

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

PIPELINE TRANSPORTATION, INC.<sup>1</sup>

Employer

and

Case 12-RC-9355

TEAMSTERS LOCAL UNION NO. 769,  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Petitioner

**DECISION AND ORDER**

The Employer, Pipeline Transportation, Inc.,<sup>2</sup> transports petroleum products from port facilities in Jacksonville, Port Everglades, Orlando, Port Canaveral and Tampa, Florida, and Birmingham, Alabama, to customers, primarily in Florida and Alabama. The Petitioner, Teamsters Local Union No. 769, affiliated with the International Brotherhood of Teamsters, filed a petition and an amended petition with the National Labor Relations Board under Section 9(c) of the Act seeking to represent a unit of all full-time and part-time drivers employed by the Employer at its facility located at 3050 Burriss Road, Ft. Lauderdale, Florida, excluding all other employees, professional employees, guards and supervisors as defined in the Act.<sup>3</sup> There are approximately 20 or 21 drivers in the unit

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<sup>1</sup> The name of the Employer appears per written stipulation of the parties.

<sup>2</sup> The Employer is a Florida corporation, with its principal office and place of business located in Jacksonville, Florida, and is engaged in transporting petroleum products from various port facilities. During the past 12 months, the Employer, in the course and conduct of its operations, purchased and received at its Jacksonville, Florida facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of Florida. The parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

<sup>3</sup> Although not set forth in the record, I take official notice of the fact that Port Everglades is a seaport in South Florida, located 23 miles north of Miami, and within the limits of the cities of Hollywood, Ft. Lauderdale, and Dania, Florida, and in unincorporated Broward County, Florida. <http://www.porteverglades.org/>.

sought by the Petitioner. A hearing officer of the Board held a hearing. The Employer filed a timely brief with me.<sup>4</sup>

As set forth at the hearing and in the Employer's brief, the Employer takes the position that the petitioned-for unit is inappropriate and that accordingly the petition should be dismissed. The Employer further takes the position that an appropriate unit must include all of its approximately 78 drivers employed company-wide, including approximately 23 or 24 drivers who usually load their trucks with petroleum products at their "home port" of Port Everglades,<sup>5</sup> 16 drivers who usually load their trucks at their home port of Jacksonville (including Robert Gorman, a driver on National Guard leave at the time of the hearing, and Mike Fore, a mechanic who also has some driving duties), five drivers who usually load their trucks at their home port of Orlando (and who sometimes also load at Port Canaveral), 29 drivers who usually load their trucks at their home port of Tampa, and five drivers who usually load their trucks at their home port of Birmingham, Alabama.

By letter submitted after the close of the hearing, the Petitioner stated that it would not proceed to an election in an alternate unit if the petitioned-for unit is determined to be inappropriate.

I have considered the evidence and the arguments presented by the parties regarding the appropriateness of the petitioned-for single-facility unit. As a preliminary matter, it is well established that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or

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<sup>4</sup> The Petitioner did not file a brief.

<sup>5</sup> The record reflects that these 23 or 24 drivers include approximately 20 or 21 in the petitioned-for unit who are assigned to park their trucks in Ft. Lauderdale and receive work orders at a drivers' room maintained by the Employer at that location. Because of space limitations at the Ft. Lauderdale parking lot, two drivers park their trucks at spaces provided by the Employer near Ft. Pierce, Florida, and one parks his truck at a space provided by the Employer near West Palm Beach, Florida. The latter three receive work orders primarily via facsimile machines at their homes that are provided by the Employer, as do drivers assigned to Orlando and Birmingham, as discussed herein.

is so functionally integrated, that it has lost its separate identity. See J&L Plate, Inc., 310 NLRB 429 (1993). The party opposing the single-facility unit has the burden of rebutting its presumptive appropriateness. However, the Board “has never held or suggested that to rebut the presumption a party must proffer ‘overwhelming evidence...illustrating the complete submersion of the interests of employees at the single store’, nor is it necessary to show that ‘the separate interests’ of the employees sought have been ‘obliterated.’” We Care Transportation, LLC, 353 NLRB No. 9 (slip op. at 1) 2008, citing Petrie Stores Corp., 266 NLRB 75, 76 (1983).

To decide whether or not the Employer has rebutted the presumption that a single-facility unit is appropriate, I have examined the record evidence regarding the Employer’s operations, including the degree of central control over the daily operations and labor relations versus the extent of local autonomy; the extent of similarity of employee skills, functions, and working conditions; the degree of employee interchange, geographic proximity between the various locations; and bargaining history, if any.<sup>6</sup> See We Care Transportation, Inc., 353 NLRB No. 9, slip op. at 4 (2008); Dattco, Inc., 338 NLRB 49, 50 (2002); Waste Management of Washington, Inc., 331 NLRB 309 (2000); R&D Trucking, Inc., 327 NLRB 531, 532 (1999); Dayton Transport Corporation, 270 NLRB 1114, 1115 (1984)

As discussed in detail below, I have concluded that the Employer has rebutted the Board’s single-facility unit presumption, and that accordingly, the petition should be dismissed. In view of this determination, it is unnecessary to determine whether Robert

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<sup>6</sup> The record is silent regarding the distance between the various homeports. However, I take official notice of the following approximate distances between Ft. Lauderdale (Port Everglades) and the other home ports: 209 miles to Orlando, 234 miles to Tampa, 317 miles to Jacksonville, and 650 miles to Birmingham. See [http://goflorida.about.com/library/bls/bl\\_driving\\_distances.htm](http://goflorida.about.com/library/bls/bl_driving_distances.htm) ; [http://maps.google.com/maps?hl=en&q=driving%distance%20Ft.%20Lauderdale%20to%20Birmingham&um=I&ie=UTF\\_8&sa=N&tab=wl](http://maps.google.com/maps?hl=en&q=driving%distance%20Ft.%20Lauderdale%20to%20Birmingham&um=I&ie=UTF_8&sa=N&tab=wl).

Gorman, the Jacksonville driver on National Guard leave, is eligible to vote or whether, Mike Fore, the Jacksonville driver/mechanic, should be included in the unit.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will examine the various factors considered by the Board to determine whether the Employer has rebutted the Board's single-facility presumption, and I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

### **I. Overview of operations**

The Employer employs a total of approximately 97 employees, including approximately 78 drivers.<sup>7</sup> The Employer also employs 17 non-driving employees in various capacities, including officers, managers, and clerical employees. All of the non-driving employees are stationed at the Employer's central dispatch command center (CDCC) headquarters facility in Jacksonville, Florida.<sup>8</sup> The Employer's 17 non-drivers are all stationed in offices in the CDCC, and, with the exception of the Vice President of Operations, they rarely travel to the Employer's other locations. The non-drivers include the president and chief executive officer, the vice president of operations, seven logistics managers who report directly to the vice president of operations, the vice president of sales and marketing, the director of safety and human resources, the accounting manager, and three clerical assistants and two billing clerks who report to the accounting manager.

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<sup>7</sup> The Employer would include Robert Gorman, who was on National Guard leave at the time of the hearing, and Mike Fore, who works primarily as a mechanic, as two of the approximately 78 drivers. Fore's primary job is as a mechanic at the Employer's Jacksonville location, and Fore also spends between five to ten percent of his work time working as a driver, according to the testimony of Mark Anderson, the Employer's President and Chief Executive Officer, who was the only witness who testified at the hearing. Anderson also testified that Fore spends a total of 10 to 15 percent of his work time driving, including both making deliveries and moving trucks in connection with his duties as a mechanic. There is no other record evidence concerning Gorman or Fore.

<sup>8</sup> The job classifications of two of the 97 employees are unknown.

The only physical facilities maintained by the Employer other than the CDCC are the truck terminal and drivers' room it maintains at the same location in Jacksonville, and drivers' rooms and truck parking areas leased by the Employer from its equipment suppliers in Ft. Lauderdale and Tampa.<sup>9</sup> The drivers' rooms in Ft. Lauderdale and Tampa each are about eight by twelve feet in size, and contain a table, a few chairs, a facsimile machine, a storage cabinet, a computer, and some surveillance cameras.

The Employer's President and Chief Executive Officer testified that the Employer operates a "virtual terminal system." The only actual terminal is the one in Jacksonville. The drivers are assigned to home ports (i.e. Port Everglades, Orlando, Tampa, Jacksonville and Birmingham), which are generally near the places they live, and to which they deliver petroleum products. The Employer does not maintain any facilities at the port locations where the drivers load their trucks with petroleum products.<sup>10</sup>

All dispatching of drivers is performed by logistics managers, and all of the logistics managers are stationed in the same room at the CDCC in Jacksonville. The dispatchers have flat screen monitors from which they can view the drivers' rooms and parking areas in Port Everglades, Tampa and Jacksonville by looking at pictures taken by the surveillance cameras in those locations. The drivers are apparently aware of this, and sometimes look into the cameras when they talk to the logistics managers.

Communications between the drivers assigned to all of the Employer's locations and their logistics managers are made by two-way Nextel radios or cell phones provided by

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<sup>9</sup> The Ft. Lauderdale facility is on the premises of Efficiency Enterprises, the Employer's equipment vendor that repairs trailers for the Employer at that location, and is also located up the street from Ryder, the company from whom the Employer leases the trucks it uses at Port Everglades. The Tampa facility is on the premises of Salem Leasing, which supplies the trucks the Employer uses at Tampa.

<sup>10</sup> Petroleum products from producers such as BP, Chevron and Texaco are apparently shipped to water port facilities in Port Everglades, Jacksonville, Tampa and Port Canaveral, and piped to the inland "port" locations of Orlando (from Tampa) and Birmingham. Although the record is not entirely clear, it appears that the port facilities where the Employer's trucks are loaded are operated by petroleum production companies and/or other parties that are unrelated to the Employer.

the Employer. Each driver unloads most of his truckloads at the premises of customers located closer to his home port than to the Employer's other home ports. Drivers deliver between one and five truckloads daily, meaning they may return to their home port multiple times in a given shift. It appears from the record as a whole that the vast majority of the Employer's deliveries are to locations in Florida, South Georgia and Alabama. The drivers use tractor trailers owned or leased by the Employer that are parked at specific locations near the ports, or in some outlying areas depending the availability of parking space at the main parking areas.

Drivers assigned to Ft. Lauderdale and Tampa pick up their work assignments that have been delivered by fax at the drivers' rooms in their respective locations, and fax back their paperwork to the CDCC from those locations at the end of the day. Similarly, drivers assigned to Jacksonville pick up and send paperwork at the drivers' room maintained at the Employer's CDCC in Jacksonville. The Jacksonville drivers pick up and drop off their trucks at the Jacksonville terminal, and the Ft. Lauderdale and Tampa drivers pick up and drop off their trucks at the parking areas on the premises of the Employer's vendors at those locations. Other drivers, including two in Ft. Pierce and one in West Palm Beach who load at Port Everglades, the five drivers assigned to the Orlando home port, and the five drivers assigned to the Birmingham home port, receive and send their paperwork at their homes through fax machines supplied to them by the Employer. Because of the small number of drivers at Orlando and Birmingham, the Employer does not have a drivers' room at either of those locations. The Employer operates 24 hours a day, and to the extent there is sufficient work, each truck is "slip-seated," i.e. there is a day shift driver and a night shift driver for each truck, and each shift is roughly 10-12 hours.

## **II. Control of labor relations and day-to-day supervision**

All of the Employer's labor relations and operations decisions are centrally made by managers working at the CDCC. The president and chief executive officer, with assistance from other managers at the CDCC, primarily the vice president of operations, decides the drivers' pay rates, promotions, benefits, personnel policies, and safety policies.

The hiring process is the same for all drivers, regardless of their work location. All applicants for driver positions are screened by the director of safety and human resources. The vice president of operations may have one face-to-face interview with an applicant at the location where the driver is applying for work. All hiring decisions are made by the president and chief executive officer and the vice president of operations. All newly hired drivers must come to the CDCC for a two day orientation and training session conducted by the director of safety and human resources.

All disciplinary and discharge decisions are handled by personnel at the CDCC. Discharge decisions made by the president and chief executive officer and the vice president of operations. Lesser discipline may be determined by logistics managers.

The accounting and clerical employees at the CDCC administer payroll for the entire company, and all drivers are paid weekly, mostly by direct deposit. The drivers are paid a percentage of the Employer's revenue from each load of fuel they deliver, and the percentage is based upon company-wide seniority. All of the drivers receive the same benefits, including holiday pay, 401(k), health insurance, vacation pay, seniority bonus pay, and safety bonus. All of the drivers follow the same drivers' handbook and

wear the same uniform.<sup>11</sup> All employees are invited to a yearly banquet in Orlando, Florida, where the Employer rewards error-free drivers with electronic goods.

The seven logistics managers cover the Employer's operations seven days per week, 24 hours per day. There are three logistics managers who regularly supervise drivers assigned to specific homeports: one for Tampa, one for both Port Everglades and Orlando, and one for both Jacksonville and Birmingham. At the time of the hearing the logistics manager for Jacksonville and Birmingham was being cross-trained to supervise Port Everglades drivers. These three logistics managers cover for each other during breaks, and during periods of leave for vacation or sickness. In addition, there are four logistics managers who supervise different ports at any given time. Thus, two night-shift logistics managers supervise all of the drivers companywide, as only one logistics manager is on duty at nights, and one logistics manager works primarily on the weekends. The seventh logistics manager supervises drivers assigned to different home ports, including Port Everglades, depending on the day of the week.

Customer orders for petroleum deliveries, company-wide, are received by the Employer's clerical employees at the CDCC, and the clerical employees input the orders into the Employer's computerized dispatch system. The logistics managers then review the orders and a dispatch sheet listing all the drivers on that shift, and formulate work assignments and shift schedules for each driver, taking into account the time the delivery is needed.<sup>12</sup> The logistics managers then prints delivery tickets and faxes them to the drivers' room or other location where the driver receives his

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<sup>11</sup> The Employer has a service that cleans the uniforms for the Jacksonville drivers, and the drivers assigned to other home ports clean their own uniforms. This is the only distinction between the benefits given to the drivers based on their assigned home port.

<sup>12</sup> The Employer must make deliveries "just-in-time," i.e. within a certain time frame specified by the customer, in order to make sure both that the customer has sufficient storage space for the delivery so there is not an over-fill, and that the customer does not run out of product.

assignments.<sup>13</sup> Although a logistics manager can only view one drivers' room per monitor, all logistics managers sit near each other in the same open room with monitors showing the other drivers' rooms, so they are able to hear each other's Nextel phones and if required, supervise another home port. In addition to assigning work to drivers, logistics managers are also in charge of granting vacation days, approving sick days, and handling mechanical breakdowns. Drivers and logistics managers communicate with each other by Nextel radio or cell phone throughout the day as needed.

The Employer's central determination and application of labor relations policies, and its common day-to-day supervision of the drivers at all locations are strong factors warranting a finding that the Employer has rebutted the presumption that a single location unit is appropriate. We Care Transportation, LLC, 353 NLRB No. 9, slip op. at 4-6 (2008) (central administration of drivers' wages, benefits, hiring, firing and discipline and common immediate supervision overcame single-facility unit presumption); Waste Management of Washington, Inc., 331 NLRB 309 (2000) (centralized control over operations, functional integration, and lack of local autonomy outweighed geographic distance and lack of affirmative evidence demonstrating more than minimal interchange among employees to warrant single-facility unit inappropriate); R&D Trucking, Inc., 327 NLRB 531, 532-533 (1999) (common supervision of the drivers among facilities by the employer's president, who made all decisions regarding hiring, firing, discipline and wage increases; lack of local supervision; centralized control over operations, including personnel functions, payroll, benefits, personnel policies, and drug testing policies overcame single facility presumption); see also Dayton Transport Corporation, 270 NLRB 1114 (1984).

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<sup>13</sup> The paperwork typically includes a delivery ticket, Department of Transportation log and bill of lading.

### **III. Employee skills, functions, and working conditions**

As noted above, the Employer provides the same brief orientation and training program for all drivers. All drivers perform the same functions of loading and delivering petroleum products, have the same basic shifts, and generally have the same experience, although they primarily work in different territories. In addition, all drivers have the same equipment. Although drivers have an assigned truck, all of the trucks used by the Employer are the same year and model and have the same company signage. As set forth above, the process by which drivers communicate with logistics managers is the same company-wide, with the exception that drivers who park their vehicles at the three largest locations Ft. Lauderdale (Port Everglades), Tampa and Jacksonville, get work assignments from headquarters via fax at their respective drivers' rooms, whereas the other drivers receive and send such faxes at home. At the end of the shift, the drivers at the three largest locations return to the drivers' room, fax the paperwork to the CDCC, and park the trucks in the parking lot next to the drivers' room. A driver at each of the drivers' room volunteers to box up the paperwork and mail it to the CDCC once or twice a month. As noted above, the drivers communicate using the same Nextel or cell phones company-wide. All drivers log their time in a DOT log book, and each truck's GPS system also records drivers' time.

The three drivers assigned to Port Everglades who receive and send work orders from their homes in Ft. Pierce or West Palm Beach usually share the same logistics manager as the drivers who regularly park at Ft. Lauderdale and load their fuel at Port Everglades, just like the petitioned-for unit of Ft. Lauderdale drivers. In addition, they occasionally use the Ft. Lauderdale drivers' room, and have their trailers repaired at the Ft. Lauderdale repair facility.

As noted above, all drivers work under the same rules and policies and are compensated under the same pay system and have essentially the same benefits.

The similarity in skills, working conditions and job functions among all of the Employer's drivers strongly weighs in favor of finding that the presumption that a single-facility unit is appropriate has been overcome. We Care Transportation, LLC, 353 NLRB slip op. at 4 (drivers had similar skills, job functions and working conditions, warranting finding that single-facility unit presumption was overcome); R&D Trucking, Inc., 327 NLRB 531, 532 (1999) (all drivers loaded and unloaded freight, drove trucks, substituted for one another as needed, shared equipment, and worked the same 8-hour shifts, warranting finding that the employer overcame the single-facility presumption).

#### **IV. Employee interchange and transfers**

The Employer provided some evidence of interchange between drivers assigned to various home ports, and also evidence of several transfers of drivers between home ports. Although there is no evidence of the actual substitution of a driver assigned to one location for a driver assigned to another location, it is not uncommon for drivers to be assigned to load petroleum products at locations other than their assigned home ports, or to make deliveries to customers outside their regular territories. In the past several years the main reasons for such interchange have been differences in pricing between ports and shortages of a particular type of fuel at a port. In earlier years, hurricanes caused the Employer to assign drivers to load at ports other than their assigned home port, and to deliver to customers outside their regular territory.

When drivers are required to load or deliver fuel outside their home ports, the logistics managers typically coordinate the delivery, and the drivers communicate with each other through their Nextel phones, often with a logistics manager as the intermediary. All drivers have two-way radio codes and/or cell phone numbers for all of the drivers company-wide. The drivers from different home ports may talk to each other, for example, to get directions or get help loading trucks at a port with which they are not familiar.

The Employer's president and chief executive officer testified that in the year 2008, there were probably 3,000 instances of drivers loading at ports other than their assigned home ports or delivering loads outside their regular territories. For example, some Tampa drivers made daily and/or weekly deliveries from Tampa to Alabama, and some other Florida drivers delivered to Alabama because of a fuel supply shortage in Alabama in 2008. In addition, in or about 2007, a Tampa driver transported loads almost every other day from Tampa to Miami, in the territory of the Port Everglades (Ft. Lauderdale) home port, for a contract with the Department of Defense for jet fuel. There is also a Jacksonville driver who occasionally delivers fuel from Jacksonville to Miami pursuant to the Employer's contract with the Coast Guard.

In addition, the record contains documentary evidence of approximately 280 instances in 2008 when some drivers traveled outside their home port area. According to the Employer's president and chief executive officer, these documents are only a sample of the documents maintained by the Employer that would show such interchange during 2008. It appears from these documents that five drivers assigned to Port Everglades were involved in such overlapping assignments, including two who had many such assignments. The documents show that these drivers often loaded fuel in Tampa or Port Canaveral, and then delivered to either the south Florida area served by Port Everglades drivers or to the central Florida areas regularly served by Tampa or Orlando drivers. On several occasions a Port Everglades driver loaded in Port Everglades and delivered to Tarpon Springs or Clearwater, Florida, locations normally served by Tampa drivers. The documents also show approximately three instances of drivers assigned to home ports other than Port Everglades delivering product to the Port Everglades territory. Thus a Jacksonville driver made a delivery to Boynton Beach, an Orlando driver made a delivery to Okeechobee, and another Orlando driver made a delivery to Ft. Pierce. The documents in evidence also show numerous instances of

such overlapping assignments involving home ports other than Port Everglades, for example, Jacksonville drivers loading fuel in Tampa and then making deliveries to Tampa or Jacksonville.

There have also been a few permanent transfers of drivers between home ports. In or about 1997, a Jacksonville driver transferred to Tampa; in or about 2004, a Tampa driver transferred to Orlando; and in or about the summer of 2009, a Tampa driver is scheduled to transfer to Port Everglades.

The Board has found that evidence of employee interchange similar to that provided by the Employer, when combined with evidence of centralized control over operations and labor relations and identical skills, functions and working conditions, is sufficient to overcome the presumption that a single location unit is appropriate. We Care Transportation, LLC, 253 NLRB No. 9, slip op at 4 (2008) (469 instances of temporary transfers within a three-month period); In re Trane, 339 NLRB 866 (2003) (over 100 crossovers among HVAC technicians, combined with centralized control of operations and identical terms and conditions of employment); R&D Trucking, Inc., 327 NLRB 531, 532-533 (1999); Dayton Transport Corporation, 270 NLRB 1114, 115-116 (1984).

#### **V. Geographic proximity; bargaining history**

The Employer's operations cover the entire State of Florida, as well as parts of Georgia and Alabama, and the distance between the home ports is significant, so this factor favors a finding that a single-facility unit is appropriate. However, this factor is less significant than it might be because of the nature of the Employer's operations. Thus, drivers spend most of their work days by themselves, regardless of the location to which they are assigned, they travel significant distances even within their own territories, and they are able to communicate with each other without regard to their assigned home port.

There is no bargaining history for any of the Employer's employees, so this factor has no impact on the unit determination in this case.

**VI. The presumption that a single-facility unit is appropriate has been overcome.**

The fact that there is a significant distance between home ports, which favors a finding of a single-facility unit, is outweighed by the centralized control of labor relations and operations, common day-to-day supervision and lack of local autonomy, identical skills, duties and other terms and conditions of employment, and evidence of overlapping work assignments, described above in detail. See In re Trane, 339 NLRB 866 (2003); Waste Management of Washington, Inc., 331 NLRB 309 (2000); New Britain Transportation Co., 330 NLRB 397 (1999). Accordingly, I find that the presumption that a single-facility unit is appropriate has been overcome, and that the petitioned-for unit is not an appropriate unit for the purposes of collective bargaining.

## ORDER

It is ordered that the petition filed herein is dismissed.

### 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 14<sup>th</sup> Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST/EDT on April 2, 2009. The request may not be filed by facsimile, but may be filed electronically.<sup>14</sup>

DATED at Tampa, Florida this 19<sup>th</sup> day of March, 2009.

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Rochelle Kentov, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Boulevard, Suite 530  
Tampa, Florida 33602

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<sup>14</sup> If the request for review is filed electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished before midnight in the time zone of the receiving office on the due date (midnight is considered the beginning of a new day). Filings accomplished by any other means, e.g., mail or personal delivery still must be received by the Board in Washington by 5:00 p.m., EST/EDT on the due date.

In order to file a request for review electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Board/Office of the Executive Secretary" and then follow the directions. The responsibility for the receipt of the request for review rests exclusively upon the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.