

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

LEISURE CHATEAU CARE CENTER

Employer

and

COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO¹

Case 6-RC-11759
(formerly 4-RC-19836)

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Henry R. Protas, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.²

Upon the entire record³ in this case, the Acting Regional Director 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.

¹ The name of the Petitioner appears as amended at hearing.

² 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. 20570-0001. This request must be received by the Board in Washington by January 28, 2000.

³ The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

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)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of all full-time and regular part-time Registered Nurses (herein "RNs") employed by the Employer at its facility at 962 River Avenue, Lakewood, New Jersey; excluding In-Service Education Nurses, Director of Nursing, Assistant Director of Nursing, managerial executives and guards, professional employees and supervisors as defined in the Act, and all other employees. The Employer, contrary to the Petitioner, contends that the RNs do not constitute an appropriate unit because they are statutory supervisors.⁴ There are approximately 14 RNs in the petitioned-for unit. There is no history of collective-bargaining for any of the individuals involved herein.⁵

The Employer is engaged in the operation of a nursing home in Lakewood, New Jersey (herein called the "Employer's facility"), with a capacity of approximately 242 residents. The facility is divided into four units, with 60 to 62 beds per unit. Three units are located on the first floor and one is located on the second floor. The four units are called California, Florida, Jerusalem and Washington. The facility operates 24 hour per day in three shifts, 7 a.m. to 3 p.m., 3 p.m. to 11 p.m. and 11 p.m. to 7 a.m..

⁴ In its brief, the Employer also contends that RN Jean Maines, who is the director of quality assurance and infection control, is a managerial employee. The Employer does not otherwise contend that the petitioned-for unit is inappropriate.

⁵ On June 10, 1999, the Petitioner herein filed a petition seeking to represent a unit consisting of approximately 36 full-time and regular part-time Licensed Practical Nurses (herein "LPNs"). In a Decision and Direction of Election in Case 4-RC-19722, dated August 12, 1999, Dorothy L. Moore-Duncan, Regional Director of Region Four of the NLRB, found that, contrary to the position of the Employer, the LPNs were not supervisors within the meaning of the Act. A Request for Review of the Regional Director's Decision and Direction of Election was denied on September 7, 1999. I am administratively advised that an election was held, in which a majority of the LPNs voted for representation by the Petitioner, and a Certification of Representative issued in that matter on September 17, 1999.

Sophie-Jane Vega, Nursing Administrator (“NA”), is responsible for the overall operation of the facility. Vega and Blanche Fitzer, Assistant Nursing Administrator (“ANA”)⁶, work in the nursing office. Although Vega and Fitzer work during daylight hours, both are on-call and available at any time. During the 3 p.m. to 11 p.m. shift, Howard Mann is on duty as the RN supervisor, and has overall responsibility for the facility’s operations. During the 11 p.m. to 7 a.m. shift, the RN supervisor is Lorda Rizalvo. On weekends and other days when Mann and/or Rizalvo are not present, various RNs and occasionally, LPNs, fill in to act as supervisor. In addition to his duties as RN supervisor, Mann, and RN Joanne Levy, provide basic skills instruction to the employees. There are also two RNs, Wilma Lecowski and Margaret Levins, who provide in-service training and staff development.⁷ Jean Maines is an RN who is the director of quality assurance and infection control.

Each of the four units has an RN who is the unit coordinator (“UC”). Karen Mazzeo is the UC in the California unit, Patricia Alcott is the UC in the Florida unit, Chana Gumabon is the UC in the Jerusalem unit and Lisa Ellis is the UC in the Washington unit. The UCs work daylight hours, but are on call at all times. On the shifts when the UC is not present, there is a charge nurse on each unit, who may be either an RN or an LPN. The staffing on each unit varies, depending on the shift and whether or not the unit has Medicare patients. Thus, there may be anywhere from one to five RNs and/or LPNs (herein collectively referred to as “staff nurses”) and from five to eight certified nursing assistants (“CNAs”) in a unit at any time, in addition to the UC or the charge nurse.⁸

⁶ The Nursing Administrator and the Assistant Nursing Administrator are sometimes referred to as the Director of Nursing and the Assistant Director of Nursing.

⁷ At the hearing, the parties stipulated, and I find, that NA Sophie-Jane Vega, ANA Blanche Fitzer, In-service RNs Wilma Lecowski and Margaret Levins, and RN supervisors Howard Mann and Lorda Rizalvo are supervisors within the meaning of Section 2(11) of the Act in that they have the authority, inter alia, to discipline employees, adjust employee grievances and direct the work of employees.

⁸ The duties and responsibilities of the CNAs, as well as the charge nurses and the staff nurses, both of whom may be either RNs or LPNs, are described in detail in the Decision and Direction of Election in Case 4-RC-19722, and need not be repeated herein.

As director of quality assurance and infection control, Jean Maines works in an office located in the lobby of the Jerusalem unit. Her job responsibility is to assure that the infection control policies and procedures regarding the nursing department, as well as other departments, are proper, and that those policies and procedures are being followed. Maines interacts frequently with the supervisory and staff nurses, for whom she is available to answer questions and solve problems relating to infection control. When Maines finds problems in this area, she writes up a report on the matter.⁹ Maines attends department head meetings, along with the UCs, the NA, the ANA, the Medical Director, and the heads of the recreation, dietary, housekeeping and pharmacy departments. The meetings are held approximately four times each year.

As stated previously, the UC is in charge of a unit during the day shift, but is on-call at all times. According to UC Karen Mazzeo, approximately one to four hours of her workday is spent performing patient care duties. The remainder of the time is spent in patient care conferences, entering information into the computer, dealing with physicians and families of residents, attending meetings, and overseeing the work of the staff nurses and the CNAs and orderlies in the unit. On some of the units the UC makes up the work schedule, on others it is prepared by staff nurses. If the unit is short-staffed, the UC can make arrangements either to call off duty employees to see if they would like to come in,¹⁰ or the UC can discuss the staffing with other UCs to determine whether some of the staff can “float” to another unit for the day. Thus, the UCs have the authority to send staff from their unit to another unit in order to balance the staffing needs of the facility. This allocation of staffing is also done by the RN supervisors on the later shifts.

⁹ The record does not reflect where Maines’ reports are sent after she completes them, nor does it reflect whether Maines’ responsibilities are merely to report matters or whether she has the discretion to formulate and/or effectuate policies relating to infection control. It appears that Maines works alone inasmuch as the record does not reflect any evidence that she works directly with any specific employees.

¹⁰ The record indicates that there is no mandatory overtime policy at the facility. Thus, employees can be asked, but not required, to come in for extra shifts.

The UCs have the authority to write up disciplinary reports on employees in their units. The facility does not have a set policy which delineates a certain number of warnings and/or suspensions prior to termination. The UCs can decide when discipline is appropriate for such infractions as poor work, insubordination, tardiness, absenteeism, and so forth. The UC can check the employee's personnel file to determine if and what previous discipline has been issued to the individual, and then issue the level of discipline that the UC deems appropriate at that time. During the shifts when the UC is not present, the staff nurses usually discuss disciplinary matters with the UC by telephone or in person at a later time, or with the RN supervisor on duty, before issuing any discipline to CNAs or to orderlies. The UC can determine what level of discipline to issue, notwithstanding the recommendation of the staff nurses, and the UCs have the authority to issue discipline without obtaining authorization from anyone else in management.¹¹

The UCs write evaluations on the employees in the unit. Often, the staff nurses are consulted by the UC prior to the evaluation, so that the UC can receive input from the staff nurses on the job performance of the individual who is to be evaluated. The UC then writes the evaluation, gives it to the individual to review, asks the individual to sign it, and then passes it on to the nursing office to be reviewed and filed in the individual's personnel file. The CNAs and orderlies are already represented by a labor organization and their wages are determined by a collective-bargaining agreement.¹² Thus, the evaluations written by the UCs have no effect on the amount of wages received by the individual being evaluated. However, the evaluation can result in the individual being required to attend additional inservice instruction if the UC decides that the individual's job skills need improvement.

¹¹ The record is unclear as to whether or not the UCs have the authority, independently, to discharge an employee.

¹² The nurses' aides, orderlies, dietary and housekeeping employees are represented by 1115 Nursing Home and Service Employees Union –New Jersey B, A Division of 1115 District Council.

The collective-bargaining agreement also provides for a grievance and arbitration procedure for the employees in the existing unit. The UCs actively participate in efforts to resolve grievances raised by employees in the unit. UCs have mediated problems between employees and have met with union representatives to resolve grievances that were brought to the attention of the Union. These grievances deal with issues such as holiday leave requests, work assignments, and so forth.

Several of the staff nurses as well as the UCs have filled in as an acting RN supervisor, either on weekends or if Mann or Rizalvo are absent from work. Some of these fill-in assignments are regularly scheduled. For example, RN Joanne Levy is the acting RN supervisor every other Sunday at the facility. At other times, various staff nurses or UCs assume the position for a shift when the regular RN supervisor is not there. These fill-ins are done voluntarily; according to NA Vega, a staff nurse chooses to “jump in” to be the acting RN supervisor when the need arises.

According to Levy, when acting as an RN supervisor, she also fulfills her normal responsibilities as a staff nurse at the same time. If problems arise in the building, staff nurses might call her for advice. Levy attempts to solve these matters if an established policy applies to the situation, or she will call the NA or ANA to make a decision on the issue. Staff nurses who fill in as acting RN supervisor have on occasion written up disciplinary reports on employees. However, it is not clear whether they discuss these reports with the NA or ANA prior to the preparation of the report. As acting RN supervisor, the staff nurses also adjust the allocation of staff if some units are short-staffed at the time.

As previously noted, the Employer contends, contrary to the Petitioner, that all of the RNs herein are supervisors within the meaning of the Act. Specifically, the Employer asserts that the RNs have the authority, with regard to the CNAs and orderlies, to assign and direct work, to issue discipline, transfer, suspend, discharge, reward and adjust grievances, and effectively recommend such actions. In addition to its assertion of supervisory status, the Employer asserts, contrary to the Petitioner, that Jean Maines, director of quality assurance and

infection control, is a managerial employee. There is no assertion that the RNs have the authority to hire, lay off, recall or promote employees.

To meet the statutory definition of a supervisor, an individual needs to possess only one of the specific criteria listed in Section 2(11) of the Act, or the authority to effectively recommend such action, so long as the performance of that function is not routine but requires the use of independent judgment. Providence Hospital, 320 NLRB 717 (1996), *enfd.* 121 F.3d 548 (9th Cir. 1997); Nymed, Inc., d/b/a Ten Broeck Commons, 320 NLRB 806, 809 (1996). This test has been traditionally used for supervisory status of all employees, and is also used to determine the supervisory status of health care professionals. The Board has defined the distinction between independent judgment and merely routine judgment as that between the “essence of professionalism” which requires the “exercise of expert judgment” on the one hand, and the “essence of supervision” which requires the “exercise of independent judgment” on the other. Providence Hospital, *supra*, at 730. The Board has long held that the party contending that an individual possesses supervisory status has the burden of proving it. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986).

In the instant case, there are four separate categories of RNs whose supervisory status is to be determined. There are the staff RNs, the UCs, the staff RNs who fill in as acting RN supervisors, and Jean Maines, the director of quality assurance and infection control. I will discuss each of these categories individually to determine if those RNs possess supervisory indicia within the meaning of Section 2(11) of the Act.

The staff RNs, like the LPNs, work under the direction of the NA, the ANA, the UC and/or the RN supervisor on duty. Even when acting as a charge nurse, which is done more often by LPNs than by RNs, the staff RN spends most if not all of his or her time providing direct patient care. The record does not support the conclusion, as urged by the Employer, that the staff RNs exercise independent judgment of the type necessary for a finding that they possess and exercise supervisory authority in the instant matter. Rather, the RNs, by virtue of their specialized training, have responsibilities to perform skilled patient care. The work tasks of the

nurses when directing the CNAs and orderlies are all related to the quality of care. The Board has repeatedly emphasized that the direction of lower skilled nursing assistants in providing routine care is not supervision within the meaning of the Act. Illinois Veterans Home at Anna L.P., 323 NLRB 890 (1997); Rest Haven Living Center, Inc., d/b/a Rest Haven Nursing Home, 322 NLRB 210 (1996); Providence Hospital, supra, at 733.

In the Decision and Direction of Election in Case 4-RC-19722, Regional Director Dorothy L. Moore-Duncan discussed the duties and responsibilities of the staff LPNs in great detail, and found that the staff LPNs, even in their role as charge nurses, were not supervisors within the meaning of the Act. The transcript of the hearing in that case, as well as the Decision and Direction of Election and the Board's denial of a Request for Review by the Employer, are all part of the record in the instant case. Consequently, it is unnecessary to repeat all of the factual and legal findings from that case. In the instant matter, there is no evidence that the staff RNs, whether acting as charge nurses or in their normal responsibilities on the units, have any duties or responsibilities or possess any authority, other than that related to their professional status, which is different than the LPNs who are acting either as staff nurses or charge nurses. Accordingly, based on the above and the record as a whole, and noting the findings, analysis and conclusions in Case 4-RC-19722, I find that the staff RNs do not exercise independent judgment in regard to any of the indicia of supervisory status under Section 2(11) of the Act.¹³

¹³ In NLRB v. Attleboro Associates, Ltd., 176 F. 3d 154 (3d Cir. 1999), the Court of Appeals for the Third Circuit found that LPNs employed in a nursing home were supervisors within the meaning of the Act because they had the authority, inter alia, to assign and direct work using independent judgment, to adjust grievances and to effectively recommend discipline. In her decision regarding the supervisory status of LPNs at the Employer's facility herein, the Regional Director for Region Four addressed the job duties and responsibilities of the staff nurses and charge nurses in light of Attleboro. The record in both Case 4-RC-19722 and in the instant case reflects that the RNs who work as staff nurses and/or charge nurses have virtually identical authority as the LPNs in those positions. Based on the records in these matters and on the Regional Director's Decision in Case 4-RC-19722, it appears that, unlike the LPNs in Attleboro, the staff nurses and charge nurses herein do not possess the authority, using independent judgment, to assign and direct work, to issue discipline, or to adjust grievances. Moreover, the Board has recently stated that it will continue to adhere to the principles set forth in Providence Hospital, supra, concerning the supervisory status of charge nurses, notwithstanding the decisions of certain circuit courts of appeal to the contrary. Vin-Cor Hospital-Los Angeles, 328 NLRB No. 167 at sl. op. p. 3, fn. 9 (Aug. 5, 1999).

With regard to the four UCs in the facility, it appears that they do possess indicia of supervisory status. The record reflects that UCs have the authority, utilizing independent judgment, to discipline employees, to transfer employees, to suspend employees and to adjust grievances. The UCs are responsible for their individual unit at all times, whether they are present or not. The charge and staff nurses call the UC at home or defer decisions relating to discipline until the UC is present.

The UCs, in addition to having the authority to issue warnings and suspensions, also have the authority to accept or reject the recommendations of the staff nurses with regard to discipline. Independently, Karen Mazzeo, UC for the California unit, suspended an employee for poor attendance after previously warning the employee that she would be suspended if the absenteeism problem continued. On another occasion, Mazzeo issued a written verbal warning, even though the disciplinary form is only for written warnings. In that case, Mazzeo wrote in that the warning was a verbal one. In another situation, a staff nurse in the Jerusalem unit was considerably distressed by the conduct of an aide on her shift, and recommended that he be discharged for his behavior. Despite her recommendation, UC Chana Gumabon decided not to terminate the employee, and instead changed his shift to daylight so that the UC could observe his conduct. The aide was never terminated following that change in schedule.

In addition to the authority to discipline and suspend, the UCs have the authority to transfer employees. The above-described situation where UC Gumabon changed the schedule of an aide to a different shift is an example of the possession and exercise of this authority. In addition, the UCs sometimes confer among themselves and transfer staff nurses, aides and/or orderlies to different units within the facility when one area is short-staffed. These temporary transfers are effectuated without the need to consult with anyone else in management.

Another indicium of supervisory authority which the UCs possess is the power to mediate and resolve employee grievances. The aides and orderlies, who are covered by a collective-bargaining agreement, sometimes have complaints which the UC has the authority to resolve. In one instance, UC Mazzeo had developed the work schedule during a holiday period,

and some of the CNAs were unhappy with the schedule. Mazzeo had the union steward come in to meet with her on the matter, and they were able to resolve the problem. The UCs also resolve problems less formally, without the involvement of the union, when employees have complaints about their working conditions.

Accordingly, based on the above and the record as a whole, I find that the four UCs are supervisors within the meaning of Section 2(11) of the Act inasmuch as they possess the authority, inter alia, to discipline, suspend and transfer employees and to adjust their grievances.¹⁴

The Employer further asserts that most, if not all, of the RNs fill in as acting RN supervisor on occasion. RN Joanne Levy fills in as acting RN supervisor for one weekend shift every two weeks. Levy is the only RN indicated in the record herein who is assigned to this position on a regular basis. NA Vega described how the other RNs “jump in” to act as RN supervisor when there is none there. While the two regular RN supervisors, Mann and Rizalvo,

¹⁴ As previously stated, in addition to the authority to discipline, suspend, transfer and adjust grievances, and to effectively recommend such actions, the Employer also asserts that the UCs have the authority to assign and direct work, to discharge and to reward employees, and to effectively recommend such actions. I find that the record contains insufficient evidence to support these assertions. With regard to the assignment and direction of work, the evidence shows that the schedule is made up by the UC or by a staff nurse by merely inserting the names of the employees to work that day in a predetermined slot of room assignments. The Board has held that work assignments made to equalize employees' work on a rotational or other rational basis are routine assignments and are not indicative of supervisory authority. Providence Hospital, supra, at 727; The Ohio Masonic Home, Inc., supra, at 395 (1989). As discussed previously herein, the Board has consistently held that the direction of nursing assistants by nurses in order to provide routine care to patients in a nursing home is not indicative of supervisory status within the meaning of the Act. Illinois Veterans Home at Anna L.P., supra; Rest Haven Living Center, Inc., d/b/a Rest Haven Nursing Home, supra; Providence Hospital, supra. With regard to terminating employees, the record contains several examples where employees were terminated following disciplinary actions reported by UCs, but it is not clear from the record that the UC, rather than the NA or the ANA, made the decision to terminate the employee. UC Mazzeo could recall only one example of an instance where she recommended the termination of an employee, while she was filling in as the acting RN supervisor several years earlier. In that case, her recommendation was not followed and the employee was not terminated. With regard to rewarding employees, I find no evidence of this indicium in the record. The aides and orderlies are paid in accordance with the provisions of a collective-bargaining agreement, so that management does not have discretion to alter their wages. Thus, while I find that the UCs are supervisors within the meaning of the Act based on their authority to discipline, suspend, transfer, adjust employee grievances and to effectively recommend such actions, I do not find sufficient evidence that they have the authority to assign and direct work, discharge or reward employees, or to effectively recommend such actions.

are stipulated supervisors within the meaning of the Act, there is insufficient evidence that the RNs who fill in possess supervisory authority within the meaning of Section 2(11) of the Act. According to Levy, when acting as RN supervisor, she also performs her regular staff nursing duties. As acting supervisor, she might be called to help allocate staff among the various units in order to make the staffing more balanced. According to Levy, if any nonroutine problem arises, she will contact Vega or ANA Fitzer for instruction as to how to proceed. The Board has held that an employee who substitutes for a supervisor may only be deemed a supervisor if the employee is given supervisory authority when substituting and if the substitution is regular and substantial. Rhode Island Hospital, 313 NLRB 343, 348 (1993); Gaines Electric Company, 309 NLRB 1077 (1992); Aladdin Hotel, 270 NLRB 838 (1984).

Nurses other than Levy also fill in as RN supervisor, but they are not regularly scheduled, nor are they scheduled in advance. NA Vega's description of the process of assigning acting RN supervisors indicates that various RNs volunteer to substitute, with no prescheduling of the assignment, in order to assure that the facility's needs are met and that everything runs smoothly. The Employer submitted documents indicating that these substitute RN supervisors have filled in disciplinary reports on employees while acting in that capacity. However, there is no evidence that these reports were issued independently and without authorization from the NA or the ANA. As described previously, UC Karen Mazzeo described a recommendation that she made as an acting RN supervisor to terminate an employee, but her recommendation was not followed. The Board has repeatedly found that the sporadic assumption of supervisory authority, as during vacations or other unscheduled occasions, is not sufficient to establish supervisory authority. Rhode Island Hospital, supra, at 348; Latas De Aluminio Reynolds, 276 NLRB 1313 (1985); Canonsburg General Hospital Association, 244 NLRB 899 (1979).

Accordingly, based on the above and the record as a whole, I find that the RNs who substitute or act as RN supervisor are not supervisors within the meaning of the Act based on any duties or authority they possess while acting in that position.

Finally, the Employer asserts that Jean Maines, director of quality assurance and infection control, should be excluded from the unit either because she is a supervisor or a managerial employee. With regard to Maines' job duties, the record indicates that her responsibilities include checking and inspecting the facility to make sure that infection control policies and procedures are being followed, and that such procedures are appropriate. She files reports on the subject when she perceives a problem area. There is no evidence that Maines has any direct interactions with any employees in the course of her work and there is no evidence in the record that Maines possesses any of the indicia of supervisory status as described in Section 2(11) of the Act. Thus, I find that the Employer has not provided sufficient evidence to find that Jean Maines is a supervisor within the meaning of the Act.

The Employer also asserts that Maines should be excluded from the unit because she is a managerial employee. Managerial employees are defined as those employees who formulate and effectuate management policies by expressing and making operative the decisions of their employers. NLRB v. Yeshiva University, 444 U.S. 672, 682 (1980), quoting NLRB v. Bell Aerospace Co., 416 U.S. 267, 288 (1974), quoting Palace Laundry Dry Cleaning Corporation, 75 NLRB 320, 323, fn. 4 (1947). In order to be considered a managerial employee, the individual must exercise discretion within, or even independently of, established policies of the employer and must be aligned with management. NLRB v. Yeshiva University, supra, at 683. There are no firm criteria established for determining whether an employee is managerial, but normally an individual can be excluded as managerial only if he or she represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

In the instant case, I find that the Employer has failed to establish that the director of quality assurance and infection control is a managerial employee. While RN Maines clearly helps to effectuate employer policy, the record contains no evidence that Maines has the authority to deviate from the employer's policies independently. The record shows that Maines' job entails inspecting the facility to assure that policies are being followed and that the policies

effectively provide the facility with control of infection. It further indicates that Maines writes reports on her findings. However, there is no record evidence that Maines is actually involved in the decisionmaking which formulates management policies, or that she has the discretion to deviate from the Employer's established policies. See S.S. Joachim and Anne Residence, 314 NLRB 1191, 1194, fn. 6 (1994). Thus, I find that the evidence is insufficient to establish that the director of quality assurance and infection control is either a supervisor or a managerial employee, and consequently, this position shall be included in the unit found appropriate herein.

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

All full-time and regular part-time registered nurses, including staff nurses, charge nurses and director of quality assurance and infection control, employed by the Employer at its Lakewood, New Jersey facility; excluding office clerical employees, the Nursing Administrator, Assistant Nursing Administrator, RN Supervisors, In-service RNs and Unit Coordinators, managerial executives and guards, other professional employees and other supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the Regional Director for Region Four among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁵ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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

¹⁵ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

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 and 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.¹⁶ Those eligible shall vote whether or not they desire to be represented for collective bargaining by Communications Workers of America, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 14th day of January 2000.

/s/Stanley R. Zawatski

Stanley R. Zawatski

Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD

Room 1501, 1000 Liberty Avenue

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177-2401-6750

177-8520-0800

177-8580-8050

¹⁶ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director of Region Four within seven (7) days of the date of this Decision and Direction of Election. The Regional Director of Region Four shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office of Region Four, 615 Chestnut Street, 7th Floor, Philadelphia, PA 19106-4404, on or before January 21, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.