5UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of

USA-IT

Employer

and Case 5-RC-15230

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCALS 24 AND 26, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before 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.

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.

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. USA-IT is a Maryland corporation with an office and place of business in Greenbelt, Maryland. The parties stipulated that USA-IT is engaged in the business of consulting with employers with respect to the issuance of J-1 visas. During the last 12 months, a representative period, USA-IT has derived gross revenues of $50,000 from services performed outside the State

of Maryland. The parties stipulated, and I find, that USA-IT is engaged in commerce within the meaning of the Act.

The International Brotherhood of Electrical Workers, Locals 24 and 26, AFL-CIO (hereinafter "the Petitioners" or "the Unions") filed the instant petition seeking to represent a unit of all employees performing electrical construction work, including telecommunications work, and voice/data video work, in Maryland, the District of Columbia, and Northern Virginia, specifically, the Cities of Alexandria and Falls Church, and the Counties of Arlington, Fairfax, Loudon, Prince William and Stafford, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The parties stipulated, and I find, that the Petitioners are labor organizations within the meaning of Section 2(5) of the Act. There is no history of collective bargaining between the parties for the petitioned-for employees.

The parties stipulated that the petitioned-for employees are employees within the meaning of the Act.

ISSUES

1. Whether USA-IT is an employer, either jointly or singly, of the petitioned-for employees;
2. Whether the petitioned-for employees are temporary employees;
3. Whether an election among the employees in the petitioned-for unit is not appropriate because the work complement is contracting; and
4. Whether the petitioned-for unit is appropriate in terms of geographic scope, or whether it must include all USA-IT employees nationwide.

POSITIONS OF THE PARTIES

The Petitioners contend that: 1) USA-IT is an employer of the petitioned-for employees; 2) the petitioned-for unit is appropriate and the employees share a sufficient community of interest; 3) there is no basis to exclude the petitioned-for employees based on the duration of their employment; and 4) the petitioned-for unit is <u>an</u> appropriate unit. The Petitioners argue that the petitioned-for employees work in the construction industry, which by definition is temporary in nature.

USA-IT contends that, although it is an employer within the meaning of the Act, it is not the employer of the petitioned-for employees and the employer, if any, is the host company, where the employees work. USA-IT further contends that if it were found to be an employer of the employees at issue, the only appropriate unit is a nationwide unit. Finally, USA-IT asserts that the employees are temporary employees who are in the United States for a fixed period of time and the unit complement is contracting and, therefore, the Board should not proceed to an election.

The Petitioners assert that as of the date of the hearing there were approximately 50 employees in the petitioned-for unit. According to USA-IT, at the time that the petition was filed there were approximately 100 employees in the petitioned-for unit. Since the filing of the petition, USA-IT asserts that 40-50 employees have left employment with their host company.[1]

USA-IT'S BUSINESS AND OPERATIONS

USA-IT presented as its witnesses general counsel Catherine Reynolds and executive vice-president Amanda Stowers.

USA-IT works to facilitate the entrance of individuals to the United States under the J-1 visa program, which is administered by the Department of State. The purpose of the J-1 visa program is to provide a cultural exchange program to train foreign nationals in certain occupations. USA-IT markets itself to electrical contractors (host companies), informing them that it has individuals available with a variety of technical skills in the electrical industry.

USA-IT'S RELATIONSHIP WITH SPONSORS

Under the J-1 program, an organization, approved by the Department of State and referred to as a sponsor, sponsors employees during their 18-month stay in the United States under the visa program. Sponsor organizations are designated by the State Department and have several obligations, including approving the J-1 exchange visitors who will become employees. The sponsors ensure that there is adequate supervision and monitoring of the employees during their time in the United States. Sponsors often designate a third party, referred to as a host company, to provide training to the employees participating in the exchange program. USA-IT does not act as a sponsor or a host company and is not a party that would be referred to in the State Department's J-1 regulations. The employees in issue have received approval of the J-1 visa from one of the following sponsors: the Association of International Practical Training (AIPT); the Cultural Exchange Network (CENET); or the YMCA, which has an agreement with the British University of North America Club (BUNAC) to oversee the program that the YMCA sponsors.

In order to enter the United States under the visa program, the potential employees must obtain a J-1 visa and must demonstrate that they do not have the intent to reside permanently in the United States and that they have ties to their home country. When a sponsor approves the application of an employee, the sponsor issues a IAP-66 form to the employee which sets forth the terms of the training program, the stipend amount, whether the employee will be receiving assistance from their home country, the name of the sponsor, and the name of the host company, if it is different from the sponsor. Once the employee is approved, the IAP-66 form is sent directly to the employee or to USA-IT, which then forwards it to the employee. USA-IT then arranges for housing and transportation, notifies the host company, and sets a start date and a date for orientation.

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[1] In its brief, USA-IT contends that since the close of the hearing, the size of the unit has drastically reduced. This contention will be addressed further below.

USA-IT'S INVOLVEMENT IN THE SCREENING OF EMPLOYEES

USA-IT works with independent contractors overseas to create a pool of applicants for the J-1 visa program. The independent contractors, on behalf of USA-IT, screen potential employees, checking their background, language skills, and references. Once USA-IT receives a list of potential employees, the résumés are provided to the host company, which then selects individuals from the group to interview. Host companies interview potential employees in person overseas or by telephone conference call. A USA-IT representative generally accompanies the host company representatives overseas and assists with the face-to-face interviews. USA-IT also works with sponsors and host companies to bring employees into the United States to obtain training and work during their 18-month stay. USA-IT assists the potential employees, sponsors, and host companies in processing and completing documentation pursuant to the J-1 visa program.

USA-IT'S RELATIONSHIP WITH HOST COMPANIES

Under the J-1 visa scheme, host companies apply to the sponsor to host the employees and are designated by the sponsor to direct the exchange program. Host companies share responsibility imposed by the State Department regulations with the sponsor and maintain the training program in which the employees will participate. The sponsor is responsible for ensuring that the host company is performing the tasks it has contracted to perform. Once the host company determines which potential employees they are interested in, USA-IT assists by reviewing the paperwork of potential employees. The host company may accept or reject any individual it chooses; USA-IT has no role in this decision by the host company. USA-IT works together with the host company to ensure that the documentation of the potential employee is in order to submit to the sponsor. Once the application has been approved, the sponsor issues the IAP-66 form. The IAP-66 form is presented to the consulate overseas, the employee is interviewed, and a decision is made as to whether the J-1 visa will be issued. USA-IT assists the host company in drafting training plans, which must be submitted to the sponsor. USA-IT reviews these documents before they are submitted to the sponsor. As part of its agreement with the host company, USA-IT pays the sponsorship or application fee, which accompanies the application to the sponsor, and the 18-month health insurance cost before each employee arrives in the United States. The sponsorship fee is usually between $650 and $1000. USA-IT does not receive reimbursement for the sponsorship fee.

COMPENSATION, BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT

USA-IT provides various services to employees and host companies. Once an employee has been selected, USA-IT pays the cost of transportation to the city of the host company, up to $500, for employees to travel to the United States. Employees are not expected to reimburse USA-IT for this cost. If the cost exceeds $500, employees reimburse USA-IT for the amount over $500 by payroll deduction. Once the employees arrive in the United States, USA-IT provides them with orientation at no cost.

The employees receive assistance from USA-IT with obtaining housing and transportation. There are some instances where USA-IT holds the lease on an apartment or house that employees live in. If the lease is held by USA-IT, the rent is deducted from the employee's salary. If USA-IT pays the first month's rent and security deposit for an apartment, that cost is similarly deducted from the paychecks of the employee. USA-IT also provides employees with a used car at no cost or assists them with purchasing a vehicle, for which they reimburse USA-IT. The employees are responsible for obtaining car insurance and providing maintenance for vehicles, although USA-IT attempts to arrange for the car insurance, for which the employee then pays.

USA-IT assists with registration of vehicles, obtaining social security cards, setting up bank accounts and familiarizing employees with the area. USA-IT generally groups employees together in one house or apartment in order to make the accommodations more affordable. Employees are free to decline the assistance of USA-IT and find housing and transportation on their own. Employees are provided with basic amenities, including a bed, sheets, dishes, towels, and basic kitchen supplies. If the amenities are purchased by USA-IT, the employees are expected to reimburse USA-IT for these costs, but no interest is charged. If the host company changes location, USA-IT assists affected employees with finding housing in the new area.

USA-IT enters into written agreements with employees and host companies. The agreement with the employee sets forth the responsibilities of the employee and USA-IT in connection with the J-1 visa program. The agreement with the host company details the services that will be provided by USA-IT to the host company. General Counsel Reynolds testified that USA-IT does not exercise any control over wages, hours or working conditions of employees. Employee time sheets are kept by the host company and sent to USA-IT for processing through the payroll system. The host company determines the employee's wages, also referred to as a stipend. USA-IT maintains an agreement whereby the host company pays USA-IT the wage for each employee and a fee for USA-IT's consulting services for each hour that the employee is on site with the host company. The host company lists the wage rate, hours and overtime rate of the employee on the application that is submitted to the sponsor. The host company is free to raise the rate of pay provided to the employee. During their stay in the United States under the J-1 visa program, employees are transferred between different host companies both within the geographic area of the petition and on a nationwide basis. There is little evidence of temporary transfer. Rather, the record reflects that approximately 65 employees were permanently transferred. If an employee does not work the full 18 months with a host company, USA-IT attempts to find another host company that would be willing to provide the employee with training for the remaining time of the visa.

USA-IT has a payroll service that provides biweekly paychecks to the employees, and deducts taxes and other funds that are to be reimbursed to USA-IT. If the host company has not paid USA-IT for the employees, USA-IT continues to pay the employees. On occasion, USA-IT provides cash advances to employees when they arrive in the United States. These advances are to be repaid to USA-IT, without interest. The United States State Department regulations require that the sponsor ensure that every employee has health insurance to cover any medical problems during their stay in the United States. The health insurance must be paid in full when the application is submitted and before the IAP-66 is sent to the employee. The host company may

provide the health insurance or reimburse USA-IT for the cost of health insurance. Employees receive workers' compensation insurance; if the host company does not provide the insurance, USA-IT offers a policy for which the host company reimburses USA-IT. USA-IT advances the cost of tools to the employee and seeks reimbursement from the employee. Benefits such as vacation and sick leave are based on the host company's policy.

CONCLUSIONS

EMPLOYER STATUS OF USA-IT

In asserting that USA-IT is an employer of the petitioned-for employees, the Petitioners rely on *M.B. Sturgis*, 331 NLRB No. 173 (2000), *Management Training Corp.*, 317 NLRB 1355 (1995), and *All-Work, Inc.*, 193 NLRB 918 (1971). The Petitioners contend that these cases hold that if an employer that supplies employees to a user-employer controls some employment matters, the supplier-employer is an employer of the employees.

In *All-Work, Inc.,* the employer provided unskilled labor through the use of a referral system. The customer directed the laborer in performing his job and set lunch and break times. The employer received a fee from the customer based on the hours worked by the laborer, and the employer paid the laborer his wages from that fee. The employer was responsible for withholding federal income and social security tax and making workers' compensation payments. The Board found that the employer controlled wage rates, the manner of pay, the assignment of work and in some instances, the transportation of laborers to job sites. Although the employer did not supervise the work of the employees on the job site, the Board found that it had control over some of the "most important aspects of the employer-employee relationship." *Id.* at 919. For that reason, the Board determined that "effective and meaningful collective bargaining could take place between the Employer and the Petitioner and that the laborers, as employees of the Employer, are entitled to such bargaining if they indicate that they desire it." *Id.*

In *Volt Technical Corp.*, 232 NLB 321, 322 (1977), the Board, citing *All-Work, Inc.,* stated that the employees at issue were entitled to the protection of the Act "even though the employer does not exercise control over the entire employment relationship." In *Volt Technical Corp.*, the Employer controlled work assignments, wage rates, the manner of payment, holiday and vacation schedules, insurance, travel and per diem expenses.

In asserting that it is not the employer of the petitioned-for employees, USA-IT argues that it does not exercise control over hiring, discipline, assignment and direction of work, discharge, evaluation or wage rates. USA-IT cites *Outokumpu Copper Franklin, Inc.*, 334 NLRB No. 39 (2001), noting that the employer in that case had "exclusive control" of almost every meaningful aspect of the temporary workers' employment. The employer retained the authority to discipline, discharge or send temporary employees home, exclusively set wage rates, and the employer's supervisors assigned and directed the temporary employees. In that regard, USA-IT contends that it does not have control over meaningful aspects of the employment of the employees at issue in the instant proceeding.

The record reveals that USA-IT pays the health insurance costs for employees before they arrive in the United States for the 18-month visa period. This is a requirement when the application is submitted to the sponsor. The host company understands that it must pay for insurance for the employee. Since USA-IT paid the cost of insurance in advance, the host company reimburses USA-IT on a monthly basis. Executive vice-president Stowers testified there is nothing that prohibits USA-IT from purchasing a health insurance policy that would supplement the policy currently provided to employees.

The record evidence reveals that USA-IT enters into consulting agreements with host companies which, among other things, specifically set the wage rates to be paid to employees. There is nothing in the record to suggest that USA-IT cannot affect those wage rates through its negotiations of these consulting agreements, although its practice has been to accept whatever wage is proposed by the host company. If an employee receives an increase in the wage rate, USA-IT receives notification. Although USA-IT asserts that it does not have any control over wages paid to employees, executive vice-president Stowers testified that there is nothing in the consulting agreement between USA-IT and the host company that prohibits USA-IT from paying the petitioned-for employees more than $10 per hour for straight time.[2] Although Stowers attempted to clarify her testimony, she again admitted that there was nothing in the consulting agreement that prohibits USA-IT from reducing its consulting fee and increasing the wages paid to the employees. Based on the record evidence, I find that USA-IT is a party to a contract that sets the wage rate of the petitioned-for employees, and thus at a minimum has a voice in what those wages should be. In addition, USA-IT procures or assists in procuring employees' health insurance, workers compensation insurance, living arrangements, and transportation to the job site. Moreover, USA-IT pays the employees' wages whether or not the host company has paid USA-IT for the employees' services. Accordingly, USA-IT is an employer under Section 2(2) of the Act and sufficiently controls the employer-employee relationship to enable effective and meaningful collective bargaining to take place. As I have determined that USA-IT is <u>an</u> employer of the employees, I find it unnecessary to reach the joint employer issue raised by USA-IT in its brief. *Professional Facilities Management Inc.,* 332 NLRB No. 40 (2000); *M.B. Sturgis, Inc.*, 331 NLRB No. 173 (2000).

TEMPORARY EMPLOYEE STATUS AND CONTRACTING UNIT

At the hearing, USA-IT asserted that the employees in issue are temporary employees and therefore the Board should not proceed to an election. The Petitioners assert that the Board has long recognized that all employment in the construction industry is temporary and this fact should not prevent the petitioned-for employees from exercising their right to vote in an election.

USA-IT argues that the final group of employees has already come to the United States, the unit will decrease beginning in October 2001 and will no longer exist in November 2002. In addition, USA-IT asserts that the number of employees has decreased nationwide due to "aggressive solicitation by the Petitioner." For these reasons, USA-IT contends that the

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[2] General Counsel Reynolds, USA-IT's first witness at the hearing, testified that she was not familiar with the exact contracts, therefore the parties utilized $10 per hour as a generalized fee paid to employees. Based on that figure, USA-IT would receive $15 per hour to compensate it for the employees' wages and its consulting fee.

Petitioner should be disqualified due to a conflict of interest and the order of an election would be inappropriate.[3]

USA-IT argues that an election would be inappropriate due to the contracting unit and eventual cessation of operations. In *Plum Creek Lumber Co., Inc.,* 214 NLRB 619 (1974), the Board dealt with a contracting unit and dismissed a petition where the unit sought would contract from 17 to 3 employees within approximately 4 months, and the nature of the work of the remaining employees would change. The Board held that, under those circumstances, it would not effectuate the Act to hold an election in a unit which was about to undergo an imminent substantial contraction. In *Douglas Motors Corp.,* 128 NLRB 307 (1960), the Board dismissed a petition where 75 percent of the employer's workforce would be eliminated and a fundamental change in operations would occur in approximately 3 months. In the instant case, there currently remains, and will remain for an indefinite period through November 2002, a substantial complement of employees in the petitioned-for unit. USA-IT has not provided specific facts, such as a timeline showing the number of employees by which the unit will decrease from the date of the hearing through November 2002. That the number of employees will drop over the next 13 to 14 months is not sufficient reason to dismiss the petition given the absence of any information from USA-IT showing at what rate this reduction will occur.

In determining whether an election should be conducted, the Board determines whether the closure or cessation of operations is imminent and certain, and not merely predicted or speculative. *M.B. Kahn Construction Co.,* 210 NLRB 1050 (1974). In the instant case, the certainty is established but the cessation of operations is not imminent. The Board also considers the proximity of cessation of operations to an election date. The completion of work must be imminent rather than distant for the Board to conclude that an election has no useful purpose. The Board has consistently held that when a job is scheduled for completion within four months, no useful purpose is served by determining representation. *Larsen Plywood Company, Inc.,* 223

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[3] In its brief, USA-IT requested that the record of the proceedings be reopened to receive evidence on the issue of conflict of interest. More specifically, USA-IT asserts that it has information that the Petitioners are seeking to lure employees away from their training program with assurances of better paying jobs at non-sponsor organization approved companies.

USA-IT's motion to reopen the record is hereby denied. Section 102.65(e)(1) states, in pertinent part, that "[a] party to a proceeding may, because of extraordinary circumstances, move after the close of the hearing for reopening of the record…. No motion…to reopen the record will be entertained by the Board or the Regional Director with respect to any matter which could have been but was not raised pursuant to any other section of these rules. A motion…to reopen the record shall specify briefly the error alleged to require a rehearing or hearing *de novo*, the prejudice to the movant alleged to result from such error, the additional evidence sought to be adduced, why it was not presented previously, and what result it would require if adduced and credited. Only newly discovered evidence – evidence which has become available only since the close of the hearing – or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at a further hearing."

In order to find that a union has a disabling conflict of interest the Board requires a showing of a "clear and present" danger interfering with the bargaining process. The burden on the party seeking to prove this is a heavy one. *Garrison Nursing Home,* 293 NLRB 122 (1989), citing *Quality Inn Waikiki*, 272 NLRB 1, 6 (1984), enfd. 783 F.2d 1444 (9th Cir. 1986). In *CMT, Inc.*, 333 NLRB No. 151 (2001), the Board affirmed the Acting Regional Director's conclusion that the Petitioner did not have a disqualifying conflict of interest with the Employer. The Board noted that the "conflict of interest" doctrine originated to address the "unique" circumstance where a union is in direct *business* competition with the employer whose employees it represents. This situation is not present in the instant case. USA-IT's allegations, even if true, do not establish a disqualifying conflict of interest. Accordingly, the requirements of Section 102.65(e)(1) have not been met.

NLRB 1161 (1976); *Martin Marietta Aluminum, Inc.,* 214 NLRB 646 (1974). In *Davy McKee Corp*., 308 NLRB 839 (1992), the Board denied a request for review of the Regional Director's decision dismissing a petition. The Regional Director found the project in issue would be completed in approximately one month and there was no basis to proceed to an election. In *Fish Engineering & Construction*, 308 NLRB 836 (1992), the Board reversed the Regional Director's dismissal of the petition since the employer entered into a contract for a project that would begin approximately 2 months after the end of the current project in the same geographic area as the unit sought in the petition.

In *General Electric Company,* 101 NLRB 1341 (1952), the employer asserted that the plant would cease operations within months and therefore it would not effectuate the purposes of the Act to conduct an election. The Board noted that the cessation of operations would continue over an extended period of time, all of the employees in question were presently employed and a substantial number will continue to be employed. For those reasons, the Board determined that an election would be held. In *E.I. du Pont de Nemours and Company (Dana Plant)*, 117 NLRB 1048 (1957), the Board directed an immediate election when approximately 6 months of work remained before the final shutdown of a plant.

Since there will be employees in the petitioned-for unit until November 2002, I find that it would effectuate the purposes of the Act to direct an election among employees in the unit found appropriate herein.

UNIT SCOPE

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof…." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.,* 322 NLRB 723 (1996); *Parsons Investment Co.,* 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.,* 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB,* 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

The Board has stated that its task, under the Act, is to determine not the most appropriate or comprehensive unit, but simply an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The Board begins by looking to the unit sought by the Petitioner and if that unit is appropriate, the inquiry ends. If the unit is inappropriate, the Board will then scrutinize the Employer's proposed unit. *Dezcon, Inc.,* 295 NLRB 109, 111 (1989).

The Employer asserts that the petitioned-for unit is inappropriate and the only appropriate unit is a nationwide unit.[4] The Employer contends that all of the employees in the United States under this particular program are subject to an 18-month stay, have similar backgrounds, work similar hours, have similar job assignments and are transferred between job sites on a nationwide basis. The Petitioners assert that there is insufficient evidence of temporary interchange into or out of the unit and there is minimal transfer in or out of the Baltimore-Washington metropolitan area.

I find that the petitioned-for unit is an appropriate unit. While there is evidence of permanent transfers both into and out of the petitioned-for unit, there is very little evidence of any temporary transfers. Rather, the transfers appear to be employees permanently moving from one host company to another. Permanent transfers are entitled to less weight than temporary transfers in determining unit scope. *Red Lobster*, 300 NLRB 908, 911 (1990). Although there is a significant percentage of employees in the petitioned-for unit who have permanently transferred into or out of that unit, I find that a nationwide unit is not the smallest appropriate unit in which these employees may be represented. In this regard, I note that the employees nationwide have very little contact and have little opportunity to join together to exercise their collective-bargaining rights. *Metropolitan Life Insurance Company*, 156 NLRB 1408 (1966).

ELIGIBIITY FORMULA

The Board held in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable in all construction industry elections, unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB No. 104 (1999). Here, the Employer's unit employees are engaged in the construction industry, and the parties did not stipulate that the *Daniel/Steiny* formula should not be applied. Accordingly, I find that the *Daniel* formula, as set forth below, is the appropriate eligibility formula to be applied in this case.

The *Daniel* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267 (1961), modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

[4] No party has asserted that any other unit would be appropriate, or that a unit smaller in geographic scope than the petitioned-for unit is appropriate.

CONCLUSION AS TO THE UNIT

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at hearing and in brief, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time employees performing electrical construction work, including telecommunications and voice/data video work in Maryland, the District of Columbia and Northern Virginia, specifically the cities of Alexandria and Falls Church, and the counties of Arlington, Fairfax, Loudon, Prince William and Stafford, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike 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 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, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began 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 **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 24 AND 26, AFL-CIO.**

LIST OF VOTERS

To insure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.,* 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility,* 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to

comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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

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, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by**, OCTOBER 17, 2001.**

Dated: October 3, 2001
At Baltimore, Maryland

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Regional Director, Region 5

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