

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15

IESI LA Corporation

Employer<sup>1</sup>

and

Case 15-RC-8546

INTERNATIONAL UNION OF  
OPERATING ENGINEERS, AFL-CIO,  
LOCAL NO. 216

Petitioner

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

The Employer collects, transports, disposes of, and recycles non-hazardous residential, commercial and industrial solid waste. The Employer's operations are divided into Regions, which are subdivided into Districts, which are further divided into Divisions. At issue in these proceedings are the eighteen truck drivers employed in the Employer's Shreveport, Louisiana Division.<sup>2</sup> Specifically, the Petitioner 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 all truck drivers employed by the employer at Barksdale Air Force Base (AFB).<sup>3</sup> At the hearing, the Petitioner clarified that it was seeking a unit of the three drivers who work on the AFB- Jesse L. Mason, Kenneth S. Mason, and James M. Petty.<sup>4</sup> The remaining fifteen work in the Shreveport Division for various customers predominantly in Caddo, Bossier, DeSoto and Claiborne Parishes. The Employer asserts that the three AFB drivers would not be an appropriate unit; that the

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

<sup>2</sup> The Shreveport Division is part of the Employer's East Texas District. The East Texas District is part of the Employer's Southern Region.

<sup>3</sup> The Employer's customer on the AFB is Olgoonik Logistics, LLC.

<sup>4</sup> It is undisputed that the three drivers sought work at the AFB.

smallest appropriate unit would be all eighteen drivers working in the Shreveport Division. A hearing officer of the Board held a hearing and the parties filed briefs with me.

I have considered the evidence and arguments presented by the parties on these issues. As discussed below, I have concluded that the smallest appropriate unit includes “All of the Employer’s Shreveport Division truck drivers including those working on Barksdale Air Force Base; excluding all office clerical employees, guards and supervisors as defined by the Act.”

## I. FACTS<sup>5</sup>

The Employer collects, transports, disposes of, and recycles non-hazardous residential, commercial and industrial solid waste. The Employer’s Main Office for the Shreveport Division is located at 4360 Greenwood Road, Shreveport, LA. The Employer has a non-permanent trailer located about eight miles from the Main Office on the AFB. The Employer employs eighteen total drivers in the Shreveport Division.

All supervisory decisions for the Shreveport Division’s drivers are issued through the Main Office by East Texas District Manager Larry Gostwick, Division Manager Glen Overtuf, Operations Manager Chuck Wheat, and/or Roll-Off Driver/Leadman Michael Jones. All decisions regarding discharges, promotions, transfers, layoffs, route changes, wage rates, and other working conditions for the Shreveport Division are made at the Main Office. All labor policies, hiring decisions, firing decisions, interviews, and disciplinary decisions regarding the eighteen Shreveport Division drivers are made at the Main Office. All eighteen were hired by submitting job applications and being interviewed at the Main Office. All personnel records, financial documents, and legal records for the Shreveport Division are kept at the Main Office. The Employer’s handbook contains policies and procedures applicable to all eighteen of the Shreveport Division drivers. In order to obtain leave, all eighteen drivers must submit and

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<sup>5</sup> The employer presented the three witnesses who testified at the hearing- Director of Human Resources Joyce Thummel, East Texas District Manager Larry Goswick, and Roll-Off Driver/Leadman Michael Jones. All record testimony is undisputed.

receive approval from Operations Manager Wheat. All eighteen drivers have the same opportunities for advancement and/or promotion. All eighteen drivers are offered the same health insurance, life insurance, and pension options. However, because the AFB employees are working under the Service Contract Act 41 USC § 351 et seq., they, unlike the non-AFB drivers, do not pay extra for these benefits.

It is unclear from the record how much each of the eighteen drivers earn. The record reflects that each of the eighteen drivers could have a different rate of pay, daily, although the ability to earn overtime is the same for all eighteen drivers. The drivers on the AFB are subject to the Service Contract Act as it relates to rates of pay. District Manager Gostwick testified that two of the AFB drivers currently earn \$15.39 an hour and one of the three drivers earns \$15.11 an hour; he did not know how much the other fifteen drivers earned per hour. These figures are the minimum starting salaries for the AFB drivers and Gostwick noted that the AFB drivers earn more money than the other fifteen drivers. The AFB drivers have the same opportunities to receive merit and longevity raises as the other Shreveport Division drivers. However, due to the length of the current contract with the customer on the AFB (it began on August 1, 2003) such raises have not yet occurred.

The parties reached the following stipulations regarding wages:

The [Employer] has two plans for its drivers, straight hourly and incentive-based. Hourly employees are paid a flat hourly rate. Incentive-based employees are paid based on the amount of work done. [AFB] drivers are paid a straight hourly rate. Per the subcontract between [Employer] and [customer], [Employer's] employees assigned to operate routes at AFB are in a starting wage rate that is higher than [the Employer's] employees not assigned to operate routes at AFB. Currently no AFB drivers are working under the company's incentive plan. However, management retains the right to change the pay structure as long as the minimums of the subcontract are maintained.

There are several different types of drivers employed by the Employer for a variety of routes. The Employer classifies the drivers as Front Load Drivers (five), Roll Off Drivers (five),

Residential Drivers (six), Container Driver (one), and Swing Driver (one). All drivers are required to have the same skills and licenses. Each driver must have a valid, commercial driver's license and experience operating a commercial vehicle. Each driver has a different route and each of the Employer's eighteen drivers<sup>6</sup> normally has a specific route for a specific customer. Specific routes are determined by the Employer's contract with each customer. Not every driver is familiar with every route. Based upon a driver's schedule, a driver may or may not see or speak to any member of supervision on a specific day.

Jesse L. Mason, Kenneth S. Mason, and James M. Petty are the three drivers working at the AFB in the petitioned-for-unit. Each have a regular designated route on the AFB and clock in on the AFB at the customer's office building (which is a different location than the Employer's portable trailer). J. Mason's designated route is the front loader route, K. Mason's route is the residential route, and Petty's designated route is the cardboard recycling route. The fourth designated route on the AFB, the roll-off route,<sup>7</sup> is not a daily route and is usually operated by Roll-Off Driver Robbie Robertson, one of the fifteen drivers in the rest of the Shreveport Division. The record reflects that, in the year-to-date, the Employer, using roll-off drivers from the non-AFB group, has made approximately 230 roll-off pickups on the AFB. The record is silent as to whether Robertson clocks in at the AFB when working this route.

Roll-Off Driver/Leadman Jones testified that he has access to and routinely enters the AFB, as needed. The record reflects that, in addition to Roll-Off Driver Robertson's routine visits to the AFB, that driver J. Mandigo spent at least a week<sup>8</sup> filling in for one of the drivers between August 1, 2004 and the date of the hearing. Moreover, Gostwick testified that he has been on the AFB once or twice to inspect machinery and that Wheat visits the AFB as needed.

The drivers report for work at each driver's scheduled route time and at the location (Main Office or AFB) where their truck is parked. Preventative maintenance on the trucks is

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<sup>6</sup> Occasionally a driver has a duty other than "driving".

<sup>7</sup> The roll-off truck has a larger bin with a 20 to 40 yard capacity

<sup>8</sup> The record is not any more specific.

performed at the Main Office and, periodically, all trucks must be driven to the Main Office. Except for the three trucks usually kept at the AFB,<sup>9</sup> the Employer's trucks are kept at the Main Office.<sup>10</sup>

After reporting for work, at the Main Office or AFB, all eighteen drivers clock in and none are required to "clock out" for lunch. The portable trailer at the AFB is a break room for the Employer's employees on the AFB. The record does not reflect where, if anywhere, the eighteen drivers actually take their breaks. The record reflects that any of the Employer's drivers may take a break at the Main Office. When a truck is filled to capacity, whether on the AFB or in the rest of the area serviced by the Shreveport District, the drivers transport the waste to either the Woolworth Landfill, Webster Parish Landfill, or the Harrelson's Construction/Demolition site.

If the drivers on the AFB complete their routes early in the day, they may ask the customer if there is anything more for them to do on base. If the other fifteen drivers complete any of their routes early, they may ask the Employer's dispatcher if there is any other work to be done. There is no record evidence of this happening.

All eighteen drivers have the same type of discretionary authority to make certain decisions regarding customer needs without first obtaining permission from higher supervision. If any of the eighteen drivers is required to make a determination about one of the Employer's twenty trucks failing or being damaged, the driver is required to contact someone at the Main Office in order to seek assistance. If, for some reason, a driver has to deviate from his assigned route,<sup>11</sup> and the driver determined that he was unable to make a decision on his own, the driver (under normal circumstance) will contact the dispatcher at the Main Office. However, if the

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<sup>9</sup> These three trucks are usually on the AFB unless undergoing preventative maintenance, damaged or another exception.

<sup>10</sup> Sometimes even the three AFB trucks are kept over night at the Main Office.

<sup>11</sup> Assigned routes are determined by input from the customer and ultimately designed and directed by the Employer at the Main Office. The customer on the AFB had more involvement in each route than most customers; however, the maintenance, direction and handling of the routes are the sole responsibility of the Employer.

driver is on the AFB, the testimony reflects that the driver may contact the Main Office or a supervisor of the customer.<sup>12</sup>

J. Mason, K. Mason, Petty, and Robertson each have a permanent security clearance as required by the AFB. The Employer noted that other customers may have certain rules and regulations regarding security which require that drivers be “authorized” access to that particular customer’s facility. The Employer acknowledged that the clearance for other customers is not usually as restrictive as the level of the clearance required for the AFB. However, the Employer notes that it has no difficulty gaining temporary or permanent clearance for any employee it needs to place on the AFB. Roll-Off Driver/leadman Michael Jones testified that, with his AFB clearance, which is less than permanent clearance and is supposed to “require authorized personnel” with him at all times, he is authorized access to all the same locations as J. Mason, K. Mason, and Petty and that he has access to these areas without accompaniment.

All drivers are provided with Nextel mobile phones, which can function as cell phones, walkie-talkies, and pagers. The Employer provides the phones so that the drivers can communicate with fellow employees and management. The phones provide the AFB drivers with the ability to, not only communicate with the Main Office, but to communicate with Roll-Off Driver/Leadman Michael Jones on an as needed basis, Roll-Off Driver Robbie Robertson, and other drivers. Jones testified that he occasionally drives a route, that he is the only leadman driver, that he is usually available to answer calls on the Employer’s mobile phone, that he assists drivers at the AFB and on routes in the Shreveport area. Jones testified that he has been contacted for assistance once or twice weekly by the AFB drivers since the inception of the contract with this customer.

The paychecks for the Employer’s Shreveport Division drivers are distributed weekly at the Main Office on Friday. Each driver, with no exception, is obligated to complete the same

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<sup>12</sup> There were no examples in the record of any specific instances of drivers calling the Main Office or any supervisors regarding problems or seeking assistance.

type of legally, required, documentation, including route summary sheets and vehicle condition reports. These documents must be systematically turned into the Main Office. The record reflects that the AFB drivers turn in their documents each Friday, either as a group, or by sending a one of the three to drop off the paperwork. At the same time that the paperwork is turned over by the AFB driver, or drivers, the weekly pay check or pay checks are also acquired. The other Employer drivers may return their paperwork to the Main Office daily or weekly.

The Employer has uniforms available for its drivers. The drivers wear the same uniform, a greenish cotton shirt and pants. However, during the summer months, the non-AFB employees can wear a company issued fluorescent yellow or green t-shirt bearing the “IESI” insignia. The uniforms worn by the AFB drivers have the AFB customer’s name on them, “Olgoonick”, while the rest of the Shreveport Division’s uniforms carry the “IESI” insignia. Gostwick testified that employees are required to wear a reflective vest when they wear their regular uniforms. Gostwick noted that the employees must wear a uniform but that they can choose not to switch to the summer uniform.

## **II. SCOPE OF THE UNIT**

### **A. OVERVIEW OF APPLICABLE LAW**

When determining whether or not a petitioned-for unit is an appropriate unit under Section 9(b), the Board will first examine the petitioned-for unit. If the petitioned-for unit is appropriate, then the inquiry into the appropriate unit ends. If, however, the petitioned-for unit is not appropriate, the Board may examine alternative units. *Boeing Co.*, 337 NLRB 152 (2001). In determining the appropriate unit, there is “nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be ‘appropriate.’” *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) enfd. on other grounds 190 F.2d 576 (7<sup>th</sup> Cir. 1951) Unit appropriateness is considered to be the unit that is appropriate to insure to employees in each case “the fullest freedom in exercising the rights guaranteed by this Act.” *Bartlett Collins Co.*, 334 NLRB 484 (2001);

*Overnite Transportation Co.*, 322 NLRB 723 (1996); *Brand Precision Services*, 313 NLRB 657 (1994); and *Phoenix Resort Corp.*, 308 NLRB 826 (1992). A Union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963); accord: *Ballentine Packing Co.*, 132 NLRB 923, 925 (1961).

In defining the appropriate unit, the Board focuses on whether the employees share a community of interest with or possess a separate community of interest from other employees. *Bartlett Collins Co.*, supra at 484, and *Overnite Transportation Co.*, supra at 724. In determining this community of interest, the Board weighs various community of interest factors including: differences in methods of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications; training and skills; differences in job functions and amount of working time spent away from the employment or plant site; infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962) *Banknote Corp. of America v. NLRB*, 84 F.3d 637, 647-648 (2d Cir. 1996).

## **B. COMMUNITY OF INTEREST FACTORS**

### **1. Wages and Compensation**

It is unclear from the record how much each of the eighteen drivers earn. Some drivers are paid a straight hourly rate while some receive incentive based pay. It is possible that the eighteen different drivers have eighteen different rates of pay, daily, although the ability to earn overtime is the same for all. The drivers on the AFB are subject to the Service Contract Act as it relates to rates of pay, their pay is a straight hourly rate, and they earn more money than the non-AFB drivers. The AFB drivers have the same opportunities to receive merit and longevity raises as the other Shreveport Division drivers. The record is unclear as to how Robbie Robertson or as to how other drivers who work temporarily on the base are paid.

## **2. Hours of Work**

The drivers report for work at each driver's scheduled route time and at the location (Main Office or AFB) where their truck is parked. None of the drivers are required to clock out for lunch.

## **3. Employment Benefits**

All eighteen drivers are offered the same health, life and pension benefits options. However, the AFB employees do not pay extra for these benefits. All AFB employees may use the portable trailer at the AFB as a break room. Any of the eighteen drivers may take a break at the Main Office however, the record is silent as to where, if anywhere, the eighteen drivers actually take their breaks.

## **4. Supervision**

All supervisory decisions, including discharges, promotions, transfers, layoffs, route changes, wage rates, and any other working conditions, for the Shreveport Division's drivers are issued through the Main Office by East Texas District Manager Larry Gostwick, Division Manager Glen Overtuf, Operations Manager Chuck Wheat, and/or Roll-Off Driver Michael Jones. All eighteen drivers were hired by submitting job applications and being interviewed at the Main Office. All labor policies, hiring decisions, firing decisions, interviews, and disciplinary decisions regarding the eighteen Shreveport Division drivers are made at the Main Office. All personnel records, financial documents, and legal records for the Shreveport Division are kept at the Main Office. Management at the Main Office handles all permanent route changes and leave requests.

## **5. Qualifications, Training, and Skills**

Although there are several different types of drivers employed by the Employer for a variety of routes, all drivers are required to have the same skills and licenses. The three employees in the petitioned-for unit each have a permanent security clearance as required by the

AFB. Other customers of the Employer may have certain rules and regulations regarding security which require that drivers be “authorized” access to that particular customer’s facility, however, the clearance for other customers is not usually as restrictive as the level of the clearance required for the AFB. The Employer has no difficulty gaining temporary or permanent clearance for any employee it needs to place on the AFB. Roll Off Driver Michael Jones has an AFB clearance, which is less than permanent clearance and is supposed to “require authorized personnel” with him at all times, however, he has access to these areas without accompaniment.

All drivers have the same decision making authority to deviate from assigned routes. If a driver requires supervisory authority for a deviation the only difference between the AFB driver and the other drivers is that the AFB driver may ask the customer on base for permission or contact the main office.

#### **6. Job Functions and Work Time Away from the Facility**

All drivers, whether working out of the Main Office or the AFB are responsible for collecting, transporting, disposing of, and recycling non-hazardous residential, commercial and industrial solid waste. The Main Office and the AFB are eight miles apart. Although there are five classifications of drivers, the three drivers in the petitioned-for unit each work in a different classification. Additionally, Robertson, who is classified as yet another type of driver, routinely works on the AFB.

Each driver has a different and specific route for a specific route for a specific customer. Routes are determined by the Company’s individual contract with each customer and not every driver is familiar with every route. Drivers can substitute for one and another and have maps to follow when assigned another driver’s route. Some routes include residential, roll-off and front loader recycling and differ from customer to customer.

All of the drivers appear to spend the majority of their time while at work, driving an assigned route. The drivers who park their trucks at the Main Office pick up their trucks at the

Main Office, while the drivers assigned to routes on the AFB, keep their trucks at the AFB and pick up their trucks at the AFB.

## **7. Contact with Other Employees and Integration of Operations**

The record reflects that a non-petitioned for driver routinely drives a scheduled route on the AFB. Additionally, since August 1, 2003, at least one non-AFB driver substituted for about a week or more for one of the drivers when his wife had a child. The record also reflects that a lead-driver has access to and visits the AFB when he is needed, which is about one to two times a week. The two Shreveport Division managers, the dispatcher (located at the Main Office) as well as all employees are reachable with the Employer issued mobile telephones.

At least one of the three regular AFB drivers go to the Main Office weekly on Fridays to turn in paperwork and pick up pay checks. Also, all trucks are driven to the Main Office for maintenance.

All of the drivers drive their trucks to the same landfills.

## **8. Bargaining History**

There is no bargaining history for the employees of the Shreveport Division.

### **C. ANALYSIS**

I find that, based on all of the foregoing facts, most specifically the fact that the Employer's AFB "location" consists of only a trailer with no supervisory personnel on site, and nothing in the record as to the purpose of the Employer's trailer on the AFB, that a community of interest analysis is the appropriate test and not a multilocation analysis.<sup>13</sup>

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<sup>13</sup> I note however, that under either analysis, my conclusion would be the same. The record is clear that the Employer exercises centralized control over daily operations and labor relations from the Main Office. As noted *infra*, the drivers at the Main Office and the AFB possess the same skills, licenses, and functions, and almost identical working conditions. Although there is not much interchange, Robertson, a non-petitioned-for employee, drives a regular route on the AFB. Finally, the Main Office and the AFB trailer are only separated by eight miles; weekly, at least one AFB driver reports to the Main Office; and their work as drivers means that contacts, other than on their Employer issued telephones, would be typically minimal. See *Trane, An operating Unit of American Standard Companies, and Local Union No. 562, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO*, 339 NLRB No. 106 p.2 (2003).

Although the three drivers servicing routes on the AFB are paid under a different system than the other non-AFB drivers, all drivers have the same opportunities to receive merit and longevity raises. All employees are offered the same health, life and pension benefits options but the employee contributions for these options for the AFB employees is paid by the Employer pursuant to the Service Contract Act. Although only the AFB employees may use the portable trailer at the AFB as a break room, all drivers may take a break at the Main Office.

All supervisory decisions, including discharges, promotions, transfers, layoffs, route changes, wage rates, and any other working conditions, for the Shreveport Division's drivers are all issued through the Main Office. All eighteen drivers were hired by submitting job applications and being interviewed at the Main Office. All labor policies, hiring decisions, firing decisions, interviews, and disciplinary decisions regarding the eighteen Shreveport Division drivers are made at the Main Office. All personnel records, financial documents, and legal records for the Shreveport Division are kept at the Main Office. Management at the Main Office determines all permanent route changes.

Each of the eighteen drivers may have a different work schedule based on their assigned routes and the needs of their customers. All drivers are required to have the same skills and licenses, although the three drivers in the petitioned-for unit each have a permanent security clearance as required by the AFB, other drivers assigned to work on the AFB, must also receive security clearance and it is not difficult to receive the clearance.

All drivers, whether working out of the Main Office or the AFB is responsible for collecting, transporting, disposing of, and recycling non-hazardous residential, commercial and industrial solid waste and all wear essentially the same uniform.

The Main Office and the AFB are only eight miles apart and Roll Off driver Robertson, a driver not in the petitioned-for unit, routinely drives a scheduled route on the AFB. Additionally, since August 1, 2003, at least one non-AFB driver substituted for about a week or more for one of the drivers when his wife had a child. The record also reflects that a lead-driver has access to and

visits the AFB when he is needed, which is about one to two times a week. The two Shreveport Division managers, the dispatcher (located at the Main Office) as well as all employees are reachable with the Employer issued mobile telephones.

At least one of the three regular AFB drivers goes to the Main Office weekly to turn in paperwork and pick up pay checks and all trucks are maintained at the Main Office. All of the drivers deliver their loads to the same landfills.

Based on all of the evidence, it would not be appropriate to find that the three employees working on the AFB form a discreet unit. Other than the wages and benefits paid to the drivers on the AFB pursuant to federal regulations, the actual location of the routes, a slight variation in uniforms, and the security clearances, the AFB drivers' work, skills, training, job functions, benefits options, opportunities, personnel policies, leave requests, ability to earn overtime, and supervision are identical to the employees whose trucks are parked at the Main Office. Further, at least one employee from the Main Office as well as a lead driver regularly performs work at the AFB. Finally, the complete lack of independent supervision for the AFB drivers leads to the conclusion that the AFB location has no local autonomy apart from the Main Office. See *Trane, An operating Unit of American Standard Companies, and Local Union No. 562, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO*, 339 NLRB No. 106 (2003).

## **VI. FINDINGS AND CONCLUSIONS**

Based on 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.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>14</sup>

3. The labor organization involved claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All of the Employer's Shreveport Division truck drivers including those working on Barksdale Air Force Base excluding all office clerical employees, guards and supervisors as defined by the Act.

## **VII. 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 in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: International Union of Operating Engineers, AFL-CIO, Local N. 216.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or 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, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who

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<sup>14</sup> The Employer, IESI LA Corporation, a Delaware corporation, is in the business of collecting and disposing of nonhazardous solid waste. In conducting its business operations, the Employer provides services valued in excess of \$50,000 for the United States Air Force. The Employer's primary facility is located in Shreveport, Louisiana.

have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those 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 since the designated payroll period; (2) 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 (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.

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

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. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 15 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that

an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 1515 Poydras St., Suite 610, New Orleans, Louisiana, 70112 on or before **August 27, 2004**. No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

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 shall post the Notices of 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 nonposting of the election notice.

## **VIII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. A request for

review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **September 3, 2004**. The request may not be filed by facsimile.

Dated August 20, 2004  
at New Orleans, Louisiana

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Rodney D. Johnson, Regional Director  
National Labor Relations Board, Region 15

420-6280