

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

COSTCO WHOLESALE, INC.

Employer

and

Case No. 29-RC-9457

LOCAL 342-50, UNITED FOOD AND
COMMERCIAL WORKERS UNION,
AFL-CIO

Petitioner¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before James Kearns, a Hearing Officer of the National Labor Relations Board, herein called the 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 hereby are affirmed.
2. The parties stipulated that the Employer, a State of Washington corporation, with its principal office and place of business located at 999 Lake Drive, Issaquah, Washington, is engaged in the retail operation of warehouse stores throughout the United States, including a store located at 1925 Richmond Avenue, Staten Island, New York, herein called the Richmond Avenue facility.

¹ The names of the Employer and Petitioner appear as amended at the hearing.

During the past calendar year, the Employer derived gross revenues in excess of \$500,000 from its retail operations. During the same period, the Employer purchased and received at its Richmond Avenue facility goods, products and materials valued in excess of \$5,000 directly from points located outside the State of New York.

Based upon the stipulations of the parties, and the record as a whole, I find that 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 Sections 2(6) and (7) of the Act.

5. On April 21, 2000, the undersigned issued a Decision and Direction of Election in Costco Wholesale, Inc., Case No. 29-RC-9446 directing an election in a unit of meat department employees employed at the Employer's facility located at 976 Third Avenue, Brooklyn, New York, herein called the Third Avenue facility. Therein, the Employer contended that the petitioned-for unit of meat department employees employed at that location was inappropriate and that the only appropriate unit was a storewide unit consisting of approximately 288 employees. The record in that matter established, inter alia, that the meatcutters at that facility exercised a variety of traditional meatcutting skills, that the meat department at that location functioned, by and large, as a separate operation,

that the meat department employees were separately supervised, and that they had a community of interest that was separate and distinct from that of the other employees working at that location. In the instant case, the Petitioner seeks an election in a unit of approximately 11 meat department employees employed by the Employer at its Richmond Avenue store. The Employer again maintains that the only appropriate unit is a wall to wall unit consisting of the approximately 235 nonsupervisory employees employed at that location. During the hearing, the parties agreed to take notice of the record developed in Case No. 29-RC-9446, and introduced additional testimony from witnesses pertaining to the Richmond Avenue location.

The record in Case No. 29-RC-9446 showed that nationwide, the Employer's business is divided into various regional operations. Russ Miller, the Vice President of Regional Operations for one of these subdivisions, is responsible for overseeing the operation of 15 of the Employer's retail outlets in the states of New York and New Jersey. Each of these locations employs a general manager who reports to Miller. Although the record did not show the precise managerial structure with regard to the Richmond Avenue store, it appears to be similar if not identical to the supervisory hierarchy at the the Third Avenue location, which employed three "assistant" managers: a front end manager responsible for overseeing the cashiers; an administrative manager, and a manager of the fresh and "ancillary" departments (the fresh manager). It appears that a second tier of managers report to the assistant managers. Among

the managers at the Richmond Avenue location that reports to the fresh manager is the manager of the meat department, Tom Gugliamo.

The Employer asserts that Gugliamo is a Section 2(11) supervisor. The Petitioner's position concerning his supervisory status is not clear. In its brief, the Petitioner maintains that Gugliamo is not a statutory supervisor. However, it goes on to argue that Gugliamo supervises the department on a day to day basis, and that he and prior meat department managers have utilized independent judgment when performing various functions that are indicative of supervisory status, such as scheduling employees and assigning work.

For the most part, Gugliamo is responsible for the day to day direction of the four cutters and 7 wrappers and clean up employees he works with. Unlike his coworkers, he is salaried. He sets up the machinery in the department before the meatcutters arrive, and spends at least 30% of his time cutting meat. He is also responsible for ordering product and supplies, setting the weekly work schedules, and for the preparation of cutting lists. The work schedules he produces must be approved by the fresh manager. Similarly, meat department employees requesting vacations or time off submit written requests to Gugliamo who in turn submits them to the fresh manager.

The preparation of cutting lists involves determining what items need to be cut and the number of cuts that should be produced. The record does not clearly show what factors he considers when making this determination or the degree to which his decisions are free of review from higher management officials.

Because it appears that Gugliamo has only managed the meat department for approximately two months he has not heretofore played a role in the hiring or disciplinary process. However, there have been occasions in which past meat department managers at the Richmond Avenue location have interviewed applicants. Andrew Lullo, a meatcutter employed at the Richmond Avenue location, testified that prior to his hire in about early 1997, he was interviewed by then meat department manager Jerry Brunetto. After undergoing a background check and a drug test, Brunetto called him and informed him he had been hired. No other individual interviewed Lullo prior to his hire. Regional Meat Manager Randy Mazzotti also testified that the meat department manager who preceded Gugliamo interviewed applicants.

It does not appear that Gugliamo has disciplined employees. However, both Mazzotti and store manager Henry McIntosh testified that Gugliamo's predecessor issued written warnings. But, they could not recall any specific instances in which this occurred or whether these warnings served as a basis for further disciplinary action. McIntosh asserted that if an employee receives several written warnings he is given a final warning. However, it does not appear that the meat manager has the authority to independently discharge employees, and there is no evidence that a meat manager has ever effectively recommended the termination of any of the employees he works with.

Lullo testified that a former meat department manager, along with the store's general manager and the Regional meat manager, met with him on one occasion to evaluate his performance. However, it is not clear when this

occurred, or whether this evaluation resulted in a wage increase or other personnel action. There is also evidence that meat department managers at other stores have attended management meetings.

Section 2(11) of the Act defines a supervisor as:

...any individual having authority, in the interests 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.

Because an employee deemed a supervisor loses of much of the protection that the Act affords, the Board is careful not to construe supervisory status too broadly. Mississippi Power and Light Company, 328 NLRB No. 146 (1999); Panaro and Grimes, 321 NLRB 811 (1996). Thus, the burden of establishing supervisory status rests with the party alleging it, and the mere exercise of “supervisory” functions is insufficient to confer supervisory status if such exercise does not require the use of independent judgement. At the same time, if it is clear that an individual possesses supervisory authority (i.e., a newly hired personnel director), a supervisory finding may be made in the absence of specific instances in which that authority has been exercised. Alaska Cummins Services, Inc., 281 NLRB 1194, fn. 1 (1986).

In the instant matter, the extent to which the preparation of cutting lists involves the use of independent judgement or is free of oversight by other supervisory officials is not clear from the record. It is also not clear whether Gugliamo’s role in approving requests for time off and preparing weekly work

schedules is largely routine in nature or requires the exercise independent judgment. The extent of his authority in this regard is also somewhat ambiguous, as the record suggests that the final decision regarding work schedules and requests for time off is with the fresh manager.

Although the record does not conclusively establish that Gugliamo has exercised supervisory authority, there is evidence that strongly suggests that he may possess such authority and that his failure to exercise it thus far is largely a result of his short tenure. Thus, there is evidence that prior meat department managers have interviewed employees, and in one such case, the meat department manager was the only individual to speak to an employee before he was hired. There is also evidence that past meat department managers may have “evaluated” employees and have played a role in the disciplinary process. Since Gugliamo has only recently assumed his position, a determination of his status may, in part, rest upon an examination of the authority that the Employer routinely bestows upon meat department managers, whether this authority differs from store to store, and an analysis of instances in which past meat department managers at the Richmond Avenue store or other locations have performed supervisory functions.

Given the seemingly contradictory arguments advanced by the Petitioner, it is not clear that there is a genuine dispute concerning Gugliamo’s supervisory authority. In these circumstances, and because there is evidence which suggests, but does not conclusively establish, that he is a statutory supervisor, I will permit him to vote subject to the challenged ballot procedure.

The Meatcutters

The meat department employees, four full-time cutters, one full time wrapper and 6 service assistants/cleaners work in a separate enclosed area. The room contains a band saw, a tenderizer, a meat grinder, an automatic wrapper, cutting blocks and various cutting instruments. To prevent spoilage the temperature in the room is maintained at approximately 47°. Meat department employees are required to wear coats, gloves, plastic aprons, hair nets and beard nets to prevent contamination.

The duties of the four meat cutters include cutting red meat, wrapping product, assembling and inspecting the machinery in their department, and other duties incidental to the cutting process such as cleaning and disinfecting the blocks on which they work. They receive most of their day to day direction from the meat department manager. However, they see the store manager on a daily basis, and the fresh manager occasionally tells them when the display case is short of certain items.

It appears that all the current meatcutters had prior experience in the meatcutting industry before they were hired. Meatcutter Andrew Lullo testified that his past experience included working on carcassed meat. The beef, lamb, veal and pork that the meatcutters currently process, however, is delivered in boxes that weigh up to 90 pounds and contain various sections of the various carcasses. These are then generally carved into smaller pieces.

Lullo testified in detail concerning various aspects of the cutting process. This process appears to vary according to the type of meat (beef, pork, veal or lamb) that is being cut and the section (loins, ribs, shoulder clod etc.) that is being carved.

If the section weighs several pounds it is generally placed, fat side down, on a conveyor belt and run through a tenderizer. It appears that the procedures the cutters subsequently follow vary according to the part of the carcass that is being cut.

Thus, if the cutters are carving bone-in pork loins, they would use a band saw to separate the hip from the loin, cutting along the joint where the hip and the loin meet. Since the bone at the bottom of the loin apparently protrudes, they chime it flat. They then remove the spinal chord and shave off the top of the rib bone. After the cutters remove the animal's tail from the loin end, it appears that they slice both the rib end and the loin end, which has the "filet mignon," into chops.

It appears from both the record in Case No. 29-RC-9446 and the instant case that cutters must be adept at removing certain bones, veins, muscles, nerves, skin and fat. Lullo testified that on a daily basis his work requires that he angle meat as it is pushed through the band saw, chime bones to give them a more attractive appearance, and debone some of the meat that he cuts. His description of the cutting procedure for the various cuts of meat the Employer produces revealed several occasions when it was necessary to trim fat, remove nerves, chime bones, "seam" and remove skin. Lullo further testified that

meatcutters are occasionally called upon to “merchandise” items, or obtain different cuts from the same piece of meat. Although the operation of some of the machinery, such as the tenderizer, requires little skill, the use of the band saw carries the risk of amputation and only meatcutters may operate it. Lullo testified that the Employer’s success in selling prime cuts of red meat largely hinges upon the ability of the meatcutters to cut and display them in an attractive manner.

Notwithstanding the apparent importance the Employer places upon this work, the Employer contends that the cutting of beef, lamb, pork and veal is relatively unskilled, and that, in any event, the cutters do not spend a great deal of time performing traditional meat cutting skills. The Employer maintains that the cutters spend at least half of their time doing unskilled work such as tenderizing the meat, assembling and disassembling their tools, sharpening their knives, cleaning their tools and the cutting blocks between cuts, checking the case in which the meat is displayed, and answering customers’ questions.

In further support of its contention that cutters spend relatively little time processing red meat, the Employer produced a sales report for the meat department covering the period from April 3 to April 9, 2000. Although most if not all the meat that is sold is delivered to the Richmond Avenue facility in boxes, much of the meat, such as chicken, sausage, and virtually all the seafood with the exception of swordfish and some cod, is not cut before being sold. Mazzotti estimated that approximately 43% of the product sold by the meat department is not cut. However, at least 60% of the ground beef that is sold consists of

trimmings left over from other cuts, and this was not included in Mazzotti's calculations. Further, it appears from the record in both Case No. 29-RC-9446 and the instant case that the meatcutters are not responsible for handling most of the seafood, poultry and processed meat that is sold by the department. Rather, these items are generally wrapped and displayed by other meat department employees. Thus, even assuming cutters spend a substantial portion of their time performing relatively simple tasks such as tenderizing meat, they still appear to spend several hours each day cutting the various red meats that the Employer sells. Mazzotti, who is responsible for meatcutting operations at 15 outlets, estimated that cutters spend about half of their time cutting red meat. Lullo placed this estimate at 7 to 7½ hours per day.

The Employer contends that even if the meat cutters spend a substantial portion of their time processing the Employer's product, when compared with cutters working at other retail establishments, those employed by the Employer are relatively unskilled. Mazzotti testified that typical retail outlets sell a considerably greater variety of cuts than the Employer produces. He further asserted that most meat has been trimmed when it arrives, relatively little deboning is required, and that it is generally not necessary for cutters to angle meat while cutting it. He also stated that it is the Employer's policy not to customize its cuts and that the Employer's meatcutters generally do not "merchandise" different muscles for different cuts. However, the Employer's argument that the cutting duties exercised by these employees required relatively little skill was somewhat undercut by Mazzotti's admission that the Employer

holds seminars on proper cutting techniques. It was further undercut by his estimate that six months of intensive training (training in which a cutter spends virtually all his time on the blocks) would be required to master these techniques. Lullo asserted that it would take 5 to 6 years for an employee to learn to properly and efficiently process the Employer's product.

The Petitioner's assertion that the meatcutters are relatively skilled employees appears to have some support in their rate of pay. As set forth in the employee handbook, the wages for cutters, range from \$9.00 to \$17.70 per hour depending upon length of service. However, it appears from the record in Case No. 29-RC-9446 that lead cutters can be paid as much as \$18.45 per hour. Lullo earns an hourly wage of \$17.70. Although the record did not reflect the precise wage rates received by the three other meatcutters at the Richmond Avenue store, it appears that they have all had prior experience in the industry.² Truck drivers employed by the Employer earn no more than \$17.00 per hour, while the wage rates of service assistants and service clerks plateau at an hourly rate of \$14.50 and \$16.17 respectively. Among the remaining hourly employees employed by the Employer, only some of the professional employees, such as licensed opticians (\$19.17 to \$22.67 per hour) and pharmacy technicians, earn a higher rate of pay than that received by meatcutters.

² There was testimony that a former meatcutter, Rory Smith, learned his trade on the job. However, Smith permanently transferred out of the meat department in 1997 after experiencing difficulties with the then meat department manager.

The remaining meat department employees

The responsibilities of the remaining employees in the meat department include wrapping, maintaining the case in which the meat and fish are displayed, and cleaning the meat department. Dan (LNU) wraps product, either by hand or with an automatic wrapper, inputs a bar code onto the label that is affixed to the package, and fills the display case. Dennis (LNU) and Kevin Clifford assist the wrapper, maintain the display case, and operate the meat grinder. Approximately every weekend the Employer runs a road show, in which it displays and sells seafood outside the department, and Robert Eisenstein is responsible for packaging and weighing seafood for customers. During holidays, he is joined by other assistants in the meat department. He receives further assistance from front end employees during the month of December. Sal (LNU) and Keith, along with Eisenstein when he is not working the road show, are responsible for cleaning the department. This involves disassembling and sanitizing the machinery, sweeping and mopping the floors, and removing the garbage. It appears that with the exception of the wrapper, these employees generally start work at about 3:30 p.m., about the time the meatcutters finish for the day. The Employer classifies these employees as service assistants and their pay ranges from \$8.00 to \$14.00 per hour. The record further shows that hourly employees throughout the company receive the same holidays, sick leave, and other fringe benefits.

Contact and interchange

There is little contact or temporary interchange between meat department workers and other store employees. With regard to the former, service assistants in the meat department occasionally venture into the receiving area to retrieve meat or other needed supplies. When necessary, a receiving employee will use a forklift to transport needed materials to the meat department. It appears that the deli and the meat department share the same cooler, and a deli employee will prepare raw chicken on a spit in the meat department before bringing it to the rotisserie area. Each morning the meat department provides the deli with various cuts that the deli then prepares, and there was testimony that employees from other departments occasionally venture into the meat department to weigh items. As noted above, in December, cashiers assist service assistants from the meat department in weighing and packaging the seafood sold at the road show. For the most part, however, any contact that arises between meat department workers and other store employees appears, by and large, to be incidental to the functions performed by meat department employees in the regular course of their duties.

With regard to interchange, there have been several permanent transfers involving meat department employees. Since 1997, five employees have transferred out of the meat department, two of them voluntarily, and two employees have transferred into the meat department. Temporary interchange is relatively rare. There have been a few occasions in which service assistants in the meat department have helped clean the deli and bakery, and a few occasions

in which employees from these departments assisted cleaners in the meat department. However, this does not appear to be a common occurrence.

Analysis

When the Board first began examining meatcutter units in the retail industry, meat cutters generally carved the entire carcass into primal or subprimal parts and frequently customized their cuts. The work involved a significant amount of deboning and trimming, and meatcutters were often required to undergo formal apprenticeship programs. As a result of this specialized training, the Board typically found appropriate separate units of meatcutters, and in Big Y Supermarkets, 161 NLRB 1263, 1268 (1966) the Board asserted that such units could be deemed presumptively appropriate. As boxed meat replaced entire carcasses as the type of meat customarily delivered to establishments, it became possible to process the product without exercising the full panoply of meatcutting skills that cutters had mastered in the past. In several cases during the 1970s, 80s and 90s the Board found that in view of the transition to the use of boxed meat at retail establishments, the separate unit presumption was no longer applicable. Accordingly the Board dismissed several petitions seeking elections in such units, or directed elections in larger units.³ In Scolari's Warehouse Markets, Inc.,⁴ the Board concluded that its approach in these more recent cases had been overly restrictive, and that it had failed to thoroughly examine the work meatcutters performed and the degree of skill

³ Copps Food Center, 301 NLRB 398 (1991); Hall's Super Duper, 281 NLRB 1116 (1986); Ashcraft's Market, 246 NLRB 471 (1979).

⁴ 319 NLRB 153 (1995).

required to perform it. While the Board found that the separate unit presumption was not applicable to the meatcutters at issue therein, it concluded that it would nonetheless be necessary to analyze the skills these employees exercised, along with other traditional community of interest factors, to determine whether a separate unit of meat department employees was appropriate. In Scolari's and in subsequent cases the Board has paid particular attention to the following factors when determining the appropriateness of a separate unit of meat department employees: (1) whether a substantial portion of the Employer's meat department business involves boxed meat; (2) whether the continued application of specialized meatcutting skills is necessary to process the meat; (3) the training required to perform their work; (4) the percentage of the unit that is engaged in skilled meatcutting work; (5) whether the meat department employees are separately supervised; (6) the degree of interchange between meat department employees and other store personnel; and (7) the wages of meat department workers as compared to other employees. Wal-Mart Stores, Inc., 328 NLRB No. 126 (1999); K Mart Corporation, 323 NLRB 582 (1997).

Applying each of these factors to the instant case, I find appropriate the unit sought by the Petitioner. It appears from the limited information provided by the Employer that the majority of the product sold by the department arrives at the facility as boxed meat. Although some of this meat is not cut, it appears that most if not all the boxed meat that arrives at the Richmond Avenue store is handled in some way by meat department employees. Meat that is not cut appears to be ground and/or packaged before being placed on display. The

percentage of product that is actually cut (43%) is significant, and it appears that the meatcutters employed by the Employer spend a large portion of their time cutting boxed meat.⁵

It also appears that the continued application of traditional meatcutting skills is necessary to perform the work. It is clear from the record in Case No. 29-RC-9446 and in the instant matter that cutting the Employer's product requires a knowledge of various sections of the carcass, the various cuts that can be produced from each of them, the type of meat (i.e. lamb, beef, veal or pork) that is being carved, and the procedures by which each section is processed. Although they produce fewer cuts than most retail establishments, the Employer's meatcutters must be adept at removing certain veins, skin, nerves, bones and fat. Lullo testified that it is necessary to angle meat, chime bones and debone cuts on a daily basis. The Board has found that the use of a band saw, the ability to seam meat, debone cuts, chime bones to give them a more attractive appearance, and angle meat when it is cut involves the exercise of traditional meatcutting skills.⁶ The Employer's argument that only the time that cutters spend using their knives should be regarded as time spent exercising traditional meatcutting skills, and that the time they spend sharpening their knives, cleaning the blocks between cuts and assembling and disassembling tools should be disregarded, is not compelling. These functions are all a part of the meatcutting process. Moreover, Lullo asserted that properly sharpening a

⁵ In Wal-Mart, 26.4% of the meat sold required cutting. Estimates as to the amount of time meatcutters in Wal-Mart spent carving meat ranged from 10% to 90%.

⁶ K-Mart, supra at 587.

knife and becoming familiar with the machinery and tools cutters use requires a certain amount of knowledge and skill. The successful performance of this work requires that knives be properly honed and all equipment be in working order. The failure to properly carve and display the various cuts the Employer sells can be costly.

It appears undisputed that considerable training is required to acquire the skills that the meatcutters in the petitioned-for unit exercise. All the meatcutters working at the Richmond Avenue facility have prior experience in the industry and Lullo has worked on carcassed meat. Mazzotti estimated that six months of continuous training would be required for a new hire to efficiently complete the meatcutting tasks he is called upon to perform, and Lullo placed this estimate at five to six years. The wages the meatcutters receive appears to reflect this skill level.⁷

Moreover, at least 4 of the 11 employees in the unit perform skilled meatcutting work, a proportion the Board has deemed considerable.⁸

Further, they have little meaningful interchange or contact, if any, with other store personnel. The transfers that have taken place over the last few years have all been permanent and some have been voluntary. The Board accords little weight to such transfers as they do not reflect a need on the part of

⁷ Experienced meatcutters receive approximately the same wage rate as that enjoyed by the meatcutters in K-Mart, who earned between \$17.70 and \$17.90 per hour.

⁸ In K Mart 25% of the unit engaged in skilled meatcutting work; here, the percentage is 36%.

the Employer to shift its employees between departments.⁹ The meat department employees work in an enclosed temperature controlled area. This area can be analogized to a factory with heavy machinery (i.e. a tenderizer with a conveyor belt, a band saw and two grinders) at which production continually takes place while product is sold outside.

Although the supervisory status of the meat department manager has not been conclusively established, the remaining factors the Board considers in determining the appropriateness of meat department units establish that the interests of the meatcutters are separate and distinct from those of employees outside the meat department. Because the wrapper works closely with the meatcutters, it appears appropriate to include him in the petitioned-for unit. As the work of the cleaners and other service assistants in the meat department is closely integrated with that of the cutters and wrapper (they clean and disinfect the machinery the cutters use, some of them operate the grinder, and they work in the same area as the meatcutters) their inclusion in the petitioned for unit is also appropriate. . Wal-Mart Stores, supra.

In view of the above, in particular, the significant amount of time the Employer's meatcutters spend exercising traditional meatcutting skills, their physical isolation from the rest of the store's employees, and the limited contact and interchange they have with other store employees, I find that they, along with the wrappers and cleaners, have a community of interest that is separate and

⁹Bud's Thrift T-Wise, 236 NLRB 1203, fn. 6 (1978); Deaconess Medical Center, 314 NLRB 677, fn. 1 (1994); First Security Services Corp., 329 NLRB No. 25, fn. 5 (1999); AVI Food Systems, 328 NLRB No. 59 (1999).

distinct from that of the other employees employed at the Richmond Avenue facility.

Accordingly, I find the following unit appropriate for the purposes of collective bargaining:

All meat department employees including meatcutters, meat wrappers, cleaners and other service assistants working in the meat department at the Employer's retail outlet located on 1925 Richmond Avenue, Staten Island, New York excluding all other employees, 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 subject to the Board's Rules and Regulations. Eligible to vote are employees 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 that 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 who are employed in the unit may vote if they appear in person or 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 to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 342-50, United Food and Commercial Workers Union, AFL-CIO.

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 the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the issuance of this Decision, four (4) 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 Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before May 10, 2000. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement

shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

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. This request must be received by May 17, 2000.

Dated at Brooklyn, New York, May 3, 2000.

/S/ ALVIN BLYER

Alvin Blyer
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National Labor Relations Board
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