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

CAPE MAY CARE CENTER Employer and	Case 4–RC–19654
UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 56, AFL–CIO Petitioner	

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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 in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved 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 Employer operates a nursing home in Cape May Court House, New Jersey, known as Cape May Care Center (herein called the Center). The Petitioner seeks to represent a unit of full-time and regular part-time Licensed Practical Nurses (LPNs). The Employer contends that based on changes it made in LPN job duties and responsibilities shortly before the hearing herein, all of its LPNs are supervisors within the meaning of Section 2(11) of the Act. The parties stipulated that if the LPNs are not found to be supervisors within the meaning of the Act, all LPNs, excluding the pool nurses, should be included in the unit. The Petitioner currently represents the Employer's certified nursing assistants (CNAs). There is no record evidence of a history of collective bargaining affecting the LPNs involved in the instant proceeding.

The Center is a single-level long-term care facility primarily for the elderly, with a capacity of 116 residents. It has two wings, with 60 residents in one wing and 56 in the other. Each wing is divided into two units, with approximately 30 residents per unit. Administrator Kathleen Higgins has overall responsibility for the Center and Director of Nursing (DON) Kathleen Murphy and Assistant Director of Nursing (ADON) Darlene Rattan are

responsible for the Center's nursing staff. Prior to March 22, 1999, the Employer employed two RN Supervisors[1] on the day shift (7:00 a.m. to 3:00 p.m.) and one RN Supervisor each on the evening (3:00 p.m. to 11:00 p.m.) and night (11:00 p.m. to 7:00 a.m.) shifts. Since March 24, 1999, the Employer has employed only one RN Supervisor on each of the three shifts.

At the time of the hearing, April 7, 1999, the Employer employed about seven RN supervisors, 13 full-time LPNs, eight pool LPNs (who work as needed to fill in when the Employer's regularly employed LPNs are absent) and about 44 CNAs. LPNs and CNAs provide direct patient care.[2] Typical staffing consists of four LPNs and 12 CNAs on day shift; one RN Supervisor, four LPNs and 10 CNAs on evening shift; and, either two RN Supervisors, an RN Supervisor and an LPN, or an RN Supervisor and two LPNs and six CNAs on night shift.

Through the date of the hearing herein, CNAs were permanently assigned to certain wings. RN Supervisors prepared written resident assignments for regularly scheduled CNAs on the day and evening shifts and designated break and lunch times for evening-shift CNAs. Day-shift CNAs rotate their breaks and lunches. It is not clear from the record how CNAs on the night shift are assigned to patients, nor how their breaks are designated. LPNs on the day and evening shifts assign floaters. If a regularly scheduled CNA is out, the LPN assigns the floater to cover for the absent CNA. If other changes need to be made because more than one CNA is out, or because residents are away from the Center or very sick, the LPN will reassign work as needed. When making these reassignments, the LPN, with "a lot of RN input," takes into consideration how much each resident needs and tries to distribute the work as evenly as possible.[3] LPN Markelina Craven testified that CNAs have complained about such assignments to RN Supervisor Frank Farelli, who told the CNAs, "Mickey [Craven] did it. … Let it stand. If a CNA wants to leave work early or becomes ill and asks to be sent home, LPNs may approve such a request, but rarely do so without first receiving approval from the RN Supervisor.

RN Supervisors evaluate CNAs with input from LPNs. The RN Supervisor prepares the evaluation, determines the ratings and presents the evaluation to the CNA. Evaluations are not used for determining raises. Raises are set by the CNA contract.[4] DON Murphy testified that evaluations "could be used for disciplinary purposes."[5]

All employees, including CNAs, can write up "problem identification" sheets to record employee performance, problems in the unit or work not completed by the prior shift. Both good and poor performance may be recorded on these forms. LPNs have written up such sheets for CNAs who have failed to perform their duties correctly. RN Supervisors review the forms, though it is not clear how the forms are used. Warnings under the Employer's disciplinary system are recorded on a different form. The only record evidence of LPNs writing up CNAs was Murphy's testimony that an LPN wrote up a CNA on a disciplinary form a few years ago.

In the first week of March 1999, the New Jersey Department of Health conducted an annual survey of the Center. DON Murphy testified that the Health Department found "deficiencies" in the Center's performance and

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[1] RN supervisors were at one time called Unit Managers.

[2] One LPN completes and transmits via modem forms known as "MDSs," which are required by the Federal Government. Prior to the hearing, the Employer also employed a part-time LPN for wound care. That individual resigned. It is not clear from the record whether the Employer intends to replace that LPN.

[3] Murphy testified that, within two weeks of the hearing, LPNs made these assignments without RN input.

[4] The record does not contain a copy of the collective bargaining agreement covering the CNAs.

[5] Murphy's example to illustrate this principle involved an evaluation which contained a reference to a disciplinary problem.

gave the Center 30 days to remedy the deficiencies. Other than certain medication-related deficiencies (which are the responsibility of licensed nurses and not CNAs), the deficiencies were not identified in the record. DON Murphy testified that Administrator Higgins, after reviewing the results of this survey, decided to not replace one of the RN Supervisors on day shift who was resigning effective March 24, 1999. She decided instead, according to Murphy, to relieve the remaining RN Supervisor on day shift of some of the responsibility for the entire shift by requiring LPNs to be more responsible and accountable for the CNAs in their units and to take a more active role in assigning them work, evaluating them and disciplining them. DON Murphy testified that LPNs were leaving "everything to the RN" and the Employer "wanted to get the leadership role" of the LPN "functioning well." On March 19, 1999, the Employer held mandatory meetings of the nursing staff on each shift. Seven or eight of the Employer's 11 LPNs employed at that time attended the meetings.

The purpose of these meetings was to review with the nursing staff the changes the Employer planned to implement in direct patient care procedures to remedy some of the deficiencies cited by the Department of Health. A written agenda distributed during the meeting for day-shift staff listed such items as reminding the staff to complete certain reports and to announce certain changes in the way medication carts were to be handled. During a portion of the meeting described in the agenda as "other," Administrator Higgins joined the meeting. What she said is the subject of some dispute. According to Murphy's contemporaneous notes, Higgins "introduced the new changes in the Nursing Dept. Steve Redman, RN [an RN Supervisor] will be the day shift Supervisor and will cover both wings. The role of the LPN is to be in charge of the hall and the personnel assigned." Murphy testified that Higgins also said:

> The function of the LPN would be to plan the assignments, to assign breaks, to monitor the work of the CNAs, and if it is not being carried out properly, that the LPN is going to be held responsible for it, too.
>
> And it was the LPNs' responsibility to correct any infringement on residents' rights, patient care, anything that has not been done properly. The LPN is supposed to even problem-identify it, write it up, do whatever, and correct it. And they were going to be held accountable for that.

LPN Jeffrey Thompson, who attended the day-shift and evening meetings, testified that Higgins did not say that LPNs would plan assignments or that they would be required to instruct CNAs to redo tasks if they failed to do them properly. According to Thompson, Higgins said only that LPNs would have more input and support from the Employer vis a vis the CNAs and if a CNA was not performing a job correctly and the LPN spoke to the CNA about it, the CNA would not be able to "just run straight into" the RN Supervisor's office. Rather, the CNA would be directed back to the floor to do his or her job. These changes were to go into effect on March 22, 1999.

The Employer prepared a new job description for LPNs in order to implement the changes. The job description was not ready by March 22, but was printed on April 5, 1999, two days before the hearing herein. Administrator Higgins did not testify at the hearing, but according to both LPN witnesses who testified, they had not experienced any changes in their job duties since March 22, 1999. The Employer's development coordinator read the new job description to some of the Employer's LPNs on April 6, 1999, but all of the Employer's LPNs had not seen or heard the new job description as of the date of the hearing herein. The job description, which uses the title "Charge Nurse,"[6] states that the primary purpose of the Charge Nurse's job is to provide direct nursing care to the residents and "supervise the day-to-day nursing activities performed by nursing assistants." The job description describes the Charge Nurses' duties and includes a section entitled "Personnel Functions." The first sentence of that section states, "Participate in employee performance evaluations, determining [sic] your shift's staffing requirements, and making [sic] recommendations to the Nurse Supervisor concerning employee dismissals,

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[6] The Employer previously called some LPNs and all RN Supervisors "charge nurses." However, prior to the new job description, there was no difference in duties between LPNs called charge nurses and those who were not called charge nurses, except for the two nurses who provided wound care and transmitted MSDs. These LPNs were not called charge nurses.

transfers, etc." The only other reference in the job description to discipline is a provision requiring the Charge Nurse to ensure that discipline is administered fairly on a nondiscriminatory basis.

A finding of supervisory status is warranted only where the individuals in question possess one or more of the indicia set forth in Section 2(11) of the Act. *Providence Hospital,* 320 NLRB 717, 725 (1996); *The Door*, 297 NLRB 601 (1990); *Phelps Community Medical Center,* 295 NLRB 486, 489 (1989). The statutory criteria are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Providence Hospital,* supra, 320 NLRB at 725; *Juniper Indus.,* 311 NLRB 109, 110 (1993). The statutory definition specifically indicates that it applies only to individuals who exercise independent judgment in the performance of supervisory functions and who act in the interest of the employer. *NLRB v. Health Care & Retirement Corp.,* 511 U.S. 571, 574, 146 LRRM 2321, 2322 (1994); *Clark Machine Corp.,* 308 NLRB 555 (1992). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. *Providence Hospital,* supra, 320 NLRB at 725. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. Id.; *Juniper Indus.,* supra, 311 NLRB at 110. The authority to effectively recommend "generally means that the recommended action is taken with *no* independent investigation by superiors, not simply that the recommendation is ultimately followed." *ITT Lighting Fixtures,* 265 NLRB 1480, 1481 (1982) (emphasis in original). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Robert Greenspan, DDS,* 318 NLRB 70 (1995), enfd. mem. 101 F.3d 107, 153 LRRM 2704 (2nd Cir. 1996), cert. denied 117 S.Ct. 68, 153 LRRM 2736 (1996), citing *NLRB v. Lindsay Newspapers,* 315 F.2d 709, 712 (5th Cir. 1963); *Gaines Electric,* 309 NLRB 1077, 1078 (1992); *Ohio River Co.,* 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578, 140 LRRM 2120 (6th Cir. 1992).

The burden of establishing supervisory status is on the party asserting that such status exists. *Northcrest Nursing Home,* 313 NLRB 491, 496 fn. 26 (1993); see *Bennett Indus*., 313 NLRB 1363 (1994). The Board has cautioned that the supervisory exemption should not be construed too broadly because the inevitable consequence of such a construction would be to remove individuals from the protections of the Act. *Providence Hospital,* supra, 320 NLRB at 725; *Northcrest Nursing Home,* supra, 313 NLRB at 491. Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Phelps Community Medical Center,* supra, 295 NLRB at 490. The legislative history of Section 2(11) makes it clear that Congress intended to distinguish between employees performing minor supervisory duties and supervisors vested with genuine management prerogatives, and did not intend to remove individuals in the former category from the protections of the Act. S. Rep. No. 105, 80th Cong., 1st Sess., 4 (1947), reprinted in 1 Legis. Hist. 407, 410 (LMRA 1947). The legislative history also shows that Congress considered true supervisors to be different from lead employees or straw bosses who merely provide routine direction to other employees as a result of superior training or experience. Id., reprinted at 1 Legis. Hist. at 410 (LMRA 1947). *Providence Hospital,* supra, 320 NLRB at 725; *Ten Broeck Commons,* 320 NLRB 806, 809 (1996). An individual will not be found to be a supervisor unless he or she has a "kinship to management." *Adco Electric,* 307 NLRB 1113 fn. 3 (1992), enfd. 6 F.3d 1110, 144 LRRM 2763 (5th Cir. 1993); *NLRB v. Security Guard Service,* supra, 66 LRRM at 2250. Further, "supervisory direction" of other employees must be distinguished from direction incidental to an individual's technical training and expertise, and technical employees will not be found to be supervisors merely because they direct and monitor support personnel in the performance of specific job functions related to the discharge of their duties. *Robert Greenspan, DDS,* supra, 318 NLRB at 76*; New York University,* 221 NLRB 1148, 1156 (1975).

In *NLRB v. Health Care & Retirement Corp.,*[7] which also concerned the status of LPNs, the Supreme Court found that the Board had created a false dichotomy between acts taken in connection with patient care and acts taken in the interest of the employer. As patient care was the business of the nursing home involved, the Court concluded that attending to the needs of patients was in the interest of the employer. Accordingly, the Court rejected the Board's position that "a nurse's direction of less skilled employees in the exercise of the professional judgment incidental to the treatment of patients, is not authority exercised in the interest of the employer" as inconsistent with

[7] Supra, 511 U.S. 571, 146 LRRM 2321.

the statute and the Court's precedent. 511 U.S. at 577–580, 146 LRRM at 2325–2325, citing *NLRB v. Yeshiva University,* 444 U.S. 672 (1980); *Public Employees Retirement System v. Betts,* 492 U.S. 158 (1989); *Packard Motor Car Co. v. NLRB,* 330 U.S. 485 (1947). However, the Court made clear that its decision in *Health Care* concerned only the proper interpretation of the statutory phrase, "in the interest of the employer," that the Board did not petition the Court to uphold its order under any other theory, and that the Court would have given an exposition and analysis of the record evidence if the supervisory issue had been presented under the proper test. *NLRB v. Health Care & Retirement Corp.,* supra, 510 U.S. 810, 146 LRRM at 2326–2327. Accordingly, in considering the supervisory issue raised in the instant case, there is no question that the LPNs' direction of the CNAs is exercised in the interest of the Employer. Thus, to resolve the supervisory issue presented, a determination must be made as to whether the LPNs possess one of the 12 indicia of supervisory authority listed in Section 2(11) of the Act, and, if so, whether the exercise of that authority requires the use of independent judgment. *NLRB v. Health Care and Retirement Corp.,* supra, 511 U.S. at 574, 146 LRRM at 2326; *NLRB v. SRDC, Inc.,* 45 F.3d 328, 148 LRRM 2257 (9th Cir. 1995).

With respect to the Employer's claim that it gave its LPNs supervisory authority in the March 19, 1999 meetings with nursing staff, only seven or eight of the Employer's 11 LPNs attended that meeting. There is, in any event, a dispute about what Administrator Higgins said during the March 19 staff meeting. As indicated above, the Board will not find supervisory status based on evidence that is in dispute. *Phelps Community Medical Center*, supra, 295 NLRB at 490. The April 5, 1999 job description for "Charge Nurses," which was intended to implement the changes allegedly announced on March 19, had not been fully distributed or implemented by the date of the hearing. The LPN witnesses who testified reported no changes in their job duties after the March 19 meetings and the partial distribution of the new Charge Nurse job description. The Board will not make a supervisory finding on the basis of job descriptions alone. The Board insists on evidence of actual supervisory authority and not mere paper authority. *Store Employees Local 347 v. NLRB*, 422 F.2d 685, 71 LRRM 2397, 2399–2400 (D.C. Cir. 1969); *NLRB v. Security Guard Service*, 384 F.2d 143, 66 LRRRM 2247, 2250 (5th Cir. 1967), enfg. 154 NLRB 8 (1965); *North Miami Convalescent Home,* 224 NLRB 1271, 1272 (1976).

As to the authority of the LPNs either prior to and after the March 19 meeting or the new job description, there is no evidence that the Employer's LPNs have the authority to hire, transfer, lay off, recall or promote employees, or effectively to recommend such actions. There is no evidence that they have the authority to discharge or effectively recommend discharge of employees, or that they are involved in CNA grievance handling. Thus, the Employer's claim of supervisory status rests on their involvement in directing and assigning work to the CNAs, issuing "discipline" to them, and affecting their terms of employment through evaluations.

LPNs do not exercise independent judgment in assigning work to CNAs. Prior to the March 19 meeting, the record is clear that RN Supervisors prepared resident assignments in advance and LPNs needed only direct floaters to cover the patients of an absent CNA or divide work evenly when more than one CNA is absent or a CNA is short a patient and thus has extra time. The testimony regarding Administrator Higgins' statements as to the LPNs' role in assignments is disputed. Thus, DON Murphy testified that LPNs were to have a more active role in assigning CNAs that they would plan the assignments and assign breaks. To the contrary, one LPN who testified stated that Higgins did not say LPNs would plan assignments. It is undisputed however, that LPNs make reassignments and assign floaters. In making these reassignments/assignments to floaters, LPNs have input from the RN and they take into account patient care needs and balancing the work load. Balancing work assignments among staff members using an equitable method does not require the use of independent judgment. *Providence Hospital,* supra, 320 NLRB at 727. Moreover, the Board has repeatedly found that the work assignments given by charge nurses do not involve independent judgment, and there is no record evidence that convincingly distinguishes the instant case. See e.g. *Illinois Veteran's Home,* 323 NLRB No. 161, slip op. at 2 (June 6, 1997), *Evangeline of Natchitoches,* 323 NLRB No. 25, slip op. at 2 (Feb. 27, 1997); *Rest Haven Nursing Home,* 322 NLRB 210 (1996); *Altercare of Hartville*, 321 NLRB 847 (1996); *Ten Broeck Commons,* supra, 320 NLRB at 809–812*; Northcrest Nursing Home,* supra, 313 NLRB at 502–505.[8] Similarly, the LPNs monitor the work of CNAs and bring

[8] The Third Circuit Court of Appeals, in *NLRB v. Attleboro Nursing Center*, 176 F3d 154, 161 LRRM 2139 (3d. Cir. 1999), rejected the Board's conclusion that the LPNs' authority to assign and direct CNAs was routine and not supervisory authority within the meaning of Section 2(11). 176 F3d at 166-

performance deficiencies to their attention. Prior to the March 19 meeting, all employees could write up "problem identification sheets." LPNs, after the March 19 meeting, were to have more input and support from the Employer regarding CNA job performance. Thus, LPNs could direct CNAs to go back to the floor and properly perform their tasks. These responsibilities do not require independent judgment within the meaning of Section 2(11) of the Act. *Ten Broeck Commons,* supra, 320 NLRB at 811. Further, there is no evidence that LPNs use independent judgment in permitting CNAs to leave work early or go home sick. Rather, the record shows that when CNAs express a need to leave early or go home sick, their requests are usually approved by the RN Supervisor and it is only rarely that an LPN will send someone home without the RN Supervisor's approval. See *St. Francis Medical Center–West,* 323 NLRB No. 185, slip op. at 2–3 (June 19, 1997). In sum, none of the assignments made by the LPNs, nor the direction they give to the CNAs either prior to or after the March 19 meeting, involves the exercise of independent judgment necessary to confer supervisory status. *Ten Broeck Commons*, supra, 320 NLRB 806; *Providence Hospital*, supra, 320 NLRB 717; *Lakeview Health Center*, supra, 308 NLRB 75.

LPNs do not have authority to issue disciplinary warnings independently. Although there is a progressive disciplinary system in effect, the record reflects that on only one occasion, years ago, an LPN wrote up a CNA on a disciplinary form.[9] The fact that LPNs write up problem– identification sheets concerning CNAs does not evidence supervisory authority. All employees — including CNAs — may complete these forms to record both good or bad performance. Although it is not clear what RN Supervisors do with these forms, there is no evidence that LPNs use these forms to affect directly or indirectly any term or condition of a CNA's employment. See *Northern Montana Health Care Center,* 324 NLRB 752 (1997), enfd. in relevant part 161 LRRM 2576 (9th Cir. 1999); *Children's Farm Home,* 324 NLRB No. 13 (July 25, 1997); *Evangeline of Natchitoches,* supra, 323 NLRB No. 25, slip op. at 2; *Ten Broeck Commons,* supra, 320 NLRB 806. Based on the foregoing, I find that the record evidence fails to establish that LPNs discipline, or effectively recommend discipline of CNAs.

As to the evaluation of CNAs, the LPNs' involvement is limited to providing input to RN Supervisors, who prepare the evaluations, determine the ratings and present the evaluations to the CNAs. Input alone, without the responsibility for preparing and rating CNAs, does not show supervisory status. *Ten Broeck Commons*, supra, 320 NLRB at 813; *Northcrest Nursing Home*, supra, 313 NLRB at 507; *ITT Lighting Fixtures*, supra, 265 NLRB 1480.

Although the new job description would give LPNs the authority to recommend employee dismissals and transfers, and the responsibility to ensure that discipline is meted out fairly, the job description had not been implemented at the time of the hearing. However, even if it had been implemented, the job description does not detail how much weight LPN recommendations would carry and, absent implementation, there are no examples of recommendations that we may examine to see how much weight the recommendations carried in practice. Accordingly, the job description did not cloak LPNs with authority to make effective personnel recommendations within the meaning of Section 2(11) of the Act.

Nor would the new job description have granted LPNs supervisory authority based on their new role in evaluating CNAs. Had the Employer implemented the job description, LPNs would have the responsibility to prepare CNA evaluations, but there is no evidence that any personnel actions would result from these evaluations. The Board has found supervisory status where an individual independently completes evaluations of other employees which lead directly to personnel actions such as merit raises, *Hillhaven Kona Healthcare Center,* 323 NLRB 1171 (1997); *Bayou Manor Health Center*, 311 NLRB 955 (1993), but has declined to find such status when the evaluations themselves do not affect these actions, *Ten Broeck Commons*, supra, 320 NLRB at 813; *Lakeview Health Center,* supra, 308 NLRB at 78. Although DON Murphy testified that evaluations may be used for disciplinary purposes, in her example of that use, a disciplinary problem was recorded in an evaluation. There is no other evidence that evaluations are used to discipline employees and merely reporting discipline problems does not

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169, 161 LRRM at 2148-2150. However, the LPNs in *Attleboro* initially set or assisted in setting daily assignments. In the instant case RN Supervisors – not LPNs – initially set CNA assignments.

[9] Although the new job description calls for CNAs to have a bigger role in the disciplinary process, it had not been implemented by the date of the hearing (as discussed above).

demonstrate supervisory authority. *Ten Broeck Commons,* supra, 320 NLRB at 812. Based on the foregoing, I find that the Employer has not satisfied its burden of proving that the LPNs possess the indicia of supervisory authority set forth in Section 2(11) of the Act. *Children's Farm Home,* supra, 324 NLRB No. 13; *Evangeline of Natchitoches,* supra, 323 NLRB No. 25; *Ten Broeck Commons*, supra, 320 NLRB 806.

Based on the foregoing, I find that 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 Licensed Practical Nurses employed by the Employer at its Cape May Court House, New Jersey Center, excluding Registered Nurses, pool nurses, guards and supervisors as defined in the Act.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,[10] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS

In order to assure 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 **3** copies of an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Clinic*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer–generated lists should be printed in at least 12–point type. In order to be timely filed, such list must be

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10 Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **August 16, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **August 23, 1999**.

Dated August 9, 1999

at Philadelphia, PA

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DOROTHY L. MOORE–DUNCAN
Regional Director, Region Four

177-8540-8000-8050

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