

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

MORAN ENVIRONMENTAL RECOVERY, LLC

Employer

and

Case 12-RC-257137

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION 487, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

International Union of Operating Engineers, Local Union 487, AFL-CIO (the Petitioner) seeks to represent a unit of all full-time and regular part-time vacuum truck operators, environmental field technicians and mechanics who work out of Moran Environmental Recovery, LLC's (the Employer's) Pompano Beach, Florida facility, excluding all other employees, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act (the Act).¹ There are approximately 24 employees in the petitioned-for unit. I find, as the parties have stipulated, that the unit set forth above is appropriate for the purposes of collective-bargaining.²

¹ The parties stipulated, and I find, that at all material times the Employer has been a Delaware limited liability company with an office and place of business located in Pompano Beach, Florida, where it is engaged in providing hydro-excavation services to public utilities. During the past 12 months, in the course and conduct of its business, the Employer purchased and received goods at its Pompano Beach, Florida facility valued in excess of \$50,000 directly from points located outside the State of Florida; thus the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act and is subject to the jurisdiction of the Board. The parties also stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

² The Employer uses some temporary employees supplied by Aerotek, Inc. (Aerotek). Aerotek submitted a statement of position, stating that it did not consent to the inclusion of its employees in the unit with employees of the Employer, but did not appear at the hearing. The Employer and the Petitioner have agreed that the individuals supplied by Aerotek to the Employer should be excluded from the unit as temporary employees.

A hearing was held telephonically on May 7, 2020,³ before a hearing officer of the National Labor Relations Board (the Board). The only issue, as discussed in more detail below, is how and when the election should be conducted. The Petitioner seeks a mail ballot election, whereas the Employer prefers a manual election. The Employer also objected to my decisions to revoke my approval of the Stipulated Election Agreement, and not to permit litigation of the issue concerning the method of voting. I have carefully considered the positions and arguments presented by the parties. For the reasons discussed below, I find that the Employer's objections are without merit, and that a prompt mail ballot election is appropriate given the extraordinary circumstances presented by the COVID-19 pandemic.

I. PROCEDURAL BACKGROUND

The instant petition was filed by Petitioner on February 28. On March 6, the parties executed a Stipulated Election Agreement, which I approved on March 9, providing for a manual election to be conducted on March 24 at the Employer's premises. At around the same time, the World Health Organization (WHO) declared that the increasing spread of the novel coronavirus is a pandemic, and the Governor of Florida declared a state of emergency, as discussed below. On March 18, I issued an Order postponing the March 24 election due to the safety and health concerns related to the COVID-19 pandemic. In addition, on March 19, the Board issued a news release in which it approved the suspension of all elections scheduled through April 3, which included the March 24 election in this case, "[d]ue to the extraordinary circumstances related to the COVID-19 pandemic." Among other considerations, the Board took this action because it was "necessary to ensure the health and safety of our employees, as well as those members of the public who are involved in the election process." The Regional office then inquired as to

³ Hereinafter all dates occurred in 2020, unless otherwise noted.

whether the parties would agree to amend the Stipulated Election Agreement to provide for a mail ballot election in lieu of a manual election, but the parties were not able to reach an agreement on the proposed amendment.

Thereafter, on April 23, I revoked my approval of the Stipulated Election Agreement based on my conclusion that a rescheduled manual election, at that time, would risk endangering the health and safety of the Employer's employees, the parties, Board personnel, and the public-at-large, in view of the spread of the Covid-19 pandemic. As will be discussed in more detail below, as of April 23, a safer-at-home order was in effect in Florida, limiting the movement of persons within the State of Florida, and in Broward County, where the Employer's Pompano Beach facility is located. In the same Order, I scheduled this case for a telephonic hearing.

In support of its objection to the revocation of approval of the Stipulated Election Agreement, the Employer argues that said agreement was a binding contract and that a manual election could have been safely conducted pursuant to that agreement. The Employer correctly states that an approved Stipulated Election Agreement constitutes a "contract" that binds the parties. However, an election agreement may be set aside if there is cause to do so based on events occurring before the election. *Super Valu Stores*, 179 NLRB 469 (1969); see also Section 11095 of the Board's Casehandling Manual, Part Two, Representation Proceedings. The unprecedented COVID-19 pandemic constituted cause to revoke the Stipulated Election Agreement in this case.

The Board recently denied a request for review of a Regional Director's revocation of a Stipulated Election Agreement because of the risk to the safety of those participating in the election process resulting from the COVID-19 pandemic, the same reason that I revoked the

Stipulated Election Agreement in this case.⁴ The Board relied on the following language of the above-cited *Super Valu Stores* decision:

[i]mplicit in the Regional Director's authority to approve consent election agreements is his authority to revoke that approval when he determines that changed circumstances, discovered prior to the counting of ballots, warrant such revocation.

Accordingly, I find that the Employer's objection to the revocation of approval of the Stipulated Election Agreement is without merit. I will address the Employer's objection to my decision not to permit litigation about the method of voting below, in conjunction with the analysis of the merits regarding that issue.

II. FACTS

At the outset, I take administrative notice of the pandemic health situation that exists in the United States, and continues to affect the way that individuals, businesses, organizations, and governments conduct their daily operations. On March 9, Ron DeSantis, the Governor of Florida, issued Executive Order Number 20-52, declaring a state of emergency for the State of Florida to control and prevent the spread of COVID-19 within the state.⁵ Then, on March 30, the Governor issued Executive Order Number 20-89 restricting public access to non-essential businesses and facilities in Miami-Dade County, Broward County, Palm Beach County, and Monroe County, all in South Florida, due to the overwhelming spread of COVID-19 in those counties. Subsequently, Executive Order Number 20-91, issued by the Governor on April 1, restricted Florida residents' movement outside of the home to those necessary to obtain or provide essential services or conduct essential activities.

⁴ *Johnson Controls, Inc.*, 16-RC-256972, fn. 1 (unpublished) (May 8, 2020).

⁵ See <https://www.flgov.com/2020-executive-orders/> for all of the State of Florida Executive Orders referenced herein.

On April 29, the Governor issued Executive Order Number 20-112, the State of Florida's Phase 1 plan for re-opening its economy. Although that order permits certain types of business to reopen partially, it continues to prohibit groups of people greater than ten from congregating, orders all persons in Florida to avoid nonessential travel, and further recommends that all persons in Florida continue to limit their personal interactions outside the home. Further, Executive Order 20-112 directs that all businesses that remain open during non-essential business closures must follow safety guidelines issued by the Centers for Disease Control and Prevention (CDC), and to continue the use of employee screening or use of personal protective equipment if necessary. The Governor specifically excluded Broward County, Miami-Dade County, and Palm Beach County from the reopening provisions in Executive Order Number 20-112, at that time, because of the extent of the spread of the virus in those counties.⁶ I also take administrative notice of the fact that after the May 7 hearing in this matter, on May 14, the Governor issued Executive Order 20-122, stating that Broward and Miami-Dade Counties would enter Phase 1 of re-opening effective on May 18.⁷ In the meantime, on May 8, by Executive Order 20-114, the Governor extended the state of emergency in Florida for 60 days.

I also take administrative notice of the information, guidance and recommendations of the CDC, an agency of the United States government.⁸ The CDC states:

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).

⁶ Broward County is bordered on the south by Miami-Dade County and on the north by Palm Beach County.

⁷ Palm Beach County was re-opened at Phase 1 effective on May 11, pursuant to Executive Order 20-120, issued on May 9.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

.... the virus has also been detected in asymptomatic persons.⁹

The CDC also recommends the avoidance of gatherings of more than ten people, the use of cloth face coverings and social distancing, among other recommendations.

The CDC further states that it is unlikely that the coronavirus will be spread from domestic or international mail, products or packaging.¹⁰ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises:

[a]fter collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.¹¹

Throughout this pandemic, the Employer's operation has remained open as an essential business in the State of Florida. The Employer is an integrated supplier of environmental industrial and mechanical services, with its Pompano Beach operation providing crews, material, and equipment for essential pole hole excavation activities on behalf of Florida Power & Light Company. Typically, three-man crews consisting of one vacuum operator and two environmental field technicians work closely together in the field. Employees in the petitioned-for unit usually begin their day at 7:00 a.m. by reporting to the facility where they receive their daily work assignments. They then depart the facility in each crew's respective work truck to jobsites throughout South Florida. Their days end at varying times in the evening, based largely on when each crew's work is completed at their assigned jobsites. Additionally, the Employer employs a mechanic who mainly works out of its Pompano Beach facility.

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

¹¹ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

III. POSITION OF THE PARTIES

The Petitioner contends that these extraordinary times require departure from the Board's general preference for manual elections. In support of its argument for a mail ballot election, the Petitioner cites to the significant spread of the novel coronavirus in South Florida, including Broward County, and specifically highlights the fact that Broward, Palm Beach and Miami-Dade Counties were not included in Florida's initial easing of COVID-19-related restrictions in the rest of the state. Furthermore, the Petitioner argues that a mail ballot election is the safest method for conducting this election given the ongoing spread of the virus, the necessary congregation of manual election participants in one location, and the potential for asymptomatic individuals exposing other participants. Lastly, the Petitioner asserts that the Board's standard two-week voting window is still appropriate in this case, but that it will agree to a three-week voting period, and further maintains that the counting of ballots should be accomplished through video meeting technology such as Skype or FaceTime.

The Employer, on the other hand, asserts that it is appropriate to conduct a manual election notwithstanding the COVID-19 pandemic. According to the Employer, because it has continued to operate throughout the pandemic, the Employer has experience in maintaining and operating in a safe environment. Employees have received coronavirus-specific training and instructions, and the Employer argues that its proactive approach to the prevention of coronavirus spread is evident because there are no reported COVID-19 cases in its workforce. The Employer submits that its Pompano Beach facility is regularly and thoroughly cleaned, as are its trucks and equipment, and employees have been furnished with gloves and N95 respirator masks.

In order to conduct a safe manual election, the Employer has proposed using one of its large loading bays which is open to the outside and, in its view, would allow all election participants to easily and safely maintain social distancing requirements. The Employer suggests that its warehouse bay can be thoroughly cleaned before a manual election, and employees would appear to vote in blocks composed of each crew that normally works together, while wearing the gloves and masks that they were issued. Regarding the actual mechanics of the manual election, the Employer proposes two unique and detailed plans. In the first plan, the election would largely operate as usual, with the added use of personal protective equipment as well as added distance between all parties in order to maintain social distancing requirements.

The Employer's second proposed mail ballot plan contemplates the Board Agent conducting and supervising the election from his or her vehicle and provides for the Petitioner's observer to also participate from his or her vehicle, in an apparent attempt to keep those individuals safe by isolating them from the other persons involved in the election. This Employer plan proposes unique methods for checking-in voters, dealing with challenges, distributing ballots, and counting the ballots. Specifically, the Employer proposes that the Board agent and the two observers maintain separate voting lists, either manually or electronically, to use for checking-in voters. When voters arrive, the voters would show their identification to the Board agent through the agent's car window, and then proceed to a nearby table where the unmarked ballots would be pre-stationed in a clear plastic bin. After taking one ballot, the voter would show the Board agent that he or she has not taken more than one ballot. The voter would then proceed to the voting booth. If the Petitioner or the Employer challenged a voter, the observer making the challenge would raise his or her hand and state the challenge. Then the voter would be instructed to fill out the challenge envelope and place it in the ballot box. The

Employer proposes that its observer would place the ballot box in a larger box, seal that box, and place the box in the Board agent's trunk. The ballot count would be done 3 days later—after the period recommended for safe handling of boxes by the CDC—by videoconference (in the Employer's first proposed plan, the ballot box would be retrieved by the Board agent through his or her driver-side window, and the count would be done via teleconference while the observers watch the ballot count through the Board agent's windows).

The Employer contends that the circumstances involved herein do not meet the situations identified by the Board in *San Diego Gas & Electric*¹² as being appropriate for mail ballots. It asserts that mail ballot elections have the tendency to suppress voter turn-out and are less secure than manual elections, and reiterates its contention that a manual election can be conducted safely at its facility. If, however, a mail ballot election is directed, the Employer asserts that a three-week voting period is needed to account for any delays with mail processing and distribution. Regarding the mechanics of the count if a mail ballot is directed, the Employer prefers an in-person count to a video count.

IV. ANALYSIS

The determination of the method of election is within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and, contrary to the Employer's objection, it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual, Part Two, Representation Proceedings, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S.*,

¹² 325 NLRB 1143 (1998).

Inc., 357 NLRB 628 (2011). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

In *Atlas Pacific Engineering Company*, 27-RC-258742 (unpublished) (May 8, 2020), the employer sought review of the Regional Director's decision not to permit witness testimony regarding election details, including whether a manual election could be safely conducted during the COVID-19 pandemic. In denying the request for review, the Board cited Section 102.66(g)(1) of the Board's Rules and Regulations, which states that a hearing officer should solicit the parties' positions regarding the type of election "but shall not permit litigation of those issues." The Board further stated, "[t]his provision is consistent with longstanding Board precedent holding that election details – including the type of election to be held – are nonlitigable matters left to the discretion of the Regional Director." *Atlas Pacific Engineering Company*, at fn. 1.¹³

Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (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.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). A Regional Director's exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will

¹³ See also *Roseland Community Hospital*, 13-RC-256995 (unpublished) (May 26, 2020) (finding that the Regional Director did not improperly deny the parties the opportunity to present witness testimony on the propriety of a manual election, as the parties' positions regarding the type of election shall not be litigated).

not be overturned “unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4.

Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in extraordinary circumstances. *San Diego Gas & Electric*, 325 NLRB at 1145.

The Board applied the guidelines in *San Diego Gas & Electric* to the extraordinary circumstances created by the COVID-19 pandemic in the aforementioned unpublished Order issued in *Atlas Pacific Engineering Company*, Case 27-RC-258742 on May 8.¹⁴ In that case the Regional Director directed a mail ballot election notwithstanding the employer’s argument that a manual election could be safely accomplished at its facility. The Board denied the employer’s request for review of the Regional Director’s Decision and Direction of Election, stating:

[i]n finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency’s assessment of current COVID-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

Due to the current environment caused by the pandemic, the Board found that the Regional Director did not abuse her discretion in relying on the “extraordinary circumstances” language of the Board’s decision in *San Diego Gas & Electric* to order a mail ballot.¹⁵

¹⁴ See also *Touchpoint Support Services, LLC*, 07-RC-258867 (May 18, 2020) and *Johnson Controls, Inc.*, 16-RC-256972 (May 18, 2020).

¹⁵ As was the case with the Board agents in the Board’s Denver, Colorado office in *Atlas Pacific Engineering Company*, Case 27-RC-258742, the Board agents assigned to the Region 12 offices in Tampa and Miami, Florida, who will conduct the election herein, are mandated to telework.

Given the extraordinary circumstances caused by the spread of COVID-19 that still face the State of Florida, including the area of South Florida where the Employer's facility is located and where its employees work, I find it appropriate to exercise my discretion to direct a three-week mail ballot election. I note that on April 1, the Board, through the Office of Public Affairs, issued a press release indicating that beginning April 6, Board-conducted elections would resume after the above-mentioned two-week suspension of all elections.¹⁶ The Board stated that the General Counsel had advised that "appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors."

A manual election would present difficulties in preventing the spread of the coronavirus notwithstanding the distribution of personal protective equipment. Participants in the election process could be infected with the virus and may not know it because they are asymptomatic and/or have not been tested. Manual polling may also raise difficult questions about the use of face masks and/or other personal protective equipment, including whether voters or others can be required to use such equipment. Given the fact that asymptomatic individuals can be a source of transmission of the virus, the failure to maintain proper social distancing or the use of appropriate personal protective equipment could jeopardize the safety of those involved.

It is apparent that a mail ballot election is the safer method of voting and is well suited to effectuating the purposes and policies of the Act during the COVID-19 pandemic. Although the rate of new COVID-19 cases has apparently slowed, and this has led to the first step of re-opening of the South Florida counties in the last week to two weeks, significant restrictions on travel are still recommended throughout the state, and it is unknown whether the partial re-opening of the state will cause a spike in the incidence of COVID-19.

¹⁶ NLRB Resumes Representation Elections (2020), <https://www.nlr.gov/news-outreach/news-story/nlr-resumes-representation-elections>.

The virus, which has resulted in an estimated death toll of approximately 100,000 persons in the United States to date, continues to spread, albeit at a slower rate. Steps such as those suggested by the Employer that modify the usual procedures for a manual election may make a manual election somewhat safer, but even with such precautions, a manual election appears to present a substantially greater risk of spreading the coronavirus than a mail ballot election.

Although I acknowledge the thought and effort of the Employer in creating alternative manual election procedures, the Employer cannot guarantee the safety of those involved. To be conducted properly, manual elections require substantial interaction of voters, observers, party representatives and the Board agent, who are all required to appear at the Employer's facility. Party representatives, the observers, and the Board agent typically gather for approximately 30 minutes before the polls open. During this time, the Board agent and parties examine the polling area, the Board agent sets up the voting booth, posts "Voting Place" signs, distributes badges to the observers, provides written and verbal instructions to the observers, answers any questions from the observers and the parties, confirms arrangements for voter release, discusses any last-minute changes to the voter list, and prepares and seals the ballot box in the presence of the parties.¹⁷ In addition, throughout the polling period, the Board agent and observers would necessarily be present, in fairly close proximity, in order to check the voter list as employees arrive to vote.¹⁸ There is no guarantee that employees will vote at even intervals. In addition, although the Employer has provided its employees with masks and gloves, it is unknown whether the employees or other participants in the election would choose to use those items, and/or choose to keep at a distance from other persons. Rather, groups of voters might

¹⁷ See Section 11318 through 11318.4 of the Board's Casehandling Manual Part Two, Representation Proceedings.

¹⁸ See Section 11322.1 of the Board's Casehandling Manual Part Two, Representation Proceedings.

congregate at the polling place at the same time. The Board agent would hand a ballot to each voter, and the voters would use the same voting booth. This could necessitate the cleaning of the voting booth after each voter, which would interfere with the smooth running of a manual election. The Board agent would also count the ballots cast by all voters at the end of the election, in the same voting area, with party representatives present. These interactions present an inherent and significant risk for all election participants in view of the COVID-19 pandemic.

Some of the Employer's proposed modifications to regular manual election procedures, especially its alternative in which the Board agent is in a car, present additional problems that can be entirely avoided by a mail ballot election. For example, the Employer's suggestion that the ballots be left for voters to take for themselves is not an option. It is imperative that the Board agent maintains physical control of the ballots at all times. See Section 11322.1 of the Board's Casehandling Manual, Part Two, Representation Proceedings. Therefore, even if the Board agent remains in his or her vehicle, the voters would need to approach the vehicle to check-in and receive a ballot. Moreover, use of three separate voting lists would appear to violate the requirement that election observers not maintain lists of who has and has not voted, because each observer would have an individual record of who voted and who did not vote. *Id.* The maintenance of three voting lists is also more likely to cause a mistake in the check-in procedure than the maintenance of a single list. In sum, these proposals appear to run afoul of the Board's standards for fair manual elections, and such problems can be completely avoided by conducting a mail ballot election.

The Employer's remaining arguments favoring a manual election over a mail ballot election are unavailing. "From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail." See *London Farm Dairy*, 323

NLRB 1057 (1997) (internal citations omitted). Furthermore, the Board has previously rejected arguments that mail ballot elections lack the requisite oversight and that they are ripe for voter coercion and lower voter participation. See *San Diego Gas & Electric*, 325 NLRB at 1146; *London Farm Dairy*, 323 NLRB at 1058.

With respect to the timing of the election, Section 102.67(b) of the Board's Rules and Regulations that govern this case states in relevant part, "The Regional Director shall schedule the election for the earliest date practicable consistent with these Rules." Processing representation petitions and timely conducting elections is central to the Board's mission, and conducting a mail ballot election is the clearly safer alternative to a manual election at this time.

For the foregoing reasons, I direct a mail ballot election to be conducted in accordance with the election details discussed below.

V. CONCLUSIONS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, as stipulated by the parties, and it will effectuate the purposes of the Act to assert jurisdiction therein.
3. 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.
4. No collective-bargaining agreement covers the employees in the petitioned-for-unit, and no other bar exists to conducting an election.

5. 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.

6. The following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time vacuum truck operators, environmental field technicians and mechanics who work out of the Employer's Pompano Beach, Florida facility, excluding all other employees, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers, Local Union 487, AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At **9:30 a.m. on June 4, 2020**, ballots will be mailed to voters by the National Labor Relations Board, Region 12, from its office at **201 E. Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824**. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots 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 **June 12, 2020**, should communicate immediately with the National Labor Relations

Board by either calling the Region 12 Office at (786) 812-7988 or (813) 228-2661 or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the **Region 12 office, 201 E. Kennedy Blvd., Suite 530, Tampa, Florida** on **June 25, 2020, at 10:00 a.m.**¹⁹ In order to be valid and counted, the returned ballots must be received in the **Region 12 office** prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the COVID-19 pandemic, I further direct that the ballot count will take place remotely through a video platform, such as iPhone FaceTime or Skype, to be determined by the undersigned Regional Director.

The parties have agreed, and I conclude, it is appropriate that the Notice of Election and ballots will be in English.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on May 24, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the

¹⁹ Although Regional office employees are on mandatory telework, a Board agent shall receive permission to enter the office for the purpose of preparing for and conducting the ballot count.

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 **May 28, 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: May 26, 2020.



David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824