

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

UNIVERSITY OF LA VERNE
Employer

and

Case 21-RC-115880

SERVICE EMPLOYEES
INTERNATIONAL UNION
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, (“the Act”) on October 28, 2013, the Service Employees International Union (“the Petitioner”), filed a petition seeking to represent certain faculty employed by the University of La Verne (“the University” or “the Employer”) at its main campus in La Verne, California.

On November 14, 2013, a hearing in this matter was held before a hearing officer of the National Labor Relations Board (“the Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based upon the entire record and the post-hearing briefs filed by the parties, the undersigned makes the following findings and conclusions.¹

¹ The University is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The Petitioner is a labor organization within the meaning of the Act. The Petitioner involved claims to represent certain employees of the University and a question affecting commerce exists concerning the representation of certain employees of the University within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

I. THE ISSUE AND SUMMARY

The sole issue herein involves the scope of the unit. The parties stipulated at the hearing that any unit found appropriate should²:

Included: All part-time faculty, including department associates, employed by the Employer who teach one or more for-credit class(es), lesson(s), or lab(s) at the Employer's main campus located at 1950 Third Street, La Verne, California;

Excluded: All other employees, employees assigned to the Employer's Law School, faculty teaching in locations outside of the main campus, faculty teaching on-line courses (regardless of location), full-time faculty, graduate students, lab assistants, artists in residence, student teaching supervisors, graduate assistants, teaching associates, clinical fellows, teaching fellows, teaching assistants, and research assistants, staff or administrators (in their capacity as such), whether or not they also have teaching responsibilities, deans, registrars, librarians, volunteers, other represented employees, clerical employees, managers, guards and supervisors as defined in the Act.

The University contends that the unit should also include part-time faculty it employs at its Regional Campuses. In addition, the Petitioner and the University stipulated that the inclusion or exclusion of the non-academic part-time physical education faculty would be litigated at the hearing.³ The petitioned-for unit consists of approximately 250 employees, while the multi-campus unit sought by the University contains about 500 employees. There is no evidence of a bargaining history for the petitioned-for unit.

I find, based on the record evidence, applicable Board law, and for the reasons set forth more specifically below, that the University has failed to rebut the Board's longstanding presumption that the single-facility petitioned-for unit is an appropriate unit. Therefore, as set forth below, I shall direct an election in the single-location unit sought

² The stipulated description will hereinafter be referred to as the petitioned-for unit.

³ Initially, the University took the position that these employees should be excluded from the appropriate unit. However, in its post-hearing brief the University acceded to the Petitioner's position that these employees should be included in the unit found appropriate. I shall therefore include them in the unit.

by the Petitioner, as further clarified by the stipulation of the parties. To provide context for that conclusion, I will first provide an overview of the facts, and then present the reasoning that supports my determination.

II. THE RECORD EVIDENCE

A. The University's Operations

Founded in 1891, the University is a private university that offers undergraduate, graduate, and postgraduate degrees to over 8,000 enrolled students. The University is divided into four colleges: the College of Arts and Sciences, the College of Business and Public Management, the College of Education and Organizational Leadership, and the College of Law. The University's Main Campus is located in La Verne, California. The University also operates nine Regional Campuses in locations throughout southern and central California, including Bakersfield, Burbank, Irvine, Ontario, Oxnard, San Luis Obispo, Victorville, Vandenberg Air Force Base, and Point Mugu Naval Air Warfare Center.

The University employs approximately 500 part-time adjunct teaching faculty. Approximately 50% of the part-time faculty teach courses at the Main Campus, and 50% teach courses at the Regional Campuses. The nearest Regional Campus, located in Ontario, is approximately 12.5 miles from the Main Campus. The farthest Regional Campus, San Luis Obispo, is approximately 227 miles from the Main Campus.⁴

The Main Campus is a traditional college campus. It encompasses several city blocks and contains dormitories, a bookstore, a dining hall, and offices for the

⁴ The approximate mileage distances from the Main Campus to the other Regional Campuses are as follows: Bakersfield–137 miles; Burbank–36 miles; Irvine–32 miles; Oxnard–99 miles; Victorville–51 miles; Pt. Mugu–90 miles; and Vandenberg Air Force Base–198 miles.

University's administration. The Main Campus offers a wide variety of academic degrees and programs, including 48 undergraduate programs that grant bachelor's degrees, and 16 programs that grant graduate degrees. The Main Campus also offers 7 credential programs, and 12 certificate programs. Most programs on the Main Campus follow a traditional semester-system academic calendar, with courses offered during day and evening hours. Approximately 50% of the students at the Main campus are "traditional" age college students, and 50% are adult learners.

The Regional Campuses provide students with an opportunity to take university programs at geographic locations convenient to their homes or workplaces. All students at the Regional Campuses are adults. The Regional Campuses are located in suites in office buildings, except for the Vandenberg and Point Mugu Regional Campuses that are located on military-base school sites. Degree offerings at the Regional Campuses are more limited than those offered at the Main Campus, and not all of the degrees are offered at each Regional Campus.

The Regional Campus programs, which include 8 undergraduate programs, 7 graduate programs, and 3 credential programs, are geared toward adults with varied educational backgrounds, mainly working professionals seeking to advance in their careers.⁵ Courses are offered exclusively during evenings or on weekends, and follow a different academic calendar than those on the Main Campus. Applicants for undergraduate programs at Regional Campuses apply to a specific Regional Campus. Their admission is based, in part, on their age and work experience. If accepted, students receive more leeway than traditional college students to complete degree

⁵ The Regional Campuses also offer non-degree and non-credit continuing-education classes.

requirements. Applicants for graduate programs at both the Main and Regional Campuses have the same application process. The appropriate academic department makes the final admission decision.

The University's ultimate governing body is its Board of Trustees, which meets regularly to review the University's financial goals and to set policies. The Board directs the University's President, who is assisted, on an administrative level, by the Provost, her Vice Presidents, the Chief Information Officer, the Chief Diversity and Inclusivity Officer, the Chief Finances Officer, and the Chief of Human Resources. At the campus and college levels, academic authority is granted to the College Deans. A Dean oversees the affairs of each college and reports to the University's Provost.

The Regional Campuses are administered through Regional Campus Administration. A Dean of Regional and Online Campuses (the "ROC Dean"), is responsible for the management and supervision of the nine Regional Campuses and the online program, La Verne Online. The ROC Dean also "provide[s] leadership, support, and supervision for the Regional Campuses and online department professional and classified staff as well as adjunct faculty." Each Regional Campus has a Regional Campus Director who oversees the administrative aspects of a particular Regional Campus. The Regional Campus Directors report to the ROC Dean.

B. Part-time Faculty Terms and Conditions of Employment

1. Hiring and Appointment

The University hires part-time faculty to teach one or more courses on a course-by-course basis. The University receives applications for part-time faculty through

advertisements to teach in particular subject areas at either the Main Campus or specific Regional Campuses, and through unsolicited inquires.

Applicants responding to advertisements to teach at the Main Campus submit resumes, transcripts, certificates, and evidence of prior teaching experience to the appropriate Dean or Department Chair. Applicants responding to advertisements to teach at Regional Campuses send the same material to the appropriate Regional Campus Director. In either situation, documents are reviewed to ensure that applicants have, at a minimum, a master's degree and some teaching experience.

At the Main Campus, the appropriate Department Chair screens applications, interviews qualified applicants, and forwards recommendations for appointment to the appropriate Dean, who generally agrees with the recommendations. At the Regional Campuses, the Deans generally delegate recruitment of part-time faculty to the Regional Campus Directors. The Regional Campus Directors screen applications and conduct initial interviews. They then forward the files of qualified applicants to the appropriate academic department for further review and appointment.

All part-time applicants who receive pre-approval to teach are placed into a University database of part-time faculty that shows what courses they are approved to teach. At the Main Campus, the appropriate Dean develops the schedule for the academic year. The Department Chairs work with full-time faculty to determine the courses they want to teach. The Associate Dean of the applicable college then contacts part-time faculty and offers them courses to teach.

At the Regional Campuses, the Regional Campus Directors identify current and prospective students, try to determine the specific courses needed toward specific

degrees, and schedule those classes. The Regional Campus Directors then select part-time faculty from the pre-approved pool and offer to have them teach the classes.⁶

Part-time faculty are under no obligation to accept a particular class offering. Because part-time faculty generally agree to teach at a campus near where they live or work, they are essentially assigned to a particular campus where they normally teach. Part-time faculty who accept an offer to teach a class then complete documents for human-resources, and are issued a uniform University contract.

After part-time faculty members accept an appointment, the University provides a course description and outline, and in some cases a recommended list of textbooks. The University requires part-time faculty to submit a syllabus for each class that they teach to the program chair, campus director, and/or department chair prior to the beginning of the term/semester.

2. Wages, Benefits, and Training

The University determines pay for all faculty, including part-time faculty, through placement on its compensation grid. The University assigns faculty to one of four salary levels on its grid based on their qualifications and length of service. Faculty who work at Regional Campuses are eligible to receive a travel stipend if they are teaching at a Regional Campus located more than 40 miles from their residence or workplace. The Regional Campus Directors decide whether to issue the stipends. The University pays wages through a centralized Payroll Department on a schedule set by its Human Resources Department.

⁶ The College of Educational and Organization Leadership has a large number of full-time faculty who are assigned to Regional Campuses. For that college, the assignment of part-time faculty at Regional Campuses to particular courses is a cooperative effort between the Regional Campus Directors and the College of Education.

All part-time faculty are eligible for the same benefits. They can participate in the University's 403(b) retirement plan, receive free parking, and access the University's library system. Several of the benefits available to part-time faculty are located on the Main Campus, including the Center for the Advancement of Faculty Excellence, which provides assistance with using various classroom technologies, and the Curriculum Lab, which provides copiers, computers, and a laminating machine. Part-time faculty are also entitled to use the Athletic Center/Fitness Room, and to receive discounts at the University's bookstore, its dining hall, and select merchants in downtown La Verne.

The University occasionally offers staff training and development on the Main Campus. The University also offers separate training for part-time faculty at the Regional Campuses. All part-time faculty receive a university email address. Part-time faculty who reach senior status receive business cards.

3. Evaluations and Promotions

The University has the same evaluation process for all part-time faculty. The appropriate Dean and Department Chair, with the assistance of the appropriate Regional Campus Director, are responsible for ensuring that all part-time faculty are evaluated according to procedures set forth in the University's Quality Management System Manual. That system relies heavily on student evaluations, which are ultimately reviewed by the appropriate College Dean.

Students who have complaints about faculty are encouraged to work with the faculty member to resolve the dispute. When students and faculty at the Regional Campuses are unable to resolve their differences, they often meet with their Regional Campus Directors who try to informally resolve the dispute. If those efforts fail, students can submit an appeal that is forwarded to the appropriate academic college.

All part-time faculty share the same process for promotion. The University hires part-time faculty either as an Adjunct Instructor or Adjunct Professor, depending on whether they have a terminal degree. After 4 years of teaching, part-time faculty become eligible to apply for promotion to either a Senior Adjunct Instructor or a Senior Adjunct Professor position.

For part-time faculty teaching at the Main Campus, the appropriate department/program chair is responsible for determining their eligibility for promotion, to notify them of their eligibility, and to explain the evaluation process. For part-time faculty at Regional Campuses, the Regional Campus Directors are responsible for those tasks. Part-time faculty who apply for promotion have their files reviewed by full-time faculty in the appropriate academic department; they then make a recommendation to the appropriate College Dean, who issues a final decision. Prior to approval, a Department Chair or Regional Campus Director observes the faculty member teaching a class.

The University offers the potential for a very limited number of part-time faculty to become Distinguished Scholars. Department Chairs at the Main Campus, and Regional Campus Directors at Regional Campuses, can nominate part-time faculty. College Deans make the final decision.

III. ANALYSIS

A. Applicable Test for Determining if the Petitioned-for Single Location Unit is Appropriate Unit for Collective Bargaining

1. Appropriate unit for collective bargaining

It is well-settled that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996) (citing cases). In deciding whether a

petitioned-for unit is “appropriate” under Section 9(b) of the Act, the Board's focus is on whether the employees share a “community of interest.” *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494 (1985). In arriving at an appropriate unit determination, the Board weighs various community-of-interest factors, including the following:

[A] difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from the employment or plant situs ... the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining.

Overnite Transportation Co., 322 NLRB at 724 (citation omitted).

2. Applicability of the single-facility unit presumption

In cases where the petitioning labor organization seeks to represent a bargaining unit situated at a single facility and the employer seeks to broaden the unit to include workers at one or more additional facilities, the Board applies a presumption of a single-facility bargaining unit as being appropriate. The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless the single facility “has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity.” *Hilander Foods*, 348 NLRB 1200, 1200 (2006); *accord New Britain Transportation Co.*, 330 NLRB 397, 397 (1999).

The single-facility unit presumption generally applies regardless of the industry involved. *See Archdiocese of Philadelphia*, 227 NLRB 1178, 1181 n.7 (1977). The burden of rebutting this presumption falls on the party arguing in favor of a multi-facility unit. *Hilander Foods*, 348 NLRB at 1200. To determine whether a party has rebutted the presumption, the Board examines “(1) central control over daily operations and labor relations, including extent of local autonomy; (2) similarity of employee skills, functions,

and working conditions; (3) degree of employee interchange; (4) distance between locations; and (5) bargaining history, if any.” *Id.*

The Board considers the degree of interchange and separate supervision to be of particular importance in determining whether the single-facility presumption has been rebutted. See *Passavant Retirement and Health Center, Inc.*, 313 NLRB 1216, 1218 (1994); *Heritage Park Health Care Center*, 324 NLRB 447, 451 (1997), enforced 159 F.3d 1346 (2d Cir. 1998).

In the Board’s decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enforced 727 F.3d 552 (6th Cir. 2013), the Board modified the framework to apply where, as here, an employer contends that the smallest appropriate bargaining unit must include additional employees or classifications beyond those in the petitioned-for unit.

The Board first assesses whether the petitioned-for unit is an appropriate bargaining unit by applying traditional community-of-interest principles. If the petitioned-for unit satisfies that standard, the burden is on the employer to demonstrate that the additional employees it seeks to include share an “overwhelming community of interest” with the petitioned-for employees, such that there is no legitimate basis upon which to exclude the employees at issue from the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Id.* slip op. at 11-13.

Although the Board did not indicate in *Specialty Healthcare* whether it intends to apply the “overwhelming community-of-interest” framework to a case involving a multi-location scope-of-unit determination, the Board’s reasoning is instructive in weighing the evidence and analyzing the issue presented herein.

B. Application of the Community-of-Interest Test

1. Central control over daily operations and labor relations, including the extent of local autonomy

The factor of central control over daily operations and labor relations focuses primarily on the control that local-level management exerts over the employees' daily work. *See Hilander Foods*, 348 NLRB at 1200; *New Britain*, 330 NLRB at 397. I find that this factor weighs in favor of finding that the petitioned-for single-facility unit constitutes an appropriate unit. In reaching that finding, I recognize that the University exerts centralized control over both the Main and the Regional Campuses through its Board of Trustees, as well as through its officials located on the Main Campus, such as its President and Provost.

Department Chairs and College Deans located at the Main Campus exert specific control over all part-time faculty by pre-approving their applications to become part-time faculty, designating courses that they can teach, and approving promotions. Similarly, student evaluations, which have a significant impact on the performance review of part-time faculty, are reviewed by College Deans located at the Main Campus. I also recognize that the University exerts centralized control over wages and benefits.

Nevertheless, the Regional Campuses have significant daily autonomy and separate supervision from the Main Campus to warrant a finding that the stipulated petitioned-for unit is appropriate under the single-facility unit presumption. A separate Dean, the ROC Dean, oversees the nine Regional Campuses, and each Regional Campus has a Regional Campus Director who oversees the administrative aspects of a particular Regional Campus.

In addition, the University places campus-specific advertisements for part-time faculty. For those individuals who apply to Regional Campuses, the applicable Regional Campus Directors screen applicants by collecting relevant material and interviewing them. Significantly, once applicants are pre-approved as part-time faculty, the process of actually hiring them to teach particular courses differs between Regional Campuses, where Regional Campus Directors have that responsibility, and the Main Campus, where the Associate Dean for the applicable college has that responsibility. The Regional Campus Directors also try to resolve faculty and student issues, and observe part-time faculty who have applied for promotion. In these circumstances, the evidence supports a finding that the petitioned-for unit is appropriate under the single-facility presumption.

2. Similarity of employee skills, functions, and working conditions

With regards to the similarity of employees' skills, functions, and working conditions, I find that this factor also supports a finding that the petitioned-for single-location unit is appropriate. I recognize that the facts establish that part-time faculty share many characteristics regardless of whether they teach at the Main or Regional Campuses. For instance, all part-time faculty have, at minimum, a master's degree. In addition, they teach classes that are the same regardless of where they are taught. There are several differences, however, between the working conditions of part-time faculty at the Main and Regional Campuses.

Thus, the Main Campus offers students a much broader selection of courses and degree programs. Part-time faculty who teach on the Main Campus teach in classrooms located at a traditional college campus to students that are either traditional college

students or adults. Part-time faculty at Regional Campuses teach at classrooms located in office suites or on military bases to students that are exclusively adults. Part-time faculty who teach at the Main Campus are generally on a different calendar schedule than those who teach at Regional Campuses; and those who teach at Regional Campuses teach exclusively at night and on weekends.

Although part-time faculty are all paid from the same University pay grid and eligible to receive the same fringe benefits, those who work at Regional Campuses located more than 40 miles from their home or workplace are eligible to receive a travel stipend. Moreover, it is unclear from the record as to how many part-time faculty at Regional Campuses are able to take advantage of fringe benefits located only at the Main Campus, given the sometimes great distances involved. Those benefits include assistance with various classroom technologies at the Advancement for Faculty Excellence, use of support materials such as computers and copiers at the Curriculum Lab, use of a gym/fitness room, discounted lunches, and discounts at various merchants in the city of La Verne.

3. The degree of employee interchange

In determining whether there is sufficient employee interchange to rebut the single-facility presumption, the Board relies on the degree to which employees transfer between facilities, and particularly on evidence of temporary transfers. *See Mercy Medical Center San Juan*, 344 NLRB 790, 793 (2005). To meet this factor, the interchange must include a significant portion of the workforce. *See, for example, Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met where 50% of the workforce came within jurisdiction of other branches); *Dayton Transport Corp.*,

270 NLRB 1114, 1115 (1984) (presumption rebutted where in 1-year there were at least 400 temporary employee-interchanges between terminals among a workforce of 87).

On the other hand, where the amount of interchange is unclear both as to scope and frequency because it is unclear how the total amount of interchange compares to the total amount of work performed, the burden of proof is not met. *See Courier Dispatch Group, Inc.*, 311 NLRB 728, 731 (1993). Also important in considering interchange is whether the temporary employee transfers are voluntary or required, the number of permanent employee transfers, and whether the permanent employee transfers are voluntary. Voluntary interchange is given less weight in determining if employees from different locations share a common identity. *See New Britain*, 330 NLRB at 398.

Here, there is limited evidence of employee interchange between part-time faculty at the Main Campus and those at Regional Campuses. Part-time faculty generally teach at the campus that is near their work or home, and the Regional Campuses are located at least a dozen miles, and up to hundreds of miles, from the Main Campus. Although, there is evidence that the University invites part-time faculty from Regional Campuses to participate in meetings at the Main Campus with part-time faculty who teach at that campus, there is no evidence of specific contact or interaction between the two groups of faculty.

The University presented a spreadsheet reflecting that 32% of part-time faculty at the College of Business and Public management are scheduled to teach at both the Main Campus and Regional Campuses for the winter and spring 2014 terms. Those terms have not yet occurred, however, and the spreadsheet at best captures interchange among part-time faculty at only one of the University's three colleges at issue. Moreover, any part-time faculty who work at both the Main and Regional Campuses do so voluntarily, and

their presence at the same locations does not establish that the part-time faculty actually interact.

4. The distance between locations

As set forth above, the distance between the Main campus and the Regional Campuses ranges from 12.5 miles to over 200 miles. Those distances indicate a significant geography separation between the Main Campus and the Regional Campuses, and support a finding in favor of the petitioned-for single-facility unit.

5. Bargaining history

The complete absence of bargaining history is a neutral factor in the analysis of whether a single-facility unit is appropriate. *See Trane*, 339 NLRB 866, 868 n.4 (2003). Thus, the fact that there is no bargaining history in this matter does not support or negate the appropriateness of the unit sought by the Petitioner.

C. Conclusion Regarding Single-Facility Unit

In determining that the University has failed to meet its burden of rebutting the presumption that a single-facility unit is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on this determination. In particular, I rely on the facts that the Main and Regional Campuses have different day-to-day management, the absence of evidence of true interchange and interaction among the part-time faculty at the Main and Regional Campuses, and the fact that the campuses are geographically separated. In my view, those factors outweigh the centralized operations and policies, and the common skills and functions of part-time faculty at all of the University's campuses.

My finding is not undermined by *Farleigh Dickinson University*, 205 NLRB 673 (1973). In that case, the Board had to choose between two petitioned-for units chosen by

two different unions: one a single-facility unit, and one a multi-facility unit. In that situation, the well-established presumption of a single-facility unit does not apply. *See NLRB v. Carson Cable TV*, 795 F.2d 879, 887 (9th Cir. 1986). Rather, the Board applied the traditional community-of-interest analysis to find that under those particular facts, including the fact that one union sought an election in a multi-facility unit, the appropriate unit constituted a multi-facility unit of faculty. *Farleigh Dickinson*, 205 NLRB at 673.

Lastly, I find that even under the alternative analysis set forth in *Specialty Healthcare*, the part-time faculty employed at the Main Campus constitute a readily-identifiable group who share a community of interest. I further conclude that the University has not demonstrated that the part-time faculty at the Main and Regional Campuses share an “overwhelming community of interest.” I reach these conclusions because the Main Campus part-time faculty are readily identifiable as they work in a geographically separate location, and there is insufficient evidence of true interchange and interaction of employees from one facility to the other facilities.

D. Conclusion

Based on the evidence and the entire record, I find that the following is an appropriate unit and I shall direct an election in this unit:

Included: All part-time faculty, including department associates, employed by the Employer who teach one or more for-credit class(es), lesson(s), or lab(s) at the Employer’s main campus located at 1950 Third Street, La Verne, California;

Excluded: All other employees, employees assigned to the Employer’s Law School, faculty teaching in locations outside of the main campus, faculty teaching on-line courses (regardless of location), full-time faculty, graduate students, lab assistants, artists in residence, student teaching supervisors, graduate assistants, teaching associates, clinical fellows, teaching fellows,

teaching assistants, and research assistants, staff or administrators (in their capacity as such), whether or not they also have teaching responsibilities, deans, registrars, librarians, volunteers, other represented employees, clerical employees, managers, guards and supervisors as defined in the Act.

There are approximately 250 employees in the unit.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **Service Employees International Union**. The date, time, and place of the election will be specified in the notices 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 strikes 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.

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.

To be timely filed, the list must be received in the Regional Office on or before **December 24, 2013**. 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's website, www.nlr.gov,⁷ by mail, or by facsimile transmission at (213) 894-2778. 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 **four** copies of the list, unless the list is submitted by facsimile or e-mail, in which only **one** copy need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day 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 5 full 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 stops employers from filing objections based on nonposting of the election notice.

⁷ To file the eligibility list electronically, go to www.nlr.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

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by December 31, 2013. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁸ but may not be filed by facsimile.

DATED at Los Angeles, California, this 17th day of December, 2013.



Olivia Garcia
Regional Director, Region 21
National Labor Relations Board

⁸ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. 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 Agency's website, www.nlr.gov.