Director of the Warehouse, to whom the slotting coordinator reports, is generally involved in employee discipline and any process changes. The slotting coordinator does not handle, nor is he present for, meetings to discuss employee grievances or discipline.

## 2. Board law.

As a matter of policy, the Board excludes from bargaining units as confidential "those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *B. F. Goodrich Co*, 115 NLRB 722, 724 (1956) (emphasis in original). This is commonly referred to as the "labor nexus" test, and was endorsed by the United States Supreme Court in *NLRB v Hendricks County Rural Electric Membership Corp*, 454 U.S. 170 (1981). As the Board has elaborated:

Under this definition it is insufficient that an employee may on occasion have access to certain labor related or personnel type information. What is contemplated instead is that a confidential employee is involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it. *Intermountain Electric Association*, 277 NLRB 1, 4 (1985).

The burden of proof is on the party asserting that an employee is to be excluded from a bargaining unit because she is confidential. *Waste Management de Puerto Rico*, 339 NLRB 262, 282 (2003). Mere access to confidential information does not establish confidential status. *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995). In particular, an employee's access to personnel records and the fact that the employee can bring information to the attention of management, which may ultimately lead to disciplinary action by management, is not enough to qualify an employee as confidential. *RCA Communications*, 154 NLRB 34, 37 (1965); *Ladish Co*, 178 NLRB 90, 90 (1969).

## 3. Application of Board law to the facts

The Employer has not carried its burden to establish the slotting coordinator's confidential status. At the outset, the fact that the slotting coordinator has access to the Employer's WMS system, and thus has access to information related to employee pay and factors upon which employees' pay is based, does not confer confidential status on his position.

Moreover, there is no record evidence that the person to whom he reports, the Director of Warehouse, formulates, determines, and effectuates management policies in the field of labor relations. Indeed, the extent of the record evidence related to the Director of Warehouse's functions vis-à-vis anything remotely connected to labor relations is general testimony that the Director of Warehouse disciplines employees and is involved in process changes. That evidence, though, falls well short of establishing that the Director of Warehouse formulates, determines, *and* effectuates management policies in the field of labor relations. Even if it were assumed that the Director of Warehouse met the standard cited above, there is no evidence that the slotting coordinator works in a confidential capacity to the Director of Warehouse.

Based on the above and extant Board law, I find that the Employer has not met its burden of showing that the slotting coordinator should be excluded from the proposed bargaining unit as a confidential employee.

**B. Resolving the eligibility status of the remaining disputed employee classifications is not necessary at the present time.**

Because the unit sought by Petitioner is presumptively appropriate for collective bargaining and a question of representation exists under Section 9(c) of the Act, I am directing an election in this matter. The issues raised by the Employer's contentions over the cycle counter, driver check-in, QA inspector, safety coordinator, will call associate, maintenance coordinator, and material handling technician classifications concern their eligibility to vote. I find that these issues need not be resolved before the election is conducted because the resolution of these issues would not significantly change the size or character of the unit.

Pursuant to Section 102.63(b)(1) of the Board's Rules and Regulations, prior to the hearing in this matter, the Employer submitted a Statement of Position in which it stated: "[t]he only identifiable grouping of Sysco South Florida employees that covers the employees requested by the Union would include all warehouse employees" including all petitioned-for employees (excluding the slotting coordinator) and those employees in the contested classifications listed above. The Petitioner seeks a unit that includes all warehouse employees. Thus, there is no actual dispute that a wall-to-wall warehouse unit, as Petitioner purports to seek herein, is appropriate. Rather, the parties disagree about whether employees working in the classifications of cycle counter, driver check-in, QA inspector, safety coordinator, will call associate, maintenance coordinator, and material handling technician are warehouse employees and eligible to vote.

In view of the fact that the Employer has not claimed that the unit sought by Petitioner is inappropriate for collective bargaining, I conclude that the Employer's position, both at hearing and in its Statement of Position, establishes that the Employer is disputing the exclusion of individuals working in certain classifications from the unit and, therefore, the ineligibility of certain individuals to vote. The record establishes that the Employer contests the exclusion of approximately 16 individuals; 4 cycle counters, 4 driver check-ins, 3 QA inspectors, 1 safety coordinators, 1 will call associate, 1 maintenance coordinator, and 2 material handling technician, compared to 117 employees over whom the parties agree are in the unit.

Because the Employer's position raises eligibility issues affecting at most 14 percent of the unit, I conclude that the Employer's contentions do not significantly change the size or character of the unit and thus are not relevant to a question concerning representation. Therefore, consistent with Section 102.64 of the Board's Rules and Regulations, I direct an election in this matter, and I further order that the individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby 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 herein.<sup>4/</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and 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.

The following employees constitute an appropriate unit for collective bargaining:

All warehouse employees including checkers, forklift operators (let down), loaders, receivers, selectors, slot coordinators, yard spotters, returns putaway, and outbound warehouse clerk, but excluding all other employees, drivers, mechanics, office clerical employees, professional employees, supervisors and guards as defined in the Act.<sup>5/</sup>

**OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether the cycle counter, driver check-in, QA inspector, safety coordinator, will call associate, maintenance coordinator and material handling technician classifications are included in, or excluded from, the bargaining unit, and individuals in

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<sup>4/</sup> The Employer stipulated to the following commerce facts "The Employer is a Delaware corporation, with an office and place of business located at 12500 NW 112<sup>th</sup> Ave , Medley, Florida The Employer is engaged in the business of food warehousing and distribution in South Florida During the past calendar year, in conducting its business operations described above, the Employer derived gross revenues in excess of \$500,000 and during that same period of time, purchased and received at its places of business in the State of Florida, goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida "

<sup>5/</sup> The petitioned-for unit seeks inclusion of "short chasers and short runners " The record is clear that short chasers and short runners are not separate employee classifications, but instead fall under either a selector or forklift operator classification Therefore, I have not separately listed them in the unit description

those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 769.

#### **A. Election Details**

The election will be held on October 4, 2017, from 5:30 am to 8:30 am and from 4:30 pm to 7:45 pm in the Dolphin Conference Room, 12500 NW 112<sup>th</sup> St., Medley, Florida.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending September 2, 2017, 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 that 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 using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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.

#### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same

information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by **September 19, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notices of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notices must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notices of Election electronically to those employees. The Employer must post copies of the Notices at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

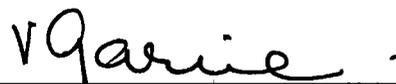
### RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 15, 2017.



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