

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

JOHNS MANVILLE

Employer

and

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

Case 14-RC-257594

Petitioner

DECISION AND DIRECTION OF ELECTION

On March 6, 2020,¹ International Association of Machinists and Aerospace Workers, AFL-CIO, (“Petitioner”) filed a representation petition under Section 9(c) of the Act seeking to represent certain employees of Johns Manville (“Employer”).

On March 13, I approved a stipulated election agreement for a manual election to take place on April 2 and 3; however, on March 19, the National Labor Relations Board (“Board”) ordered all Board-conducted elections temporarily suspended. The Board lifted its suspension and resumed conducting elections on April 6. In ending the suspension, the Board noted appropriate measures for conducting elections in a safe and effective manner were available and the determination as to such measures would be left to the Regional Directors.

Because mail ballots have the advantage of significantly reducing social interactions, after the Board lifted the suspension of Board elections, the Region solicited the parties’ positions as to the appropriateness of a mail-ballot election or whether the stipulated election agreement should be revoked. The parties were unable to reach agreement. On May 12, the Petitioner filed a Request to Withdraw from Election Agreement and asked for a new election to be scheduled.

On May 14, I revoked the stipulated election agreement and scheduled a hearing for the parties to present evidence and witnesses regarding the appropriate unit and their positions on the method of election.

On May 21, the parties entered a stipulated record, including an appropriate unit,² and provided their positions on the method of election.

¹ All dates are in 2020 unless otherwise noted.

² The parties stipulated, and I find, the following unit to be appropriate for the purposes of collective bargaining.

INCLUDED: All full-time and regular part-time production, warehouse and maintenance employees employed by the Employer at its facility currently located at 1465 17th Avenue, McPherson, Kansas.

EXCLUDED: Office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

I. DECISION

Based on the stipulated record, having reviewed the parties' positions, and having considered other factors, as addressed below, I have determined that because of the extraordinary circumstances presented by the ongoing pandemic, the Board will conduct this election by mail ballot.

Although the type of election to be held is not a litigable issue at a hearing,³ I herein provide the basis for my decision to order a mail-ballot election in this case.

National, state, county, and local authorities have all declared states of emergency or disaster, and public health officials recommend minimizing in-person contact due to the risk of infection with the novel coronavirus. I am unconvinced by the Employer's position that measures could be undertaken which would allow for the safe and effective conducting of a manual ballot election at this time. The most responsible measure to ensure a safe election is to change the method to a mail-ballot election, which will minimize the risk of exposing employees, Board agents, Employer and Union representatives, their families, and the public to this virus and, thereby, maximize participation. Additionally, given the current rapidity of changes to both recommended and mandatory virus countermeasures, a manual ballot election would be fraught with uncertainty and subject to unpredictable changes. A mail-ballot election provides the certainty of process and procedure to conduct an election within a reasonably prompt period and in an effective manner.

II. BACKGROUND AND POSITIONS OF THE PARTIES

The Employer is a Delaware corporation that manufactures insulation, commercial roofing and fibers and nonwovens for commercial, industrial and residential applications. At its facility in McPherson, Kansas, the workplace at issue in the instant petition, the Employer produces building insulation.

The Petitioner advocates for a manual election at the Employer's facility during the first week of June or, in the alternative, the second week of June. However, Petitioner argues that if I do not deem a manual election safe in this case, it should not cause further delay and, per the Board's Rules and Regulations, the election should be conducted by whatever method the Region deems necessary for a prompt and safe election given the ongoing COVID-19 pandemic.

The Employer does not reject the contention that the present pandemic requires special considerations, but it maintains that the risk can be mitigated, and that it is capable of taking steps which would ensure a safe manual election. In this regard, the Employer indicates it is able to provide a well-ventilated area, including an outdoor tent, that will allow room for social distancing; sanitizer and gloves for the writing instruments used to vote; and other unspecified

³ See Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). See also, *2 Sisters Food Group, Inc.*, 357 NLRB 1816 (2011); *Halliburton Services*, 265 NLRB 1154 (1982).

personal protective equipment (“PPE”). The Employer stresses that there have been no confirmed, reported, or even suspected cases of COVID-19 at its McPherson facility.

The Employer asserts only a manual election would be appropriate, arguing the Board’s decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), provides that representation elections should be held manually and any departure from a manual election under the current circumstances would be an abuse of my discretion. The Employer contends that conducting a manual election while observing social distancing and other safety protocols at the Employer’s facility is manageable. Further, it argues that under *San Diego Gas*, the rare exception to the manual election presumption has been where employees are widely scattered and cannot easily visit the workplace to vote, which is not the case here.

III. CONDUCTING A MANUAL BALLOT ELECTION WOULD UNNECESSARILY RISK INFECTING EMPLOYEES, THE BOARD AGENTS CONDUCTING THE ELECTION, AS WELL AS JEOPARDIZING THE HEALTH OF THE PUBLIC AT LARGE

At the time of this decision, despite unprecedented efforts to limit transmission, over 100,000 deaths from COVID-19 have been reported in the United States, with over 1.7 million confirmed cases.⁴ The voting group of employees, other personnel at the Employer’s facility, National Labor Relations Board Region 14 personnel, and the general population of central Kansas are subject to the risks of COVID-19 transmission. This risk has been recognized by officials in several declarations, recommendations, and orders at the national, state, and local level. Governor Laura Kelley issued a proclamation declaring a state of emergency for the State of Kansas due to COVID-19 on March 12.⁵ The next day, President Donald J. Trump, issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”⁶ On May 26, Governor Kelley issued another State of Disaster Emergency Proclamation. While this most recent proclamation eliminates her previous phased reopening plan, it specifically recognizes the “Imminent Threat of Surges of COVID-19 Infections during Reopening,” noting fifteen counties issued first-time emergency declarations since May 15.⁷

Kansas has been significantly affected by the novel coronavirus, with new confirmed cases and deaths every day. As of May 27, Kansas had reported over 9,300 cases of COVID-19

⁴ Johns Hopkins University & Medicine. *Coronavirus Resource Center*. <https://coronavirus.jhu.edu/map.html> (last accessed May 28, 2020).

⁵ “Governor Issues Emergency Declaration for COVID-19.” <https://governor.kansas.gov/governor-issues-emergency-declaration-for-covid-19/> (last accessed May 28, 2020).

⁶ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed May 28, 2020).

⁷ <https://governor.kansas.gov/state-of-disaster-emergency-proclamation-signed-may-26-2020/> (last accessed May 28, 2020).

in over 88 counties, including McPherson County, with 822 hospitalizations and 205 fatalities statewide.⁸

Government agencies and authorities, recognizing the danger of this pandemic, have taken appropriate measures to limit exposure. Through at least June 8, the McPherson County Health Department recommends employers to avoid gatherings greater than 15 where social distancing protocols cannot be maintained and to continue to maintain 6 feet of distance between people. Individuals are to minimize or avoid travel unless it is related to medical, family, or business needs.⁹ A 14-day home quarantine is mandated for those in McPherson County on their return from Connecticut, Illinois, Maryland, Massachusetts, New Jersey, New York, Rhode Island, and Maryland, any foreign country, or cruise ships, including river cruises.¹⁰ Kansas Department of Health and Environment is also recommending a 14-day home quarantine for any Kansan that traveled to Lake of the Ozarks over the Memorial Day weekend.¹¹

Although Region 14 has available personnel who would appear to be infection free, the virus is believed to spread through presymptomatic and asymptomatic individuals.¹² At some point in the future, testing may be more widespread. Currently, sending a Board agent to conduct the election would risk the exposure of everyone at the facility. Eligible voters along with other employees who may come into contact with these participants, Board agents, and party representatives, would risk being exposed to the virus and spreading it to the community and their families. Therefore, the number of people placed at risk for exposure is much greater than just the number of employees eligible to vote.

The Board's manual election procedures require close proximity for the duration of the election between Board agents, election observers, and voters. Even if writing instruments are sanitized after each use, Board agents hand fresh ballots to eligible voters and voting takes place in an enclosed booth before the marked ballot is placed in a sealed box; each ballot is individually handled by the Board agent conducting the election and available for inspection by the party representatives. Before voting, voters are required to give their names to party observers, who then check the name off the same voter list. These procedures carry the risk of

⁸ "COVID-19 (2019 Novel Coronavirus) Summary" as of May 27, 2020. Kansas Department of Health and Environment. <https://www.coronavirus.kdheks.gov/DocumentCenter/View/1125/> (last accessed May 28, 2020).

⁹ "McPherson County Coronavirus (COVID-19) Response to Reopening" effective May 28, 2020. McPherson County Health Department. <https://mcpersoncountyks.us/DocumentCenter/View/6122/McPherson-County-Reopening-Plan-Effective-5272020> (last accessed May 28, 2020).

¹⁰ "Coronavirus Disease (COVID-19) Identified in McPherson County" General Update (May 22, 2020). McPherson County Health Department. <https://mcpersoncountyks.us/DocumentCenter/View/6112/MP-Co-COVID-19-PR-5-22-2020---General-Update> (last accessed May 28, 2020).

¹¹ "Travel & Exposure Related Isolation / Quarantine." Kansas Department of Health and Environment. <https://www.coronavirus.kdheks.gov/175/Travel-Exposure-Related-Isolation-Quaran> (last accessed May 28, 2020).

¹² "Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020." *Morbidity & Mortality Weekly Report (early release)*. Centers for Disease Control. <https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e1.htm> (last accessed May 28, 2020).

exposure for employees at the facility, party representatives, Board personnel, their families, and the community.

IV. THE ONLY ACCEPTABLE WAY TO MITIGATE THESE RISKS IS A MAIL-BALLOT ELECTION

In its position statement, the Employer contends the following measures can ensure a safe and effective manual election: using social distancing measures by making sure voters are not less than six feet apart at any given time and maintaining a sanitary and disinfected place for all on the premises. While the Employer stated social distancing would be maintained, there are no means for the Board or Employer to enforce social distancing without disturbing laboratory conditions or disenfranchising potential voters. I have also considered the feasibility and efficacy of its other proffered measures. Regarding the election itself, I have considered using masks and gloves, frequently sanitizing election equipment, and the use of plastic barriers. I have also considered the required testing of participants (regardless of symptoms) and whether a Board agent conducting the election could observe appropriate restrictions while traveling to the election site.

Additionally, as discussed, I have considered mail balloting and measures associated with a mail-ballot election. I have considered requiring Region 14 personnel to sanitize outgoing mail, limiting the number of people who may participate in the count, and requiring social distancing for count attendees.

Regarding the Employer's proposed social distancing in the voting area, I agree social distancing could reduce the risk of spread; however, I note the experts disagree about the distance required for safety and that guidelines are subject to change. Current Centers for Disease Control and Prevention ("CDC") guidance defines "good social distance" as "about 6 feet."¹³ Some scientists disagree that 6 feet is enough.¹⁴ Given the uncertainty of determining an "appropriate" distance, we cannot be sure current guidelines sufficiently mitigate risk. Additionally, it is possible guidelines could change between the time of an election order and the date of the election.

Regarding the use of masks and gloves, it is well documented that there is a shortage of these types of supplies, and that they are most needed by healthcare institutions at this time. Although the Employer has offered to make such personal protective equipment available, the safest method would involve Board agents bringing their own equipment. I also note the role of the observer would be made more difficult if voters were wearing masks covering their faces and

¹³ Centers for Disease Control website entry: Coronavirus Disease 2019 (COVID-19), Prevent Getting Sick, How COVID-19 Spreads. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed May 28, 2020).

¹⁴ See, for example, Lydia Bourouiba, "[Turbulent Gas Clouds and Respiratory Pathogen Emissions Potential Implications for Reducing Transmission of COVID-19](#)," *Journal of American Medicine*, March 26, 2020 ("Given the turbulent puff cloud dynamic model, recommendations for separations of 3 to 6 feet (1-2 m) may underestimate the distance, timescale, and persistence over which the cloud and its pathogenic payload travel, thus generating an underappreciated potential exposure range for a health care worker").

obscuring their identity. Removal of the masks by the voter during voting would result in potential cross-contamination, thereby rendering the process even more risky.

Regarding sanitation and disinfecting of the voting place, these measures would do little to substantially reduce the potential for spread, given the number of individuals coming in and out of the voting area, the need for the passing of papers and proximity of individuals for the purpose of providing ballots and checking off names.

While not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections,¹⁵ stating that officials should encourage mail-in voting. This CDC guidance provides, in relevant part:

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.

Moreover, the CDC states, “Although the virus can survive for a short period on some surfaces, it is unlikely to be spread from domestic or international mail.”¹⁶Based on the foregoing, I conclude the use of a mail-ballot election would provide the framework for more certain and safe election procedures.

V. DISCUSSION

Although the Employer is considered an essential business during this time, the health of its employees and their families must be protected. The Employer highlights that no confirmed, reported, or suspected cases of COVID-19 have occurred at the facility; however, less than two-percent of the population in McPherson County have been tested with negative results.¹⁷ Given that many—if not the majority—of people infected with (and capable of spreading) the novel coronavirus display no symptoms,¹⁸ this low rate of testing and likely greater than reported rate

¹⁵ “Recommendations for Polling Locations.” Centers for Disease Control. <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (last accessed May 28, 2020).

¹⁶ Centers for Disease Control website entry: Coronavirus Disease 2019 (COVID-19), Frequently Asked Questions, How to Protect Yourself, Am I at risk for COVID-19 from mail, packages, or products? <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last accessed May 28, 2020).

¹⁷ “KS Coronavirus Disease 2019 (COVID-19) Case Summary” (468 negative tests). Kansas Department of Health and Environment. <https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas> (last accessed May 28, 2020).

¹⁸ Monica Gandhi, Deborah S. Yokoe, and Diane V. Havlir, “[Editorial: Asymptomatic Transmission, the Achilles’ Heel of Current Strategies to Control Covid-19](#),” *New England Journal of Medicine*, April 24, 2020 (“Asymptomatic transmission of SARS-CoV-2 is the Achilles’ heel of Covid-19 pandemic control through the public health strategies we have currently deployed.”).

of infection¹⁹ is particularly worrisome. Importantly, given the necessary attendance of offsite participants such as Board agents and party representatives at a manual election, not to mention offsite contacts by employees with unknown parties in the days and hours preceding the election,²⁰ a manual election has a high potential for contributing to the spread of infection. Given the conditions in Kansas at this time, and the available risk mitigation measures, I conclude that conducting an election placing employees in close proximity to Board agents and party observers, who may be traveling from areas with higher rates of infection than McPherson County—and who may unknowingly be carrying the virus—is not acceptable.

The Board has ordered mail-ballot elections because of circumstances that would temporarily prevent or delay a manual election for an indefinite time. *San Diego Gas* mentions such a condition—a strike—as one in which a mail-ballot election would be appropriate. Presumably, a manual election could be held at some unknown time after a strike ends; however, the Board recognized this was at least one situation where an election delay would be grounds for mail balloting, rather than a manual election.

The Board has also upheld the use of mail-ballot elections during the off-season for seasonal employees.²¹ Even though it would have been possible to delay an election and hold it manually later in the year, when seasonal employees were present at work, the Board found a mail-ballot election proper.

Here, a manual election cannot be held without endangering the health and safety of employees, party observers, Board agents, and the broader community. Since the Board has allowed mail-ballot elections to take place in situations where a manual election would be delayed because of strikes or the absence of seasonal workers, and the current pandemic presents extraordinary circumstances preventing a manual election under the facts presented in this case, a mail-ballot election is appropriate.

A Regional Director has broad authority over conducting representation elections;²² however, the Board has provided guidelines for reasonably exercising this discretion when

¹⁹ Jagodnick, Kathleen M. et al. “[Correcting under-reported COVID-19 case numbers: estimating the true scale of the pandemic](#),” MedRxiv preprint, posted April 5, 2020 (“This study suggests that the current reporting of COVID-19 cases significantly underestimates the true scale of the pandemic. The lack of testing complicates the estimation of the true CFR and causes significant misinformation.”) (last accessed May 28, 2020).

²⁰ See, for example, “Travel & Exposure Related Isolation / Quarantine” (recommending a 14-day home quarantine for Kansans who traveled to Lake of the Ozarks over the Memorial Day weekend). Kansas Department of Health and Environment. <https://www.coronavirus.kdheks.gov/175/Travel-Exposure-Related-Isolation-Quaran> (last accessed May 28, 2020).

²¹ See, for example, *Pennsylvania Interscholastic Athletic Assn.*, 365 NLRB No. 107 (2017); *Sitka Sound Seafoods, Inc.*, 325 NLRB 685 (1998).

²² The Board has long held that a Regional Director has broad discretion to decide issues of election conduct, so long as this discretion is not abused or exercised arbitrarily, capriciously, or unreasonably. This includes determining whether to conduct an election by mail, even if the Direction of Election did not provide for mail balloting. See, for example, *California Pacific Medical Center*, 357 NLRB 197, 198 (2011); *North American Plastics Corp.*,

ordering a mail-ballot election. The Board's policy for when a Regional Director should order a mail-ballot election was described in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998):²³

When 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. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern. We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, in the absence of extraordinary circumstances, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.

Although there is a preference for conducting manual elections in ordinary circumstances, *San Diego Gas* allows a Regional Director to exercise discretion and order a mail-ballot election in extraordinary circumstances.²⁴ *San Diego Gas* did not claim to provide an exhaustive list of circumstances where mail-ballot elections would be allowed, but rather *at least* three cases where mail-ballot elections should normally be used.²⁵ The Board rejected limitations implied by outdated language in the Casehandling Manual suggesting mail-ballot elections were proper only if manual elections were "infeasible," as well as suggestions that a mail-ballot election should never be held where it would be possible to conduct an election manually. *Id.* at 1145 fn. 6, 10.

The Board, in *San Diego Gas*, clarified the use of mail-ballot elections is not limited to three enumerated circumstances, but that "other relevant factors," especially in "extraordinary circumstances" may be considered by a Regional Director. The present circumstances, a

326 NLRB 198 (1998); *E.I. Dupont du Nemours & Co.*, 79 NLRB 345, 346 (1948); *Postex Cotton Mills, Inc.*, 73 NLRB 673, 677 (1947); *Fedders Mfg. Co., Inc.*, 7 NLRB 817, 822 (1938).

²³ See also NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11301.2 (Jan. 2017); Outline of Law & Procedure in Representation Cases Sec. 22-110.

²⁴ The Board has recognized current federal, state, and local government directives resulting from the ongoing COVID-19 pandemic to constitute "extraordinary circumstances." *Roseland Community Hospital*, Case 13-RC-256995 (Unpublished, May 26, 2020) (denying review of Regional Director's decision for mail-ballot election); *Atlas Engineering Pacific Engineering Co.*, Case 27-RC-258742 (Unpublished, May 8, 2020).

²⁵ The Employer argues a mail-ballot election directly contravenes the will of the parties; however, *San Diego Gas* clearly makes parties' preference one of several considerations and does not elevate it over the others. Importantly, the Board recognized a Regional Director may use other unspecified factors when extraordinary circumstances are present.

worldwide pandemic in which more than 350,000 deaths have occurred,²⁶ are extraordinary, and present many relevant factors suggesting that a mail-ballot election would be appropriate.

VI. CONCLUSION

This election must be held “on the earliest date practicable consistent with the Board’s rules.”²⁷ A manual election cannot be held safely at this time. There is no indication when a manual election could be safely held. Waiting until it would be safe to conduct a manual election would further delay this already-delayed election. However, a mail-ballot election would allow this election to be held safely and without further delay.

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

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²⁸
2. 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 following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time production, warehouse and maintenance employees employed by the Employer at its facility currently located at 1465 17th Avenue, McPherson, Kansas.

EXCLUDED: Office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

²⁶ Johns Hopkins University & Medicine. *Coronavirus Resource Center*. <https://coronavirus.jhu.edu/map.html> (last accessed May 28, 2020).

²⁷ On December 18, 2019, the Board published a “new” final rule modifying the Agency’s Representation Case Procedures to take effect April 16, 2020; however, on March 30, 2020, the Board postponed the effective date of this final rule from April 16, 2020 to May 31, 2020. Thus, it does not apply in this case. See also, *Western Wall Systems, LLC*, 2020 WL 1931401 fn. 1 (2020) (applying 2014 Election Rule and noting amendments are not in effect until May 31, 2020). See also, NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11302.1.

²⁸ The Employer, Johns Manville, is a State of Delaware Corporation engaged in the business of producing fiberglass building insulation from its facility located at 1465 17th Avenue, McPherson, Kansas, the only facility involved herein. During the past year, a representative period, the Employer in the course and conduct of its business operations purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of Kansas. During this same period, the Employer sold and shipped goods valued in excess of \$50,000 directly to customers located outside the State of Kansas. The Employer annually derives gross annual revenues in excess of \$500,000.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Association of Machinists and Aerospace Workers, AFL-CIO.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit on June 15. Voters must return their mail ballots so that they will be received by close of business on July 6. The mail ballots will be counted **on July 13 at 10:00 a.m.** at a location to be determined, either in person or otherwise, after consultation with the parties, provided the count can be safely conducted on that date.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 14 office by no later than 4:45 p.m. on June 22, in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **May 22, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Ineligible to vote are 1) employees who have quit or been discharged for cause since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals who will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by **June 2**. 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, included in this Decision and Direction of Election, 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

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

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

DATED at Overland Park, Kansas, this 29th day of May 2020.

/s/ Susan A. Wade-Wilhoit

Susan A. Wade-Wilhoit, Acting Regional Director
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