

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

LEISURE KNOLL AT MANCHESTER

Employer

and

Case 04-RC-249476

SEIU LOCAL 32BJ

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Union in this case already represents a small unit of maintenance employees at this company which manages a homeowner's association for an active adult community. The Union wishes to add three office employees to the unit through a self-determination election. The addition of these three employees would make the unit an employer-wide unit. The only issues to be decided are whether the Employer has rebutted the presumptive appropriateness of this employer-wide unit, and whether one of the office employees is a statutory supervisor. I have concluded that the Employer has not met its burden on either issue, so I will direct the election requested by the Union.

The Petitioner, SEIU Local 32BJ, seeks an *Armour-Globe*¹ election among the remaining unrepresented employees of Leisure Knoll at Manchester (Employer) to determine whether the three office employees wish to be included in the existing bargaining unit. The Employer contends that the petitioned-for unit is inappropriate because office clericals are generally excluded from rank and file bargaining units, the office employees do not share a community of interest with the existing bargaining unit, and the Office Manager is a statutory supervisor. The Employer bears the burden of establishing both that the employer-wide bargaining unit is inappropriate² and that the Office Manager is a statutory supervisor excluded from the Act's coverage. Examining the evidence and the parties' arguments in this matter, I find that the Employer has failed to carry its burden to prove either of these contentions. Contrary to the Employer's assertions, there was insufficient evidence that the Office Manager satisfied any of the 12 indicia of supervisory authority. The Employer also was unable to rebut the presumption that the employer-wide bargaining unit is appropriate since the employer runs a small operation where the employees share similar terms and conditions and common overall supervision. Accordingly, I shall order a self-determination election to determine whether the office employees wish to be included in the existing bargaining unit.

¹ This self-determination election is so named because it originated in *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) and was refined in *Armour & Co.*, 40 NLRB 1333 (1942).

² An employer-wide unit is presumptively appropriate. *Airco, Inc.*, 273 NLRB 348, 349 (1984).

I. OVERVIEW OF OPERATIONS

The Employer is a homeowner's association located in Manchester, New Jersey. The Employer operates a 1,626 single family home community for "active adults" aged 55 and over. The owners of these homes elect seven members to serve on the Board of Trustees (Trustees). The Trustees are responsible for hiring employees, awarding bonuses, and establishing employees' terms and conditions of employment.

The highest-ranking individual is Community Manager Mary D'Ime who ultimately oversees the entire operation. D'Ime oversees projects and the budget and assists the Board of Trustees with their responsibilities. Maintenance Manager Jack Gregg, who oversees the maintenance employees, reports to Community Manager D'Ime. The parties agree that the Community Manager and Maintenance Manager are both statutory supervisors. D'Ime testified that there are three office employees: (1) the Office Manager Diana Gregg; (2) Receptionist Michelle Biggins; and (3) Account Payable Vickie Smizlowicz. These office employees ultimately report to D'Ime. There are also four maintenance employees who are responsible for maintaining and cleaning the common areas and completing necessary repairs, landscaping and janitorial work.

II. BARGAINING HISTORY

The Petitioner has represented the Employer's maintenance employees since 1972. It currently represents about four employees working in the following classifications:

All full-time and regular part-time maintenance employees employed by the Employer including drivers, grounds keepers, and building attendants employed by the Employer, excluding all other employees, guards, and supervisors as defined in the Act.

The office employees have never been represented by any labor organization.

III. THE RELEVANT LEGAL STANDARDS

***Armour-Globe* Elections and Community of Interest**

An *Armour-Globe* self-determination election permits employees who share a community of interest with a unit of already represented employees to vote on whether to join the existing unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). The Board has long recognized that a self-determination election is the proper mechanism by which an incumbent union adds unrepresented employees to its existing unit if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). The traditional community of interest factors include whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; are functionally integrated with the Employer's other employees; have frequent contact with other

employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017).

The Board has long recognized that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” *Airco, Inc.*, *supra*, 273 NLRB at 349 (quoting *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962)); see also Section 9(b) of the Act (“ . . . the unit appropriate for the purposes of collective bargaining shall be the *employer unit*, craft unit, plant unit, or subdivision thereof”) (emphasis supplied). The party claiming that an employer-wide unit is inappropriate bears the burden of rebutting the presumptive appropriateness of the unit by demonstrating “the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit.” *Airco, Inc.*, *supra*; see also *Greenhorne & O’Mara, Inc.*, 326 NLRB 514, 516 (1998).

B. Supervisory Status

The National Labor Relations Act specifically excludes supervisors from its coverage. It is well settled that the party asserting supervisory status bears the burden of establishing it by a preponderance of the evidence. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-12 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006); *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). The Board has made clear that the evidentiary burden is significant and substantial, holding that purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 n.6 (1995). The Board must not construe the statutory language too broadly, because an individual found to be a supervisor is denied the Act’s protections. *Avante at Wilson*, *supra* at 1057; *Oakwood Healthcare*, *supra* at 687. The party seeking exclusion must demonstrate specific details or circumstances clearly showing that the claimed supervisory authority exists and is not merely paper authority, and that the authority is more than sporadic. *Avante at Wilson*, *supra* at 1057-58; *Shaw*, *supra* at 357, fn. 21; *Oakwood Healthcare*, *supra* at 693; *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001). Further, where the evidence conflicts or is inconclusive regarding particular indicia of supervisory authority, the Board will find that a party has not established supervisory status based on those indicia. *The Republican Co.*, 361 NLRB 93, 97 (2014); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003).

Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Under that test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions; (2) the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) the authority is held in the interest of the employer. *Kentucky River*, *supra* at 712-13; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994). The 12 supervisory functions listed in the statute are the authority to hire, transfer, suspend, layoff, 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. 29 U.S.C. § 152(11).

The criteria for supervisory status enumerated in Section 2(11) are read in the disjunctive; possession of any one of the 12 indicia listed will confer supervisory status, if they are exercised

using independent judgment. *Kentucky River, supra* at 713; *Shaw, supra* at 355. On a case-by-case basis, the Board differentiates between exercising independent judgment and giving routine instruction, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a routine, clerical, or perfunctory manner is insufficient to render an employee a statutory supervisor. *Oakwood Healthcare, supra* at 693; *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994). Under Board precedent, effective recommendation involves an action without independent investigation by supervisors, not simply a recommendation that is ultimately adopted. *The Republican Co., supra* at 97; *Children's Farm Home*, 324 NLRB 61 (1997). Importantly, absent evidence that an individual possesses at least one of the primary indicia enumerated in Section 2(11) of the Act, secondary indicia, such as higher pay, are insufficient to establish supervisory status. *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Billows Elec. Supply of Northfield, Inc.*, 311 NLRB 878, 878 n.2 (1993); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993).

In *Oakwood Healthcare*, the Board clarified the definitions of “assign” and “responsibly to direct.” The Board determined that the term “assign” refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, supra* at 689. The authority to “assign” requires more than choosing the order in which an employee will perform discrete tasks within an overall significant assignment of duties. *Id.*

Responsible direction, unlike the authority to assign, encompasses the delegation of discrete tasks rather than overall duties. *Oakwood Healthcare, supra* at 690-92. However, the authority to responsibly direct other employees requires that the delegation of discrete tasks result in accountability for the putative supervisor. The Board has explained that “to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692; *see also Community Education Centers*, 360 NLRB 85, 85-86 (2014); *Entergy Mississippi, Inc.*, 357 NLRB No. 178, slip op at 5-7 (2011).

To confer supervisory status based on the authority to discipline, “the exercise of disciplinary authority must lead to personnel action without the independent investigation or review of other management personnel.” *Lucky Cab Co.*, 360 NLRB 271, 272 (2014) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)). Warnings that simply bring substandard performance to the employer's attention without recommendations for future discipline serve nothing more than a reporting function and are not evidence of supervisory authority. *See Willamette Industries, Inc.*, 336 NLRB 743, 744 (2001); *Loyalhanna Health Care Associates*, 332 NLRB 933, 934 (2000) (warning merely reportorial where it simply described incident, did not recommend disposition, and higher authority determined what, if any, discipline was warranted); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996) (written warnings that are merely reportorial and not linked to disciplinary action affecting job status are not evidence of supervisory authority). The Board has found that putative supervisors do not possess disciplinary authority where counselings, warnings, or reports do not constitute an initial step in a progressive

disciplinary system, and thus do not impact job status. See, e.g., *Vencor Hospital-Los Angeles*, 328 NLRB at 1139.

The Board will also not find supervisory grievance adjustment authority based on the resolution of "minor employee complaints regarding workload, lunch and break schedule conflicts or personality conflicts." *Regal Health and Rehab Center, Inc.*, 354 NLRB 466, 473 (2009), reaffirmed at 355 NLRB 252 (2010); *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991).

Lastly, a finding of supervisory status based on any of the 12 indicia must also involve an exercise of independent judgment. *Oakwood Healthcare, supra* at 692-93. In *Oakwood Healthcare*, the Board undertook a lengthy discussion of the "contours of 'independent judgment,'" and explained that it requires that an individual act or effectively recommend action free from the control of others and form an opinion or evaluation by discerning and comparing data, provided that the act is not of a routine or clerical nature. Judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, a collective-bargaining agreement, or a higher authority's verbal instruction. *Oakwood Healthcare, supra* at 692-93; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008).

IV. ANALYSIS OF THE RELEVANT FACTORS

A. Supervisory Status of the Office Manager

As the party asserting supervisory status, the Employer has the burden to produce sufficient evidence that the Office Manager exercises at least one of the indicia set forth in Section 2(11) of the Act, and that she does so utilizing independent judgment. The Employer claims generally that the Office Manager has the authority to assign and responsibly direct other employees, adjust grievances, discipline and effectively recommend discipline, hiring, and discharge. The evidence produced at the hearing clearly failed to establish any of these contentions.

The Employer admits that the Office Manager does not have the authority to hire, promote, discharge, or reward other employees because all such authority is vested in the Trustees. The Employer also admits that the Office Manager has never transferred or recalled any employees, nor has the Office Manager ever effectively recommended such actions.

The Office Manager is responsible for accounts receivable, processing payroll, ordering office supplies, and preparing correspondence for the Employer's various committees. Although the Community Manager testified generally that the Office Manager is responsible for supervising the Accounts Payable and the Receptionist, there is no mention of any supervisory authority in the Office Manager's job description. The Accounts Payable is responsible for paying bills, book keeping, and maintaining the budget. The Receptionist answers telephones, greets visitors, and performs clerical duties.

1. Assignment and Responsible Direction

Although the Employer claims that the Office Manager assigns work to the office employees and responsibly directs them, the record evidence failed to substantiate this claim. In

support of this contention, the Employer relies, not on the job description of the Office Manager, but rather on the job descriptions of the Accounts Payable and Receptionist that state, “Any other duties requested by the office Manager, Association Manager or Board of Trustees.” The Employer also refers to Office Manager Gregg’s annual evaluation that remarked “continuing to oversee office operations running smoothly,” and that she is “a strong mentor to others.” The record evidence failed to substantiate the conclusory statements that Gregg assigns work to the other employees. When questioned about assessing Gregg’s supervisory/managerial attributes in completing her evaluation, D’Ime was unable identify any specific examples of how Gregg directed others or assigned them work. Office Manager Gregg testified that she does not assign work to the Receptionist and Accounts Payable because each office employee performs the tasks on her written job description. Occasionally, a new task will arise outside the scope of this normal routine and the office staff will work together to decide which tasks to divide among themselves. For instance, Gregg testified that this occurred when D’Ime informed the office employees that the community switched to a new cable company provider, and the office staff worked together to divide the additional work associated with this change. With regard to responsible direction, there is no evidence that the Office Manager was held accountable for the quality of the other office employees’ work.

To the extent the Employer relies upon the evaluations naming Gregg as the supervisor of the Accounts Payable and Receptionist to support its claim of supervisory status, it is well-settled that job descriptions, job titles, and similar items that constitute "paper authority" do not, without more, demonstrate actual supervisory authority. *Golden Crest Healthcare Center, supra*, 348 NLRB at 731; *Chi Lake-Wood Health*, 365 NLRB No. 10 at fn. 1 (2016); *Peacock Productions of NBC Universal Media*, 364 NLRB No. 104, slip op. at 2-3 and fn. 6 (2016); see also *Operating Engineers Local Union No. 3*, 324 NLRB 1183, 1187 (1997) (finding title of “office manager” is insufficient to confer supervisory status). Rather, the statute requires evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority, rather than unsupported assertions that supervisory authority has been conferred on a particular person. *Golden Crest Healthcare Center, supra* at 731; *Avante at Wilson, supra* at 1057. The evidence produced at the hearing clearly failed to meet this standard. Accordingly, I find that the Office Manager does not assign work or responsibly direct others as defined in Section 2(11) of the Act.

2. Discipline

The Office Manager testified that she does not have the authority to discipline on her own or recommend discipline. The record is devoid of any documentary evidence substantiating the Employer’s claim that she has the authority to discipline or to effectively recommend discipline. In support of its contention that the Office Manager has the authority to discipline, the Employer relies on Community Manager D’Ime’s conclusory testimony that Gregg has the authority to discipline. In addition, the Employer cites an incident in the summer of 2018 where the Office Manager counseled a temporary, seasonal part-time employee about the position’s job duties. Gregg testified that when she discovered that the temporary office employee was only performing some of the duties outlined in her job description and her actions were disrupting the office, she told the employee that she could not select which duties to perform and had to perform all the duties in her job description. Gregg then told the temporary employee that she would discuss the

employee's performance with Community Manager D'Ime and whether the employee wanted to keep working there. Gregg testified that she did not have the authority to give the employee any consequences without permission from D'Ime or the Trustees. The employee then met with D'Ime and Gregg in D'Ime's office to discuss her job duties and she continued to work throughout the summer. The Employer did not present any evidence as to whether there is a progressive discipline policy. It is undisputed that no discipline or write-up issued to this temporary employee. At most, Gregg simply coached this seasonal employee about her performance of tasks that were set forth in her written job description. Since it involved tasks that were controlled by detailed instructions, it did not involve independent judgment. And such coaching or counseling does not constitute discipline in any event. See *Veolia Transportation Services, Inc.*, 363 NLRB No. 98 (2016).

The fact that the Community Manager requested Gregg's presence at disciplinary meetings when the Community Manager met with employees similarly fails to establish that the Office Manager has the authority to recommend discipline. Gregg testified that she merely observed and remained silent at these meetings and did not recommend any discipline. In conclusion, the Employer has clearly failed to meet its burden to establish that the Office Manager has the authority to discipline or effectively recommend discipline.

3. Other Supervisory Indicia

The Employer relies on Gregg's role in evaluating employees as a basis for finding supervisory status. Both the Office Manager and Community Manager complete an evaluation for the Receptionist and Accounts Payable and each employee completes a self-evaluation as well. After completing employee evaluations, Gregg and D'Ime meet with each employee to discuss all the evaluations together. The employee then meets with D'Ime and the President of the Board of Trustees to discuss the evaluations. The President of the Board of Trustees also signs the evaluations and they are all maintained in the employee's file. D'Ime testified that these evaluations provide insight as to how coworkers perceive an employee's work and highlight the areas that the employee is performing well and what areas need improvement. D'Ime testified that she does not know whether evaluations are used to award promotions or grant wage increases.

Section 2(11) does not list "evaluate" in its enumeration of supervisory functions. As a consequence, an individual will not be found to be a supervisor based on the completion of evaluations unless the evaluations directly affect the wages or job status of other employees. *Pacific Coast M.S. Industries, Limited*, 355 NLRB 1422, 1423 fn. 13 (2010); *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1335 (2000). As there is no record testimony that Gregg's evaluations directly determine any personnel actions, I find that Gregg's act of completing these evaluations does not establish supervisory status.

All decisions regarding hiring, promotions, discharges, and rewards are vested in the Board of Trustees. Office Manager Gregg testified that she is not involved in the decisions related to hiring, promotions or salary increases. Gregg admitted to attending interviews for new hires, but she does not ask questions during the interview and after the interview, she merely informs her manager whether she liked the applicant and whether she thought they would be a good fit. The Employer relies on D'Ime's conclusory testimony that Gregg has the authority to effectively recommend discharge and hire. However, there is no evidence that Gregg ever exercised this authority or that she was ever informed that she held this authority. As previously noted, merely

conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB at 729; *Avante at Wilson, Inc.*, 348 NLRB at 1057; *Chevron Shipping Co.*, 317 NLRB at 381 n.6.

Despite the assertion that the Office Manager has the authority to adjust employee grievances, the record is devoid of any specific examples. The only evidence on this issue is D’Ime’s testimony that the Office Manager would often bring employee complaints or grievances to her and they would discuss it. In response to a leading question, D’Ime agreed that the Office Manager would then make a recommendation as to how it should be addressed, but D’Ime was unable to provide any examples of this action or disclose whether she followed her recommendations. Such conclusory evidence does not establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB at 729; *Avante at Wilson, Inc.*, 348 NLRB at 1057; *Chevron Shipping Co.*, 317 NLRB at 381 n.6.

For about two weeks each year, while the Community Manager is on leave, the Office Manager fills in for the Community Manager. In D’Ime’s absence, the Office Manager has the authority to permit a sick employee to leave work early. However, if any important matter needs deciding, the Office Manager discusses the issues with the Trustees. As the Office Manager must consult with the Trustees on all important decisions, I find that this evidence is insufficient to establish supervisory status. Moreover, the exercise of some supervisory authority in a merely routine or sporadic manner does not confer supervisory status on an employee. *Somerset Welding & Steel, Inc.*, 291 NLRB 913, 913 (1988); *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985).

4. Secondary Indicia

While the Office Manager is paid substantially more than the other office employees,³ such secondary indicia alone cannot establish supervisory status. See *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Billows Elec. Supply of Northfield, Inc.*, 311 NLRB 878, 878 n.2 (1993); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Moreover, the Office Manager has been working for about 14 years more than the Accounts Payable and about 16 years more than the Receptionist. Their differences in seniority and job duties may account for the pay discrepancy between the employees.

B. The Employer-wide Unit is Appropriate and a Community of Interest Exists Between the Office Employees and Maintenance Employees

Under well-established Board principles and Section 9(b) of the Act, an employer-wide unit is presumptively appropriate. *Airco, Inc.*, 273 NLRB 348, 349 (1984). The Employer’s evidence was clearly inadequate to rebut this presumption.

The Employer contends that the unit is inappropriate because office clericals are generally excluded from rank and file bargaining units and the office employees do not have a community of interest with the maintenance employees because they have different job duties, they report to

³ The Office Manager makes approximately \$11,000 more per year than the Accounts Payable and \$22,000 more than the Receptionist.

different immediate supervisors, and there is no interchange among the employees and minimal interaction.

Contrary to the Employer's contentions, the evidence established that the employees share traditional community of interest factors, including common overall supervision, common terms and conditions, and functional integration. The office employees and maintenance employees are ultimately supervised by the Community Manager and the Trustees. Although the maintenance employees are covered by a collective-bargaining agreement and office employees are not, the Trustees have instituted some of the same terms and conditions for all of these employees. For example, each employee received a 2% raise this past year and a Christmas bonus based on seniority and responsibilities. The Employees all receive the same health insurance plan, which is the health fund provided by the Union. There also exists a degree of functional integration between the two units. The maintenance department is responsible for maintaining all the communal space of the community. When homeowners notice either an emergency or non-emergency maintenance issue in these communal spaces, they contact the office. For non-emergency calls, the office employee enters a work order into the computer system for the maintenance employees to complete. In the case of emergencies, the office employees directly notify Maintenance Manager Jack Gregg.

Unlike the cases the Employer relies upon in arguing that office clericals are traditionally excluded, this case involves a petitioner seeking their inclusion in an employer-wide unit. Although the Board in *Central Cigar & Tobacco Co.*, 112 NLRB 1094, 1095 (1955) found a plantwide unit, excluding office clericals and salesmen, was an appropriate unit, the petitioner therein was seeking to exclude the office clericals and the Board did not require their inclusion in the petitioned-for bargaining unit. The Board did require the inclusion of office clericals in an overall store unit in *G. C. Murphy Company*, 171 NLRB 370, 371 (1968), in light of the small employee complement and the existence of traditional community of interest factors. The Board has recognized that including office clericals is appropriate in small bargaining units. See *id.*; *Berenson Liquor Mart*, 223 NLRB 1115, 1116 (1976). The bargaining unit here is extremely small since the Petitioner seeks to add only three employees to an existing unit of four employees.

The presumption that this unit is appropriate has clearly not been rebutted. The Employer failed to demonstrate that the interests of the office employees were so disparate from those of maintenance employees that they cannot be represented in the same unit. See *Airco, Inc.*, 273 NLRB at 349. Based both on the presumption and on the existence of traditional community of interest factors, I find that the office employees share a community of interest with the existing bargaining unit employees. I also find that the office employees constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *Warner-Lambert Co.*, *supra*, 298 NLRB at 995. Accordingly, an *Armour-Globe* election is appropriate and I shall order an *Armour-Globe* election to determine whether the office employees wish to be included in the existing bargaining unit.

V. CONCLUSION 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 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 in this case.
3. The Petitioner is a labor organization that 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 Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of Collective Bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time office employees, including Office Manager, Accounts Payable, and Receptionist, employed by the Employer, excluding all other employees, guards, and supervisors as defined in the Act.

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 **SEIU Local 32BJ** as part of the existing unit of employees in the following classifications:

All full-time and regular part-time maintenance employees, including drivers, grounds keepers, and building attendants, employed by the Employer, excluding all other employees, guards, and supervisors as defined in the Act.

A. Election Details

The election will be held on **November 6, 2019** from 10:30 a.m. to 11:00 a.m. in the Board meeting room in the Maintenance Building of the Employer's facility located at 1 Buckingham Drive North, Manchester Township, New Jersey.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 25, 2019**, 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(1) 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.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **November 4, 2019**. 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.

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. 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 Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice 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 Notice of Election electronically to those employees. The Employer must post copies of the Notice 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, 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: October 31, 2019

/s/ Dennis P. Walsh

Regional Director, Region Four
National Labor Relations Board