

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

**CALIFORNIA FORENSIC MEDICAL GROUP,
INC. (WELLPATH)**

Employer

and

Case 32-RC-258519

**NATIONAL UNION OF HEALTHCARE
WORKERS (NUHW)**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The petition in this matter was filed by National Union of Healthcare Workers (NUHW) (Petitioner) on March 27, 2020, under Section 9(c) of the National Labor Relations Act, as amended (Act), seeking a *Sonotone* election to represent a unit of professional and non-professional employees employed by California Forensic Medical Group, Inc. (Wellpath) (Employer) at three of its Modesto, California facilities (Employer's facilities). There are approximately 96 employees in the unit sought.

The only matters at issue are whether the election should be held in abeyance due to the COVID-19 pandemic and whether the election should be conducted by manual or mail ballot method. Election arrangements, including the voting method, are not litigable matters at a pre-election hearing, but the positions of the parties were solicited for consideration prior to the direction of an election, at an April 23, 2020 telephonic hearing before a hearing officer of the National Labor Relations Board (Board).

The questions before me are whether and how to best conduct this election given the reality of the COVID-19 pandemic. The impact of COVID-19 on daily life has been profound. As of this date, there are 1,085,789 cases and 63,852 deaths in the United States. Many of the measures recommended by the Federal and state governments to prevent the spread of the virus are well-known at this point: maintain a 6-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene. *The President's Coronavirus Guidelines for America*; Centers for Disease Control and Prevention (CDC), *How to Protect Yourself and Others*.

On March 23, 2020, the CDC published guidance on its website specifically for correctional and detention facilities like the Employer's facilities. *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (CDC Guidance). This CDC Guidance notes that there are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress;

transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. The CDC Guidance further states that some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions. With respect to social distancing, the CDC Guidance acknowledges that although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. The CDC Guidance also suggests that lawful alternatives are implemented to in-person court appearances where permissible; that the number of operational entrances and exits to the facility be limited; that all persons present in the facility avoid sharing items such as utensils, dishes, and cups; and that all non-essential physical contact be avoided.

With respect to staff at correctional and detention facilities, the CDC Guidance suggests that when feasible and consistent with security priorities, staff be encouraged to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways and to keep interactions with individuals with respiratory symptoms as brief as possible. With respect to visitors at such correctional and detention facilities, the CDC Guidance states that if possible, such facilities should “communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility” and to “promote non-contact visits.” Additionally, the CDC Guidance encourages that such facilities “restrict non-essential vendors, volunteers, and tours from entering the facility.” The CDC Guidance further recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody.

In addition, many state and municipal governments have issued restrictions tailored to the situation in specific communities. On March 19, 2020, the Governor of the State of California issued Executive Order N-33-20 ordering all individuals living in the State of California to stay home, except as to maintain continuity of operations of the Federal Critical Infrastructure Sectors. On April 22, 2020, an Amended Order of Stanislaus County Public Health Officer issued, to implement Executive Order N-33-20 and to ensure that the maximum number of people self-isolate in their homes or places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible.

Although communities nationwide have taken these steps to prevent or slow the spread of COVID-19, the impact of the virus has continued, in California and throughout the United States. The Stanislaus County Health Services Agency reports that, as of April 29, 2020, 324 confirmed cases of COVID-19 in Stanislaus County and ten Stanislaus County residents have died from COVID-19.

The Employer, which is engaged in the business of providing health care services at a multi-facility corrections center in Stanislaus County, is included within the Healthcare and

Public Health Sector that has been deemed one of the Critical Infrastructure Sectors to remain operational during the COVID-19 pandemic. As a result, employees continue to report for work and perform their regular duties, to ensure that its adult inmates and juvenile detainees have patient access to essential healthcare services. As of the date of the hearing, the Employer reported that to its knowledge, none of its employees had tested positive for COVID-19.

II. POSITIONS OF THE PARTIES

Petitioner maintains that a mail ballot election is necessary because of the extraordinary circumstances of the current COVID-19 pandemic and its associated restrictions. First and foremost, a manual election requires at least some gathering of people, voters, Board agents, and observers. While measures can be taken to limit interaction and make these interactions as safe as possible, this is ultimately not an essential gathering because the mail ballot procedure exists as an alternative to in-person voting. Petitioner argues that as a result of restrictions imposed to prevent the spread of COVID-19, it is not possible to set up a manual polling place and conduct the election safely.

Second, beyond the concerns associated with gathering, a manual election requires travel of individuals such as Board agents and party representatives, in and out of Modesto, California, an unnecessary risk to the communities involved. Third, Petitioner notes the Board's procedures for a manual election are well-established and involve steps that are problematic under the current circumstances, with numerous close contact activities such as voters using a ballot booth, observers jointly maintaining a voter list, and a challenged ballot procedure that involves an exchange of materials between the voter and a Board agent.

Since Petitioner filed this petition on March 27, 2020, it requests that a mail ballot election commence as soon as practicable, preferably by April 30, 2020, with mail ballots returnable to the Regional Office within two weeks and a ballot count conducted by the Region by videoconference shortly thereafter. Although the Employer does not agree that a mail ballot election is appropriate, the Employer contends that if I decide to order a mail ballot election, it should commence around May 7, 2020. The Employer also requests that if I order a mail ballot election, for me to "prohibit home visits of any nature whatsoever through the end of the election."

The Employer's primary position is that any election should be postponed indefinitely during the pendency of the State of California and Stanislaus County shelter in place orders.

Alternatively, the Employer argues that should I determine that it is appropriate to hold an election during the COVID-19 pandemic, that voting should be conducted entirely by manual ballot, based on the Board's longstanding policy favoring manual balloting. The Employer argues that because it is following the CDC Guidance and taking appropriate precautions and because its employees continue to report to the Employer's facilities daily, there is no basis to deviate from the Board's preference for manual elections. The Employer proposes that a manual election occur on May 21, 2020, at Conference Room T101, Stanislaus County Jail, 200 E

Hacket Rd., Modesto, California 95358¹ from 6:00 a.m. to 8:00 a.m.², 2:00 p.m. to 4:00 p.m., and 6:00 p.m. to 7:00 p.m.

Finally, the parties agreed that the payroll eligibility date for this election is April 25, 2020.

III. EMPLOYER’S REQUEST TO POSTPONE THIS ELECTION INDEFINITELY

The Employer cites *Henry Ford Macomb Hospital Corporation*, Case 07-RC-256592, in support of its request to postpone this election indefinitely. In that case, the parties had reached and the Regional Director of Region 7 had approved a Stipulated Election Agreement for a manual election to occur on March 16, 2020. However, prior to the date of the manual election, on March 13, 2020, the Regional Director of Region 7 postponed the election indefinitely due to the COVID-19 pandemic.

On April 1, 2020, the Board issued notice that beginning April 6, 2020, Regional Offices would resume processing elections, as “conducting representation elections is core to the NLRB’s mission” and that “appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director.” Thereafter, Region 7 contacted the parties about their positions regarding conducting a mail ballot election, and although the petitioner agreed that a mail ballot election was appropriate, the employer opposed a mail ballot election based on “Board policy [which] prefers use of manual elections over mail ballot elections” and took the “position that a manual election should be conducted on the Hospital premises after the current [State of Michigan] “stay home” orders are lifted.”

On April 14, 2020, the Regional Director of Region 7 issued the parties a letter notifying them that he considered the positions of the parties and, “in light of the on-going COVID-19 emergency and the nature of the Employer’s acute health care operations, the election in this case will be held in abeyance until such time as a manual election can be safely conducted at the Employer’s facility.”

Despite the Regional Director of Region’s 7 determination to hold that acute care hospital election in abeyance based on the circumstances of that case, I note that in the Board’s recent unpublished decision, *Crozer-Chester Medical Center*, Case 04-RC-257107 (4/23/20), the Board denied another acute care hospital’s request to stay the election based on the COVID-19 pandemic, acknowledging that:

[T]his election involves employees of an acute-care hospital and that conducting an election during the COVID-19 pandemic raises significant challenges for the employees, the Petitioner, and the Employer, as well as for Regional personnel. However, we recognize that our general obligation is to maintain operations to the extent that it is safe

¹ Petitioner agreed to this location for the election should I decide to order a manual election.

² Petitioner proposed this morning polling session at the hearing should I decide to order a manual election, and the Employer agreed to these morning polling times.

and feasible to do so. Although there may be circumstances in a particular case that warrant postponing an election, the Acting Regional Director carefully considered the circumstances presented here, and neither the parties nor the record has raised an issue that warrants postponement of the election.

IV. BOARD'S ELECTION STANDARDS

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2 (Casehandling Manual). However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* The Casehandling Manual addresses the most common situation where a mail ballot is utilized: where employees are "scattered," working in different geographic areas, working in the same area but traveling on the road, working different shifts, or working combinations of full-time and part-time schedules. *Id.* This scattering of employees was also the issue in *San Diego Gas & Elec.*, and in that case the Board identified a specific test for use under these circumstances.

V. REGIONAL DIRECTOR DECISION FOR THIS ELECTION

The instant case raises two issues: 1) whether to postpone the election indefinitely based on the present State of California and Stanislaus County public health orders due to the COVID-19 pandemic; and 2) whether to direct a mail ballot election based on public health concerns, and specifically whether the circumstances of the COVID-19 pandemic, where the Employer's facilities are located in Modesto, California, at the time of my decision, make a mail ballot appropriate.

With respect to the first issue, as noted by the Board's recent unpublished decision in *Crozer-Chester Medical Center*, Case 04-RC-257107 (4/23/20), this election involves employees of a multi-facility corrections center and that conducting an election during the COVID-19 pandemic raises significant challenges for the employees, the Petitioner, and the Employer, as well as for Regional personnel. However, as the Board recognized, the Board's general obligation is to maintain operations to the extent that it is safe and feasible to do so. On April 1, 2020, the Board notified the public that beginning on April 6, 2020, its Regional Offices would resume processing elections, as "conducting representation elections is core to the NLRB's

mission” and that “appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director.” On April 17, 2020, the Board issued a press release indicating that its representation petitions and elections are being processed and conducted by its Regional Offices and that its Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing Board precedent. I have carefully considered the circumstances presented for the election here, and neither the parties nor the record has raised any issues that warrant postponement of this election. Based on the foregoing and the record as a whole, I deny the Employer’s request to postpone this election indefinitely.

Before turning to the second issue, I note there is no contention that the employees in question are scattered by location or schedule. Absent public health concerns this would not likely be an election where a mail ballot would be considered.

However, for the reasons articulated earlier, this election will not be held under normal circumstances. Guidelines currently in place at the Federal level, including the CDC Guidelines applicable to the Employer, recommend avoiding unnecessary in-person contact and conducting business remotely when possible. In addition, the CDC guidelines for conducting elections during the COVID-19 pandemic encourage mail-in methods that minimize direct contact with other people, if allowed in the jurisdiction. Similarly, public health orders in place in the State of California and in Stanislaus County make it clear that gathering is discouraged unless absolutely necessary. Hundreds of residents of Stanislaus County have confirmed COVID-19 cases, and approximately ten individuals have died. The Employer’s employees are at the workplace because their work is essential to maintain adult inmate and juvenile detainee access to healthcare services, and because of the nature of the work, no option exists to perform their work remotely. While the mail ballot procedure may not be the Board’s preferred procedure, it is one of the Board’s allowed procedures for conducting an election. Under the extraordinary circumstances present during the COVID-19 pandemic, I find it appropriate to order a mail ballot election.

The unit consists of approximately 96 employees. Any manual election will potentially result in at least 96 interactions between the voters, observers, and the Board agent(s) that can be avoided if a mail ballot is used. While the employees are already in contact with one another in the workplace, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among themselves. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary, or may be major, such as an ill employee reporting to work to vote in the manual election. The Board’s manual procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. It is not unreasonable to conclude that an employee who is not working due to illness, considered not working due to mild illness, or has self-quarantined due to exposure to someone who is ill, may report to work to avoid disenfranchisement in a manual election.

It is also reasonable to conclude that a manual election would result in travel, at a minimum of the Board agent(s) if no other party. Although there is no Federal rule or

requirement that strictly prohibits holding a manual election, I find that holding a mail ballot election, and minimizing travel and the contact between individuals, is within the spirit of the current Federal recommendations, including the CDC Guidelines applicable to the Employer and applicable to conducting elections generally.

In reaching this conclusion, I do not find that a manual election is impossible, or that mail ballot elections are the only appropriate option. I only find that in the particular circumstances of this case involving a multi-facility corrections center, with the number of employees involved, the location of the Employer's facilities likely necessitating travel, and the circumstances in Stanislaus County at this time, it is the appropriate option.

I do not find fault with the Employer's comprehensive proposal for conducting a manual election if I ordered the parties to conduct a manual election. The Employer's experience with running a critical business in the COVID-19 environment also likely makes it well suited to apply necessary precautions. However, I do note that some of these precautions, by their very nature, introduce other problems. For example, multiple polling periods lasting several hours may help avoid voters congregating in line while waiting to vote, but this protracted and lengthy manual voting process significantly increases the time the observers and Board agent conducting the election spend in proximity to each other. Ultimately, the Employer's employees are working at the Employer's facilities because no alternative exists due to the nature of their work. However, the Board does have an alternative to conducting a manual election. Additionally, current public health guidance, including the CDC Guidelines applicable to the Employer, strongly recommends avoiding or limiting in-person contact between individuals, and therefore a mail ballot election minimizes such risk.³

I do not agree with the Employer's argument that in *San Diego Gas & Electric*, the Board held that a Regional Director should deviate from a manual election *only* where the following circumstances exist: (1) where eligible voters are "scattered" because of their job duties over a wide geographic area; (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. 325 NLRB 1143, 1145 (1998). I acknowledge that these are the most common reasons that a mail ballot procedure is used, and

³ I note that this approach of balancing Section 7 rights with public health demands is consistent with the broader approach the Board has taken in response to the current COVID-19 pandemic. On March 19, 2020, due to the extraordinary circumstances related to the COVID-19, the Board suspended all elections, including mail ballot elections, until April 3, 2020. On April 1, 2020, after determining measures were in place at the Regional level to allow elections to resume in a safe and effective manner, the Board did not extend this suspension, but allowed elections to resume beginning April 6, 2020, as determined by the Regional Directors.

On April 17, 2020, the Board issued a press release indicating that its representation petitions and elections are being processed and conducted by its Regional Offices. The Board further provided that consistent with their traditional authority, its Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing Board precedent. In doing so, the Board stated that its Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

it is correct that in *San Diego Gas & Elec.*, these reasons were referenced as “situations that normally suggest the propriety of using mail ballots.” *Id.* at 1145.

However, as stated earlier, absent the current extraordinary circumstances, a mail ballot election would almost certainly not be under consideration in this case. The COVID-19 pandemic is an unprecedented situation, and I do not find that the absence of a history of applying mail ballot procedures in similar circumstances suggests a mail ballot is inappropriate. Ultimately, discretion allows for a response to developing or new circumstances, and the Board has stated Regional Directors retain broad discretion to order a mail ballot election where circumstances dictate. See *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998) (“a Regional Director has broad discretion in determining the method by which an election is held.”) I find circumstances are present here that require me to utilize that discretion and order a mail ballot election for the reasons stated above.

Since I have ordered a mail ballot election, the Employer’s corresponding request for me to “prohibit home visits of any nature whatsoever through the end of the election” is denied as inconsistent with the Board’s established pre-election procedures and Rules and Regulations. See *Casehandling Manual*, Sec. 11273; *NLRB Rules and Regulations*, Part 102, Subpart D, Sections 102.67(a) and (b). Nevertheless, I encourage all individuals involved with this matter to act in accordance with the latest Federal, State, and Stanislaus County COVID-19 guidelines for the duration of this proceeding.

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 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 herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.

⁴ During the hearing, the parties stipulated to the following commerce facts:

The Employer, California Forensic Medical Group, Inc. (Wellpath), a California corporation, with facilities located 1115 H Street, Modesto, CA 95354, 2215 Blue Gum Ave., Modesto, CA 95358, and 200 East Hackett Rd., Modesto, CA 95358 (Employer’s facilities), is engaged in the operation of forensic treatment centers which provides health care services on behalf the Modesto Men’s Jail, Modesto Juvenile Hall and Re-Entry and Enhanced Alternatives to Custody Training Center (REACT’s) Public Safety Center East/West and Units 1 & 2. During the past 12 months, a representative period, the Employer has derived gross revenues in excess of \$250,000 from the operation of the Employer’s facilities and has purchased and received goods valued in excess of \$5,000, directly from sources located outside the State of California.

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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time and per diem professional and nonprofessional employees employed by the employer at or from the Men's Jail, Juvenile Hall and REACT, in the following job classifications:

VOTING GROUP - UNIT A (PROFESSIONAL UNIT): Registered Nurses, Psychiatric Nurses, Nurse Practitioners, Family Nurse Practitioners, Licensed Marriage and Family Therapists (LMFTs), Medical Social Workers (MSWs), Marriage and Family Therapists (MFTs), and Licensed Clinical Social Workers (LCSWs).

VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT): Dental Hygienist, Dental Assistant, Clerk, Licensed Vocational Nurse, and Medical Records Clerks.

Excluded: All other employees, employees working in the Jail Based Competency Treatment Program (JBCT), confidential employees, employees represented by other labor organizations, guards and supervisors as defined by the National Labor Relations Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. There will be two voting groups in the election as set forth above, **Unit A** and **Unit B**. Two questions shall appear on the ballot of the professional employees in **Unit A**:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No".
2. Do you wish to be represented for purposes of collective bargaining by **NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)**? The choices on the ballot will be "Yes" or "No".

The question on the ballot for the non-professional employees in **Unit B** will be "Do you wish to be represented for purposes of collective-bargaining by **NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)**?" The choices on the ballot will be "Yes" or "No".

If a majority of the professional employees voting in **Unit A** vote "Yes" to the first question on the ballot, indicating their desire to be included in a unit with non-professional employees in **Unit B**, they will be so included, and their votes on the second question on the ballot regarding whether or not they wish to be represented for purposes of collective bargaining by **NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)** will be counted together

with the votes of the non-professional employees in **Unit B** to decide the question concerning representation for the overall unit consisting of the employees in **Unit A and Unit B**.

If, on the other hand, a majority of the professional employees voting in **Unit A** do not vote “Yes” to the first question on the ballot, their ballots will be counted separately to decide the question concerning representation in a separate **Unit A**.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 32, on May 8, 2020. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 32 office by close of business on May 22, 2020. In order to be valid and counted, the returned ballots must be received at the Region 32 office prior to the counting of the ballots.

All ballots will be commingled and counted at a location to be determined by the Regional Director at 10:00 a.m. on May 27, 2020.⁵ The parties will have the opportunity to participate remotely, if necessary, including using Facetime, to observe the count. No person is permitted to record the ballot count.

Any person who has not received a ballot by May 15, 2020, should immediately contact the Region 32 office at (510) 637-3300, or contact Board Agent Nicholas L. Tsiliacos at (510) 671-3046 or Nicholas.tsiliacos@nrlb.gov, to request a ballot.

B. Voting Eligibility

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending **April 25, 2020**, including employees who did not work during that period because they were ill, on vacation, or were 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)

⁵ If, on the date of the count, the Region 32 office is closed, or the staff of the Region 32 office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.

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. **The Employer must provide a separate list for each voting unit.**

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, May 5, 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.

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.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 Oakland, California this 1st day of May 2020.

/s/ Valerie Hardy-Mahoney

Valerie Hardy-Mahoney
Regional Director
National Labor Relations Board
Region 32
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Oakland, CA 94612-5224