

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

NORTHWEST REGIONAL EDUCATION
LABORATORY

Employer

and

Case 36-RC-6029

OREGON PUBLIC EMPLOYEES UNION,
SERVICE EMPLOYEES LOCAL 503,
SEIU INTERNATIONAL

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, hereinafter referred to as 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 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 following employees constitute voting groups:

Voting Group A: All professional employees, including temporary professional employees employed on a contract of 90 days or longer duration, employed by the Employer at its Portland, Oregon, facility; but excluding all nonprofessional employees, confidential employees, temporary employees employed through an agency, and guards and supervisors as defined by the Act.

Voting Group B: All employees, including temporary employees employed on a contract of 90 days or longer duration, employed by the Employer at its Portland, Oregon, facility; but excluding all professional employees, confidential employees, temporary employees employed through an agency, and guards and supervisors as defined by the Act.

The Employer is engaged in providing educational services to schools and school districts primarily in the Pacific Northwest, from its principal place of business located in Portland, Oregon. Petitioner seeks a unit of all employees, both professionals and non-professionals. The employer contends that non-professional management assistants and three professional employees are statutory supervisors. The Employer also contends that two of the three professional employees are managerial employees. Otherwise, the parties are in agreement. They stipulated to which employees were professionals and which were not.

The Employer functions to effectuate the results of university level research concerning effective teaching and learning by providing to schools and school districts curriculum materials and training modules utilizing such research. The Employer's operations are funded by grants from Federal and state agencies, and income received for workshops, conferences, products, and publications. The Employer is organized into various departments or programs which provide services to schools and school districts, such as teacher training, and technical assistance of various types.

Dr. Ethel Simon-McWilliams is the Employer's executive director, and, as such, is the ultimate decision-maker in all matters. She is assisted by associate executive director Carole Thomas. Reporting directly to Simon-McWilliams are the program directors of the various programs, and the directors of the administrative units, such as finance and human resources. The programs employ professional employees, who generally work in teams of three to five members, to carry out the mission of the program, along with supporting clerical staff, who work under the management assistants alleged herein to be statutory supervisors.¹

"Management assistants" are employed in: Assessment Program (Kathleen Peterson); Child & Family Program (Catherine Swoverland); Comprehensive Center (vacant); Development & Communications Unit (Mary Cutting); Education, Career & Community Program (Michele Sugahiro); Equity Center (vacant); Evaluation Program (Ann Rader); Mathematics & Science Center (Cathy Clark); National Monitoring Center (Sheryl Glenn); National Safe Schools Center (Linda Higgins); Planning & Program Development (Cherrie Salvatore and Linda Fitch²); Rural Education Program (Teri Shetters); School Improvement Program (Nancy Crain); and Technology Center (Kyle LaTrace). The professional employees at issue are: Carol Graney, general ledger accountant in the Finance Unit, contended to be a managerial employee and a statutory supervisor; Nancy Henry, training and technical assistance associate in Education, Career & Community Program, contended to be a managerial employee and a statutory supervisor; and Arlene (Francie) Lindner, research associate in Education, Career & Community program, contended to be a statutory supervisor.

"Management assistants" report to the program directors and perform various secretarial and clerical tasks. They make travel arrangements for professionals, prepare purchase orders and

¹ The parties stipulated that the executive director, associate executive director, unit managers, program directors, and administrative directors are supervisors within the meaning of Section 2(11) of the Act. In addition, the parties stipulated that the management assistants to the executive director and the associate executive director, and Vickie Kowolchuk are confidential employees as that term is defined by the Board. In addition, the parties stipulated that Michele Driscoll is a managerial employee excluded from any unit found appropriate.

² Linda Fitch is not a management assistant. She is the library assistant, and as such, works under Salvatore.

expense claims, monitor time sheets, make bookkeeping entries, and monitor the program's activities to assure that performance conditions of contracts are being met. They are assisted in these activities by other support employees.

Graney's and Henry's positions, alleged as supervisor managerial professionals, are described elsewhere below. Lindner, similarly alleged, is a program associate who reports to Eve McDermott, program director in Education, Career, and community. Two employees work under Lindner: Nicole Martin and Robert Wood, who is a "long-term temporary" employee of the Employer. Lindner and the other two employees work with schools and school districts to help design and deliver professional development for their education reform initiatives.

Supervisory Issues.

Each of the alleged supervisors was litigated individually at hearing. A common pattern is evident throughout the record as a whole; any individual variations lack significance. The alleged supervisors will, therefore, be treated herein as a group.

The Employer has an established hiring procedure whereby candidates for a position are screened and interviewed by a selection committee consisting of four or five employees, including a "chairperson." The relevant department or program director may or may not be a member of the selection committee. For support staff positions, the management assistant in the particular department or program is generally the chairperson of the selection committee. The professional employees contended herein to be supervisors have also served as chairpersons of selection committees for employees who will be working directly with them. The chairperson or the committee as a whole sort the applications and decide which candidates to interview. The committee members as a panel interview the chosen candidates, and each committee member fills out a rating form for each applicant. The committee members then discuss the applicants among themselves and reach a *consensus* on a recommendation. The chairperson then writes a memo to the Employer's executive director, presenting the committee's recommendations and the underlying reasons, and attaching the rating forms completed by the individual committee members. The executive director then makes the final decision to hire. The recommendations of selection committees are not always followed by the executive director.

The Employer has a policy of conducting performance evaluations of employees after the first six months of employment and annually thereafter. The alleged supervisors herein fill out evaluation forms for the employees who work with them. There are slight variations from department to department in how this is done. In most departments, the alleged supervisor fills out the evaluation form. In a few, the alleged supervisor and the employee fill out the form together. In at least one department, the program director fills out the form. Employees are rated as to whether their performance is exceptional, commendable, satisfactory, or unsatisfactory with respect to specific items, and also given an overall rating. One of the alleged supervisors testified that she was told that giving merely a "satisfactory" rating was "the kiss of death,"³ and that an exceptional rating could not be given to the same employee every year, so that her "only" choice was to give commendable ratings. Program directors review the evaluations and make changes to them at will.

³ There is no contention or evidence that any employee has ever been put on probation or otherwise disciplined, or been terminated solely on the basis of a performance evaluation.

In about January 2000, all program directors were advised that they had the opportunity to give 30 percent of their employees a two-percent raise. In addition, the executive director asked the program directors to make recommendations for pay increases for more senior employees who were being paid no more than new hires. Some program directors consulted their management assistants regarding which support employees should get pay increases, and the management assistants so consulted made suggestions, many of which were followed. At least one management assistant was told by her program director to give a certain employee an exceptional rating on that employee's performance evaluation, so that the employee would be eligible for a pay increase. One of the professional employees alleged to be supervisory testified that she recommended a merit award for an employee, which the employee received, but there is no specific supporting testimony regarding such merit award and the process by which the recommendation became a reality.

The alleged supervisors verbally counsel employees whose work is unsatisfactory or who have attendance problems. There is no evidence that any record is kept of such verbal counseling. Some management assistants first discuss the problem with their program director; others simply go ahead on their own and speak to the employee. One management assistant testified that an employee working for her misused company e-mail, and that she had given the employee a "written reprimand", by noting in the employee's performance review that the problem had occurred and that the employee had corrected it. A departmental manager testified that an alleged supervisor working under her has authority to issue written reprimands, but there is no evidence that the individual has ever done so. Indeed, there is no evidence that any employee of the Employer has ever received a written reprimand, or has ever received a disciplinary suspension, or that the Employer has any established policy of progressive discipline.

The director of Planning and Program Development, Steve Nelson, testified that management assistant Cherrie Salvatore recommended that an employee be fired. The employee had a record of making many errors in data analysis. The program on which that employee was working was running short of money. Nelson (a conceded supervisor) and Salvatore discussed possible cost-cutting measures. Salvatore suggested terminating the data analysis employee, and Nelson concurred. Jerry Kirkpatrick, director of Development and Communications, testified that management assistant Mary Cutting recommended that an employee who had had many problems with her work be fired. Kirkpatrick said that he had talked to the employee himself and had earlier placed her on probation. Cutting testified that she did not *recommend* firing the employee, that Kirkpatrick simply said that he thought she should be terminated at the end of her probationary period and asked Cutting if she agreed, to which Cutting responded that she did. The Employer has a written policy concerning terminations, which state that certain documentation must be made, and certain steps be followed, including discussions with the executive director, who makes the final decision.

Management assistants are responsible for the "flow" of work, that is, for making sure that all of the clerical tasks are done in a timely manner. To this end, they sometimes hand out work to be done. In some cases, one employee may have a greater ability to perform a particular task than another employee, and such ability may be taken into consideration. There is no specific evidence regarding the skills and abilities of the clerical employees. Similarly, the professional employees alleged to be supervisors are responsible for seeing to it that the work of their team gets done. In the finance area, the employees working under Carole Graney have established work assignments, and there is no day-to-day handing out of work. Nancy Henry and Arlene Lindner meet with the employees on their teams once a week and collaboratively decide who will do which task.

The Employer uses a large number of employees from a temporary agency. The agency is chosen by the Employer's Human Resources department, and normally a person from that department makes calls to the agency to request a temp, although one or two management assistants testified that they had made such calls themselves. It appears that the Employer has a policy that the top priority is to get the work done in a timely manner, and if the regular employees are not going to be able to accomplish that goal, and sufficient funds exist, temps are to be brought in as needed. If a temp is not performing satisfactorily, the management assistant can request a replacement. At the time of the hearing, an agency temp was working as a management assistant in the Comprehensive Center. As noted, the parties agreed to exclude agency temps from the Voting Groups.

The Employer also directly hires temporary employees, some of whom are considered "long-term temps." The management assistant position in the Equity Center is currently staffed by such a long-term temp. Employer policy provides that long-term temps can work up to 1000 hours in any one year. Robert Wood is a long-term temp working under Arlene Lindner in Education, Career & Community. The program director testified that Lindner can determine whether Wood works 20 hours a week or 40 hours a week, without offering any specific supporting testimony of how the decision is made. Lindner began his employment in the fall of 2000, and has enough hours out of the 1000-hour limit available that he can work full-time throughout the remainder of 2000, and may also work full-time in 2001, as he may be available in that year only until June. It appears that his hours of work in 2001 have not yet been determined.

It appears that it is established Employer policy that employees who need to take time off for personal reasons, such as a medical appointment, be permitted to do so. For the most part, employees who need to take such time simply advise the program director or management assistant that they will be out. Employees who wish to take a day or two off may discuss their wishes in advance with fellow employees to assure that their work will be taken care of and that the area will not be disastrously short-handed. There is no evidence that any employee has ever been refused a request for time off. There is no evidence that the Employer has any paid vacation policy.

There is no contention or evidence that the Employer has any practice of laying off and recalling employees. It appears that employees are transferred within and/or promoted through the same selection committee process as is used for new hires. There is no evidence that the Employer has any established grievance-handling procedure.

The number of employees working under a management assistant varies from department to department. Cherrie Salvatore in Planning & Program Development has four employees working under her, including Linda Fitch, also alleged to be a supervisor, who in turn has one employee under her. Mary Cutting in Development & Communications has three employees and two vacant positions currently filled by agency temps working under her. Kathleen Peterson in Assessment Program has four employees working under her. Michele Sugahiro in Education, Career & Community and Ann Rader in that revaluation Program each have three. Cathy Clark in Mathematics & Science Center and Nancy Crain in School Improvement Program each have two. Sheryl Glenn in National Monitoring Center, Linda Higgins in National Safe Schools Center, and Kyle LaTrace in Technology Center each have one. Catherine Swoverland in Child & Family Program and Teri Shetters in Rural Education Program each have one vacant position currently filled by an agency temp.

Among the professionals in question, Nancy Henry has two employees on her team. Arlene Lindner has one permanent employee and one long-term temporary employee. Carole Graney has three employees.

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

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively 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.

The burden is on the party alleging supervisory status to prove it. Gaps in the record will not to filled with assumptions or presumptions.

Where hiring recommendations or decisions are made collectively by a committee, participation in such committees does not establish supervisory status. *Fordham University*, 214 NLRB 971, 974 (1974). Here, there is much evidence that management assistants consistently are the chairpersons of the hiring committees who interview candidates for positions in the support staff, and the chairperson of such a committee is the person who memorializes the committee's deliberations and recommendations and conveys such information to the executive director, who makes the final decision. There is no evidence that any of the hiring decisions in evidence herein were anything other than a collaborative effort by the respective hiring committees, or that the chair or management assistants' views carried any extra weight; indeed they seem to function more as scribes and coordinators than anything else, in this process. Further, there is evidence that the executive director does not always follow the recommendations of such committees.

Authority to evaluate is not among the statutory indicia of a supervisor. Thus, authority merely to evaluate employees, without more, is insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Elmhurst Extended Care Facilities*, 329 NLRB No. 55 (1999). There must be a clear nexus between the rating and, say, a specific pay increase. Here, the evaluation forms completed by the management assistants do not include any recommendations for reward or discipline. Evidence that management assistants, *upon request*, made suggestions regarding the granting of raises to specific employees, does not establish that they have statutory authority to effectively recommend rewarding employees. The mere fact that a superior agrees with a recommendation or suggestion does not, without more, establish effective recommendation. There is no record testimony demonstrating that agreement was based solely on the recommendation of the alleged supervisor, as opposed to being preceded by an independent investigation by the supervisor, or simply based on his own independent knowledge. Here, the department heads (program directors) were given an opportunity to give raises to 30 percent of their staff; there is no evidence that the department heads relied solely on the recommendations of management assistants in determining who would get a raise. There is testimony that no employee will receive a raise unless that employee was evaluated as being "exceptional", but there is no evidence that every employee rated as "exceptional" gets a raise. Moreover, there is evidence that any department head who wants to give a raise to a selected employee can pre-arrange for that employee to be rated as exceptional on a performance evaluation.

Verbal reprimands and counseling do not constitute “discipline” within the meaning of Section 2(11) of the Act absent some showing of impact on employees’ job status. *Hydro Conduit Corporation*, 254 NLRB 433 (1981). Here, there is no evidence that any verbal counseling of employees by management assistants has any impact on any employees’ job status. There is no evidence that any record of such counseling is preserved. There is no evidence of a progressive, discipline system wherein an oral or written warning is a prerequisite to, say, a suspension imposed by a higher authority. Conclusionary testimony that management assistants have authority to give written warnings, without more, does not establish that they have statutory authority to discipline. Indeed, here there is no evidence that any employee has ever received a written warning or reprimand from anyone, let alone from a management assistant. The comments by one management assistant in an employee’s evaluation about that employee’s abuse of company e-mail do not amount to written discipline.

The Board has consistently held that authority to “effectively recommend” generally means that the recommended action is taken without any independent investigation by higher authority, not simply that the recommendation is ultimately followed. *Children’s Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Company*, 186 NLRB 1 (1970). With respect to Salvatore’s one-time “recommendation” that an employee be fired, the evidence is insufficient to establish statutory authority. The recommendation came during a discussion between Salvatore and her own supervisor, Nelson, about cost-cutting measures involving the area in which the employee was working. The record does not reveal any details of the discussion which occurred between Salvatore and Nelson, just Nelson’s conclusionary testimony that Salvatore made the recommendation. There is no evidence with respect to any actions by the executive director with respect to Salvatore’s recommendation. Further, the evidence regarding Cutting’s alleged recommendation that an employee be fired is insufficient to establish that Cutting even made any such recommendation, but even if she did, it is clear that Kirkpatrick made an independent assessment of the situation.

Any authority which management assistants have with respect to requesting or dismissing *agency* temps does not amount to statutory supervisory authority. It is clear that the Employer has a policy of using agency temps whenever it is obvious that there is a need, and equally clear that it has a policy of dismissing temps whose work is not satisfactory. There is no evidence that such decisions require any use of independent judgment. Moreover, agency temps are not employees of the Employer. Generally, supervision of non-employees of an employer is not supervision within the meaning of Section 2(11).

The record fails to establish that management assistants are required to use any independent judgment in giving work to employees. In most areas, the support employees have established work assignments, and additional tasks are assigned essentially on the basis of giving them to whoever appears to have time to do them. There is no evidence that there are any distinctions among the employees as to skills, or that the tasks that are assigned require any special skills. By way of example, simply knowing or noticing that someone is “better” on a particular software program than another, or better in filling out a particular form, does not, without more, demonstrate that that assessment and any assignment based thereon require “independent judgement.” Proof of independent judgment is a necessary predicate to a finding of supervisory status.

“Secondary” indicia do not support a finding of supervisory status of management assistants. For example, if management assistants were found to be supervisors, some support staff would be working under a ratio of one supervisor for one employee. A few management

assistants are not supervising any employees of the Employer at the present time. Further, in two areas, Equity Center and Comprehensive Center, the management assistant position is vacant, and the individual filling in is not a permanent employee. Indeed, in the Comprehensive Center, the position is being filled by an agency temp.

I conclude that the management assistants are not statutory supervisors, inasmuch as the record fails to establish that they have any independent authority to exercise any of the statutory indicia, nor do they have authority to make effective recommendations.

The record also fails to establish that Graney, Henry, and Lindner are statutory supervisors. In this regard, they have no different or greater authority than do management assistants.

Managerial Issues.

Carole Graney reports to controller Kathee Prakken, who in turn reports to Richard Alford, chief financial officer. Graney is in charge of the general ledger. She assures that all items are correctly posted, that payments are made to vendors and expense claims are reimbursed, and that all expenses are attributed to the correct accounts. Three non-professional accounting technicians work under her: two in accounts payable, Kristine Price and Eileen Bladorn; and one in travel, Tom Rutter. There is also a vacant travel clerk position. There is no evidence that Graney is involved in any policy-making decisions, nor any evidence that she makes any expenditure decisions.

Nancy Henry is a training and technical assistance associate in Education, Career and Community. She reports to program director, EvaMcDermott. Henry heads a team which includes two other professionals: Dean DeSantis and Randi Douglas.

Henry coordinates a grant project funded by the Corporation for National Service, a federal agency. The project is known by the acronym LEARNs, which stands for "Linking Education and America Reads through National Service." It is a national training and technical assistance project to support mentoring, tutoring, and literacy programs that utilize volunteers. She and the members of her team provide training and technical assistance. They also do some product development, and respond to technical assistance requests. As the team leader, Henry is liaison to the funding agency and writes quarterly progress reports.

The LEARNs project has a \$1 million budget. Henry writes the project budgets, the scopes of work, and negotiates the work plan with a representative of the Corporation for National Service. The money is made available to the Employer and Henry negotiates as to what services the Employer will perform for that amount of money. Henry "supervises" in some unspecified way a subcontractor at Bank Street College on the East coast. She negotiates with the subcontractor as to the details of an unspecified type of training sessions, i.e., when, where, who will be on the staff, and what the curriculum will be. Bank Street has expertise in the curriculum of children's tutoring, particularly reading programs. Henry does not have authority to sign contracts with Bank Street; Ethel Simon-McWilliams signs. There is no evidence with respect to how Bank Street was chosen to be the subcontractor.

Eve McDermott testified that, "Nancy works out the deliverable list with the subcontractor, negotiates how much money, we talk about it, we talk about whether we need a subcontractor or not, then she'll do the negotiations of that. I will sign the recommendation, it will then go – but the ultimate contract is signed by Dr. Ethel Simon-McWilliams." The scope of

work as negotiated by Henry directly affects the number of employees who are working on the LEARNS project, in that Henry makes recommendations to the Employer as to the need to perhaps hire a new person in order to accomplish the work as negotiated. The evidence with respect to Henry's authority and activities in conducting the LEARNS negotiations is non-specific and conclusionary.

The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *Bell Aerospace*, 416 U.S. 267 (1974); *Palace Laundry Dry Cleaning*, 75 N.L.R.B. 320, 323 n. 4 (1947). In *Yeshiva University*, 444 U.S. 672 (1980), the Court noted that managerial employees are "much higher in the managerial structure" than those explicitly mentioned by Congress [i.e., supervisors] which "regarded them as so clearly outside the Act that no specific exclusionary provision was found necessary."

Herein, the Employer relies on *Concepts and Designs*, 318 NLRB 948 (1995) and other cases in which the Board has found that individuals who have authority to commit the employer's credit in substantial amounts through the exercise of discretion which is not ordinarily reviewed are managerial employees.

The Employer has failed to establish that either Graney or Henry meet that standard. Graney functions as an accountant who is responsible for assuring that general ledger entries are correct and that vendors are paid correctly and timely. There is no evidence that Graney makes any purchasing decisions, or otherwise has any authority to commit the Employer's credit.

The budget for which Henry is "responsible" consists of grant money awarded to the Employer in return for certain specific kinds of services provided in the form of training sessions conducted by Henry herself, the two employees who work with her, and by staff provided by a subcontractor. Henry is instrumental in determining the training sessions and how they will be delivered. There is no specific evidence, however, that her negotiations with the Corporation for National Service and the subcontractor Bank Street are not ordinarily reviewed. Indeed, McDermott testified that she and Henry regularly discuss these matters, McDermott recommends the contract and it is ultimately signed off on by Simon-McWilliams. Henry, while forming a critical role within the one Employer, is clearly not out there making policy on her own, without reins.

Moreover, although not decisive, the Employer's organization is such that neither Graney nor Henry is placed high in the managerial structure. Graney reports to the controller, who in turn reports to the director of the finance unit; Henry reports to the program director of the Education, Career, and Community program, and her position is parallel to that of Arlene Lindner.

Therefore, I conclude that neither Graney nor Henry is a managerial employee.

Appropriate Unit.

At hearing, the parties stipulated that temporary employees employed directly by the Employer on a contract of 90 days or longer duration are included in the unit(s), while temporary employees employed through an agency are excluded.

It appears that Petitioner is seeking to represent the employees of the Employer in a single unit. Inasmuch as the Act provides that professionals and non-professionals may not be

included in the same unit unless the professionals vote in favor of such inclusion, the employees in the professional voting group (Group A) will be asked two questions on their ballot:⁴ (1) Do you wish the professional employees to be included with the non-professional employees in a unit composed of all employees of the Employer at its Portland, Oregon, facility, for the purposes of collective bargaining? (2) Do you wish to be represented for purposes of collective bargaining by Oregon Public Employees Union, Service Employees Local 503, SEIU International?

If a majority of the professional employees in voting group A vote “yes” to the first question, indicating their wish to be included in a unit with the nonprofessional employees, they will be so included. Their votes on the second question would then be commingled with the votes of the nonprofessional voting group B to decide the representation for the entire unit. If, on the other hand, a majority of professional employees in voting group A voted against inclusion, they would not be included with the nonprofessional employees. Their votes on the second question would then be separately counted to decide whether they wish representation separately by Petitioner herein.

My unit determination is based, in part, upon the results of the election among the professional employees. However, I now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees (Voting Group A) vote for inclusion in the unit with the nonprofessional employees (Voting Group B), I find that the following employees will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9b) of the Act:

All employees, including temporary employees employed on a contract of 90 days or longer duration, employed by the Employer at its Portland, Oregon, facility; but excluding all confidential employees, temporary employees employed through an agency, and guards and supervisors as defined by the Act.

2. If a majority of the professional employees (Voting Group A) do not vote for inclusion in the unit with the nonprofessional employees (Voting Group B), I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9b) of the Act:

(A) All professional employees, including temporary professional employees employed on a contract of 90 days or longer duration, employed by the Employer at its Portland, Oregon, facility; but excluding all nonprofessional employees, confidential employees, temporary employees employed through an agency, and guards and supervisors as defined by the Act.

(B) All employees, including temporary employees employed on a contract of 90 days or longer duration, employed by the Employer at its Portland, Oregon, facility; but excluding all professional employees, confidential employees, temporary employees employed through an agency, and guards and supervisors as defined by the Act.

There are approximately 91 employees in Group A and approximately 49 employees in Group B.

⁴ *Sonotone Corp.*, 90 NLRB 1236 (1950).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Voting Groups 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 those in the Groups 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 OREGON PUBLIC EMPLOYEES UNION, SERVICE EMPLOYEES LOCAL 503, SEIU INTERNATIONAL. Those in Voting Group A shall also vote on whether they wish to be included in a combined unit along with Voting Group B.

NOTICE POSTING OBLIGATIONS

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

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 lists of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that election eligibility lists, containing the alphabetized full names and addresses of all the eligible voters, broken down into Group A and Group B, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the lists available to all parties to the election.

In order to be timely filed, such lists must be received in the **new** Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before November 22, 2000. No extension of time to file these lists may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such lists. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections

are filed. The lists may be submitted by facsimile transmission to (503) 326-5387. Since the lists are to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy of each need be submitted.

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 the Board in Washington by November 29, 2000.

DATED at Seattle, Washington, this 15th day of November, 2000.

/s/ PAUL EGGERT

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