

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE**

METROLINA PLASTICS, INC.
Employer

and

Case 5-RC-15736

**BAKERY, CONFECTIONARY,
TOBACCO WORKERS &
GRAIN MILLERS INTERNATIONAL
UNION, LOCAL NO. 358**
Petitioner

DECISION AND DIRECTION OF ELECTION

ISSUES

The issues raised by this proceeding are: (1) whether quality control leadpersons are supervisors within the meaning of the Act; (2) whether mechanics are supervisors within the meaning of the Act; and (3) whether the temporary employees supplied by Dixie Staffing Services, Inc. and used by Metrolina to perform production work share such a close community of interest with Metrolina's production employees that they must be included in the petitioned-for unit.¹ There is no relevant history of collective bargaining.

PETITIONER'S POSITION

The Petitioner contends: (1) the three quality control leadpersons are not supervisors within the meaning of the Act, and should be included in the unit; (2) the two maintenance employees/mechanics are supervisors within the meaning of the Act, as they substitute for foremen and thus act in a supervisory capacity, and therefore should be excluded from the unit; and (3) the three temporary employees supplied by Dixie Staffing Services, Inc. and used by Metrolina to perform production work may be properly excluded from the unit because they do not share such a close community of interest with Metrolina's permanent production and maintenance employees that their inclusion is mandated. There are approximately 17 employees in the unit proposed by Petitioner.

¹ At the hearing, the parties initially presented as an issue the appropriate placement of clerical employees. The evidence showed, however, that the Employer has only one such person: Office/Personnel Manager Calvette Starks. The parties stipulated that Ms. Starks is a supervisor as defined in Sec. 2(11) of the Act. Therefore, it is unnecessary to address any issue with regard to the unit placement of clerical employees, and neither party has raised this issue in its post-hearing brief.

At the hearing, Petitioner called as witnesses Jason Edwards, a mechanic; Doris Harris, a former temporary employee and current permanent employee; and Ray Daniels Jr., Petitioner's president.

EMPLOYER'S POSITION

The Employer contends: (1) quality control leadpersons are supervisors within the meaning of the Act because they have the authority to effectively recommend personnel actions concerning employees, specifically, discipline, hiring, firing, and performance evaluations, and they responsibly direct and assign work; (2) maintenance employees/mechanics do not possess any supervisory indicia and should be included in the unit; and (3) the temporary employees share a sufficient community of interest with the permanent employees to be included in the unit. There are approximately 19 employees in the Employer's proposed unit.

The Employer's sole witness at the hearing was Office/Personnel Manager Calvette Starks.

CONCLUSIONS

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the parties' respective factual and legal positions set forth in their post-hearing briefs, I find: (1) quality control leadpersons are *not* supervisors within the meaning of the Act, and are properly included in the unit; (2) mechanics are *not* supervisors within the meaning of the Act, and are properly included in the unit; and (3) the temporary employees do not share such a close community of interest with Metrolina's production workers so as to mandate their inclusion in the unit. There are approximately 19 employees in the unit found appropriate.

FACTUAL SETTING

The Petitioner seeks to represent all of the Employer's production employees including packers, sorters, and utility operators, shipping and receiving employees including lead warehouse workers, and janitorial employees; but excluding all office clerical employees, professional employees, guards, and supervisors as defined by the Act.

Metrolina Plastics, Inc. is owned by C.F. Sauer Company. Metrolina manufactures plastic containers, bottles, caps, cans, and lids for C.F. Sauer, based on orders sent to Metrolina from C. F. Sauer. The orders list the type of product, and thus the size of the container, and the quantity required by C. F. Sauer.

The facility at issue in this matter is located at 1800 West Marshall Street in Richmond, Virginia. The facility is approximately the length of one city block and has two floors: the first floor is the production floor, where the production machines and

printing machines are located; the second floor is used exclusively for storage. The production machines are molding machines for plastic containers and bottles, and pressing machines for pressing out cans. Different machines produce different sized containers. Printing machines print out the various boxes required to pack and ship the product.

Metrolina operates three shifts: 8:00 a.m. to 4:00 p.m., 4:00 p.m. to midnight, and midnight to 8:00 a.m. There is a fifteen-cent wage differential for second shift workers, and a twenty-cent wage differential for third shift workers. All workers on the second and third shifts, from the foremen (stipulated supervisors) on down, receive the shift differentials for their respective shifts. All three shifts manufacture and produce the various sized containers.

In addition to the Operations Manager and the Office/Personnel Manager, approximately 10 employees and one supervisor work on the first shift: a foreman/supervisor, a quality control leadperson, two utility operators, three packers/sorters, two maintenance employees or mechanics, a warehouse lead employee, and a janitorial employee. Approximately four employees and one supervisor work on the second shift: a foreman/supervisor, a quality control leadperson, a utility operator, and two packers/sorters. Approximately five employees and one supervisor work the third shift: a foreman/supervisor, a quality control leadperson, a utility operator, and three packers/sorters.

Generally, Metrolina supplements its work force by using temporary employees supplied by Dixie Staffing Services, Inc. At any given time, the number of temporary employees used by Metrolina ranges from one to nine, with an average of six. At the time of the hearing, Metrolina was using only three temporary employees supplied by Dixie. Since the year 2000, no other staffing service or temporary personnel service has supplied employees to Metrolina.

The Operations Manager, who is responsible for day-to-day operations and production, oversees the Metrolina facility. The parties stipulated the Operations Manager is a supervisor within the meaning of the Act. Reporting directly to the Operations Manager is the Office/Personnel Manager, who the parties also stipulated is a supervisor within the meaning of the Act. The Office/Personnel Manager is responsible for bookkeeping, record keeping, ordering supplies, as well as making and maintaining employees' personnel files.

The parties further stipulated that the three shift foremen, one assigned to each shift, are supervisors within the meaning of the Act. The foremen earn an hourly wage between \$15.00 and \$17.25 per hour. Shift foremen report directly to the Office/Personnel Manager and the Operations Manager. The Office/Personnel Manager and the Operations Manager instruct the foremen what type of product and how much product is to be produced. The first shift foreman not only acts in a supervisory capacity for her shift but also acts as the print foreman. When the printing machine is to run, she starts and stops the printing machine, and has the printing machine adjusted by

maintenance to production needs. Because the first shift foreman is responsible for the printing machine, most of her time is spent on the production floor and not in the foremen's office. The second and third shift foremen function primarily as supervisors and spend most of their time in the foremen's office. The three foremen are also charged with starting, maintaining, and shutting down machines on the production floor as the need arises. The shift foremen perform annual performance reviews for all packers/sorters and utility operators on the employees' respective anniversary dates. The shift foreman consults with the quality control leadperson as to how well the employee to be evaluated knows his job, i.e. the employee's packing ability. While there was one instance in which a quality control leadperson signed an employee's evaluation because the foreman was new to the position, the reviews are regularly completed and signed by the shift foreman, not by a quality control leadperson.

In addition to a foreman, each shift has one quality control leadperson. Each foreman supervises the quality control leadperson on his or her shift. The quality control leadpersons are primarily responsible for quality control, e.g., making pass/fail quality decisions on the product. The quality control leadpersons perform vacuum tests to determine the strength of container walls and volume capacity of the containers. If a small amount of product fails quality review, the quality control leadperson advises the maintenance mechanic to adjust the production machines in use to cure the defect. While the quality control leadpersons are responsible for inspecting and identifying defective product, in actuality most defective product is identified by the packers/sorters who bring the defect or flaw to the attention of their quality control lead person. If a large amount of product fails quality review, the packers/sorters are directed by the leadpersons to separate the good product from the bad product. Scraps of product that can be used again are recycled, and useless scrap is disposed. The decision to separate the defective product from the good, and to determine what scrap can be recycled and what scrap must be disposed of, is decided jointly by the quality control leadperson and the foreman. The quality control leadperson cannot make this determination without consulting with and obtaining the approval of the shift foreman. Quality control leadpersons work both in the foremen's office and on the production floor. Approximately 40 percent of the quality control leadpersons' time is spent on the production floor, inspecting product at the machines.

The foremen inform the quality control leadpersons of the type and amount of product to be produced on each shift. The quality control leadperson then sets up the required machine to the specifications needed, and assigns employees to the machines based upon a set rotation schedule.² Thus, under the Employer's established policy, each employee's work assignment is determined by his assignment the prior day. For example, an employee who finished his day at lid machine 55 will start the next day at lid machine 56. The employee will spend one hour working on lid machine 56 before rotating to the next machine, can machine 57. Each production employee thus rotates

² Office/Personnel Manager Calvette Starks testified that a quality control leadperson may assign an employee to a machine based on the employee's speed or efficiency, but there were no specifics given in this regard and no indication that this occurred other than on an infrequent basis. Ms. Starks' testimony was clear that the set rotation is followed daily by the quality control leadpersons.

hourly among the various production machines, which include two can machines; two lid machines; three bottle machines; and an unknown number of bottle cap machines. The rotations are accomplished hourly and are done every day, on every shift, except when the packers/sorters are running the print machine. When the packers/sorters are running the print machine, they are stationed at the print machine for the whole shift. Each of the packers/sorters can operate all of the machines. The quality control leadpersons also assign relief packers/sorters to fill-in for other packers/sorters who are on break, and will themselves fill-in for packers/sorters and utility operators who are on break. Such substitution for production workers accounts for about 10 percent of their daily work time.

Quality control leadpersons are consulted by the foremen regarding the hiring and firing of packers/sorters; however, while the Employer ultimately may take the action recommended by quality control leadpersons, their recommendations are not automatically adopted by the foremen.³ The foremen also consult quality control leadpersons when a foreman evaluates a packer/sorter's or utility operator's job performance. This consultation is brief and casual, and a foreman may or may not accept the recommendation of the quality control leadperson; there is no procedure, policy or format that requires the foreman to routinely accept that recommendation.

Quality control leadpersons, as well as the utility operator on the shift, train new packers/sorters in their job duties and decide what training a new employee should receive. They report employees' infractions of company rules to foremen or other stipulated supervisors. Quality control leadpersons orally instruct packer/sorters and utility operators in the proper operation of the various machines, as required to avoid producing bad product. Other than the recollection of a single instance which occurred about five years ago, there is no record evidence that a quality control leadperson reports or documents any employee's work performance even as a follow-up to any of their oral instructions to employees.

Quality control leadpersons start at an hourly rate of \$7.50 per hour; all present leadpersons currently earn about \$8.50 per hour. The same health plans and benefits available to them are available to all of the employees and the foremen. The same terms and conditions of employment apply to the quality control leadpersons as other employees, except that the quality control leadpersons must report to work 30 minutes earlier than other employees to set-up the machines.

³ While Office/Personnel Manager Calvette Starks testified with regard to the hiring of employees that the quality control leadperson's recommendation is given "great weight," she also stated the recommendation is only "usually" followed. There is no record evidence that the foremen adopt such recommendations without any independent review. Thus, while packer/sorter Doris Harris was recommended for hiring by the quality control leadperson, and Harris was ultimately hired by the Employer, I find it telling that Harris was offered permanent employment in a meeting attended only by Harris, the foreman, and Office/Personnel Manager Starks. These same principles apply to the recommendations of the quality control leadpersons regarding the termination of employees. Office/Personnel Manager Starks also testified that quality control leadpersons may resolve "minor" complaints or grievances. No further details or examples were provided by Starks. Harris, on the other hand, testified that complaints and grievances are presented to and resolved by the foremen, as directed by the Operations Manager.

Packers/sorters work on the production floor on all three shifts, and are the employees primarily responsible for the manufacturing of the product. At the time of the hearing, three packers/sorters were working the first shift, two were working on the second shift, and three were working on the third shift. The packers/sorters operate the molding machines or pressing machines, depending on which product needs to be made. The packers/sorters also inspect the product for flaws and defects. If the product is not flawed or defective, the packers/sorters pack the product into boxes and place the boxes on pallets. Packers/sorters earn rates of pay from \$6.25 per hour to \$7.25 per hour, plus differentials for second and third shifts. Packers/sorters are eligible for wage increases based on their attendance and performance after 60 days of employment and every six months thereafter.

Utility operators perform virtually the same tasks as packers/sorters, with the exception that utility operators fill-in for quality control leadpersons when the need arises. If the quality control leadperson for his or her shift is present, then the utility operator works as a packer/sorter. On first shift, where there are two utility operators, the shift foreman decides which of the utility operators will fill-in for the quality control leadperson, if needed. Because the utility operators are back-up quality control leadpersons, they earn from \$7.25 per hour to \$8.25 per hour, a dollar more than their packer/sorter counterparts. Unlike packers/sorters, utility operators are not eligible for a wage increase until their one-year anniversary with Metrolina, and every year thereafter on their anniversary date. At the time of the hearing, two utility operators worked the first shift, one utility operator worked the second shift, and one utility operator worked the third shift. Also at the time of the hearing, all of the utility operators were earning about \$8.50 per hour, plus differentials for the operators on the second and third shifts.

Metrolina employs two maintenance employees. The maintenance employees are casually referred to as mechanics. Both mechanics work the same hours as the first shift. Both mechanics report directly to the Office/Personnel Manager Starks and to the Operations Manager. Notwithstanding their normal working hours, occasionally the mechanics are asked to substitute for a foreman on the second or third shift if one of those foremen is absent. The mechanics do not possess any primary indicia of supervisory status even when filling in for the foremen. If an incident occurs on the floor such as a machine breaks down or a personnel issue arises, the mechanic is preauthorized by the Operations Manager only to shut the machines down and send all of the employees home. The goal of this response is to diffuse the situation immediately so it can be accurately assessed and resolved by management on first shift the following day. This is the only response to an incident a mechanic can make when he fills in for a foreman on second or third shift. In short, when the mechanic is filling in for a foreman, he is only filling-in for the foreman in the foreman's role of quasi-mechanic, and the mechanic's authority and duties do not vary from those he possesses and performs when working on the first shift. Other than the shift differential, the mechanic receives no increase in his wages for filling in for the foremen. In the last six months, mechanic Jason Edwards filled in for a foreman approximately 16 times, to cover vacations and absences.

Metrolina employs one lead warehouse employee. This employee works the same hours as the first shift, and also reports directly to the Office/Personnel Manager and Operations Manager. The warehouseman works exclusively on the second floor. Only the warehouseman and the foremen can access the second floor. His job is to maintain the storage area. To that end, he loads and unloads trucks, and checks to insure there are sufficient boxes and supplies for the packers/sorters. The warehouse leadperson reports to the Office/Personnel Manager and the Operations Manager. Neither party contends the lead warehouse employee is a supervisor.

Metrolina also employs one janitorial employee whose responsibility it is to keep the facility clean. The janitorial employee reports directly to the Office/Personnel Manager and Operations Manager.

The temporary employees or “temps” supplied by Dixie and used by Metrolina perform the same exact duties as do the packers/sorters. The temps work side by side on the production floor with their Metrolina counterparts on all three shifts. The temps earn \$6.50 an hour. The temps are assigned work in the same way and by the same foremen and quality control leadpersons as the Metrolina packers/sorters. The quality control leadpersons and the utility operators train the temps in the same manner as they train permanent employees. Temps take the same breaks and same lunch period as permanent employees. Temps can be and are hired to permanent positions with Metrolina if they perform well and there is the need for packers/sorters. As long as the temps remain temps, any health benefits, 401(k) plans, workers compensation, and vacation are provided to them through Dixie, and not through Metrolina. While permanent employees record their hours by use of a “chronos” time keeping system, the Office/Personnel Manager or a foreman manually records the hours worked by each temp. If there is a problem or incident with a temp, Metrolina can refuse to permit that temp from again working at Metrolina, but cannot terminate the temp’s employment by Dixie. While Metrolina may make a recommendation to Dixie about whether Dixie should retain that employee, the decision to terminate an employee from Dixie lies in Dixie’s sole discretion.

SUPERVISORY STATUS OF QUALITY CONTROL LEADPERSONS

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the

supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed-out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

Regarding the quality control leadpersons, I find that the Employer has not met its burden of establishing that its quality control leadpersons are statutory supervisors. While quality control leadpersons may be consulted by foremen regarding hiring, firing, and evaluations, their recommendations, though followed by the foremen in some instances, are not routinely accepted by the foreman on their face but are accepted only where the foreman concurs. It does not necessarily follow that where a quality control leadperson makes a recommendation as to a personnel action, and where the recommended action ultimately is taken by the Employer, that the quality control leadperson's recommendation caused the ultimate action to be taken. Without further material and specific evidence, the record in its totality is insufficient to establish that the recommendation was "effective," and thus also is insufficient to find that quality control leadpersons are supervisors.⁴ See *Ryder Truck Rental*, 326 NLRB 1386, 1387-88 n.9 (1998), and cases cited therein (the Board has declined to find supervisory status where the employer did not adduce specific testimony establishing a nexus between the recommendations and the employer's decision); *Beverly Health & Rehabilitation Services*, 335 NLRB 635 (2001) (no supervisory status found where employee could only

⁴ I also find it significant that were quality control leadpersons found to be supervisors, this would result in a supervisor to employee ratio of 4:9 on first shift, 2:3 on second shift, and 2:4 on third shift. Though not dispositive of supervisory status, this secondary indicium bolsters my finding that quality control leadpersons are not statutory supervisors.

document incidents but take no action without conferring and obtaining approval of his immediate supervisor); *Coventry Health Center*, 332 NLRB 52 (2000) (that leadpersons are asked by supervisors to give feedback when completing performance evaluations, and this feedback may be included in the final written evaluation, is not sufficient to establish that leadpersons are supervisors); and *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991) (the resolution of minor employee complaints or personality conflicts is insufficient to establish supervisory status).

The Employer's reliance on *Glenmark Assoc. v. NLRB*, 147 F.3d 333, 341-42 (4th Cir. 1998), is misplaced in that *Glenmark* occurred in a health care context under a collective-bargaining agreement that contained progressive discipline procedures for employees, and the LPN's at issue there issued oral warnings and documented those warnings in writing. Such is not the case here. Accordingly, I find the quality control leadpersons are not supervisors within the meaning of the Act, and are properly included in the unit.

SUPERVISORY STATUS OF MECHANICS

Similarly, for many of the same reasons, I find Petitioner has not met its burden of proving the two mechanics are statutory supervisors. Notwithstanding that mechanics may occasionally substitute for an absent foremen on the second or third shift during the foreman's vacation or illness, even when so substituting the mechanics are relegated to a mechanic/maintenance role, follow set procedures, and are limited in their ability to respond to production or personnel issues by preestablished guidelines. It is clear from the record the mechanics are not granted the authority possessed by foremen when substituting for them. Consequently, the mechanics are not supervisors within the meaning of § 2(11) of the Act on this basis. See, e.g., *Quality Chemical*, 324 NLRB 328 (1997); *Hexacomb Corp.*; 313 NLRB 983 (1994), and cases cited therein.

UNIT PLACEMENT OF TEMPS

A close issue is presented regarding whether the temporary employees supplied by Dixie and used by Metrolina must be included in the petitioned-for unit. In this case, as in *Outokumpu Copper Franklin Inc.*, 334 NLRB 263 (2001), cited by the Employer, the temporary employees are employed by another employer but directed by the Employer's supervisors. The temporary employees are trained by the same personnel and in the same way as the Employer's own employees. Further, the temps perform the same tasks in the same way, work the same shifts, and take the same breaks in the same areas as the Employer's own employees. The two groups of employees work side-by-side to accomplish the Employer's business. Unlike in *Outokumpu*, however, the Employer and its supervisors possess no authority to discharge temporary employees; temporary employees are not evaluated by the Employer's supervisors; the Employer does not set hiring criteria to be followed by the temporary agency; and the Employer does not set or control the temporary employees' wages. Further, while the Employer's own employees record their hours worked by punching a time clock, the temporary employees' hours are manually recorded and reported by Office/Personnel Manager

Starks (on the first shift) or by a foreman (on the second or third shifts), and the benefits received by the two groups of employees are markedly different. Based on the facts of this case, I find that the Dixie-supplied temporary employees do not share such a strong community of interest that their inclusion in the petitioned-for unit is mandated, and therefore conclude that the petitioned-for unit of solely employed employees is *an* appropriate unit for bargaining. *Engineered Storage Products Co.*, 334 NLRB 1063 (2001).

CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, Bakery, Confectionary, Tobacco, Workers & Grain Millers International Union, Local No. 358, is a labor organization as defined in Section 2(5) of the Act, and claims to represent certain employees of the Employer.
4. There is no history of collective bargaining between the parties.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
6. The parties stipulated that the Employer, Metrolina Plastics, a Virginia corporation, with an office and place of business in Richmond, Virginia, is engaged in the manufacture and sale of plastic bottles, containers, and caps. During the past twelve (12) months, a representative period, the Employer purchased and received at its Richmond, Virginia, facility goods valued at in excess of \$50,000 directly from points located outside the State of Virginia.
7. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees including quality control leadpersons, utility operators, maintenance employees, packers/sorters, shipping and receiving employees

including lead warehouse workers, and janitorial employees employed by the Employer at its Richmond, Virginia, location; but excluding all temporary employees referred by other employers, managerial employees, office clerical employees, professional 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 above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **BAKERY, CONFECTIONARY, TOBACCO WORKERS & GRAIN MILLERS INTERNATIONAL UNION, LOCAL NO. 358**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. 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.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing

the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). 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, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **July 9, 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 (410) 962-2198. 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.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 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., E.D.T. on **July 16, 2004**. The request may not be filed by facsimile.

(SEAL)

/s/Wayne R. Gold

Dated: July 2, 2004.

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

