UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

NAVARRE BEACH VOLUNTEER FIRE DEPARTMENT, INC.[1]	
Employer	
and	**Case No. 15-RC-8839**
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO, CLC, LOCAL 4494[2]	
Petitioner	

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing was held before a hearing officer of the National Labor Relations Board (Board) in Navarre, Florida on May 13, 2010. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

As explained more fully below, I find that the fire lieutenants are not supervisors under the Act and that the proposed unit sought by the International Association of Fire Fighters, AFL-CIO, CLC, Local 4494 (Petitioner) is appropriate.

I. Preliminary Findings

Based upon the entire record,[3] I find the following:

[1] The name of the Employer has been corrected to reflect its full legal name.
[2] The name of the Petitioner has been corrected to reflect its full legal name.
[3] Both parties have filed briefs that have been duly considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. Navarre Beach Volunteer Fire Department, Inc. (Employer) is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties have stipulated, and I so find, the Employer is a Florida corporation and is engaged in the business of providing fire and rescue services in Santa Rosa County, Florida. The parties have stipulated, and I so find, that, annually, the Employer purchases and receives at its Navarre Beach, Florida facility materials and services valued in excess of $50,000 directly from points outside of the State of Florida. The parties have stipulated, and I so find, that the Employer is subject to the jurisdiction of the National Labor Relations Board.

3. The parties have further stipulated, and I so find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties have stipulated, and I so find, there is no history of collective bargaining between the parties.

5. The parties have stipulated, and I so find, there is no contract or other bar in existence that would preclude the processing of this petition.

II. Position of the Parties

Both parties stipulated that the correct unit is described as follows:

> All full-time employees employed as fire fighters by the Employer, excluding all fire chiefs, deputy fire chiefs, office clerical employees, administrative employees, guards, and supervisors as defined in the Act.

The Petitioner contends that the unit includes the job position of Lieutenant. However, the Employer asserts that the Lieutenants are supervisors under the Act and should not be included in the unit.

III. Findings

A. Relevant Facts

1. The Employer's Operation

The Employer provides fire and rescue service from its facility, a fire station, in Navarre Beach, Florida. The Employer employs nine full-time employees. Of those nine, three are designated as Lieutenants and six are Fire Fighters.[4] Over the employees is Deputy Fire Chief Kevin Rudzki and over the Deputy Fire Chief is Fire Chief Michael C. Howard. The Deputy Fire Chief position is an unpaid voluntary position and the Fire Chief position is a part-time position.

The employees are divided into three shifts: A, B, and C shifts are comprised of a Lieutenant and two fire fighters. Each employee is assigned to a shift and they are not rotated among the shifts. The shifts begin at 7:00 a.m. and end at 7:00 a.m. the following day. The employees on each shift work 24 hours on and 48 hours off. The station is, therefore, manned by a different three-man[5] shift every day in rotation. Deputy Fire Chief Rudzki is also employed full-time by a different employer and his schedule for this Employer varies. Fire Chief Howard has another job as captain for the Okaloosa Island Fire Department. Howard works at the Employer's station every third day for 24 hours. Howard can also be reached by pager if he is not at the station.

---

[4] The Petitioner asserts that all nine employees should be included in the unit whereas the Employer asserts that only the six non-Lieutenant fire fighters should be included in the unit.
[5] All of the Employer's employees are, in fact, men.

Fire Chief Howard is paid a salary, which works out to a little more than $10 an hour. Deputy Fire Chief Rudzki is unpaid. Once past their probationary employment, the employees, including the Lieutenants, receive the same hourly pay: a little more than $9 an hour. All of the employees have access to the same dental and health insurances and 401(k) retirement plan. All of the employees earn the same sick leave and vacation time.[6]

Both the Fire Fighters and the Lieutenants must be able to perform the following tasks: drive a fire truck; work a fire hose; perform CPR; be able to set up a fire ladder; perform water rescues, and use the jaws-of-life. Unlike Fire Fighters, Lieutenants investigate fires to determine their causes. If the Lieutenant is unable to determine the cause of the fire, he refers to the Fire Chief, who, if he cannot determine the cause of the fire, refers to the State Fire Marshall.

When a call comes in, the Lieutenant decides the proper apparatus to take, including the proper truck. The Lieutenant is responsible for determining whether to call in additional units at fires. Lieutenants must use their judgment to determine what is needed at a fire, but they do not receive any training in addition to that they received as a Fire Fighter.

The employees all wear the same uniform. The only visible distinction between Fire Fighters and Lieutenants is on their helmets. Lieutenants' helmets have a white shield with the word "Lieutenant" on it. While on duty at the station, each employee is assigned an individual room with a bunk bed. All personnel bring in their own food.

[6] They earn 5 days of sick leave and 5 days of vacation every year.

2. Supervisory Authority of Lieutenants

The only witness presented at the hearing was Fire Chief Howard, who testified regarding the written job description of the Lieutenants. The job description was developed in 2008, when the Employer created the Lieutenant position.[7] The job description is undated and was contained in Howard's flash drive until May 11, 2010, when it was copied and placed in a procedural manual in the computer room at the station. The Lieutenant job description was not available to Lieutenants while it was on Howard's flash drive and is not provided to Lieutenants when they become Lieutenants. No evidence was presented to show that the Lieutenant job description was ever shown to any Lieutenant; used to instruct Lieutenants regarding their job duties, or used as a standard to evaluate the Lieutenants' job performance. Howard testified as follows regarding the job duties of the Lieutenants and the fire fighters.

a. Hiring and Discharges

The hiring process is controlled by the Deputy Fire Chief and the Fire Chief, who interview applicants and make the hiring decisions. The Lieutenants do not participate in the interview process or the hiring decisions. All employees, including Fire Fighters and Lieutenants, have the authority to recommend applicants for hire. Fire Chief Howard has never discharged anyone and no evidence was presented to indicate that the Employer has a procedure for discharging employees.

After a 90-day probationary period, Fire Chief Howard determines whether to retain Fire Fighters. He testified that he bases his decision on his own observations of the Fire Fighter and from oral reports from the Lieutenants regarding the Fire Fighters' performance. However, Howard did not provide any details regarding the impact of the oral reports from Lieutenants on

[7] The position of Lieutenant was created on July 1, 2008, when the first three Lieutenants were promoted.

his decision to retain employees after their probationary period. Furthermore, Howard did not provide any examples of any such reports from Lieutenants.

b. Transfer of employees

Normally, Fire Fighters are assigned to a permanent shift. However, the Employer presented evidence that A shift Lieutenant Winterberry recommended that, sometime around August 25, 2009, Fire Fighter Richard Wiggins be transferred from the A shift to the C shift. First, Wiggins verbally complained to Fire Chief Howard about working on A shift with Lieutenant Winterberry and requested to be transferred from A shift. Howard instructed Wiggins to put his complaints in writing. Second, after Howard met with Wiggins, but before Wiggins submitted his written complaint, Lieutenant Winterberry, sent a memorandum to Rudzki complaining about Wiggins' job performance and requesting that he be transferred to another shift. Third, Wiggins submitted a written request to transfer from the A shift.[8] Subsequently, Howard transferred Wiggins from A shift to C shift to allow another Lieutenant to assess Wiggins' job performance. No evidence was presented to show that there was any further assessment of Wiggins' job performance.

c. Discipline and Suspend

No evidence was presented that the Employer has a systematic disciplinary system of any sort. Fire Chief Howard asserts Lieutenants have the authority to orally reprimand Fire Fighters when they do not follow the directions of a Lieutenant. However, no examples of any oral reprimands were provided by the Employer. The oral reprimands are not recorded or reported to the Deputy Fire Chief or the Fire Chief. Although Fire Chief Howard asserted that Lieutenants have the authority to issue written discipline, no examples were provided to show that

[8] Wiggin's written request was not presented as an exhibit at the hearing.

Lieutenants have ever exercised that authority.[9] Howard said that Lieutenants must notify either the Deputy Fire Chief or the Fire Chief if they issued written discipline, but Howard did not testify about any Lieutenant making such notification.

Regarding reporting in tardy or absent, Fire Fighters contact the Lieutenant on duty at the time when they call in. No further evidence of Lieutenants enforcing an attendance policy was produced.

d. Promotions

The Employer presented evidence that Edward P. King was recently promoted from Fire Fighter to Lieutenant.[10] Prior to the vacancy in the Lieutenant position, King expressed an interest in becoming a Lieutenant to Fire Chief Howard.[11] In addition, Howard testified that some Lieutenants and some Fire Fighters recommended that King be promoted to Lieutenant. As soon as Howard learned of the vacancy, Howard called King into his office and offered him the Lieutenant position. Howard testified that he had already determined that King should have the promotion and that he didn't need the recommendation of the Lieutenants to make that decision. No other example of promotions was provided.

The job description of the lieutenants states that they are to conduct performance evaluations of assigned personnel. However, in fact, the Employer does not require any of its employees to undergo formal performance evaluations.

---

[9] The Employer characterized Lt. Winterberry's memorandum regarding Fire Fighter Wiggins as an example of an effective recommendation of discipline. However, Lt. Winterberry recommended that Wiggins be transferred, not disciplined, in his memorandum.
[10] The evidence does not indicate the date of King's promotion.
[11] The Employer has no formal system of notifying employees of Lieutenant vacancies.

e. Assign

The Fire Chief assigns Fire Fighters and Lieutenants to their shifts. All personnel make written requests to the Fire Chief for vacation. Lieutenants do not review leave records or have a role in approving leave. The Fire Chief provides each shift with a list of the rest of the employees who can be called to come in to work overtime to fill in for a Fire Fighter or Lieutenant. The list is alphabetical and employees cannot be required to replace another when called. The Employer does not maintain a separate list for Lieutenants. Fire Chief Howard's testimony regarding staffing when Fire Fighters go on vacation was not clear as to whether the Fire Fighters themselves or the Lieutenants call for a replacement.

When a Fire Fighter calls in sick, he contacts the Lieutenant on duty at the time to let him know he will not be at work. The Lieutenant then uses the overtime list to call for a replacement. However, the Lieutenant does not have the authority to require Fire Fighters to come to work. When a Lieutenant cannot come to work, a Fire Fighter is called in to come to work, and the most senior Fire Fighter on the shift takes over as Lieutenant.

f. Responsibly Direct

Lieutenants are responsible for supervising Fire Fighters in their daily duties of apparatus check-out, checking equipment, checking medical gear, starting the trucks, making sure the equipment is in a ready state, cleaning the station, and training. Each apparatus has a check off sheet. The Fire Fighters and the Lieutenant are responsible for completing the check off sheets for apparatus assigned to them by the Fire Chief. Fire Chief Howard testified that Lieutenants are responsible for making sure that the Fire Fighters complete their checks, and the Lieutenants are accountable and responsible for making sure the daily tasks were done. If the Lieutenants have a problem with the check lists, they bring them to the attention of the Fire Chief.

The Employer asserted that Lieutenants, in addition to engaging in their own cleaning tasks, direct the Fire Fighters to do cleaning tasks at the station. The Employer offered no evidence concerning how the cleaning tasks are assigned. Even though, the Employer asserted that the Lieutenants are held accountable for the Fire Fighters' completion of the check lists and of the cleaning duties, the Employer provided no evidence to show how the Employer enforces that accountability.

The Employer also asserted that Lieutenants make certain decisions when sent on fires, such as when to send a Fire Fighter into a building, and monitor the Fire Fighters to ensure that they perform within the scope of their medical training. However, the decisions made at an emergency are made according to the Employer's protocol and do not require the Lieutenants to engage in any independent judgment. The Employer presented no evidence to show that Lieutenants are accountable for the medical performance of the Fire Fighters. For every incident to which the employees respond, Lieutenants fill out the appropriate forms from the State of Florida. The Lieutenants are responsible for making sure that the proper procedures are followed at fires. If Fire Fighters do not use the proper procedures, the Lieutenant corrects them or takes over the procedure himself. No evidence was presented that the deficiencies in the procedures were reported to the Employer in any fashion.

g. Adjust Employee Grievances

The Employer asserted that Fire Fighters bring their personnel problems to the Lieutenants, the Lieutenants then investigate the situations, and resolve the situation, if possible. However, the Employer provided no evidence of any personnel problems resolved by any Lieutenants.

h. Lay off, Recall, or Reward

No evidence was presented to show that Lieutenants have any authority regarding lay offs, recall from lay off, or rewarding employees.

i. Training

In an effort to show that the Lieutenants are supervisors under the Act, the Employer presented testimony that the Lieutenants are responsible for training Fire Fighters. The Fire Chief issues training sheets directing the Fire Fighters and the Lieutenants to conduct two hours of training each day. The Employer asserts that the Lieutenants are responsible for ensuring that the Fire Fighters complete the training. However, the Employer presented no evidence to indicate that the Employer monitors the completion of the training at all.

B. Analysis

The burden of proving supervisory authority resides with the party asserting it and such proof must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006), citing *Dean & Deluca*, 338 NLRB 1046, 1047 (2003). Purely conclusory evidence is not sufficient to establish supervisory status. The Board requires evidence that the employee actually possess the Section 2(11) authority at issue. *Golden Crest Healthcare Center*, 348 NLRB 727 (2006). Furthermore, mere "paper authority" to engage in certain supervisory actions is insufficient to show actual supervisory authority. *Loyalhanna Care Center*, 352 NLRB 863, 865 (2008)

Section 2(11) of the National Labor Relations Act (Act) defines a supervisor as the following:

> Any individual having the authority, in the interest of the employers, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or

> effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Individuals will be classified as supervisors if they have the authority to exercise, or effectively recommend the exercise of, at least one of the listed functions, provided the authority is in the interest of the employer and is not routine or clerical in nature, but is exercised using independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006).

In *Oakwood*, the Board defined the meaning of "assign," "responsible to direct," and "with independent judgment." The Board distinguished "assign" from "responsible to direct." To assign is "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." To assign refers to the designation of overall duties and not to ad hoc instruction that employees perform discrete tasks. *Oakwood* at 689.

The act of responsibly directing others in their work is defined by the Board as determining "what job shall be undertaken next or who shall do it," provided that the direction is both "responsible" and carried out with "independent judgment." To be "responsible," the putative supervisor "must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Oakwood* at 691-692. The responsible direction must also be exercised with the use of independent judgment and not be merely routine or clerical. The use of independent judgment involves acting or recommending action "free of the control of others and form an opinion or evaluation by discerning and comparing data." Such

judgment must involve a degree of discretion that rise above the "routine or clerical." *Oakwood* at 693.

To show supervisory status, any "effective recommendation" must be made with independent judgment. The party asserting supervisory status must prove, by a preponderance of evidence, that the purported supervisor's recommendation was made using independent judgment. *American Directional Boring, Inc.*, 353 NLRB No. 21 (2008) n. 5.

In general, the Employer's evidence consisted of unsupported assertions made by the Fire Chief about the Lieutenants' job duties as outlined by a job description. In its brief, the Union asserts that the evidence indicates that the job description was originally intended for a job position titled "Lieutenant chief." The evidence is not sufficient to reach that conclusion, however, the evidence is clear that the job description has no bearing on the current duties of the Lieutenants. Prior to two days before the hearing, the Employer kept the job description in the Fire Chief's flash drive, which was not accessible by the Lieutenants. Even when the job description was liberated into the light of day, it was merely inserted into a notebook. At no point did the Employer show the job description to the Lieutenants, make them sign for the job description, or hold the Lieutenants accountable for exercising the duties in the job description.

In fact, Fire Chief Howard's testimony shows that the Lieutenants do not carry out some of the functions in the job description. Contrary to the job description, the Lieutenants do not conduct performance evaluations of assigned personnel, review and approve leave records, or recommend corrective disciplinary action to the Fire Chief. In light of the fact that the Employer has not provided the job description to the Lieutenants and that the job description is inapplicable in several respects, I find that the Lieutenant job description is of no evidentiary value in determining the supervisory status of the Lieutenants.

In addition to the job description, the Employer presented the testimony of Fire Chief Howard concerning the applicability of the supervisory indicia to the Lieutenants. Regarding hiring, the Lieutenants have no authority to hire and no more authority than the Fire Fighters to recommend applicants for hire. Regarding probationary employees, the evidence is insufficient to determine that Lieutenants have the authority to effectively recommend retention of probationary employees, inasmuch as the record does not demonstrate the effectiveness of those recommendations. Nor does the evidence demonstrate whether the Lieutenants use independent judgment in making those recommendations. To be effective, purported supervisors must use independent judgment in making recommendations. See *ADB Utility Contractors, Inc.*, 353 NLRB No. 21 n. 5. No evidence was presented to show that the Lieutenants have any authority to discharge or recommend discharge of employees since no one has been discharged since the position of Lieutenant was created in July 2008. Regarding transfer of employees, the Employer presented evidence that Fire Chief Howard transferred Fire Fighter Wiggins after Lieutenant Winterberry recommended that Fire Fighter Wiggins be transferred to another shift. However, Wiggins also requested that the transferred be effectuated. In these circumstances, the transfer was made as an accommodation to both Winterberry and Wiggins and is not sufficient to show that the Lieutenants make recommendations to transfer with the requisite independent judgment to show supervisory status.

Regarding discipline and suspension, the Employer does not have a systematic disciplinary system. It is claimed the Lieutenants have the authority to issue oral reprimands and, purportedly, to issue written discipline. However, the oral reprimands are not recorded and the Employer presented no evidence that the Lieutenants were under instructions to report oral

discipline to the Fire Chief. No evidence of Lieutenants ever issuing written discipline was provided.

The Board has found that oral reprimands similar to the ones in the instant case are not part of the disciplinary process unless they lay "a foundation for future disciplinary action against [the employee]." *Promedica Health Systems*, 343 NLRB 1351, 1351 (2004), enfd. in relevant part 206 Fed. Appx. 405 (6th Cir. 2006), cert. denied 127 S.Ct. 2033 (2007). See *Oak Park Nursing Care Center*, 351 NLRB 27 (2007) n. 4. The evidence shows that the oral reprimands issued by the Lieutenants are not used as the basis for future discipline. In these circumstances, the Employer did not meet its burden of providing a preponderance of evidence to show that Lieutenants have authority to issue discipline to employees.

Regarding promotion, the evidence shows that one employee has been promoted since the Lieutenant position was created. The Employer asserts that the Lieutenants have the authority to effectively recommend employees for promotion. However, Fire Chief Howard made his decision regarding the promotional opportunity on his own, without regard to any recommendations from the Lieutenants. Inasmuch as Howard did not rely on recommendations from the Lieutenants to make the promotion, the evidence is insufficient to show that Lieutenants have the authority to effectively recommend employees for promotion.

Regarding assigning work to employees, Lieutenants find replacement Fire Fighters by going down an alphabetical list provided by Fire Chief Howard. Fire Fighters are not required to respond affirmatively when called to work. No procedure for finding replacement employees could be more routine than going down an alphabetical list without authority to require employees to respond affirmatively. The Employer has, therefore, not met its burden to show that Lieutenants use independent judgment in finding replacement employees.

Regarding responsibly directing employees, the Employer presented evidence that Lieutenants direct some work around the station. Both Lieutenants and Fire Fighters must perform checks on the assigned apparatus. Fire Chief Howard, not the Lieutenants, assign the apparatus to the employees. After the accompanying paperwork is completed it is put in notebooks and, according to Howard, the Lieutenants are to review it and, if any problems appear, they are to bring those problems to Howard's attention. Again, this describes a purely routine function and does not serve to support a supervisory finding. No evidence was presented to show whether or not assigning the Lieutenants cleaning duties at the station involves the use of any independent judgment. Therefore, the Employer has not met its burden to show a preponderance of evidence that Lieutenants exercise the supervisory authority of responsibly directing employees regarding delegating tasks in the station.

The Employer also alleges that Lieutenants responsibly direct other employees at emergency scenes by judging when to call in other units and by making decisions regarding what procedures to use. However, the only example presented regarding calling in other units shows that Lieutenants have a protocol that they use that does not require independent judgment. Furthermore, the record evidence did not establish how making the decision to call in other fire departments relates to directing the Employer's employees in their work. Regarding the direction of Fire Fighters at emergency scenes, no evidence was presented to show any actual direction or the criteria used by Lieutenants to direct the Fire Fighters. Accordingly, there is insufficient evidence to show that the Lieutenants use independent judgment when directing employees at emergency scenes.

Other than Fire Chief Howard's mere assertion, no evidence was presented to show that Lieutenants do in fact or have adjusted employee grievances. Thus, the evidence is insufficient to demonstrate that Lieutenants have the authority to adjust employees' grievances.

The Employer asserted that Lieutenants exercise supervisory authority in regard to training employees. However, Fire Chief Howard establishes the training to be done each week and the Lieutenants merely schedule it so that the employees on their shift complete it. Again, this is a routine function and does not require the Lieutenants to exercise any independent judgment in administering the training program. In addition, no evidence was presented to show that the Lieutenants suffer any consequences if the training is not completed. Therefore, the Employer has failed to meet its burden that the Lieutenants exercise any supervisory authority regarding the training of Fire Fighters.

Regarding secondary indicia of supervisory status, the Lieutenants and Fire Fighters share a similar pay structure with no difference in their pay. They are subject to the same medical insurance and retirement plan. They live in the same station and wear the same uniforms while on duty. The only difference between the Lieutenants and the Fire Fighters with regard to secondary indicia are that the Lieutenants' helmets designate them as Lieutenants and, at times,[12] the Lieutenants are the highest ranking personnel at the station. However, "the Board has continued to hold that an employees' service as the highest-ranking employee on duty is a secondary indicium of supervisory status that, by itself, is insufficient to demonstrate supervisory status. *Loyalhanna Care Center*, 352 NLRB 863, 864-865 (2008).

[12] The Fire Chief's schedule has not been clearly established in the record.

IV. Conclusion

Pursuant to *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006) and the other cases cited herein, the Employer has failed to satisfy its burden to show that the Lieutenants are supervisors under the Act. The Employer presented a paucity of evidence to support any of its assertions. The Lieutenant job description presented is unreliable inasmuch as it is not used by the Employer to establish the Lieutenants' job duties. Fire Chief Howard's testimony did not provide concrete examples to show that the Lieutenants exercise independent judgment to perform any of the supervisory duties listed in Section 2(11) of the Act. The Lieutenants have the same authority as Fire Fighters to recommend employees for hire. The evidence regarding transfer of employees does not meet the burden of showing that Lieutenants have the authority to effectively recommend that Fire Fighters be transferred or promoted. Lieutenants have no effective role in the discipline of Fire Fighters. Lieutenants do not use independent judgment when assigning overtime to Fire Fighters.

Although Lieutenants direct Fire Fighters in work at the station and at emergency scenes, no showing was made that the Lieutenants use independent judgment in making those decision or that Lieutenants are held accountable for the Fire Fighters' completion of tasks. Therefore, the evidence does not show that Lieutenants responsibly direct employees in their work. The evidence is insufficient to determine that Lieutenants adjust employee grievances. No evidence was presented to show that Lieutenants have any authority regarding lay off, recall, rewarding, or discharging employees. The evidence regarding Lieutenants' training of employees does not establish that any of the supervisory indicia are exercised in conjunction with the training. Since none of the supervisory indicia are met, the fact that the Lieutenants are the highest-ranking

employees at the station two thirds of the time does not support a supervisory finding. The designation of Lieutenant on their helmets also is insufficient to show supervisory status.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining with in the meaning of Section 9(b) of the Act:

> All full-time employees employed as fire fighters by the Employer, excluding all fire chiefs, deputy fire chiefs, office clerical employees, administrative employees, guards, and supervisors as defined in the Act.

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 the International Association of Fire Fighters, AFL-CIO, CLC, Local 4494. 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.

Eligibility to Vote

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 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.

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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 15, F, Edward Hebert Federal Building, 600 S. Maestri Place, Seventh Floor, New Orleans, Louisiana 70130-3408 on or before **June 18, 2010**. No extension of time to

file the 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's website, www.nlrb.gov,[13] by mail, or by facsimile transmission at (504) 589-4069. 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 (2) copies of the list, unless the list is submitted by facsimile or electronically, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services,* 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

[13] To file the eligibility list electronically, go to www.nlrb.gov and select the E-GOV tab. Then click on the E-Filing link on the menu, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request for review with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on **June 25, 2010**, at **5 p.m. Eastern Time**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically**. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[14]

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

---

[14] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed directions. The responsibility for the receipt of the request for review rests exclusively with the sender.

A failure to timely file an appeal electronically will not be excused on the basis of a claim that the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason, absent a determination of technical failure of this site, with notice of such posted on the website.

SIGNED at New Orleans, Louisiana on this 11th day of June, 2010.

/s/ Sandra L. Hightower

Sandra Hightower
Acting Regional Director
National Labor Relations Board
Region 15
F. Edward Hebert Federal Building
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3408