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

MIDWEST AIR TRAFFIC CONTROL SERVICE, INC.[1]

Employer

and

MICHAEL WITSAMAN, an Individual **Case 7-RD-3576**

RD Petitioner

and

FRANKLIN ANTHONY LEWIS, an Individual[2] **Case 9-RD-2147**

RD Petitioner

and

GREG FOWLER, an Individual[2] **Case 13-RD-2568**

RD Petitioner

and

[1] The name of the Employer appears as amended at the hearing.
[2] After the close of the hearing in Cases 7-RD-3576, 13-RC-21643, 22-RC-12816, 30-RC-6686, and 30-RC-6692 (hereafter Case 7-RD-3576 et al.), RD Petitioners Lewis and Fowler filed their respective petitions in Cases 9-RD-2147 and 13-RD-2568. The parties in Cases 9-RD-2147 and 13-RD-2568 waived the conduct of separate hearings and the filing of separate briefs in those cases, and stipulated to be bound by the official record of the consolidated hearing in Case 7-RD-3576 et al. To effect the wishes of the parties in Cases 9-RD-2147 and 13-RD-2568, and for administrative convenience, Cases 9-RD-2147 and 13-RD-2568 are hereby consolidated, pursuant to Section 101.21 of the Board's Statements of Procedure, with Case 7-RD-3576 et al.

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION, INC. (PATCO)[3]

Cases 13-RC-21643
22-RC-12816
30-RC-6686
30-RC-6692

RC Petitioner

and

PROFESSIONAL AIR TRAFFIC CONTROLLERS ORGANIZATION (PATCO), FPD, NUHHCE, AFSCME, AFL-CIO[3]

Incumbent Union

APPEARANCES:

Stephen D. Kort, Attorney, of Kansas City, Missouri, for the Employer
Michael Witsaman, of Fowlerville, Michigan, pro se
Ron Taylor, of Stuart, Florida, for the RC Petitioner
Lance Geren, Attorney, of Philadelphia, Pennsylvania, for the Incumbent Union

DECISION AND DIRECTION OF ELECTIONS

Upon petitions filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[4] in this proceeding, the undersigned finds:

1. The hearing officer's rulings 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.

[3] The names of the RC Petitioner and Incumbent Union appear as amended at the hearing.
[4] All parties in Case 7-RD-3576 et al. filed briefs, which were carefully considered. As noted, the parties in Cases 9-RD-2147 and 13-RD-2568 waived the filing of briefs.

3. The labor organizations involved claim 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.

Overview

RD Petitioners Witsaman, Lewis, and Fowler filed petitions seeking decertification elections in respective units of from four to six air traffic control specialists employed by the Employer at its Jackson, Michigan, Cincinnati, Ohio, and Gary, Indiana facilities. The RC Petitioner filed four petitions, for Gary, Indiana, in Case 13-RC-21643, West Trenton, New Jersey, in Case 22-RC-12816, Appleton, Wisconsin, in Case 30-RC-6686, and Waukesha, Wisconsin, in Case 30-RC-6692, seeking to represent the four to six air traffic control specialists employed by the Employer at its facilities in those respective cities. The petitions were consolidated for purposes of hearing, which was conducted by a hearing officer from Region 7 in Detroit, Michigan.

The Petitioners and the Employer in Case 7-RD-3576 et al. agree that the facilities, which were all individually certified, are appropriate as single units, and thus separate elections should be held. The Incumbent Union contends that the petitions should be dismissed because the single facilities were merged into a national unit, comprised of about 125 employees from approximately 25 facilities, that is now the only appropriate bargaining unit.

The Employer and the Incumbent Union have already argued their positions in Cases 30-UD-175 and 5-RD-1421. Case 30-UD-175 was dismissed on January 11, 2007, when the Regional Director concluded that the single-facility unit of employees at the Employer's Appleton, Wisconsin facility set forth in the UD petition was not coextensive with what he found to be the contractually–defined national unit. In Case 5-RD-1421, the Regional Director reached a contrary conclusion on July 2, 2007, and directed a decertification election for a single-facility unit at the Employer's Charlottesville, Virginia facility, finding that there was insufficient evidence to establish that the individually certified unit in Charlottesville had merged into a multi-facility unit. The Incumbent Union's request for review of the decision in Case 5-RD-1421 was denied by the Board on July 25, 2007. The records and decisions from Cases 30-UD-175 and 5-RD-1421 were stipulated into the record of the instant cases.

Giving careful consideration to the records in this case and both previous cases, I find that there is insufficient evidence that the individually certified units as described in the instant petitions have been merged by the Employer and Incumbent Union into a

multi-facility unit. Therefore, I find the petitioned-for single units are appropriate for purposes of decertification and certification elections.

The Employer's Operations

The facts of this case, for the most part, were discussed in depth in both prior decisions. Briefly, the Employer contracts with the Federal Aviation Administration (FAA) to operate air traffic control towers in the United States. The Employer initially operated the 40 to 50 towers in Area 3 of the FAA's Federal Contract Tower Program, the central and Great Lakes regions, including the facilities in Jackson, Gary, Appleton, and Waukesha. In January 2005, the Employer began operating, as well, about 35 air traffic towers in Area 1, covering the eastern and New England regions, including the facility in West Trenton.[5] A majority of the towers operated by the Employer are nonunion.

Each local tower is supervised by an air traffic manager, who has authority for shift scheduling, payroll, evaluations, supervision and training of the air traffic controllers, and quality control. The air traffic managers report to one of four air traffic service managers located at the Employer's corporate headquarters in Overland Park, Kansas. Every air traffic controller must be certified by the FAA at his particular tower.

Bargaining History

The current collective bargaining agreement is a master contract effective May 18, 2004 to September 30, 2007, applicable to all of the Employer's union facilities, which are listed in Appendix 1 of the agreement. It includes all of the petitioned-for facilities. There are no separate local agreements for any of the individual towers. The Board certified each unionized tower as a single-facility unit pursuant to separate representation elections, most of which were held in 2002. The Incumbent Union was certified at Waukesha on July 18, 2002, at Jackson on August 20, 2002, at Appleton on August 23, 2002, and at Gary on September 6, 2002. The record is not clear when the Incumbent Union was certified at West Trenton.

The recognition clause of the master agreement, Article 2, states:

> Section 1. The Employer hereby recognizes the Union as the exclusive collective bargaining representative of all full-time and regular part-time air traffic control specialists employed at the air traffic control towers listed in Appendix 1 to this agreement, pursuant to Section 9(a) of the National Labor Relations Act and certification of the Union as the exclusive bargaining agent of bargaining unit employees employed at the Employer's

[5] The facilities in Area 1 were previously operated by Robinson-Van Vuren Associates, Inc. (RVA). RVA currently holds the contract with the FAA for Area 2, covering the southern and southwest regions of the country.

facilities listed on Appendix 1 are attached as Appendix 2 to this Agreement.

Section 2. If the bargaining units described in Section 1 of this Article are amended to include other employees, those employees shall be covered by this Agreement.

The Area 1 towers formerly operated by RVA were covered by a collective bargaining agreement between the Incumbent Union and RVA. In 2004, when the FAA awarded the Employer the contract to operate Area 1, the employees at Area 1 facilities represented by the Incumbent Union, including West Trenton employees, were incorporated into the existing Employer-Incumbent Union collective bargaining agreement.[6]

As described in the decision in Case 5-RD-1421, the collective bargaining agreement alternately refers to employees as members of a "bargaining unit" (singular) and "bargaining units" (plural). The plural "units" appears in Article 2, Section 2 quoted above (Union recognition). The singular "unit" appears in Article 5, Section 2 (Grievance Procedure), Article 19, Section 1 (General Provisions), and a side agreement providing that the labor agreement is conditioned upon ratification by the "bargaining unit."

Wages, vacation time, and holidays are determined in accordance with Department of Labor standards and thus vary by region and county. Grievances have been resolved locally, with one exception related to the wearing of shorts, which led to the Employer's institution of a company-wide dress code policy. Work-related contact among the employees at different towers is virtually nonexistent. Most of the facilities are in different States, and thus not in close proximity. No air traffic control manager is responsible for another tower. No employee can bid on another facility's shift schedule, in part because FAA certification is facility specific. Shifts are determined based on local tower seniority.

The record reveals minimal, if any, interchange. One individual may have voluntarily transferred between facilities, and other voluntary transfers may have occurred, but no evidence was provided as to names, dates, places, or circumstances. Each year, a Wisconsin facility hosts an air show, with which employees from other towers, union and nonunion, assist. The record does not disclose whether participation is

[6] The collective bargaining agreement contains an addendum labeled "May 2004" but dated January 2005, detailing exceptions to the contract for certain facilities previously operated by RVA. West Trenton received no exception. However, other former RVA facilities received vacation schedule modifications and wage modifications, in compliance with the Service Contract Act §4c, 41 U.S.C. § 353 (c), which mandates that upon takeover by a succeeding contractor, economic terms of the preceding agreement must be honored until a new contract is negotiated.

voluntary or mandatory, how long employees are on loan, how transferees are selected, and how many, if any, employees from unionized towers are involved.

Training is at the local level and determined by either FAA or corporate requirements.

Analysis

An election conducted to afford employees an opportunity to decertify or replace their bargaining representative is generally held in the certified or contractually defined unit. ***Campbell Soup Co.***, 111 NLRB 234 (1955). However, if the parties mutually agreed to merge individually-certified units into a single one covering multiple facilities, the appropriate unit for a decertification or certification election is the multi-facility grouping. ***Gibbs & Cox***, 280 NLRB 953, 954 (1986). The Board looks to contractual language, bargaining history, and course of conduct for evidence of the parties' intent. ***Gibbs & Cox***, supra; ***White-Westinghouse Corp.***, 229 NLRB 667, 672 (1977); ***General Electric Co.***, 180 NLRB 1094 (1970). In the absence of "unmistakable evidence" that the parties acquiesced in the extinction of the separate units and the creation of a multi-location unit, the Board will find that the individually-certified bargaining units are appropriate. ***Duval Corp.***, 234 NLRB 160, 161 (1978), quoting ***Utility Workers Local 111 (Ohio Power Co.)***, 203 NLRB 230, 239 (1973), enfd. 490 F.2d 1383 (6th Cir. 1974) ("The Board does not find a merger in the absence of unmistakable evidence that the parties *mutually* agreed to extinguish the separateness of the previously recognized or certified units" (emphasis in original)); ***Remington Office Machines***, 158 NLRB 994, 997 (1966) (requiring an "unmistakable indication" that parties mutually intended merger).

I find that the record lacks unmistakable evidence of the parties' assent to merger. First, the contract itself is ambiguous as to the parties' intent. While some sections of the contract refer to "bargaining unit" (singular), the recognition clause refers to "bargaining units" (plural). The Board, with court approval, has found similar recognition language to be too ambiguous to support a finding of merger. ***Louisiana Dock Co.***, 293 NLRB 233, 235 (1989), enfd. in relevant part 909 F.2d 281 (7th Cir. 1990).

The plural recognition language was proposed by the Employer in December 2002 at the outset of negotiations. The Incumbent Union agreed to it on the first day of negotiations without proposing changes. In the entire 16 months of negotiations from December 2002 to March 2004, neither party raised the issue of bargaining unit scope. They never explicitly discussed whether the agreement created a single bargaining unit from the multiple covered locations.

The Incumbent Union would ascribe any ambiguity as to unit scope to the Employer, as drafter of the recognition clause. The argument is misplaced. The task at

hand is to parse contractual language for evidence of a shared goal to merge the individual units. Ambiguity in the language cuts against a finding of mutuality, regardless of which side was responsible. More importantly, the notion of penalizing the Employer for an ostensible drafting error misconstrues the principle at stake, which is the representational rights of employees.

The Incumbent Union correctly notes that the Board will not let use of the plural term "units" defeat a finding of merger, where history shows a merged unit. ***Gold Kist, Inc.***, 309 NLRB 1 (1992). In ***Gold Kist***, the union had twice been certified by the Board in the wider overall unit before a petition seeking an election in a narrower grouping was filed. History in that case plainly showed that the once discrete units had merged. Nothing in ***Gold Kist*** prohibits consideration of plural references when, as here, history is far from as revelatory.

The parties' bargaining history evinces mutual confusion or even contradictorily held beliefs as to unit scope. The Incumbent Union asserts that both parties intended to create a national unit. The Employer denies such an intent. The Incumbent Union's own intent is muddied by evidence of an e-mail dated June 22, 2006 to the Employer from Incumbent Union representative Gerald Tuso, who wrote that he would testify in Case 30-UD-175 "that the CBA is a master agreement and that it covers all bargaining units." The e-mail contains other references to "units" as well.

In contrast, the Employer contends that it never wavered from its traditional practice of preserving the individual bargaining units certified by the Board. Stephen Kort, the Employer's chief negotiator, testified that the Employer's plan was to negotiate a master agreement applicable to the individual bargaining units, with the option of negotiating supplemental agreements as needed. The parties chose not to enter into separate local agreements at any of the facilities at issue. However, the Employer's claim of its intention to preserve the separateness of the individual units is buttressed by a Memorandum of Understanding dated May 2004, providing that, if the Employer acquires a facility already represented by the Incumbent Union, the parties will meet "for the purpose of negotiating a labor agreement to such facility or facilities."

The Incumbent Union argues that the Employer insisted on crafting a single labor contract, and that it thereby blended the individual towers into a single bargaining unit. I do not agree. Negotiating a single contract to cover multiple locations has clear advantages from the standpoints of economy and convenience, and in itself does not reveal an intention to create a merged unit. ***Duval Corp.***, supra. The absence of local agreements, on which the Incumbent Union relies to show that local lines were superseded, does not necessarily establish anything other than that the parties felt their interests were adequately addressed by the provisions of their master agreement.

The Incumbent Union urges that the commonality of employees' terms and conditions is reflective of the parties' mutual merger intent. But centralized bargaining for separate units logically fosters similarity of contractual benefits, and is not enough to warrant the inference that the parties agreed to merge units. ***Delta Mills, Inc.***, 287 NLRB 367, 369 (1987); ***Utility Workers Local 111***, supra.

Drawing on its bargaining history with former Area 1 employer RVA, the Incumbent Union contends that the West Trenton employees were already merged by contract into a multi-facility unit. The March 2001 contract between RVA and the Incumbent Union, however, granted recognition to the Incumbent Union "for the [Annex A] bargaining units" (plural), and contained nothing compelling the conclusion that a multi-location unit was contractually created to supplant the individually Board-certified ones. Incumbent Union officer Gerald Tuso testified that RVA Vice President Wil Mowdy recently told him that RVA intended to combine its facilities in one unit. Mowdy did not testify at this or either of the related hearings in Regions 5 or 30. The uncorroborated hearsay testimony of Mowdy's alleged remark to Tuso can be given little weight, not only because Mowdy was not subject to cross examination, but also because RVA's intent, were it discernible, can not be imputed to the Employer. At any rate, the Incumbent Union admits that it later asked the Employer to negotiate a separate labor agreement for RVA's former Area 1 towers. This erodes the notion that the Incumbent Union's history with RVA set the seeds for a nationwide unit of the Employer's towers in Areas 1 and 3.

The parties' course of conduct does not appreciably advance the Incumbent Union's cause. The existence of a mutual merger intention is undermined by the absence of employee interchange, except for inconclusive evidence regarding voluntary transfers and staffing of the Wisconsin air show, and the evidence that all grievances but one have been negotiated and resolved locally.

It appears that union security and checkoff terms of the master agreement have recently been extended to air traffic specialists in Nashua, New Hampshire, pursuant to a Board election resulting in the Incumbent Union's certification on April 16, 2007 as the bargaining representative of a Nashua unit. The Incumbent Union contends that dues are being deducted from the paychecks of Nashua air traffic controllers by operation of Article 2, Section 3, which applies the master agreement to future sites of the Employer where the Incumbent Union becomes the exclusive bargaining agent. The record does not disclose whether contract terms other than union security or checkoff have been extended to the Nashua tower, or what if any discussion the parties have had about the newly certified Nashua unit. That Nashua employees gained coverage not by accretion, but by a separate election, sheds little light on the central question: whether the parties mutually meant to create a solitary unit, or simply to apply the master agreement to discrete new additions.

The Incumbent Union's own course of conduct has been equivocal. Its pooling of members' ratification votes to arrive at a nationwide tally with respect to the master agreement is consistent with, though not dispositive of, merger. ***Sears, Roebuck and Co.***, 253 NLRB 211, 212 (1980) (no merger despite pooled voting); ***Duval Corp.***, supra (same); compare ***Time Chevrolet***, 242 NLRB 625, 626 (1979), enf. denied on other grounds, 659 F.2d 1006 (9th Cir. 1981) (pooled voting is factor in merger finding). Yet it failed to object in Case 7-UD-538 to a single-facility deauthorization election petitioned-for and conducted in Jackson, Michigan on July 6, 2005. Although it asserts that its inaction was an unintentional lapse, it does not dispute that it had full notice of the petition and an opportunity to participate. The lapse, even if negligent, resulted in an election that militates against merger.

The Incumbent Union's case authority is unpersuasive. In ***Albertson's, Inc.***, 307 NLRB 338 (1992), the Board found that merger occurred based on evidence, wholly absent here, that the parties explicitly discussed and exchanged writings on the subject. In ***S.B. Rest. of Huntington, Inc.***, 223 NLRB 1445 (1976), referred to by the Incumbent Union as ***Steak and Brew***, the mutuality of the parties' intent to merge individually organized stores into a single unit was crystallized by both parties espousing that very position at the hearing, and arguing that a deauthorization petition for a vote within a single store should be dismissed on that ground.

In ***Heck's, Inc.***, 234 NLRB 756 (1978), the Board found merger based upon contract language, as well as evidence, missing here, that grievance settlements at one store set binding precedents at other stores. The litigation background of ***Heck's*** was unusual, and included an earlier unfair labor practice case settlement stipulation that apparently memorialized a nine-store unit. Perhaps because its facts were *sui generis*, its reasoning has not been specifically approved in any subsequent Board case.

I find no instruction from those decisions that turn in whole or part on comparing the length of time the parties bargain on a single- versus a multi-facility basis. In such cases, e.g., ***West Lawrence Care Center***, 305 NLRB 894 (1991), ***Wisconsin Bell***, 283 NLRB 1165 (1987), and ***Albertson's***, supra, the Board faced a clear intent to merge, and measured its tenure against the span of the parties' single-facility bargaining history. Here, the evidence does not evince a clear intent to merge, so the measuring test is not reached.

The Incumbent Union is correct that a community-of-interest analysis is improper, because this case does not present a question of unit scope for *de novo* determination. But just as a single-facility unit finding is presumptively appropriate in *de novo* cases, so must the evidence favoring an intent to merge separately certified units into one be clear and unmistakable. In either situation, the evidentiary threshold is high, in order to maximize expression of employee free choice. Without unmistakable evidence from the

contract, bargaining history, or the parties' course of conduct, I conclude that the parties did not mutually assent to the merger of the Employer's individually-certified units.

I find that the petitioned-for units of air traffic control specialists at the individually specified facilities are appropriate units for bargaining. Although there is evidence of centralized labor relations and corporate operations, the lack of employee interchange, absence of inter-tower contact, separateness of grievance administration, and degree of local autonomy vested in the site tower managers, preclude a finding that the identities of the individual facilities have been extinguished. ***North Hills Office Services***, 342 NLRB 437 fn.3 (2004); ***Van Lear Equipment, Inc.***, 336 NLRB 1059, 1063 (2001); compare ***Prince Telecom***, 347 NLRB No. 73 (July 31, 2006) (significant employee transfers); ***Budget Rent A Car Systems***, 337 NLRB 884 (2002) (functional integration and employee contact). I direct elections in the individual units.

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time air traffic controllers employed by the Employer at the Jackson County Airport in Jackson County, Michigan; but excluding all office clerical employees, managerial employees, confidential employees, guards and supervisors as defined in the Act.
>
> All full-time and regular part-time air traffic control specialists employed by the Employer at its facility located on W. Industrial Highway, Gary, Indiana; but excluding office clerical employees and guards, professional employees, and supervisors as defined in the Act.
>
> All full-time and regular part-time air traffic control specialists employed by the Employer at its West Trenton, New Jersey air traffic control tower site; but excluding all tower managers, and guards and supervisors as defined in the Act.
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> All air traffic controllers employed by the Employer at the Appleton Airport located in Outagamie County, Wisconsin; but excluding all office clerical employees, guards, and supervisors as defined in the Act.
>
> All air traffic controllers employed by the Employer at its Waukesha, Wisconsin Airport located in Waukesha County, Wisconsin; but excluding all office clerical employees and all guards and supervisors as defined in the Act.

All air traffic controllers employed by the Employer at Ohio State ATC Tower, 2160 Case Road, Columbus, Ohio; but excluding all office clerical employees and all guards and supervisors as defined in the Act.

All air traffic control specialists employed by the Employer at the Waukegan Control Tower in Waukegan, Illinois; but excluding guards and supervisors as defined in the Act, and all other employees.

Dated at Detroit, Michigan, this 13th day of August, 2007.

"/s/[Stephen M. Glasser]."

(SEAL) /s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. In the decertification elections, the employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Professional Air Traffic Controllers Organization (PATCO), FPD, NUHHCE, AFSCME, AFL-CIO.** In the certification elections, the employees will vote whether they wish to be represented for purposes of collective bargaining by **Professional Air Traffic Controllers Organization (PATCO), FPD, NUHHCE, AFSCME, AFL-CIO, or Professional Air Traffic Controllers Organization, Inc. (PATCO), or neither**. The date, time and place of the elections will be specified in the notice of election that the respective Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the units 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 dates, 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 quit or 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 respective Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters for the respective unit. ***North Macon Health Care Facility***, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). The Regional Director shall, in turn, make the lists available to all parties to the elections.

To be timely filed, the list(s) must be received in the respective Regional Office on or before **August 20, 2007**. No extension of time to file the lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the lists. Failure to comply with this requirement will be grounds for setting aside the election(s) whenever proper objections are filed. The list(s) may be submitted to the Regional Office by electronic filing through the Agency website, www.nlrb.gov,[7] by mail, or by facsimile transmission directly to the respective Regional Office. The burden of establishing the timely filing and receipt of the lists will continue to be placed on the sending party.

Since each list will be made available to all parties to that election, please furnish a total of **four** copies of the lists, unless the lists are 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. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to commence the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

[7] 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 then click the **Accept** button. The user then completes a form with information such as the case name and number, attaches the document containing the request for review, 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 web site, www.nlrb.gov.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **August 27, 2007**. The request may be filed electronically through E-Gov on the Board's website, www.nlrb.gov,[8] but may **not** be filed by facsimile.

[8] 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**.

To file the request for review 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 **Board/Office of the Executive Secretary** 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 then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click 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 web site, www.nlrb.gov.