

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**218-220-222 West 141st Street, HDFC and
West Harlem Group Assistance, Inc.**

Employer

- and -

Case No. 2-RC-22616

**Stationary Engineers, Firemen, Maintenance
and Building Service Union, Local 670,
RWDSU, UFCW, AFL-CIO, CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Gregory B. Davis, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding¹, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I find that 218-220-222 West 145th Street, Housing Development Fund Corporation (HDFC) and West Harlem Group Assistance, Inc., a New York corporation, collectively referred to herein as the Employer, provide real

¹ The briefs, filed by Counsel to the Employer and the Union, have been carefully considered.

estate management services and operate as joint employers with common management and control over the labor relations of employees at facilities located at 218, 200 and 222 West 141st Street, New York, New York, the sole facilities involved herein.

Annually, in the course and conduct of its operations, the Employer derives gross revenues in excess of \$500,000, and purchases goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated and I find that Stationary Engineers, Firemen, Maintenance and Building Service Union, Local 670, RWDSU, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. At the commencement of the hearing, Petitioner amended its petition. Petitioner seeks to represent all full-time and regular part-time building service and maintenance employees, including but not limited to, superintendents and porters employed at the Employer's facilities located at 218, 220 and 222 141st Street, New York, New York, excluding all other employees, including office clerical employees, professionals, guards and supervisors as defined by the Act.

The Employer contends that the superintendent is a supervisor and, therefore, should not be included in the unit. The Employer further contends that, inasmuch as the petitioned-for unit consists of only one employee, the Petition should be dismissed. The Petitioner, to the contrary, contends that the Employer has failed to meet its burden of establishing that the superintendent is a supervisory employee within the meaning of the Act.

The record establishes that the Employer manages the cleaning and maintenance of several residential apartment buildings. At the facilities involved herein, consisting of three adjoining buildings on West 141st Street, the Employer has employed, at all relevant times, one superintendent, whose name is Jorge Bueno, and one porter, Ronald Campbell.

Executive Director Donald C. Notice heads the Employer's supervisory structure. He delegates most personnel matters to Deputy Director Lisa Espinosa. The Area Supervisor, Edwin Hernandez, reports to the Deputy Director and the building superintendent, Bueno, reports to the Area Supervisor.

Hernandez interviewed Bueno and hired him for the superintendent position in November 2001. The Employer had just installed a new \$450,000 boiler at the site, thus it dispatched a plumber to observe Bueno on the job and to evaluate his skill at operating the boiler system. Based primarily on the plumber's positive recommendation, Hernandez hired Bueno.²

Soon after Bueno was hired, Notice met with him to describe the organization and inform him of his duties. At this time, Bueno was given a job description listing his duties. As discussed in further detail below, the job description provides, among other things, that the superintendent has the authority to recommend the hiring and firing of the porter, to discipline the porter and to supervise the porter in various assignments. Notice admits that he did not, however, discuss whether Bueno had any authority regarding the hiring or firing of the porter or any other specific item mentioned in the job description.³ Instead, he described, in general terms, the nature of Bueno's job, such as

² It appears that Espinosa also may have been involved in some aspect of the hiring process; Notice's participation was limited to "signing off" on Bueno's hire.

³ Notice gave Bueno a package of paperwork that included a job description, the personnel policies and various forms, like an I-9 and W-9. Notice admitted that he did not compile the information and could not testify for certain that the job description in evidence was the same as

making repairs in a timely fashion, handling emergencies and overseeing the porter to ensure that the building is clean. Notice testified that he normally does not discuss the job description with the superintendents; rather, the area supervisors typically handle that part of the hiring process. There is no evidence in the record, however, to establish that Hernandez discussed the responsibilities enumerated in the job description in any specific detail with Bueno. Additionally, it is unclear from the record whether Bueno, who testified in Spanish, read and understood the job description that is written in English.

Bueno's recollection is that Notice discussed building repairs and electrical problems and instructed him to make sure that the porter kept the building clean. They did not specifically review the job description. Additionally, Bueno testified that at the time he was hired, Area Supervisor Hernandez told him that if there were a problem with the porter, he should report it to Hernandez and the office would take the proper measures.⁴ Hernandez did not testify at the hearing.

Subsequent to their initial meeting, sometime in August 2002, Notice provided Bueno with another copy of a job description. In addition, Notice claimed that job descriptions were handed out at several bimonthly maintenance meetings. According to Bueno, there were two occasions when Notice gave him a job description: at his hire and in August 2002. Bueno denied that job descriptions were distributed at maintenance meetings.

the job description in Bueno's hiring packet. It appears from the record that the job descriptions for the position of superintendent differ depending on the specific responsibilities at a particular site.

⁴ After nearly a year on the job, Bueno has not reported any problems regarding the porter's job performance to Hernandez or anyone else in management.

As discussed above, according to the job description in evidence, the superintendent can recommend the hiring and firing of the porter. According to Notice, the superintendent's role in the porter's hiring consists of making a recommendation based on his observation of the porter's skills for a few days. In the instant case, Campbell was already working when Bueno was hired. Notice testified that there are numerous instances of superintendents hiring porters, in the manner described above, at other building locations not at issue herein. However, Notice could not recall any specific instance where a porter was fired on the recommendation of the superintendent. He claimed that if a porter appeared for work drunk, the superintendent has the authority to fire him right on the spot. The record fails to contain evidence of any instances of misconduct resulting in the termination of a porter based upon the recommendation of the superintendent and there is no evidence regarding a progressive disciplinary system. Bueno testified that he was never informed that he had the authority to hire or fire the porter.

The job description additionally grants the superintendent the authority to "discipline[] the porter as needed, including all write-ups." A standardized form is available for this purpose. Bueno testified that he was never informed that he had the authority to discipline the porter. Instead, Area Supervisor Hernandez instructed him that if he had a complaint or problem with a porter, he should relay the information to him. Additionally, Notice testified that the area supervisor is fully responsible for any disciplinary actions. Further, if a porter is suspended or docked, the deputy director will review the decision.

Campbell testified that both Hernandez and Notice have verbally warned him not to congregate with tenants in front of the building, and that Notice cautioned him that a further infraction would result in termination. Notice testified that he informed Bueno that the porter should have been doing his job that and he assumed that Bueno subsequently

spoke with Campbell. Bueno denied that Notice spoke to him about a work problem with Campbell and did not recall speaking to Campbell regarding problems with his performance. Campbell testified that he is unaware that Bueno has the authority to discipline him and that in fact, he never has. Campbell did testify, however, that Bueno mentioned to him that he was a good worker and cautioned him not to stand in front of the building because “they are trying to make problems for you.”

Notice testified that after conducting March inspections, he realized that the superintendents were not supervising the porters. As a result, he conducted a meeting in June 2002, to reiterate to the superintendents what their roles and responsibilities were and to reinforce that they were fully responsible for the porter’s work.

At the meeting, Notice informed the superintendents that they were supposed to make sure that the buildings were clean and they would now be held accountable for it. Accordingly, a superintendent may be disciplined for not supervising the porter. In addition, the superintendent’s evaluation will be based, in part, on how well he is supervising the porter. Thus, failure to supervise the porter may result in the denial of a wage increase for the superintendent. No evaluations were submitted in evidence. Bueno testified that the discussions at bimonthly maintenance meetings addressed issues such as tenants’ problems, repairs and any problems regarding tickets or summonses for the building. Additionally, there is no record evidence regarding wage increases for superintendents or that any superintendent was disciplined regarding the porters’ failure to perform work.

Notice also testified that he introduced a new procedure whereby superintendents would conduct year-end evaluations of the porters’ work. Previously,

the property managers evaluated both porters and superintendents.⁵ Based on this new system, the superintendents are to complete a form and recommend the porters for merit raises. Evidence of this form was not introduced into the record. Notice claimed that he would honor those recommendations, depending on the budget. Because this procedure was implemented in June 2002, Bueno has not yet performed an end-of-year evaluation of the porter. Bueno denied that he was instructed to evaluate the porter. He did not recall any new directions regarding the evaluation process.

According to Campbell, who has been working as the porter at the site since January 2000, he has received one evaluation that was written by the property manager. Campbell claims that he was never informed of any changes in the evaluation process.

Campbell does not regard Bueno as his supervisor and he claims that at no time did the area supervisor, the property manager, the deputy director or Notice inform him that the superintendent was his supervisor or that the superintendent had the authority to discipline, terminate or evaluate him. He thought that all of these duties were the responsibility of the area supervisor, who, as noted above, did not testify at the hearing. According to Campbell, the superintendent is in charge of making sure that the building is operating properly, but if he needs supplies or any problems arise, he contacts Area Supervisor Hernandez. In that regard, both Bueno and Campbell testified that Hernandez comes to the job site nearly every day and at least three times a week.

With respect to work assignments, Notice claimed that it is the superintendent's responsibility to tell the porter when to take out the garbage so as to avoid City fines. Further, it is the superintendent's and the area supervisor's responsibility to make sure

⁵ The property manager and the deputy director appear to be different positions, but their specific roles and duties were not fully explored in the record.

that the porter sweeps the halls and stairways daily. Similarly, the superintendent and the area supervisor determine which days the building needs to be mopped. Even though the superintendent can adjust the mopping and sweeping schedule, as a general rule, the buildings are mopped three times a day and swept every day. In sum, Notice testified that the schedule for cleaning which the superintendent and/or the area supervisor devise is based on the particular needs of the building.

According to Bueno, the porter knows his job assignment and he only seeks out the porter if there is a special problem. As an example, graffiti removal is primarily the superintendent's responsibility, but he may request the porter's assistance in removing it. The porter's job duties consist of daily work that is outlined in the porter's job description. Thus, assignment of work rarely comes into play because the porter's work is well-defined.

According to Campbell, Hernandez sets up his routine as a guideline for his daily duties. The porters have standard work that they must do everyday, such as taking care of the garbage, cleaning, sweeping and mopping, and outside yard work. The City's sanitation schedule dictates when Campbell collects and deposits the garbage. He testified that he has not received any work assignments from Bueno. He corroborated that if a special need arises, he will perform additional work. He mentioned, for example, that if there were a contractor in the building, the superintendent would make sure that the porter performs additional work resulting from the construction.

In some circumstances, the superintendent and the porter work together. For instance, both the superintendent and the porter remove snow and ice. They will also work together in emergency situations, such as if there were to be a flood in the building.

With respect to granting time off, Notice testified that the porter fills out a leave time utilization form, which either the superintendent or the area supervisor approves

and which is then submitted to the Deputy Director or to Notice. Both Campbell and Bueno testified that they request time off from Area Supervisor Hernandez.

With respect to other terms and conditions of work, both Campbell and Bueno utilize the same time and attendance procedure. Campbell earns \$10 an hour and works 8 a.m. to 4 p.m., Monday through Friday. Bueno is paid \$9.00 per hour and works the same hours, barring a weekend emergency.

Campbell's schedule was set by Lisa Espinosa and confirmed by Notice. Because there was no superintendent at the site, the property manager informed Campbell that part of his job was to work on Saturdays. After Bueno started, the Property Manager informed Campbell that he no longer had to work on weekends. There is no record evidence that Bueno was involved in the decision to adjust the porter's schedule.

As mentioned above, Petitioner seeks to represent employees in the building service and maintenance classifications, including the superintendent. The Employer maintains that the superintendent is a supervisor and should be excluded from the unit. In the event I were to conclude that the superintendent is a supervisor, the petitioned-for unit would consist of only one employee, and dismissal of the Petition would be warranted.

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

any 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 to 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 merely routine or clerical in nature, but requires the use of independent judgment.

It is well established that section 2(11) of the Act must be read in the disjunctive, and that an individual therefore need possess only one of the enumerated indicia for

there to be a finding that such status exists. *Concourse Village, Inc.*, 276 NLRB 12 (1985).

It is also well established that a party seeking to exclude an individual or group of employees based upon their status as supervisory employees bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861, 1866-1867 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Alois Box Co., Inc.*, 326 NLRB 1177 (1998). Further, the Board has cautioned that in construing the supervisory exemption, it should refrain from construing supervisory status “too broadly” because the inevitable consequence of such a construction is to remove the individual from the protections of the Act. *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Thus, “whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, we will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, supra.

Applying the foregoing standards to the facts of this case, I find insufficient support in the record to conclude that Bueno is a statutory supervisor. The record does not establish that Bueno exercises independent judgment with respect to decisions involving the hiring, firing, disciplining, evaluating, or granting wage increases to employees, or any of the other criteria enumerated in Section 2(11) of the Act, or that he effectively recommends such actions.

In support of its contention that the superintendent is a supervisor within the meaning of the Act, the Employer relies largely upon a written job description. I note however, that the record is not conclusive that the document that was entered into evidence is, in fact, the one actually provided to Bueno. Even assuming, however, that Bueno was provided with this job description, it is well settled that the mere issuance of

“paper authority” which is not exercised does not confer supervisory status. *Crittenton Hospital*, 328 NLRB 879 (1999) (and cases cited therein).

The Employer has failed to present sufficient probative evidence to establish that Bueno has been given the authority to hire or effectively recommend that employees be hired. Notice admitted that such authority had never been discussed with Bueno and, in fact, the record establishes that the area supervisor and/or the deputy director interview applicants. Therefore, the Employer clearly has an independent basis for its selections. *The Mower Lumber Company*, 276 NLRB 766 (1985). *Northwest Steel*, 200 NLRB 108 (1972). Even assuming that the Employer may have, in the past, sought the opinions of other superintendents on the skills and qualifications of prospective employees, there is no evidence that these opinions were the only source of information or constituted effective recommendations on which the Employer relied in making its hiring decisions.

With respect to terminations, the record fails to establish that any superintendent employed by the Employer has been involved in a discharge decision, let alone has effectively recommended that such a determination be made. Rather, the record demonstrates that managerial personnel are responsible for disciplinary determinations. While there was some testimony suggesting that superintendents have the authority independently to discharge an intoxicated employee, and there is no evidence that this authority was ever conveyed to or exercised by Bueno, and no specific examples or documents were introduced to establish that other superintendents have been informed that they possess this authority or have exercised it. In any event, it has been held that the grant of authority to order an intoxicated employee to leave the workplace does not arise to a statutory authority to fire employees; as such conduct is so egregious and obvious that little independent judgment is needed. *Chevron Shipping Co.*, 317 NLRB 379 (1995); *Great Lakes Towing Co.*, 165 NLRB 695 (1967).

With respect to the Employer's contention that Bueno is responsible for disciplining the porter, the record fails to establish that Bueno exercises any grant of independent authority in this regard; rather, it is clear that Bueno performs, at most, a reporting function that is not supervisory under the Act. Bueno's un rebutted testimony establishes that he was directed to bring any problems he might have with the porter to Hernandez. While the record establishes that Notice and Area Supervisor Hernandez repeatedly spoke to Campbell about a work problem, the evidence fails to establish that Bueno was directed to or that he in fact did intervene on behalf of the Employer or that he issued any discipline to Campbell.

Even if I were to conclude, as the Employer asserts, that Bueno has been given the authority to issue oral and written warnings, the evidence establishes that either the area supervisor or the deputy director independently investigates and decides what, if any, discipline is warranted. Further, there is no record evidence that a specified number of warnings result in adverse action or that personnel policies regarding a form of progressive discipline are always followed. Thus, even if Bueno were to issue warnings to Campbell, there is no evidence that these warnings, either individually or in the aggregate, would lead to personnel action absent independent investigation or review by others. Accordingly, the warnings are reportorial in nature and fail to constitute indicia of supervisory authority. *Northcrest Nursing Home*, 313 NLRB 491 (1993); *Pepsi-Cola Bottling Co.*, 154 NLRB 490 (1965).

In conclusion, I find that the evidence proffered by the Employer to be insufficient to establish that Bueno has authority to exercise the use of independent judgment with respect to any of the criteria enumerated in Section 2(11) of the Act. Here, the Employer's contentions are largely conclusory assertions lacking supporting facts or documentation. Indeed, Campbell and Bueno rebutted the Employer's claims and cited Hernandez as the management representative with primary responsibility for all

personnel matters. Nor has the Employer provided any specific evidence regarding any recommendation made by Bueno that was followed without independent investigation. Thus, while it may be true, as the Employer asserts, that a grant of supervisory authority, absent evidence it has been actually exercised, may be sufficient to establish such status under the Act, under the circumstances of the instant case I find that absence of evidence that Bueno has exercised any of the criteria under Section 2(11) to constitute some evidence that the grant of such authority has not, in fact, been conferred. The Employer's assertions, without more evidence, do not establish that the superintendent possesses Section 2(11) authority. *The Bakersfield Californian*, 316 NLRB 1211 (1995).⁶

The Employer additionally relies on what are traditionally considered secondary indicia of supervisory authority, such as Bueno's asserted authority to evaluate the work of the porter. It is well settled that, in the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. *SDI Operating Partners, L.P.*, 321 NLRB 111, 11 fn. 2 (1996). In particular, the Board has found that the authority to "evaluate" is not one of the indicia of supervisory

⁶ The Employer's assertion that "the NLRB holds that an employee is a supervisor even if the employee has not exercised his authority" is not applicable in the instant case inasmuch as the evidence fails to establish that such authority has, in fact, been granted. Moreover, the cases relied upon by the Employer are inapposite to the situation at hand. For example, in *Pepsi-Cola Company*, 327 NLRB 1062 (1999), the Board considered whether account representatives were supervisors. Where the account representatives had merchandisers assigned to them, the Board held that the evidence demonstrated that as a group they possessed the same authority with respect to the merchandisers, irrespective of whether a particular account representative had actually hired or fired the merchandisers working under them. Similarly, in *Fred Meyer Alaska, Inc.*, 334 NLRB No. 94 (2001), the Board held that the meat and seafood managers throughout several stores possessed similar authority sufficient to confer supervisor status to all employees within that classification. These managers were sought for the same unit. In the instant case, the superintendents at other locations are not included in the unit sought by Petitioner, the record fails to establish that their responsibilities are supervisory and uniform throughout the Employer's operation and, therefore, their purported authority is not determinative as to whether the superintendent in the unit in question is a statutory supervisor.

status set out in Section 2(11) of the Act. *Elmhurst Extended Care Facilities*, 329 NLRB 525, 536 (1999). Accordingly, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor.

In the instant case, there is insufficient evidence that superintendent evaluations have had or will have any effect on a porter's status or tenure. The evidence provided is largely speculative insofar as it relates to the Employer's future plans, and inconclusive as it hinges on future economic contingencies. There is no evidence regarding what rating system is used or what skills the employee may need to develop. Further, there is no evidence that the Employer will take any action in response to a porter's failure to follow an evaluation's recommendation. Accordingly, the Employer has not shown that the superintendent's evaluations will meaningfully impact the porter's wages or job status. *Williamette Industries, Inc.*, 336 NLRB No. 59 (2001); *Eventide South*, 239 NLRB 287, 288 (1987).

As regards the superintendent's role in assigning work to employees, as with every supervisory criteria, such assignment of work must be done with independent judgment before it is found to be supervisory under Section 2(11) of the Act. Thus, the Board has distinguished between routine direction or assignment of work and that which requires the use of independent judgment. *Laborers International Union of North America, Local 872*, 326 NLRB No. 56 (1998); *Azusa Ranch Market*, 321 NLRB 811 (1996); *Providence Hospital*, 320 NLRB 717, 727 (1996). The Board has held that only supervisory personnel "vested with genuine management prerogatives should be considered supervisors, not straw bosses, lead men, setup men and other minor supervisory employees." *Ten Broeck Commons*, 320 NLRB 806, 809 (1996).

Based on the record evidence, it appears that any work assignments made by Bueno are routine in nature, have not required the exercise of independent judgment

and, therefore, do not rise to Section 2(11) status. The duties of the porter are clearly delineated and not in dispute. Thus, the porter generally knows what functions he is responsible for performing and how to accomplish his tasks. The Employer failed to provide any details regarding how often porters actually break with routine, how much deviation is allowed or whether any discretion is actually involved in telling the porter to perform his assigned functions. In non-routine situations, the porter is in contact with Area Supervisor Hernandez. In *Dynamic Science, Inc.*, 334 NLRB No. 57 (2001), the Board determined that the Employer failed to sustain its burden of establishing that the test leaders possess statutory supervisory authority in their direction of other employee. The evidence showed that the test leaders' role in directing employees is limited and circumscribed by detailed orders and regulations issued by the employer and other standard operating procedures. Consequently, the degree of judgment exercised by the test leaders fell below the threshold required to establish statutory supervisory authority.

Similarly, in the instant case, it is clear that once the original assignment has been set, there are limited circumstances whereby that schedule would be adjusted. The fact that the superintendent may function like a quality control employee in inspecting and reporting the work of others, does not confer supervisory authority on him. *Brown & Root, Inc.* 314 NLRB 19 (1994).

Finally, other secondary indicators of supervisory authority militate against a conclusion that Bueno is a supervisor. Like the porter, the superintendent is paid on an hourly basis and punches a time clock. The superintendent is paid less than the porter, who the Employer concedes, is in the unit. Notably, they sometimes perform maintenance work together. Moreover, given the Employer's multi-layered management hierarchy, the ratio of supervisory to non-supervisory personnel points to the more inherently plausible conclusion that the superintendent is not a statutory supervisor.

In conclusion, based upon the record herein, I find that the Employer has failed to meet its burden of establishing that Bueno is a supervisor within the meaning of Section 2(11) of the Act.

I therefore find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time building service and maintenance employees, including but not limited to, superintendents and porters employed by the Employer at its facilities located at 218, 220 and 222 141St Street, New York, New York.

Excluded: All other employees, including office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

Direction of Election

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place⁷ set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.⁸ Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the 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 service of the United States who are in the unit 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

⁷ Pursuant to Section 101.21 of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

⁸ Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. requires that the Employer notify the Regional Office at least five 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).

eligibility 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.⁹ Those eligible shall vote on whether or not they desire to be represented for collective bargaining purposes by Stationary Engineers, Firemen, Maintenance and Building Service Union, Local 670, RWDSU, AFL-CIO, CLC. ¹⁰

Dated at New York, New York
This October 16, 2002

(s) _____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 177-8501
177-8520

⁹ 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 that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who 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 at the address below, on or before **October 23, 2002**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

¹⁰ 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. This request must be received by the Board in Washington by no later than **October 30, 2002**.