

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

ANYTHING DISTRIBUTORS, INC.,  
A.D.I. t/a MEDIA PLAY, STRIDE NEWS, LTD.,  
and THOMAS W. SHERWOOD d/b/a  
SHERWOOD INVESTMENTS AND  
TRUST COMPANY<sup>1</sup>

Employer

and

Case 4-RC-20682

TEAMSTERS LOCAL UNION 115, AFL-CIO<sup>2</sup>

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer is a single integrated business enterprise comprised of four entities located in Philadelphia, Pennsylvania: Anything Distributors, Inc., (ADI) which distributes adult novelty items; A.D.I., t/a Media Play (Media Play), which distributes adult videos and DVDs; Stride News, Ltd., (Stride News), which distributes adult magazines; and Thomas W. Sherwood, d/b/a Sherwood Investments and Trust Company (Sherwood Investments), which distributes supplies and provides maintenance and management services for the three other entities.<sup>3</sup> The Petitioner, Teamsters Local Union 115, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's maintenance employees, warehouse employees, and drivers. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

The parties agree that the unit should consist of the maintenance employees, warehouse employees, and drivers for all four of the Employer's business entities.<sup>4</sup> The parties disagree, however, as to whether the following individuals should be included in the unit: Robert Foxhill, Eric McCarthy, James DeSimone, Ember Betker, John Oldroyd, Jerry Oldroyd, Robert Cox, and Orididio Arroyo. The Petitioner would exclude Foxhill, McCarthy and DeSimone based on its contention that they are

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Petitioner's name appears as amended at the hearing.

<sup>3</sup> The parties stipulated that the four entities constitute a single employer.

<sup>4</sup> The parties stipulated that William Clark, Dontonie Harris, and Louis Jedwabny should be included in the unit and that Doug Hadry should be excluded from the unit as a supervisor.

supervisors, and the Petitioner also contends that DeSimone should be excluded on the grounds that he lacks a community of interest with the unit employees. The Petitioner would exclude Betker because she is a relative of the Employer's owner, and the Petitioner would exclude Jerry Oldroyd and John Oldroyd because they assertedly lack a sufficient community of interest with the unit. The Employer contends that all of these employees should be included in the unit. The Petitioner further asserts that laid-off employees Cox and Arroyo have a reasonable expectancy of recall and should be included in the unit, while the Employer contends that they should be excluded.

I have considered the evidence and the arguments presented by the parties concerning all of these issues. As discussed below, I have concluded that the Petitioner has not met its burden of demonstrating that Foxhill, McCarthy, or DeSimone are statutory supervisors, and they therefore shall be included in the unit. I have further determined that John Oldroyd and Jerry Oldroyd share a sufficient community of interest with the other unit employees to be included in the unit. I have concluded that Cox had a reasonable expectancy of recall at the time of his layoff and should be included in the unit. The record does not contain sufficient evidence concerning Arroyo's status, and he shall be permitted to vote subject to challenge. The record also does not contain sufficient evidence to enable a determination as to whether Betker enjoys a special status or job-related benefits, and she shall be permitted to vote subject to challenge. In this Decision, I will first provide a brief overview of the Employer's operations. Then, I will present in detail the relevant case law and the facts and reasoning that support my conclusions on each of the issues.

## **I. OVERVIEW OF OPERATIONS**

The four entities operate from three facilities in Philadelphia. ADI employs drivers and warehouse employees who are supervised by Nancy Leech. Media Play employs warehouse employees who are supervised by James Long and Patricia Rizzo. Stride News performs packaging and warehouse work with employees who are also supervised by Patricia Rizzo.<sup>5</sup> Sherwood Investments, which is located in the same facility as Stride News, employs drivers who are supervised by Thomas Sherwood, the Employer's owner. There are about 20 unit employees employed by these companies, in addition to the employees whose status is in dispute.

The Employer's employees are paid by the entity for which they work, and if they work for more than one entity, they receive a paycheck from each one. Some employees are paid on an hourly basis, while others are salaried. With input from on-site supervisors, Sherwood determines annual raises for all employees. The Employer provides half of the cost of health insurance, and employees receive paid vacations and holidays.

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<sup>5</sup> Patricia Rizzo supervises employees at both Media Play and Stride News because the Employer is in the process of merging personnel at these locations.

## II. THE DISPUTED EMPLOYEES

### The Supervisory Status of Robert Foxhill, Eric McCarthy, and James DeSimone

*Robert Foxhill*, a driver, is responsible for delivering Media Play and Stride News merchandise to retail locations in Pennsylvania, New Jersey, and New York. He also brings merchandise and money from the retail stores back to the Employer's facilities. According to the Employer's sole witness, Controller Gary Reitman, Foxhill has the same job duties as the Employer's other truck drivers and drives an Employer-owned van with a "Stride News" logo. Foxhill is not authorized to use the van for personal reasons, but he is permitted to drive the van home because he often starts his delivery route from home.<sup>6</sup> Foxhill is at the Philadelphia facilities about two days a week, and he spends the rest of the week on the road making deliveries. The Employer pays for Foxhill's driving expenses such as gasoline, oil, tolls, and parking. The record does not indicate whether he is paid on an hourly or salaried basis or whether he punches a time clock.

Laid-off driver Robert Cox, the Petitioner's sole witness, testified that Foxhill informed him that in addition to delivering the Employer's merchandise and picking up cash from the retail stores, he manages two stores in New Jersey and has the authority to terminate employees at those stores. Cox has not personally observed Foxhill managing the stores or performing any supervisory duties. Reitman testified that Foxhill does not manage the New Jersey stores or discipline the employees working there.

*Eric McCarthy* works in the warehouse at the Stride News facility packaging magazines for distribution. His sister, Stride News Manager Patricia Rizzo, supervises him. Reitman testified that McCarthy does not assign work to employees and is not involved in hiring or firing. He further testified that he believes McCarthy signs in and out at the beginning and end of his shift along with the other employees and that he does not know if McCarthy is paid a salary or an hourly rate or the nature of his benefit package. The Petitioner presented no evidence as to this employee.

*James DeSimone* was transferred by the Employer in April 2003 from the sales department to the warehouse at the Stride News facility. In April or May 2003, the Employer sent DeSimone to California to observe a rubber products manufacturing operation because the Employer was transferring this operation from California to Philadelphia.<sup>7</sup> Controller Reitman testified that as a warehouse employee, DeSimone is responsible for performing packaging work and that DeSimone performs the same work as other warehouse personnel and receives no special benefits. According to Reitman, DeSimone does not hire, fire, or assign work to employees. Reitman does not know if DeSimone punches a time clock or if he is paid by the hour or receives a salary. The Employer provides DeSimone with health insurance coverage, but as with all employees DeSimone is required to pay half of the premium. The Employer does not plan to transfer him back to a sales position.

Cox testified that when DeSimone worked in sales, he observed DeSimone calling customers, processing orders, and soliciting new customers. He further testified that DeSimone has informed him

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<sup>6</sup> Not all drivers are permitted to take the vans home.

<sup>7</sup> Cox testified that when DeSimone was in California, the Employer provided him with a house, a car, and \$1000 of petty cash every two weeks. Cox did not testify as to the source of this information.

that he is in charge of the new rubber products operation, for which three or four other employees work. Cox only observes DeSimone for about half an hour to an hour a day, when Cox picks up merchandise at the Stride News facility, and he does not know what DeSimone does the rest of the time. He testified that he observed DeSimone assigning work to employees at the new manufacturing and packaging operation and ensuring that the employees completed their assigned work. When asked about the nature of these assignments, Cox testified that DeSimone would “basically just direct them in the procedures, make sure they’re getting the job done.” He did not provide further details as to the nature of these assignments, and he has not observed DeSimone hiring or firing employees. On one occasion since DeSimone returned from California, Cox overheard DeSimone talking on the telephone to Stride News Supervisor Nancy Leech and assuring her that he would take care of one vendor if she could take care of another vendor.

The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. *NLRB v. Kentucky River Community Care, Inc.*, supra, 532 U.S. at 712; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestions, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical or perfunctory manner does not confer supervisory status on an employee. *Juniper Industries*, supra, at 110. The authority effectively to recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation ultimately is followed. *Children’s Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Gaines Electric*, 309 NLRB 1077, 1078 (1992); *Ohio River Co.*, 303 NLRB 696, 714 (1991), enfd. 961 F.2d 1578 (6<sup>th</sup> Cir. 1992). Evidence of the exercise of secondary indicia of supervisory authority is not sufficient to establish supervisory status in the absence of primary indicia of supervisory authority. *First Western Building Services*, 309 NLRB 591, 603 (1992).

Based on these legal standards, the Petitioner has not demonstrated that Foxhill, McCarthy, or DeSimone are supervisors within the meaning of Section 2(11) of the Act. Foxhill works as a delivery driver, but the Petitioner asserts that he is a supervisor because in addition to his driving responsibilities, he picks up money from the retail outlets and manages two stores, where he has the authority to discipline employees. However, transporting money does not confer supervisory status, and the only evidence that Foxhill manages any stores or disciplines employees consists of uncorroborated hearsay reported by Cox. In this regard, Controller Reitman denies that Foxhill manages any stores, and the Petitioner has provided no evidence to the contrary. Accordingly, the Petitioner has not substantiated

its contention that Foxhill has the authority to discipline employees or any other supervisory authority. McCarthy works in the warehouse performing packaging work, and there is no evidence that he possesses any of the indicia of supervisory status set forth in Section 2(11) of the Act. There also is no evidence that DeSimone possesses any indicia of supervisory status. DeSimone may have played some role in establishing the rubber product manufacturing operation in Philadelphia, as evidenced by his visit to California to observe the manufacturing operation there, but the record does not establish the nature of his role. Cox' vague testimony that DeSimone assigns work suggests that DeSimone has directed employees in following the Employer's procedures but fails to establish that DeSimone exercises independent judgment in doing so. See *Gem Urethane Corp.*, 284 NLRB 1349 (1987). There also is insufficient evidence to support the Petitioner's contention that DeSimone should be excluded on community of interest grounds because he works in sales. In this regard, it is undisputed that in April 2003, the Employer transferred DeSimone from sales to the warehouse, and there is no intention to transfer him back to sales work. Accordingly, I find that the Petitioner has failed to meet its burden to prove that Foxhill, McCarthy, and DeSimone are supervisors. I further find that DeSimone shares a community of interest with other unit employees and that these three employees shall be included in the unit.

#### Ember Betker

For more than 20 years, Ember Betker has worked in the packaging and shipping department of the warehouse at the Media Play facility. According to Reitman, she packages and ships videotapes and DVDs, and she has the same responsibilities and duties as the other warehouse employees. Betker is Sherwood's niece, but she does not live with him, nor is she his dependent. She is supervised by her mother, Francine Eliason. There is no evidence as to Betker's pay and no indication that she receives benefits that are not granted to other employees.

Section 2(3) of the Act excludes from the definition of employee, "any individual employed by his parent or spouse." The Board also will exclude other relatives of an employer's owner if the employee's interests "are sufficiently distinguished from those of other employees." *NLRB v. Action Automotive*, 469 U.S. 490, 494-495 (1985). On the other hand, the Board does not exclude an employee simply because he or she is a relative of a member of management. *R & D Trucking, Inc.*, 327 NLRB 531, 533 (1999). In order to exclude an employee relative from the bargaining unit, the Board looks for evidence showing that the employee relative does not share a community of interest with the other unit employees because the employee relative enjoys job-related benefits or a special status not available to other members of the bargaining unit. *Luce & Sons, Inc.*, 313 NLRB 1355, 1356 (1994). In the absence of a job related benefit or special status, the employee relative is included in the unit. See *Blue Star Ready-Mix Concrete Corp.*, supra.

As there is no evidence as to whether Betker receives a different rate of pay than her co-workers or whether she enjoys a special status or receives any job-related benefits that are unavailable to other employees, I cannot determine whether she should be excluded because of her familial relationship. Accordingly, I shall permit her to vote subject to challenge.

#### John Oldroyd and Jerry Oldroyd

John Oldroyd works for the Employer as a maintenance employee and delivery driver. He repairs the Employer's buildings and equipment and delivers merchandise for Media Play and Stride News on a route that includes Pennsylvania, New Jersey, and New York. Jerry Oldroyd, John's brother, is a maintenance employee. He repairs equipment and performs electrical, plumbing, building repair, and general maintenance work. Jerry Oldroyd occasionally performs maintenance work at retail stores managed by Sherwood Investments, and he periodically delivers merchandise if he does not have maintenance work to perform.

John and Jerry Oldroyd both live in Camp Hill, Pennsylvania, but because they generally work in Philadelphia, about 110 miles away, the Employer provides them with an apartment during the week.<sup>8</sup> They work about 80% of the time in Philadelphia or New Jersey, but they occasionally are sent elsewhere to perform their assignments. They share a small room at the rear of the Stride News facility where they store their maintenance supplies. There is no evidence as to their pay rates. They drive their own trucks, and Reitman does not know whether the Employer pays for the cost of the trucks or insurance. Cox testified, however, that John Oldroyd informed him that the Employer paid for half of his vehicle. They are reimbursed for travel expenses such as gasoline and oil. John and Jerry Oldroyd have traveled to Alaska and Colorado to perform maintenance work at stores the Employer manages there. On those trips, the Employer paid for the Oldroyds' travel expenses.

The Petitioner agrees that maintenance employees and drivers are appropriately included in the unit, but contends that John and Jerry Oldroyd lack a community of interest with unit employees because they enjoy job-related benefits unavailable to other unit members, specifically the Philadelphia apartment and their travel expenses. The Board has held, however, that where employees perform unit work, the fact that they receive different benefits and are paid in a different manner than other employees are inadequate bases for excluding employees from a unit on community of interest grounds. See *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998); *K.G. Knitting Mills*, 320 NLRB 374 (1995).<sup>9</sup> As John and Jerry Oldroyd perform unit work, I find that they share a community of interest with unit employees and should be included in the unit.

#### Robert Cox and Orididio Arroyo

Robert Cox worked for the Employer as a driver and warehouse employee from February 1997 until he was laid off on July 25, 2003. He worked in the ADI warehouse performing packing work about 70 to 80% of the time and worked as a driver the remainder of the time, delivering merchandise to retail stores in Philadelphia, New Jersey, and Delaware.

On July 25, Sherwood informed Cox that the Employer had to lay him off. According to Cox, Sherwood said, "[T]hings are a little slow right now, I'll have to let you go, I'll call you back in September."<sup>10</sup> Sherwood then gave Cox a paycheck. The Employer did not give Cox any document describing the terms of the layoff, and Cox has had no subsequent communications with Sherwood.

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<sup>8</sup> The record does not indicate the cost of the apartment. The Oldroyds pay for their own food.

<sup>9</sup> In *K.G. Knitting Mills*, the employees at issue also had the authority to adjust their hours to suit their own convenience, did not punch a time clock, and received less supervision than other employees. Nevertheless, the Board included them in the unit with employees who performed similar work.

<sup>10</sup> Supervisor Nancy Leech was present during this discussion, but neither she nor Sherwood testified.

After his layoff, the Employer removed Cox from its payroll and cancelled his health insurance. Cox testified that there was no decline in his workload prior to his layoff.<sup>11</sup> There was no evidence concerning what the Employer told Arroyo at the time of his layoff.

Reitman testified that the Employer is struggling financially because of increased competition in the adult novelties industry caused by a rise in home businesses and Internet businesses and that the Employer does not anticipate an improvement in its economic condition. The Employer did not provide any financial data or other evidence to support this assertion. Reitman testified that he did not expect that the Employer will have a need to recall anyone on layoff status, and it has no past practice regarding the layoff and recall of employees.

To determine whether laid-off employees are eligible to vote, the Board considers whether, based on objective factors, they have a reasonable expectancy of recall in the near future. In making this determination, the Board analyzes the following factors: (1) the employer's past practice of layoff and recall; (2) the employer's future plans; (3) the circumstances surrounding the layoff; and (4) what employees were told about the likelihood of recall. *MJM Studios of New York, Inc.*, 338 NLRB No. 147 (2003); *Apex Paper Box Co.*, 302 NLRB 67, 68 (1991).

Applying these factors, I find that Robert Cox is an eligible voter because he has a reasonable expectation of reemployment in the near future. There is minimal evidence as to the first three factors. Thus, the Employer does not have a history of layoff and recall of employees or an established policy for dealing with these matters. The only evidence provided by the Employer as to its future plans and the circumstances surrounding Cox' layoff was Reitman's generalized, unsupported statement that the Employer's business was declining and he did not anticipate recalling employees from layoff in the near future. See *D.H. Farms Co.*, 206 NLRB 111, 112 (1973).<sup>12</sup> As to the final factor, Sherwood informed Cox at the time of his layoff that he would call him back in September, thus clearly indicating that Cox would be recalled to work in a few weeks.<sup>13</sup> In the absence of convincing evidence as to any of the other factors, I find that Cox had a reasonable expectancy of recall and is eligible to vote in the election. *Atlas Metal Spinning Co.*, 266 NLRB 180 (1983); *J.I. Brown Tree Expert*, 245 NLRB 1246, fn.1 (1979). As there is insufficient evidence to determine whether Arroyo had a reasonable expectation of reemployment with the Employer, he shall be permitted to vote subject to challenge.

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<sup>11</sup> In Case 4-CA-32319, the Petitioner has alleged, inter alia, that the Employer violated Section 8(a)(1) and (3) of the Act by laying off Cox because of his Union support and activities.

<sup>12</sup> In that case, the Board stated, with respect to similarly conclusory testimony, "[I]n the absence of figures or some form of supporting evidence Respondent's testimony amounts to little more than a bald assertion that there was no reasonable expectancy of recall which, being self serving, is not entitled to significant weight."

<sup>13</sup> The Board has held that "vague statements by the employer about the chance or possibility of employee[s] being hired will not overcome the totality of the evidence to the contrary." *Sol-Jack Co.*, 286 NLRB 1173, 1174 (1987). In *Sol-Jack*, the employer informed an employee at the time of his layoff that he might be back to work in one to two weeks, but several weeks later, on the day of the election, the Employer informed the employee that the layoff was permanent. The Board found that the Employer's equivocal statement at the time of the layoff was more likely an attempt to lend hope to the laid-off employee than to give a realistic assessment of the likelihood of his being recalled to work. In this case, in contrast, Sherwood did not use equivocal language but told Cox without reservation that he would call him back in September.

### **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error, and are hereby affirmed.<sup>14</sup>
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 in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees 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 maintenance employees, drivers, and warehouse employees employed by Anything Distributors, Inc., A.D.I. t/a Media Play, Stride News, Ltd., and Thomas W. Sherwood d/b/a Sherwood Investments and Trust Company, a single employer, at its Philadelphia, Pennsylvania facilities located at 626-636 North 5<sup>th</sup> Street, 1508-1512 North 5<sup>th</sup> Street, and 600 North 3<sup>rd</sup> Street.

### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Teamsters Local Union 115, AFL-CIO**.

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<sup>14</sup> During the hearing, the Petitioner requested a continuance to allow time to serve the Employer with a subpoena duces tecum requesting documents showing, inter alia, employee benefits, payment of the Oldroyds' expenses, whether the employees sign in or punch a time clock, and whether the employees are paid on an hourly or salaried basis. The hearing officer provided Petitioner's counsel with a subpoena but advised him that the record would not be held open for receipt of these additional documents. The Petitioner contends that this ruling was incorrect.

I affirm the hearing officer's ruling to close the record at the conclusion of the hearing. As the petition was filed 14 days before the hearing, the Petitioner had ample opportunity to serve the Employer with a subpoena duces tecum in a timely manner. Moreover, the documents sought by the Petitioner would not have affected the decision in this case. Thus, even if the disputed employees were compensated differently than other employees, this disparity would be an insufficient basis for finding that they did not have a community of interest with the unit employees. *K.G. Knitting Mills*, 320 NLRB 374 (1995). With respect to the supervisory issues, the information sought is not relevant to any primary indicia but only to secondary indicia, which are not controlling. *First Western Building Services*, supra, 309 NLRB at 603.

The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

**A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) 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 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure 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 within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **September 12, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## V. 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. This request must be received by the Board in Washington by 5:00 p.m., EDT on **September 19, 2003**.

Signed: September 5, 2003

at Philadelphia, PA

/s/

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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four

### Classification Index Numbers:

177-8560-1500	362-6798-5000	420-2912	420-2963
362-6766-1050	362-6798-7500	420-2924	
362-6798-0100	420-0100	420-2930	

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