

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

**UNIFORM COLOR COMPANY**

**Employer**

**and**

**GENERAL TEAMSTERS UNION, LOCAL NO. 406,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

**Case GR-7-RC-23162**

**Petitioner**

**APPEARANCES:**

Donald F. Lawless and Kurt M. Graham, Attorneys, of Grand Rapids, Michigan, for the Employer

James Chase, of Grand Rapids, 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.

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<sup>1</sup> The Employer filed a brief, which was carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

In its petition, the Petitioner seeks to represent a unit of approximately 94 “factory workers” and drivers, excluding supervisors, guards, and salaried employees. The Petitioner contemplates a production and maintenance unit, a general concept that the Employer does not oppose. Although the record does not contain any unit stipulation, the parties seem to agree that the following classifications belong in the petitioned-for unit: general production, machine operators, mixers, molders, floaters, packagers, material handlers, pre-check technicians (collectively sometimes referred to herein as manufacturing employees), shipping material handlers (some of whom are drivers), color lab technician 1, molding machine adjustment technician, maintenance technicians I and II, and facilities janitors, employed by the Employer at its Holland, Michigan facility.

The parties dispute the placement of twelve employees in six classifications: four production technicians, one receiving clerk, three shipping clerks, one inventory control specialist, two production schedulers, and one maintenance team leader. The Petitioner asserts that the contested employees should be excluded because they are salaried, while the Employer argues that they should be included on community-of-interest grounds. There is no history of collective bargaining between the parties at the facility in question.

I find that the employees in the six named classifications have such a close community of interest with the other production and maintenance employees as to require their inclusion in the unit.<sup>2</sup>

### **Overview Of Operations**

At its Holland plant, the Employer manufactures custom color concentrate for the plastic injection mold industry. The Holland operation comprises two facilities, a receiving station and warehouse at 905 Brooks Avenue, and a manufacturing and shipping building across the street at 942 Brooks Avenue. The two facilities function as a single, comprehensive operation that receives, collects, melts, and extrudes dry pigment and resin, renders the resultant concentrate into pellets, and ships the final product to customers. The Employer daily completes from 70 to 100 jobs, some of which are large and pre-scheduled, but many of which are small and considered “hot.” Because the

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<sup>2</sup> Neither party contends, or adduced evidence to show, that the disputed individuals are statutory supervisors. The Employer presented evidence, some of which is discussed below, to establish their employee status. I find that they are employees within the meaning of Section 2(3) of the Act.

Employer's production schedule is dynamic, communication among departments is essential.

Bill Burk, who serves as both plant and logistics manager, oversees the production, order management, and logistics departments. A production manager, an unspecified number of shift and shipping supervisors, and an order management supervisor all report to Burk. The disputed production technicians are directly under the shift supervisors. The disputed shipping clerks, receiving clerk, and inventory control specialist report immediately to shipping supervisors. The disputed production schedulers answer directly to the order management supervisor. A director of engineering and quality oversees the maintenance manager, who supervises the employees in the maintenance department, including the disputed maintenance team leader.

Kathy Bader is the human resources director. Job descriptions in the record refer to a director of technology, employee development specialist, procurement/scheduling manager, color lab supervisor, and product development supervisor, but those individuals' names, departments, and positions in the management hierarchy are not revealed.<sup>3</sup>

The Employer operates 7 days a week, 24 hours a day. Manufacturing employees are organized into two sets of 12-hour day shifts and two sets of 12-hour night shifts. The two complements rotate in order to provide around-the-clock coverage, each working 36 hours one week and 48 hours the next. Shipping, receiving, order management, and maintenance personnel work eight-hour shifts.

### **Genesis Of Salaried Nonexempt Jobs**

The employees in the disputed positions of production technician, receiving clerk, shipping clerk, and inventory control specialist were hourly rated until January 2006. At that time, the Employer converted about 40 to 45 hourly employees, including those in the four cited disputed positions, to the status of "salaried nonexempt." The term was never defined in the record, but undoubtedly refers to their coverage under the Fair Labor Standards Act. According to Human Resources Director Bader, the conversion in pay status was to "elevate the positions" and give the incumbents "a little

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<sup>3</sup> The record does not include evidence of the complete chain of supervisory command or any stipulations as to supervisory status. There is evidence that the shift and shipping supervisors, and maintenance manager, assign work to employees, approve their overtime, and influence their compensation levels by means of annual evaluations. I find on those bases that they are statutory supervisors. Because job descriptions describe the shift and shipping supervisors as directly below the production and plant managers, and the maintenance manager below the director of engineering and quality, it is inferable that the individuals in the superior positions also possess statutory supervisory authority. I so find. The record is too bare to permit inferences regarding the supervisory status of the order management supervisor, director of technology, employee development specialist, procurement/scheduling manager, color lab supervisor, or product development supervisor.

more ownership.” The Employer did not offer any further explanation of the change in the method of pay. Subsequently, the Employer created the new positions of maintenance team leader and production scheduler, both of which were also classified as salaried nonexempt.

All salaried nonexempt positions have been filled from in-house promotions, most of which resulted in compensation increases of three to five percent. Presently, all disputed employees, like the others rated salaried nonexempt, are paid a guaranteed weekly amount, and are eligible for overtime pay for hours worked in excess of 40, payable at 1.5 times their weekly salary divided by 40 hours.<sup>4</sup>

### **Production Technicians**

One production technician is assigned to each of the four 12-hour manufacturing shifts. They monitor the manufacturing jobs, report on progress, facilitate communication among departments and shifts, and work with manufacturing employees to assure that jobs are completed timely and well. In carrying out these missions, they have almost constant daily contact with general production workers, machine operators, mixers, molders, floaters, packagers, material handlers, and pre-check technicians, all of whom report, as they do, to the manufacturing shift supervisor.

The production technicians do not make initial assignments, which is the province of the shift supervisors. However, to smooth the flow of work, they may ask hourly workers to change machines during a shift. The authority is merely to request, not to compel.<sup>5</sup>

The incumbent production technicians have considerable manufacturing experience and are particularly adept at the extrusion process. They perform the more difficult “hot” jobs, routinely fill in for employees on work breaks, and substitute for workers who are unexpectedly absent. Although they share an office with various other salaried nonexempt individuals, they spend about 90 percent of their time on the production floor.

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<sup>4</sup> The Employer takes the position that the only salaried nonexempt employees properly includable in the unit are those in the six classifications in question. The record does not identify the other salaried nonexempt jobs beyond manufacturing assistant (also known as production clerk), inventory usage administrator, and checking resin material handler, all of which are within the order management department.

<sup>5</sup> The official job description for production technician states that they distribute workload, supervise employees, and help the supervisor with employee issues. There is no claim or evidence, however, that the production technicians responsibly direct, assign, adjust grievances, discipline, or engage in any other supervisory indicia using independent authority. The production technicians refer any failure to cooperate or other personnel problem to the shift supervisor, who, as far as the record discloses, handles the situation without any effective recommendation from the production technicians.

A production technician may substitute for a shift supervisor during the latter's brief or unanticipated absence. During a shift supervisor's scheduled or longer absence, another shift supervisor or an engineer takes his place.<sup>6</sup>

If production technicians are not needed to work during a break, they enjoy down time with other manufacturing employees in the same nonwork areas. Their work uniform, the same worn by other manufacturing employees, has an insignia bearing their name, but not their title. For safety reasons, they are required to shower in the plant at shift's end, as are all manufacturing workers.

Production technicians are rated salary grade nine, while the acknowledged unit employees in the manufacturing department are rated grade five or six. The significance of this disparity is not known, because the record does not disclose the monetary ranges of the pay grades. Bader testified that an ordinary manufacturing employee with considerable experience might be at the outer reaches of his grade, and therefore earn more than a production technician. No instances were adduced.

### **Receiving Clerk**

Using a hi-lo, the receiving clerk unloads incoming material from trucks, labels and puts it away in warehouse racks, and stocks it across the street at the production facility. Physically moving supplies around the production floors occupies about 75 to 80 percent of his eight-hour day shift workday. The remainder is spent reviewing inbound shipping documents to verify that materials are received in accordance with the purchase order, and recording the receipt of raw material in Syteline, the Employer's computerized data entry system located in the receiving office. Syteline entry work is also within the official job description of the material handlers, a job classification within the petitioned-for unit.

The receiving clerk occasionally fills in for shipping material handlers, who, like him, report directly to the shipping supervisor. The incumbent receiving clerk regularly works overtime doing production. The receiving clerk is at pay grade five, as are all manufacturing employees except floaters.

Like shipping material handlers, who are included in the petitioned-for unit, the receiving clerk has the option to wear a uniform and to shower at the plant. The Employer does not require these employees to shower, because they are not exposed to pigment, as manufacturing workers are.

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<sup>6</sup> There is no evidence that the production technicians possess any of the authorities enumerated in Section 2(11) of the Act during such temporary stints. Even if they did, sporadic or isolated instances of supervisory authority do not confer supervisory status. *St. Francis Medical Center – West*, 323 NLRB 1046 (1997).

## **Shipping Clerks**

In contrast to the receiving clerk, who handles inbound supplies, the three shipping clerks process outbound finished products. Shipping clerk work occurs only on weekdays, with each shipping clerk working a different eight-hour shift to achieve 24-hour coverage.

The shipping clerks spend a considerable amount of time collecting, packing, repacking, labeling, and loading finished material onto outbound trucks, work similar to that performed by shipping material handlers and packagers. Shipping clerks, like shipping material handlers, must possess a license to operate a hi-lo. The shipping clerks coordinate pick-up schedules with truck lines and customers, but do not select carriers or set the priority of shipments.

The other principal duty of the shipping clerk is to prepare computer-generated shipping documents, such as bills of lading. Because most product is shipped during business hours, day shift shipping clerks spend about 80 percent of their time preparing documents, and the remainder driving a hi-lo and doing manual labor on the shop floor. For afternoon and night shift clerks, the ratio is reversed. Although hourly production employees do not routinely generate shipping documents, some shipping material handlers have the requisite computer skills to do so. The job description of the shipping material handlers states that they regularly review shipping documents for accuracy.

Shipping clerks sometimes substitute for absent shipping material handlers. A shipping clerk with a commercial driver license may fill in for a driver, transporting product across the street between the Employer's facilities.

Like shipping material handlers, shipping clerks report to the shipping supervisor. They may choose whether to wear a uniform or shower on the clock. In contrast to shipping material handlers, who are paid at grade four, shipping clerks are at salary grade six.

## **Inventory Control Specialist**

The inventory control specialist works primarily at 905 Brooks Avenue to maintain and monitor the physical inventory of raw materials. This entails checking on inventory status via computer; pulling material from warehouse racks to verify weight counts; communicating between receiving and manufacturing personnel regarding availability of ingredients; and notifying the purchasing department when supplies are low. His function is merely reportorial. He does not order material or modify product schedules, based on inventory availability.

An unquantified portion of the time of the inventory control specialist is spent on a hi-lo helping material handlers, or the receiving clerk, load and unload trucks. Because the incumbent inventory control specialist has a commercial driver license and a predilection for driving, he not only fills in for drivers, but also daily inspects the trucks and conducts driver training.

The inventory control specialist reports to the shipping supervisor. Whether he works the 8-hour shipping or the 12-hour manufacturing shift was not revealed. He is paid at salary grade seven.

### **Production Schedulers**

The Employer invests its order management group with the complex task of coordinating the simultaneous completion of jobs. The order management supervisor, also known as the master scheduler, decides what is produced each day, and how. Under him are various clerks and inventory personnel who are not asserted to be in the petitioned-for unit. Their job duties are not fully described in the record. Among the order management staff are two production schedulers, one for each 12-hour day shift. The Employer created this position at an unspecified time after January 2006.

Production schedulers spend the preponderance of their time on the production floor, checking what jobs are running and on which machines, determining when machines will become available, and assessing whether production has hit snags. They have constant interaction with production technicians and manufacturing employees regarding work flow issues, and also communicate frequently with customer service staff.

Both production schedulers are the original employees to hold the positions, and each has considerable plant experience, one as a mixer and the other as an extruder. When needed, they perform manufacturing jobs to expedite orders. To earn overtime pay, they regularly work on the production floor on weekends. They are paid at salary grade eight.

The 12-hour work shifts of the production schedulers subject them to the same grime and residue to which manufacturing workers and production technicians are exposed. Consequently, production schedulers also are required to wear uniforms and shower at shift's end. In contrast, the other salaried nonexempt personnel in the order management group perform administrative work in eight-hour shifts in clerical offices removed from the shop floor.

### **Maintenance Team Leader**

The maintenance department consists of about 10 to 12 maintenance technicians who install, repair, and maintain machinery, equipment, building structures, and grounds,

in eight-hour shifts, under the supervision of the maintenance manager. All have considerable experience and tend to work autonomously.

The Employer is developing a production facility in Slovakia slated for opening in early 2009. Because the maintenance manager is expected to visit the new plant for extended periods, the Employer in October 2007 added the new position of maintenance team leader. The rationale was to create a local liaison between the maintenance department and upper management in the event the maintenance manager is inaccessible by telephone or email. An employee in the classification of maintenance technician II was promoted to the team leader position.

At the time of the hearing, the maintenance manager was not yet spending much time in Slovakia. His trips now occur only once per calendar quarter for an unspecified average duration. The maintenance team leader, therefore, does not yet perform the gamut of tasks that the manager's more extended absence will eventually necessitate.

The team leader's current duties require him to perform hands-on maintenance work and train new maintenance employees. When the manager is abroad, it is unclear how different the team leader's work will be. The written team leader job description ascribes to him the tasks of repairing and maintaining buildings and grounds, inspecting and testing machines and equipment, and machining replacement parts, work that maintenance techs I and II also perform. The written description goes beyond the core work of the maintenance techs in calling for the team leader to maintain morale, promote communication, lead projects in conference with engineers and vendors, and update work instructions and procedures. Whether these paper duties will actually inure to the team leader, and what authority he may possess to effectuate them, are still speculative.<sup>7</sup>

The team leader does not have an office or a desk. He uses the same lockers and break room, and takes the same breaks, as other maintenance workers. He wears the same uniform. He is paid at salary grade nine, two grades over maintenance tech I and one grade over maintenance tech II. The pay level of the maintenance manager, who is classified as salaried exempt, was not disclosed.

### **Common Features**

The disputed jobs are covered by the same general handbook of rules and regulations that governs all Employer personnel. All of the disputed employees record their hours by means of an electronic swipe card, as do hourly production and maintenance workers. They have access to the same break rooms and cafeteria.

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<sup>7</sup> Bader testified that even in the manager's absence, the maintenance team leader will never discipline an employee or effectively recommend the same, will confer frequently with the absent manager for instructions, and will contact human resources or the manager if an employee misbehaves.

None of the contested employees attend meetings that are restricted to managers. The production technicians, and usually the production schedulers, report to the same “shift kickoff” meetings every Monday, Wednesday, and Friday attended by hourly manufacturing workers under the shift supervisor. The inventory control specialist, receiving clerk, and shipping clerks join shipping material handlers at different meetings, held once or twice weekly, conducted by the shipping supervisor.

## **Analysis**

The legal issue in this case is not whether the classifications of production technicians, receiving clerk, shipping clerks, inventory control specialist, production schedulers, and maintenance team leader may appropriately be added to the bargaining unit. Rather, the question is whether the petitioned-for unit excluding them is appropriate.

Employees may appropriately be grouped in more than one way for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723 (1996). The Act does not require that a bargaining unit be the only, ultimate, or most appropriate grouping. *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union is not necessarily required to seek representation in the most comprehensive grouping of employees. *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). Its desire as to unit is always a relevant consideration, but cannot be dispositive. *Airco, Inc.*, 273 NLRB 348 (1984); Section 9(c)(5) of the Act. The Board normally ends the inquiry into unit appropriateness if the petitioned-for unit is appropriate. *Boeing Co.*, 337 NLRB 152, 153 (2001); *Bartlett Collins Co.*, 334 NLRB 484 (2001).

In establishing an appropriate unit, the Board considers whether employees share a community of interest. Community-of-interest factors include: (a) similarity of employee skills, qualifications, and training; (b) degree of functional integration; (c) frequency of contact and interchange among employees; (d) commonality of supervision; (e) similarity in benefits, hours, and other terms and conditions of employment; and (f) bargaining history. *Ore-Ida Foods, Inc.*, 313 NLRB 1016, 1019 (1994), enfd. 66 F.3d 328 (7<sup>th</sup> Cir. 1995); *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

The job tasks and skills of the disputed employees are largely identical to those of the production and maintenance workers from whose ranks they emerged. Functional integration is so extensive that it is difficult to imagine the manufacturing workers operating without the production schedulers and production technicians; the material handlers working without the shipping clerks, receiving clerk, and inventory control specialist; or the maintenance technicians doing without their team leader. Contact between the contested individuals and the acknowledged unit employees is regular and continuous. Substitution of disputed employees for production workers is frequent. Immediate supervision is shared, except for the production schedulers, who report to the

order management supervisor, but interface constantly with the shift supervisors who are over the manufacturing employees.

Terms and conditions of employment are largely common. All are covered by the Employer's handbook, enjoy the same fringe benefits, and use the same rest areas. Shift schedules are coextensive. Most apparently wear the same uniform. Showers are required for all whose jobs make hygiene a safety precaution.

The distinctions that exist in respect to work duties are relatively insubstantial. Production schedulers field calls from customer service staff, but spend most of their time on the shop floor. The receiving clerk uses Syteline, and shipping clerks produce bills of lading, but so may material handlers and shipping material handlers, respectively.

Nor is the difference in pay a bar to unit inclusion. The Board has long held that differences in compensation levels or methods of payment are not adequate bases for excluding employees from an appropriate unit. *Four Winds Services, Inc.*, 325 NLRB 632 (1998); *Aurora Fast Freight, Inc.*, 324 NLRB 20, 21 (1997); *Embry-Riddle Aeronautical University, Inc.*, 242 NLRB 689, 689-690 (1979). The disputed employees have higher incomes than most of the petitioned-for unit employees, and are guaranteed base weekly amounts, but they swipe the same electronic time clock as do other production and maintenance workers, and share eligibility for overtime. Where, as here, salaried employees otherwise share a strong community of interest with hourly workers, their salaried status is not an impediment to their inclusion in the unit. *Alleghany Aggregates, Inc.*, 327 NLRB 658, 659-660 (1999) (salaried floater added to production and maintenance unit); *K. G. Knitting Mills, Inc.*, 320 NLRB 374 (1995) (salaried individuals included despite claim of special status); *Libbey Glass Div., Owens-Illinois, Inc.*, 211 NLRB 939, 940-941 (1974) (salaried quality control inspectors added to production and maintenance unit); *International Harvester Co.*, 125 NLRB 640, 644 (1959) (salaried drivers included).

I find that the mutuality of interest between the salaried nonexempt employees in the six disputed classifications and the other production and maintenance employees is so compelling that the former group may not appropriately be separated from the latter. *Turner Industries Group, LLC*, 349 NLRB No. 42 (Feb. 28, 2007) (adding classifications to a multi-craft unit); *Buckhorn, Inc.*, 343 NLRB 201, 203-204 (2004) (adding production employees to petitioned-for maintenance unit, despite presumption in favor of latter, due to high degree of integration, contact, interchange, similarity of skills, and shared supervision); *Boeing Co.*, supra (adding classifications to petitioned-for group due to same skills and type of work, high degree of integration, and same benefits, personnel policies, and lunch area). Whether the legal standard to defeat the Petitioner's proposed unit requires "overwhelming" evidence, as the Board has sometimes stated, *Lundy Packing Co.*, 314 NLRB 1042, 1042-1044 (1994), or a lesser evidentiary threshold, as the Fourth Circuit admonished upon review in the *Lundy* case, 68 F.3d 1577

(4<sup>th</sup> Cir. 1995), cert. denied 518 U.S. 1019 (1996), denying enf. to 314 NLRB 1042, I find that the record amply supports the instant unit determination.

## Conclusion

I find that the petitioned-for employees do not possess a community of interest sufficiently separate and distinct from the employees in the classifications of production technicians, receiving clerk, shipping clerks, inventory control specialist, production schedulers, and maintenance team leader so as to justify the latter's segregation. I find, therefore, that the six classifications sought by the Employer must be, and are, included in the overall unit.

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.<sup>8</sup>

All full-time and regular part-time production and maintenance employees, including general production employees, machine operators, mixers, molders, floaters, packagers, material handlers, pre-check technicians, shipping material handlers, drivers, color lab technicians 1, molding machine adjustment technicians, maintenance technicians I and II, facilities janitors, production technicians, receiving clerks, shipping clerks, inventory control specialists, production schedulers, and maintenance team leaders, employed by the Employer at its facilities located at 905 and 942 Brooks Avenue, Holland, Michigan; but excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees.

Those eligible may vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 18th day of January, 2008.

(SEAL)

/s/ Stephen M. Glasser  
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> As a larger unit than petitioned for was found appropriate, the Petitioner, which appears from the record to be willing to participate in an election in a larger unit, is accorded a period of 14 days from the date of this Decision and Direction of Election in which to submit to the undersigned an additional and sufficient showing of interest. If insufficient additional showing of interest is submitted, the petition will be dismissed. In the event the Petitioner does not wish to proceed with the election, it may withdraw its petition without prejudice by notice to the undersigned within 14 days from the date of this Decision and Direction of Election.

## 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 **GENERAL TEAMSTERS UNION, LOCAL NO. 406, INTERNATIONAL BROTHERHOOD OF TEAMSTERS**. 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.). This list may initially be

used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office on or before **January 25, 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.

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

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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).

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 **February 1, 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).