

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

**2101 LLC D/B/A
INTERCONTINENTAL TRUCK BODY**

Employer

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS LODGE 88, AFL-CIO**

Petitioner

Case 19-RC-258144

**2101 LLC D/B/A INTERCONTINENTAL TRUCK BODY'S
EMERGENCY MOTION TO STAY THE ELECTION**

**I. Legal Standard for Staying an Election Subject to the Board's Review of a
Regional Director Decision and Direction of Election.**

2101 LLC d/b/a Intercontinental Truck Body ("ITB" or "Employer") brings this Emergency Motion to Stay the Election pursuant to Section 102.67(j) of the National Labor Relations Board's ("NLRB" or "Board") Rules and Regulations and respectfully requests the Board grant an emergency stay of the election in this matter. The Region 19 Director, in his Decision and Direction of Election issued May 19, 2020, directed a mail-ballot and further directed that ballots will be mailed on May 29, 2020. Exhibit A, *2101 LLC D/B/A Intercontinental Truck Body*, 19-RC-258144 (May 19, 2020).

Under Section 102.67(c)-(e) of the NLRB's Rules and Regulations, a party may request Review of "any action of a Regional Director delegated to him under Section 3(b) of the Act to also move to stay some or all of the proceedings, including the election." 29 C.F.R. § 102.67(c)-

(d) (2020). In addition to its Request for Review, a party may also request extraordinary relief in the form of “a stay of some or all of the proceedings, including the election.” *Id.* at § 102.67(j)(1)(ii). The Board’s Rules and Regulations provide that extraordinary relief in the form of a stay of election requires “a clear showing that it is necessary under the particular circumstances of the case.” *Id.* at § 102.67(j)(2).

II. The Regional Director Abused his Discretion by Ordering a Mail Ballot When There are Zero Active Cases in the County Where the Employer is Located.

Deer Lodge County, Montana – where the Employer is located – has **zero active COVID-19 cases**. Montana State Library, *MONTANA RESPONSE: COVID-19 - Coronavirus - Global, National, and State Information Resources* (last accessed May 22, 2020).¹ Deer Lodge County has maintained zero active cases for nearly two months. The Regional Director abused his discretion by directing a mail ballot election despite the Board’s longstanding presumption in favor of manual ballot elections. *See e.g., San Diego Gas and Electric*, 325 NLRB 1143 (1998); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954). The Regional Director improperly applied the “extraordinary circumstances” exception to the Board’s presumption in favor of manual elections where no extraordinary circumstances exist. *See San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Deer Lodge County, Montana’s zero active cases of COVID-19 do not rise to the level of an extraordinary circumstance at “the election scene.” *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954). The Board’s recent, unpublished Orders denying review of Regional Directors’ directions of mail ballot elections presented starkly different factual situations, *i.e.*, hundreds or thousands of active COVID-19

¹ <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>

cases in the “local area.”² *Johnson Controls, Inc.*, 16-RC-256972, fn.1 (Order Denying Request for Review, May 18, 2020); *Touchpoint Support Services, LLC*, 07-RC-258867, fn.1 (Order Denying Request for Review, May 8, 2020); *Atlas Pacific Engineering Company*, 7-RC-258742, fn.1 (Order Denying Request for Review, May 18, 2020).

III. A Stay is Necessary to Determine Whether the Extraordinary Circumstances Exception Warrants Foregoing a Manual Ballot Election.

Here, a stay is necessary because undoing an erroneously ordered mail ballot election in favor of a manual ballot election must be accomplished prior to the scheduled mailing of ballots on May 29. Exhibit A, *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144 (May 19, 2020). Moreover, the unique circumstances presented in this case, combined with the lack of published Board case law addressing any similar circumstances, raise important and unanswered question about what constitutes “extraordinary circumstances” sufficient to warrant foregoing the presumption in favor of a manual ballot election for mail ballots. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998).

The Board’s longstanding deference to Regional Directors’ determinations regarding the time and place of elections derives from the Directors “close view of the election scene, including the many imponderables which are seldom reflected in a record, [which] is essential to a fair determination of this issue.” *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954). In a series of recent, unpublished Order, the Board reiterated that “the Agency’s assessment of current Covid-19 pandemic conditions in the local area” should serve to guide any decision about the prudence of in person Board activity, such as, holding an in-person election. *Johnson Controls, Inc.*, 16-RC-256972, fn.1 (Order Denying Request for Review, May 18,

² The Employer’s Statement of Position Regarding Method of Election (Exhibit B) includes a chart that briefly lays out this stark contrast in COVID-19 case numbers.

2020); *Touchpoint Support Services, LLC*, 07-RC-258867, fn.1 (Order Denying Request for Review, May 8, 2020); *Atlas Pacific Engineering Company*, 7-RC-258742, fn.1 (Order Denying Request for Review, May 18, 2020).

Here, the Regional Director directed a mail ballot “despite the fact that Deer Lodge County has so far been fortunate to have only three confirmed cases of COVID-19 and zero deaths,” instead, relying generally on a finding “that the COVID-19 pandemic presents an extraordinary circumstance.” Exhibit A, *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144 (May 19, 2020). The Regional Director further found that a manual ballot election would present “a significant risk for all election participants,” but does not in any way attempt to define or quantify that “significant risk.” *Id.* Moreover, the “significant risk” found by the Regional Director does not comport with the fact that at the time of the hearing for the election Deer Lodge County itself had zero active cases and this remains true today. Montana State Library, *MONTANA RESPONSE: COVID-19 - Coronavirus - Global, National, and State Information Resources* (last accessed May 22, 2020).³

IV. Conclusion

The Regional Director abused his discretion in finding that conducting a manual election at the Employer’s facility in Anaconda, Montana poses a significant risk that rises to the level of an extraordinary circumstance under Board precedent. Generalized references and reliance upon the effects and prevalence of COVID-19 in other parts of the country to find a level of risk that triggers the extraordinary circumstances exception in *San Diego Gas* contravenes Board precedent. This case raises the substantial question of what limits, if any, confine Regional Directors’ use of the extraordinary circumstances exception to overcome the Board’s

³ <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>

presumption in favor of manual elections, while COVID-19 is present in any degree, in any part of the country. A stay is necessary to maintain the status quo and delay the mailing of ballots until the Board can review and remedy the Regional Director's abuse of discretion.

Date: May 22, 2020

Respectfully Submitted by:

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CERTIFICATE OF SERVICE

The undersigned, on behalf of Employer, 2101 LLC d/b/a Intercontinental Truck Body, LLC, sent a true and correct copy on May 22, 2020, via efile and email, of Intercontinental Truck Body's Emergency Motion to Stay the Election this day to the NLRB Region 19 Director and to the parties at the addresses set forth below:

Office of the Executive Secretary
National Labor Relations Board
via efile

Ronald K. Hooks, NLRB Region 19 Director
via efile

Sara Dunn
via email: Sarah.Dunn@nlrb.gov

Adam D. Morrison
via email: Adam.Morrison@nlrb.gov

Jason Hardwick
via email: jhardwick@iamaw.org

Caren Sencer
via email: csencer@unioncounsel.net

/s/Richard D. Alaniz
Richard D. Alaniz

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

**2101 LLC D/B/A INTERCONTINENTAL TRUCK
BODY**

Employer

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Case 19-RC-258144

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LODGE 88, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The petition in this matter was filed by International Association of Machinists and Aerospace Workers, Lodge 88, AFL-CIO (Petitioner) on March 17, 2020,¹ under Section 9(c) of the National Labor Relations Act, as amended (Act), seeking an election to represent a unit of production and maintenance employees employed by 2101 LLC d/b/a Intercontinental Truck Body (the Employer) at its manufacturing facility located in Anaconda, Montana (Employer's facility). There are approximately 18 employees in the unit sought.

On March 18, Region 19 (the Region or Region 19) of the National Labor Relations Board (the Board) served the petition on the parties and issued a Notice of Hearing in this matter. On April 8, the Region issued an Order Rescheduling the Hearing to May 27. On April 27, the Region issued an Order further Rescheduling the Hearing from May 27 to May 14.

On May 13, both parties executed a Stipulation of Record for Pre-Election Hearing (Stipulation), agreeing that they are not in dispute about any other issues and that the sole issue precluding them from reaching a stipulated election agreement in this case is the manner of election, specifically, whether the election should be conducted by manual election or by mail ballot election, and the date(s) of the election. The parties also agreed that their Stipulation, its exhibits, and each party's position statements regarding the manner of the election due on May 15 constitutes the entire record for this matter (stipulated record) and that I will make a determination solely on the basis of the parties' stipulated record. Further, the parties agreed in their Stipulation that they retain the right to file, **limited to the method, date, time, and place of election ordered**, a request for review of my decision with the Board. (emphasis in original) Additionally, the parties agreed in their Stipulation that if I order a mail ballot election, and if I set a due date for returning ballots different than the date of the ballot count, the parties understand that no ballot will be counted that Region 19 receives after the due date I established.

¹ All dates hereafter are in 2020 unless otherwise indicated.

The parties further waived their right to file objections based upon any untimely received ballots.

Based on the parties' Stipulation and the stipulated record, the only issue I must determine is the manner of the election, whether to conduct a manual election or a mail ballot election given the reality of the COVID-19 pandemic.

II. FACTUAL OVERVIEW AND POSITIONS OF THE PARTIES

A. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of May 18, 1,480,349 people in the United States have been infected with COVID-19 and 89,407 people have died from it.² The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus. *How to Protect Yourself and Others*.³ Many of the measures recommended by CDC 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. *Id.*

The CDC and the Occupational Safety and Health Administration have also recently issued specific interim guidance for the manufacturing industry, *Manufacturing Workers and Employers* (Interim Guidance).⁴ This Interim Guidance states that the virus is thought to spread mainly from person to person:

- Between people who are in close contact with one another (within about 6 feet, which is about two meters); and
- Through respiratory droplets produced when an infected person coughs, sneezes, or talks.

According to the Interim Guidance, recent studies indicate that people who are not showing symptoms can spread the virus, and it may also be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes. The Interim Guidance notes that this is not thought to be the main way the virus spreads, but acknowledges that we are still learning more about this virus.

With respect to the exposure to COVID-19 among manufacturing workers specifically, the Interim Guidance underscores that the manufacturing work environment—production or assembly lines and other areas in busy plants where workers have close contact with coworkers and supervisors—may contribute substantially to workers' potential exposures. The Interim Guidance notes distinctive factors affecting manufacturing workers' risk for exposure to COVID-19 including:

² See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

³ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-manufacturing-workers-employers.html>.

- **Distance between workers** – Manufacturing workers often work close to one another on production or assembly lines. Workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker/changing rooms.
- **Duration of contact** – Manufacturing workers often have prolonged closeness to coworkers (e.g., for 8–12 hours per shift). Continued contact with potentially infectious individuals increases the risk of COVID-19 transmission.
- **Type of contact** – Manufacturing workers may be exposed to the infectious virus through respiratory droplets in the air—for example, when workers in a plant who have the virus cough or sneeze. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances/exits to the facility may contribute to their risk.

The Interim Guidance suggests certain administrative controls employers should implement to promote social distancing, including the following: limiting facility access only to essential workers; if meetings must be held, such as at shift changes, breaking them into smaller groups instead of holding a larger meeting, and eliminating non-essential meetings; employees maintaining at least 6 feet of distance from others at all times, including on breaks; and providing visual cues (e.g., floor markings, signs) as a reminder to workers to maintain social distancing. Other Interim Guidance recommendations to limit exposure and transmission of COVID-19 include: cohorting (grouping together) employees to reduce the spread of COVID-19 in the workplace by minimizing the number of different individuals who come into close contact with each other, potentially reducing the number of workers outside of the cohort exposure to the virus; and educating employees to avoid touching their faces, including their eyes, noses, and mouths, particularly until after they have thoroughly washed their hands upon completing work and/or removing personal protective equipment (PPE).

Further, although not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections, *Recommendations for Election Polling Locations*⁵ (CDC Election Guidance), stating that officials should encourage mail-in voting. This CDC guidance provides as follows:

Actions for elections officials in advance of election day

Encourage voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.

- Encourage mail-in methods of voting if allowed in the jurisdiction.

In addition, many state and local governments have issued restrictions tailored to the situation in specific communities. On April 22, Montana Governor Steve Bullock (Governor)

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

issued a Directive providing guidance for the phased reopening of Montana (Directive).⁶ This Directive extends the March 30 mandatory quarantine for non-business travelers from out of state through the end of the emergency, requiring non-business travelers to quarantine for 14 days or for the duration of their visit – whichever is shorter. However, out-of-state travel to Montana for work-related reasons is exempt from this mandatory quarantine.

The Directive establishes three phases, explaining that the duration of each phase will be regularly evaluated in close consultation with public health and emergency management professionals. Factors considered in moving from one phase to the next include the ability for public health professionals to monitor new cases adequately and conduct contact tracing. Hospitals must maintain the ability to treat all patients safely, both COVID-19 patients and those with other health conditions. Montana must maintain its ability to screen and test all people with COVID-19 symptoms and maintain sufficient levels of PPE. The Directive emphasizes that negative indicators in these areas may result in the need to re-implement certain restrictions or take other protective measures.

There are certain requirements for employers that apply to all three phases, including developing and implement appropriate policies, in accordance with Federal, state, and local regulations and guidance, and informed by industry best practices, regarding: social distancing and PPE; temperature checks and/or symptom screening; testing, isolating, and contact tracing, in collaboration with public health authorities; sanitation; using and disinfecting common and high-traffic areas; monitoring the workforce for indicative symptoms and not allowing people with symptoms of COVID-19 to work; and collaborating with public health officials when implementing policies and procedures for workforce contact tracing following an employee's COVID-19 positive test result.

During Phase One, which is currently in effect, individuals should avoid gathering in groups of more than 10 people in circumstances that do not readily allow for appropriate physical distancing. Phase One guidance for employers includes: allowing employees to telework, and if telework is not feasible, accommodating alternative work schedules such as shift work and staggered scheduling in order to adhere to social distancing guidelines; closing common areas where personnel are likely to congregate and interact, or enforce strict social distancing protocols; and minimizing non-essential business travel.

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in Montana and throughout the United States. As of May 18, the Montana State Library (Library) reports that in Montana, there have been 470 confirmed cases of COVID-19, 20 active cases of COVID-19, and 16 deaths from COVID-19.⁷ At the local level, the Employer's facility is in Anaconda, Montana, located in Deer Lodge County. According to the Library, as of May 18, there were 3 confirmed cases of COVID-19 in Deer Lodge County. *Id.* The Library does not contain any data indicating whether

⁶ See <https://covid19.mt.gov/>.

⁷ See <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>.

any Deer Lodge County residents have died from COVID-19, but according to local news reports, there have been no COVID-19 deaths in Deer Lodge County.⁸

B. The Employer's Ongoing Operations

The Employer has continued operating its manufacturing facility, providing essential military and commercial transportation equipment, including aluminum grain hauling equipment, platforms, shelters, C-130 aircraft loading ramps (ramps), and steel flight line tow vehicles (tow trucks). The Employer's facility receives raw materials such as aluminum, Ford F350 trucks, or customer supplied commercial vehicles and pre-cut steel plates to convert vehicles. According to the Employer, its ramps are formed, drilled, riveted, painted, and shipped based on the required specifications. To create military tow trucks, Ford F350 Trucks are shortened in length; new steel bodies are formed, welded, painted, and installed; and new lighting, wiring, and hitches are installed. Further, the Employer modifies commercial trucks by assembling aluminum beds, making boxes for the truck bed, and converting the bed by adding lights and wiring and performing other modifications. According to the Employer, since it has remained operational for the duration of the COVID-19 pandemic, with its employees working at the Employer's facility, maintaining excellent attendance, the Employer and its employees are knowledgeable and experienced in COVID-19 social distancing and hygiene best practices.

III. POSITION OF THE PARTIES

A. Petitioner's Position – Mail Ballot Election is Necessary due to COVID-19

Petitioner maintains that a mail ballot election is necessary because of the extraordinary circumstances of the current COVID-19 pandemic and its associated restrictions. The Petitioner notes that Regional Directors have wide discretion in determining the place, time, and manner of election, and the Board has already denied a request for review of a Regional Director exercising her discretion to order a mail ballot to protect voters, party representatives, and Board agents.⁹ Petitioner highlights that Montana's phased re-opening requires that significant precautions still be taken and pays particular attention to those traveling to Montana from out of state, including a Board agent who would either be traveling from Seattle or Spokane in Washington State or from Portland, Oregon. With respect to such out-of-state travel to Montana, I note that Petitioner's counsel's office is located in Alameda, California, and the Employer's counsel's office is located in Houston, Texas.

Petitioner requests that I exercise my discretion to direct a mail ballot election at the earliest practicable date – 10 days after the issuance of this decision. To accommodate this request to have the election as early as possible, Petitioner agreed to waive three days of the 10 days it is entitled to have the voter list prior to the election, agreeing to have the list for a total of seven days.

⁸ See, e.g. <https://www.kpax.com/news/coronavirus/no-new-covid-19-cases-reported-in-montana-sunday-may-17>.

⁹ See *Atlas Pacific Engineering Company*, 7-RC-258742 (Order Denying Request for Review, May 8, 2020).

With respect to the risks associated with holding a manual election during the COVID-19 pandemic, Petitioner notes that a manual election would require at least 18 interactions between voters, two observers, and the Board agent. Further, a voter list is shared between the two observers and the Board agent, with observers less than a foot apart when they check off voters. According to Petitioner, the Employer's suggested precautions to reduce such risks during a manual election are insufficient and add additional obstacles to its employees voting in the election. In conclusion, although all parties would generally advocate for a manual election under normal circumstances, the Petitioner notes that the uncertainties present make a mail ballot election the only means by which I can ensure that the Employer's employees have the ability to exercise their rights under the Act in a timely and safe manner.

B. Employer's Position – Manual Election at the Employer's Facility

The Employer argues that the election should be conducted entirely by a manual election, based on the Board's longstanding policy favoring manual elections. According to the Employer, a manual election can be safely conducted at the Employer's facility and would result in a much quicker ballot count than a mail ballot election. The Employer proposes holding a manual election at the Employer's facility from 1:30 p.m. to 2:30 p.m. on Friday, June 5.

According to the Employer, since there are only approximately 18 employees in the petitioned-for unit, voting could be completed in less than an hour, utilizing strict social distancing and hygiene protocols. To observe social distancing and hygiene guidelines advised by the CDC, the voting room could be thoroughly deep cleaned and disinfected immediately prior to the commencement of voting using a 60% or greater alcohol solution. Eligible voters could remain at their workstations while waiting to vote until the prior voter exits the voting area, or alternatively, wait in a line, standing more than six feet from one another, indicated by floor markings. Eligible voters could check their temperature prior to casting their ballot. I note that the Employer's proposal does not specify how such temperature checks would take place, including ensuring that the thermometer is sanitized between each use and that the temperature reading is accurate. The Employer proposes a voting area at its facility, in an unidentified area on its shop floor of an approximate 40 feet by 40 feet size, cordoned off for privacy by welding curtains, which would purportedly be large enough to allow for the two observers, the Board agent, and the voter present to remain more than six feet apart for the entire voting period.

The Employer further proposes that the equipment necessary to run Board manual elections such as a voting booth, a ballot box, a voter list, and ballots, could be packaged in plastic bags and isolated from contact with Board personnel for several days or a week prior to the Board agent conducting the election transporting the materials to the Employer's facility. According to the Employer, the necessary distribution of election equipment materials, such as election instructions for observers and badges for observers, could be done through the Board agent placing such materials on each observer's separate table while the observers are not present.

Further, the Employer suggests that each observer could have his or her own voter list to allow for necessary social distancing, and each observer could check off voters on different sides

of the voters' names using different colored pens or pencils. The Employer proposes that the Board agent have a separate table, and the voting booth could be at least six feet away from the Board agent's table and both observers' tables. The Employer further indicates that a taped off path and signage could indicate the route to indicate how voters should proceed into the voting area to the observer checking tables, then to the voting booth, and then out of the voting area, all while remaining six feet away from the observers and Board agent. Additionally, the Employer offers to place clear plastic screens in front of both observers' tables and the Board agent's table as an extra safety measure.

The Employer proposes that each voter would enter the voting area one at a time. The voter could then stand at a designated floor marking, state his or her name, the observers could check that voter off the list, the Board agent could place a ballot on the table for the voter to retrieve after the Board agent has backed away from his or her table at a distance of at least six feet, the voter could retrieve the ballot off of the table, proceed to the voting booth, and place the ballot in the ballot box. Spoiled ballots could be handled in this same manner, by the voter placing the spoiled ballot on the Board agent's table, the Board agent retrieving the ballot, inspecting it, placing a clean ballot on the table, the voter retrieving the clean ballot, after the Board agent has backed at least six feet away from the table, and the voter could then proceed again to the voting booth and then the ballot box. The closing of the polls and all signing and certifying of documents by the Board agent and the parties could be completed consecutively, rather than concurrently, while following social distancing protocols.

As for the challenged ballot procedure, the Employer proposes that the Board agent fill out the appropriate information on the challenged ballot envelope at the Board agent's table. While the voter remains in the voting booth, the Board agent could place the challenge envelope on the voting table for the voter to retrieve. Once the Board agent returns to his or her table, the voter could exit the voting booth, display his or her folded ballot, place the ballot in the challenged ballot envelope, seal the envelope, and place the envelope in the ballot box. According to the Employer, the small size of the petitioned-for unit and the parties' Stipulation to the unit composition mean the likelihood of any challenged ballots is slim.

Finally, the Employer proposes that it would provide hand sanitizer for the observers and Board agent at their respective tables. The Employer would also provide all participants, including the Board agent, both observers, and all voters, gloves and N95 masks to wear throughout the manual election. Voters would sanitize their hands immediately before and after casting their ballots. Each voter would use his or her own pencil or pen to fill out the ballot or, alternatively, any commonly used pen or pencil could be sanitized after each use. Each voter could wipe down the voting booth surfaces with a disinfectant wipe prior to departing. Due to the small size of the petitioned-for unit and the familiarity between eligible voters, any lowering of masks for identification purposes would be unnecessary.

With respect to a mail ballot election, the Employer argues that a mail ballot election could disenfranchise voters and result in low voter participation due to the unreliability of the mail, mail service delays, and delays associated with the Regional office's receipt of mail ballots since all Board staff are currently teleworking. The Employer also notes that the Employer's

facility, located in Deer County, Montana, a county with zero active COVID-19 cases, in a state with a total of 20 active COVID-19 cases, does not present extraordinary circumstances warranting a mail ballot election.

IV. ANALYSIS

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.¹⁰ Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.¹¹

Although the Board prefers to conduct manual elections over conducting mail ballot elections, the Board has made it clear that mail ballot elections need not be reserved only for the most extraordinary circumstances, reasoning that "neither our precedent nor common sense supports such a stringent approach to the use of mail ballots." *Sutter Bay West Hospitals*, 357 NLRB 197, 198 (2011). Indeed, the Board has always acknowledged that circumstance may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted." *Id.*

The Board has determined that there are some instances in which a mail ballot election is appropriate because "of circumstances that would tend to make it difficult for eligible employees to vote in a manual election." *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that extraordinary circumstances may warrant a departure from the specific guidelines articulated in that case. *Id.*

¹⁰ In its April 17th press release, the Board stated that Regional Directors have discretion with respect to when, where and if an election can be conducted in accordance with existing Board precedent and the Board specifically noted that Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state, and local laws and guidance. See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

¹¹ See *Atlas Pacific Engineering Company*, 7-RC-258742 (Order Denying Request for Review, May 8, 2020).

I acknowledge that absent public health concerns, I would not order a mail ballot election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. As noted above, current Federal and state public health guidance strongly recommends discouraging gatherings and minimizing non-essential business travel, and a mail ballot election minimizes such risk. As noted above, despite the fact that Deer Lodge County has so far been fortunate to have only three confirmed cases of COVID-19 and zero deaths from COVID-19, a manual election at the Employer's facility in Anaconda, Montana, at a minimum, would require a Board agent to travel from Spokane¹² or Seattle¹³ in Washington State, or from Portland, Oregon,¹⁴ and could also involve the travel of Petitioner's counsel from Alameda, California¹⁵ and the Employer's counsel from Houston, Texas,¹⁶ where, in all of these areas, the COVID-19 statistics are far more grim than in Montana. The Employer's employees remain working at the Employer's facility because they provide essential services to their military and commercial customers, and because of the nature of their manufacturing and fabrication work, no alternative exists to perform their work remotely. However, the Board does have an alternative to conducting a manual election.

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the unit employees' union representation preferences at this time. The safety of the voters, the observers, the out-of-state party representatives, and the out-of-state Board agent conducting the election must be considered in determining the appropriate method for conducting the election.

Although the Employer has offered certain accommodations in an effort to allow for some degree of social distancing and protection during the election, manual election procedures inherently require substantial interaction. Voters, observers, and party representatives would all need to appear at the Employer's facility to participate in the election. Party representatives, the observers, and the Board agent would have to gather for approximately 15 to 30 minutes for the pre-election conference, including the check of the voter list and the parties' inspection of the voting area. The Board agent and observers would need to share a voting area indoors, of approximately 40 feet by 40 feet, enclosed merely by welding curtains, for the duration of the proposed manual election spanning an hour. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. The Board agent must provide a ballot to each voter, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent and observers might need to use a restroom at the Employer's facility, perhaps before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, typically held in the

¹² See <https://srhd.org/covid19cases>.

¹³ See <https://www.doh.wa.gov/emergencies/coronavirus>.

¹⁴ See <https://govstatus.egov.com/OR-OHA-COVID-19>.

¹⁵ See <https://ac-hcsa.maps.arcgis.com/apps/opsdashboard/index.html#/1e0ac4385cbe4cc1bffe2cf7f8e7f0d9>.

¹⁶ See <https://harriscounty.maps.arcgis.com/apps/opsdashboard/index.html#/c0de71f8ea484b85bb5efcb7c07c6914>.

same voting area, with the observers, party representatives, and other employees who wish to attend.

In these circumstances, the substantial interaction inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and protective measures proposed by the Employer. Although the Employer directs that employees abide by certain protective measures while at work, it cannot police employees' adherence to those measures in the polling area and the Board agent cannot also police employees' adherence to those measures at the locations outside the voting area. Despite the Employer's apparent precautions to minimize the transmission and spread of COVID-19 at the Employer's facility, any election participant could be an asymptomatic carrier of the virus.

Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary if the employee were performing work duties, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election. The Board's manual election procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. Additionally, conducting manual elections under the current circumstances could disenfranchise voters, as employees may be wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation.

Since the Employer prefers a manual election, I do not take my determination to conduct a mail ballot election lightly. I do not find that a manual election is impossible, or that a mail ballot election is the only appropriate option. However, I have determined that, under the current circumstances, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. In fact, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages mail-in methods of voting if allowed during this extraordinary COVID-19 pandemic.

In sum, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees' union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency's obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The parties stipulated and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁷
2. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time production, fabrication, maintenance, and facilities maintenance employees employed directly by the Employer at its Anaconda, Montana facility.

Excluded: All other employees, employees supplied by temporary staffing agencies, employees supplied through the Job Corp Program, professional employees, clerical employees, managers, and guards and supervisors as defined by the Act.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 18 employees.

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

¹⁷ The Employer, a State of Montana limited liability company, with a place of business in Anaconda, Montana, is engaged in the business of manufacturing various commercial and military transportation equipment. In the past twelve months, a representative period, the Employer has purchased and received goods valued in excess of \$50,000 directly from points outside the State of Montana and received gross revenues in excess of \$500,000. Accordingly, the Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board.

be represented for purposes of collective bargaining by **INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LODGE 88, AFL-CIO.**

A. Election Details

I have determined that a mail ballot election will be held for the reasons I have explained above.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. On **Friday, May 29, 2020**, ballots will be mailed to voters by an agent of Region 19 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, June 5, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 19 Office at (206) 220-6300 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by **12:00 p.m. (noon) PST on Friday, June 19, 2020**. All ballots will be commingled and counted by an agent of Region 19 of the National Labor Relations Board on **Wednesday, June 24, at 1:00 p.m.**, likely via a videoconference to be arranged by Region 19. In order to be valid and counted, the returned ballots must be received at the Region 19 Office by **12:00 p.m. (noon) PST Friday June 19, 2020**. Per the parties' stipulation, no ballots will be counted that are received after the due date. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, May 9, 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 who are present in the United States may vote.

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 **Thursday, May 21, 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.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. 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, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. 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.

2101 LLC d/b/a Intercontinental Truck
Body
Case 19-RC-258144

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 Seattle, Washington this 19th day of May 2020.

RONALD K. HOOKS

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006

EXHIBIT B

TO: Ronald K. Hooks, Regional Director
Region 19
National Labor Relations Board
915 2nd Avenue
Room 2948
Seattle, WA 98174-1078

FROM: Alaniz Law & Associates
Representative for 2101 LLC d/b/a Intercontinental Truck Body

DATE: May 15, 2020

RE: Case No: 19-RC-258144
Petitioner: International Association of Machinists and Aerospace Workers, AFL-CIO

STATEMENT OF POSITION REGARDING METHOD OF ELECTION

I. Board Precedent Favors Manual Ballot Election Because Manual Ballots Best Ensure Employee Enfranchisement

As previously communicated to the Region, the Employer believes that a manual ballot election in the single, Anaconda, Montana facility of the Employer is safe and appropriate in this case for a variety of reasons. The National Labor Relations Board (“NLRB” or “Board”) has long held that the National Labor Relations Act (“NLRA” or “Act”) grants the Board the power to “designate the site of an election.” *In re Halliburton Servs.*, 265 NLRB 1154 (1982). The Board has also, in its discretion, primarily left the determination of the time and place of elections to the discretion of the Regional Director, based on the Director’s “close view of the election scene, including the many imponderables which are seldom reflected in a record, [which] is essential to a fair determination of this issue.” *Manchester Knitted Fashions, Inc.*, 108

NLRB 1366 (1954). The Board has made clear that the Regional Director’s discretion “is not unfettered and is to be exercised within certain guidelines,” and “that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.” *San Diego Gas*, 325 NLRB 1143, 1144 (1998). Board precedent favors manual elections in the unit’s workplace because this facilitates unit members’ opportunity to vote. *In re Halliburton Servs.*, 265 NLRB 1154 (1982); *Groceryworks.com Operating Company LLC*, 19-RC-254203 (Jan. 24, 2020). Further, mail ballot elections are “more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over the employees’ voting,” and “inspire lower participation than on-site elections.” *Thompson Roofing, Inc.*, 291 NLRB 743, fn. 1 (1988); *Kwik Care Ltd. v. NLRB*, 82 F.3d 1122, 1126 (D.C. Cir. 1996).

The Board’s *San Diego Gas* decision sets out guidelines clarifying the circumstances under which the Regional Director has the discretion to direct the use of mail ballots. The Board cites three specific situations that “normally suggest the propriety of using mail ballots.” *San Diego Gas*, 325 NLRB 1143, 1145 (1998). They are: 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. None of these circumstances are present in this case. In addition, there are no other factors present that would likely inhibit voter participation, which is the Board’s primary consideration in selecting between a mail or manual ballot election. *San Diego Gas*, 325 NLRB 1143, 1146 (1998).

The Board’s position is further laid out in the NLRB Casehandling Manual (Part Two), Representation Procedure (“Casehandling Manual” or “Manual”) Section 11336, which states

that “the use of mail balloting, at least in situations where any party is not agreeable to the use of mail ballots, should be limited to those circumstances that clearly indicate the infeasibility of a manual election.” Here there is no infeasibility related to the potential eligible voters. The employees all work at the Employer’s single facility in Anaconda, Montana. All potential unit employees work on a single daytime shift with the same daily work schedule. The Employer is deemed “essential” and all employees have been reporting for work as scheduled throughout the emergency.

In this case, the only basis for considering foregoing a manual ballot election in favor of a mail ballot election is the potential difficulties posed by the Coronavirus pandemic. The Board has recently acknowledged in an unpublished decision that a Regional Director’s Decision and Direction of a mail ballot, relying on “the extraordinary federal, state, and local government directives” limiting non-essential activity, was not an abuse of discretion. *Atlas Pacific Engineering Company*, 27-RC-258742, fn.1 (May 8, 2020). The Board further stated that Regional Directors’ “assessment of current Covid-19 pandemic conditions in the local area” and how these conditions potentially affect Board personnel safety is a proper basis for considering the merits of a mail ballot. *Id.* For the reasons stated in detail below, the circumstances in the local area – Anaconda, Montana – are far from extraordinary. Montana’s Stay-At-Home order has expired, any de minimis risk to Board personnel can be mitigated through common sense precautions, and no present circumstance warrants deviation from the Board’s longstanding preference for manual ballot elections.

a. Mail Delivery Disruptions May Disenfranchise Voters

Numerous, recent news reports throughout the country highlight the problems with mail delivery during the COVID-19 pandemic. Such delivery issues are more rampant at the United

States Postal Service (“USPS” or “Postal Service”) due to the number of postal workers in the country that have been affected by COVID-19. A statement issued by the National Association of Mail Carriers on April 17, 2020, found that 8,000 postal workers were quarantined at that time. Frederic Rolando, *Statement from President Frederic V. Rolando Re: COVID-19 Virus Crisis*, National Association of Letter Carriers (May 14, 2020), <https://www.nalc.org/news/nalc-updates/body/4-17-20-statement.pdf>.

Problems with delivery of the mail could cause employees to lose their voice in the election. The post office Mail delivery problems have been reported in Detroit, Colorado, New Orleans, New York, and several other locations. Anne Runkle, Oakland County residents report delays in mail delivery, *The Oakland Press*, (April 22, 2020)

https://www.theoaklandpress.com/news/coronavirus/oakland-county-residents-report-delays-in-mail-delivery/article_be936296-840d-11ea-bf7a-731dcf043be3.html; Evan Kruegel, Coloradans report mail delays; COVID-19 causing delivery issues nationwide, FOX31 Denver KDVR-TV, (April 16, 2020) <https://kdvr.com/news/coronavirus/coloradans-report-mail-delays-covid-19-causing-delivery-issues-nationwide/>; Thomas Perumean, Problems with Postal Service another fallout due to COVID-19, WWL 870 FM 105.3, (April 9, 2020),

<https://wwl.radio.com/articles/problems-with-postal-service-another-fallout-due-to-covid-19>; Jake Offenhartz, Gothamist, "The Mail Just Stopped": Coronavirus Staffing Shortages And Budget Gaps Push Postal Service To Brink Of Collapse, (April 2, 2020) <https://gothamist.com/news/mail-coronavirus-staffing-postal-service-covid-19>.

Even where delivery in an area is not affected, individuals may lose delivery of mail. In one case, a woman that tested positive for COVID-19 was reportedly refused service for mail. Arezow Doost, Post-it note left for woman diagnosed with COVID-19 reads no more mail

delivery, (May 11, 2020), <https://www.kxan.com/investigations/post-it-note-left-for-woman-diagnosed-with-covid-19-reads-no-more-mail-delivery/>.

Moreover, there is a possibility that mail delivery could completely stop.

Congresspersons Maloney and Connolly issued a statement that the Postal Service could shutter as early as June unless Congress provides relief. Congressperson Carolyn B. Maloney and Gerald E. Connolly, Letter to Majority Leader Mitch McConnell, March 24, 2020, available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-03-24.CBM%20GEC%20to%20McConnell-%20Senate%20re%20Postal%20Emergency.pdf>.

Obviously, the end of the Postal Service or any of the significant reported disruptions would require the parties to consider other methods for employees to return their ballots or result in ballots not being counted. A delay in delivery of mail would cause ITB employees to lose the ability have their voices heard in this election. A manual election would avoid all of these potential issues that could further delay the process.

b. Past Comments and Concerns from the NLRB Itself Demonstrate that a Mail Ballot Election May Limit Employees' Ability to Participate in the Election

Problems with mail ballots have been noted by prior NLRB regional offices. These were outlined when Chairman William Gould proposed expanding the use of mail ballots in 1994.

Comments included that:

- A Board agent's presence provides employees an increased sense of security and assurance that their rights are preserved. Daniel V. Yager, *NLRB Agency in Crisis*, 46 (1996) (*quoting* Richard J. Roth, Assistant Director of Brooklyn NLRB Regional Office).
- There is increased potential for interference by either party, which increases the odds that an additional election will have to be conducted because of misconduct. *Id.*

- Ballots are included with other junk mail that reduces the seriousness of the process. *Id.* (quoting Nina Rzymiski, NLRB Region 6, Election Specialist).
- A voter that is confused or uncertain about the process lacks the ability to speak with an official agent to answer questions, which increases the likelihood that they will procrastinate and “find it easier to not vote.” *Id.*

The problems of a mail ballot election are demonstrated in *Western Wall Systems, LLC*, 28-RC-247464 (Apr. 16, 2020). *Western Wall* was a mixed manual ballot election where seven votes were to be counted by mail. *Id.* There were numerous problems with these mail ballots. *Id.* There were statements that most, if not all of the ballots may not have been received by the designated date; a voter contacted the NLRB, but the NLRB stated that they did not know anything about the ballots; five of the voters received duplicate ballots and these were not counted because they were not properly completed or arrived late at the NLRB. *Id.* Moreover, the envelopes that needed to be signed only had instructions in English and the unit was primarily composed of people that were only literate in Spanish. *Id.* Finally, many of the employees in this election received the ballot on the same day that would have been required to return it. *Western Wall Systems, LLC*, 28-RC-247464 (Apr. 16, 2020). All of these issues disenfranchised members of the potential bargaining unit even though the results in the election were not affected. *Id.*

The NLRB has itself decided to no longer issue decisions by mail but is instead using eservice as many of its members are teleworking. (see exhibit _____ email discussing service of NLRB decisions). The NLRB’s decision shows the increased problems that may be present for the NLRB in conducting a mail ballot election.¹

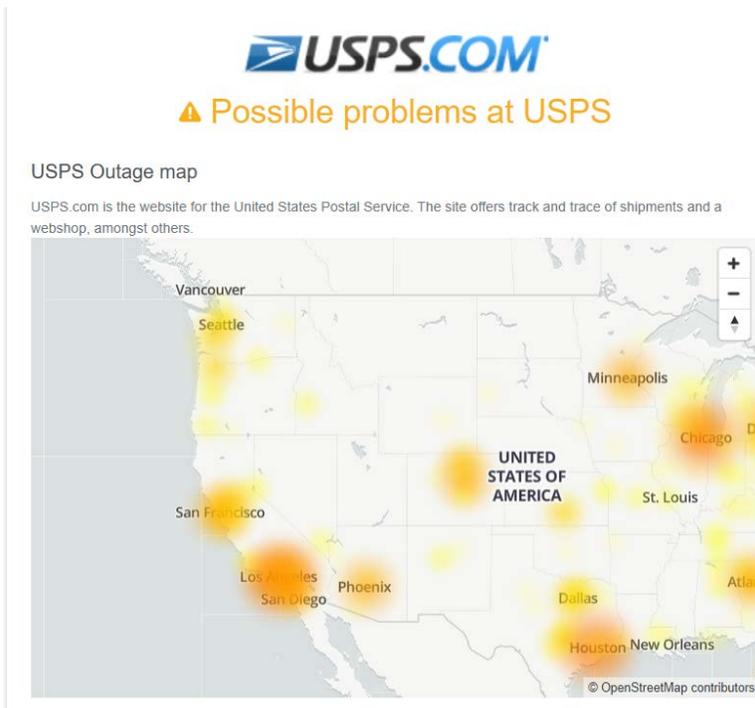
¹ The NLRB seems to be acknowledging that service by mail may be delayed or otherwise difficult or compromised.

All of these facts demonstrate the difficulty of conducting a mail ballot election in this election when mail service delays have been noted throughout the country.

c. Mail Balloting May Result in too Few Participants for the Unit to be Certified

Mail balloting may result in an election where a miniscule number of employees participate, and an additional election must be held. In *Shepard Convention Services*, a mail ballot election, a mere 77 ballots, 19 percent of the total number of eligible votes, were cast in a 438-person unit. *Shepard Convention Servs., Inc. v. NLRB*, 85 F.3d 671, (D.C. Cir. 1996) (86, including 9 void ballots, of 438 eligible voted in mail election, or 19.6%). The D.C. Circuit admonished the NLRB in that case and overturned their attempt to certify the union, due to disenfranchisement of the majority of eligible voters. *Id.*

Downdetector, a monitoring service that reports on outages of various apps, internet providers, online services, and other providers shows service problems throughout the Seattle area where any mail would need to pass through to reach the NLRB office.



A review of complaints on the site reveals numerous individuals that describe issues with USPS tracking being out of date or incorrect, deliveries taking more than a month in some areas, and substantial delays in post office services. A mail ballot election may cause severe disenfranchisement issues for individuals as the mail will have to be re-routed several times for it to make it from the office in Seattle to Anaconda, Montana and back to the NLRB offices. Delays of a month that some individuals are complaining about for various types of shipments would likely result in a complete disenfranchisement of many members of the unit or shrink the number of returned ballots to the point where a unit certification might be subject to challenge. A manual election avoids this problem.

II. There Are Zero Active Cases in the County Where The Employer is Located and Montana's Stay-At-Home Order Has Expired.

To the extent that Montana's Stay-At-Home Order may have been relevant, it essentially expired on April 26, 2020 and businesses have progressively resumed operation since. Montana, Reopening the Big Sky, Phased Approach, *available at* <https://drive.google.com/file/d/1ndkepiFNDJZC6y2jXBQEGswv7EMdmphy/view> (last accessed May 14, 2020). Places of worship opened with reduced capacity and strict social distancing protocols on April 26, restaurants and bars opened May 4, subject to certain social distancing guidelines, public schools began opening May 7, and the state continued to advise avoiding gatherings of more than 10 people in situations where appropriate social distancing could not take place. *Id.*

Anaconda, Deer Lodge County, Montana, where the Employer's facility is located, has fortunately experienced a total of only three COVID-19 cases and even more fortunately, no deaths, as of May 15, 2020. *MONTANA RESPONSE: COVID-19 - Coronavirus - Global, National, and State Information Resources,*

<https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>, Montana State Library, (last accessed May 15, 2020). All three cases in Deer Lodge County were reported almost two months ago in March. Tom Kuglin, *Montana adds 14 cases of COVID-19 by Sunday night, for a total of 161*, Helena Ind. Rec., Mar. 29, 2020, available at https://helenair.com/news/state-and-regional/montana-adds-14-cases-of-covid-19-by-sunday-night-for-a-total-of-161/article_9466a3f3-72c1-5d38-9a8b-b79fba8ab392.html; Kristine DeLeon, Anaconda's AWARE Inc. confirms two coronavirus cases among its staff, MT Standard, Mar. 31, 2020, available at https://mtstandard.com/news/local/anacondas-aware-inc-confirms-two-coronavirus-cases-among-its-staff/article_328cae88-27b2-59c8-ab02-5595a0472a3d.html. All three people who suffered from COVID-19 in Deer Lodge County have now recovered, leaving zero active cases remaining in the county. *MONTANA RESPONSE: COVID-19 - Coronavirus - Global, National, and State Information Resources*, <https://montana.maps.arcgis.com/apps/MapSeries/index.html?appid=7c34f3412536439491adcc2103421d4b>, Montana State Library, (last accessed May 15, 2020). Further, the number of new cases in Montana has steadily declined since the end of March. *Id.* Only 19 cases remain active in the state of more than a million people, and on average, during May, only one new case per day has been reported throughout the state. *Id.* Montana has experienced the fewest COVID-19 cases per capita of any state and the “curve has flattened” almost entirely in the state.² *Id.*; N.Y. Times, *Coronavirus in the U.S.: Latest Map and Case Count*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed May 15, 2020).

² The number of new cases reported in Montana peaked on March 26, 2020 with 35 new cases reported.

Deer Lodge County, with zero active COVID-19 cases, presents a stark contrast to the circumstances numerous Regional Directors examined in recent weeks when issuing Decisions and Directions of Elections requiring mail ballots. *See e.g., Roseland Community Hospital*, 13-RC-256995 (May 12, 2020); *MyCity Transportation LLC*, 12-RC-258326 (May 8, 2020). In these decisions and the decisions cited in the chart below, Regional Directors have pointed to the risks created by the large and growing number of COVID-19 cases as the basis for directing mail ballots, rather than the preferred manual ballot elections.

CASE	D & D of E DATE	EMPLOYER LOCATION	CASES – DATE OF DECISION	CURRENT CASES³
<i>Citizen 360 Condominium</i> , 02-RC-257691	April 17, 2020	New York County (Manhattan), NY	“one of the nation’s epicenters”	24,525 and 3,007 deaths
<i>Flynn Architectural Finishes, Inc.</i> , 05-RC-258064	April 22, 2020	Montgomery County, Maryland	Cited national and state numbers.	7,759 cases and 411 deaths
<i>Atlas Pacific Engineering Company</i> , 27-RC-258742	April 20, 2020	Pueblo County, CO	86 Cases, 7 Deaths	186 cases and 13 deaths
<i>VICTORY WINE GROUP, LLC</i> , 16-RC-257874	April 23, 2020	Travis County, TX	1,256 Cases, 28 Deaths	2,288 cases and 72 deaths
<i>JDRC Managed Services, LLC</i> , 13-RC-258758	April 24, 2020	Cook County, IL	Not Cited	58,457 cases and 2,675 deaths
<i>Durham School Services</i> , 16-RC-259069	April 27, 2020	Lubbock County, TX	499 Cases, 40 Deaths	607 cases and 50 deaths

³ Case numbers and deaths were pulled from *The Covid Tracking Project*, The Atlantic, <https://covidtracking.com/data> (last accessed May 15, 2020) and *Tracking the novel coronavirus in the U.S.*, Reuters, <https://graphics.reuters.com/HEALTH-CORONAVIRUS-USA/0100B5K8423/index.html> (last visited May 15, 2020).

<i>Ryder Truck Rental, Inc.</i> , 32-RC-258444	April 28, 2020	San Joaquin County, CA	528 Cases, 25 Deaths	644 cases and 31 deaths
<i>Millennium Tower Residences</i> , 02-RC-258153	April 29, 2020	New York County (Manhattan), NY	“New York City is one of the epicenters of the nation’s current COVID-19 outbreak.”	24,525 and 3,007 deaths
<i>Baker Commodities, Inc.</i> , 28-RC-259125	April 29, 2020	Maricopa County, AZ	7,202 Cases, 304 Deaths in AZ, with the “majority” in Maricopa County	6,821 cases and 302 deaths
<i>Omni Glass & Paint, LLC</i> , 18-RC-259116	April 30, 2020	Winnebago County, WI	Not Cited	108 Cases and 1 Death
<i>California Foresic Medical Group, Inc. (Wellpath)</i> , 32-RC-258519	May 1, 2020	Stanislaus County, CA	Not Cited	537 Cases and 23 Deaths
<i>Touchpoint Support Services, LLC</i> , 07-RC-258867	May 4, 2020	Oakland County, MI	“Detroit and its surrounding metropolitan areas in Southeast Michigan have been strongly affected by the virus with multiple confirmed cases and deaths.”	7,952 cases and 888 deaths
<i>North American Industrial Services, Inc.</i> , 22-RC-258810	May 5, 2020	Union County, NJ	“New Jersey is one of the epicenters of the nation’s current COVID-19 outbreak”	14,385 cases and 930 deaths
<i>Fontanini Foods, LLC</i> , 13-RC-257636	May 5, 2020	Cook County, IL	Not Cited	58,457 cases 2,675 deaths
<i>Curaleaf Massachusetts, Inc.</i> , 01-RC-259277	May 7, 2020	Plymouth County, MA	Not Cited	6,774 cases and 435 deaths
<i>Maplebear Inc. d/b/a Instacart</i> , 13-RC-259423	May 7, 2020	Cook County, IL	Not Cited	58,457 cases 2,675 deaths
<i>Johnson Controls, Inc.</i> , 16-RC-256972	May 7, 2020	Bexar County, TX	1,677 Cases, 52 Deaths	1,976 cases and 58 deaths

<i>Twinbrook Health & Rehabilitation Center, 06-RC-257392</i>	May 8, 2020	Erie County, PA	Not Cited	129 cases and 3 deaths
<i>MyCity Transportation LLC, 12-RC-258326</i>	May 8, 2020	Broward County, FL	“significant prevalence of COVID-19 in Broward County”	6,057 cases and 267 deaths
<i>Roseland Community Hospital, 13-RC-256995</i>	May 12, 2020	Cook County, IL	Not Cited	58,457 cases 2,675 deaths
<i>Ca Florida Holdings, LLC D/B/A The Palm Beach Post And Palm Beach Daily News, 12-RC-256556</i>	May 13, 2020	Palm Beach County, FL	“one of the highest among all counties statewide”	4,278 cases and 263 deaths
<i>Gannett MHC Media, Inc., a wholly owned subsidiary of Gannett Media Corp. d/b/a Fort-Myers News-Pres, 12-RC-256899</i>	May 13, 2020	Collier County, FL, Lee County, FL	Not Cited	Collier County: 882 cases and 35 deaths Lee County: 1,350 cases and 73 deaths

Every case noted on this chart involves cases involve a prevalence of COVID-19 that is a far cry from that present in Deer Lodge County, Montana. Simply stated, a county with zero active cases in a state with a total of 19 active cases does not present extraordinary circumstances. A manual ballot election can be safely conducted.

III. Washington’s Stay-At-Home Order Will Have Expired But Never Posed an Obstacle to Holding This Election in Montana.

The Washington Stay-At-Home order affecting the Seattle-headquartered NLRB Region 19 began to expire on May 4, 2020. The Governor began a phased reopening, beginning to lift restrictions on public life and allowing non-essential businesses to begin reopening. *Safe Start Washington*, Office of the Governor, <https://coronavirus.wa.gov/what-you-need-know/safe-start> (Last accessed May 14, 2020). Many construction projects began to resume even earlier on April 24, pursuant to Governor Inslee's plan. *Id.* Under the Governor's plan, less populous, less affected Washington counties, ten in total, are permitted to apply for variances to open businesses and public life more rapidly than the state generally. *Id.*; Spaced out: State issues Phase 2 guidelines for opening retail stores, <https://komonews.com/news/coronavirus/spaced-out-state-issues-phase-2-guidelines-for-opening-retail-stores> (last accessed May 14, 2020). Thus far eight counties have applied and been approved to move into Phase 2 of the Governor's plan ahead of the rest of the state allowing for in-store retail shopping, in-restaurant dining, and limited non-essential travel. Lauren Kirschman, *Coronavirus updates: 3 counties approved for next phase of reopening; Washington DFI investigating scams*, *The News Tribune*, May 11, 2020, available at <https://www.thenewstribune.com/news/coronavirus/article242585471.html>. The remainder of the state is scheduled to enter Phase 2 on June 1. *Inslee issues guidance for limited in-store retail, manufacturing in phase 2*, *The News Tribune*, May 11, 2020, available at <https://www.thenewstribune.com/news/coronavirus/article242699201.html>.

Irrespective of the Orders, governmental functions such as the NLRB continued, with most employees teleworking throughout March, April, and May. *NLRB Announces Agency-wide Telework Until April 1*, NLRB Office of Public Affairs (March 16, 2020). At the Board's direction, union elections have been proceeding since April 6, which "is core to the NLRB's mission." *NLRB Resumes Representation Elections*, NLRB Office of Public Affairs (April 1,

2020). Further, a manual election in this case involves only one Board Agent, who has presumably been teleworking since the Board announced Agency-wide telework on March 16, 2020. *NLRB Announces Agency-wide Telework Until April 1*, NLRB Office of Public Affairs (March 16, 2020); Hassan A. Kanu, *Labor Board Extends Teleworking Indefinitely Due to Pandemic*, Bloomberg Law, Mar. 27, 2020, available at <https://news.bloomberglaw.com/daily-labor-report/labor-board-extends-teleworking-indefinitely-due-to-pandemic>. Thus, the Board Agent will have self-isolated far beyond the CDC recommendation for people who experience symptoms. Centers for Disease Control and Prevention, *What to Do If You Are Sick*, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html> (Last accessed May 15, 2020). Driving from Seattle to Anaconda would not violate Washington’s Stay-At-Home Order, expose the Board Agent to any potential contact with the virus, or pose a material risk to either the Board Agent, the Employer, or the potential voters.⁴ Moreover, the Board’s Resident Agent in Spokane has largely handled the pre-election processing of this matter. A Resident Agent driving from Spokane to Anaconda would similarly not violate Washington’s Stay-At-Home Order, expose the Board Agent to any potential contact with the virus, or pose a material risk to either the Board Agent, the Employer, or the potential voters. Additionally, a Resident Agent traveling from Spokane to Anaconda would provide the added benefit of reducing travel time and costs by approximately half when compared to the Regional headquarters in Seattle, which fulfills one of the Board’s administrative purposes of the Resident Office. Finally, Spokane County has experienced approximately ten times fewer COVID-19 cases per capita than Kings County. The Board Agent, wherever she or he travels from, can

⁴ Per Board directive, “skeleton staff” of Board personnel have continued to travel into the regional office “as needed to handle the mail,” among other duties, which presents greater risk of COVID-19 exposure than travel to Anaconda, MT.

further take the CDC recommended precautions such as monitoring his or her temperature for fever, practice thorough hand washing, and wear appropriate PPE.

IV. Precautions Can Mitigate the Minimal Risks of Holding a Manual Ballot Election in a County With Zero Active COVID-19 Cases.

The unit consists of only 18 members. Voting could be completed in less than an hour, while utilizing strict social distancing and hygiene protocols. To observe social distancing and hygiene guidelines advised by the CDC, the voting room could be thoroughly deep cleaned and disinfected immediately prior to the commencement of voting using a 60% or greater alcohol solution. Unit members could remain at their workstations while waiting to vote until the prior voter exits the voting area, or wait in a line, standing more than six feet from one another, as indicated by markings on the floor. Unit members could check their temperature prior to casting their ballot. The balloting could be conducted in a space on the shop floor, cordoned off for privacy by welding curtains, which would be large enough (approximately 40 feet by 40 feet) to allow for the observer for each side, the board agent, and the voting unit member to remain more than six feet apart for the entirety of the process.

The necessary election equipment (voting booth, ballot box, ballots, etc.) could be packaged in plastic bags and isolated from contact with Board personnel for several days or a week prior to the Board Agent conducting the election transporting the materials to Anaconda. *See* National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11304. Necessary distribution of election equipment materials, such as instructions or badges, could be done through the Board Agent placing the materials on the observers' tables while the observers are not present. Each observer could have his or her own table and copy of the Eligibility List as a slight modification to the Case Handling Manual to allow for necessary social distancing. *See* National Labor Relations Board Casehandling Manual Part Two Representation Proceedings,

Sec. 11322.1. Each observer could still check off voters as appropriate on different sides of the voters' names using different colored pens or pencils. *See Id.* The Board Agent could also have a separate table. The voting booth could be at least six feet away from each table. "Affirmative steps ... taken to avoid confusion" could include a taped off path and signage indicating the route to indicate how voters should proceed into the room to the checking table, then to the voting booth, and then out of the voting room, all while remaining six feet away from the observers and Board Agent. National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11322. Clear plastic screens placed in front of each table could be used as an additional safety measure.

Unit members would enter the voting room one at a time, in accord with the standard protocol for most small unit manual ballot elections. The employee could then stand at a point marked with tape on the floor, state her or his name, the observers could check that voter off the list, the Board Agent could place a ballot on the table for the voter to retrieve after the Board Agent has backed away from his or her table, at least six feet, the voter could retrieve the ballot off of the table, and proceed to the ballot box. Spoiled ballots could be handled in this same manner, by the voter placing the spoiled ballot on the Board Agent's table, the Board Agent retrieving the ballot, inspecting it, placing a clean ballot on the table, the voter retrieving the clean ballot, after the Board Agent has backed at least six feet away from the table, and the voter could then proceed again to the voting booth. National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11322.3. The closing of the polls and all signing and certifying of documents could additionally be completed, while following social distancing protocols by reviewing and signing consecutively, rather than concurrently. *See*

National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Secs. 11318.4 & 11324.

Similar to the spoiled ballot procedure outlined above, the Board Agent could fill out the appropriate information on the challenged ballot envelope stub at the Agent's table. National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11338.3. While the voter remains in the voting booth, the Board Agent could place the challenge envelope on the voting table for the voter to retrieve. *Id.* Once the Board Agent returns to his or her table, the voter could exit the voting booth, display his or her folded ballot, place the ballot in the challenged ballot envelope, seal the envelope, and place the envelope in the box. *Id.* Additionally, the small size of the unit and the parties' stipulation to the unit composition mean the likelihood of a challenged ballot in the first place is slim.

Hand sanitizer would be available for the observers and Board Agent at their respective tables. Unit members would sanitize their hands immediately before and after casting his or her ballot and each would use his or her own pencil or pen to fill out the ballot or any commonly used pen or pencil could be sanitized after each use. Each voter could wipe down the voting booth surfaces with a disinfectant wipe prior to departing. All participants would wear gloves⁵ and properly fitted N-95 masks throughout the process, provided by the Employer. Mask and gloves would be made available to the Board Agent. Due to the small size of the unit and the personal familiarity between unit members, lowering of masks for identification purposes would be unnecessary.

⁵ The CDC only recommends wearing gloves while cleaning or when caring for a sick person. Outside of these two contexts, wearing gloves "will not necessarily protect you from getting COVID-19 and may still lead to the spread of germs. The best way to protect yourself from germs when running errands and after going out is to regularly wash your hands with soap and water for 20 seconds or use hand sanitizer with at least 60% alcohol." When to Wear Gloves, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/gloves.html> (last accessed May 14, 2020).

V. A Mail Ballot Election Will Not Expedite the Return of Election Results and Thus Will Not Fulfill the Ends of the National Labor Relations Act Faster Than A Manual Ballot Election.

Mail ballot procedures generally cause a month to six weeklong delay between the “election date” – when ballots are mailed – and the date ballots are counted, the point at which the election result can be determined. *See e.g., Gannett MHC Media, Inc., a wholly owned subsidiary of Gannett Media Corp. d/b/a Fort-Myers News-Pres*, 12-RC-256899 (May 13, 2020); *Ca Florida Holdings, LLC D/B/A The Palm Beach Post And Palm Beach Daily News*, 12-RC-256556 (May 13, 2020); *Touchpoint Support Services, LLC*, 07-RC-258867 (May 4, 2020); *VICTORY WINE GROUP, LLC*, 16-RC-257874 (April 23, 2020); *Groceryworks.com Operating Company LLC*, 19-RC-254203 (Jan. 24, 2020). Voters casting their ballots is not an end unto itself, but rather, a means of determining whether union representation in collective bargaining is preferred by a majority of the eligible voters. 29 U.S.C. § 151. Given the rural locale of the unit members combined with the severe consequences of COVID-19 on the United States Postal Service and the elevated potential for delays in mail delivery this creates, what is typically a month or six-week delay could be required to extend even longer. Thus, a manual ballot election delayed by three or four weeks to allow even further mitigation of COVID-19 in Montana, would result in a much quicker return of election results than a mail ballot. In this case, Montana has relaxed its social distancing guidelines as a result of a sustained decline in COVID-19 cases since early April, rendering an early June manual ballot election appropriate. A mail ballot would necessarily entail at least a further, four to six-week delay before ballots could be counted and the results returned. This means the June 5 manual ballot election proposed by the Employer will provide election results about one month earlier than a mail ballot, fulfilling the Petitioner’s desire for an expeditious election, as well as effectuating the goals of the Act. 29 U.S.C. § 151.

Further, short staffing at the Regional Office could additionally depress voter turnout because ballots returned in unsigned envelopes might not be processed as expeditiously as they would when a full office staff is present. National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11336.4(b). Combined with the rural area the unit members live in and the potential mail delays this entails, unsigned envelopes from attempted voters face steep obstacles to being counted. A mail ballot election would additionally present the same issues as a manual ballot election for the Board Agent and observers counting ballots. Section 11336.5(b) of the Case Handling Manual states in part: “At the time scheduled for the count, the returned envelopes are treated as “voters” approaching the checking table. The observers at the table make their marks alongside the respective names on the list.” National Labor Relations Board Casehandling Manual Part Two Representation Proceedings, Sec. 11336.5(b). With the mail ballots presumably sent to the Region 19 office in Seattle, following this procedure would require the Board Agent to travel in person to the Region’s office and the Employer’s and presumably the Petitioner’s representative to travel from Montana to Seattle to observe the count, where the COVID-19 pandemic remains substantially more prevalent.

V. The Circumstances in Deer Lodge County, Montana Are Not So Extraordinary to Warrant the Regional Director Directing an Essential Employer to Conduct a Mail Ballot Election Under Board Precedent.

The Board’s longstanding election rules favoring manual ballot elections are in place to ensure, to the extent possible, full participation by all eligible voters who wish to vote. An election in the employees’ own workplace would assure that the Board provides a full opportunity to vote to eligible voters. A manual ballot election is far preferable to mail ballots sent by a Postal Service beleaguered by COVID-19 to employees living in a rural area relatively unscathed by COVID-19. The delays inherent to a mail ballot election could not return election

results any faster than a manual ballot election and these delays could be exacerbated by the difficulties faced by the Postal Service. If the Regional Director determines that ballots cannot be cast in person in Anaconda, Montana due to extraordinary circumstances, it stands to reason that these same extraordinary circumstances would also preclude a count of mail ballots at the Region 19 office in downtown Seattle.

In light of this, the Board's long held presumption in favor of manual ballot elections dictates a manual ballot election at the Employer's workplace located at 78 Gold, Anaconda, Montana 59711 should be directed by the Regional Director. Therefore, the Employer proposes holding a manual ballot election from 1:30 PM to 2:30 PM on Friday, June 5 at the Employer's facility. This date also avoids having an election during the week of the Memorial Day holiday, May 25th, a period when some employees may have planned to be away.

Date: May 15, 2020

Respectfully Submitted by:

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CERTIFICATE OF SERVICE

The undersigned, on behalf of Employer, 2101 LLC d/b/a Intercontinental Truck Body, LLC, sent a true and correct copy on May 15, 2020, via efile and email, of Intercontinental Truck Body's Statement of Position Regarding Method of Election this day to the NLRB Region 19 Director and to the parties at the addresses set forth below:

Ronald K. Hooks, NLRB Region 19 Director
via efile

Sara Dunn
via email: Sarah.Dunn@nlrb.gov

Adam D. Morrison
via email: Adam.Morrison@nlrb.gov

Jason Hardwick
via email: jhardwick@iamaw.org

Caren Sencer
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/s/Richard D. Alaniz

Richard D. Alaniz