

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Glen Rose, Texas

THE ATLANTIC GROUP, INC.

Employer

and

Case 16-RC-256920

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 220**

Petitioner

DECISION AND DIRECTION OF ELECTION

On a petition duly filed under Section 9(c) of the National Labor Relations Act (“Act”), a hearing was held on March 5, 2020, before a hearing officer of the National Labor Relations Board (“Board”). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

The Atlantic Group, Inc. (“Employer”) provides services and products to nuclear and fossil power plants, including the Comanche Peak Nuclear Power Plant in Somervell County, Texas. International Brotherhood of Electrical Workers, Local 220 (“Petitioner”) seeks to represent a unit of all full-time and regular part-time core maintenance and modification and radiation protection employees employed by the Employer at Comanche Peak; but, excluding all other employees, Document Control Center employees, Mailroom employees, Planning employees, Safety Representatives, office clerical employees and guards, and supervisors as defined in the Act.²

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. Petitioner is a labor organization within the meaning of the Act.
- d. Petitioner seeks to represent certain employees of the Employer in the unit described in the instant petition, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend there is any contract bar to this proceeding.
- f. 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.

² The parties stipulated to the listed exclusions at the hearing and agreed, but did not stipulate, to the inclusion of the following classifications: SR Decon, Carpenter, Carpenter Helper, Millwright Helper, Electrician (Journeyman), Electrical Helper, Insulator (Journeyman), Insulator Helper, Painter (Journeyman), Painter Helper, Pipefitter (Journeyman), Pipefitter Helper, Rigger, Welder (Journeyman), Equipment Operator, Mechanic (Journeyman), Heavy Equipment Operator, Heavy Equipment Mechanic, Foreman (Paint), Foreman (Pipefitter), Laborers Utility, Laborers

I. ISSUES AND PARTIES' POSITIONS

The Employer maintains any appropriate unit must include its employees who work outages at Comanche Peak and contends the petition is premature and should be dismissed because the petitioned-for employees are part of an expanding unit.³ The Petitioner contends outage employees are temporary employees and should be excluded from any appropriate unit, which means the unit is not expanding and its petition is timely filed.

II. DECISION

As explained below, based on the record and relevant Board law, I find the Employer's outage employees are temporary employees; therefore, its plans to hire outage employees do not constitute an expanding unit. Accordingly, I direct an election in the following appropriate unit:

Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including SR Decon, JR Decon, SR HP, JR HP, Radiation Supervisor, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers (Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.

III. THE EMPLOYER'S OPERATION

The Employer is an indirect subsidiary of The Day & Zimmerman Group Inc.⁴ The Employer provides services and products as a contractor to nuclear and fossil power plants throughout the United States. These services include maintenance and modification ("M&M"), radiological protection ("RP"), valve services, scaffolding services, condenser, and security screening. The Employer currently employs over 3,000 people nationwide in the industry.

(Proficient) Foremen. The parties could not agree on the inclusion or exclusion of Radiation Supervisor, SR HP, JR Decon, JR HP, Foreman (Operator), and Laborers (Entry) Fire Watch.

³ In its closing argument at the hearing, the Employer asserted, for the first time, outage employees should be included in any appropriate unit because they share a community of interest with core employees. As I find outage employees to be temporary employees, community of interest is not applicable.

⁴ The Employer is referred to throughout the record as Atlantic, Atlantic DZ, DZ, D&Z, and Day & Zimmerman.

The Employer has two contracts with Comanche Peak Power Company LLC, owned and operated by Luminant Generation Company LLC (“Luminant”) at the Comanche Peak Nuclear Power Plant (“Comanche Peak”) in Somervell County, Texas. One contract is for RP services, which began in August 2018, and the other is a 5-year contract for M&M services, which began January 30, 2020.⁵

Comanche Peak consists of two operational nuclear reactors (“units”) that generate power. Each unit currently operates on an 18-month refueling cycle. A unit is considered on-line during a cycle. At the end of a cycle, the unit is shut down creating an outage, which lasts about one month. While a unit is on-line, the Employer maintains a “core crew” of RP and M&M employees. During an outage, the Employer briefly increases its workforce using an “outage crew” to perform additional radiation protection work and maintenance and modification projects, including tasks in otherwise inaccessible areas of Comanche Peak, such as containment.

The Employer uses the same job classifications across core and outage crew employees, although not all classifications are filled in the core crew. Because Comanche Peak is a nuclear facility, many employee requirements are highly regulated. For example, RP classifications are industrywide and based on regulations. According to Senior Vice President of Nuclear Operations Ross McConnell, regulations specify the number of hours of experience a junior decontamination employee (JR Decon) must have to become a decontamination employee (SR Decon). Similarly, he stated the Nuclear Regulatory Commission requires a junior health physics technician (JR HP) to have 2,080 hours before becoming senior health physics technician (SR HP). The experience requirement is not site specific.

The Employer maintains an onsite office and shop areas where its employees work at Comanche Peak. Its management team consists of a site manager, a site superintendent, and various other superintendents who, among other things, oversee the facilities, civil, electrical, and mechanical crews. This is altered during outages when the Employer increases the number of superintendents to manage the added night shift, including a night shift lead superintendent and night civil, electrical, and mechanical superintendents.⁶

A. On-Line Work and “Core Crew”

When Comanche Peak units are on-line and producing power, core employees typically work a 10-hour shift, Monday through Thursday, only on dayshift.⁷ According to McConnell, the number of core crew depends on the work activities needed by Luminant, but the record indicates the number of RP and M&M core employees has remained stable across multiple contractors.

⁵ All dates are in 2020 unless otherwise indicated.

⁶ This management summary is based on Employer Exhibits 1 and 2 and McConnell’s testimony regarding these exhibits. Earlier in the record, McConnell testified generally that the management team at the Employer’s sites usually consists of a site manager, “superintendent types,” and “a general foreman.” McConnell did not identify a specific general foreman who is part of the management team at Comanche Peak.

⁷ McConnell testified the industry standard workweek when a plant is on-line is dayshift only and either a 10-hour shift, four days per week, or an 8-hour shift, five days per week.

Specifically, McConnell testified that 99.9% of its approximately 57 M&M core employees came from the previous contractor, Fluor Daniel. The Employer interviewed Fluor Daniel M&M core employees offsite and offered them core M&M jobs prior to starting its contract with Luminant on January 30. There are approximately three RP core employees. The record does not include evidence of how many RP employees the Employer retained from the predecessor. Examples of Core employees' employment agreements entered into the record by the Employer specifically state the employee is a "core" or "online long term" employee.

Some core employees' regular wages are less than outage employees, but during an outage they are paid the same rate as the outage workers. Core employees are eligible for per diem if they maintain a separate permanent residence more than 50 miles from Comanche Peak. Proof of the permanent residence (e.g., mortgage, deed, or lease) is required for the per diem; however, the record reveals few, if any, core employees qualify for the per diem.

The record shows core employees receive health benefits but includes no details about those benefits.

Core M&M employees perform maintenance and modify and repair systems. McConnell gave the example of modifying piping and ductwork, which would use insulators and require carpenters to build scaffolds. A long-term core journeyman electrician at Comanche Peak testified that he worked on HVAC, electrical, and site facilities maintenance (e.g., changing lights) when the units were on-line.

Core employees receive at least two identification badges. One badge provides access to the protected areas, and the other allows entry into outlying plant buildings, offices, and the training center. Core employees receive parking stickers for the long-term employee parking lot.

Four long-term employees classified as laborers are responsible for opening and closing Squaw Creek Park each day. This park, which is located on Comanche Peak's property, may be accessed by the public for fishing and other activities. These laborer employees are known as "lake employees" and do not have any access badges. The record does not include any other details about their terms and conditions of employment or the work they perform.

B. Outages (Off-Line Work) and "Outage Crew"

Luminant generally plans outages for the spring or fall when consumer demand for power is less. Planned outages⁸ occur on an 18-month or 24-month cycle, so a unit can be refueled. Unit 2 at Comanche Peak has a planned outage scheduled for April 19, 2020, through May 14, 2020 ("Spring 2020 Outage"), and Unit 1 is tentatively scheduled for a planned outage from October 18, 2020, through November 11, 2020 ("Fall 2020 Outage"). According to McConnell, Comanche Peak is switching to a 24-month cycle so the next outage will not occur until 2022.

⁸ The record references unplanned or emergency outages but includes no details on their staffing or the work performed.

According to McConnell, outage employees are also known as travelers because they travel from shutdown to shutdown, working for different companies at different power plants. McConnell and a current full-time Luminant RP employee, who was a traveler for 16 years, testified that travelers chase overtime.

During an outage, the Employer's workforce is on a 24/7 schedule with employees working 12-hour shifts, six days per week, dayshifts and nightshifts. Some classifications receive increased wages during outages. For example, the record shows journeyman heavy equipment operators make \$4.50 more per hour during an outage while electricians make \$1.50 more per hour while carpenters', insulators', and laborers' wages remain the same. Outage employees are eligible for per diem if they maintain a separate permanent residence more than 50 miles from Comanche Peak. Proof of the permanent residence (e.g., mortgage, deed, or lease) is required for the per diem. The record indicates many outage employees receive per diem.

Outage employees do not receive health benefits.

The specific RP needs are dictated by Luminant, which tells the Employer how many JR Decon, SR Decon, JR HP, and SR HP employees to provide. After receiving the orders, the Employer contacts its centralized recruiting and staffing group to bring in the necessary personnel. The record indicates all 92 RP outage employees are scheduled to be hired between March 30 and April 20.⁹

The specific M&M needs for a planned outage are codetermined by the Employer in conjunction with Luminant based on the scope of work Luminant needs completed. Based on the work to be performed, the Employer and Luminant assess current resources and estimate the labor and resources needed for the outage work, including which crafts will be hired and the approximate number in each craft. This information is put into a Manpower Request Form listing the estimated dates of hire for all outage employees, which is sent to the Employer's recruiting and staffing group to begin bringing in the planned-for personnel. The ramp-up for the outage takes approximately two months. For example, the M&M Manpower Request Form for the Spring 2020 Outage shows 17 separate hire dates starting on February 10, 2020, and ending on April 14;¹⁰ however, the bulk of outage employees arrive in the two weeks preceding the outage. For the Spring 2020 Outage, 259 of the projected 309 M&M outage employees are scheduled to be hired after March 29. Similarly, all 92 RP outage employees are scheduled to be hired between March 30 and April 20.

Both RP and M&M outage employees are hired through the Employer's recruiting and staffing group. Outage employees are recruited through advertising, job fairs, and the Employer's database, which includes the names of over 150,000 people. The database consists of individuals

⁹ In addition to the listed supervisors, Employer's counsel stated Dosimetry and the RAD Engineer are statutory supervisors.

¹⁰ McConnell testified employees needed to be hired by April 14, 2020 to complete the onboarding process in time to start work on April 19, 2020. Onboarding includes, among other things, a background check, drug screen, and psychological evaluation.

who have expressed interest in working for the Employer, previously applied for work with the Employer, and previously worked for the Employer. Outage employees' employment agreements specifically state the employee is an "outage" employee.

Although the record is limited on the details of RP work, it appears RP outage employees perform the same work as RP core employees. McConnell testified that the Employer has a preference for hiring site returnees. The Employer entered into evidence a RP staffing document for the upcoming outage in which about 50% of the approximately 90 nonsupervisory employees are marked as "site returnee." McConnell testified, though, that some of the marked site returnees have worked at the site for a different employer. As a result, the record does not include definitive evidence as to exactly how many of the expected RP outage employees previously worked directly for the Employer at the Comanche Peak site.

According to McConnell, M&M outage work is similar to on-line work. He gave examples of painters painting, using electricians to provide temporary power, pipefitters and welders for pipework, fabrications, and installing new pipe systems and valves. During an outage, core employees and outage employees may work alongside each other and on the same tasks. While McConnell stated the Employer likewise has a preference for site returnees with respect to M&M employees, the record is devoid of evidence on how many M&M outage employees are site returnees. Further, since the Employer only obtained the M&M contract in January 2020, there is no history as to the practice of hiring former employees at this site for this work.

Throughout an outage both outage and core employees work under the same supervision structure summarized above in the Employer's Operation section and set forth in Employer Exhibit 1. In addition, several members of the core crew will become what is known in the industry as "step-ups" during the outage. In this period, these employees step up into a higher position, such as from journeyman to foreman, to support the outage work. Specifically, Employer Exhibit 17 lists approximately 18 employees stepping up into a foreman position and three employees stepping into general foreman or supplemental supervisor positions.¹¹

Outage employees only have access to the protected areas of Comanche Peak. They do not have badge access to the outlying plant buildings. If they need to perform work in those buildings a core employee or Luminant employee provides access. Outage employees do not receive a long-term employee parking sticker.

At the end of an outage, the Employer ramps down its outage operations. For the Spring 2020 Outage, this will start around May 11. McConnell acknowledged the Employer makes projections about the ramp-down, but the Employer did not bring that document to the hearing. A Luminant RP employee, who has worked at Comanche Peak since 2008, testified outage employees are no longer onsite within a week of an outage ending. For the Spring 2020 Outage, McConnell testified the Employer would lay off outage employees when the outage ended and

¹¹ Neither the Employer nor the Union have asserted that any of the employees listed in Employer Exhibit 17 becomes a Section 2(11) supervisor by virtue of stepping up into the higher position and there is no record evidence detailing indicia indicating that this is the case.

encourage them to apply for the Fall 2020 Outage but makes no job offers at the time of their layoff.

Although McConnell testified several times that the Employer will give preference to Spring 2020 Outage employees when hiring for the Fall 2020 Outage, the Employer presented no documents substantiating this preference generally or specifically with respect to Comanche Peak. The record shows the Employer draws outage employees from job fairs, advertisements, and its database, which includes the names of over 150,000 individuals. There is no record evidence indicating the Employer prejudices outage applicants who were previously terminated or no-shows or dropped after confirming.

The record shows none of the Employer's outage employees have converted to core employees at Comanche Peak.

IV. TEMPORARY EMPLOYEES

A. Board Law

The test for determining the eligibility of individuals designated as temporary employees is whether they have an uncertain tenure. *Marian Medical Center*, 339 NLRB 127 (2003). If the tenure of the disputed individuals is indefinite or uncertain and they are otherwise eligible, they are permitted to vote. *United States Aluminum Corp.*, 305 NLRB 719 (1991); *Lloyd A. Fry Roofing Co.*, 121 NLRB 1433, 1438 (1958); *Personal Products Corp.*, 114 NLRB 959, 960 (1955).

Conversely, the Board has long held where employees are employed for one job only, or for a set duration, or have no substantial expectancy of continued employment and are notified of this fact, and there have been no recalls, such employees are excluded as temporaries. *MJM Studios of New York, Inc.*, 336 NLRB 1255, 1257 (2001); *Owens-Corning Fiberglass Corp.*, 140 NLRB 1323, 1325 (1963); *Indiana Bottled Gas Co.*, 128 NLRB 1441, 1442 fn. 4 (1960). See also, *Emco Steel Inc.*, 227 NLRB 989, 991 (1977) (temporary employees include those hired with "definite terminal dates," "hired for a set term," or hired "to perform a specific project or series of tasks"), *enfd.* without published opinion sub. nom. 562 F.2d 38 (2nd Cir. 1977).

B. Application of Board Law to the Facts of This Case

The record shows outage employees are hired for a particular outage, they are laid off when the outage ends, and they must reapply for the next outage if they want to work. Accordingly, their tenure is both certain and definite: defined by the terms of the outage, a finite project, which lasts a little more than one month.

Although the Employer contends it gives preference to previous employees and will hire these employees for future Comanche Peak outages, these assertions were not substantiated by any compelling record evidence. While M&M employees comprise about 75% of outage workers (approximately 300 employees), the record is devoid of any documentary or other evidence of any tracking or historical hiring patterns regarding these employees. Further, with regard RP employees, as already discussed above, the evidence shows the approximate 45 RP outage

employees listed as “site returnees” have merely worked for Comanche Peak at some previous point, not necessarily for the Employer. Moreover, outage employees are hired through the Employer’s recruiting and staffing group, which draws from a database of over 150,000 individuals nationwide, while the Employer hired core employees locally offsite and almost exclusively from the previous contractor’s workforce. Given the vast pool of potential applicants in its database; the Employer’s undisputed practice of recruiting outage employees through advertisements and job fairs; and the record in its totality, it cannot be concluded there is sufficient evidence to establish a significant number of the outage employees have a substantial expectation of continued employment past the Spring 2020 Outage.

Despite planned outages generally occurring in spring or fall based on consumer power demands, outages themselves are intermittent occurring once every 18 months (soon to be once every 24 months) and employment lasts only about six weeks for the overwhelming majority of outage employees. As Comanche Peak has only two units, the next planned outages will not happen until 2022.¹²

The Board’s decision in *E. F. Drew & Co.*, 133 NLRB 155, 156-7 (1961) is particularly on point. There, the Board found employees to be temporary where they “were hired for a particular job, were told that they were merely temporary employees for an approximate duration of 10 to 12 weeks, and were given special record cards stamped ‘temporary.’” *Id.* at 156-157. Here, outage employees are hired for one particular outage, which lasts approximately 4 to 13 weeks,¹³ and are told they are outage employees being hired only for the Spring 2020 Outage, including an employment agreement designating them as “outage.”

Similarly, the Board excluded truckdrivers and laborers hired to help with particular projects (i.e., repairing sewer leaks) as temporary employees, where “in all but isolated incidents” they left the company’s employ at the end of the particular job, which could “last from several

¹² In its Statement of Position, the Employer very briefly outlined an alternative argument that, based on principles from the Board’s case law on seasonal employment, the election should be held when employment at Comanche Peak reaches its peak level. The Employer did not re-raise this argument in its oral argument at hearing. I know of no cases where the Board found seasonal employment when the time between seasons was regularly more than one year and the season lasted only six weeks. Even assuming seasonal employment, the record evidence consists only of a single season’s employment with regard to 75% of the employees at issue (M&M employees), so “there is no pattern of seasonal employment from which” to extrapolate the employer’s labor requirements and the Board “cannot conclude” this factor favors inclusion. *L & B Cooling, Inc.*, 267 NLRB 1, 3 (1983). Further, the outages are necessitated by the operational need to refuel the reactors every 18 or 24 months. This refueling need, not any particular season, is what causes the intermittent nature of the work. Luminant just *times* the outages to coincide with spring or fall because of the decreased demand for power during these times. Moreover, the duration of the work is dictated by the extent of maintenance work needed during the shutdown and is unrelated to the length of any season. See, *Cajun Co., Inc.*, 349 NLRB 1031, 1034-1035 (2007) (finding a contractor employer that provided maintenance services to power plants was *not* a seasonal operation when it employed both core workers and workers on a temporary basis every year during a January through May period when there were multiple outages).

¹³ The Manpower Request Form for Spring 2020 Outage indicates early pre-outage hires to be almost exclusively carpenters, which the record shows build scaffolding so other employees can perform their work.

days to several months,” and even though they “were not specifically told of the temporary nature of their employment.” *Sealite, Inc.*, 125 NLRB 619, 619 (1959).

Applying extant and well-settled Board precedent, I find outage employees to be temporary employees and, therefore, excluded from the bargaining unit and ineligible to vote.

V. UNIT EXPANSION

Where there is definite evidence of an expanding or contracting unit, the current work complement must be substantial and representative of the ultimate complement to be employed in the near future, projected both as to the number of employees and the number and kind of classifications. *MJM Studios of New York, Inc.*, 336 NLRB 1255, 1256 (2001), citing *Douglas Motors Corp.*, 128 NLRB 307, 308 (1960).

As noted in Section IV.B., above, the Board does not consider temporary employees to be part of an appropriate bargaining unit. As I have found outage employees to be temporary, the hiring of outage employees does not constitute an expansion of the unit at issue here.

VI. CONCLUSION

While Petitioner contends the Senior HP, Junior Decon, Junior HP, Radiation Supervisor, Foreman (Operator), Laborers (Entry) Foreman should be excluded, it neither provided the bases for these exclusions nor does the record include any evidence of supervisory indicia or other exclusionary indicia. Petitioner’s only contention appears to be that individuals employed in these classifications would always be outage employees; however, the record fails to disclose whether these classifications are only hired as outage employees. As such, Petitioner has failed to meet its burden to exclude the classifications of Senior HP, Junior Decon, Junior HP, Radiation Supervisor, Foreman (Operator), Laborers (Entry) Foreman. To the extent individuals in these positions are outage employees, they are excluded as temporary employees. Including these classifications provides for a presumptively appropriate wall-to-wall unit of the Employer’s non-administrative employees.

Given the Employer has not met its burden to show the petitioned-for unit is an expanding unit, Board precedent requires me to direct an election in the following unit:

Included: All full-time and regular part-time employees in Radiation Protection (RP) and Maintenance and Modification (M&M), including JR Decon, SR Decon, JR HP, SR HP, Carpenters, Carpenter Helpers, Millwright Helpers, Electricians (Journeyman), Electrical Helpers, Insulators (Journeyman), Insulator Helpers, Painters (Journeyman), Painter Helpers, Pipefitters (Journeyman), Pipefitter Helpers, Riggers, Welders (Journeyman), Equipment Operators, Mechanics (Journeyman), Heavy Equipment Operators, Heavy Equipment Mechanics, Foremen (Operator), Foremen (Paint), Foremen (Pipefitter), Laborers Utility, Laborers (Entry) Fire Watch, and Laborers (Proficient) Foremen employed by the Employer at Comanche Peak Nuclear Power Plant in Somervell County, Texas.

Excluded: All other employees, outage employees, Document Control Center employees, Mailroom employees, Planning employees, office clerical employees and guards, and supervisors as defined in the Act.

Others Permitted to Vote: The record includes insufficient evidence on the four lake employees, so they may vote in the election, but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether these individuals are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

VII. 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 220.

1. Election Details

The election will be held on a date to be determined from 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m. in Building 3G2 Classroom 7 at Comanche Peak Nuclear Power Plant.

2. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 15, 2020**, 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.

3. Voter List

As required by Section 102.67(1) 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 Friday, March 20, 2020. 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.nlr.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.nlr.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.

4. 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, that will issue at a later date, 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.nlr.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 at Fort Worth, Texas, this 18th day of March 2020.



Timothy L. Watson, Regional Director
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