

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

In the Matter of

MASSACHUSETTS INSTITUTE  
OF TECHNOLOGY

Employer

and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
UNION NO. 877, AFL-CIO

Petitioner<sup>1</sup>

Case 1-RC-22202

**DECISION AND DIRECTION OF ELECTION**<sup>2</sup>

This case concerns the appropriateness of a petitioned-for unit of communications console operators (CCOs) employed in the facilities department on the Employer's main campus in Cambridge, Massachusetts. The Employer maintains that the appropriate unit must include all its support staff employees, who work at various locations on the main

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<sup>1</sup> The name of the Petitioner appears as amended at the hearing.

<sup>2</sup> Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 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.

campus and at its other facilities.<sup>3</sup> In particular, the Employer asserts that the CCO positions at issue are similar to five support staff positions in its repair and maintenance division (R&M), five customer service representatives in the information services and technology department, and two CCO positions at Lincoln Laboratory. The Petitioner takes the position that the five CCOs on the main campus are an appropriate residual unit to an existing unit of trades employees, maintenance mechanics, and custodians.

For the reasons set forth below, I find that the CCOs do not meet the Board's standard for a residual unit, and that they are not an appropriate stand-alone unit. I further find that the smallest appropriate unit must also include the R&M support staff employees and the Lincoln Laboratory CCOs.

## **FACTS**

### **The Employer's Operation**

The Employer operates a private educational institution with a 150-acre main campus in Cambridge, Massachusetts, and several other facilities as described above. It employs approximately 1,919 support staff employees in some 130 different positions on the main campus and at its other facilities. Of those, the Employer asserts, about 1,200 – including the CCOs – are employed in clerical positions.<sup>4</sup>

Theresa Stone is the Employer's executive vice president and treasurer, a position in the Employer's non-academic hierarchy. Allison Alden is the vice president of human resources. Marianna Pierce, the Employer's director of labor and employee relations, reports to Alden. Jonathan Barnes is the manager for labor relations, and Annette Montminy is the director of human resources for the facilities department.

The Employer's facilities department includes more than 600 employees, and consists of several divisions, including the division of campus planning, engineering, and construction, headed by director Richard Amster; and facilities operations and security, headed by director John DiFava. The former is responsible for the planning and execution of future projects, while the latter has responsibility for the operation of the Employer's physical plant.

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<sup>3</sup> The Employer operates the Lincoln Laboratory in Lexington, Massachusetts; the Haystack Observatory in Westford, Massachusetts; and the Bates Linear Accelerator in Middleton, Massachusetts.

<sup>4</sup> The clerical positions include: accounts payable assistant, administrative assistant I, administrative assistant II, administrative assistant/communications, archivist, CAD specialist, customer service representative, facilities assistant II, financial assistant II, graphics assistant, human resources assistant, office assistant I, parking coordinator, and senior administrative assistant.

The facilities operations and security division includes custodial services, which is responsible for most of the custodial areas at the main campus, with the exception of a few buildings where these services have been outsourced; grounds services, which encompasses day-to-day grounds management, as well as event management and recycling coordination; mail services; parking and transportation; utilities; and repair and maintenance (R&M), which includes the repair and maintenance support center, all the trades associated with repair and maintenance, and the operations center in which the CCOs work. The manager of R&M, which is the largest division in the facilities department, is Bernard Richard. Linda Bradford, who supervises the five CCOs at issue, reports to Richard.

The CCOs are among the 1919 support staff employees,<sup>5</sup> scattered throughout the Employer's main campus and other locations, whom the Employer describes as hourly paid, nonexempt, nonprofessional staff employees whose jobs are to support the work of particular departments, including academic departments. Although their day-to-day duties vary according to the departments in which they work and the demands of their particular job, all support staff employees work at desks with computers, answer phones, and perform other clerical duties. Support staff employees are located throughout the main campus, as well as the Employer's other facilities. Many of them have daily contact with one another by phone, by email, or in person. Within the facilities department, there are approximately 36 support staff employees, including the CCOs at issue here.

#### Duties of the Communications Console Operators

As noted above, the CCOs are employed in the R&M department in the Employer's facilities department. They work in the operations center, located on the first floor of Building E-19, the Ford Building. The seven-story building also houses several departments<sup>6</sup> employing about 71 support staff employees. The five CCOs monitor all the Employer's life safety and mechanical systems, including fire alarms and heating/cooling systems for the 142 buildings located on the main campus. The operations center, where the CCOs work, is located in Suite 133, consisting of two offices divided by a small, unstaffed vestibule. The other office in the suite is occupied by five R&M support staff employees, whose jobs will be discussed below. All R&M employees, including tradespersons, have a swipe card to access Suite 133. Once inside the suite, however, only CCOs and supervisors have swipe card access to the operations center, while the R&M support staff office remains unlocked during business hours.

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<sup>5</sup> Approximately 1000 of these employees occupy the positions of office assistant I and II, administrative assistant I and II, and senior administrative assistant, and are considered part of the Employer's secretarial, administrative assistant, and clerical support staff.

<sup>6</sup> Among the departments located in Building E-19 are human resources, housing, public relations, information services and technology ("IS&T"), and the office of the provost.

The operations center contains three work stations: one for supervisor Linda Bradford, and two for CCOs. Of the two CCO stations, one is equipped with computers that control the mechanical systems in campus buildings, while the other is equipped with fire alarm panels and is known as the fire desk. From the former station, CCOs can remotely monitor and control HVAC systems throughout the campus. From the latter, CCOs monitor campus fire alarms and assist fire technicians with regular alarm tests.

CCOs handle various emergency calls that come in from throughout the campus, including calls regarding floods, power outages, elevator entrapments, and room temperature issues, known as “hot/cold” calls. Such calls are either made directly to the operations center, or, more typically, come in via the R&M support staff on the campus “*Fixit*” line, a number posted throughout the campus for repairs and maintenance. When a hot/cold call comes in directly to the operations center, the CCO uses the computer’s facilities control system software (FCS) to access the specific building where the reported problem is located, and can sometimes diagnose and/or repair the problem remotely from the work station. If necessary, the CCO dispatches a mechanic from the appropriate trade to the site, and generates a work order for the mechanic. If, as more frequently occurs, the repair call comes in on the *Fixit* line, it would be answered by an R&M support staff employee and directed to the appropriate department.<sup>7</sup> For hot/cold calls, the R&M support employee creates a work order, places it on the operation center’s database filter, and notifies the CCOs that there is a work order needing attention. The CCO then proceeds as described above. For other calls, such as a report of a leaky pipe, the R&M support employee dispatches the appropriate tradesman.

CCOs are in frequent contact with R&M support staff and with the various trades mechanics, who often contact the operations center while attempting to diagnose and repair problems in the field. While CCOs do not leave the operations center or make equipment repairs, other than remotely as described above, they often assist the mechanic in troubleshooting problems from their computer consoles, where they can zero in on particular valves and other parts and make adjustments remotely.<sup>8</sup>

In addition to monitoring and controlling the Employer’s HVAC system, CCOs staff the fire desk, responding to alarms, taking calls from individuals reporting suspicion of fire, and acknowledging fire alarm tests. When an alarm goes off, the CCO contacts the Cambridge Fire Department via a direct line at the desk, calls campus police, and then follows the Employer’s protocol in notifying other departments. When, for example, a student calls to say he smells smoke in a campus building, the CCO instructs him to pull a fire alarm box and get out of the building. Finally, on an almost daily basis, the Employer’s fire alarm technicians test the alarms throughout campus to make sure that

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<sup>7</sup> The exception to this is calls made after 3 p.m., when the R&M support staff goes home. After hours, *Fixit* calls are automatically forwarded to the operations center.

<sup>8</sup> CCOs are not permitted to leave the operations center during their work shifts. Thus, any face-to-face contact with other employees – whether work-related or social – occurs at their work stations.

they are working properly. When the alarm sounds in the operations center, the CCO acknowledges the alarm by pressing a button that silences it, and notifies the fire technician via radio that the alarm was received and the system restored.

CCOs provide monitoring coverage 24 hours a day, 7 days a week, working one of three shifts per day. The shifts run from 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m. Supervisor Bradford and two CCOs work the first shift, while only one CCO is on duty during the second and third shifts. Weekends are divided into 12-hour shifts, with one CCO working each shift.

CCOs receive on-the-job training for about 6-12 months before they are permitted to work alone. Although the Employer prefers applicants who have HVAC experience, such candidates are rarely if ever available. As a result, when hiring CCOs, the Employer looks for candidates who have dispatch experience, rather than trades experience.

In addition to the five campus CCOs, the Employer has two CCOs assigned to Lincoln Laboratory. Their duties are similar to the campus CCOs inasmuch as they receive maintenance-related calls on a central line, perform some mechanical repairs via their computer consoles, and dispatch mechanics or custodians as appropriate. Unlike their campus counterparts, the Lincoln Laboratory CCOs handle non-hot/cold calls, such as spills and electrical problems. Moreover, they do not monitor fire protection alarms, which are handled by Lincoln Laboratory's security operations center, and do not provide 24/7 coverage. The two CCOs are supervised by operations & maintenance operations manager Dennis Weron. They receive the same pay and benefits as the CCOs on the main campus, and have never been represented by a labor organization.

#### Duties of the R&M support staff employees

As described above, five R&M support staff employees work in the second office located in the two-room suite, adjacent to the operations center. They work from 7 a.m. to 3 p.m., and are supervised by R&M manager Bernard Richard, whose office is across the hall. Each of the five has a particular function within the department. Kathy Honan, an administrative assistant I, is the shut-down coordinator; Janine Findlay, an administrative assistant II, is responsible for overtime, radios, cell phones, and customer service; Bernadette Drinkwater, an office assistant I, handles preventive maintenance; Gloria West and Jennifer Garland are administrative assistants I, handling labor cards and dispatching, respectively. R&M support staff employees receive on-the-job training of a shorter duration than CCOs.

Between 7 a.m. and 3 p.m., when their shifts overlap, R&M support staff employees and CCOs have frequent contact via telephone and e-mail concerning work orders, as described above. When calls come in on the Employer's *Fixit* line, the R&M support staff determine, based on the nature of the problem reported, where to direct the work order. Only hot/cold calls are sent to the CCOs; other maintenance issues, such as burned-out light bulbs and spills, are dispatched to the appropriate trade.

Jobs that are to be “billed” to a particular department require requisitions, which R&M support employees use to generate work orders.<sup>9</sup> Such “sales work” generates “revenue” for R&M. When a repair has been completed, an R&M support staff employee closes out the work order by inputting the closing comments from the tradesman who handled the situation, indicating that the work has been done. After 3 p.m., CCOs close out work orders in this fashion.

R&M support staff have primary responsibility for entering data from “labor cards” into the computer system known as SAP. Labor cards are filled out by trades employees after they complete work on a job, providing an accounting for all repair and maintenance work. After the labor card is approved by the supervisor, it is sent to the R&M support staff for data entry so that the appropriate department can be billed for the work. Although all R&M support employees, including CCOs, have authority to perform this work, the CCOs enter labor cards “rarely, if ever.”

CCOs and R&M support staff employees communicate with each other regarding equipment shutdowns, which occur about two or three times per week. For example, if there is a need to temporarily shut down a piece of equipment affecting the air or electricity in a particular room, the CCO will contact the R&M support staff employee in charge of shutdowns so that she, in turn, can notify affected individuals that the shutdown is going to occur. In the event of an emergency shutdown after 3 p.m., the CCO would make the appropriate notifications.

#### Duties of the IS&T support staff

The Employer presented evidence regarding a subset of five customer service representatives (CSRs) in the IS&T department, whose work it claims is analogous to that of the CCOs. From an office on the seventh floor of Building E-19, the CSRs field calls from throughout campus when there are problems with telephones or voicemail. They assist callers by answering their questions or, in certain limited circumstances, resolving the problem remotely via computer. In other situations, the CSRs dispatch technicians to repair phones. CSRs work the day shift only, and are supervised by the manager of telephone client support in the IS&T department.

#### Supervision

The petitioned-for CCOs are supervised by Linda Bradford, who reports to R&M manager Bernard Richard. Bradford is responsible for interviewing candidates for CCO positions, overseeing the operations center, and ensuring 24/7 coverage by approving time off and overtime.<sup>10</sup> She works the day shift, Monday through Friday. Before

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<sup>9</sup> Requisitions submitted after 3 p.m. are not addressed until R&M support staff employees report the next day, unless they involve emergencies, in which case the CCO would review the requisition and generate the work order.

<sup>10</sup> The parties stipulated, and I find, that Bradford is a supervisor within the meaning of Section 2(11) of the Act, and is excluded from the unit found appropriate.

becoming operations center supervisor, Bradford was the senior CCO, having worked in that position for 30 years. Until her promotion in about July 2007, Richard was directly supervising the CCOs, as he currently does the R&M support staff. Senior administrative assistant Katherine Collupy works in an office adjacent to Richard's, and assists him in overseeing the five R&M support employees. Her position is currently under review for possible promotion to supervisor, similar to the review that resulted in Bradford's promotion in 2007. Until that occurs, the R&M support staff employees report directly to Richard, who also interviews candidates for those positions.

### Temporary interchange and transfers

If one of the five campus CCOs calls in sick, is on vacation, or for some reason is not available for work, one of the other CCOs will cover the shift. If this is not feasible – for example, if the need for additional help arises from an emergency situation – an R&M support staff employee may be temporarily transferred to the operations center as a last resort. Supervisor Bradford testified about a recent occasion on which the only CCO on duty needed to leave work unexpectedly an hour before the end of the shift, leaving Bradford alone to cover the operations center. During the hour she was alone, there was a power outage on campus, creating chaos in the operations center. Because she could not get a CCO to report quickly enough, Bradford asked senior administrative assistant Collupy to help out in the operations center, covering the fire desk and answering phone calls.

All R&M support staff employees are trained to cover the fire desk in the operations center when necessary. On the infrequent occasions<sup>11</sup> when such coverage is necessary, the R&M support employee sits at the fire desk, acknowledging alarm tests, and may also answer phones and process work orders. If an actual alarm sounds, the R&M support employee gives the desk over to the CCO on duty, as she is not trained to handle actual emergencies. R&M support staff employees never cover the HVAC consoles, and never work alone in the operations center.

The Employer produced evidence demonstrating that employees frequently transfer between support staff positions, including those within the facilities department. However, since at least 2004, no employee has transferred into or out of a CCO position. Moreover, the record refers to only one person who has transferred into or out of a CCO position. Nicole McKenna was initially hired as an office assistant in facilities before transferring to a CCO position. After a series of transfers and promotions within and outside the facilities department, she finally returned to her current CCO position.

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<sup>11</sup> It is not clear how often this situation arises. In the post-September 11, 2001 period, when operations center coverage was increased, R&M support employees were called in to cover the fire desk with greater regularity than they are now. R&M manager Richard could not recall it occurring in several years.

### Wages, benefits, and other terms of employment

All support staff employees who work at least 17.5 hours a week, including the petitioned-for employees, are entitled to the same benefits, including health and life insurance, sick leave, disability benefits, and retirement benefits. These are the same benefits offered to virtually all the Employer's benefits-eligible employees, including those on the academic side of the institution, except those represented by labor organizations. Additionally, all support staff employees are subject to the same personnel policies, including the employee complaint and grievance procedure maintained by the Employer.

Support staff employees fall on the Employer's wage scale from pay grades 2 through 6.<sup>12</sup> The CCOs at issue here and employees occupying positions classified as administrative assistant II are paid at a grade 5 level. Wage increases for support staff are determined by the Employer's executive vice president, finance director, and other high-level administrators, who determine the percentage increase available to departments for that year. Department supervisors decide how the pool will be allocated among their staff. Wage increases for all support staff, including the CCOs, are given annually on April 1, while those for administrative, academic, and unionized service staff become effective on July 1.

### Pattern of bargaining

The petitioned-for employees have no history of collective bargaining with the Employer. However, there are currently five bargaining units at the Employer's various locations. In particular, approximately 550 trades employees, maintenance mechanics, and custodians on the main campus are represented by SEIU Local 615. Those employees work with their hands in the field, maintaining and repairing the Employer's equipment and facilities throughout the main campus.<sup>13</sup> SEIU Local 615 also represents a separate unit of about 90-100 trades employees at Lincoln Laboratory. Additionally, the approximately 40 campus police officers are represented by the Campus Police Association. About 550 technical employees, divided between the main campus and Lincoln Laboratory, are represented by the Research Development and Technical Employees' Union. Finally, about 40 guards at Lincoln Laboratory are represented by the Security Officers' Independent Union. Labor relations manager Jonathan Barnes sits on the Employer's negotiating committees for all contracts.

### Relationship between CCOs and employees in the existing bargaining unit

The Petitioner presented little evidence regarding the relationship between the petitioned-for CCOs and the existing unit of trades and maintenance employees. From their stations in the operations center, CCOs have regular and frequent radio contact with

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<sup>12</sup> The midpoint hourly wage rate for grade 2 is 16.80; the midpoint for grade 6 is \$25.50.

<sup>13</sup> This unit includes fire protection technicians and HVAC mechanics.

HVAC mechanics, whom they dispatch to various campus locations for HVAC repairs.<sup>14</sup> While they are performing repairs, mechanics regularly have reason to call CCOs. For example, in order to troubleshoot or repair problems, the mechanic may ask the CCO to make adjustments to HVAC components using the computer. In this regard, the CCOs assist trades employees in diagnosing and remotely repairing HVAC problems. Trades employees are supervised by various trades shop supervisors, who in turn report to R&M manager Richard. Some of them are based in shops and offices in Building E-19, but perform their work throughout the campus. Like the CCOs, trades employees provide coverage 24 hours a day, seven days a week.

## **ANALYSIS**

The Petitioner maintains that the main campus CCOs have a separate and distinct community of interest apart from the Employer's other support staff, and constitute an appropriate unit. The Employer contends that the CCOs are office clericals who share a community of interest with its other 1900 office clerical employees in its various departments. In particular, the Employer asserts that the main campus CCOs share a community of interest with the five R&M support staff employees, the two Lincoln Laboratory CCOs, and the five IS&T CSRs; and takes the position that the smallest appropriate unit must include those employees. Based on the foregoing, I find that the petitioned-for unit of CCOs on the main campus is too narrow in scope to constitute a separate appropriate unit, and that the smallest appropriate unit must also include the R&M support staff employees and the Lincoln Laboratory CCOs. I further find, contrary to the Petitioner's assertion, that the CCOs do not constitute an appropriate residual unit under established Board law.

It is well settled Board law that a union need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Transerv Systems*;<sup>15</sup> *Morand Bros. Beverages Co.*<sup>16</sup> When determining unit scope, the Board first considers the petitioning union's proposals. If the unit sought is appropriate, the inquiry ends. If it is inappropriate, the Board will scrutinize the employer's proposals. *Dezcon, Inc.*<sup>17</sup> In deciding whether a unit is appropriate, the Board weighs various factors, including differences or similarities in the method of wages or compensation, hours of work, employment benefits, supervision, working conditions, job duties, qualifications, training, and skills. The Board also considers the degree of integration between the functions of employees, contact with other employees, and interchange with other

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<sup>14</sup> This is not unique to the CCOs. For non-hot/cold calls, R&M support staff employees dispatch trades and custodial employees for repairs and cleanups.

<sup>15</sup> 311 NLRB 766 (1993).

<sup>16</sup> 91 NLRB 409 (1950).

<sup>17</sup> 295 NLRB 109, 111 (1989).

employees, as well as history of bargaining. *Overnite Transportation Co.*<sup>18</sup> In the university setting, the Board has frequently held that a clerical unit that is less than university-wide is inappropriate. See, e.g., *The President and Fellows of Harvard College*;<sup>19</sup> *Yale University*.<sup>20</sup> The petitioner's desire as to the unit is a relevant consideration, though not dispositive. *Florida Casino Cruises*.<sup>21</sup>

#### The CCOs at Lincoln Laboratory

First, I find that the two CCOs at Lincoln Laboratory must be included in any unit found appropriate. Although they do not share common supervision, they have the same essential skills and duties as their campus counterparts, receive the same wages and benefits, and are subject to the same personnel policies. That their work stations are located several miles away in Lexington does not make them inappropriate for inclusion in the same unit with the campus CCOs. See *Harvard College*.<sup>22</sup> Therefore, I shall include them in the unit found appropriate.<sup>23</sup>

#### R&M support staff employees

I also find that the CCOs share a strong community of interest with the five R&M support employees who work in the adjacent office. It is true that the CCOs have duties that are distinct from those of the R&M support staff and other clerical employees. In particular, they troubleshoot mechanical failures on campus using computer software unique to their function, and respond to fire alarms and tests from their work stations. On the other hand, the bulk of the CCOs' work day is spent sitting at a computer console, inputting data, and making and receiving telephone calls. In this regard, their skills and duties are similar to most of the Employer's other clericals, and especially the R&M support employees. While the focus of the CCOs' work is HVAC- and fire-oriented, it is nevertheless clerical in nature and does not require a set of skills or qualifications vastly different from those needed to perform other clerical jobs. The Board looks to the relative skills and functions of the employees, and the essential nature of the work they perform, rather than to the unique context that the employees work in on a daily basis.

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<sup>18</sup> 322 NLRB 723, 723-724 (1996), citing *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

<sup>19</sup> 269 NLRB 821 (1984).

<sup>20</sup> 184 NLRB 860 (1970).

<sup>21</sup> 322 NLRB 857, 858 (1997), citing *Airco, Inc.*, 273 NLRB 348 (1984).

<sup>22</sup> *Supra*.

<sup>23</sup> I shall not include any IS&T employees in the unit, as their functions are unrelated to those of the petitioned-for employees.

See, e.g., *Harvard College*.<sup>24</sup> To find otherwise would divide the support staff along departmental or functional lines, and run counter to Board policy against fragmentation of the workforce.<sup>25</sup>

CCOs share common second-level supervision with the R&M support staff. Until 2007, when Linda Bradford was promoted to CCO supervisor, R&M manager Bernard Richard directly supervised the CCOs. Currently, he has overall responsibility for the operations center, as well as the entire R&M department, including its 36 clerical employees. Richard directly supervises the R&M support staff employees from an office across the hall.

The Employer's human resources function is highly centralized, a factor supporting a larger unit than the one petitioned for.<sup>26</sup> It uses a single wage scale for all unrepresented employees, who also share common benefits and personnel policies. Annual wage increases are determined by department supervisors within a percentage determined by high-level administrators. The wage range for CCOs falls within the range established for all support staff. Both groups receive on-the-job training, with the CCOs requiring a much longer training period before they can perform the job alone. CCOs are required to learn the Employer's mechanical systems in order to perform remote operations on them, but do not generally have HVAC experience when they are hired. CCOs do work different hours from other support staff – a reflection of the emergency nature of their work.

There is regular and frequent overlap in the performance of the duties of the CCOs and R&M support staff employees, who work in adjacent offices. Both groups receive calls from students and campus personnel, reporting problems such as power outages, heating and cooling issues, burned-out lights, and a wide array of mechanical and maintenance problems. Both groups create work orders based on those calls, and input the appropriate information in the computer system. They share responsibility for closing out work orders, with R&M support staff employees performing this duty during the day and CCOs performing it after hours. CCOs answer the *Fixit* line after R&M support staff employees have gone home for the day. R&M support staff employees are trained to cover the operations center's fire desk in the event of a staffing shortage. While it is true that R&M support staff employees cannot perform all the duties of a CCO, they can and do perform certain duties, such as the fire desk and phone calls, when necessary. Since at least 2004, there have been no permanent transfers into or out of the CCO group.

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<sup>24</sup> *Supra*, 269 NLRB 821, 823 (1984)(little weight given to fact that petitioned-for clerical and technical employees in Medical Area were “medically oriented” since skills required were virtually identical to skills required for other jobs in same classifications.

<sup>25</sup> *Id.* See also *American Broadcasting Co.*, 210 NLRB 654 (1974).

<sup>26</sup> See *Harvard College*, *supra*.

The two operations are functionally integrated. R&M support staff employees receive hot/cold calls on the Employer's *Fixit* line, and send the related work orders to the CCOs for repair and/or dispatch. Equipment shutdowns for routine maintenance or emergency repairs require the work of both groups. In most cases, the CCO notifies the R&M support staff employee of a planned shutdown so that she can notify those who will be affected by it. CCOs and R&M support staff employees have frequent contact throughout the work day on these and other work-related matters. As a result, I find that the R&M support staff employees must be included in any unit found appropriate.

The Employer's CCOs have never been represented by any labor organization. Nevertheless, about 1300 employees are represented in five different bargaining units, including a unit of trades employees, maintenance mechanics, and custodians on the main campus. Of the five, only one – a technical unit covering the main campus and Lincoln Laboratory – includes employees from more than one location.

### The residual unit question

Where a portion of a workforce is already represented, the Board considers first whether the petitioned-for employees constitute an appropriate separate unit. If they do not, the Board determines whether they constitute an appropriate residual unit. The Petitioner urges me to find that a unit of CCOs on the main campus is residual to the unit of trades and maintenance employees currently represented by SEIU Local 615. The Board has consistently held that groups of employees omitted from established bargaining units constitute appropriate residual units, provided they include "all unrepresented employees of the type covered by the petition." *Fleming Foods*.<sup>27</sup> Thus, the Board requires that all unrepresented employees residual to an existing unit or units be included in an election to represent them on a residual basis. *Syracuse University*.<sup>28</sup>

As discussed above, the CCOs at issue here work at computer consoles in an office, where they also answer phones, process work orders, and perform other clerical-type duties. Although their duties and working conditions differ somewhat from the R&M support staff employees and other office clericals, they are nevertheless engaged in office work that makes them more akin to clerical employees than trades employees, who work with their hands in the field to perform equipment maintenance and repairs. In this regard, they are but a handful of the 1900 unrepresented employees performing office work for the Employer.<sup>29</sup> Thus, the CCOs do not constitute an appropriate residual unit,

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<sup>27</sup> 313 NLRB 948 (1994).

<sup>28</sup> 325 NLRB 162 (1997)(citations omitted).

<sup>29</sup> Even if I were to take a narrower view of the CCOs, they would not constitute an appropriate residual unit because there are similarly situated employees who are unrepresented. In this regard, the narrowest possible residual unit would consist of the CCOs on the main campus, the CCOs at Lincoln Laboratory, and the IS&T employees on the main campus.

since only a portion of the unrepresented employees of the type covered by the petition are sought to be represented by the Petitioner.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time communications console operators employed by the Employer at its Cambridge and Lexington, Massachusetts facilities and all full-time and regular part-time clerical employees working in Room 133 of Building E-19, including the shut-down coordinator; the coordinator of overtime, radios, cell phones, and customer service; the preventive maintenance coordinator; the labor card coordinator; and the dispatcher, but excluding all other employees, professional employees, managers, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**<sup>30</sup>

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been

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<sup>30</sup> As the unit found appropriate is broader than the petitioned-for unit, in accordance with the Board's usual practice, I shall provide the Petitioner a reasonable period of time, not to exceed 10 days, from the date of this Decision and Direction of Election in which to demonstrate the requisite showing of interest among employees in the unit found appropriate, unless a Request for Review is timely filed by the Petitioner, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the Request for Review. In the event that the Petitioner does not submit such additional evidence within the applicable 10 day period, the Direction of Election shall be vacated. Alternatively, the Petitioner will be permitted to withdraw its petition without prejudice upon written notice to me within 10 days from the date of the Direction of Election.

permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Union of Operating Engineers, Local Union No. 877, AFL-CIO.

### **LIST OF VOTERS**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the 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.*,<sup>31</sup> *NLRB v. Wyman-Gordon Co.*<sup>32</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.<sup>33</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before May 21, 2008. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 28, 2008.

In the Regional Office's original correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select

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<sup>31</sup> 156 NLRB 1236 (1966).

<sup>32</sup> 394 U.S. 759 (1969).

<sup>33</sup> 315 NLRB 359 (1994).

the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

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Rosemary Pye, Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 14<sup>th</sup> day of May, 2008.

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