

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

USPROTECT CORPORATION

Employer

and

Case 5-RD-1423

IRVING LEE, an Individual

Petitioner

and

NATIONAL ASSOCIATION OF
SPECIAL POLICE AND SECURITY
OFFICERS (NASPSO)

Union

DECISION AND DIRECTION OF ELECTION

The Employer, USProtect Corporation, provides security guard services to the Walter Reed Army Institute of Research and other government sites. The Petitioner, Irving Lee, filed a decertification petition with the National Labor Relations Board pursuant to Section 9(c) of the National Labor Relations Act seeking an election in the unit of all full-time and regular part-time security officers employed at the Walter Reed Army Institute of Research located in Silver Spring, Maryland.

The parties disagree on whether Lee, a Security Information Specialist assigned to the monitor room, is a statutory supervisor within the meaning of the NLRA. The Union, National Association of Special Police and Security Officers (NASPSO) argues that Lee is a supervisor due to his assignment in the monitor room. The Union contends the Employer holds Lee out as a

supervisor, because he has worn “sergeant” stripes on his uniform, indicating to other employees that he, along with the site supervisor who wore “captain” bars, is a supervisor, and because he utilizes independent judgment in exercising the authority to responsibly direct and assign employees, as well as, effectively recommend discipline. The Employer and the Petitioner assert that Lee is not a supervisor because he has no authority or responsibility within the parameters of the NLRA’s definition of a supervisor and that any “supervisory function” in Lee’s day-to-day responsibilities is exercised in a merely routine or clerical nature. The Employer and the Petitioner further argue there are other Security Information Specialists who work in the same capacity as Lee in the monitor room who are not supervisors. The Union does not assert that these other monitor room Security Information Specialists are supervisors.

I have carefully considered the evidence and arguments presented by the parties at the hearing regarding this issue. No briefs were filed. For the reasons set forth below, I find that the Union has not met its burden of establishing that Lee is a supervisor within the meaning of the Act.

The Union presented testimony from John Tresvant, lead officer for American Security Programs; Frank Cartier, Security Information Specialist; Napeer Hussain, former Security Information Specialist; and Tasheen Ali, Security Information Specialist. The Employer presented testimony from John Clemence, Corporate Operations Manager and Program Manager for employees at the site. The Petitioner, Irving Lee, a Security Information Specialist, also testified.

FACTS

USProtect is a government contractor that provides un-armed security officers, now called Security Information Specialists, at the Walter Reed Army Institute of Research (WRAIR)

in Silver Spring, Maryland. The Board, on May 12, 2006 in Case 5-RC-15968, certified the Union as the bargaining representative for all full-time and regular part-time security officers employed by the Employer at the Walter Reed Army Institute of Research.

The fifteen bargaining unit employees hold the position of Security Information Specialists (SIS). All Security Information Specialists employed by the Employer at the Walter Reed facility are in the bargaining unit. Two to six Security Information Specialists are on duty during the day, with two to three working after hours and on weekends. American Security Programs (ASP), a separate company, provides two armed security guards at the same location, one who roams the building on foot, while the other stays at the front desk.

A Security Information Specialist staffs the front desk of the facility twenty-four hours a day, seven days a week, signing employees in and out of the building. Security Information Specialists work in the monitor room twenty-four hours a day, seven days a week. This room houses the closed-circuit television system monitors that provide feeds from multiple cameras at the facility, alarm monitors, as well as various equipment such as keys that are issued to the Security Information Specialists. At these posts, Security Information Specialists operate in three shifts: first shift is 11:00 p.m. to 7:00 a.m.; second shift is 7:00 a.m. to 3:00 p.m.; and third shift is 3:00 p.m. until 11:00 p.m. A Security Information Specialist is posted at the loading dock, the delivery gate, and Building 511, a separate building at the facility, during duty hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

John Clemence, the Corporate Operations Manager for USProtect, is responsible for overseeing the Employer's operation at the Walter Reed facility as well as three other government facilities where USProtect has Security Information Specialists. Clemence is the Program Manager for the facility and does not work at the site. Directly under Clemence is

Darnell Lawton who is the Site Supervisor for the Walter Reed facility. Lawton works on the site daily in the monitor room.¹ Clemence testified that Lawton is the only supervisor at the Walter Reed facility, and that all other USProtect employees are simply Security Information Specialists. Lawton is the only person responsible for scheduling and assigning employees to particular posts.

Approximately thirteen of the fifteen Security Information Specialists have at some point worked in the monitor room. On a regularly scheduled basis, there are five to seven Security Information Specialists assigned to the monitor room. The duties of the Security Information Specialist in the monitor room include: ensuring all the monitors are functioning properly; ensuring the security system is functioning, checking and monitoring the alarm systems; dispatching appropriate personnel to respond to alarm notifications; assisting the front desk Security Information Specialist; watching the CCTV system; and maintaining a daily shift log in which he or she keeps track of any incidents that occur on his or her shift. Examples of incidents would be alarms for time zone violations,² door breaches, or fires at the facility. In addition, if the monitor room Security Information Specialist witnessed any violations of policy by USProtect employees in carrying out their job duties, the monitor room Security Information Specialist would note those on the log as well. The monitor room Security Information Specialist determines the appropriate response according to standard operating procedure and rules of the Walter Reed Facility.

The Department of Labor wage standards dictate that Security Information Specialists assigned to the monitor room receive additional compensation. Some of the employees who

¹ John Tresvant, an employee with ASP, testified that he worked with Mr. Lawton on the second shift, which is from 7:00 am to 3:00 pm. It is unknown what days of the week Mr. Lawton works.

² A time zone violation is when an employee of the facility is attempting to enter a secure zone at a time when they are not authorized to do so.

work in the monitor room received special training to do so and some did not. There is no special certification necessary to work this post. Lee testified that he received two days of training in April 2007 because he requested it, after working in the monitor room for eight months.

Lawton issued "rank" stripes to individuals, though the record does not indicate when that occurred. Lawton himself wore "captain" bars on his uniform. He issued "sergeant" stripes to several Security Information Specialists and "corporal" stripes to others. Sergeant stripes are higher than corporal stripes, and Lawton issued them to several Security Information Specialists who worked in the monitor room. However, not all employees who worked in the monitor room received stripes. Frank Cartier, a Security Information Specialist, testified that although he regularly worked the monitor room and Lawton told him he was a Lead, he did not receive stripes. He testified that Lawton told him that since he is a part-time employee, he did not get stripes. Cartier further testified however, that some other part-time employees did have stripes. There was no difference in pay for those who wore sergeant stripes, corporal stripes, or no stripes at all. Program Manager Clemence testified that he did not authorize Lawton to provide rank stripes to employees and that when he discovered that Lawton provided rank stripes to Security Information Specialists at the facility, he instructed Lawton to remove his rank and that of the employees. The employees stopped wearing the rank stripes in or around May or June 2007.

Security Information Specialist Lee works third shift, from 3:00 p.m. to 11:00 p.m. He is regularly assigned to the monitor room but on occasion rotates to the other Security Information Specialist posts. He began working for USProtect in 2003 at the front desk. In August of 2006, he began working in the monitor room. Lee testified that he does not hire, transfer, suspend, lay-off, promote, discharge, or reward other employees. He testified that he does not assign

employees. When working in the monitor room, he dispatches ASP Guards, Security Information Specialists, and makes contact with appropriate personnel according to standard operating procedure for that particular incident. For example, if there were a fire in the building, Lee would first call the fire department, then the Department of Defense, the police, safety, and Lawton, in that order. He testified this was a standard contact list and standard operating procedure. Lee is not responsible for ensuring employees are at their assigned duty location. Lee testified that he does not direct employees and that at most, he will ensure an employee is following the rules. For example, one of the front desk Security Information Specialist's duties is to answer the phone. If Lee saw that the front desk Security Information Specialist was not answering the phone, he would instruct them to answer the phone. Lee follows established protocol and procedures when executing these duties. Lee testified that he does not discipline employees. He stated that he prepares daily incident logs, recording all the incidents that occur on the shift, such as security breaches, fires, or someone getting sick. If an employee, either from ASP, USProtect or the facility violated a rule, he would make a notation in the log. Lee testified that anyone could write an incident in the log. Security Information Specialist personnel submit this log to Lawton for review before Lawton submits it to the Walter Reed facility. Lee testified that Lawton was the only one with authority to write-up an employee for a violation. He does not attend supervisor-only meetings. He stated the only meetings he had with Lawton were at the end of Lawton's shift when Lee was coming on duty. The nature of these meetings was to pass on any information about incidents that occurred on the shift to the next shift. These "pass on" meetings were held at every shift change between the individual leaving the shift and the individual coming on shift. Lee also testified that Lawton was on-call twenty-four hours a day.

Frank Trevsat, an armed guard employed by ASP, testified that Lawton told him that any officer who worked in the monitor room was a lead officer acting in a supervisory capacity, and that Lawton told him on several occasions that the monitor room Security Information Specialist was a supervisor. Trevsat testified that he did not know if Lee or any of the other USProtect employees who worked in the monitor room were involved in hiring, transferring, suspensions, lay offs, promotions, discharges, assignments, rewards or discipline of other employees. He testified that he has heard Lee pass on instructions and information about the building to other USProtect Security Information Specialists.

Tasheen Ali is a Security Information Specialist who worked the second shift at the front desk, while Lawton worked in the monitor room. She testified that Lee would come in at 3:00 p.m. and relieve Lawton in the monitor room. She would still be on the clock until 3:30 p.m. She testified Lawton told her that Lee was in charge when Lawton was not there; that Lawton instructed her to report any issues or take any incidents to whomever was working in the monitor room; and that the person in the monitor room was able to correct an employee if they were not following proper work rules. She and Lee worked the same days, therefore she did not have occasion to interact with other employees who also worked in the monitor room. She testified there was an incident where she had been relieved from her duty, but was still on the clock and Lee asked her if she had gone to her car in violation of the rules. She told him that she had not gone to her car. Ali did not receive any discipline regarding the incident.

Lee's duties in the monitor room are the same as the other Security Information Specialists assigned to work in the monitor room. Cartier testified that although Lawton called him a lead supervisor when he worked in the monitor room, he was not involved in hiring, transferring, suspensions, lay offs, promotions, discharges, assignments, rewards or discipline of

other employees.³ He testified that Lawton was the only one who had that authority. Cartier testified that if an employee violated a standard operating procedure, such as coming in late, he had the authority and expectation to counsel verbally that employee on the requirement of the standard operating procedure. If Cartier felt the issue warranted more than simple verbal counseling, he could write up the incident and refer it to Lawton for further handling.

Napeer Hussain was another Security Information Specialist who worked in the monitor room. He testified that he understood his position was a Lead Security Information Specialist, but that Lawton did not refer to him as a supervisor.⁴ Hussain testified that his job responsibilities included making sure the lobby was in working order, guiding the front desk Security Information Specialist if needed, dispatching ASP officers according to protocol, writing incident reports, and assisting new employees with their understanding of procedure. He testified that he did not have authority to go outside of the standard operating procedure. He testified that Program Manager Clemence fired him because another employee did not report to her assigned shift and Clemence held Hussain responsible. However, Program Manager Clemence testified he terminated Hussain due to his own actions, specifically, his past performance and falsifying documents. Clemence further testified that it was the responsibility of the monitor room Security Information Specialist to watch the other posts via the camera and if an employee was not at his or her assigned post, the monitor room Security Information Specialist was to log the incident and to notify Lawton. The monitor room Security Information Specialist was expected to report absences. Clemence also testified that when Lawton was not on site, and a situation came up which required his immediate attention, the monitor room Security Information Specialist was to follow standard operating procedure and contact Lawton.

³ The Union did not assert that Cartier is a supervisor.

⁴ The Union did not assert that Hussain is a supervisor.

DISCUSSION

Analysis: Supervisory Issue

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 121 S.Ct. 1861, 1867 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

More recently, in light of *Kentucky River*, the Board issued three decisions in which it refined and clarified the analysis to apply in assessing supervisory status. See *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006); *Croft Metals, Inc.*, 348 NLRB No. 38 (2006); and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006). In those decisions, the Board analyzed the Section 2(11) terms "assign", "responsibility to direct" and "independent judgment." In accordance with the Board's decisions in these three cases, the record must first establish the purported supervisor satisfy the Board's stated definitions of the Section 2(11) terms. If established, it must then be determined if the purported supervisor exercised the terms utilizing the Board's stated definition of "independent judgment." "Responsible" means "accountable", which requires a showing that the person directing the performance of a task must be held accountable for the performance of that task, and must have the authority to correct any errors made. There must be a prospect of adverse consequences to the person directing the work if the work is not performed properly or no corrective action is taken. *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006). Extending the Supreme Court's analysis in *Kentucky River*, the Board recognized that at one end of the spectrum there are situations where there are detailed instructions for the actor to follow, but that at the other end there are situations where the actor is wholly free from constraints. *Id.* It found that

“a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement[,]” but that a judgment is independent even where there is a guiding policy so long as that policy allows for discretionary choices. *Id.*

I find the Union has not met its burden of establishing that Lee is a supervisor as defined by the Act. While monitor room Security Information Specialists receive higher pay, the record overwhelmingly established the monitor room duties are exercised in a routine manner, dictated by standard operating procedure, Walter Reed facility directives, and well-established protocol.

The Union asserts that Lee, while working in the monitor room, carried out day-to-day “supervisory functions.” However, at no point does the Union state what those functions are. The record shows that any “supervisory functions” the monitor room Security Information Specialist may exercise is exercised in a merely routine, ministerial, clerical or perfunctory manner and does not confer supervisory status.

The Union has not met its burden of establishing that Lee has the authority to assign work or responsibly direct the work of employees. Rather, when the monitor room Security Information Specialist sees an alarm on the monitor or otherwise becomes aware of an incident on the facility, he does not assign personnel to particular tasks; rather he is merely setting in motion an established reactionary plan to such events with pre-established assignments for USProtect and ASP personnel. It appears for most of Lee’s shift, there are only two employees on duty; Lee in the monitor room and the Security Information Specialist at the front desk. Further, Lee does not assign individuals to the front desk, rather it is Lawton who creates the schedule and shift assignments.

It is also clear from the record that Lee does not exercise independent judgment. When determining a response to an incident, the monitor room Security Information Specialist follows detailed written policies and standard operating procedure. He follows a prescribed set of instructions when making calls and sending personnel to respond. These actions fall squarely at the far end of the spectrum defined in *Oakwood* as they are clearly devoid of any independent judgment. The Union has not presented evidence that actions of the monitor room Security Information Specialist, and Lee in particular, are the product of discretion or anything more than routine and clerical execution of established policy.

The Union has not met its burden of establishing that Lee responsibly directs employees. The Employer does not hold the monitor room Security Information Specialist accountable for the actions of other employees. While Hussain, who is not asserted to be a supervisor, testified that he felt he, as a monitor room Security Information Specialist, was terminated due to the action of another employee (not showing up to her assigned shift), other testimony refutes that premise. Program Manager Clemence testified that he terminated Hussain for his own actions, not those of another employee. Further, he stated monitor room Security Information Specialist employees were specifically not responsible for other employees' actions or inactions. Rather, their job was simply reportorial in nature, and all that was required of them was to report the incident to Lawton, which Hussain did not do. The testimony of Lee and Cartier supports the position that monitor room Security Information Specialist employees were not accountable for other employees. They both testified that if an employee were to call out sick, their duty was simply to call Lawton and report the absence. Both Lee and Cartier testified that they verbally counseled employees for the limited purpose of clarifying procedures or identifying work rules.

The Union did not meet its burden of establishing that the Employer holds Lee accountable for violations of rules or procedures by other employees, by virtue of working in the monitor room.

The Union has not met its burden of establishing that Lee has the authority to discipline or effectively recommend discipline. The record is clear that monitor room Security Information Specialists do not have authority to issue discipline to employees; that was the sole province of Lawton. It is also clear from the record that the action of a monitor room Security Information Specialist recording an employee's violation of a work rule on the daily log was not disciplinary action, rather it was merely the reporting of an incident, which is then presented to Lawton for his independent review. The record is void of any testimony that discipline was issued based on notations in the daily log. Any time Lee or any monitor room Security Information Specialist notified Lawton, or met with him during a shift-change pass-on, it was clearly for the limited purpose of passing information to Lawton, not to make recommendations. In any instance where an employee was found to have violated a rule, it is Lawton who determines what, if any, action should be taken. Therefore, although the monitor room Security Information Specialist brings incidents to the attention of Lawton, this sort of reportorial function does not involve the kind of independent judgment required to confer supervisory status, especially where the record fails to establish that Lawton takes action without making his own investigation. See *Ken-Crest Services*, 335 NLRB 777, 778 (2001); *Northcrest Nursing Home*, 313 NLRB 491, 497-498 (1993).

The Union also asserts that Lee is a supervisor because he wore sergeant stripes and other employees viewed him as a supervisor. The record is clear there were several other Security Information Specialists also wore sergeant stripes; however, none of them is asserted to be supervisors. Furthermore, none of the Security Information Specialists wearing stripes of any

kind received any extra pay, nor is it clear what the criteria was in determining who received stripes and who did not. The Union argues those who worked in the monitor room received sergeant stripes; however, Cartier also worked in the monitor room and he did not receive stripes. Program Manager Clemence testified that Lawton did not have authority to give out bars and stripes. Clemence instructed Lawton to remove his bars and to have the employees remove their stripes, which he did. Further, as the Board stated in *New Fern Restorium Co.*, simply calling someone a supervisor does not make him so within the meaning of the Act.

The Union asserts that the only monitor room Security Information Specialist who is a supervisor is Lee. However, Lee's duties are identical to those of the other Security Information Specialists who work in the monitor room. Lee does not exercise any duty or responsibility beyond those proscribed in the work rules and standard operating procedure, just as any employee who works in the monitor room would. The Union has not offered evidence that Lee holds any duties or functions beyond those of other employees who work in the monitor room. Just as a Security Information Specialist who works in the monitor room lacks the authority to hire, fire, discipline, evaluate, assign or responsibly direct other employees, or carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions, neither does Lee when he works in the monitor room. Further, the Union does not assert the Security Information Specialist in the monitor room who comes on duty after Lee is a supervisor. That Security Information Specialist has identical duties as Lee does, working only with the Security Information Specialist at the front desk. The Union did not present evidence that Lee hires, fires or evaluates other employees or that Lee performs any supervisory function over the other employees in the unit.

Based on the foregoing, I find that the Union, as the party asserting supervisory status, has failed to meet its burden in establishing that Lee has the authority to hire, fire, discipline, evaluate, assign or responsibly direct other employees, or carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. *Kentucky River Community Care*, 121 S.Ct at 1867. Therefore, I find that Lee is not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, I will include him in the unit.

CONCLUSIONS AND FINDINGS

Accordingly, given the record here in the instant matter, I will direct an election.

Based upon the entire record in this matter and in accord 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 an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union, National Association of Special Police and Security Officers (NASPSO) is a labor organization as defined in 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 Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer provides security guard services to various government agencies throughout the United States, including the Walter Reed Army Institute of Research (WRAIR) in Maryland, the only location involved in these proceedings. Annually, the Employer, in conducting its business operations described above, performs services valued in excess of \$50,000 in States other than the State of Maryland.

6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed by the Employer at the Walter Reed Army Institute of Research (WRAIR) in Silver Spring, Maryland, but excluding all other employees, including 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. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **National Association of Special Police and Security Officers (NASPSO)**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

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

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

B. Employer to Submit List of Eligible Voters

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

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **July 23, 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 to the Regional Office by mail, by electronic filing through the Agency website, www.nlrb.gov,⁵ or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

⁵ To file the list electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Regional, Subregional, and Resident Offices and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the list of eligible voters, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., E.S.T. on **July 30, 2007**. The request may be filed electronically through E-Gov on the Board's website, www.nlr.gov,⁶ but may not be filed by facsimile.

(SEAL)

/s/Steven L. Shuster

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street
Baltimore, MD 21202

Dated: July 16, 2007

⁶ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-filing page the user should select the option to file documents with the Board/Office of the Executive Secretary.