

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
UNITED STATES OF AMERICA  
REGION 19

BRV, INC. d/b/a THE SUN

Employer

and

Case 19-RC-14503

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO, DISTRICT LODGE 160,  
LOCAL LODGE 282

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>2</sup>

**SUMMARY**

The Employer is engaged in the business of publishing and distributing newspapers at its facilities located in and around the Bremerton, Washington area. On April 1, 2004, the Petitioner filed the instant petition seeking a unit of all full-time District Managers and Assistant District Managers employed by the Employer at its Bremerton, Washington facility and excluding all other employees, guards and supervisors as defined by the Act. The Employer contends that the District Managers are statutory supervisors, as defined by Section 2(11) of the Act, and are managerial employees and, therefore, should be excluded from the unit of employees sought by the Petitioner. The Petitioner contends that the District Managers (DMs) are neither supervisors nor managers and, thus, should be included in the unit.

In 2001, the same parties participated in a representation case proceeding, Case 19-RC-14153, before this Region. That prior case essentially dealt with the same issues involved here, namely, whether the DMs are managers and/or supervisors. In the prior case, the Acting Regional Director found in his October 19, 2001, Decision and Direction of Election that the DMs were neither managers nor supervisors and, thus, included them in the unit. Subsequently, the Employer requested review of the Acting Regional Director's Decision and Direction of Election but before the

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<sup>1</sup> The Petitioner and the Employer filed timely briefs. The briefs were duly considered.

<sup>2</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer. 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.

Board could address the request for review, the Petitioner withdrew its petition, which effectively put an end to that case.

At the hearing in the instant case, the parties stipulated to incorporate the record from Case 19-RC-14153 into the current proceeding and agreed to limit the introduction of evidence to changes occurring since 2001. However, I find that the evidence of changes since 2001, along with the Employer's arguments in this regard, are insufficient to warrant reversing the Acting Regional Director's decision in 19-RC-14153 concerning the DMs inclusion in the unit. Accordingly, I further find that the DMs are neither managers nor supervisors and I shall, therefore, include them in the unit.

Below, I have set forth a section detailing the record evidence relating to background information about the Employer's operations and relating to new evidence presented in the instant case by the parties. Following the Evidence section is my analysis of the applicable legal standards in this case and a section directing an election.

## 1.) **EVIDENCE**

### A.) **Background Information**

The Employer publishes a daily newspaper at its facility located in Bremerton, Washington. The Employer utilizes "carriers" to deliver the Employer's newspaper to subscribers.<sup>3</sup> The DMs work closely with the carriers in and about Bremerton and outlying areas to facilitate such deliveries.

The DMs report to Home Delivery Manager Eddie Odey. Odey reports to Circulation Director Sandra Atkins. Atkins oversees the circulation department, the transportation department, sales, home delivery, single copy delivery, and customer service. The circulation department's budget is approximately \$208,333 a month, based on an annual budget of \$2.5 million. Approximately 26,000 customers receive home delivery of newspapers and another 4,000 newspapers are delivered to stores or newspaper racks, referred to as single copy distribution, or to hotels, referred to as third-party copy distribution. There are approximately 125 carriers and 128 routes. The carriers are paid bi-weekly with carriers receiving about \$650 a month. On a monthly basis, the Employer pays out about \$96,000 to the carriers.

Much of the record in the hearing in the current case centered on Employer Exhibits 1 and 2. These Exhibits purport to show that DMs changed carriers' "per piece rates" and their routes. The Employer contends that such changes financially impact the Employer and the carriers to a significant degree. In particular, Employer's Exhibit 1 shows changes to the carriers' per piece rates while Exhibit 2 shows changes to carriers' routes. Circulation Director Atkins testified that Employer Exhibits 1 and 2 were created expressly for the pre-election hearing in the instant case and that the Exhibits show changes occurring for the period of September 1, 2003, through March 31, 2004, because "that is when a lot of changes started taking place at *The Sun*, and that is when . . . route changes were made at a specific time like in District two [Exhibit 1, p. 1], as you see, all of them were done on September 5 because that was . . . something that we were doing at that time."

According to DM Ricky Watkins, there were more changes than normal to the per piece rate paid to carriers during the period of September 1, 2003, to March 31, 2004, because during that time period, the Employer performed "a massive restructuring." According to Watkins, the Employer explained to DMs and to Assistant District Managers ("ADM"s) that there were going to be "massive changes" without explaining what would be changed.

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<sup>3</sup> The parties stipulated that the carriers are independent contractors.

**B.) New Evidence**

**1.) Evidence Regarding Per Piece Rate (Pay) Changes**

Carriers are contracted to make deliveries along a specified route and are paid a flat rate, which is referred to as the "per piece rate," for each paper delivered to an Employer subscriber. Carriers are paid a lower rate for newspapers delivered Monday through Saturday and more per paper for Sunday deliveries. In short, the Employer's payments to carriers is essentially a factor of the per piece rate and the number of subscribers in a route. Thus, changing either the per piece rate or the number of papers delivered could impact payments by the Employer to the carriers and impact the Employer's costs.

Atkins testified that DMs made 31 changes in the per piece rate paid to carriers during the 6 month period covered by Employer Exhibit 1 (analysis of piece rate adjustments made by district managers). Of the 31 changes in the per piece rate paid to carriers, 12 changes were due to either a reduction or an increase in the number of papers assigned to a route.<sup>4</sup> The other 19 changes occurred simply as a result of increasing certain carriers' per piece rates.

In sum, the following rate increases resulted in the following changes per month in costs paid by the Employer to carriers. The change in December 2003 resulted in a \$78.63 decrease, the change in January 2004 resulted in a \$2621.20 increase; and the rate change in March 2004 resulted in a \$961.47 increase per month in the amount of money the Employer paid carriers. Based on the rate adjustments made in December 2003, January 2004, and March 2004, the Employer apparently pays \$3,504.04 more per month to carriers than it paid in September 2003. In other words, by the end of March 2004, the Employer's operating costs apparently increased by \$3,504.04 a month since September 2003. The record further reveals that a \$3,504.04 per month increase in the Employer's circulation department's monthly budget of \$208,333 constitutes a 1.7% increase to that budget.

During the period of September 2003 through March 2004, changes in the piece rate were made on a route-by-route basis and were not across the board increases for all carriers. Circulation Director Atkins testified that, during the period, the DMs changed roughly 25% or 31 out of 125 of the carriers' per piece rates.<sup>5</sup> The Employer approved increasing the per piece rate paid to carriers in order to retain carriers who had provided good customer (subscriber) service because it is the Employer's position that subscriber retention directly relates to the quality of service that the Employer's subscribers receive. Further, by retaining subscribers and/or increasing subscribers, the Employer increases coverage or circulation for the ads that run in its papers and these ads similarly add to Employer revenues.

Atkins testified that DMs become involved in increasing carriers' per piece rate when they contact Delivery Manager Odey regarding piece rate changes. In this regard, Atkins explained that Odey reviews proposed changes submitted by DMs to make sure they are logical before forwarding

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<sup>4</sup> Out of the 12 changes in the piece rate paid to carriers due to a reduction or increase in the number of papers assigned to their routes, 8 changes involved reducing the number of papers assigned to a route, while simultaneously increasing the per piece rate paid to those carriers. The other 4 changes involved increasing the number of papers assigned to a route and increasing the per piece rate paid to those carriers.

<sup>5</sup> The increase or decrease in the per piece rate paid to 25% of the carriers resulted in the following increases in monthly pay: the carrier for route 227 received a 10.6% pay increase; the carrier for route 233 received a 38.7% pay increase; the carrier for route 245 received a 35.7% pay increase; the carrier for route 250 received a .8% pay increase; the carrier for route 251 received a 24% pay increase; the carrier for route 269 received a 19.2% increase; and the carrier for route 271 received a 20.3% pay increase. These are just samples of the apparent changes which do appear to be significant.

the suggested changes to Atkins. Atkins testified that on one occasion, she recalled denying a DM's request to give a carrier a raise because the Employer does not give carriers "raises" due to their independent contractor status.<sup>6</sup>

Robert Macero began working as a DM in June 2002. Macero testified that during the period of September 1, 2003 through March 31, 2004, he did not make any piece rate adjustments to carriers' rates.<sup>7</sup> Yet Macero testified that Employer Exhibit 1 shows changes to the piece rate earned by carriers who worked in Macero's district at the time these changes occurred. Macero also testified that he did not provide any information leading to the changes listed in Employer's Exhibit 1. In short, Macero apparently played no role in the rate changes impacting his carriers during the period covered by Exhibit 1.

According to Macero, he has never suggested a specific piece rate change for any of the carriers who report to him because an Employer designed computer program performs piece rate analysis to determine if piece rate adjustments are appropriate. Because the computer program performs the rate analysis, Macero explained that he does not know how to analyze per piece rate adjustments. Thus, he would not know what to suggest with regard to amount of rate changes. Macero admitted that when carriers ask him for a per piece rate increase, he follows-up on their requests by providing either Odey or Atkins with information such as the carrier's route mileage, route time, and the number of newspapers delivered. However, Macero did not elaborate on any instances when he relayed such information to the Employer.

As a DM, Macero supplies pertinent information to complete a rate analysis (i.e. route mileage, time needed to complete the route, and the number of papers delivered in a particular route) because part of a DM's job is to drive the routes in his district and Odey and Atkins do not drive the routes. Macero testified that after he supplies Odey and Atkins with the pertinent information for the rate analysis, those two will decide if the per piece rate should be increased.

DM Ricky Watkins also testified that he did not make any rate adjustments to carriers' pay during the period of September 2003 through March 2004. Rather, the Employer adjusted the rates of some of the carriers who reported to him. Further, Watkins similarly testified that he does not suggest or specify the amount of change that should be made in a per piece rates. Rather, he has informed Odey and Atkins that certain route piece rates should be increased as a means of insuring retention of carriers working routes with Watkins' district. Typically, Watkins' suggestions in this regard are triggered by a carrier's complaint that the pay is inadequate. Watkins testified that around the beginning of March 2004, Watkins suggested increasing pay to a carrier and Odey or Atkins performed a rate analysis. However, Atkins eventually decided not to increase the carrier's per piece rate. Since September 2003, Watkins has suggested that the Employer increase a carrier's per piece rate on at least 5 or 6 occasions and only once during that period, in the instance noted above, did the Employer reject his suggestion.

## **2.) Changes to Carriers' Routes**

Employer Exhibit 2 (analysis of route changes made by district managers) purportedly shows that on 13 occasions, the DMs transferred subscribers or customers from one route to another during the period of September 1, 2003 through March 31, 2004. Two of the changes occurred because routes were eliminated and one of the changes occurred because a new route was created. During the same period of time, 591 subscribers out of 26,000 total subscribers receiving home delivery were transferred between certain carriers' routes.

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<sup>6</sup> Atkins testimony did not elaborate how this particular "raise" would differ from other "increases" some carriers have received.

<sup>7</sup> The Employer presented one witness, Atkins, during the hearing in this case. The Union presented two witnesses: DMs Robert Macero and Ricky Watkins.

The Employer contends that there may be a financial impact to the Employer if subscribers in one route are transferred to another carrier who is paid a higher piece rate than the rate received by the carrier from whom the transfer is received. The Employer further contends that even if the piece rate of the carrier to whom subscribers are transferred, is lower or the same, the rate may still be increased to account for an increase in a carrier's workload.

Notwithstanding such contentions, Employer Exhibit 2 purports to show that DMs increased the Employer's operating costs by \$2034.15 a month by making changes to the carriers' routes.<sup>8</sup> However, Exhibit 2 only shows the impact to one of the carriers involved in such changes and the Employer did not elaborate on what impact, if any, occurred with respect to the other carrier involved in the change. Thus, it appears that with increases in rates, other rates could very well have been correspondingly decreased. Regardless, Atkins testified that Exhibit 2 shows significant route changes and does not show the minor changes that occur on a regular basis. An example of a minor change is when a DM moves a street from one carrier to another. Atkins testified that since January 1, 2004, district managers have made approximately 25 minor route changes by moving customers from one carrier to another.

To substantiate its position that the DMs made route changes, the Employer attached router slips to Employer's Exhibit 2. The router slips purport to show the transfer of customers from one route to another route. Eddie Odey's initials and the dates on which the route changes were approved are on 4 out of 8 of the router slips. None of the router slips contain a DM's initials. Atkins testified that the first router slip attached to Employer Exhibit 2 shows that DM Macero forwarded suggested route changes to Odey and Atkins because DM Macero did not have access to the computer for entering the changes into the system. In this regard, Atkins further testified that she and Odey approve route changes in order to ensure that a proposed change is "not something outrageous, that they [DMs] can't go in and move 300 papers. So they [route changes] are approved by first the home delivery manager and myself."

According to DM Macero, he was in charge of some of the routes listed on Employer Exhibit 2 for the period of September 1, 2003, through March 31, 2004. Yet, during that time period he did not make any route changes listed in Employer Exhibit 2, but he did suggest areas of change. Macero described relaying to Odey that some of the routes were too big. Macero knew some of the routes were too big because he had occasionally handled these routes and had found that the routes could not be completed in a timely manner. Regardless, Macero testified that he did not have the authority to change routes. Rather, he has submitted "paperwork" to Odey suggesting changes, and within a few days, Odey and Atkins approved and implemented the suggested changes. Odey never refused to make a route change that Macero suggested.

DM Watkins similarly testified that he has not been allowed to make any route changes and that he could only make suggestions to Odey or Atkins about altering routes to improve driving distance. Watkins stated that he did not make any of the route changes set forth in Employer Exhibit 2 even though he is in charge of some of the routes listed in that Exhibit. According to Watkins, an employee by the name of Noreen Hamren mapped out all of the route changes in Employer's Exhibit 2 in order to make the routes larger and more manageable for the carriers. Watkins could not recall Hamren's job title at the time she changed the routes, and he believed, but was not certain, that the Employer had assigned Hamren the task of changing the routes.

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<sup>8</sup> The Employer arrived at the \$2034.15 figure by averaging the per piece rates paid to carriers for delivering daily papers (Monday – Saturday) and Sunday papers. Averaging the per piece rates paid to carriers on a daily basis with the per piece rates paid on Sunday fails to take into account the fact that the daily rate is lower than the Sunday rate and that the daily rate is paid to carriers 6 days a week, while the Sunday rate is paid just once a week.

Watkins testified that during the time he has worked as a DM, he has suggested changes to routes and he could not recall a time when Odey rejected his suggested route changes. Watkins explained that his suggested changes usually involved moving streets from one route to another. Such suggestions to change routes usually arose out of the need to correct prior mistakes such as failing to give a carrier all of the customers in one geographic area.

## 2.) LEGAL ANALYSIS

The Employer asserts that its new evidence submitted in this case, in addition to record evidence in the prior case, establishes that the DMs are managers or supervisors and, thus, should be excluded from the unit sought by Petitioner. In particular, the Employer asserts that the DMs have the managerial authority to change per piece rates and/or to change routes within their districts and that such changes cumulatively have a significant financial impact on the carriers and/or the Employer.<sup>9</sup> Petitioner, on the other hand, argues that the DMs are not managers or supervisors and that nothing in the current case warrants a change in the findings made by the Acting Regional Director in the prior case.

Turning first to the parties' arguments concerning managerial status, Board law defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980)(citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974)(quoting *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320, 323, n. 4 (1947)). *Yeshiva* describes managerial employees as "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary." *Yeshiva University*, supra, 444 U.S. at 682 (quoting *NLRB v. Bell Aerospace Co.*, supra, 416 U.S. at 283). The inquiry into whether a DM is a manager involves determining if the DM makes and implements significant management policy and whether the DM has discretion to deviate from the Employer's established policies. *Long Beach Press Telegram*, 305 NLRB 412 (1991). In the newspaper industry, the Board has concluded that a DM is an employee and not a manager when the DM possesses and exercises limited authority that is circumscribed by the use of standard forms, adherence to Employer promulgated policies, and supervision by supervisors. *The Bakersfield Californian*, 316 NLRB 1211, 1218 (1995)(citing *Washington Post*, 254 NLRB 168 (1981)).

Here, the record establishes that a carrier's complaint about inadequate compensation triggers a DM to propose a rate increase to Odey, who reviews the rate change requests to make sure they are "logical" before forwarding requests to Atkins for approval. Along with the request for a rate increase, the DM supplies Odey and Atkins with standard information such as route mileage, time required to complete the route, and the number of papers delivered in a route. This information is entered into a computer program, which DMs cannot access and which analyzes whether an adjustment to a carrier's per piece rate is warranted.

Further undermining the significance of Employer Exhibit 1 is the fact that the Employer offered no testimony as to which DM, if any, made the per piece rate changes in Macero and/or Watkins' respective districts as both DMs testified that they did not make any of the rate changes set forth in that document. Moreover, the Employer did not elaborate as to what prompted a large number of the rate changes set forth in Employer Exhibit 1, which was prepared by the Employer for use in this case. It should also be noted that Watkins and Atkins both testified that the latter has, indeed, rejected rate change requests by DMs. In short, it is apparent that DMs' suggestions for rate changes are subject to sequential review by two superiors and are performed within the narrow framework of an established company policy and/or computer analysis from which DMs have no

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<sup>9</sup> The Employer incorporates, by reference, the brief that it submitted in Case 19-RC-14153.

authority to deviate. See *Reading Eagle Co.*, 306 NLRB 871, 872 (1992); *Long Beach Press-Telegram*, 305 NLRB 412 (1991). At most, the Employer may have established that approximately 25% of the carriers received pay increases and that for some of the carriers, the pay increase was substantial. However, the Employer did not establish that the DMs formulate, develop or effectuate Employer policies with sufficient independent judgment or discretion as it relates to their duties concerning per piece rate changes. See *Long Beach Press-Telegram*, supra.

The Board found it significant in *Eugene Register Guard*, 237 NLRB 205, 206 (1978), that DMs in performing their job duties, made determinations as to carrier compensation, which committed the Employer to pay significant expenses. Here, while Employer Exhibit 1 shows 31 occasions of per piece rate changes, the overall impact of the changes is inconclusive, particularly in view of the fact that Exhibit 1 covers a period that was not truly representative of the norm for such actions as Atkins admits the period was significantly more active in terms of the changes that typically take place.

Aside from the authority to change piece rates, the Employer also asserts that newly submitted evidence shows that DMs are managers because they have the power to change routes within their districts and that the exercise of such power results in a significant financial impact on the Employer's costs and on payments to carriers. See *The Bakersfield Californian*, 316 NLRB at 1218 (interpreting *Eugene Register Guard*, 237 NLRB 205 (1978)).

In particular, the Employer offered Employer Exhibit 2, which was also created for the pre-election hearing and which purported to show that on 13 occasions the DMs transferred a significant number of customers from one route to another during a selected 6-month period. To show that the DMs made route changes, the Employer attached "router" slips to Exhibit 2. However, 4 out of 8 "router slips" showed that Odey initialed the slips indicating that he approved the route change. There is not one DM's signature or initials on any of the router slips. Accordingly, the router slips fail to establish that the DMs unilaterally implemented route changes. Rather, the record evidence supports the DMs' testimony that Odey and Atkins reviewed and approved route changes. Indeed, Atkins corroborated the DMs' testimony that only Odey and Atkins are vested with the authority to change routes by testifying that such authority rests above the DMs because the Employer wants to insure that DMs do not make "outrageous" changes such as moving delivery of 300 papers.

Employer Exhibit 2 shows that out of the Employer's 26,000 customers, approximately 591 customers, or 2.3%, were transferred from one carrier's route to another. The Employer asserts that these route changes resulted in increasing the Employer's costs by \$2034.15 a month. I note, however, that while Employer's Exhibit 2 shows that a carrier's per piece rate increased or decreased with the addition or deletion of paper deliveries, the Exhibit only shows one side of the ledger in that it does not indicate what happened to the other carrier involved in the exchange, especially as it relates to this other carrier's piece rate. Thus, Exhibit 2 fails to reveal the full impact of changing routes.

The Employer primarily cited two cases in support of its contentions that the DMs are managers. One of the cites was to *Guard Publishing Company d/b/a Eugene Register Guard*, 237 NLRB 205 (1978) which involved "county supervisors" who were found to supervise and/or manage newspaper carriers whose independent contractor status was not clear. There the Board found, among other things, that the county supervisors are managers because they "exercise their own discretion to commit the Employer to the number of such persons used and to the compensation they receive." The other cited case is *The Bakersfield Californian*, 316 NLRB 1211 (1995) where the Board held that management status does not exist if "no matter how many routes a district is divided into, total carrier compensation remains the same and all papers must be delivered in the same time frame and at the same price." While the Employer argues that the instant case factually falls more in line with *Guard Publishing Company* than with *The Bakersfield Californian*, the record in both this

case and in 19-RC-14153 supports a converse conclusion. Here, the Employer's new evidence fails to fully and accurately complete the picture on what transpired with regard to the changes in per piece rates and routes set forth in Exhibits 1 and 2. Moreover, the record establishes that per piece rates and route changes are subject to review, control and approval by upper level management and are subject to standards from which the DMs have no discretion to deviate. In sum, the record evidence does not establish that the DMs are able to independently change the rates paid to carriers or the number of carriers used to deliver the Employer's newspapers.

In view of the above and the record evidence in the prior and instant cases, I find that evidence of changes since 2001 along with the Employer's arguments in this regard, are insufficient to warrant changing the Acting Regional Director's Decision and Direction of Election in 19-RC-14153, which found that the DMs are not managers. Thus, I further find that the DMs are not managers as Board law defines that term.

Turning to the issue of the DMs' supervisory status, the parties did not present new evidence or arguments regarding their positions on this issue in the instant case. Accordingly, I find that no grounds exist to warrant changing the Acting Regional Director's Decision and Direction of Election wherein he found that the DMs are not supervisors as that term is defined in Section 2(11) of the Act.

In view of the above, I find that the DMs are employees in the unit and will be permitted to vote. Accordingly, I shall direct an election in the following unit of employees:

All full-time and regular part-time District Managers and Assistant District Managers employed by the Employer in its operations at its Bremerton, Washington facilities and other Western Washington circulation facilities; excluding all other employees, guards and supervisors as defined by the Act.

There are approximately seven employees in the unit.

### **3.) DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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 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 employees who have quit or been discharged for cause since the designated payroll 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 160, Local Lodge 282.

#### **A.) List of Voters**

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. *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 alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 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. The Region shall, in turn, 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, 915 Second Avenue, 29<sup>th</sup> Floor, Seattle, Washington 98174, on or before May 4, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the 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 to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**B.) Notice Posting Obligations**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 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). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C.) 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. This request must be received by the Board in Washington by May 11, 2004.

**DATED** at Seattle, Washington, this 27th day of April 2004.

/s/ Richard L. Ahearn  
Richard L. Ahearn, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174