

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

SUMMIT ELECTRIC CONSTRUCTION, INC.

Employer

and

Case 4-RC-21375

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL 98, AFL-CIO¹

Petitioner

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

The Employer is an electrical contractor with a facility in Warminster, Pennsylvania. The Petitioner has filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the Employer's field electricians. The Employer seeks to include three Material Handlers, two Mechanics and Field Supervisors Lateef Bryant and Mark Leonardis in the unit. It also takes the position that 11 field electricians who were laid off on December 4 or 5, 2007, have no expectation of recall and should not be permitted to vote. The Petitioner takes the position that the Material Handlers and Mechanics lack a community of interest with the field electricians, that Bryant and Leonardis are supervisors within the meaning of Section 2(11) of the Act, and that the laid off employees should be permitted to vote because they satisfy the eligibility criteria for construction industry employees set forth in *Steiny and Co., Inc.*, 308 NLRB 1323 (1992), and *Daniel Construction Co.*, 133 NLRB 264 (1961) as modified 167 NLRB 1078 (1967).²

A Hearing Officer of the Board held a hearing on December 18, 2007. I have considered the evidence and arguments presented by the parties, and, as detailed below, I find that the Material Handlers and Mechanics do not share a sufficient community of interest with the field electricians to require their inclusion in the bargaining unit. Because the Petitioner did not meet its burden of showing that Bryant and Leonardis are statutory supervisors, I shall include them in the unit. I further find that the laid off employees who meet the Board's *Steiny/Daniel* criteria for eligibility should be permitted to vote.

¹ Petitioner's name appears as amended at the hearing.

² The parties agree that the unit should include all electrical employees working in commercial and underground crews and those classified as service electricians, alarm technicians, roughers and finishers.

I. OVERVIEW OF OPERATIONS

The Employer primarily performs electrical work associated with new residential construction, although it also performs some work on underground and commercial construction. Steve Diodati, the owner, also serves as President. Manager David Bianchini is second in command.

At the time of the hearing, some 78 employees were working for the Employer, 53 or 54 of them as field electricians. The field electricians are divided into four groups – commercial/underground; rough electricians; finish electricians; and service electricians. The rough and finish electricians work primarily on new residential construction. As of the date of the hearing, about 20 rough, 20 finish, 10 commercial/underground and three to four service electricians were employed. The electricians report to the Warminster facility at the beginning and end of each work day, but spend the bulk of their work time at job sites.³

Supervisors Russell Heist, Joseph Murray and Jeff Herb report to Bianchini, and are in charge of the rough electricians, finish electricians and the commercial/underground electricians, respectively.⁴ Individuals referred to as Field Supervisors report to Heist and Murray. Leonardis reports to Heist and is the Field Supervisor for the rough electricians. Bryant reports to Murray and is the Field Supervisor for the finish electricians. There is no Field Supervisor for the commercial/underground group.

The Employer maintains a warehouse at the Warminster facility. Three Material Handlers and two Mechanics work there. The Material Handlers and Mechanics report directly to Manager Bianchini.

II. THE MATERIAL HANDLERS AND MECHANICS

A. Relevant Factors

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be an appropriate one. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the unit sought by the Petitioner. If that unit is appropriate, the inquiry ends. *Bartlett Collins Co.*, 334 NLRB 484 (2001). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, or it may select a unit different

³ In the past, the Employer had employees classified as alarm technicians, but none were employed at the time of the hearing.

⁴ It is not clear who supervises the service electricians.

from the proposed alternative units. See, e.g., *Bartlett Collins Co.*, supra.; *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000).

The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), enfd. 411 F.2d 356 (7th Cir. 1969). In determining whether a group of employees possesses a separate community of interest, the Board examines such factors as the degree of functional integration between employees, common supervision, employee skills and job functions, employee contact and interchange, fringe benefits, and similarities in wages, hours and other terms and conditions of employment. *Home Depot USA*, 331 NLRB 1289 (2000); *Esco Corp.*, 298 NLRB 837 (1990).

B. Facts

The Petitioner seeks a unit limited to the Employer's field electricians. The field electricians report to Supervisors Heist, Murray and Herb. They spend most of their time at construction sites installing wiring, although they may report to the Warminster facility at the beginning and end of their work day to pick up and drop off material. The Employer does not require its field electricians to have any particular training or certifications before being hired. Its electricians are trained on the job. Electricians begin work at either 6:30 a.m. or 6:45 a.m. They are paid between \$9 and \$20 per hour.

The Employer argues that the unit must include Material Handlers and Mechanics in addition to the field electricians. There are three Material Handlers and two Mechanics. They report to Manager Bianchini and are not managed by the three Supervisors who have responsibility for the field electricians.

The Material Handlers and Mechanics spend the bulk of their time in the warehouse at Warminster. The warehouse is divided into four sections. Materials used by the Employer's residential electricians are stored in two of the sections where the three Material Handlers work. A third section is devoted to the materials and equipment used by the commercial/underground electricians. The two Mechanics work in this section. The fourth section is used solely for storage. Nobody works in this area on a regular basis.

The Material Handlers receive copies of Supervisor schedules indicating the jobs the residential electricians are scheduled to perform. Based on these schedules, they gather the materials and equipment they believe the electricians will need each day. The electricians normally leave their vans at the warehouse overnight, and the Material Handlers load the materials and equipment into the vans before the start of the electricians' work day. The electricians sometimes assist with the loading. Electricians also assist Material Handlers in unloading equipment and material from the vans at the end of the work day.

Electricians sometimes need supplies or equipment not shown on the Supervisor schedules. They may secure this material from the warehouse themselves at the beginning or end of their work days or ask the Material Handlers to obtain it. Access to some material and equipment is restricted. When it is, the electricians must go through the Material Handlers to

obtain the restricted material. The Material Handlers maintain records showing which electricians have been provided with restricted material.

On occasion, Material Handlers will assemble electrical components for use by electricians. They also prepare purchase orders, receive deliveries of equipment and supplies and maintain the warehouse. When the amount of work is too great for the residential electricians to handle on their own, Material Handlers have been assigned to go to construction sites where they assist with the installation of wiring. The record does not indicate how frequently this takes place.

If work is slow, residential electricians are assigned to help in the warehouse. Between one and three electricians work in the warehouse for part or all of a day one or two days each week. Electricians and Material Handlers sometimes visit distributors to pick up needed supplies.

The primary function of the Employer's Mechanics is to repair and maintain the Employer's vehicles and equipment. The Mechanics spend roughly half of their time on vehicle repair. They sometimes are required to go into the field to make repairs.

Most of the remainder of the Mechanics' work days are spent gathering equipment and material for use by the Employer's commercial electricians and maintaining the portion of the Employer's warehouse devoted to its commercial operation. In effect, the Mechanics function as Material Handlers for the Employer's commercial warehouse. In this capacity, they have occasion to interact with commercial electricians who stop at the warehouse to pick up or drop off material and equipment. Because commercial jobs frequently take longer to complete than residential work, the commercial electricians visit the warehouse less frequently than do the residential electricians.

Commercial electricians are also assigned to assist with warehouse work from time-to-time. The Employer is currently reorganizing its commercial warehouse, and, during the two months preceding the hearing, on a daily basis, one or two electricians have been assigned to do work there to assist with the reorganization. The record does not indicate how frequently commercial electricians were assigned to assist in the warehouse prior to the start of the reorganization.

Like the Material Handlers, the Mechanics occasionally are asked to work on construction sites assisting electricians. However, they do electrical work less frequently than the Material Handlers. Manager Bianchini testified that the Mechanics performed "very little" field electrical work in the year preceding the hearing.

The Employer does not require Material Handlers or Mechanics to have any formal training before being hired. However, one of the Material Handlers spent a year working as an electrician prior to starting with the Employer, while a second Material Handler studied electrical work at a technical school. The third Material Handler and both Mechanics had no training in electrical work before coming to work for the Employer. The Mechanics had some experience with vehicle repair prior to being hired.

Two of the Material Handlers report for work at 5:30 a.m. The third Material Handler begins work at 7 a.m. The record does not disclose what hours the Mechanics work. Material Handlers and Mechanics are paid between \$10 per hour and \$16 per hour. They sometimes attend safety and other meetings with electricians.

C. Analysis

I find that the Employer's field electricians form a sufficiently distinct group of employees constituting an appropriate unit without inclusion of the Material Handlers and Mechanics. The two groups of employees – electricians and Material Handlers/Mechanics – are separately supervised. They spend most of their time working at different locations with the electricians assigned at job sites away from the Warminster facility, whereas the Mechanics and Material Handlers are located in the Warminster warehouse. For the most part, they perform discrete functions requiring different skills. The electricians install wire. The Material Handlers do warehouse work. The Mechanics do both warehouse work and vehicle repair.

The electricians do interact with Material Handlers and Mechanics on a regular basis, and, there is some temporary interchange of duties between the two groups with electricians sometimes working in the warehouse and Material Handlers and Mechanics occasionally being assigned to job sites to assist with electrical installations. An appropriate unit could include Material Handlers and Mechanics with the electricians. But, I find the combination of separate supervision, different work locations and distinct duties makes a unit composed only of electricians also to be an appropriate one. See, *Overnite Transportation Co.*, 322 NLRB 347 (1996); *Wasson H.P. & Co.*, 153 NLRB 1499 (1965); *Brown-Ely Co.*, 87 NLRB 27 (1949); *Ozark Dam Constructors*, 77 NLRB 1136 (1948). Accordingly, I shall order an election in a unit limited to the Employer's field electricians.

III. FIELD SUPERVISORS BRYANT AND LEONARDIS

A. Factors Relevant to Evaluating Supervisory Status

The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001); *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Dean & DeLuca*, above at 1047 (2003). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 supervisory functions listed in Section 2(11) of the Act; (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River Community Care, Inc.*, above at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive; possession of any one of the indicia listed is sufficient to make an individual a supervisor. *Kentucky River*, above at 713; *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and helpful suggestions; and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994); *Juniper Industries*, above at 110.

The authority effectively to recommend an action means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation ultimately is followed. See *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). The Board has an obligation not to construe the statutory language too broadly because individuals found to be supervisors are denied the protections of the Act. *Avante at Wilson, Inc.*, 348 NLRB No. 71 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Dole Fresh Vegetables Inc.*, 339 NLRB 785, 792 (2003); *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Purely conclusory evidence is not sufficient to establish supervisory status. *Austal USA LLC*, 349 NLRB No. 51 at fn. 6 (2007); *Avante at Wilson*, above; *Franklin Hospital Medical Center*, 337 NLRB 826, 829 (2002). The sporadic exercise of supervisory authority is not enough to transform an employee into a supervisor. See *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001); *Gaines Electric*, 309 NLRB 1077, 1078 (1992). An individual must spend a regular and substantial portion of his or her work time performing supervisory functions in order to be considered a supervisor within the meaning of Section 2(11). *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 9 (2006).

In *Kentucky River*, the Court decided, contrary to the Board, that RNs at a residential nursing care facility were supervisors within the meaning of the Act. In determining that the nurses were not supervisors, the Board had found, inter alia, that although they directed the work of nurses' aides, this direction did not involve independent judgment because it was by virtue of the nurses' training and experience, not because of their connection with management. The Court acknowledged that the term "independent judgment" is ambiguous with respect to the *degree* of discretion required for supervisory status and recognized that it was "within the Board's discretion to determine, within reason, what scope of discretion qualifies." 532 U.S. at 713. The Court rejected the Board's analysis, however, because the Board erroneously excluded, "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards" from the statutory definition of independent judgment, even where the employees exercised a sufficient degree of discretion to otherwise warrant a supervisory finding. *Ibid.* In all other respects, the Court left intact the Board's traditional role in drawing the line between the performance of functions that are clerical and routine and assignment and direction involving a sufficient element of discretion so as to

confer supervisory status.⁵ Thus, the Court did not hold that every exercise of professional or technical judgment in directing other employees is necessarily an exercise of independent judgment, but recognized that the Board could determine the degree of independent judgment necessary to meet the statutory threshold for supervisory status. *Id.* at 714.

In its decisions in *Oakwood Healthcare, Croft Metals, Inc.*, 348 NLRB No. 38 (2006) and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006), the Board clarified the circumstances in which it will find that individuals exercise sufficient discretion in performing two of the Section 2(11) functions – assignment and responsible direction of work – to justify the determination that they are statutory supervisors. Thus, the term “assign” refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare*, slip op. at 4.

In *Oakwood*, the Board, advertent to the legislative history, explained “responsible direction” as follows: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible . . . and carried out with independent judgment.’”⁶ “Responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks as opposed to overall duties. *Oakwood Healthcare*, above, slip op. at 5-6. But, an individual will be found to have the authority to responsibly direct other employees only if he or she is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and that the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Oakwood Healthcare*, slip op. at 7.

Assignment or responsible direction will produce a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the putative supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood Healthcare*, slip op. at 8. Independent judgment requires that the decision “rise above the merely routine or clerical.” *Ibid.*

⁵ The Court also indicated that, “the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer.” *Id.* at 713-714.

⁶ In providing this explanation, the Board referred to statements made by Senator Flanders during the 1947 Senate hearings concerning the Act. At those hearings, Senator Flanders offered the amendment adding the phrase “responsibly to direct” to Section 2(11). See NLRB, Legislative History of the Labor Management Relations Act of 1947, 103-104.

B. Facts

As noted above, Lateef Bryant and Mark Leonardis are classified by the Employer as Field Supervisors. Bryant reports to Joe Murray, the supervisor for the finish electricians. Leonardis reports to Russell Heist who oversees the rough electricians.

Bryant and Leonardis spend about 50% of their time performing the same tasks as other electricians. They are sometimes asked to check on the work of fellow workers. If they believe that an electrician is having production problems or quality issues, Murray or Heist will ask Bryant or Leonardis to check the electrician's work. Bryant and Leonardis fill out inspection sheets to perform these work checks. It is not clear what information the inspection sheets contain or what is done with them after they are completed. The sheets are not submitted to higher level management nor are they considered by the Employer when making personnel decisions. Bryant and Leonardis also give employees verbal instructions if they notice work being done improperly. No record is kept of such instructions, and they are not taken into account by the Employer in evaluating employees' work.

Bryant and Leonardis do not play any role in hiring or firing employees or selecting employees for layoff. Murray and Heist decide whether employees should be given written warnings or other discipline. Although Bryant and Leonardis are not involved in the decision to discipline, they sometimes are asked to hand warnings to employees.

Murray or Heist may ask Bryant or Leonardis for their opinions as to whether an employee should be given a wage increase, although it is not clear what, if any, weight these opinions are given. Bryant and Leonardis sometimes are asked to attend management meetings and provide their views as to how employees might react to a change in policy. Again, it is not clear what, if any, weight is given to their views.

Work assignments are made by Murray and Heist. Bryant and Leonardis are not involved. Bryant and Leonardis also have no authority to prioritize work, authorize overtime or permit employees who are ill to leave work. According to Manager Bianchini, Bryant and Leonardis are merely highly skilled employees who have been placed in positions allowing them to share their knowledge with other workers in an effort to improve work performance.

Bryant and Leonardis are hourly paid as are all of the Employer's electricians. Their hourly rates are among the highest in the Employer's workforce. Unlike most of the other electricians, Bryant and Leonardis are permitted to take their Company owned vans home at night. They do not appear to enjoy any additional benefits not granted to other workers. Bianchini conceded that other workers may regard Bryant and Leonardis as supervisors.

C. Analysis

The Petitioner, as the party asserting supervisory status, has the burden of proof. I find that it has not carried that burden. There is no evidence that Bryant and Leonardis exercise any authority in most of the functions listed in Section 2(11) of the Act. They appear to play no role in hiring, transferring, suspending, recalling, laying off, promoting, discharging or assigning

other employees. Bryant and Leonardis have distributed disciplinary warnings to other workers as conduits merely for determinations made by higher ranking individuals. Serving in this role does not make them statutory supervisors. *Alois Box Co.*, 326 NLRB 1177, 1178 (1998).

The ability of Bryant and Leonardis to review the performance of other employees and have deficient work redone is also insufficient to confer supervisory status. Although serving in this role requires them to direct employees, as the Board defines that term, direction only matters if it is “responsible.” And, responsible direction requires evidence that the directing employee may suffer material consequences to his or her terms of employment as a result of his or her performance of the direction. *Lynwood Manor*, 350 NLRB No. 44 (2007); *Golden Crest Healthcare Center*, at slip op. p. 4-5; *Croft Metals*, slip op. p. 6. Nothing in the record suggests that Bryant and Leonardis have ever suffered any consequences, either positive or negative, as a result of the manner in which they monitor other employees’ performance. Absent such evidence, there is no basis to find that the two Field Supervisors responsibly direct other workers.

As for the role played by Bryant and Leonardis in evaluating employees for wage increases, the record merely shows that they may be asked to offer an opinion. It is not clear what sort of opinion is sought. It may be that the Field Supervisors are asked if they believe an increase is appropriate or they may merely be questioned generally about an employee’s work. In either case, the record does not show the weight given to the Field Supervisors’ opinions. Evaluations establish supervisory status only if they directly impact wages or the job status of the employees being evaluated. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). There is no indication that the Field Supervisors’ opinions have such a direct impact.

Finally, that the Field Supervisors are sometimes asked to attend management meetings or may be regarded as supervisors by other workers does not, without evidence that they possess a primary indicium, qualify them as supervisors within the meaning of the Act. *Hauser-Chrome of KY, Inc.*, 326 NLRB 426 (1998); *Williamson Memorial Hospital*, 284 NLRB 37, 38 (1987). I shall include Field Supervisors Bryant and Leonardis in the bargaining unit.

IV. THE LAID OFF EMPLOYEES

A. Relevant Factors

In *Daniel Construction Co.*, and *Steiny and Co.*, supra, the Board established a formula for determining when laid off employees in the construction industry will be deemed eligible to vote in a representation election. Under the *Daniel/Steiny* standard, laid off construction industry employees are eligible to vote if they were employed for 30 days or more within the 12 months preceding the eligibility date for the election or have some employment within those 12 months and were employed for 45 days or more within the 24-month period immediately preceding the eligibility date.

This formula is applied to all construction industry elections without regard to the employer’s method of operation unless the parties agree not to use it. *Signet Testing*

Laboratories, Inc., 330 NLRB 1 (1999). In *Steiny*, the Board specifically rejected attempts to refrain from using the formula in cases involving construction employers with a stable workforce or where the evidence indicates that laid off employees may never work for the employer again. 308 NLRB at 1325-27. The only exceptions to application of the formula arise when an employer clearly operates on a seasonal basis or where an employee was discharged for cause or voluntarily quit prior to completing the last job on which he or she was employed. 308 NLRB at 1326, 1328, fn. 16.

B. Facts

There is no dispute that the Employer is engaged in the construction industry and there is no record evidence that it operates on a seasonal basis. The Employer has a largely stable workforce, having had just two lay offs in the 11 years prior to December 2007, one in 1996 and the other in 2000. In both cases, employees were selected for layoff based on the Employer's assessment of their productivity. None of the employees laid off in 1996 and 2000 were recalled to work, although some of the laid off workers were permitted to reapply.⁷

On December 4 or 5, 2007, the Employer experienced a slowdown in work and laid off 11 employees. As in the past, employees were selected for layoff based on the Employer's evaluation of their work performance. Manager Bianchini met with 8 or 9 of the 11 laid off employees and told them they were being let go because work had slowed down. Bianchini did not attribute the lay offs to the employees' work performance. Some of the employees asked if they would be recalled. Bianchini responded that he did not "have a crystal ball" and could not "predict the future." According to Bianchini, the Employer has no plans to recall any of the workers laid off in December 2007.

C. Analysis

As noted above, the *Daniel/Steiny* formula applies in all construction industry elections regardless of an employer's mode of operations. As the Employer is engaged in the construction industry, the formula is applicable. The fact that the Employer has a stable workforce and no history of recalling laid off workers does not require a different result.

Further, none of the recognized exceptions apply. The Employer does not contend that its business is seasonal. There is no evidence that any of the laid off employees voluntarily quit their employment. And, although the Employer relied on work performance in selecting the employees to be laid off, the record shows that the lay off resulted from a slow down in work. There is no evidence the laid off workers were discharged for cause prior to completion of their last assignment. In short, there is no reason to ignore the *Daniel/Steiny* standard in this case. To the extent the employees laid off in early December 2007 meet the *Daniel/Steiny* criteria, they are eligible to vote in the election.

⁷ The record does not indicate whether the Employer rehired any of the laid off workers who submitted new applications

V. CONCLUSIONS AND FINDINGS

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 case.
3. The Petitioner claims to represent certain of the employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time field electrical employees including employees working as commercial electricians, underground electricians, rough electricians, finish electricians, service electricians, alarm technicians and Field Supervisors; excluding all other employees, Material Handlers, Mechanics, office personnel, guards and supervisors as defined in the Act.

VI. 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 the purposes of collective bargaining by **International Brotherhood of Electrical Workers Local 98, 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.

A. Eligible Voters

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Additionally eligible are those employees in the unit who have been employed for a total of 30 working days or more within the period of 12 months or who have had some employment in that period and have been employed for a total of 45 working days within the 24 months immediately preceding the payroll

period ending immediately preceding the date of this Decision, and also have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.⁸ Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, 2) 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 3) employees engaged in an economic strike which began more than 12 months before the election date 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 seven (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). The 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, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **January 11, 2008**. No extension of time to file this list shall 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 (215) 597-7658, or by E-mail to Region4@NLRB.gov.⁹ Since the list will be made available to all parties to the election, please furnish a total of two (2) 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.

⁸ *Steiny & Co.*, 308 NLRB 1323 (1992); *Daniel Construction*, 133 NLRB 264 (1961), modified in 167 NLRB 1078 (1967).

⁹ See OM 05-30 dated January 12, 2005, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 05-30 is available on the Agency's website at www.nlr.gov.

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 three (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 five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. 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, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by electronic filing through the Agency's website at www.nlr.gov. A copy of the request for review must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing. Guidance for electronic filing can be found under the **E-Gov** heading on the Agency's website. This request must be received by the Board in Washington by 5:00 p.m., EST on **January 18, 2008**.

Signed: January 4, 2008

at Philadelphia, PA

/s/ [Daniel E. Halevy]

DANIEL E. HALEVY

Acting Regional Director, Region Four
National Labor Relations Board