

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

Snyder of Berlin, Division of Birds Eye Foods, Inc.<sup>1</sup>

Employer

and

International Association of Machinists and  
Aerospace Workers, AFL-CIO, District Lodge 98

Petitioner

**Case 6-RC-12583**

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

The Employer, Snyder of Berlin, Division of Birds Eye Foods, Inc. is engaged in the manufacture of snack foods at its facility in Berlin, Pennsylvania, where it employs about 197 employees. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 98, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of quality assurance technicians. A hearing officer of the Board held a hearing and the Employer filed a timely brief with me.

As evidenced at the hearing and in the brief, the parties disagree on the following issue: whether the quality assurance technicians are managerial employees.

The Employer contends the petition must be dismissed because the quality assurance technicians are managerial employees, while the Petitioner contends the unit sought is appropriate because the quality assurance technicians are not managerial employees.<sup>2</sup> There

---

<sup>1</sup> The name of the Employer appears as amended at the hearing and as reflected in the collective-bargaining agreement contained in the record.

<sup>2</sup> The Employer also asserts that the quality assurance technicians are professional employees under Section 2(12) of the Act. The Petitioner takes no position on whether the quality assurance technicians are professional employees, but instead indicates its intention to represent the quality assurance technicians regardless of whether or not they are professional employees. Since professional employees may constitute an appropriate unit, and the Employer does not assert that there are any other professional employees, I do not reach the issue of whether the quality assurance technicians are professional employees under the Act.

is no contention that the petitioned-for unit is not otherwise appropriate. At the time of the hearing, the unit sought by the Petitioner had two employees.

I have considered the evidence and the arguments presented by the parties on the issue presented. As discussed below, I have concluded that the quality assurance employees are not managerial employees. Accordingly, I have directed an election in a unit that at the time of the hearing consisted of two employees.

To provide a context for my discussion of the issue presented, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusion on the issue.

### **I. OVERVIEW OF OPERATIONS**

The Employer operates a facility where snack foods are manufactured. Specifically, the Employer manufactures potato chips, popcorn, corn curls, and tortilla chips. In general, the process involves receiving raw ingredients, such as potatoes; peeling them; slicing them; frying them either on a continuous basis or in batches; applying seasonings to the product; and packaging the final product. In these operations, the Employer employs about 197 employees, including about 110 production and warehouse employees, about 10 maintenance employees, about 75 drivers, and the two quality assurance technicians who are the subject of the instant petition.

The overall operations of the Employer are the responsibility of its General Manager, Jerry Barker. Reporting directly to General Manager Barker are Director of Operations John Blough and Plant Manager David Smith. Reporting to Director of Operations Blough are Human Resources Manager Lori Perrin, Supervisor Sharon Pertrocelli,<sup>3</sup> and Quality Assurance Manager Kathy Stehr.<sup>4</sup> William Hillman serves as Director of Finance for the corporate parent's Snack Group, which includes the Employer herein.

---

<sup>3</sup> Pertocelli is in charge of the potato handling storage area and the tortilla line.

<sup>4</sup> The parties have stipulated, and I find, that Barker, Smith, Perrin and Stehr are statutory supervisors in that they have the authority to hire, fire and discipline employees. Although not included in the parties' list of stipulated supervisors, the record also reveals that Blough possesses similar authority, and I find that he is also a statutory supervisor.

The Employer's production and warehouse employees are represented by United Bakery and Confectionery Workers, Local 1718 a/w Retail, Wholesale and Department Store Union, a district council of the United Food and Commercial Workers, and are covered by a current collective-bargaining agreement.<sup>5</sup> The Employer's maintenance employees are represented by the Petitioner and are covered by a current collective-bargaining agreement. The drivers are not represented.

All of the production occurs within one building. The Employer operates in three shifts, from 7 a.m. to 3 p.m., from 3 p.m. to 11 p.m., and from 11 p.m. to 7 a.m. Production occurs on the first two shifts and the third shift is used for cleaning. All employees wear a uniform, but different job classifications wear different uniforms.<sup>6</sup>

While the production and maintenance employees are considered hourly employees,<sup>7</sup> the quality assurance technicians are considered salaried non-exempt employees.<sup>8</sup> The quality assurance technicians record the hours they work on a computer, and these hours are then approved by the Department Manager at the end of each pay period. The pay range for production employees is about \$12 to \$13 per hour; the pay range for maintenance employees is about \$13 to almost \$18 per hour. The quality assurance technicians are paid salaries, one earning about \$28,000 per year and the other earning about \$26,000 per year.<sup>9</sup> As non-exempt employees, the quality assurance technicians are eligible for overtime.

---

<sup>5</sup> Although it was notified of the filing of the petition in this matter, Local 1718 did not seek to intervene in this proceeding.

<sup>6</sup> Production and sanitation employees wear white uniforms, maintenance employees wear blue uniforms, production supervisors wear khaki and striped shirts, and quality assurance technicians and the Quality Assurance Department Manager wear white shirts and blue pants.

<sup>7</sup> The drivers are paid a sales commission.

<sup>8</sup> The office clerical employees are also considered salaried non-exempt employees.

<sup>9</sup> These amounts represent about \$14 per hour and about \$13 per hour, respectively.

The production supervisors and managers are considered salaried exempt employees. The pay range for the production supervisors is about \$32,000 to the upper \$40,000 per year range. The pay range for managers is about \$40,000 to \$50,000 per year.

The Employer offers a similar benefit plan to all employees, with two exceptions. Hourly employees are eligible for a pension plan and salaried employees may participate in a 401(k) plan. Further, hourly employees have a set vacation schedule while salaried employees have paid time off (PTO) with no set schedule.

## **II. QUALITY ASSURANCE**

The Employer's Quality Assurance Department is under the supervision of Manager Kathy Stehr. At present, there are two quality assurance technicians, although the Employer is currently seeking to fill a third quality assurance technician position. Darlene Baker is a 13-year employee who works on the first shift. Jared Ansell is a 5-year employee who works on the second shift.

As noted, the Quality Assurance Department reports to Director of Operations Blough. Until recently, the Quality Assurance Department had reported to Plant Manager Smith. About one and a half to two months before the hearing in this case, the Quality Assurance Department was switched from Smith to Blough. This was done because of concerns that when the Department reported to a production manager, there was too great an emphasis on quantity, as opposed to quality. The Department was therefore reassigned to Blough to ensure that its focus remained on quality and to ensure that the Department had the authority to stop production when necessary. Blough explained that because the snack food industry is very competitive, quality is extremely important.

There is a quality assurance lab located adjacent to the production area. The quality assurance technicians conduct inspections on the production floor and perform tests in this lab. The duties and qualifications of the quality assurance technicians are set forth below.

#### A. Inspections

The quality assurance technicians monitor the ingredients, the production process, and the final products. Specifically, the quality assurance technicians inspect incoming cornmeal, oil and seasonings.<sup>10</sup> They ensure that the containers are unopened and not contaminated. They ensure that the product is accompanied by the appropriate paperwork. They record lot numbers so that products can later be traced if necessary. They perform tests on the incoming products. For example, on cornmeal, they perform sift tests, moisture tests and blacklight tests to check for toxins.

The quality assurance technicians perform “line checks” on the production floor, looking at the product for color, tasting it, placing a hand under the salter to ensure that the salter is dispensing salt, ensuring that the seasoners are dispensing seasoning, and checking that bags are sealed.<sup>11</sup> In addition, the quality assurance technicians perform certain tests on a set schedule. They check the thickness of slices, test to ensure that the oil in the fryers is not breaking down, test the color of the product after frying, test the moisture content, test the oil content, test the fat content, test the amount of salt, test the applications of cheese, test the applications of seasonings, test the fill weights, and check the bag codes.<sup>12</sup> However, there is no evidence that the quality assurance technicians determine the nature of tests to be performed or the schedule on which they are performed.

The quality assurance technicians report the results of the testing on various forms.<sup>13</sup> Quality Assurance Manager Stehr checks some of these forms and signs off on some of them.

---

<sup>10</sup> The quality assurance technicians do not check the incoming potatoes.

<sup>11</sup> Quality Assurance Manager Stehr also performs some line checks.

<sup>12</sup> Packers also check for code dates on bags; if a packer realizes that a miscoded product has passed out of his area, the packer contacts a quality assurance technician to locate and red tag the product. The quality assurance technicians show the packers what to look for regarding the code dates.

<sup>13</sup> Director of Operations Blough testified that although he was not sure who created the quality assurance forms, he was sure that the quality assurance technicians helped to create them. However, the record contains no more specific evidence as to whether quality assurance technicians actually did participate in the development of the forms, and if they did, the extent of their involvement.

As would be expected in this type of facility, all employees are expected to monitor the quality of the product and report any problems to supervision. If a production employee discovers a problem, the employee generally will inform his supervisor. Depending on the nature of the problem, the production supervisor may address it himself,<sup>14</sup> or the supervisor may contact the Quality Assurance Department to address the situation. In addition to the general expectation that all production employees monitor the product, there are certain production employees who perform specific quality assurance duties. In particular, on the low-fat potato chip line, the operators check the moisture and oil content. Further, on the kettle chip line, there are production employees called “pickers” who pull dark or defective chips.<sup>15</sup>

#### B. Standards

The quality assurance technicians must ensure that the product falls within acceptable standards for the different quality criteria that are tested. These standards are set forth in quality assurance manuals, on wall charts, in memoranda and in booklets; many of these standards are set forth on the forms the quality assurance technicians complete.<sup>16</sup> Some of the standards are industry-wide standards. In addition, as the Employer has developed new products, in particular, new lines of seasoned potato chips, new standards for the application of seasonings have been developed. There is no evidence that the quality assurance technicians have been involved in the development of any of the standards, except for the application of seasonings to newly developed product lines described below.

The new products are generally developed in the following manner. The Employer’s Sales and Marketing Department will decide on a new product, such as a honey barbecue chip. Quality Assurance Manager Stehr and a procurement employee will contact the seasoning

---

<sup>14</sup> Production Supervisors do not conduct lab tests, however.

<sup>15</sup> This function is performed by machine on the continuous potato chip line and, in the future, the Employer plans to use machines on the kettle chip line as well.

<sup>16</sup> For example, on the form, raw popcorn has a moisture range of 11.5-14.0; cracks and fractures are set at 10 percent breakage, and the kernel count is 69-75 kernels per 10 grams.

companies and request seasoning, in this example, honey barbecue seasoning. The seasoning companies will provide the seasoning and recommend the amount to be applied, generally a 7 to 9 percent application.

The quality assurance technicians will prepare a sample, by taking a bag of chips and a can of seasoning, and applying the seasoning based on weight. Taste tests are then conducted. Based on the results, the quality assurance technicians will adjust the percentage of seasoning to apply. In this way, the quality assurance technicians are involved in the development of the standards for the applications of new seasonings.

### C. Corrective Actions

If the quality assurance technicians discover anything out of the ordinary, they make an entry in a journal. Depending on the nature of the problem, different types of solutions may be utilized. These corrective actions may include rejection of incoming products, making adjustments to the manufacturing process, shutting down a particular machine, shutting down an entire production line, or red tagging a product.

If problems are discovered with incoming products, the quality assurance technicians will contact the appropriate individual in purchasing, who will then determine whether the product is acceptable.<sup>17</sup> For some production issues, the quality assurance technicians can recommend adjustments to produce acceptable results. For example, if the coloring is unacceptable, they may recommend mixing in better potatoes. As another example, if there are wet chips coming out of the fryer, the fryer temperature may need to be raised.

The quality assurance technicians are authorized to direct an operator to shut down a machine. This occurs about once every two weeks. An example of when this may occur is if one of four individual seasoning machines is not applying seasoning, or if bags are missing the code dates.

---

<sup>17</sup> Although Director of Operations Blough believed that sometimes the Quality Assurance Department could contact suppliers, the record disclosed no more specific testimony as to whether any quality assurance technician had ever in fact contacted a supplier.

In addition to shutting down a particular machine, the quality assurance technicians are authorized to shut down entire production lines without obtaining approval from anyone higher in management.<sup>18</sup> The quality assurance technicians will usually consult with the production supervisor before shutting down a production line and attempt to reach agreement with the production supervisor on whether to do so. If they cannot agree on whether the line must be shut down, ultimately the quality assurance technician's decision controls.<sup>19</sup> When the problem is resolved, the quality assurance technicians discuss the start-up of the line with the production supervisors. Production supervisors are also authorized to shut down production lines without obtaining approval from anyone higher in management, but production employees do not possess the authority to shut down production lines.

On average, a production line is shut down about once every two weeks because of quality issues. The last time before the April 26, 2007 hearing date that a quality assurance technician shut down a production line was on April 2, 2007. On that occasion, the centrifuge cone<sup>20</sup> on the low-fat kettle chips line was sparking, and the line was shut down. Other times, production lines have been shut down because of excess moisture in the chips, or because a piece of metal has been found in the product.

A quality assurance technician may decide to "red tag" a product, which refers to designating a product for further inspection and decision by upper management on how to proceed. For example, a product may be red tagged if it is suspected that there is metal in the product.

#### D. Work Rules

The Employer has a number of work rules that directly relate to safety and quality, such as rules dealing with earrings, hair nets and open-toed shoes. If the quality assurance

---

<sup>18</sup> The operators physically shut down the equipment at the direction of the quality assurance technicians.

<sup>19</sup> It does not appear that this is a frequent occurrence.

<sup>20</sup> The centrifuge spins the oil out of the kettle chips to make a reduced fat product.



technicians observe that production employees are not in compliance with these rules, the quality assurance technicians tell the production employees, and can remove the employees from the line and notify the employees' supervisors.<sup>21</sup> The quality assurance technicians do not, however, have the authority to impose any discipline on the employees. Rather, it is the production supervisors who impose such discipline.<sup>22</sup>

#### E. Consumer Complaints

One of the other duties handled by the quality assurance technicians is handling consumer complaints. The quality assurance technicians interact with the customers, and determine the specifics of the complaints. The quality assurance technicians will usually send the complaining customer coupons equal to the value of the product they had purchased. In the case of a serious complaint, such as a broken tooth, the quality assurance technician refers the matter to Quality Assurance Manager Stehr for resolution.

#### F. Purchasing

In addition to the other duties described above, quality assurance technician Baker is also responsible for purchasing certain supplies related to ensuring that quality standards are maintained in the production process. Baker orders products such as hair nets, beard nets, boots, gloves and hose nozzles. In order to purchase these items, Baker obtains a purchase order number from the purchasing department and then contacts the vendor to place the order. Baker orders the same products on a regular basis, but at times will add items to her order, such as dumpsters, at the direction of a manager. Baker testified that she is not aware of any dollar limit on her purchases.

---

<sup>21</sup> The production supervisors can also remove employees from the line for rules violations.

<sup>22</sup> There is no evidence that the quality assurance technicians memorialize such incidents or recommend any discipline to the production supervisors.

#### G. Other Activities

The quality assurance technicians have some limited involvement in training other employees: for example, showing the packers what to look for regarding bag codes, training summer workers in the Quality Assurance Department, and training new quality assurance technicians. Also, the quality assurance technicians, along with upper management and production supervisors, are involved in the annual inspection of the Employer's facility conducted by an industry group. Further, the quality assurance technicians participate on the Employer's food safety team, along with production employees and upper management. This team can make changes to the good manufacturing processes, or GMPs, used by the Employer.

The Employer shares some financial information which it considers confidential with the quality assurance technicians. This information is also shared with upper management, production supervisors, administrative personnel and office clerical employees.

Other than the activities identified above, the quality assurance technicians do not attend any meetings that could be considered to be management meetings

#### H. Job Qualifications

As noted, the Employer presently employs two quality assurance technicians, Darlene Baker and Jared Ansell. Before joining the Employer about 13 years ago, Baker had 12 years experience in the quality control field and had been employed as a lab supervisor in an analytical lab working with coal and water samples. Baker does not possess a college degree. She has taken a hazardous analysis critical control points (HACCP) course and a food safety training course.<sup>23</sup>

---

<sup>23</sup> Although Director of Operations Blough testified that he believed Baker had taken a course at Ohio State University for quality control in the snack food industry, Baker testified that she was offered the opportunity to take the course, but that she and Quality Assurance Manager Stehr decided that Baker was already familiar with the information that would be presented.

Ansell holds a bachelor's degree in food science from Penn State. The Employer is presently recruiting applicants for the third quality assurance technician position, and would prefer to hire an employee with a bachelor's degree in food science, biology or chemistry.

In addition to the quality assurance technicians, the Employer also uses temporary employees in the summer in the Quality Assurance Department. One such temporary employee was a high school graduate, who performed the same functions as the quality assurance technicians. In fact, a temporary employee<sup>24</sup> shut down the seasoning machine because it kept running out of seasoning, and red tagged the product.

### III. MANAGERIAL STATUS

"Managerial employees" are defined as employees who formulate and effectuate management policies by expressing and making operative the decisions of their employer and those who have discretion in the performance of their jobs independent of their employer's established policies. Tops Club, Inc., 238 NLRB 928, fn. 2 (1978), quoting Bell Aerospace, 219 NLRB 384 (1975), on remand from the Supreme Court's decision 416 U.S. 267 (1974).

In NLRB v. Yeshiva University, 444 U.S. 672, 682–683 (1980), (citations omitted) the Supreme Court described managerial employees as follows:

Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

The Board has long found quality control employees with duties similar to, or more discretionary than, those of the quality assurance technicians at issue in this case not to be

---

<sup>24</sup> It appears that the temporary employee who shut down the seasoning machine was the high school graduate.

managerial employees. See, e.g., Aeronca, Inc., 221 NLRB 326, 329 (1975) (quality control engineer and method planners at aircraft components manufacturer); Bechtel, Incorporated, 225 NLRB 197, 198 (1976) (quality control department employees of employer involved in Alaskan pipeline construction); Alco-Gravure, Inc., 249 NLRB 1019 (1980) (process control supervisor, quality control monitors and job operators at printing plant); Iowa Electric Light & Power v. NLRB, 717 F.2d 433 (8<sup>th</sup> Cir. 1983), enforcing 264 NLRB 144 (1982) (quality control inspectors at nuclear power plant).

In the present case, it is clear that the quality assurance technicians do not exercise a significant degree of discretion in the performance of their jobs within or independent of their Employer's established policies. The record reveals that with one minor exception,<sup>25</sup> the quality assurance technicians' evaluation of the incoming products, of the production process, and of the final product are all predicated upon specific standards. The record contains no evidence showing that the quality assurance technicians develop these standards, decide on the appropriate testing methods, or the testing schedule. That is, there are pre-existing standards which provide the basis for comparing and ultimately judging the acceptability of the product and the process. Thus, the judgments and decisions made by the quality assurance technicians appear to be primarily technical in nature and limited by pre-existing established policy.

The Board reached a similar conclusion in the Iowa Electric Light & Power case. In that case, the Board considered the role of quality control inspectors in a nuclear power plant. As stated by the reviewing Circuit Court:

---

<sup>25</sup> The role of the quality assurance technicians in determining the amount of seasoning to be applied to a newly developed product does not warrant a different result. The record does not disclose the frequency with which this occurs. Further, it appears that in those cases, the amount of seasoning applied is determined by taste tests conducted by the Sales and Marketing Department. Moreover, the fact that the quality assurance technicians participate in establishing such standards is insufficient to make them managerial employees. See Aeronca, Inc., supra at 329 (quality control personnel determine quality criteria and inspection points for aircraft components.)

The Board found that the Quality Control Inspectors “are responsible for performing inspection, examination, and testing activities that assure the quality and safety of a nuclear power plant. The Inspectors determine whether the materials, supplies, components, systems and processes conform to the predetermined quality requirements so as to insure safe, efficient and reliable plant performance.” The Board found that the Inspectors used checklists in making these inspections, and that they had no authority to vary the terms of those checklists. Thus, the Board considered the decisions of the Quality Control Inspectors to be “primarily technical in nature and limited by pre-existing established policy.” 717 F.2d at 435.

The fact that the quality assurance technicians have the authority to shut down a production line does not compel a different result. In Alco-Gravure, Inc., supra at 1020, the Board found that quality control employees who had independent authority to halt the presses were neither supervisory nor managerial employees, even though production may have been idled and overtime may have been necessary. As the Board explained in that case, “any directions given by these employees concerning the halting of production in connection with quality control is of a technical . . . nature. . . .” Id. In Bechtel, Incorporated, supra at 198, the quality control inspectors had “the authority to halt construction” of the Alaskan pipeline.<sup>26</sup> Nevertheless, the Board found that they were not neither supervisory nor managerial employees where their decisions were based upon pre-existing standards and their work was monitored by a supervisor.

The other activities engaged in by the quality assurance technicians are not managerial in nature. The counseling of employees to follow quality/safety related work rules, the resolution of minor customer complaints, the purchase of supplies, and the participation on quality

---

<sup>26</sup> In making this finding, the Board noted in a footnote that “when the inspector makes the decision to halt construction he fills out a stop work order, which must be signed by the section QC supervisor.” Bechtel Incorporated, supra at 198, fn.6. However, the Board did not find that the inspectors obtained the signature of the section QC supervisors before halting construction. Nor did the Board find that the inspectors otherwise obtained prior approval before halting construction. Rather, the Board found, as noted above, that the inspectors had the authority to halt construction, but nevertheless, concluded that the inspectors were not managerial employees.

committees do not make the quality assurance technicians managerial. See Alco-Gravure, Inc., supra at 1019-1020 (technical directions given to employees; contact with customers and authority to negotiate contract changes; ordering supplies). In addition, the educational and training requirements of the position, and the pay scale<sup>27</sup> are consistent with a finding that the quality assurance technicians are not managerial employees.

The Employer further argues that permitting the quality assurance technicians to be represented by the same Union that represents the maintenance employees will cause divided loyalty, especially in the event of a strike by the maintenance unit. A similar argument was rejected by the Board in Bechtel, Incorporated, supra at 198. As in Bechtel, in this case the work performed by the quality assurance technicians is comparing the product with predetermined standards, and the work of the technicians is overseen by a supervisor, in this case Quality Assurance Manger Stehr. Thus, as in Bechtel, the Employer maintains a substantial degree of control over the work of the technicians, and there is no basis for presuming that representation of these employees will result in an impairment in the performance of their duties. See also Iowa Electric Light & Power v. NLRB, 717 F.2d at 436-437.

In sum, I conclude that although the quality assurance technicians' job duties require the use of judgment and discretion, the record does not establish that such discretion is independent of the Employer's established policies, or that they are involved in the formulation, determination, and effectuation of management policies. Accordingly, I find that the quality assurance technicians are not managerial employees and I shall direct an election in the petitioned-for unit.

---

<sup>27</sup> The fact that the quality assurance technicians are salaried does not compel a contrary conclusion. See Alco-Gravure, Inc., supra at 1020; Bechtel, Incorporated, supra at 198; Leland Electric Company, Div. of AMF Company, 126 NLRB 406, 410 (1960).

#### **IV. FINDINGS AND CONCLUSIONS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
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 quality assurance technicians employed by the Employer at its Berlin, Pennsylvania facility; excluding all office clerical employees and guards and supervisors as defined in the Act, and all other employees.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 98. 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 an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as 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 seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.



To be timely filed, the list must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before **May 25, 2007**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full 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 five (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 precludes employers from filing objections based on non-posting of the election notice.

## **VI. 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001.<sup>28</sup> This request

---

<sup>28</sup> A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, [www.nlrb.gov](http://www.nlrb.gov), under "E-Gov."

must be received by the Board in Washington by 5 p.m., EST (EDT), on **June 1, 2007**. The request may **not** be filed by facsimile.

Dated: May 18, 2007

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
Two Chatham Center, Suite 510  
112 Washington Place  
Pittsburgh, PA 15219

**Classification Index**

460-5033-7500

440-1760-0580