

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

**LEGAL AID AND DEFENDER ASSOCIATION, INC.**

**Employer**

**and**

**Case 7-RC-23186**

**MICHIGAN COUNCIL 25, AMERICAN FEDERATION  
OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES  
(AFSCME), AFL-CIO**

**Petitioner**

APPEARANCES:

Theodore R. Opperwall, Attorney, of Birmingham, Michigan, for the Employer  
Robert Fetter, Attorney, of Detroit, Michigan, for the Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are 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.
3. The labor organization involved claims to represent certain employees of the Employer.

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<sup>1</sup> The parties filed briefs, which were carefully considered.

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.

The Petitioner seeks to represent a unit of all full-time staff attorneys in the Civil Law Group employed by the Employer at its offices located at 613 Abbott and 1240 Third Street, Detroit, Michigan; 21885 Dunham Road, Clinton Township, Michigan; and 28 N. Saginaw, Pontiac, Michigan,<sup>2</sup> but excluding staff attorneys in the Employer's Juvenile Law Group, deputy defenders in the Employer's State Defender Office, deputy defenders and research and writing specialists in the Employer's Federal Defender Office, paralegals, guards and supervisors as defined by the Act.<sup>3</sup> The Employer contends that the unit should include all full-time staff attorneys, deputy defenders, assistant federal defenders and research and writing specialists employed by the Employer at its offices in Detroit, Pontiac, Clinton Township and Flint, Michigan.

I find that the petitioned-for unit is appropriate. The record does not demonstrate that the attorneys in the other law groups (also referred to herein as practice groups) possess such a significant community of interest with the attorneys in the Civil Law Group so as to require their inclusion in the same bargaining unit.

### **Overview of Operations**

The Employer is a Michigan nonprofit corporation engaged in the provision of legal services to low-income residents of Southeastern Michigan at its facilities located in Detroit, Flint, Pontiac and Clinton Township. It has four practice groups that provide legal services to its clients: a civil law group, a juvenile law group, a state defender office and a federal defender office. The Civil Law Group employs 23 staff attorneys who offer services in matters including family law, housing law, public benefit representation, consumer protection, and bankruptcy. The Juvenile Law Group employs 15 staff attorneys who represent juveniles in abuse and neglect and delinquency matters in Wayne County. The State Defender Office represents individuals who have been charged with felonies in state court. There are about 14 deputy defenders working in the State Defender Office. The Federal Defender Office represents individuals who have been charged with felonies in federal court. There are about 19 assistant federal defenders and research and writing specialists in the Federal Defender Office. The research and writing specialists are licensed attorneys, and the position is considered an entry-level position.

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<sup>2</sup> These offices are also referred to as Wayne County (Detroit), Macomb County (Clinton Township), and Oakland County (Pontiac).

<sup>3</sup> The Petitioner amended its petition at hearing to include the two Civil Law Group staff attorneys located at each of the Employer's Macomb County and Oakland County Offices. I am administratively satisfied that Petitioner's showing of interest is adequate in such amended unit.

The Employer's main office is located at 613 Abbott Street, Detroit, Michigan. Its administrative offices are located on the 6<sup>th</sup> floor of that building. The Federal Defender Office is located on the 5<sup>th</sup> floor of the Abbott Street building and also in a separate office in Flint, Michigan. The State Defender Office is housed on the 4<sup>th</sup> floor of the Abbott Street building. The Juvenile Law Group is on the 3<sup>rd</sup> floor. The Civil Law Group has offices on the 1<sup>st</sup> and 2<sup>nd</sup> floor of the Abbott Street building and has an intake service center in an annex to the Abbott Street building. The annex is located at 1240 Third Street. The Civil Law Group also has offices at 21885 Dunham Road in Clinton Township and 28 N. Saginaw in Pontiac. No attorneys from any other law groups are located in the Clinton Township or Pontiac offices. Only attorneys from the Federal Defender Office are located in the Employer's Flint Office.

There are several common areas in the Employer's Abbott Street building that are open to employees of all the practice groups. The Employer maintains a law library and conference rooms on the 6<sup>th</sup> floor of the building. There is an amphitheater on the first floor that is used for large meetings and presentations by all of the practice groups. There is also a cafeteria in the basement of the building that is open to anyone who works in the building. Each floor in the Abbott Street building has its own break area which includes a coffee maker and refrigerator.

Attorneys in the civil and juvenile law groups and State Defender Office enter their case data into the same case tracking system. Attorneys in the Federal Defender Office use a separate tracking system, but do enter some data into the system used by the other attorneys in order to keep track of potential conflicts that may arise between the practice groups. The Civil Law Group, Juvenile Law Group and State Defender Office are supported by the same information technology (IT) staff. The Federal Law Group has its own IT support. Attorneys in all of the practice groups have access to the same legal research software. Each practice group has its own paralegals and clerical support staff. All of the groups use a common letterhead for correspondence, but use different envelopes, identifying their specific law group.

## **Funding**

Each Law Group has its own funding sources. The Civil Law Group is funded by several different sources, including the Legal Services Corporation (LSC), the Michigan State Bar Foundation, the City of Detroit, and the Skillman Foundation. The Juvenile Law Group and the State Defender Office are funded by Wayne County. The Federal Defender Office receives its funding from the federal court system. The Employer is prohibited by federal law from commingling any of its funds among the various law groups, and, in some instances, within the law group. Each practice group is required to separately account for all expenditures.

In order to receive funding from the LSC, attorneys in the Civil Law Group are required to submit Client Case Service Reports. These reports track the attorneys' clients, the work done on their cases, and various other statistics arising in the processing of a case. Attorneys in the Juvenile Law Group, State Defender Office and Federal Defender Office do not submit these forms. The LSC also requires that the Civil Law Group maintain retainer forms for all clients, which forms are generated by the Employer. The Federal and State Defender offices maintain documentation regarding client relations that is operated by the court. The funding sources of the various law groups exercise control over the types of clients each group may serve and the types of cases they may handle. For example, staff attorneys in the Civil Law Group are prohibited by their funding sources from representing illegal immigrants, defending a client in a criminal matter, or representing anyone in an abortion case.

## **Clients**

The Civil Law Group's clients make their initial contact with the group either by calling its toll-free number or walking into its intake center. They then meet with an intake screener,<sup>4</sup> who asks questions to determine whether or not they are eligible to receive the services of the group. The Civil Law Group also develops clients through community outreach programs held at various sites such as senior citizen centers. The funding sources of the group dictate the requirements clients must meet before receiving services. These requirements range from the location the person lives to their income and the type of case with which they would like assistance. The staff attorneys in the Civil Law Group litigate cases, but spend the majority of their work day in the office.

The juvenile, state defender, and federal defender groups all receive their clients exclusively through court appointment. The courts in their respective jurisdictions determine which individuals are eligible for public defender representation and then refer those clients to the Employer. Attorneys in the juvenile and state defender groups spend the majority of their work day in the courtroom. Because of the nature of their practice, they do not meet with their clients at the office. Attorneys in the Juvenile Law Group work in Wayne County's juvenile court.<sup>5</sup> Attorneys in the State Defender Office work in various criminal courts within Wayne County. Attorneys in the Federal Defender Office practice in the U.S. District Court and the U.S. Sixth Circuit Court of Appeals.

## **Supervision and Personnel Policies**

The Employer is governed by its Board of Directors and is managed by the executive director, Deirdre Weir. The executive director oversees the work of the systems operations manager, the information technology contractor, the facility management director, the finance director, the director of marketing and development,

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<sup>4</sup> The intake screener is not an attorney.

<sup>5</sup> Attorneys in the Juvenile Law Group meet with their clients' families at the Annex on Saturdays.

the human resources director and the law group chiefs. Each law group has its own chief counsel who oversees the day-to-day operation of the law groups. The Civil Law Group has a chief counsel, deputy chief counsel, and managing attorneys overseeing each practice group. The Juvenile Law Group has a chief counsel and deputy chief counsel. The State Defender Office has a chief defender and two supervisory attorneys. The Federal Defender Office has a chief defender and two supervisory attorneys.<sup>6</sup>

The only common supervision among the law groups is the executive director. The chief counsels of each group make decisions with regard to hiring, promotions and discipline within their respective law groups, but must obtain the approval of the executive director before these actions are effective. The executive director has the authority to refuse to approve the recommendations of the chief counsels, but the record contains no evidence that this authority has been exercised on a routine basis. The chief counsels also evaluate the work of the attorneys within their groups and can deny an employee's request for sabbatical leave. Employees cannot appeal a denial of sabbatical leave to the executive director.

According to their job descriptions, staff attorneys in the Civil Law Group report to the managing attorney or supervisor attorney and are hired by and serve at the pleasure of their managing attorney, with the approval of the deputy chief counsel. The job description for the staff attorneys in the Juvenile Law Group states that they are hired by the chief counsel, report to their supervisor attorney, and serve at the pleasure of the group's chief counsel. The deputy defenders in the State Defender Office report to a supervisory attorney and serve at the pleasure of the chief defender. The assistant federal defenders reports directly to the federal defender or a supervisory attorney appointed by the federal defender.

The Employer has an employee handbook that is distributed to attorneys in all four practice groups. Each practice group has its own operations manual that covers matters specific to that group. The operations manual for the Civil Law Group is divided into six headings, General Office Procedure, Application Procedure, PAI Procedure,<sup>7</sup> Case and File Maintenance, Case Handling and Review, and Case Closure Procedure. Each of these topics is further divided into subcategories. New employees receive orientation from their law group's chief counsel. The Employer has promulgated a dress code, but it is enforced differently by the different law group chief counsels. For example, there is no business casual dress day in the Civil Law Group, and female attorneys in that group are required to wear trousers or a skirt with pantyhose at all times. Attorneys in the other

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<sup>6</sup> The parties stipulated that the executive director, systems operations manager, the information technology contractor, the facility management director, the finance director, the director of marketing and development, the human resources director, the law group chiefs, deputy chief counsel, managing attorneys, chief defenders and supervisory attorneys are managers or supervisors, and are excluded from the unit.

<sup>7</sup> PAI refers to Private Attorney Involvement, a program offering pro bono opportunities in various Civil Law Group Applications.

practice groups are able to wear more casual clothing, including jeans, when they are not required to appear in court. The dress code states that business casual days are at the discretion of the law group chief counsels. The Employer maintains a firm-wide seniority list for the purpose of assigning parking spaces. It does not use this list for any other purpose.

## **Transfers**

Attorneys in the Employer's various practice groups occasionally apply for and receive permanent job transfers to another practice group. In the past two years, only two attorneys have transferred to the Civil Law Group from another practice group. Internal candidates are given a hiring preference when the Employer posts open job positions, but employees are required to submit letters of resignation to their former law group when they take a position in another law group. Attorneys who transfer to a law group with a higher pay scale normally receive a raise to bring their salary in line with that of other attorneys in that law group. The transfer of their accrued annual and sick leave is at the discretion of the chief counsel of their new law group, with the approval of the executive director.

There are no temporary transfers of attorneys between the law groups. The separate funding sources of the different groups prohibit attorneys from one group from assisting on a case in another group. Attorneys may assist one another on an informal basis, such as responding to a question by telephone, but there is scant record evidence of this occurring. The Employer maintains a telephone list with contact information for all of the staff attorneys in the organization. The list indicates whether a particular attorney can assist other attorneys with translation services; however, there is no specific record evidence that this occurs on a regular basis. The Employer has a voluntary mentoring program that pairs managers and supervisors from one law group with staff attorneys and other employees from a different law group, but the record contains no evidence of the frequency of contact between the mentors and mentees and whether the mentoring concerned work-related matters.

## **Meetings and Committees**

The Employer has approximately two firm-wide meetings every year. These take place in the amphitheater on the first floor of the Abbott Street building. The Employer also has a nonmandatory holiday party in December and a Mother's Day party in May. The Employer conducts firm-wide training once or twice a year. This generally consists of state bar presentations on ethics issues, such as conflict of interest. Most of the training offered to attorneys is done within their respective law groups. The Civil Law Group provides annual training through the Michigan Poverty Law Program. New employees receive orientation from their law group chief counsel. In the Civil Law Group, this training is mandated by the LSC. The executive director sometimes

participates in the new employee orientation. Attorneys from the Federal Defender Office may occasionally assist attorneys in the Civil Law Group when the latter prepare to argue cases before the U.S. Sixth Circuit Court of Appeals, but the record does not contain specific examples of when and how often this has occurred.

The Employer has some limited history of individuals from different practice groups serving together on committees. For example, before the Employer moved to the Abbott Street building in November 2007, committees comprised of volunteers from the various practice groups assisted in planning the layout of the new building, the furniture, the design, and other such matters. However, the record does not reflect who served on these committees, how frequently they met and how long the committee remained in place.

The Employer operates a prison re-entry program called the Michigan Prisoner Re-entry Initiative. Staff attorneys from both the state and civil practice groups served on the committee that planned that initiative, but this participation took place several years ago. The program is ongoing, but now involves staff attorneys from the Civil Practice Group meeting with prisoners prior to their release from jail without the involvement of the deputy defenders. Although some of the individuals served by this program may have been clients of the state defender group at one time, that information is not conveyed to the civil practice staff attorney group who is working with the prisoner to facilitate his or her transition back to society.

The Employer offers a program, Another Chance at Education, that refers clients of the Juvenile Law Group to the Civil Law Group for assistance in returning to school. The Employer provides letters and brochures to the courts, which in turn refer juveniles to the Civil Law Group, as appropriate. There is no evidence that the program involves direct contact between staff attorneys in the civil and juvenile law groups. A joint education program offered by the Civil Law Group and Juvenile Law Group was discontinued due to lack of funding several years ago.

## **Salaries and Benefits**

The attorneys in the Employer's Federal Defender Office are subject to a nationwide pay scale and are paid in accordance with the salary scale in the U.S. Attorney's Office. Their average salary is \$121,941 per year. In theory, for the attorneys in the state, juvenile and civil law groups, the Employer utilizes a separate pay scale that is significantly lower than that of the attorneys in the federal group. The Employer does not pay the attorneys in accordance with that pay scale, however, because of the different funding levels in the various law groups. According to the pay scale, the starting salary for an attorney is about \$46,000 per year. However, due to funding variances, the starting salary for an attorney in the State Defender Office is about \$35,000 per year; in the Juvenile Law Group, it is approximately \$43,000 per year. Starting salaries for

attorneys in the Civil Law Group are in line with the Employer's pay scale of about \$46,000 per year.

The average salary in the Civil Law Group is approximately \$100 less per year than the average salary in the Juvenile Law Group; however, the average seniority in the civil group is about seven years less than the average seniority in the juvenile group. The average salary in the State Defender Office is about \$11,000 less than that of the Civil Law Group, with the average seniority being about two years less than that of the civil group. The average seniority in the Federal Defender Office is 13.7 years.

The Employer offers a cafeteria style benefit plan to all of its employees. Employees can choose their health and dental coverage, life and disability insurance, and dependent child care reimbursement benefits from that plan. The Employer also offers the same defined benefit retirement plan to all employees in its administrative offices, Civil Law Group, Juvenile Law Group and State Defender Group. The plan is currently being managed by the Employer. Employees of the Federal Defender Office are part of the same retirement plan as employees in the U.S. Attorney's office. They contribute to a 403(b) plan and receive a matching contribution from the federal government. Employees in the other practice groups may also contribute to a 403(b) retirement savings plan, but they are not eligible to receive matching funds from the Employer.

The Employer offers a loan repayment assistance program to attorneys in all of its practice groups. This provides support in repaying student loans from law school, up to \$3,000 a year for 5 years. After ten years of employment, all employees are eligible to apply for a paid sabbatical. Requests for sabbatical are made to the law group chiefs. The Employer occasionally pays bonuses to the attorneys. These bonuses are based on merit but vary from law group to law group depending on that group's budgetary constraints. Attorneys in all four law groups are subject to the same vacation and sick leave policy. Attorneys in the Civil Law Group have the week between Christmas and New Year's Day off, while the attorneys in the Juvenile Law Group, State Defender Office and Federal Defender Office are required to work during that week on a rotating basis to handle any arraignments that might occur.

## **Bargaining History**

There is no history of collective bargaining in the Civil Law Group. Employees in the State Defender Office were represented in a separate bargaining unit from the mid-1980's until the unit was decertified sometime in the 1990's. At that time, and until the Employer moved to the Abbott Street building in 2007, the State Defender Office was located at 462 Gratiot, Detroit, Michigan and the Federal Defender Office and the civil and juvenile law groups were located in another building about a half mile away.

## Analysis

The Act does not require that a petitioned-for unit be the only appropriate unit or the most appropriate unit. It requires only that the unit be appropriate. *Overnight Transportation Co.*, 322 NLRB 723 (1996); *Dezcon, Inc.*, 295 NLRB 109 (1989); *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). While a petitioner's desire in regard to unit composition and scope is relevant, it is not dispositive. *E.H. Koester Bakery Co.*, 136 NLRB 1006, 1012-1013 (1962).

The issue here is not whether the staff attorneys in the Juvenile Law Group, the deputy defenders in the State Defender Office, and the assistant federal defenders and research and writing specialists in the Federal Defender Office may appropriately be included in the bargaining unit sought by the Petitioner. Rather, the issue is whether the petitioned-for unit excluding them is appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950).

When a petitioned-for unit of employees has a community of interest that is distinct from the interests of the employees the petitioner seeks to exclude, the Board deems the petitioned-for unit to be an appropriate one. *Aerospace Corp.*, 331 NLRB 561, 562 (2000); *Ore Ida Foods*, 313 NLRB 1016 (1994). In determining whether employees share a community of interest, the Board looks at a variety of factors, including the existence of common supervision, employee skills and job duties, functional integration, interchange and contact between employees, bargaining history, and salaries and benefits. *Stormont-Vail Healthcare, Inc.*, 340 NLRB 1205, 1207 (2003); *Verizon Wireless*, 341 NLRB 483, 485 (2004); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). The existence of separate funding sources may also be considered. *Trustees of Columbia University*, 222 NLRB 309, 310 (1976).

## Supervision

The existence of separate daily supervision is a significant factor in determining community of interest. *Lawson Mardon U.S.A., Inc.*, 332 NLRB 1282, 1282 (2000). In organizations where there is some centralized control over labor relations, the Board examines whether the decisions of the lower level supervisors carry significant weight in order to determine whether there is separate supervision among groups of employees. *Executive Resources Associates, Inc.*, 301 NLRB 400, 402 (1991). Here, the chief counsels of each law group are responsible for evaluating the attorneys' job performance, and make decisions with regard to hiring, discipline and promotions. They are also responsible for enforcing the dress code, resulting in different dress code standards between groups.

The executive director must approve the decisions of the law group chiefs before they become effective. However, there is no record evidence that the executive director

fails to abide by the recommendations of the law group chief counsels or overturns their decisions on a routine basis. Therefore, although there is some centralized control of labor relations, it appears that the decisions of the chief counsels carry significant weight in the organization and that the various law groups have separate supervision in day-to-day matters. *Id.*

### **Employee Skills and Job Duties**

The existence of different job skills and working conditions weighs in favor of a separate unit. *AGI Klearfold, LLC*, 350 NLRB No. 50, slip op. at 5 (2007). While the employees at issue are all attorneys, there are different skills involved in representing clients in civil, juvenile, and criminal cases. The staff attorneys in the Civil Law Group receive separate training from the attorneys in the other law groups. They spend less time in court than the attorneys in the other law groups and more time meeting with clients. The Civil Law Group develops its client base through outreach programs and call-in and walk-in inquiries. The federal and state defender offices and the Juvenile Law Group develop all of their cases exclusively through court referrals. The funding sources for each law group place different requirements, such as reporting forms and prohibitions on taking certain cases, that vary from law group to law group and could make common representation difficult.

### **Functional Integration, Interchange, and Employee Contact**

The record reveals little evidence of regular interchange between employees in the different law groups. While the Employer had formed some committees that have involved attorneys from the various law groups, none of the committees are still in existence. There is evidence that attorneys from the civil and state groups worked on the formation of the Employer's prisoner re-entry program, but such participation ended several years ago. The program now involves only attorneys from the Civil Law Group. The committees the Employer formed to ease the transition to the new building ceased to exist after the move was completed in November 2007.

There is no record evidence that attorneys from the different law groups work together on a daily basis. The town hall meetings held by the Employer and the nonmandatory holiday parties occur only a few times a year and do not constitute a significant amount of employee contact. While the employees have a common telephone directory and are free to call one another with legal questions or for translation services, there is no record evidence that this type of interaction takes place on a regular basis.

There have been no temporary transfers involving staff attorneys between any of the practice groups. Indeed, the funding sources for each law group forbid any sort of work sharing or temporary transfers as a result of the prohibition on commingling funds. Permanent transfers are afforded less weight than temporary transfers in determining

whether there is functional integration between two groups of employees. *Alamo Rent-A-Car*, 330 NLRB 898, 898 (2000); *Red Lobster*, 300 NLRB 908, 911 (1990). In the last two years, only two staff attorneys have permanently transferred from another practice group into the Civil Law Group.

The limited contact between the attorneys in the different law groups and the infrequent and relatively few transfers over the past two years is not substantial enough to compel the inclusion of attorneys from the federal, state and juvenile law groups in the petitioned-for unit.

### **Bargaining History**

The history of once separate bargaining in the State Defender Office supports a finding that a separate unit of staff attorneys in the Civil Law Group is appropriate.

### **Salaries and Benefits**

Differences in pay are an important factor in determining whether employees share a community of interest. *Executive Resources Associates, Inc.*, 301 NLRB 400, 402 (1991) (\$9,000 salary differential found potentially to be “a prime source of friction” between employees). The average salary in the Federal Defender Office is more than double that of the average salary in any other group, and the attorneys in that office have their wages and benefits set in accordance with the wages and benefits of the employees in the U.S. Attorney’s Office. Attorneys in the Civil Law Group have a starting salary that is \$11,000 per year more than a starting attorney in the State Defender Office.

The salary disparities between the various law groups would almost certainly lead to divergent interests among the attorneys and weigh in favor of allowing the staff attorneys in the Civil Law Group to be represented in a separate bargaining unit.

### **Funding**

Separate funding is a factor in determining the appropriate community of interest. *Trustees of Columbia University*, supra; *Jewish Hospital of Cincinnati*, 223 NLRB 614, 618 (1976). The four law groups all derive their funding from different sources. Each funding source has different requirements as to how its funds may be used, and the Employer is not permitted to commingle funds. Clients of each practice group must meet different requirements related to their income, location, and the nature of their legal issue before being deemed eligible to receive services.

The different demands placed upon the organization by the funding sources would make collective bargaining on behalf of the attorneys in all four practice groups problematic at best. The funding received by the groups dictates, among other things,

whether employees can be paid in accordance with the Employer's salary scale and whether employees receive bonuses.

## Conclusion

I find that a separate unit of the staff attorneys in the Civil Law Group employed by the Employer at its offices in Detroit, Clinton Township, and Pontiac, Michigan is appropriate for the purposes of collective bargaining. While the comprehensive unit of all staff attorneys, deputy defenders, and research and writing specialists proposed by the Employer may also be appropriate, and certain factors would support such a unit, the record does not establish that the staff attorneys in the Civil Law Group have such a substantial community of interest with the other attorneys employed by the Employer as to compel the creation of one overall unit. *Lawson Mardon U.S.A., Inc.*, supra; *J & L Plate*, 310 NLRB 429 (1993).<sup>8</sup>

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 staff attorneys, deputy defenders, assistant federal defenders and research and writing specialists employed by the Employer at its offices in Detroit, Pontiac, Clinton Township and Flint, Michigan.

Dated at Detroit, Michigan, this 22<sup>nd</sup> day of May 2008.

(SEAL)

*/s/ Stephen M. Glasser*

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Stephen M. Glasser, Regional Director  
National Labor Relations Board, Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue, Room 300  
Detroit, Michigan 48226

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<sup>8</sup> In reaching my decision, I note that the Employer has not cited any case authority for its position that all of the attorneys employed by the Employer should be included in a single bargaining unit.

## **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 **MICHIGAN COUNCIL 25, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME), 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. 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 quit or 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). 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.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 29, 2008**. 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 to the Regional Office by electronic filing through the Agency website, [www.nlr.gov](http://www.nlr.gov),<sup>9</sup> by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two copies** of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Posting of Election Notices**

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

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<sup>9</sup> To file the list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. The user then completes a form with information such as the case name and number, attaches the document containing the request for review, and clicks the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.69 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, DC 20570-0001**. This request must be received by the Board in Washington by **June 5, 2008**. The request may be filed electronically through **E-Gov** on the Board's website, **[www.nlr.gov](http://www.nlr.gov)**,<sup>10</sup> but may **not** be filed by facsimile.

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<sup>10</sup> Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.

To file the request for review electronically, go to **[www.nlr.gov](http://www.nlr.gov)** and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, **[www.nlr.gov](http://www.nlr.gov)**.