UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

PRIME FLIGHT AVIATION SERVICES, INC.

Employer

And **Case 02-RC-186447**

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1430

Petitioner

DECISION AND DIRECTION OF ELECTION

PrimeFlight Aviation Services, Inc. (the Employer) provides various ground-handling and terminal services at airports throughout the United States, including the Westchester County Airport (the Airport) in White Plains, NY. The International Brotherhood of Electrical Workers, Local Union 1430 (the Petitioner) seeks to represent all full-time and part-time baggage handlers, wheelchair agents, and line queue agents employed by the Employer at the Airport.[1] The parties agree that this unit is an appropriate unit for the purposes of collective bargaining. The only issue presented is whether the Board has jurisdiction over the Employer.

The issue in this case is identical to that in *Prime Flight Aviation Services, Inc.*, Case 02-RC-158251. I issued a Decision and Direction of Election in that case on September 28, 2015, in which I found that the Board had jurisdiction over the Employer.

A hearing officer of the Board held a hearing in the instant matter and the parties orally argued their respective positions prior to the close of the hearing. The parties stipulated to the evidence presented in Case 02-RC-158251 and presented no additional evidence. The Employer contends again, without presenting any additional evidence or legal support, that the National Labor Relations Board does not have jurisdiction over it, and that it is instead subject to the jurisdiction of the Railway Labor Act and that the case should be referred to the National Mediation Board. The Petitioner disagrees and argues that the NLRB has jurisdiction over the Employer and that an election should be directed in the petitioned-for unit.

For the reasons set forth below, as previously explained in my Decision in Case 02-RC-158251, I find again that the Board has jurisdiction over the Employer.

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[1] The petitioned-for unit additionally included employees working as sky caps. The Employer stated at hearing that it no longer utilizes the services of sky caps and the parties stipulated that sky caps are appropriately excluded from the unit.

I. Overview of Operations

The Employer has contracts with JetBlue Airways Corporation (JetBlue), and AFCO AvPORTS Management, LLC (AvPORTS) to provide services at the Westchester County Airport (the Airport). The Employer's contract with JetBlue states that the Employer will provide wheelchair services, baggage transfer services, security line checkpoint services, and skycap services, including curbside baggage handling. The Employer's contract with AvPORTS also provides for curbside baggage handling and wheelchair services, as well as monitoring of the departure lounge exit doorway and any temporary construction gates, airline baggage recorder and other baggage handling services. The record does not state what percentage of work is performed on behalf of each entity.

II. Relevant Legal Standard

The National Mediation Board (the NMB) is endowed by the Railway Labor Act (RLA) with jurisdiction over common carriers by rail and air engaged in interstate or foreign commerce. Section 2(2) of the National Labor Relations Act defines "employer" to exclude from coverage "any person subject to the Railway Labor Act." With respect to determinations of whether to assert jurisdiction over an employer potentially covered by the RLA, it has been the Board's practice to refer the issue of jurisdiction to the NMB in cases where the issue is doubtful, but the Board will not refer a case that presents a jurisdictional claim in a factual situation similar to one in which the NMB has previously declined jurisdiction. *See Spartan Aviation Industries*, 337 NLRB 708, 708 (2002).

When an employer is not a rail or air carrier engaged in transportation of freight or passengers, the NMB applies a two-part test to determine whether the employer is subject to the RLA. First, the NMB determines whether the nature of the work is traditionally performed by employees of rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a carrier or carriers. Both parts of the test must be satisfied for the NMB to assert jurisdiction. *See, e.g., Airway Cleaners, LLC*, 41 NMB 262, 267 (2014).

When considering the second part of the test, the NMB looks for evidence of whether a sufficient degree of control exists between the carrier and the subject employer for the latter itself to be deemed a carrier. The factors the NMB considers include:

> the extent of the carrier's control over the manner in which the company conducts its business, access to the company's operations and records, the carrier's role in personnel decisions, the degree of supervision exercised by the carrier, the carrier's control over training and whether the employees in question are held out to the public as carrier employees.

Bags, Inc., 40 NMB 165, 169 (2013) (citations omitted).

Here, the Petitioner seeks to represent a unit consisting of employees who perform ground services work, pursuant to PrimeFlight's contracts with JetBlue and AvPORTS. While JetBlue is clearly an airline under jurisdiction of the National Mediation Board, AvPORTS does not appear to meet the definition of a common carrier under the Railway Labor Act because it does not fly aircraft and is not directly or indirectly owned by an air carrier. *See Airway Cleaners*, 41 NMB at 267. However, AvPORTS provides services to airlines at the Airport including U.S. Air, Delta, American and United. Therefore, for purposes of this decision, I will assume that AvPORTS is a carrier and examine the relationships between the Employer and each entity as if they are both carriers under the RLA.[2]

III. Jurisdiction

A. Facts

1. Work Traditionally Performed by Employees of Carriers

The parties have stipulated that the work performed by the Employer at the Airport for JetBlue and AvPORTS – baggage handlers, wheelchair agents, skycaps, and gate monitoring – is the type of work traditionally performed by employees of air carriers. Accordingly, the first prong of the NMB test is not in issue.

2. Carrier Control over the Employer

a. The Employer's Daily Operations vis-à-vis JetBlue and AvPORTS

The Employer has contracts, or service agreements, with JetBlue and AvPORTS. The contract between the Employer and JetBlue requires that the Employer provide skycap, wheelchair, and baggage services. The contract between the Employer and AvPORTS requires the Employer to provide curbside baggage handling, wheelchair services, security monitoring and ancillary services. Under both contracts, the Employer is paid based on the hours of service provided. The contracts set the maximum daily number of service hours to be provided based on the travel season. The Employer must get permission from both entities before exceeding the maximum number of service hours.

JetBlue and AvPORTS provide the Employer with the flight schedule on a bimonthly basis, with the exception of the summer season when they provide the Employer with the flight schedule for the entire summer. The Employer is also given lists each day by JetBlue and all other airlines at the Airport (including U.S. Air, Delta, American and United), which show the number of passengers who will need wheelchair assistance for each flight throughout the day. The Employer also has limited access to certain computers owned by JetBlue that it can use to retrieve information about passengers who will need wheelchair assistance. The Employer uses

[2] In a recent case arising in Region 19, a jurisdictional challenge was raised by an employer that had a contract for services with an entity involved in the management of the Portland International Airport. *See ABM Onsite Services West*, Case 19-RC-144377 (March 13, 2015) (petition for review denied, April 2, 2015). Unlike here, however, the airport management entity in that case was a consortium of airlines that would most likely meet the definition of a carrier under the RLA.

the scheduling and wheelchair information to create employee work schedules and assign particular employees to provide the required services. Neither JetBlue nor AvPORTS tells the Employer how many or which employees to assign to a particular task. On occasion, JetBlue and AvPORTS will request that the Employer provide additional hours of work under the contracts to provide service during busy travel times or to adjust to the airlines' varying schedules.

The record also contains evidence that in 2014 and 2015, both JetBlue and AvPORTS reported that the Employer was failing to meets its expectations in a number of areas, such as failing to provide contractually required reports or adequate staff, neglecting to clean equipment, and raising concerns about employees speaking on their cell phones while on duty. In response to these concerns, the Employer's regional manager and general manager created a chart outlining the concerns and what actions needed to be taken to address each issue. The Employer's general manager was responsible for addressing each concern and communicating with JetBlue and AvPORTS to ensure that each entity was aware of the Employer's efforts to improve its performance.

b. Access to the Employer's Operations and Records

AvPORTS provides the Employer with an office at the Airport and has a key to the Employer's office. AvPORTS is free to enter the employer's office to perform repairs and maintenance. JetBlue does not have access to the Employer's office. Neither AvPORTS nor JetBlue has access to the Employer's employees' personnel and training files, which are located in a cabinet for which only the Employer has the key.

Under its contract with JetBlue, the Employer is required, upon request, to provide copies of records related to workplace accidents and injuries, employee grievances, and employee disciplinary actions. The Employer is also required to provide JetBlue with regular reports showing the number of wheelchair "transactions."

JetBlue and AvPORTS both have the right to audit the Employer's records when the audit is directly related to services provided to either entity by the Employer. Both entities also have a contractual right to audit and inspect the services provided by the Employer.

The Employer's contracts with JetBlue and AvPORTS require that the Employer provide employees with certain training, as discussed in more detail below. The Employer is required to maintain records related to training and JetBlue and AvPORTS have the right to review those records upon request.

c. Role in the Employer's Personnel Decisions

The Employer interviews and hires all of the employees in the petitioned-for unit. Although, on occasion, the Employer has sought input from JetBlue and AvPORTS regarding promotions, the Employer ultimately decides which of its employees will be promoted. The Employer independently determines employee wage rates and currently does not offer benefits to its employees. JetBlue, however, allows the Employer's employees to travel on JetBlue flights

using its "buddy pass" program, which is a privilege extended to the employees of all of JetBlue's business partners at various airports.

The Employer sets employee work schedules and approves vacation and sick leave requests. The Employer has an employee handbook that contains provisions discouraging employees from communicating directly with the Employer's clients. The Employer's handbook also has a provision entitled "problem resolution" that encourages employees to raise workplace concerns with their supervisors, a manager, or the Employer's human resources department. Further, the handbook sets forth the Employer's policies on attendance, personal appearance, workplace etiquette and discipline. The discipline policy includes an option for progressive discipline but also lists many examples of behavior that may result in immediate termination such as threatening a co-worker or customer, sleeping on the job, or accepting bribes or money in connection with one's job.

The Employer's contract with JetBlue specifically states that the Employer's employees will not be held or construed to be employees of JetBlue; however, it also provides that JetBlue reserves the right to require the Employer to remove an employee from servicing JetBlue if the employee engages in unacceptable behavior. The record states that neither JetBlue nor AvPORTS evaluates or disciplines the Employer's employees and both entities address concerns with employee performance to the Employer's managers, rather than directly to the employees.

The record demonstrates that the Employer's most frequent basis for issuing discipline results from attendance problems. For example, in 2015, the Employer has fired approximately six or seven employees due to attendance issues. These terminations were handled entirely by the Employer's general manager and regional manager without any involvement by JetBlue or AvPORTS.

In July 2011 and October 2013, JetBlue reported that two of the Employer's employees engaged in serious misconduct. In July 2011, JetBlue informed the Employer that an employee performing curbside check-in had engaged in two acts of misconduct within a short period of time. First, the employee offered a JetBlue customer a $20 discount when there was no such discount available. About ten days later, the same employee received a $50 cash payment from a customer for an overweight bag and kept the money for himself. A JetBlue manager described the incidents in an email to the Employer's regional manager and requested that the employee be removed from all JetBlue areas and stated further that he "did not want the employee working for JetBlue in any capacity."

The Employer suspended the curbside check-in employee pending an investigation. The Employer's General Manager Albert Tejada discussed the allegations with the JetBlue manager, who stated that both customers had identified the employee. Since the employee was not at work, Tejada asked him to come in but he refused, stating he knew he was just going to be fired. The Employer terminated the employee the same day. The Employer's Corrective Action Notice stated that the reason for the termination was "dishonesty/theft," without further elaboration.

In 2013, an employee performing wheelchair services threatened a JetBlue employee that he was going to "hurt her with tools" that he had in his vehicle. JetBlue's general manager

reported the threat to the Employer's Regional Manager Matthew Barry and requested that the employee be terminated. Barry directed Tejada to investigate the incident and determine how to proceed. Tejada first spoke with the JetBlue's manager and then the employee. The employee admitted that he had made the threat. Tejada told him that this behavior was in violation of the Employer's handbook policies and also that the JetBlue manager did not want him providing service to JetBlue any more. Tejada terminated the employee, and documented that the threat was a violation of the Employer's handbook policies and that JetBlue had recommended the termination.

The record also describes one instance where AvPORTS reported employee misconduct. In March 2015, an AvPORTS manager sent an email to Barry stating that an employee responsible for "gate watch duty" was caught sleeping on the job and included a photograph of the sleeping employee. The record shows that the Employer fired the employee based on the photograph provided. AvPORTS did not recommend that the Employer take any particular action.

d. The Degree of Supervision Exercised

The Employer's contracts with JetBlue and AvPORTS specifically require that the Employer provide supervisors to supervise its employees. The parties stipulated that JetBlue coordinates with the employer's supervisors on a daily basis to ensure that the Employer provides the necessary wheelchair and baggage services. The parties further stipulated that the Employer's supervisors are expected to understand the daily workload and provide instructions to the Employer's employees to ensure that the work is accomplished according to the terms of the contracts with JetBlue and AvPORTS and meet their expectations, as well as to assign employees to perform services for JetBlue and AvPORTS.

Both AvPORTS and JetBlue have reported problems with the performance of the Employer's supervisors in the past and the Employer took steps to address the issues identified and improve supervisor performance.

Similarly, both JetBlue and AvPORTS generally address concerns with employee performance to the Employer's managers rather than directly to the employees. Although a former JetBlue manager regularly attended the Employer's staff meetings and spoke to the employees about workplace practices, the current JetBlue managers do not attend the Employer's staff meetings.

e. Control over Training

The parties stipulated that the Employer is contractually required to provide its employees with all "necessary initial and recurrent training, including familiarization with JetBlue policies." Some of the training is mandated by the Federal Aviation Authority and the Transportation Security Administration. The Employer is also contractually responsible for providing training that complies with standards set by the Department of Transportation. The Employer is responsible for the cost of training its employees. JetBlue provided instruction to one of the Employer's employees, who then trained all of the other employees.

f. Whether the Employees are Held out the Public as Carrier Employees

The petitioned-for employees wear uniforms with the PrimeFlight logo. The Employer's contract with JetBlue specifically states that the Employer's employees will not be held or construed to be employees of JetBlue.

B. Analysis

The record in this case demonstrates that JetBlue and AvPORTS do not exercise a sufficient amount of control over the Employer to establish RLA jurisdiction. The Employer's contracts and its relationships with JetBlue and AvPORTS are comparable to the relationships described in recent cases where the NMB concluded that it lacked jurisdiction. *See, e.g., Bags, Inc.*, 40 NMB at 169-70; *Airway Cleaners, LLC*, 41 NMB 269-70. Examining each factor identified in the NMB's test, JetBlue and AvPORTS's level of control over the Employer is no greater than the "typical" level of control between a service provider and a customer. *Id.* at 268.

First, considering carrier control over how the Employer conducts business, the Employer operates its business according to the parameters set out in its contracts with JetBlue and AvPORTS. The Employer is responsible for its day-to-day operations, such as assigning staff in order to accommodate the carriers' needs. Like any customer, JetBlue and AvPORTS can and will raise performance concerns to the Employer, as it did in the examples in the record in 2014 and 2015. The Employer, like any responsible subcontractor, took steps to address the deficiencies identified in order to avoid losing business and revenue. The record demonstrates that the Employer's managers were the individuals responsible for improving service to satisfy the customer. Evidence that subcontractors undertake efforts to improve performance in response to carrier's complaints does not demonstrate a sufficient amount of control over how the Employer conducts business. *See, e.g., Huntleigh USA Corporation*, 40 NMB 130, 134 (2013) (employer responded to carrier's complaints regarding insufficient number of wheelchairs; no RLA jurisdiction found).

Addressing the second factor, carrier access to the Employer's operations and records, JetBlue and AvPORTS have the right to request training records and JetBlue has additional rights to access other records. Under both contracts, the entities have the right to audit the Employer's records. Although AvPORTS provides the Employer with office space and has access to that space to perform necessary maintenance, neither JetBlue nor AvPORTS can access the Employer's files. The level of access over the Employer's operations and records in the record demonstrates an ordinary level of control between a service provider and a customer. *See id.*, 40 NMB at 132-33 (airline provided office as a courtesy to employer's terminal operations manager, made specific training requirements and had contractual right to audit training records).

Considering the third factor, carrier control over employers' personnel decisions, recent NMB decisions suggest that this factor is perhaps the most critical in determining whether the carriers exercise sufficient control for the NMB to assert jurisdiction, and the Board has taken these decisions into consideration in analyzing the jurisdictional issue presented here. *Allied Aviation Service Co.*, 362 NRLB No. 173 (August 19, 2015). *See, e.g., Airway Cleaners*, 41

NMB at 268-69. A carrier must exercise "meaningful control over personnel decisions," and not just the type of control found in any contract for services, in order to establish RLA jurisdiction. *Id.* at 268 (citing *Bags*, 40 NMB at 170). Here, the Employer is responsible for hiring its employees and in most cases of employee performance issues (i.e. attendance problems), the Employer will discipline its employees without any involvement from the carriers.

Nonetheless, the Employer argues that this case should be referred to NMB because Employer did not actually conduct "investigations" when JetBlue reported employee misconduct but simply acquiesced to JetBlue's demands that the employees be removed or terminated. However, in both the instances, the Employer's managers consulted among themselves, spoke with JetBlue mangers to learn the details of the allegations, and finally spoke with the employee if possible. Both employees were terminated only after the general manager concluded the allegations were true. The record shows that the Employer did not simply rely on JetBlue's demands but rather undertook its own inquiry. The termination decisions were based on what the inquiries revealed and the Employer terminated the employees in accordance with the Employer's own handbook policies. These examples do not demonstrate significant carrier control over the Employer's personnel decisions. *Cf. Huntleigh*, 40 NMB at 137 (NMB did not find RLA jurisdiction where carriers reported problems with subcontractor's employees and subcontractor's manager investigated and disciplined the employees).

Although JetBlue has the contractual right to demand removal of the Employer's employees, the NMB has not found such a provision determinative in the past. *See Menzies Aviation, Inc.*, 42 NMB 1, 5 (2014)(NMB concluded no RLA jurisdiction where Alaska Airlines had contractual right to demand removal of subcontractor's employees). In other NMB cases involving ground service employers at larger airports, the NMB has noted that employers moved employees to other positions in those airports after a particular carrier requested that an employee be removed. *See id.* at 5. Here, this option is not available to the Employer because of the small size of the Airport and the employee could inadvertently be assigned to JetBlue even if technically performing work under the AvPORTS contract. Nonetheless, as demonstrated above, the Employer is independently responsible for the vast majority of employee discipline and will investigate allegations against its employees to determine appropriate discipline even if JetBlue demands an employee's termination. And, in the one example where AvPORTS reported misconduct, the Employer terminated the employee based on the evidence that the employee was sleeping on the job, which clearly demonstrated a violation of the Employer's policies and required no further investigation.

The fourth factor is the carrier's degree of supervision over the Employer's employees. Here, there was little to no evidence that the JetBlue or AvPORTS supervises the Employer's employees. Rather, the Employer has its own supervisors and the carriers direct concerns about employee performance to the Employer's managers. A former JetBlue manager attended the Employer's staff meetings on a regular basis, but the record shows that the manager merely reminded employees of basic standards of conduct and there is no evidence that the manager effectively supervised the employees. Furthermore, there is no evidence that any other past or current JetBlue or AvPORTS managers attend staff meetings or directly supervise the employees.

Next, examining the carrier's control over training, much of the training required by JetBlue and AvPORTS is required of all ground service employees under federal law and the Employer is responsible for the cost of training its employees. The level of control over training exerted by the carriers is not significant here.

Finally, considering the sixth and final factor, the Employer's employees are not held out to the public as carrier employees. The employees wear the Employer's uniforms and by contract, are not to be held out as JetBlue employees. Therefore, this factor does not favor RLA jurisdiction.

In conclusion, the record here is factually similar to recent cases where the NMB has found no RLA jurisdiction. *See, e.g., Huntleigh,* 40 NMB at 136-37; *Airway Cleaners*, 41 NMB 268-69; *Menzies Aviation, Inc.*, 42 NMB 4-5. As noted above, the NLRB has followed the factors relied upon in these cases when asserting jurisdiction. *Allied Aviation, supra.* Accordingly, I conclude that the Employer is subject to NLRA jurisdiction and this case should not be referred to the NMB.

IV. Conclusions and Findings

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and part-time baggage handlers, wheelchair agents, and line queue agents employed by the Employer at the Westchester County Airport, White Plains, New York.

Excluded: All other employees, sky caps, clerical employees, guards and supervisors as defined by 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. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local Union 1430.

A. Election Details

The election will be held on November 17, 2015 from 8:00 a.m. to 9:00 a.m. and 3:30 p.m. to 4:30 p.m. at Westchester County Airport, 240 Airport Road, White Plains, NY in the terminal's second floor main conference room.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 13, 2016**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **November 8, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by

department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: November 4, 2016

Karen P. Fernbach by ARD

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