

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

NATIONWIDE WAREHOUSE AND
STORAGE, LLC

Employer¹

and

Case No. 29-RC-9560

DISTRICT 6, INTERNATIONAL UNION OF
INDUSTRIAL SERVICE, TRANSPORT,
AND HEALTH EMPLOYEES

Petitioner

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 Nancy Lipin, 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 record² 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 Nationwide Warehouse and Storage, LLC,

¹ The Employer's name appears as corrected at the hearing. (See Board Exhibit 4).

² The undersigned hereby amends the transcript sua sponte as indicated in the Appendix attached hereto. References to the record are hereinafter abbreviated as follows: "Tr. #" refers to transcript page numbers, "Er. Ex. #" refers to Employer's exhibits, "Pet. Ex. #" refers to Petitioner's exhibits, and "Bd. Ex. #" refers to Board exhibits.

herein called the Employer or Nationwide, is a Georgia limited liability company with its principal office and place of business located at 6420 Atlanta Boulevard, Suite 130, Norcross, Georgia, and with places of business located in New York and New Jersey,³ where it is engaged in the retail sale of furniture, mattresses and bedding. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, derived gross annual revenues in excess of \$500,000, and purchased and received at its New York facilities goods valued in excess of \$5,000 directly from points outside the State of New York.

Based on the stipulation 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 that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein 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. District 6, International Union of Industrial Service, Transport and Health Employees, herein called the Petitioner, seeks to represent a unit of warehouse employees employed at the Employer's 17 New York and New Jersey facilities, which include the following:

- (1) 2102 Utica Avenue, Brooklyn, New York;
- (2) 91-30 Van Wyck Expressway, Queens, New York;
- (3) 32-86 47th Street, Queens, New York;
- (4) 283 4th Avenue, Brooklyn, New York;

³ The specific addresses of the New York and New Jersey store locations are listed below, in connection with the bargaining-unit description.

- (5) 1991 Third Avenue, New York, New York;
- (6) 700 Grand Concourse, Bronx, New York;
- (7) 2856 Webster Avenue, Bronx, New York;
- (8) 137 East Sunrise Highway, Freeport, New York;
- (9) 460 Suffolk Drive, Brentwood, New York;
- (10) 5740 Sunrise Highway, Unit 12-15, Sayville, New York;
- (11) 400 Duffy Avenue, Hicksville, New York;
- (12) 919 West Street, Westchester, New York;
- (13) One South Drive, Yonkers, New York;
- (14) 700 31st Street, Union City, New Jersey;
- (15) 63 Route 46 West, Lodi, New Jersey;
- (16) 357 Long Avenue, Hillside, New Jersey; and
- (17) 396 U.S. Highway 22W, Greenbrook, New Jersey.

The Employer characterized these locations as all the locations in its "New York Region," including New York City, Westchester County, Long Island and New Jersey.

At the hearing, the Petitioner amended its petition to include all 17 locations. The parties do not dispute the geographical *scope* of the bargaining unit. However, the parties dispute the unit's *composition*, i.e., which job classifications must be included.

As indicated above, the Employer is engaged in the retail sale of furniture and bedding. Each of the Employer's facilities employs approximately 4 to 5 warehouse employees, 3 to 4 sales employees, a clerical employee, a store manager and an assistant store manager.⁴ The Petitioner seeks a bargaining unit limited to the warehouse employees, consisting of approximately 50 to 55 employees. However, the Employer contends that it would be inappropriate to exclude sales employees from the unit, inasmuch as sales employees work in close geographical proximity to the warehouse employees, share common supervision with them, and have functions that are substantially integrated with the warehouse functions. Thus, the Employer argues that the only appropriate unit includes both warehouse and sales employees, which

⁴ At least some stores also have a "warehouse leadperson" or "warehouse manager," whose status as a warehouse employee or statutory supervisor is discussed below in more detail.

would include a total of approximately 90 employees. Both the Petitioner and the Employer seek to exclude clerical employees from the unit.

In support of its positions on these issues, the Employer called the following 11 witnesses to testify: Randy R. Patterson, director of human resources; John A. Silver, vice president and chief operating officer; Raj K. Mamy, district manager for five of the New York stores; Roham Frazier, Richard Batista and Jose Ruiz, store managers; Juan E. Rodriguez, sales employee in the Yonkers store; Francis Joseph, Christopher Akrivos and Reginald Russell, warehouse managers/leadpersons; and Jerry Kornman, regional manager for New York and New Jersey. The Petitioner called three warehouse employees to testify: Ernesto Conde, Carlos Rodriguez and Ronald Thompson.

The Petitioner has indicated its willingness to proceed to an election in any unit found appropriate herein.

The Employer's operations

There is no dispute that each Nationwide store contains a retail sales area and a warehouse area within the same building. The Employer does not use separate warehouse buildings to store its merchandise. The Employer's vice president and chief operating officer, John A. Silver, described a typical store as a large, wide open building, averaging 10,000 square feet. (See Er. Ex. 6, sample store diagram.) The front half of the store, near the customer entrance, contains numerous displays of furniture and bedding. The back half of the store is the warehouse area, where the furniture is stored and made available for customer pick-up or for delivery. The warehouse area typically contains a back door and/or loading docks, where pick-ups and deliveries are made. The two areas are not separated by a solid wall. In some stores, the retail and warehouse

areas are partially separated by steel racks on which mattresses are stored. Silver testified that customers can see through spaces in the racks into the warehouse area. Other stores do not have any visible separation between the retail and warehouse areas.

Stores do not uniformly have the same shape. For example, Silver described some stores as being "L-shaped." Petitioner witness Ernesto Conde also described the Webster Avenue, Bronx, store as containing two separate warehouse areas, with the retail floor in the center. (See Pet. Ex. 2). Nevertheless, it is undisputed that each store, regardless of the specific layout, contains both the retail and warehouse areas in one building.

Customers initially enter the store from the front entrance and view the displays of furniture. Sales employees' duties in the retail area include greeting the customers, showing them the merchandise, answering their questions and trying to make a sale. Sales employees prepare the paperwork involved in a sale (such as sales orders), and take the customers' payment. Sales employees also spend time on the telephone, answering customers' questions, and scheduling pick-ups and deliveries of previously-ordered furniture. Customers who want to pick up their merchandise immediately are given the required paperwork, and are told to go around the building to the warehouse entrance in the back. Typically, the warehouse employees' duties include pulling orders from the warehouse shelves, to make the items physically available for customers or the delivery contractor to pick up. Warehouse employees also help load merchandise into customers' vehicles, including tying a mattress to the vehicles' roof. Warehouse employees also unload the incoming merchandise from vendors' trucks, and move the merchandise to the proper storage areas within the warehouse. Silver admitted that

warehouse employees spend most of their time working in the warehouse, and it is obvious from the sales employees' job duties that they spend most of their time working in the retail area.

Nevertheless, the Employer's witnesses also explained several situations where warehouse and sales employees interact and interchange. For example, Silver testified that there is "constant" communication between the sales and warehouse employees, such as when a sales employee needs a warehouse employee to check whether an item is in stock, so that the customer can pick it up immediately. Sometimes, especially when the warehouse employees are particularly busy, the sales employees actually go into the warehouse area to check the stock themselves. Raj K. Mamy testified that sales employees also enter the warehouse area when a customer wants to inspect the actual piece of furniture before buying it, rather than simply looking at the display model in the retail area. In that instance, the sales employee (and possibly a warehouse employee) would accompany the customer into the warehouse area to unwrap and inspect the item. Silver also testified that, as part of their three-day training, new sales employees spend a half-day learning about warehouse procedures, including how to identify products in their cartons and how to load customers' vehicles.⁵ Employer witnesses Silver, Mamy and Frazier testified that sales employees also help load customer's vehicles (including tying mattresses to cars) at least once a week. Mamy and Frazier estimated that sales employees help unload vendors' trucks at least once a week. Frazier and Mamy testified that sales employees sometimes substitute for absent warehouse employees, although they did not specify how often. Employer witness Juan Rodriguez, a sales employee

⁵ See also Er. Ex. 8, a checklist for new sales employees, which includes a "certification" that they have completed warehouse training.

who has worked at both the Webster Avenue (Bronx) store and the Yonkers store, estimated that he helps in the warehouse at least once a week. By contrast, Petitioner witness Ernesto Conde, who has worked as a warehouse employee at the Webster Avenue store for three years, denied that sales employees ever help in the warehouse. Conde later acknowledged one exception, Juan Rodriguez, but otherwise denied that sales employees help unload trucks, load customers' cars or even enter the warehouse area at all.

Employer witness Silver said that warehouse employees often go into the retail portion of the store, for example, to provide documentation of a confirmed pick-up or to find a missing sales order. Silver estimated that warehouse employees spend as much as 50% of their time in the retail area. Employer witnesses Silver, Mamy and Frazier also testified that sales employees and warehouse employees work side by side "as a team" every morning before the store opens, cleaning and repairing the furniture displays and replacing displays that have become worn or damaged. However, Petitioner witness Conde testified that only the warehouse employees, not the sales employees, clean and move the furniture displays. There is no dispute that warehouse employees do not actually sell furniture, handle customers' payments or substitute for absent sales employees.

Warehouse employees who demonstrate sufficient knowledge of the merchandise and communication skills, and who are "balanced" enough to deal with customers and their money may become sales employees, according to Frazier. For example, the Employer's evidence indicates that a Bronx warehouse employee named Cesar Aguilera became a sales employees in May 2000 (Er. Ex. 1). A Brentwood

warehouse employee named Fernando Sanchez became a sales employee in April 2000 (Er. Ex. 2). Job changes may occur in the other direction as well. For example, a Lodi sales employee named Jose Rios became a warehouse employee in February 2000 (Er. Ex. 4). Human resources director Randy Patterson estimated that, in the New York region, 2 or 3 warehouse employees transfer into sales positions every two months, and that 1 or 2 sales employees transfer to warehouse positions in that same time. Employer witness Frazier (store manager in Lodi, NJ) has seen 3 warehouse employees become sales employees, and one sales employee become a warehouse employee in the past five months.

Warehouse employees are paid on an hourly basis, whereas sales employees earn an hourly rate plus sales commissions. Warehouse and sales employees are eligible to participate in the same benefits. All employees are subject to the same personnel policies and manuals.

The record is somewhat contradictory as to whether warehouse and sales employees wear the same clothing at work. Although there is no dispute that sales employees are required to wear a shirt with a Nationwide logo, witnesses differed as to whether warehouse employees also wear the same shirt. Specifically, Petitioner witness Conde denied that warehouse employees are required to wear the logo shirt. Employer witness Patterson said that, to his knowledge, sales and warehouse employees wear the same clothing, but he admitted that he cannot always see employees' shirts when he visits the New York region stores in cold weather because employees often wear coats while working. Silver testified that warehouse employees are supposed to wear logo shirts at least three days per week. Frazier testified that the "normal" dress code is for all

employees to wear Nationwide logo shirts., but he admitted that he has seen warehouse employees work without the logo shirts. Thus, if the Employer has a rule requiring warehouse employees to wear logo shirts, it appears from the record that any such rule is not strictly followed or enforced.

The record does not contain much evidence regarding the clerical employees' duties. However, under questioning by the Hearing Officer, Silver explained that the clerical employees handle various administrative tasks, such as processing customers' payments, picking up and dropping off sales orders within the store, and relaying information from the store manager to Nationwide's main office in Georgia. On rare occasions when all the sales employees are busy, Silver testified, a clerical employee may try to help a customer temporarily until a sales employee becomes available.

The record indicates that there is no collective bargaining history in the Employer's stores.

Warehouse managers/leadpersons

As indicated above, each store has a store manager and assistant store manager. At least some of the Employer's stores also have a "warehouse manager" or "warehouse leadperson." Both the Employer and the Petitioner contend that the warehouse managers/leadpersons are non-supervisory employees, and that they should be included in the unit found appropriate. Nevertheless, because resolution of the disputed bargaining-unit issue herein involves determining whether or not the warehouse employees have "separate supervision," A. Harris & Co., 116 NLRB 1628, 1632 (1956), specific testimony was elicited regarding the duties of the warehouse managers/leadpersons, and whether they are supervisors as defined in Section 2(11) of

the Act. (See Bd. Ex. 1(h).) Thereafter, witnesses for both the Employer and Petitioner generally testified that the warehouse managers/leadpersons spend most of their time performing the same work as other warehouse employees, but that they also have more responsibility for filling out warehouse "paperwork" than other warehouse employees, because they are more familiar with it. The witnesses also testified that the warehouse managers/leadpersons perform routine assignment of work to other employees, and may devise the weekly schedule. Finally, the witnesses testified that warehouse managers/leadpersons do not have independent authority to grant time off, hire, transfer, discipline, suspend, discharge, layoff, promote or reward employees.

As noted above, neither the Petitioner nor the Employer have argued that warehouse managers/leadpersons are statutory supervisors. Furthermore, based on the evidence described above, it is clear that the record herein fails to establish the existence of such status. Accordingly, I find that the individuals occupying this position are not supervisors as defined in the Act.

Discussion

In A Harris & Co., 116 NLRB 1628 (1956), the Board held that in retail stores, a bargaining unit limited to warehouse employees (as opposed to a "wall-to-wall" or "storewide" unit including all employees) is appropriate only where (1) those employees work in a warehouse that is geographically separate from the retail store operations; (2) those employees have separate supervision from the other employees; and (3) there is no substantial integration among the warehouse employees and other employees. Id., 116 NLRB at 1632. *See also* Sears Roebuck & Co., 117 NLRB 133 (1957); and Levitz Furniture Co. of Santa Clara, Inc., 192 NLRB 61 (1971). The A. Harris line of cases

started from the premise that a store-wide unit is "the optimum unit" in a retail store.

Allied Stores of New York, Inc., d/b/a Stern's, Paramus, 150 NLRB 799 (1965) and cases therein at p. 803.⁶ Thus, under those cases, the Board would allow a petitioning union to carve out a smaller warehouse unit *only* in limited circumstances where the A. Harris criteria applied (separate location, separate supervision and lack of integration). In other words, A. Harris created a limited exception to the general wall-to-wall rule for retail store bargaining units.

The Board continued to apply the A. Harris criteria for warehouse-employee units in the retail industry for at least 20 years. Then, in a short series of cases from 1977 to 1981, the Board appeared to use a less-restrictive "community of interest" analysis in assessing the appropriateness of petitioned-for retail units that were less than storewide. For example, in Wickes Furniture, a Division of The Wickes Corp., 231 NLRB 154 (1977), the Board apparently used a community-of-interest analysis in approving a petitioned-for unit limited to "selling" employees. In a concurring opinion, Member Murphy urged the Board to be less rigid in insisting on wall-to-wall units in retail stores. In Welsh Lumber and Supply, Inc. d/b/a Big Buck Lumber, 241 NLRB 639 (1979), the Board approved a petitioned-for unit of warehouse yardmen and drivers, without even mentioning the A. Harris factors. Then in Wickes Furniture, a Division of the Wickes Corp., 255 NLRB 545 (1981), a Regional Decision affirmed by the Board noted explicitly that the Board was moving away from its insistence on wall-to-wall retail units and from the restrictive A. Harris exception, and moving toward a more flexible community-of-interest analysis. *See also* Gustave Fischer, Inc., 256 NLRB 1069

⁶ See also A. Russo & Sons, Inc., 329 NLRB No. 43 (1999), noting that the Board's restrictive A. Harris test was "consistent with its policy at that time of favoring wall-to-wall units in the retail industry."

(1981)(Member Jenkins' dissenting opinion questions whether A. Harris is the "last word on the subject".)

However, in a subsequent series of cases in the mid-1980s, the Board firmly upheld the restrictive A. Harris criteria for carving out a less-than-storewide unit in retail stores. In Roberds, Inc., 272 NLRB 1318 (1984), Salem International Co., 272 NLRB 1321 (1984), and Charette Drafting Supplies Corp., 275 NLRB 1294 (1985), the Board dismissed petitions for warehouse-type units, finding that the A. Harris criteria had not been met. In those cases, the Board emphasized that *all three* criteria must be present for a separate warehouse unit to be considered appropriate. Salem International, *supra*, 272 NLRB at 1322. Furthermore, the Board stated that the criterion of "geographic" separation requires physically separate buildings, not simply separate areas within a building. Roberds, *supra*, 272 NLRB at 1319. Finally, it should be noted that the favored wall-to-wall unit in retail operations includes *all* non-supervisory employees, including clerical employees. *See* Sears, Roebuck & Co., 191 NLRB 398 (1971); Levitz Furniture, *supra*; Gustave Fischer, *supra*; and Salem International, *supra*;

More recently, in A. Russo & Sons, Inc., 329 NLRB No. 43 (1999), the Board declined to apply the A. Harris limitations to bargaining units in combined retail/wholesale operations, stating that it would examine all the relevant community of interest factors in those cases. Nevertheless, in that case, the Board appeared to assume that the A. Harris criteria continued to apply to retail operations. 329 NLRB at fn. 12, citing Esco Corp., 298 NLRB 837, 840 (1990)(explicitly "assum[ed] without deciding" the continuing application of A. Harris to the retail industry). Thus, for purposes of this Decision, the continuing validity of A. Harris is assumed in retail operations.

In the instant case, I conclude that the A. Harris criteria have not been met, and therefore that the petitioned-for unit limited to Nationwide's warehouse employees is inappropriate. Specifically, the record indicates Nationwide's warehouse employees do not work in separate warehouse buildings from the retail stores. Rather, all of Nationwide's stores contain both retail and warehouse areas within the same building. Thus, on these facts, the first A. Harris requirement for carving out a separate warehouse unit has clearly not been met. Secondly, the record herein indicates a substantial level of integration between warehouse employees and other employees. Because the Employer's operations are intended to allow immediate pick-up and delivery of items, there is frequent communication and interaction between the warehouse employees and sales employees, i.e., to check whether a customer's desired item is in stock and to finalize the purchase by actually making the item available for pick-up. The record also indicates that warehouse employees perform some work in the retail area on a regular on-going basis, such as cleaning and moving the furniture displays and checking the documentation for sales and pick-ups.⁷ Finally, it is not uncommon for warehouse employees to become sales employees, and vice versa. Based on Patterson's undisputed testimony, it appears that approximately 12 to 18 warehouse employees become sales employees in the New York region per year, and 6 to 12 sales employees become warehouse employees per year. Based on the foregoing, I find that the "lack of integration" requirement of A. Harris has not been.

⁷ The witnesses dispute whether sales employees also help clean and prepare the furniture displays. (See p. 7, supra.) It should also be noted that this Decision does not rely on sales employees' alleged help in performing warehouse work, since the parties' witnesses disputed each other on that point. (See pp. 6-7 supra, testimony of Employer witnesses Silver, Mamy, Frazier and Rodriguez that sales employees help unload vendor trucks and load customers' cars on a weekly basis, versus the testimony of Petitioner witness Conde, denying that sales employees regularly help with warehouse work.) This conflicting testimony cannot be reconciled without making a credibility determination.

As indicated above, the Board clearly requires all three A. Harris criteria to exist for a warehouse-employee unit to be deemed appropriate in the retail industry. While the record herein does not establish that the warehouse leads are supervisors within the meaning of the Act, the presence of such individuals at each location at least raises the question with the respect to the third criterion, i.e., separate supervision. However, since at least two criteria (separate buildings, lack of integration) have not been met herein, resolution of the supervisory issue is not necessary for the disposition of this case.

In sum, the circumstances of this case do not allow the Petitioner to carve out a bargaining unit limited to warehouse employees. It is clear that, under the A. Harris line of cases, the petitioned-for, less-than-storewide unit would be inappropriate in this retail operation. I will therefore direct an election in a wall-to-wall unit, including the warehouse employees, sales employees and clerical employees. The Petitioner has indicated its willingness to proceed to an election in any unit found appropriate herein.

It should be noted that neither the Petitioner nor the Employer sought to include clerical employees in this unit. However, the case law cited above clearly indicates that, unless the A. Harris exception applies, the only appropriate unit is a wall-to-wall unit of *all* store employees, including clerical employees.

Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁸

⁸ Inasmuch as I have directed an election in a larger bargaining unit than that requested by the Petitioner, further processing of the petition is conditioned on the Petitioner's having an adequate showing of interest in the enlarged unit. The Petitioner's current showing of interest will therefore be checked using the Excelsior list, which the Employer must submit within 7 days. If the current showing is inadequate for the enlarged unit, the Petitioner will be given an additional 14 days to submit additional evidence of interest. The Excelsior list will not be made available to the Petitioner unless and until an adequate showing is made in the expanded unit.

All full-time and regular part-time employees, including warehouse employees, sales employees and clerical employees, employed by Nationwide Warehouse and Storage , LLC, at its facilities located in New and York and New Jersey (including 2102 Utica Avenue, Brooklyn, NY; 91-30 Van Wyck Expressway, Queens, NY; 32-86 47th Street, Queens, NY; 283 4th Avenue, Brooklyn, NY; 1991 Third Avenue, New York, NY; 700 Grand Concourse, Bronx, NY; 2856 Webster Avenue, Bronx, NY; 137 East Sunrise Highway, Freeport, NY; 460 Suffolk Drive, Brentwood, NY; 5740 Sunrise Highway, Unit 12-15, Sayville, NY; 400 Duffy Avenue, Hicksville, NY; 919 West Street, Westchester, NY; One South Drive, Yonkers, NY; 700 31st Street, Union City, NJ; 63 Route 46 West, Lodi, NJ; 357 Long Avenue, Hillside, NJ; and 396 U.S. Highway 22W, Greenbrook, NJ), but excluding 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 shall vote whether they desire to be represented for collective bargaining

purposes by District 6, International Union of Industrial, Service, Transport and Health Employees.

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 7 days of the date 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 January 5, 2001. 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 non-posting 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 the commencement 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 January 12, 2001.

Dated at Brooklyn, New York, on December 29, 2000.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

440-1760-6700 et seq.

APPENDIX

The record is hereby amended as follows:

Page 3 (index of witnesses) should indicate that witness Raj Mamy was recalled to testify on page 208.

Page 7, lines 18-9 et seq.: All references to "West Chester" should be spelled "Westchester".

Page 9, line 16: "**91-30** Van **Wyck** Expressway" rather than "**9130** Van **Brook** Expressway".

Page 9, line 16: "32-86" 47th Street, rather than "3286".

Page 10, line 2: The seventeenth address on the list is "396" U.S. Highway, rather than "17396".

Page 10, line 17: "principal" rather than "principle".

Page 10, line 18: "Norcross" rather than "North Cross".

Page 10, line 19: The zip code is "30071" rather than "371".

Page 14, line 3: "A. Harris" (referring to A. Harris & Co., 116 NLRB 1628) rather than "Ahairs".

Page 14, line 6: "A. Russo" (referring to A. Russo & Sons, Inc., 329 NLRB No. 43) rather than "A. Russell".

Page 29, line 20: "Angel" Sanchez rather than "Ehail".

Page 90, lines 22-4 were spoken by "THE WITNESS" (John Silver) rather than "MR. PERRY".

Page 266, lines 2-4 were spoken by "THE HEARING OFFICER" rather than "THE WITNESS".

Page 276, line 8: "in this position" rather than "disposition".

Page 276, line 24: Section "2(11)" rather than "311".

Page 278, line 1 should read that the Region "will not accept..."

Page 278, line 3: "meets or doesn't meet" rather than "needs or doesn't need".

Page 279, line 15: "God damn" rather than "got dam".