

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 1**

**NEW ENGLAND TREATMENT ACCESS, LLC**

**Employer**

**And**

**Case 01-RC-257458**

**UNITED FOOD AND COMMERCIAL WORKERS  
LOCAL 1445**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**<sup>1</sup>

New England Treatment Access, LLC (the Employer) operates a cannabis dispensary. United Food and Commercial Workers Union, Local 1445 (the Petitioner) seeks to represent a bargaining unit of all fulltime and regular part time guides/patient service associates, inventory specialists, environmental services team members, lot attendants, security specialists, and security leads employed at the Employer's Brookline, Massachusetts location, but excluding all causal employees, confidential employees, managers, guards and supervisors as defined in the Act.

The Employer seeks to exclude those employees holding the positions of lot attendant and security specialist on the basis that they are guards within the meaning of Section 9(b)(3) of the Act. The Employer also seeks to exclude employees holding a position of security lead on the basis that they are guards within the meaning of Section 9(b)(3) of the Act and on the basis that they are supervisors within the meaning of Section 2(11) of the Act.

During the proceedings the parties stipulated, and I so find, the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Guides/Patient Service Associates, Inventory Specialists, and Environmental Services Team Members employed at the

---

<sup>1</sup> The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a Hearing Officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

No witnesses were called at the hearing. Under the circumstances, briefs were not warranted and the parties were advised of as much before the close of the hearing. Any evidence submitted by either party after the hearing was, therefore, not considered.

Employer's Brookline, MA location, but excluding all casual employees, confidential employees, managers, guards, and supervisors as defined in the Act.

The parties have further agreed that those employees holding the positions of lot attendant, security specialist, and security lead shall be permitted to vote subject to challenge with their eligibility to be resolved in a post-election proceeding, if necessary.

The only remaining matter in contention is whether to conduct a manual or mail ballot election.

The Petitioner argues that a mail ballot election is safer than a manual election and will enfranchise employees who may have been scattered by the COVID-19 pandemic.

The Employer argues that a manual election is the preferred method pursuant to the NLRB Case Handling Manual and will enfranchise the most voters. The Employer asserts the employees are not scattered, as many laid off employees have recently returned to work.

### Facts

During the pandemic, the Commonwealth of Massachusetts issued a stay-at-home advisory, as did the Centers for Disease Control. All but essential businesses were required to cease operations. Although the Commonwealth has now begun to "reopen," gatherings of more than 10 people remain prohibited except with regard to "delivery of COVID-19 Essential Services."

Thus, any "gatherings" of the parties' observers, the Board agent, and representatives of the parties for the pre-election preparation and conference; the observers, Board agent and voters waiting in line to vote during the course of the election; and the observers, Board agent and parties' representatives assembled for the vote tally, would arguably be contrary to state mandates.

As the Employer operates a medical marijuana dispensary, it is classified as a health care provider and remained open throughout the pandemic to provide critical medication to patients. The Employer also operates a recreational marijuana dispensary and was permitted to resume those operations on May 25. Approximately 69 of the petitioned-for employees remained employed throughout the pandemic; approximately 38 employees were furloughed in early April but have since returned to work; and approximately 53 employees were furloughed and, according to the Employer, cannot expect to be recalled.

The Employer proposes that the Region conduct a manual election in a tent in its parking lot. The Employer notes that the outside location will allow air to circulate and that the tables, the voting booth, the ballot box, and the line of voters can be spaced to allow all individuals participating in the election to observe social distancing protocol.

The Petitioner asserts that many employees take public transportation to work and that taking an extra trip to the polling location will needlessly expose them to COVID-19. The

Petitioner further suggests that furloughed employees who have not yet returned to work may be eligible to vote. Finally, the Petitioner notes that any manual election will involve the use of shared equipment such as voting booths.<sup>2</sup>

Analysis

In *San Diego Gas and Electric*, 325 NLRB 1143 (1998), the Board reviewed the circumstances under which it may be appropriate to direct a mail ballot election. The Board's longstanding policy has been that, as a general rule, representation elections should be conducted manually. Recognizing, however, that there are some extraordinary circumstances that would make it difficult for eligible employees to vote in a manual election, the Board has vested Regional Directors with broad discretion to determine the method by which elections shall be conducted. Under the guidelines set forth in *San Diego Gas*, a mail ballot election may be appropriate where eligible voters are "scattered" because of their job duties in terms of geography and/or varied work schedules, so that all employees cannot be present at a common location at common times to vote manually.

The employees at issue here are not "scattered" in the traditional sense. They are, however, "scattered" by COVID-19, which has rendered an immediate manual election, like so many other previously-ordinary gatherings, unsafe.<sup>3</sup>

Although many employees continue to work their usual schedules, other employees are in the process of returning to work after being furloughed. Employees may be unable to travel to a polling location due to their responsibilities as caregivers or their own illness. Still more employees may be reluctant to make an extra trip to their workplace to vote while stay-at-home advisories urge them not to travel except where absolutely necessary in their capacity as essential workers. Indeed, a manual election may run contrary to the Orders of Governor Baker even as more businesses are permitted to reopen in limited fashion.

Most importantly, the safety of all involved cannot be guaranteed during a manual election, even where, as here, the Employer has made a thoughtful proposal which takes safety into consideration. Many of those infected with COVID-19 are not symptomatic and unknowingly pass their infection to those with whom they interact. In addition, there is no need to offer symptomatic employees the choice between forfeiting their right to vote and violating quarantine.

---

<sup>3</sup> See *Atlas Pacific Engineering Company*, 27-RC-258742 (May 8, 2020). The Board, in denying the employer's request for review, stated that the COVID-19 pandemic constitutes extraordinary circumstances warranting a mail ballot where federal, state, and local government directives have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting the election should remain on mandatory telework.

I conclude that, under these circumstances, a mail ballot election has no significant drawbacks. It is appropriate because it will protect the health and safety of voters, Agency personnel, the parties' representatives, and the public during the current health crisis.

Conclusion

I find that 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:

All fulltime and regular part time guides/patient service associates, inventory specialists, and environmental services team members employed at the Employer's Brookline, Massachusetts location, but excluding all causal employees, confidential employees, managers, guards and supervisors, as defined in the Act.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications of lot attendant, security specialist, and security lead whose eligibility remains unresolved as specified above and in the Notice of Election.

The National Labor Relations Board will conduct a secret mail 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 United Food and Commercial Workers Union Local 1445.

**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. On June 23, 2020, ballots will be mailed to voters by National Labor Relations Board, Region 3, Albany Resident Office. 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.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 1 office by close of business on July 21, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by June 30, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 1 Office at (617) 565-6700 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, at 10:00 am on July 24, 2020. Each party will be allowed to have one observer attend the virtual ballot count.

## **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending Sunday, May 15, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, June 2, 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](http://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](http://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, and distribute the Notice by 12:01 a.m. June 18, 2020** and copies must remain posted until the end of the election. 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.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

#### **RIGHT TO REQUEST REVIEW**

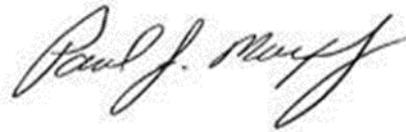
Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a 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.

New England Treatment Access, LLC  
Case 01-RC-257458

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](http://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 29, 2020



---

PAUL J. MURPHY  
ACTING REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 01



United States of America  
National Labor Relations Board



# NOTICE OF ELECTION

## INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

**CHALLENGE OF VOTERS:** An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

### **METHOD AND DATE OF ELECTION**

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 5:00p.m. on Tuesday, June 23, 2020, ballots will be mailed to voters from the National Labor Relations Board, Region 03, Albany Resident Office, 11A Clinton Avenue, Room 342, Albany, NY 12207.

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.**

In order to be valid and counted, the returned ballots must be received in the Region 01 Office at Thomas P. O'Neill Fed Bldg, 10 Causeway St, Room 601 Boston, MA 02222-1001 by July 21, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by June, 30, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 01 Office at (617)565-6700 or our national toll-free line at 1-844- 762-NLRB (1-844- 762-6572).

All ballots will be commingled and counted virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, on Friday, July 24, 2020 at 11:00a.m.

---

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America  
National Labor Relations Board



**NOTICE OF ELECTION**

**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**

**VOTING UNIT**

**EMPLOYEES ELIGIBLE TO VOTE:**

Those eligible to vote are: All full-time and regular part-time Guides/Patient Service Associates, Inventory Specialists, and Environmental Services Team Members employed at the Employer's Brookline, MA location who were employed by the Employer during the payroll period ending May 15, 2020.

**EMPLOYEES NOT ELIGIBLE TO VOTE:**

Those not eligible to vote are: All casual employees, confidential employees, managers, guards, and supervisors as defined in the Act.

**Others permitted to vote:** At this time, no decision has been made regarding whether the classifications of Lot Attendant, Security Specialist, and Security Lead are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.



United States of America  
National Labor Relations Board



**NOTICE OF ELECTION**

**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**



**UNITED STATES OF AMERICA**  
**National Labor Relations Board**

01-RC-257458



**OFFICIAL SECRET BALLOT**

For certain employees of  
**NEW ENGLAND TREATMENT ACCESS, LLC**

Do you wish to be represented for purposes of collective bargaining by  
**UNITED FOOD AND COMMERCIAL WORKERS LOCAL**  
**1445?**

**MARK AN "X" IN THE SQUARE OF YOUR CHOICE**

**YES**

**NO**

**DO NOT SIGN THIS BALLOT. See enclosed instructions.**

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL**

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

**The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.**

**If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.**

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

**Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.**

**Anyone with a question about the election may contact the NLRB Office at (617)565-6700 or visit the NLRB website [www.nlr.gov](http://www.nlr.gov) for assistance.**