

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

HELP SOCIAL SERVICES CORPORATION  
Employer<sup>1</sup>

and

Case No. 29-RC-10171

LOCAL 888, UNITED FOOD  
AND COMMERCIAL WORKERS  
INTERNATIONAL UNION, AFL-CIO  
Petitioner<sup>2</sup>

**DECISION AND DIRECTION OF ELECTION**

HELP Social Services Corporation (herein called HELP or the Employer) provides a variety of social services in the New York City area, including temporary housing to homeless families at a complex of buildings on or near Amboy Street in Brooklyn, New York (herein called the Amboy Street facilities). Until June 30, 2003, another social service agency, Amboy Neighborhood Center, Inc. (herein called Amboy) provided temporary housing to homeless families at the same Amboy Street facilities, under contract with New York City's Department of Housing Preservation and Development (herein called HPD). For more than 10 years, Amboy's employees were represented by Local 888, United Food and Commercial Workers International Union, AFL-CIO (herein

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<sup>1</sup> The Employer's name appears as amended at the hearing. (See Board Exhibit 2.)  
References to the record will hereinafter be abbreviated as follows: "Tr. #" refers to transcript page numbers, and "Bd. Ex. #", "Er. Ex. #" and "Pet. Ex. #" refers to Board exhibits, Employer exhibits and Petitioner exhibits, respectively.

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

called the Petitioner), in a “wall-to-wall” unit including all of Amboy’s employees, specifically including both professional and non-professional social service employees, maintenance employees and clerical employees, and excluding only confidential employees, guards and supervisors. However, as of July 1, 2003, Amboy’s contract with HPD expired, and HELP began operating the Amboy Street facilities under the name HELP New Horizons. HELP New Horizons hired some of its predecessor’s employees, although apparently less than a majority of its complement there. On March 4, 2004, the Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, essentially seeking to represent a wall-to-wall unit of all employees employed at the Amboy Street facilities (specifically including social service employees, maintenance employees and clerical employees) who are now employed by HELP New Horizons.

As described in more detail below, the parties stipulated that certain classifications of employees (case managers and substance abuse counselors) are professional, and that they would be entitled to vote separately whether or not to join whatever non-professional unit or units are found appropriate. Sonotone Corp., 90 NLRB 1236 (1950). The parties also agreed to exclude a “trainer,” who runs a computer-learning program for homeless children and other children from the community, as managerial. The parties further agreed to exclude the executive administrative assistant and the business manager as confidential employees. The parties agreed to exclude certain other classifications (regional vice president of client services, director of client services, team leaders, recreational supervisor, director of physical plant management, and assistant maintenance supervisors) as supervisors as defined in Section 2(11) of the Act. Finally, the parties agreed to exclude the safety department (safety monitors, safety

director, safety monitor supervisor, assistant safety monitor supervisor), although they did not agree on the precise basis for doing so. The Petitioner asserted that these classifications constituted guards within the meaning of Section 9(b)(3) of the Act. The Employer asserted that the safety director, safety monitor supervisor and assistant safety monitor supervisor must be excluded as statutory supervisors, and refused to take a position as to whether the safety monitors are guards. Inasmuch as neither party sought to include these classifications, it was not necessary to litigate the precise basis for their exclusion. Nevertheless, I note that HELP's safety monitors at other locations were found to be guards in 1996 in Case No. 2-RC-21565. (See Er. Ex. 5.)<sup>3</sup>

Although the parties reached agreement on the issues listed above, other points of contention remained. First, the Employer contends that the petitioned-for, single-site bargaining unit is inappropriate, and that the only appropriate unit or units must include HELP's other facilities in the New York City area<sup>4</sup>. Furthermore, the Employer argues that the maintenance employees (porters) at New Horizons constitute an accretion to a multi-site bargaining unit of HELP's maintenance employees who are already represented by another union, Local 74, Service Employees International Union, AFL-CIO (herein called Local 74).<sup>5</sup> In addition, the Employer contends that the social service employees and maintenance employees have such a disparity of interests that it would be inappropriate to include them in the same unit. Thus, combining those contentions

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<sup>3</sup> Local 74, Service Employees International Union, AFL-CIO, represents a bargaining unit of safety monitors employed by HELP at multiple locations.

<sup>4</sup> As described in more detail below, HELP operates social service facilities in New York City itself, as well as in Westchester and Suffolk counties. Hereinafter, the phrase "New York City area" will include those locations. For some reason, the Employer's description of the area also includes Rockland County and Nassau County, even though the record does not indicate any HELP facilities in those counties.

together, the Employer argues that the only appropriate units are one multi-site unit for all maintenance employees in the New York City area (already represented by Local 74)<sup>6</sup>, and one separate multi-site unit for all social service employees in the New York City area (including the possibility of a separate, multi-site professional unit, if the professional employees choose not to join a unit with the non-professional social service employees). Finally, the Employer contends that the administrative assistant employed at the Amboy Street facilities must be excluded as a confidential employee.

A hearing was held before Paul Richman, a hearing officer of the Board, on those issues. In support of its contentions, the Employer called two witnesses to testify: Nancy Nunziata (regional vice president of client services) and Azalia Matos-Bonilla (director of human resources). In support of its contentions, the Petitioner called three witnesses to testify: Matthew Pavesi (union representative), Glen Holland (porter) and Miguel Cruz (recreation counselor). Except where noted, the facts are not in dispute.

For the reasons discussed in more detail below, I reject the Employer's contentions. I specifically find that the petitioned-for, wall-to-wall unit consisting of all employees at the Amboy Street facilities is appropriate for collective bargaining, and that the administrative assistant is not a confidential employee.

### **The predecessor's operations**

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<sup>5</sup> As described in more detail below, Local 74 did not seek to intervene in this proceeding.

<sup>6</sup> The Employer refused to take a position during the hearing as to whether it claimed that Local 74's 2001-2006 contract with HELP (Er. Ex. 3) constitutes a bar to an election at this time (Tr. 10-11, 494), and the Employer's post-hearing brief does not make any reference to contract bar. Thus, it is unclear whether the Employer seeks *dismissal* of the petition as to the porters, or whether the Employer seeks a *multi-site election* for all the porters (that is, if the Petitioner would be willing and able to proceed to an election in a multi-site unit). If the latter, the Employer does not propose whether or how Local 74 would be placed on the ballot, since it has not intervened in this case.

The Amboy Street facilities are located in the Brownsville area of Brooklyn, on a block bordered by Amboy Street (east), Sutter Avenue (north), Herzl Street (west) and Blake Street (south). There are eight residential apartment buildings with addresses of 172, 185, 186, 191, 199, 202, 207 and 217 Amboy Street, where temporary housing is provided for up to 144 homeless families. Each building has 20 apartments, some of which are used as office space. There is also office space at a handful of connected buildings nearby known as 164A and 164B Amboy Street and 155A and 155B Herzl Street.

Amboy Neighborhood Services, Inc. used to employ approximately 32 social service employees, maintenance employees and clerical employees at the Amboy Street facilities. Matthew Pavesi, a union representative employed by the Petitioner, testified that the Petitioner represented this bargaining unit since 1993, after Amboy voluntarily recognized the Petitioner based on a card check. The initial collective bargaining agreement between Amboy and the Petitioner (Pet. Ex. 1) was effective from April 1, 1993, to March 30, 1996. The parties then signed a Memorandum of Agreement (“MOA,” Pet. Ex. 2), effective from April 1, 1996, to March 30, 1999, extending certain terms of the 1993-96 agreement and modifying others. Pavesi testified that although the parties did not execute another contract or MOA after 1999, Amboy continued to pay health benefits and other provisions of the 1996-99 MOA and to deal with the Petitioner regarding grievances.

As noted above, the bargaining unit represented by the Petitioner was essentially a “wall-to-wall” unit, including all of Amboy’s professional and non-professional

employees, excluding only confidential employees, guards and supervisors. The parties' 1993-96 contract (Pet. Ex. 1) specifically described the unit as including all:

full and part-time employees at Amboy Street, in Brooklyn, New York including management aides, receptionists, intake clerks, inventory clerks, administrative secretary clerks, quality control inspectors, home specialists, community organizers, sports coordinators, outreach workers, recreation aides, teachers, teachers aides, cooks, cooks assistants, maintenance men, plumbers, porters, maintenance trainees, painters and all professional employees, excluding security guards, all confidential employees and supervisors as defined in the National Labor Relations Act.

Pavesi testified generally about the functions of these employees. For example, the home specialists helped homeless families who were temporarily living in the Amboy Street facilities to find permanent housing. The outreach workers contacted various government agencies to get medical care and other services that the families needed. The sports coordinator and recreation aides organized activities for the homeless children and adults. The community organizers solicited donations for a food bank, and organized community events such as block parties. The social service employees also included social workers, case planners, and a substance abuse counselor. There was some kind of on-site school or day care program which employed teachers and teaching assistants, although Pavesi was not familiar with the details. There was also a kitchen which employed cooks and cooks assistants, to provide meals for the children. Pavesi testified that the maintenance employees performed general cleaning and maintenance of the facilities, performed repairs in the residents' apartments, and renovated and painted the apartments when they became vacant. (Pavesi was not familiar with the specific duties of the various clerical employees in the bargaining unit.)

As of June 30, 2003, when Amboy's contract with HPD expired and was not renewed, Amboy terminated all of its employees. To Pavesi's knowledge, Amboy went out of business at that time, and does not employ employees at any other locations.

**HELP's operations at the Amboy Street facilities**

HELP started its contract with HPD on July 1, 2003, and began operating the Amboy Street facilities under the name New Horizons. It continues to provide temporary housing and related services to homeless families there.

Nancy Nunziata, HELP's regional vice president of client services, testified that when HELP first took over, the Amboy Street facilities housed fewer than 50 families, out of its capacity of 144 families. This was because HPD had stopped referring families to Amboy several months earlier, near the end of Amboy's contract. Nunziata testified that the facility was in very ill repair, and HELP needed to do extensive cleaning and renovation before it could accept more families and assume normal operations. Thus, although HELP initially employed a "start-up team," it did not hire its full staff at New Horizons until after three or four months of the "cleanup" period. As described in more detail below, HELP used employees (including porters) from other HELP locations to get the New Horizons "up to speed" during those first few months.

Currently, HELP employs 23 employees in the petitioned-for unit, including four case managers, three housing specialists, one substance abuse counselor, two recreation aides, one administrative assistant and 12 porters. This is a smaller group than the 32 employees who were employed by Amboy there, at least in part because HELP does not employ employees in all of the classifications that Amboy employed. For example, since New Horizons does not operate a kitchen there, it does not employ cooks or cooks

assistants. It does not employ teachers or teaching assistants.<sup>7</sup> It appears that HELP does not employ as many clerical classifications. Some of the duties previously performed by Amboy's outreach workers and intake clerks are now performed by HELP's case managers. Otherwise, many of HELP's classifications are the same or similar to those of Amboy. (The duties of case managers, housing specialists, recreation aides, substance abuse counselors, porters and the administrative assistant are described in more detail below.)

### **Specific classifications -- social service employees**

Nunziata testified that, when homeless families arrive at New Horizons, they first go to the security office at 199 Amboy Street to get an identification badge. A safety monitor reviews various rules with the family, including fire safety rules, curfew, and signing in and out. Then the family goes to an office at 164 Amboy Street, to meet with a case manager (or team leader) for the "intake" process of opening a case record and reviewing the family's needs. The case manager first addresses the family's immediate needs, such as calling 911 if they need immediate medical care, or getting some food from an emergency food pantry if they are hungry. The case manager also begins to assess the family's complete history, including why they are homeless, their medical issues, mental health, possible foster care history, domestic abuse and substance abuse. The case manager enters this information into a database computer program called FACTORS, which includes "modules" for various elements of the family's history and service needs. A supervisory team leader reviews the assessment, which

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<sup>7</sup> HELP employs a "trainer" who oversees volunteer mentors as part of a community-based computer learning center at the Amboy Street facilities, funded by Intel. The parties agreed to exclude the trainer, as a managerial employee, from any bargaining unit(s) found appropriate herein.

becomes the basis for the family's "service plan." At some point, the family is brought to their temporary apartment.

Each family's service plan must be updated every two weeks, for as long as the family remains at New Horizons. (Families stay at New Horizons for an average of nine months.) The case managers' duties also include inspecting the apartments every two weeks. If the family has school-age children, the case manager may need to contact the New York City Board of Education to get the children into a school program. Case managers continue to make sure that each family receives the services it needs, contacting various social service agencies when necessary and helping the families prepare to live independently. Case managers are required to have a bachelor's degree in social work or a related field. (Er. Ex. 6(a), case managers' job description.)

The housing specialists employed by HELP (similar to Amboy's home specialists) assist families in obtaining permanent housing. Nunziata testified that housing specialists have access to part of the FACTORS program, in which they document each families' living arrangements and ongoing attempts to secure housing. According to their written job description (Er. Ex. 6(b)), their duties also include helping families learn how to search for an apartment, how to fill out housing application forms, how to "interview" for an apartment, how to activate utilities, and how to maintain a household budget. Housing specialists are required to have a high school diploma or equivalent (bachelor's degree preferred) and at least one year of housing-placement experience.

As the title indicates, the substance abuse counselor provides counseling and other services to families with substance abuse problems. The counselor collects

information from a variety of sources to identify which families need substance abuse counseling (including information from the case managers' assessments, incident reports and her own observations from meeting the families), and enters information into the substance abuse FACTORS module. Depending on the severity of the problem, the counselor may need to get a resident into a detoxification program, or provide individual or group counseling. According to the job description (Er. Ex. 6(c)), the substance abuse counselor must have a bachelors' degree in human services, and at least two years experience in substance abuse treatment. (The current substance abuse counselor at New Horizons has a master's degree in social work.)

New Horizons employs four case managers and three housing specialists, who are supervised by team leaders. (The parties stipulated that the team leaders are statutory supervisors.) Thus, each team consists of one team leader, at least one case manager and one housing specialist. They meet on a weekly basis to discuss the families assigned to their team. The team leaders report to Donna Bryant, the director of client services at New Horizons who, in turn, reports to Nunziata.<sup>8</sup> The substance abuse counselor does not report to the team leaders but, rather, reports directly to Bryant. Nevertheless, she participates in the weekly team meetings to discuss the families who have substance abuse issues.

HELP New Horizons also employs two recreation aides, whose duties are similar to the recreation aides previously employed by Amboy. The Employer's witnesses did not testify in detail regarding the recreation aides' duties, and no written job description

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<sup>8</sup> Although HELP's other facilities in Brooklyn have their own executive directors, New Horizons does not have an executive director. Nunziata testified that she essentially performs two roles: she performs the duties of an executive director at New Horizons, as well as her official title as regional vice president for client services for four Brooklyn facilities.

was offered. Nevertheless, Nunziata mentioned that recreation aides may take children from New Horizons out to various activities like the circus or sports games. Petitioner witness Miguel Cruz, a recreation aide formerly employed by Amboy and now employed by HELP, testified in more detail regarding his daily duties. Cruz arrives at 11:30 a.m. and prepares some kind of lesson plan. When the children arrive in the afternoon, he helps them with their homework, goes through his lesson plan, gives them a snack and may show them a brief movie before they go to their apartments by 6:45 p.m.<sup>9</sup> Cruz also mentioned that he recently brought some New Horizons children to the circus, and that the recreation department organizes some kind of clothing drive. Nunziata stated that recreation aides must have a high school degree.

Recreation aides at New Horizons report to the recreation supervisor, Stephanie Tingue, who reports to the director of client services, Donna Bryant. Cruz testified that when he had an unspecified “problem” at work, he discussed it with Tingue, who said she would discuss it with Donna Bryant. The problem was resolved. Cruz says that he also attends weekly team meetings, along with other social service workers, to discuss any problems regarding the children. Nunziata testified that recreation aides do not have access to the residents’ assessment information in the computer; Cruz stated that he has not learned the FACTORS program.

The social service employees work in different parts of the Amboy Street facilities. Specifically, Nunziata testified that the recreation staff uses two apartments

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<sup>9</sup> When Cruz worked for Amboy, he worked a later schedule. Specifically, he arrived at 2:00, helped the children with homework, served a meal to them at 4:30 (prepared by the kitchen staff), and gave the children “free play” time until 5:45. Then he would do some kind of activity in the gym until 10:00 p.m.

(1A and 1B) at 207 Amboy Street as office space. Some of the case managers, team leaders and housing specialists have office space at 199 Amboy, the same building as the safety staff and maintenance staff. The substance abuse counselor has a desk at 199 Amboy, but no private office there. She conducts individual counseling sessions in a conference room at 164 Amboy Street. The other case manager, housing specialist and team leader work at 164A Amboy Street, the same building as some of the administrative offices (including Nunziata's office, Nunziata's executive assistant, the director of client services, the business manager and administrative assistant).

Nunziata testified that the social service employees generally work from 9:00 a.m. to 5:00 p.m., although there is a later shift (11:00 a.m. to 7:00 p.m.) which they rotate in order to accommodate homeless parents who work during the day and need to come after work.

Social service employees are paid on a bi-weekly basis. Nunziata stated that recreation aides earn approximately \$17,000 to \$18,000 per year. Housing specialists earn \$18,000 or more per year (listed as pay "grade 6" on their job descriptions). The case managers and substance abuse counselor's pay was not specified on the record, except that they are both listed on their job descriptions as "grade 7" of HELP's pay scale.

Social service employees must attend certain training sessions within the first six months of their employment, such as training on homelessness.

Nunziata testified that the social services employees wear normal business attire.

## **Porters**

As stated above, HELP currently employs 12 maintenance employees at New Horizons, all called “porters.” Although HELP does not use some of the specific classifications that Amboy used (plumbers and painters), the current porters perform the same minor plumbing and painting work as their predecessors. Nunziata testified that porters’ duties include cleaning outside the buildings, inside the offices and common areas, and inside the apartments when vacant; garbage removal; painting; various minor repairs such as tightening a washer in a sink, replacing a window, plastering a hole in the wall, or replacing tiles. Similarly, Petitioner witness Glen Holland, a porter, testified that he performs cleaning, does repairs including minor plumbing or electrical repairs, and renovates vacant apartments. (See also Er. Ex. 1 and 4, job descriptions.) Any major plumbing or electrical repairs are done by outside contractors. Porters must have a high school diploma or equivalent, and must be able to lift 75 pounds.

The porters at New Horizons are supervised by three assistant maintenance supervisors (Sabino “Tito” Viera, Daryl Jones, Miguel Diffot), who are supervised by New Horizons’ director of physical plant management (also known as the maintenance director), Alan Thomas. The assistant maintenance supervisors (who the parties stipulated are statutory supervisors) and Thomas assign work to the porters on a day-to-day basis. Thomas, in turn, reports to Reno Fiori, who is the regional maintenance director for HELP’s southern region (including Brooklyn and lower Manhattan), who reports to a senior vice president at HELP’s corporate headquarters in Manhattan. Nunziata testified that, although there is no official “reporting relationship” to her at New Horizons, Thomas actually reports to her for “day to day” operational purposes.

Holland testified that assistant maintenance supervisor Viera oversees his work. Whenever Holland asks Viera or Thomas for time off, they always tell him right away whether his request was granted. To Holland's knowledge, these New Horizons supervisors did not have to get approval from their regional or corporate supervisors. Nunziata admitted that employees at New Horizons get permission for time off from their immediate supervisors there. (See also Pet. Ex. 5, time and attendance sheet signed by an assistant maintenance supervisor.) Similarly, when Holland asked Thomas if he could permanently make his work schedule an hour earlier (6:00 a.m. to 2:00 p.m., rather than 7:00 a.m. to 3:00 p.m.), Thomas approved his request immediately. On the other hand, when Holland wanted to transfer from the HELP's Genesis Homes facility in Brooklyn to New Horizons,<sup>10</sup> the transfer was approved by regional director Fiori.

There appears to be no dispute that porters at New Horizons receive job assignments from their immediate supervisors there. The supervisors also check their work, and evaluate them.

Nunziata testified that although all new employees attend the same general "orientation" training, porters do not attend the social service trainings. Furthermore, porters do not attend the social service team meetings and departmental meetings and, conversely, social service employees do not attend the maintenance department's meetings. Porters do not have access to New Horizons' computerized records, such as the residents' assessment and other confidential information. Although porters have

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<sup>10</sup> Holland was previously employed by Amboy at the Amboy Street facilities. He was hired by HELP in July 2003 to work at Genesis Homes, but he wanted to transfer back to the New Horizons location on Amboy Street. He transferred in October 2003. Evidence regarding transfers between HELP facilities is discussed in more detail below.

some contact with residents when they repair the apartments, porters are supposed to perform the repairs and leave as soon as possible. All employees are subject to a policy against “fraternization” with residents. Overall, Nunziata testified, the porters have less contact with residents than the social service employees do.

As mentioned above, the maintenance department uses part of the 199 Amboy Street building, the same building as some of the case managers, team leaders, housing specialists and safety staff. Specifically, Nunziata described Apartment 1C there as containing the maintenance supervisors’ office, a lounge room with the porters’ lockers, and some storage space for maintenance equipment. Social service employees do not have lockers, and do not generally use the maintenance area in Apartment 1C. However, social service employees may go there to fill out a work-order request if they notice that a repair is needed when they inspect the residents’ apartments. Porters sign in and out at Apartment 1C at 199 Amboy Street, whereas social service employees sign in at 164 Amboy Street.

Nunziata testified that there is little interchange between the social service employees and the porters at New Horizons. If social service employees fill out a work-order request, they submit the form to a maintenance supervisor, not directly to the porters. Similarly, recreation aide Cruz testified that he has no “dealings” with the porters. Both Nunziata and human resources director Azalia Matos-Bonilla testified that no porters have transferred into social service positions, or vice versa.

Porters work in various shifts on weekdays, some from 7:00 a.m. to 3:00 p.m., some from 8:00 p.m. to 4:00 p.m. Nunziata testified that there is usually some maintenance “coverage” until about 8:00 p.m. Porters do not usually work on

weekends, unless there is a special event or “unit turnover” (when one family moves out and the apartment must be prepared before a new family moves in). Porters take their breaks at the same set times, whereas social service employees do not.

Porters’ starting wage is \$7.57 per hour, which Nunziata said works out to “\$15,000 and change” per year. Porters are paid on a weekly basis, whereas social service employees are paid bi-weekly. They have the same benefits.

Porters wear a uniform.

### **Administrative assistant**

The administrative assistant reports to New Horizons’ director of client services, Donna Bryant. She works across the hallway from Bryant, in the 164 Amboy Street building.

The administrative assistant’s duties include photocopying, filing and typing memoranda, employee evaluations, disciplinary warnings, and minutes of the social service department’s meetings. She opens the director’s mail, and helps compile statistical reports on case activity. She also maintains a sign-in log on her desk (where social service employees must sign in and out), and helps prepare payroll information for the social services department. She attends the weekly meetings for people who report to the director of client services, and the monthly meetings for New Horizon’s whole social service staff, but she does not attend any meetings that are limited to management. She fills in for the executive administrative assistant when the latter is absent, approximately one day per month (10 days since July 2003).

The administrative assistant is paid a salary (unspecified), and receives the same benefits as other employees.

## **HELP's overall structure and multi-site operations**

New Horizons is one of at least 15 HELP locations in the New York City area, including the following:

HELP I ("One"): a residential facility for homeless families, providing transitional housing and social services, located on Blake Avenue in the East New York neighborhood in Brooklyn.

HELP R.O.A.D.S.: a non-residential program for battered women and their children, providing counseling, court accompaniment, advocacy and community education, also located on Blake Avenue in East New York.

HELP Brownsville Women's Center: a transitional housing facility for single homeless women without children, located on Saratoga Avenue, in the Brownsville neighborhood in Brooklyn.

Genesis Homes: permanent housing for low-income and formerly homeless families, located on Hinsdale Street in East New York, Brooklyn.

Genesis Neighborhood Plaza: located in East New York, Brooklyn. The specific nature of this facility was not described on the record, but it apparently includes some housing.

HELP Bronx Morris and HELP Bronx Crotona: two transitional housing facilities for homeless families in the Bronx, located on Morris Avenue and Crotona Park North, respectively.

WestHELP - Greenburgh: transitional housing for homeless families in White Plains, Westchester County, New York.

WestHELP - Mt. Vernon: transitional housing for homeless families in Mt. Vernon, Westchester County, New York.

HELP Suffolk: transitional housing for homeless families in Bellport, Suffolk County, New York.

HELP Haven and HELP Harbor: two domestic violence shelters in upper Manhattan (specific locations not disclosed for safety reasons).

Genesis Apartments: permanent housing for low-income and formerly homeless families on East 13th Street in lower Manhattan.

HELP Supportive Employment Center: residential facility and employment services for homeless adults on Wards Island, New York.

HELP's corporate headquarters (also known as "Central"), located at 5 Hanover Square in Manhattan, contains the offices of HELP's president and chief executive officer, corporate directors, senior vice presidents, human resources, and purchasing.

In HELP's hierarchy, certain facilities have been grouped together into regions. For example, Nunziata is the regional vice president of client services for four of HELP's Brooklyn facilities,<sup>11</sup> and there are regional directors for client services of various other regions (Bronx/Manhattan, Westchester/Suffolk, etc.), who all report to HELP's senior vice president for client services, Fred Shack. Similarly, in the maintenance hierarchy, regional maintenance directors (such as Reno Fiori for the "southern" region including Brooklyn and lower Manhattan) report to the senior vice president for maintenance and safety at HELP's corporate headquarters.

Although Nunziata's office is at New Horizons, she testified that she visits her other three Brooklyn facilities at least every other week, possibly more if necessary. She has authority to transfer employees among those sites.

Nunziata estimated that New Horizons and the Brownsville Women's Center are only a 5-minute drive away from each other. New Horizons is a 10-minute drive from the facilities in East New York (Help I, Genesis Homes, Genesis Neighborhood Plaza). HELP Suffolk is 55 miles away from New Horizons. WestHELP Greenburgh is 50 to 60 miles away from New Horizons. Distances to the other HELP facilities do not appear on the record.

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<sup>11</sup> Specifically, Nunziata oversees New Horizons, Help I, Help ROADS and the Brownsville Women's Center. It is not clear from the record whether there is regional supervision for the other Brooklyn facilities, Genesis Homes and Genesis Neighborhood Plaza.

HELP uses the same policy and procedure manual for all locations, the same employee handbook, and the same job descriptions. Social service employees' duties are the same at all facilities, including intake, entering information into the FACTORS program, counseling and service planning. (See Er. Ex. 6(a), (b) and (c).) To some extent, the duties are governed by New York City's regulations on homeless shelters (Pet. Ex. 4), but providers like HELP decide how to assign the tasks specifically. For example, although the regulations require the facilities to meet safety and sanitation standards, HELP has specifically assigned its case managers to conduct apartment inspections.

All locations use the same "absentee and time adjustment report" to account for leave requests and overtime, but local supervisors may approve the requests. For example, when New Horizons porter Mario Acosta requested a personal day off in January 2004, his request was approved by assistant maintenance supervisor Sabino Viera (Pet. Ex. 5).

HELP's budget procedures, purchasing and fundraising are all handled by the corporate headquarters in Manhattan. The human resources department is also located at corporate headquarters, including the benefits coordinator. All employees are all eligible for the same benefits. Employees at all sites have the same pay ranges (e.g., Grade 6 for housing specialists, Grade 7 for case managers and substance abuse counselors, etc.), as established by corporate headquarters. Furthermore, as described above, all employees are entitled to the same leave, including the porters covered by HELP's contract with Local 74.

All employees may attend the same holiday party. Porters wear the same uniforms at all locations.

Nunziata testified somewhat vaguely that HELP's human resources office is involved in disciplining employees at the various locations: "If there's ... a disciplinary issue, before anything gets written up, an employee gets met with and we decide whether it's a verbal warning or a written warning, we have to have a conversation with Human Resources" (Tr. 400). There were no further explanations or specific examples to show the extent of local control versus centralized control of disciplinary decisions.

Human resources director Matos-Bonilla testified that the local executive directors have authority to hire employees for their facility, within a wage range pre-determined by HELP's corporate headquarters. Headquarters posts both the external help-wanted advertisements and internal postings, and coordinates the pre-employment criminal background checks and drug testing. No specific examples of hiring were given to show the extent of local control versus centralized control of hiring decisions.

Nunziata conceded that local supervisors have authority to effect temporary or permanent changes in employees' schedule. Local supervisors also evaluate employees. Four witnesses (Nunziata, Matos-Bonilla, Holland and Cruz) testified that employees may bring any "problems" to their immediate supervisors, although no specific examples were given by any witness. Matos-Bonilla also added that employees may bring problems to directors or to human resources at HELP's headquarters, but no

specific examples were given. The record contains no specific evidence to show the extent to which terminations or promotions are decided locally or centrally.<sup>12</sup>

**Evidence regarding the maintenance employees' unit represented by Local 74**

HELP employs approximately 65 to 75 porters at its 13 residential facilities in the New York City area: HELP I, Brownsville Women's Center, Genesis Homes, Genesis Neighborhood Plaza, HELP Bronx Morris, HELP Bronx Crotona, WestHELP - Greenburgh, WestHELP - Mt. Vernon, HELP Suffolk, HELP Haven, HELP Harbor, Genesis Apartments and the HELP Supportive Employment Center. This number excludes the 12 porters employed at New Horizons but, if they were included, the total number would be 77 to 87. (HELP does not employ any porters at its non-residential facilities such as HELP R.O.A.D.S. or the corporate office.)

Local 74, Service Employees International Union, AFL-CIO, has represented the porters employed at all of HELP's residential facilities in the New York City area since 1996. The first contract was a five-year contract, from 1996 to 2001. The current contract is also a five-year contract, effective from July 1, 2001, to June 30, 2006 (Er. Ex. 3). The contract describes the bargaining unit as "all full-time and regular part-time maintenance employees including porters, leads and technical specialists" employed by HELP at 11 of the specified locations. (For some reason, HELP I and Genesis Apartments were not specifically listed.) The contract does not expressly state that it covers all the facilities in the New York City area, and there is no provision for including newly-acquired facilities, "accretions" or the like.

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<sup>12</sup> The Employer's assertion at p. 13 of its post-hearing brief that "The Human Resources Department must approve all employee terminations before they can be implemented" is not supported by any record evidence.

The current contract was signed by HELP's senior vice president for support operations and corporate compliance. Matos-Bonilla testified that management from HELP's central office negotiates the contract with Local 74, and that HELP's local and regional maintenance supervisors are not involved in the negotiations.

Although Local 74's contract contains such provisions as holidays, sick leave and vacation leave, Matos-Bonilla testified that *all* HELP employees receive the same holidays, sick leave and vacation leave. The porters' leave is not necessarily determined by the Local 74 contract. In that regard, she explained that all employees, including the porters, get a certain amount of personal leave at the beginning of the year, without having to wait for "accrual," even though the porters' contract appears to require accrual. The contract also provides that maintenance employees shall be paid biweekly, even though they are paid weekly. The porters' starting wage, which Nunziata said is \$7.57 per hour, is not expressly stated in the contract. Rather, the contract provides for percentage increases (3.3% on 12/1/01, 3.0% on 12/1/02, etc.) without reference to a specific starting point.

Matos-Bonilla testified that these terms of employment, governed by HELP's corporate-wide policies if not the Local 74 contract, have been applied to the maintenance employees hired at the Amboy Street facilities since New Horizons took over in July 2003.

The Petitioner's representative, Matthew Pavesi, testified that when HELP took over the Amboy Street facilities, he requested bargaining. However, HELP declined to bargain with the Petitioner, and suggested that the Petitioner talk to Local 74. Thereafter, the Petitioner's parent, the United Food and Commercial Workers

International Union, filed a charge under Article XX of the AFL-CIO's constitution against Local 74's parent, the Service Employees International Union (SEIU). In November 2003, the AFL-CIO's umpire determined that SEIU had violated the AFL-CIO's "no raid" provisions (Pet. Ex. 3).

Local 74 has not sought to intervene in these proceedings. In a letter dated March 24, 2004, Local 74's president advised Region 29 that it would not intervene in the case because of the Article XX decision (Bd. Ex. 4(c)).

It should be noted that Local 74 also represents a separate, multi-site bargaining unit of HELP's security employees.

It appears to be undisputed that HELP's social service employees and clerical employees have not been represented for collective bargaining purposes. HELP has approximately 300 non-supervisory social service employees at its New York City area facilities, excluding New Horizons. HELP employs a total of approximately 550 to 600 non-supervisory employees in the New York City area, including maintenance employees, social service employees and clerical employees.

#### **Evidence of interchange between the HELP sites**

Returning to the description of HELP's overall operations, the record contains some evidence of contact and transfers among the various sites.

#### **Employees' contact at meetings, trainings, conferences, recreational events**

Nunziata testified that each HELP facility in Brooklyn sends a representative to the East New York Planning Group, which sponsors breakfast meetings for legislative and/or business leaders at least twice per year. The substance abuse counselor at New Horizons was the representative for that facility, and attended the monthly planning

sessions at Genesis Homes in Brooklyn. The substance abuse counselor and one case manager from New Horizons attended the last breakfast, held in early March 2004, along with social service employees from other HELP facilities in Brooklyn.

Similarly, social service employees from various locations work together on the HELP Advocacy Council. Each HELP facility has a Residents' Advisory Council, which allows HELP's clients/residents to discuss their concerns with a "liaison" from each facility. For example, the recreation supervisor at New Horizons is the liaison for the Residents' Advisory Council there; some other HELP facilities have a non-supervisory social service employee as the liaison. The liaisons, in turn, meet as the Advocacy Council at HELP's corporate headquarters to discuss how best to address the residents' concerns. In March 2004, the Advocacy Council organized a lobbying day in Albany. The record does not indicate how often the Advocacy council meets.

Social service employees from various HELP locations may attend and help plan conferences together, such as a recent conference on domestic violence.

All training is organized by a central training department. Nunziata testified that new employees from various HELP facilities attend general orientation training and a training regarding sexual harassment. Recreation aide Cruz corroborated that he attended a training regarding sexual harassment in Manhattan, along with HELP employees from other sites. He has also attended a first aid/CPR training in the Bronx, along with HELP employees from other sites. However, when Cruz attended an orientation at Genesis Homes in Brooklyn in July 2003, the only other employees there were other former Amboy employees. By contrast, porter Glen Holland testified that he never attended any orientation whatsoever.

Social service employees from various sites also attend certain trainings. For example, Er. Ex. 9 indicates that three case managers from New Horizons attended a training session on August 5, 2003, along with three social service employees from HELP Bronx Morris and HELP Bronx Crotona. Five non-supervisory social service employees from New Horizons attended training on casework strategies on August 12, 2003, along with four social service employees from HELP Bronx Morris and Brownsville Women's Center. Matos-Bonilla testified that trainings usually take place every two months.

Nunziata also testified that recreation aides from various HELP facilities occasionally meet each other when HELP gets tickets to bring the children to a circus or sporting event. By contrast, recreation aide Cruz testified that he has not seen other HELP employees at such events. For example, when he recently brought some children from New Horizons to the circus, his group was the only HELP group there. (Cruz said that he saw individual children with their parents, but he did not see another large group of children like his group.) Nunziata also mentioned that there were recreational outings to Shea Stadium in Queens, but Cruz said he has not attended any ball games since HELP took over last summer.

#### Porters moving furniture and equipment between Brooklyn sites

There is no dispute that maintenance employees at New Horizons occasionally go to other HELP facilities in Brooklyn to borrow furniture or equipment. Nunziata testified that, on three or four occasions since July 2004, when HELP has held community meetings or events at New Horizons, porters from New Horizons have gone to HELP I to pick up table and chairs, and then returned them a day or two later.

Nunziata expects this borrowing to continue because New Horizons does not have enough tables and chairs for its community meetings. Similarly, porter Holland testified that he and New Horizons' maintenance director, Alan Thomas, went to pick up some locker cabinets at HELP I in March 2004. They spoke to the maintenance director there, George (last name unknown). Holland has also gone to Genesis Homes two times since October 2003 to pick up such items as dressers, compactor bags and garbage bags. He went once with a New Horizons assistant maintenance supervisor Viera, and once with another New Horizons porter. On those occasions, Genesis maintenance supervisor Frank Spicer let them into the locked storage area. They did not perform any work for Genesis while there, and there is no evidence that they interacted with other maintenance employees there.<sup>13</sup>

#### Temporary re-assignments or transfers

As mentioned above, HELP had to spend the first few months cleaning and renovating the Amboy Street facilities before it could assume normal operations. During this period, HELP temporarily used employees (including porters) from other locations to get the New Horizons "up to speed." Specifically, Nunziata testified that one porter came from HELP Suffolk for two or three weeks; one to three porters came from HELP Bronx Morris for two weeks; two or three porters from HELP I came for "a good two weeks"; and one or two porters came from Genesis Homes (including Holland) for two weeks or more. Holland corroborated that, although he was working at Genesis Homes at the time, he was sent to help with New Horizons' "big push" to get

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<sup>13</sup> Contrary to an assertion on page 10 of the Employer's post-hearing brief, Holland did not testify that he "continues to perform tasks at other facilities" such as "mov[ing]" furniture there. His task was simply to pick up furniture and equipment, and bring it back to New Horizons.

the place ready in July 2003. At that time, he also saw a porter from HELP I and a painter from Genesis Homes there.

Whenever there is an emergency which prevents normal transportation, employees may have to report to the HELP facility near where they live. For example, during the city-wide blackout in August 2003, one porter and a couple of safety employees from Genesis Homes reported to New Horizons and, conversely, a couple of New Horizons employees reported to Genesis Homes or HELP I. Nunziata remembered that the Employer's emergency preparedness plan was also used during a major snowstorm some time before the blackout, although she could not remember exactly when. She admitted that these emergencies are "out of the ordinary."

When New Horizons held a "grand opening" in late September 2003, some kitchen employees from HELP I's day care center came to New Horizons for a few hours to prepare some food and snacks. Nunziata also said that two porters came from HELP I to New Horizons to help "set up."

As mentioned above, 50 apartments at the Amboy Street facilities were occupied at the time that HELP took over. Families continued to live in those apartments, while New Horizons cleaned up the rest of the facilities, and started to fill the other 94 apartments. However, in November 2003, the New York City Department of Homeless Services (DHS) decided that 10 of the already-occupied apartments were not "approved," and ordered New Horizons to relocate the families into renovated apartments. Nunziata testified that, at that time, employees from other HELP locations came to New Horizons for a couple of weeks, to help get those apartments ready. Although Nunziata could not remember exactly, she thought that some porters probably

came from HELP I and Genesis Homes. They worked under the direction of New Horizons' maintenance director. Nunziata conceded that this was an unusual circumstance, resulting from the change-over between Amboy Neighborhood Center and HELP New Horizons. She explained that apartments are usually approved *before* DHS sends families there.

Another temporary re-assignment occurred in December 2003, when HELP I needed assistance meeting its "housing targets" set by DHS. (It is not clear from the record whether the targets refer to the number of on-site apartments filled, or the number of families placed into permanent housing.) In any event, Nunziata assigned the housing specialist from New Horizons to work at HELP I for three weeks in December, to help "beef up" HELP I's numbers. During that time, the housing specialist reported directly to the housing supervisor at HELP I. Her wages and benefits did not change during that time. Nevertheless, this was another unusual circumstance related to New Horizons' relative newness, because DHS was not yet reviewing New Horizons' targets. Nunziata conceded that if New Horizons were on DHS' "radar screen" at that time, she could less likely "afford" to take the housing specialist away from New Horizons.

In early January 2004, there was a major flood in two connected buildings known as 164B Amboy Street/155B Herzl Street. Nunziata testified that two or three porters came from HELP I and Genesis Homes for about a week to help the New Horizons porters move furniture and computers out of way; and that the clean-up was supervised by New Horizons' maintenance director. However, Glen Holland disputed that account, testifying that he did not see any employees from other HELP sites

assisting with the flood clean-up. He saw only outside contractors, who had previously installed the heating system, return to repair the heating system at that time.

Recreation aide Cruz testified that he has never worked at other HELP sites, and that he has never worked at New Horizons with HELP employees from other sites.

#### Permanent transfers

HELP's human resources department creates a weekly list of job openings (e.g., Er. Ex. 7). The list is distributed to all sites via e-mail and also posted on bulletin boards. Current HELP employees may apply for an opening at other HELP facilities, by completing an internal job listing application and having their local supervisor "sign off."

Nunziata testified at length regarding permanent transfers involving the Amboy Street facilities since HELP took over in July 2003. (See also Er. Ex. 8, list of transfers.) The majority of the transfers to New Horizons occurred within the first two weeks of the takeover, including the following:<sup>14</sup>

On 7/1/03, a case manager from HELP I, Christina Aquilano, was promoted/transferred to become a supervisory team leader at New Horizons.

On 7/1/03, an administrative assistant from HELP I, Olga Arango, was promoted/transferred to become the executive assistant at New Horizons.

On 7/1/03, a housing specialist from HELP I, Salina McAlister, became a housing specialist at New Horizons.

On 7/1/03, the family educator/education coordinator at Genesis Homes, Josephine Mitchell, became the substance abuse counselor at New Horizons.

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<sup>14</sup> This list includes transfers that involved -- at least in part -- classifications in the petitioned-for unit, i.e., maintenance employees, social service employees and non-confidential clerical employees. The list does not include safety department transfers, confidential employees and supervisor-to-supervisor transfers.

On 7/7/03, a housing specialist from HELP I, Jamilla Colver, transferred to a housing specialist position at New Horizons.

On 7/7/03, a case manager at HELP I, Charlotte Palmer, became a case manager at New Horizons.

On 7/14/03, a case manager from HELP I, Robert Linden, became a case manager at New Horizons.

On 7/14/03, a safety supervisor from HELP I, Beverly White, became a housing specialist at New Horizons.

It is obvious from the timing (during the first two weeks of HELP's contract) and the one-way nature of the transfers (all going to, not from, New Horizons) that the transfers were part of HELP's initial staffing of New Horizons. In response to a question from the Hearing Officer, Nunziata stated that the transfers resulted from HELP's need to staff New Horizons when HELP assumed operations from the predecessor company in July 2003, although she added that there were also other "changes that happen as you go along" after that.

The record indicates two other transfers, involving social service employees or maintenance employees, after the first two weeks of July 2003. Specifically, on 7/21/03, a porter from New Horizons, Frank Spicer, was promoted/transferred to become an assistant maintenance supervisor at Genesis Homes. Then on 10/5/03, porter Glen Holland (who used to work as a porter for Amboy) transferred from Genesis Homes back to New Horizons, after he told regional maintenance director Fiori that he wanted to return to the Amboy Street facilities. Fiori approved the transfer. (Holland's wage rate did not change from one location to the other.)<sup>15</sup>

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<sup>15</sup> Although Nunziata testified regarding only transfers that involved New Horizons, the list of transfers (Er. Ex. 8) seems to indicate transfers between other HELP sites as well. For example, the list shows the following transfers of unnamed porters:

Employee No. 5, from "ALBA -Gen. [Genesis] Homes" to "ALBA HINY"[HELP I] on 9/14/03;

HELP employees from other sites who transferred to New Horizons retained their “anniversary date” of employment, for purposes of their annual evaluation. Whenever a transferred employee’s anniversary date has come up, his or her supervisor prepares an evaluation. The employee’s eligibility for a merit increase at New Horizons is based on a formula, the same way that HELP does it at other sites.

**DISCUSSION**

As stated above, the Employer contends that the petitioned-for, single-site bargaining unit is inappropriate, and that the only appropriate unit or units must include HELP’s other facilities in the New York City area. Furthermore, the Employer argues that the porters at New Horizons constitute an accretion to a multi-site bargaining unit of HELP’s maintenance employees who are already represented by Local 74. In addition, the Employer contends that the social service employees and maintenance employees have such a disparity of interest that it would be inappropriate to include them in the same unit. Thus, considering these contentions together, the Employer argues that the only appropriate units are one multi-site unit for all maintenance employees in the New York

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Employee No. 7, from Gen. Homes to HELP I on 6/16/02; (continued)  
Employee No. 10, from [Bronx] Crotona to Greenburgh on 1/7/02;  
Employee No. 20, from Brownsville to HELP I on 7/21/03;  
Employee No. 27, transferred three times, from HELP I to Gen. Homes on 6/12/02, then to Brownsville on 8/12/02, then back to HELP I on 12/21/03;  
Employee No. 70, from Brownsville to [Bronx] Morris on 1/8/02;  
Employee No. 95, from Crotona to Morris on 10/7/02, then back to Crotona on 3/10/03;  
Employee No. 104, from HELP I to Gen. Homes on 2/24/04;  
Employee No. 109, from Brownsville to [HELP] Harbor on 2/1/04;  
Employees No. 112 and 114, from Morris to HELP I on 1/25/04.

City area (already represented by Local 74), and one separate multi-site unit for all social service employees in the New York City area (including the possibility of a separate, multi-site professional unit, if the professional employees choose not to join a unit with the non-professional social service employees). Finally, the Employer contends that the administrative assistant employed at the Amboy Street facilities must be excluded as a confidential employee.

For reasons detailed below, I reject the Employer's contentions. I specifically find that the petitioned-for, wall-to-wall unit consisting of all employees at HELP's Amboy Street facilities is appropriate for collective bargaining, and that the administrative assistant is not a confidential employee.

#### **Single-site versus multi-site bargaining unit**

It is well settled that a certifiable bargaining unit need only be *an* appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988), Dezcon, Inc.; 295 NLRB 109 (1989). Whenever a labor organization seeks to represent employees at a single location of a multi-location employer, the Board generally presumes the single-location unit to be appropriate, even though a broader unit might also be appropriate. A multi-location employer who asserts that the single-location unit is *inappropriate* must rebut the presumption, for example, by showing that the single plant is so integrated with the other plants as to lose its separate identity. Cargill, Inc., 336 NLRB 1114 (2001); Kendall Co., 184 NLRB 847 (1970). The burden is on the employer to prove by affirmative evidence a lack of autonomy at the local level. J & L Plate, Inc.,

310 NLRB 429 (1993). The relevant factors include the extent of interchange and contact among employees at the different facilities; their functional integration; the extent of centralization in management and supervision, especially with regard to labor relations (hiring, firing, affecting the terms of employment); geographical distance between the facilities; and the history of collective bargaining.

In the instant case, the Employer has not proven that a bargaining unit limited to New Horizons would be inappropriate. First of all, the evidence indicates that New Horizons has its own supervisors and directors who retain significant autonomy at the local level. Specifically, for the maintenance employees, local supervisors include the three assistant maintenance supervisors and the director of maintenance (Alan Thomas). For the social service and clerical employees, local supervisors include the three team leaders, the recreation supervisor (Stephanie Tingue), the director of client services (Donna Bryant), and Nancy Nunziata in her capacity as executive director. Nunziata also testified that the maintenance director actually reports to her for “day-to-day” purposes, although he officially reports to the regional maintenance director in HELP’s hierarchy.

The local supervisors and directors at New Horizons make the day-to-day assignment of work to unit employees. They oversee and evaluate the work of those employees which, in turn, directly affects any wage increase to which employees may be entitled (albeit under HELP’s centrally-determined formula). The local supervisors and directors also control permanent schedule changes, such as the maintenance director’s approval of Holland’s request to make his shift an hour earlier. The local supervisors and directors also sign the “absentee and time adjustment” forms, which govern all

vacation time, sick time, personal days and overtime. The immediate supervisors also adjust employees' grievances at the local level. For example, Cruz testified that Tingué and Bryant resolved a problem about which he had complained to Tingué. Social service employees attend supervisory team meetings at the local level, and maintenance employees attend maintenance department meetings at the local level. Finally, the record indicates that directors have authority to hire employees for their facility, as long as it is within the centrally-determined budget and wage range. There is no evidence that HELP's central office interviews candidates, or retains any final authority to approve or disapprove the local director's selection. *Cf. St Luke's Health System, Inc.*, 340 NLRB No. 139 (2003)(single-site unit inappropriate, in part, because central human resource office could reverse the local manager's hiring decision).

Nunziata's vague testimony that a local director must "have a conversation with Human Resources" before issuing any discipline falls far short of proving that discipline is actually controlled at the HELP's headquarters rather than at the local facilities. Likewise, the Employer has failed to prove that HELP's centralized management controls terminations or promotions. As stated above, it is the Employer's burden to introduce affirmative evidence establishing a *lack* of autonomy at the local level regarding such labor relations matters, *J & L Plate, supra*, 310 NLRB at 429, but the Employer has failed to do so.

In short, the local supervisors at New Horizons retain significant autonomy in matters directly affecting the employees' working lives, *Rental Uniform Service, Inc.*, 330 NLRB 334, 336 (1999), which is not rebutted by the Employer's centralized administration, budgeting, personnel policies, benefit administration and training. *New*

Britain Transportation Co., 330 NLRB 397 (1999); Cargill, Inc., *supra*. In this regard, the case is clearly distinguishable from cases like P.S. Elliott Services, Inc., 300 NLRB 1161 (1990), where 175 cleaning employees at 90 commercial sites were supervised by five area supervisors, a coordinator and the company president, who all worked out of the central office, without any on-site supervisors. In that case, all hiring and other personnel matters were handled exclusively by the central office.

Furthermore, although New Horizons' location in Brooklyn is close to HELP's other facilities in Brooklyn, it is more than 50 miles away from HELP's facilities in Westchester and Suffolk counties. The Board has found such geographical distance to favor the appropriateness of the single-site unit. General Mills Restaurants, Inc., d/b/a Red Lobster, 300 NLRB 908 (1990)(13 restaurants within a 22-mile radius in Detroit); D & L Transportation, Inc., 324 NLRB 160 (1997)(five bus terminals, up to 29 miles apart); Rental Uniform, *supra* (three locations, up to 50 miles apart); New Britain, *supra*, 330 NLRB at 398 (even distances of 6 to 12 miles may have "significance" where employees do not wish to be permanently transferred to a location further from their homes).

In addition, the evidence does not demonstrate a high degree of functional integration among the various HELP facilities. It appears that each facility assists its own population of homeless clients, low-income families, or domestic violence victims. Although the types of services and skills required to help these populations may be identical at all facilities, there is no evidence of actual integration from site to site, such as referring a client at one site for housing or services at another site. In this regard, the case is unlike St. Luke's Health System, *supra*, where patients who received acute care

at the hospital could then receive a full range of health-related services (such as rehabilitation) at the employer's various clinics in the metropolitan area.

Although the Employer submitted evidence of employee transfers, most of the examples involved unusual circumstances related to New Horizons' take-over of the Amboy Street facilities. Specifically, the transfers included porters from other HELP sites temporarily coming to help clean and renovate the Amboy Street facilities after July 2003; a number of permanent transfers in July 2003 as part of HELP's initial staffing of New Horizons; kitchen employees and porters temporarily coming to help with New Horizons' "grand opening" event in September 2003; and porters coming temporarily to help renovate certain apartments which were already occupied when HELP took over but which were subsequently not "approved" by DHS. The Board gives less weight to transfers related to opening new facilities. Rental Uniform, *supra*. See also Renzetti's Market, Inc., 238 NLRB 174, 175 at fn. 8 (1978). Presumably, this is because openings are "one-time" events, not expected to provide a continuing basis for interchange between separate facilities. Similarly, Nunziata conceded that the temporary transfer of one housing specialist from New Horizons to HELP I in December 2003 would be less likely to occur now that New Horizons is on DHS' regulatory "radar screen," and must work to meet its own housing targets. Finally, I find that any temporary transfers related to emergencies (such as electrical blackouts and blizzards) are too rare to show any ongoing, significant interchange between facilities.

Other than transfers related to New Horizons' start-up process and other unusual circumstances, the record also shows two permanent transfers involving New Horizons: Frank Spicer's transfer/promotion from New Horizons to Genesis Homes in July 2003,

and Glen Holland's transfer from Genesis Homes to New Horizons in October 2003.<sup>16</sup> On a handful of occasions, New Horizons porters have also gone briefly to pick up or drop off equipment at nearby sites in Brooklyn, without performing any work for supervisors at those sites and without seeing any other porters there. This small amount of interchange over the course of several months fails to prove that New Horizons is so functionally integrated into HELP's multi-site operations that it has lost its separate identity. This is a far cry from cases such as P. S. Elliott, *supra*, where more than half of the cleaners had been transferred from building to building, or St. Luke's Health, *supra*, where up to 20 percent of employees were regularly assigned to other facilities under the employer's "floating" system.

Some of the Employer's other examples of contact among employees at various sites were disputed by the Petitioner's witnesses. For example, although Nunziata testified that recreation employees from various sites meet each other when they bring children to events such as the circus, recreation aide Cruz denied seeing other HELP employees at such events. Similarly, both Cruz and Holland denied seeing HELP employees from other sites at new-employee orientation. Furthermore, although some employees from different sites see each other at trainings, conferences and other meetings, such contact appears to be occasional and incidental at best. For example, the East New York Planning Council involves only one social service employee from New Horizons attending a monthly meeting with other Brooklyn HELP employees. I find

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<sup>16</sup> The Board places less weight on permanent transfers than temporary transfers in assessing the appropriateness of a petitioned-for, single-site bargaining unit, because permanent transfers show "a less significant indication of actual interchange." Red Lobster, *supra*, 300 NLRB at 911.

that the amount of contact at such events is not so overwhelming as to negate the separate identity of the New Horizons facility.

The Employer also introduced evidence regarding transfers among HELP's other facilities (i.e., other than New Horizons, see fn. 15 above), which purports generally to show the multi-site integration of HELP's operations. For example, out of the 65 to 75 porters employed by HELP at its 13 residential facilities, 11 porters have permanently transferred between HELP's other sites since May 2001. I find this number to be fairly small, amounting to only a few transfers per year. However, even if transfers among other facilities were considered numerous, they do not necessarily negate the separate community of interest shared by the New Horizons employees. D & L Transportation, supra. Cf. St. Luke's Health, supra, slip op. at p.3 (evidence of system-wide floating significant, even if it does not include petitioned-for site). The bottom line is that most employees at New Horizons continue to spend most or all of their time at the Amboy Street facility, providing services for clients at that facility, as supervised by supervisors and directors located at that facility. Other than some contact with other HELP sites in Brooklyn, the employees at New Horizons have very little contact with employees or supervisors at HELP's other facilities or corporate headquarters.

Admittedly, some factors in the instant case (such as the uniform pay scales and benefits at all sites) indicate that a multi-site bargaining unit might also be appropriate for collective bargaining. The Employer's brief cites various reasons why the maintenance employees and social service employees "should" be included in respective, multi-site units in the New York City area. Theoretically, the argument could also be made that a smaller regional unit, consisting of HELP's Brooklyn

facilities, might also be appropriate. However, that is not the proper inquiry here. The proper inquiry is whether the petitioned-for unit, limited to New Horizons, is *an* appropriate unit for bargaining. In my view, the Employer's evidence falls far short of demonstrating that this site has lost its separate identity so as to render the petitioned-for unit *inappropriate*. For those reasons, I find that the Employer has failed to rebut the presumptive appropriateness of the single-site unit.

As for bargaining history, the Board has held that the presumptive appropriateness of a single-unit is particularly strong where employees have historically been represented in a single-location unit.<sup>17</sup> Here, the Petitioner represented a unit of employees at the Amboy Street facilities, performing essentially the same duties, for approximately 11 years. The Petitioner cites to such cases as Van Lear Equipment, Inc., 336 NLRB 1059 (2001). *See also* Montauk Bus, 324 NLRB 1128 (1997); Banknote Corp. of America, 315 NLRB 1041 (1994), *enfd.* 84 F.3d 627 (2nd Cir. 1996), *cert. denied* 519 U.S. 1109 (1997). However, these cases involved so-called Burns successors, where the new employer retained a majority of incumbent employees in its new complement, and the bargaining history clearly attached to those employees, who were presumed to continue to support the incumbent union. NLRB v. Burns Intern. Security Services, 406 U.S. 272 (1972). By contrast, in the instant case, HELP did not hire a majority of former Amboy employees in its new complement at New Horizons.

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<sup>17</sup> A Burns successor employer may be able to show that the historical, single-site unit is no longer appropriate, based on significant changes in the operation of that site. P.S. Elliott Services, *supra*. However, the Board places a heavy evidentiary burden on a party attempting to show that historical units are no longer appropriate. Canal Carting, Inc., 339 NLRB No. 121 (2003); Ready Mix USA, Inc., 340 NLRB No. 107 (2003). For the reasons cited above, I find that the Employer herein has not made such a showing.

Furthermore, the successor employers in those cases did not have their own, competing bargaining history, whereas HELP's maintenance employees at other locations had their own bargaining history with Local 74. Under these circumstances, it is not clear that the Petitioner's bargaining history predominates at the Amboy Street facilities. Thus, while the Petitioner's long history of representing employees at the Amboy Street facilities is *one* factor supporting the appropriateness of that single-site unit, I do not rely primarily on that factor.

For the same reasons regarding the appropriateness of the single-site unit, I also find that the porters employed at the New Horizons site are not an accretion to HELP's existing multi-site unit of porters represented by Local 74. The Board has defined an accretion as "the addition of a relatively small group of employees to an existing unit where these additional employees share a community of interest with the unit employees and have no separate identity." Safety Carrier, 306 NLRB 960, 969 (1992). In assessing an alleged accretion, the Board weighs such factors as bargaining history, functional integration of operations, centralization of management and administrative control, similarity of duties and skills, interchange of employees, common supervision and working conditions -- in other words, the same factors discussed above with reference to the appropriateness of a single-site unit. The Board follows a particularly restrictive policy in accreting employees to an existing bargaining unit, since it precludes those employees from exercising their right to free choice regarding union representation. Towne Ford Sales, 270 NLRB 311 (1984), *enfd.* 759 F.2d 1477 (9th Cir. 1985). Thus, accretion is not warranted unless the group of employees in question has lost its "separate identity," and could not constitute a separate appropriate bargaining unit.

Passavant Retirement and Health Center, Inc., 313 NLRB 1216 (1994); Local 144, Hotel, Hospital, Nursing Home & Allied Services Union v. NLRB, 9 F.3d 218, 223, 144 LRRM 2617, 2620 (2nd Cir. 1993). Thus, for all the reasons discussed above for finding the petitioned-for, single-site unit appropriate -- including the porters' separate supervision at the Amboy Street facilities, separate location, minimal interchange with porters at other facilities, etc. -- I find that the porters do not constitute an accretion to the multi-site unit represented by Local 74, and that Local 74's current contract does not bar an election at this time.

Finally, the Employer argues that Local 74's decision not to intervene in the instant proceeding due to the Article XX decision must be disregarded, because the Board must not cede its exclusive jurisdiction on questions concerning representation to the AFL-CIO's private resolution mechanism. While it is true that the Board does not cede jurisdiction to private resolutions in certain circumstances, such as a collusive agreement between two unions to allow one union to avoid the terms of a collective bargaining agreement, Mack Trucks, Inc., 209 NLRB 1003 (1974), the Board accords some deference to the AFL-CIO's independent, adversarial Article XX's procedure. *See* Casehandling Manual, Representation Proceedings, Sec. 11017 *et seq.* Thus, where a "raiding" union signs a contract with an employer and then subsequently makes a valid disclaimer pursuant to an Article XX decision, the Board accepts the disclaimer and does not consider the "raiding" union's contract to bar an election. VFL Technology Corp., 332 NLRB 1443 (2000). In the instant case, Local 74 has stated that it plans to comply with the umpire's decision, and will not "organize" employees at the Amboy Street facilities. The record contains no evidence that Local 74 has taken any action

inconsistent with its disclaimer. Thus, it appears that Local 74 is not interested in representing the New Horizons employees as part of the larger unit, which is a relevant factor in assessing the appropriateness of the petitioned-for, single-site unit. New Britain Transportation, supra, 330 NLRB at 398.

To summarize, I find that the petitioned-for unit limited to employees at the Amboy Street facilities is an appropriate unit for collective bargaining, based on the presence of local supervision, the high level of local autonomy, the geographical distance from many of the other HELP sites, the minimal amount of transfers and interchange between employees at various HELP sites (after the initial staffing period at New Horizons), the bargaining history of employees being represented at that single site, and the fact that no other labor organization seeks to represent the employees on a broader basis at this time. Although the Employer has presented some evidence to show that a broader unit might also be appropriate, the Employer has failed to meet its burden of proving that the single-site unit has become *inappropriate* by virtue of losing its separate identity. Thus, the presumptive appropriateness of the single-site unit has not been rebutted. For those same reasons, the Employer's evidence fails to demonstrate that the porters at New Horizons are an accretion to the existing, multi-site unit of maintenance employees represented by Local 74.

**Wall-to-wall unit including all classifications, versus separate maintenance and social service employee units**

The Employer also argues that it would be inappropriate to include maintenance employees and social service employees together in the same bargaining unit, inasmuch as they do not share a community of interest. As described in more detail above, the evidence indicates that the maintenance and social service employees perform different

types of work, under separate supervision, have different schedules, and have little interchange with each other. The porters do not use the same computers as the social service employees, and have no access to the FACTORS program. The porters wear a uniform, whereas the social service employees do not.

The Petitioner essentially seeks to represent a “wall-to-wall” unit at the Amboy Street facilities, including all job classifications of social service employees (case managers, housing specialists, substance abuse counselors and recreational aides), maintenance employees and clerical employees, excluding only supervisors, confidential employees and guards. This petitioned-for unit is similar to the wall-to-wall unit of Amboy Neighborhood Center employees which the Petitioner previously represented there, although some specific classifications have been eliminated or renamed. (Both parties agree that the professional case managers and substance abuse counselors are entitled to vote separately whether or not to join the non-professional unit.)

Section 9(b) of the Act provides the following:

The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

The plain language of the Act clearly indicates that the same employees may be grouped together for bargaining purposes in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute part of an appropriate employer-wide, multi-plant unit also may constitute an appropriate plant-wide unit, craft unit or other subdivision. Overnite Transportation Co., 322 NLRB 723 (1996). It is well settled that there is more than one way in which employees may be grouped for purposes of collective bargaining, and that a certifiable bargaining unit need only be *an*

appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., and other cases cited *supra* at p. 32. Thus, although a petitioner must seek *an* appropriate unit, it is not compelled to seek a narrower appropriate unit if a broader unit is also appropriate. Overnite, *supra*, 322 NLRB at 723-4, citing NLRB v. Carson Cable TV, 795 F.2d 879, 123 LRRM 2225 (9th Cir. 1986).

The Board considers a wall-to-wall or “plantwide” unit, encompassing all of an employer’s non-supervisory job classifications, to be presumptively appropriate for bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 136 (1962); Airco, Inc., 273 NLRB 348 (1984). In that regard, the Board has noted that "a community of interest inherently exists" among a plantwide group, unless it can be shown that the interests of subgroups are so disparate that they cannot be represented in the same unit. Airco, Inc., 273 NLRB at 349. *See also* Livingstone College, 290 NLRB 304 (1988); Huckleberry Youth Programs, 326 NLRB 1272 (1998).

In the instant case, the petitioned-for employees all work for the same employer at the same facilities, providing services to the same homeless clients. There is some functional integration between the groups, in that the porters help maintain the residents’ apartments, which must meet DHS’ standards of approval. The case managers’ duties include inspecting those apartments every two weeks, and filling out repair request forms when necessary. Although the employees have separate immediate supervisors, they share the same overall supervision in Nunziata’s capacity as executive director for New Horizons. Furthermore, as noted above, there is a history of collective bargaining on a “plantwide” basis at this location. Finally, as HELP employees, they are all subject to the same policies and procedures, and entitled to the same benefits.

Overall, I find that the factors mentioned by the Employer, such as the lack of interchange between porters and social service employees, do not outweigh the strong “inherent” community of interest among all of these employees at New Horizons. I therefore find the petitioned-for, wall-to-wall unit to be appropriate for the purposes of collective bargaining.

**Administrative assistant as confidential employee**

The Board defines confidential employees as those who "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." B.F. Goodrich Co., 115 NLRB 722, 724 (1956), approved in NLRB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170, 108 LRRM 3105 (1981). The Board has developed a very limited definition of confidential employees. Inland Steel Company, 308 NLRB 868, 872 (1992). First, the definition applies only to those who assist *managerial* employees, not those who assist mere supervisors. Ford Motor Co., 66 NLRB 1317 (1946). Second, as indicated above, the manager must exercise managerial functions *in the field of labor relations*, the so-called "labor nexus" test. B.F. Goodrich, *supra*. Furthermore, although in some earlier cases the Board excluded any employee who worked closely with a labor-relations manager, *e.g.* B.F. Goodrich, *supra*, and Prince Gardner, 231 NLRB 96, 97 (1977), in subsequent cases the Board conducted a more detailed review of the exact information to which the assistant has access. For example, in The Bakersfield Californian, 316 NLRB 1211 (1995), the Board reviewed the specific duties of Denise Taylor, who was secretary to one of the managers on the labor negotiating committee. Even though Taylor opened and read all of the manager's "confidential" mail; typed all sorts of personnel, grievance

and disciplinary documents; had access to information regarding investigations of employee discipline; and typed notes of the manager's bargaining sessions with the union (i.e. information which was already known to the union, or was in the process of being forwarded to the union), she was found not to be a confidential employee, inasmuch as she did not type the manager's contract proposals (i.e., before they were presented to the union). Id. at p. 1212. By contrast, in the same case, the Board found another secretary (Patricia Bailey) to be confidential, inasmuch as she had access to the manager's labor strategy notes. Id. at p. 1213. The Board noted that this information was "a particularly sensitive matter with respect to contract negotiations and, if revealed to the Union, could seriously impair the Employer's ability to negotiate." Id.<sup>18</sup> *See also Emanuel Lutheran Charity Board, d/b/a Emanuel Hospital*, 268 NLRB 1344 (1984)(personnel assistant who, *inter alia*, typed contract proposals and wage forecasts for personnel director, confidential); Associated Day Care Services of Metropolitan Boston, 269 NLRB 178 (1984) (administrative assistants who, *inter alia*, have regular access to memoranda concerning management's formulation of contract proposals, and to minutes of management meetings where such proposals are discussed, found confidential).

It is well settled that mere access to confidential personnel files and documents, the mere preparation of statistical data to be used in contract negotiations, and the mere retrieval of personnel information to be used by management for grievance handling, do not render an employee confidential within the Board's narrow definition. Bakersfield Californian, *supra*, and cases cited therein at p. 1212; Associated Day Care, *supra*, at 180-

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<sup>18</sup> In such cases as Pullman, Inc., 214 NLRB 762 (1974), employees with access to certain bargaining-strategy information have also been found to be confidential, even if they do not work as assistants to labor-relations managers.

1; Inland Steel, *supra*, and cases cited therein at p. 877. Rather, under these cases, an employee will be excluded as confidential only if her close working relationship with a manager causes her to be entrusted with information regarding labor policy formulation (such as bargaining proposals and strategies), the disclosure of which could impair the manager's ability to deal with the union. As a further limitation on the definition of "confidential," even employees who have had access to contract proposals may not be deemed confidential if their access is an "isolated" occurrence rather than "regular." Crest Mark Packing Co., 283 NLRB 999, 1000 (1987) (two isolated occurrences). *Compare* Associated Day Care, *supra*, 269 NLRB at p.181 ("regular" access). *See also* Inland Steel, *supra*, 308 NLRB at 879 (secretary to operating services manager to vote under challenge because record did not indicate whether her typing of arbitration-strategy minutes was a "regular" part of her duties).

The party alleging the confidential status of an employee bears the burden of providing evidence to support its assertion. Intermountain Rural Electric Assn., 277 NLRB 1 (1985); S.S. Joachim and Anne Residence, 314 NLRB 1191, 1196 (1994).

Given the Board's narrow definition, I find that the Employer has failed to meet its burden of establishing that the administrative assistant at New Horizons is a confidential employee. First, the Employer has not demonstrated that her supervisor, New Horizon's director of clinical services (Donna Bryant), is a managerial employee, specifically exercising managerial functions in the field of labor relations. Furthermore, none of the evidence regarding the administrative assistant's specific typing or payroll duties qualifies her as a confidential employee under the cases cited above. Finally, even if the executive administrative assistant who reports directly to Nunziata is

assumed to be a confidential employee (as the parties stipulated), the administrative assistant's occasional substitution for her has not been shown to entail any significant or regular access to confidential information. Swift & Co., 129 NLRB 1391 (1961). The fact that the administrative assistant may have access to confidential information regarding HELP's clients is irrelevant.

The Employer has cited no cases where the Board has found an employee, with the duties of its administrative assistant as described in this record, to be confidential. Based on the foregoing, I find that the administrative assistant is not confidential, and include her classification in the wall-to-wall unit described below.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this proceeding, including the parties' stipulations 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 hereby are affirmed.
2. The parties stipulated that HELP Social Services Corporation is a domestic corporation with its principal office and place of business located at 5 Hanover Square, New York, New York. It provides a variety of social services at locations throughout the metropolitan New York City area, including the New Horizons program to provide temporary housing to homeless families at a complex of buildings on or near Amboy Street in Brooklyn, New York. During the past 12 months, which period is representative of its annual operations generally, HELP derived gross revenues in excess

of \$250,000, and purchased and received at its New York facilities, supplies and materials valued in excess of \$5,000 directly from points outside the State of New York.

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, a labor organization, 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. If the majority of the professional employees (case managers and substance abuse counselors) vote for inclusion in a unit with non-professional employees, I find that the following employees will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional and non-professional employees, including case managers, substance abuse counselors, housing specialists, recreation aides, porters and administrative assistants, employed by the Employer at its Amboy Street facilities, in Brooklyn, New York, excluding all confidential employees, managerial employees, safety department employees, guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with non-professional employees, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A (professional): All full-time and regular part-time professional employees, including case managers and substance abuse counselors, employed by the Employer at its Amboy Street facilities, in Brooklyn, New York, but excluding all other employees, non-professional employees, confidential

employees, managerial employees, safety department employees, guards and supervisors as defined in the Act.

Unit B (non-professional): All full-time and regular part-time non-professional employees, including housing specialists, recreation aides, porters and administrative assistants, employed by the Employer at its Amboy Street facilities, in Brooklyn, New York, but excluding all professional employees, confidential employees, managerial employees, safety department employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 888, United Food and Commercial Workers International Union, AFL-CIO. 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.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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. Unit employees 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.

**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, specifying the professional and non-professional employees. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This 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 on or before **May 25, 2004**. No extension of time to file this list will 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 (718) 330-7579. Since the list will 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. If you have any questions, please contact the Regional Office.

### **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 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.

### **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. This request must be received by the Board in Washington by 5 p.m., EST on **June 1, 2004**. The request may **not** be filed by facsimile.

Dated: May 18, 2004.

/S/ ALVIN BLYER

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Alvin Blyer  
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