

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

**MORRISON MANAGEMENT SPECIALISTS,  
INC. d/b/a MORRISON HEALTHCARE**

**Employer**

**and**

**Case 12-RC-257857**

**1199SEIU UNITED HEALTHCARE WORKERS  
EAST**

**Petitioner**

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

1199SEIU United Healthcare Workers East (the Petitioner) seeks to represent certain employees of Morrison Management Specialists, Inc. d/b/a Morrison Healthcare (the Employer) employed at Palm Beach Gardens Medical Center and Emergency Services (the Medical Center), located at 3360 Burns Road, Palm Beach Gardens, Florida. The parties have stipulated, and I find, that any unit found appropriate in this case should include all full-time and regular part-time dining associates, food service utility employees, food service workers, cooks, and cashiers employed by the Employer at the Medical Center, and should exclude all managers, executive chefs, sous chefs, confidential employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act (the Act).<sup>1</sup> There are a total of approximately 42 employees employed in the undisputedly included job classifications.

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<sup>1</sup> The parties stipulated, and I find, that at all material times the Employer has been a Georgia corporation with its principal office and place of business located in Atlanta, Georgia, and operations at Palm Beach Gardens Medical Center and Emergency Services, located at 3360 Burns Road, Palm Beach Gardens, Florida, the only facility involved herein, where it is engaged in providing healthcare food services. During the past 12 months, in the course and conduct of its business operations described above, the Employer purchased at facilities where it does business in the State of Florida, goods 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. In addition, the parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Petitioner and the Employer do not agree as to whether four patient dining supervisors should be included in, or excluded from, the unit. The Petitioner urges that the patient dining supervisors are eligible to vote and should be included in the unit, whereas the Employer contends that they are ineligible to vote because they are supervisors within the meaning of Section 2(11) of the Act and do not share a community of interest with the unit employees. I precluded the parties from litigating the eligibility or inclusion in the unit of the patient dining supervisors because the parties' dispute concerning this job classification would not significantly change the size or character of the unit, and this issue need not be resolved before the election is conducted. Thus, the patient dining supervisors may vote subject to challenge. The Employer objected to my refusal to permit litigation of this issue at the hearing. For the reasons set forth below, I find that the Employer's objection is without merit.

A hearing was held telephonically on May 20, 2020,<sup>2</sup> before a hearing officer of the National Labor Relations Board (the Board). The only substantive issue, as discussed in more detail below, is how and when the election should be conducted. Both parties seek a manual election to be conducted at an outdoor area adjacent to the Medical Center where the unit employees and the patient dining supervisors work. I have carefully considered the positions and arguments presented by the parties. As fully discussed below, despite the desires of the parties and even though a manual election would be preferable in this case in the absence of the COVID-19 pandemic, I have directed a mail ballot election because it is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic.

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<sup>2</sup> Hereinafter all dates occurred in 2020, unless otherwise noted.

## I. PROCEDURAL BACKGROUND

The instant petition was filed by Petitioner on March 11, and I initially scheduled a preelection hearing for March 19. However, due to the health concerns related to COVID-19, I postponed the hearing indefinitely. Thereafter, on April 22, I issued a notice of representation hearing to reschedule the preelection hearing, and I scheduled a telephonic hearing for April 30. On April 27, the Employer filed a motion with the Board objecting to the telephonic representation hearing, which the Board treated as a request for review. On April 30, the Board granted the Employer's motion, and stayed the telephonic hearing in order to more fully consider and address the issues raised by the Employer's motion.

On May 11, the Board issued an Order holding that Regional Directors may conduct preelection representation case hearings by telephone "only where compelling circumstances exist and no witness testimony is involved," except that telephonic hearings are permitted if compelling circumstances warranting a remote hearing exist, and the parties agree to a telephonic hearing at which witnesses are to testify. *Morrison Healthcare*, 369 NLRB No. 76, slip op. at pages 1-2 and fn.4 (2020). The Board further specified that in such compelling circumstances, Regional Directors may hold telephone hearings that do not involve witness testimony in preelection representation cases "in which the parties merely state their positions on nonlitigable matters such as election details." *Id.* at slip op., page 2. The Board further found that where compelling circumstances exist, such as during the current Coronavirus Disease (COVID-19) pandemic, Regional Directors may conduct preelection representation case hearings that involve witness testimony by videoconference. *Id.* Finally, the Board remanded the case to me for further proceedings consistent with its Order. Pursuant to the Board's remand, the hearing in this matter was held telephonically, in accordance with the Board's directives, because no witnesses

would be permitted for the purposes of obtaining the parties' respective positions with respect to the only remaining question, the election details.

## 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. As referenced above, as of March 11, the COVID-19 outbreak was characterized as a pandemic by the WHO and Florida Governor Ron DeSantis had declared that a state of emergency existed in Florida in Executive Order 2020-52.<sup>3</sup> Between that time and early April, the Governor issued a series of Executive Orders that placed significant restrictions on non-essential businesses and the movement of individuals within the State of Florida, including in Palm Beach County, the location of the Medical Center where unit employees work.<sup>4</sup> On April 29, the Governor issued Executive Order 2020-112, outlining Florida's Phase 1 plan for re-opening its economy, but excluding Palm Beach County and two other South Florida counties, Broward and Miami-Dade, because of the extent of the spread of the virus in those counties. Subsequently, on May 8 the Governor extended the state of emergency in Florida for 60 days. The following day, in Executive Order 2020-120, he modified Executive Order Number 2020-112 to allow Palm Beach County to enter Phase 1 of the State's plan for re-opening, effective May 11.

Although, Executive Order Number 2020-112 permits certain types of business to reopen partially, this Order continues to prohibit groups of people greater than ten from congregating in environments where proper social distancing cannot be maintained, orders all persons in Florida

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<sup>3</sup> See <https://www.flgov.com/covid-19-executive-orders/> for all of the State of Florida Executive Orders referenced herein.

<sup>4</sup> See e.g. Executive Orders 2020-68 to 72, 80, 82-83, 85-92. Executive Orders 2020-70 and 2020-90 specifically restricted activities in Palm Beach County.

to avoid nonessential travel, and further recommends that all persons in Florida continue to limit their personal interactions outside the home. Further, Executive Order 2020-112 directs all businesses that remained open during non-essential business closures to follow strict safety guidelines issued by the CDC and continue the use of employee screening or use of personal protective equipment if necessary.

I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States government.<sup>5</sup> 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).

.... the virus has also been detected in asymptomatic persons.<sup>6</sup>

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. Importantly, the CDC has instructed that cloth face coverings are not a substitute for proper social distancing.<sup>7</sup> Moreover, the CDC states that it is unlikely that the coronavirus will be spread from domestic or international mail, products or packaging.<sup>8</sup> 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.<sup>9</sup>

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<sup>5</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>.

<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

<sup>8</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

<sup>9</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

Throughout this pandemic, the Employer's operation has remained open as an essential business in the State of Florida, and Palm Beach County, that provides food services at the Medical Center. According to Petitioner, there are currently patients within the Medical Center that are confirmed to be suffering from COVID-19. I take administrative notice of the data showing that there have been approximately 1,114 confirmed hospitalizations due to COVID-19 in Palm Beach County, including in patients who have been treated at the Medical Center, which has an operating room and patient wings dedicated to treating COVID-19 patients according to its website.<sup>10</sup> I further note that the Medical Center has resumed elective scheduling and performing elective procedures which, pursuant to Executive Order 2020-112, requires the Medical Center to certify that it has capacity to continue accepting and treating patients afflicted with COVID-19 in a surge capacity situation.<sup>11</sup>

### **III. POSITION OF THE PARTIES**

The Petitioner and Employer (collectively the "parties") jointly seek a manual election to be held in an outdoor grassy area adjacent to the Medical Center behind the employee parking lot. The proposed location is behind the Medical Center's loading dock area, and is not an area with a lot of foot traffic. According to the Employer, the Medical Center owns a tent that it will lend to the Employer. The Employer proposes to erect the tent on the outdoor grassy space and to conduct the election under the tent, and to have tables with personal protective equipment, including masks, disposable gloves, and hand sanitizer gel available for use by all participants at

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<sup>10</sup> See the State of Florida's COVID-19 tracking dashboard at: <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>; see also <https://www.wptv.com/news/region-n-palm-beach-county/palm-beach-gardens/new-coronavirus-treatment-showing-promise-in-palm-beach-gardens>.

<sup>11</sup> See <https://www.pbgmc.com/news/newsroom/coronavirus-florida-hospitals-emphasizing-safety-as-elective-medical-procedures-return>.

the entrance to the tent.<sup>12</sup> Signs would be posted to remind voters and other participants to practice safe six-foot social distancing while waiting in line to vote, and retractable belt stanchion barriers along with six-foot tape marks would be set up to ensure that the voting line allows for proper social distancing.

The parties have also proposed that each of them would only have one representative at the pre-election conference, and all pre-election conference participants would wear personal protective equipment and maintain social distancing. Second, the parties have stipulated that neither party would appoint an election observer, so that only the Board agent would check-in voters, and that each voter would be issued a personal writing utensil (pencil) to avoid the sharing of writing utensils needed to mark the ballot.

The Employer argues that a manual election can be safely conducted as proposed by the parties, and should be the preferred voting method in this case. The Employer asserts that a manual election should be directed here because, in its view, this case does not involve any of the situations where the Board would find mail ballot elections more appropriate as discussed in *San Diego Gas & Electric*.<sup>13</sup> Moreover, the Employer argues that mail balloting is less reliable than manual voting because of the absence of Board supervision over the voting process during manual balloting, and that mail ballot elections produce lower voter turnout. Finally, the Employer contends that mail ballot voters may be concerned or afraid to handle mail given the unknown risk of coronavirus transmission through handling mail.

The Petitioner contends that because the eligible voters have worked at a hospital throughout the pandemic, they are familiar with the necessary methods of protecting themselves.

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<sup>12</sup> The Employer represents that it has borrowed a tent from the Medical Center in the past. The Employer did not know the dimension of the tent or the grassy area where it proposes to conduct a manual election.

<sup>13</sup> 325 NLRB 1143 (1998).

The Petitioner agrees to the outdoor election area proposed by the Employer, with the caveat that managerial and supervisory personnel not use that area to enter the Medical Center during the election. The Employer agreed to that condition. The parties also agreed to hold the election on June 11, and expressed the belief that the State of Florida will likely further re-open its economy by that date.

#### IV. ANALYSIS

1. Resolving the eligibility status of the patient dining supervisor classification is not necessary at the present time.

As noted above, the parties disagree as to whether the patient dining supervisor classification should be included in any appropriate unit, and the Employer has objected to my decision not to permit litigation of that issue at hearing. The Petitioner asserts that patient dining supervisors are not statutory supervisors and belong in the petitioned-for unit. Conversely, the Employer argues that patient dining supervisors are statutory supervisors as defined by Section 2(11) of the Act, and additionally argues that the supervisory status of the disputed employees is of such significant importance that should be litigated before the election. There are approximately four employees in this disputed classification, less than 10 percent of the approximately 42 employees in the classifications that the parties have agreed belong in an appropriate unit.

Section 102.64(a) of the National Labor Relations Board's Rules and Regulations states in relevant part:

The purpose of a hearing conducted under Section 9(c) of the Act is to determine if a question of representation exists. A question concerning representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining .... Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

The Employer agrees that the unit sought by Petitioner is appropriate for collective-bargaining except for the inclusion of the patient dining supervisors. The Employer does not dispute the existence of a question concerning representation. As noted above, I have concluded that the resolution of the eligibility or inclusion of the four patient dining supervisors does not significantly change the size or character of the unit. Accordingly, my exercise of discretion to preclude litigation of this issue in the preelection hearing is permissible. The patient dining supervisors may vote in the election, and the ballots of any patient dining supervisors who vote shall be challenged because their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

2. A mail ballot election is the safest and most appropriate method of voting in this case.

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 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., 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).

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 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 has applied the guidelines in *San Diego Gas & Electric* to the extraordinary circumstances created by the COVID-19 pandemic in an unpublished Order issued in *Atlas Pacific Engineering Company*, Case 27-RC-258742 on May 8. 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 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.<sup>14</sup>

The Board agents assigned to the Region 12 office in Miami, Florida, who would conduct a manual election herein, are mandated to telework.<sup>15</sup>

Given the extraordinary circumstances caused by the spread of COVID-19 that still face the State of Florida, and particularly the area of South Florida that includes Palm Beach County where the Medical Center is located, and the fact that the Medical Center is treating COVID-19 patients, and the employees of the Employer work in the Medical Center, I find it appropriate to exercise my discretion to direct a 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 a two-week suspension.<sup>16</sup> In the press release, 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."

The circumstances surrounding a manual election in this case could present difficulties in preventing the spread of the coronavirus if any of those involved are infected and, as noted, persons may be infected without knowing it because they are asymptomatic and/or have not been tested for the virus. This is of particular concern for an election held among employees who

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<sup>14</sup> See also the Board's unpublished orders at [www.nlr.gov](http://www.nlr.gov) in *Touchpoint Support Services, LLC*, Case 07-RC-258867 (May 18, 2020); *Johnson Controls, Inc.*, Case 16-RC-256972 (May 18, 2020); *Roseland Community Hospital*, Case 13-RC-256995 (May 26, 2020); *2110 LLC d/b/a Intercontinental Truck Body*, Case 19-RC-258144 (May 28, 2020); *Seminole Electric, Inc.*, 12-RC-256815 (May 28, 2020).

<sup>15</sup> According to Florida Department of Health statistics as of May 28, 2020, Miami-Dade County had the highest incidence of positive coronavirus cases of all of the 67 counties in Florida, with 17,209 positive residents, 187 positive non-residents, 2,834 hospitalizations, and 669 deaths, and Palm Beach County had the third highest incidence of positive coronavirus cases among Florida's counties (after Miami-Dade and Broward), with 5,450 positive residents, 91 positive non-residents, 1,114 hospitalizations, and 327 deaths (the second highest county death total in the state). <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>.

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

work at a healthcare facility in South Florida, which has seen the largest concentration of positive COVID-19 cases in the State. Manual polling may also raise difficult questions as to whether voters can be required to use face masks and/or other personal protective equipment, and maintain social distancing, notwithstanding the plans of the parties to require such measures.

Given the current information from the CDC 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 many individuals.

Whether or not such measures are taken, for the reasons noted above, 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 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. Indeed, 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 parties 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.

I have considered the jointly proposed plans to safely run a manual election at the Medical Center's premises. While I acknowledge the careful consideration paid to this issue by the parties, they simply cannot guarantee the safety of all those involved. This is particularly so because the coronavirus, according to the CDC, primarily spreads through close, person-to-

person contact, which has prompted the CDC to warn that the use of facial coverings is not a substitute for proper social distancing. Moreover, of significant impact in this case is the fact that the eligible voters work in a building where confirmed COVID-19 patients are treated, increasing the likelihood of their exposure to those patients, or to medical personnel who directly treat the COVID-19 patients. This circumstance elevates the risk of coronavirus transmission for the participants in this election.

Furthermore, to be conducted properly, manual elections require substantial interaction between voters, party representatives, and the Board agent, who are all required to appear at the polling location. A manual election would involve a pre-election in-person meeting between the Board agent and one representative of each party for approximately 30 minutes before the polls open. During this time, the Board agent and parties examine the polling area and possibly adjust the set-up of the voting table and retractable belt stanchion barriers under the tent. In addition, the Board agent would set up the voting booth, post "Voting Place" signs, answer any questions from the parties, confirm arrangements for voter release, discuss any last-minute changes to the voter list with the parties, and prepare and seal the ballot box in the presence of the parties.<sup>17</sup>

Additionally, throughout the polling period, the Board agent must necessarily make close physical contact with each voter. Section 11322.1 of the Board's Casehandling Manual requires that the Board agent conducting the election maintain physical control of the ballots at all times. Accordingly, the Board agent hand-distributes ballots to each voter within a close space, and may also deal directly with voters to obtain information and assist them in casting challenged

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<sup>17</sup> See Section 11318 through 11318.4 of the Board's Casehandling Manual Part Two, Representation Proceedings (referred to herein as the Board's Casehandling Manual).

ballots.<sup>18</sup> Although the parties have proposed the use of personal protective equipment by all participants during the election, as referenced above it is unknown whether the employees or other participants in the election would use those items, and/or keep at a safe distance from other persons. In that regard, there is no guarantee that employees will vote at even intervals, and groups of voters might congregate at the polling place at the same time. Moreover, every voter would have to enter the same voting booth, likely touching the same surfaces within a short period of time. 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. There is a substantial risk that the manual election process would involve close person-to-person contact that would not meet proper social distancing guidelines between the Board agent and party representatives, between the Board agent and voters, and between and among the voters, who are actively working in an environment where COVID-19-positive patients are being treated. These face-to-face interactions present an inherent and significant risk for all election participants in view of the COVID-19 pandemic.

A mail ballot election presents no such risk. There is no evidence that people have been infected with the novel coronavirus by the handling of mail. To the contrary, as noted above, the CDC states that the novel coronavirus “is unlikely to be spread from domestic or international mail, products or packaging.” Moreover, any employee who is nevertheless concerned about opening mail immediately after it is received may set aside the mail ballot packet for two or three days after it has been received from the Regional office, and then open it, vote, and mail the

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<sup>18</sup> In this case there are four potential challenges to the patient dining supervisors. The Board agent may also be required to challenge the votes of any individuals who appear to vote but are not included on the voter list submitted by the Employer. See Sections 11338.2(b) and 11338.3 of the Board’s Casehandling Manual.

ballot back to the Regional office in ample time for it to be counted at the end of the three week voting period.

The Employer's remaining arguments are unavailing. The Board has rejected the arguments made by the Employer that mail ballot elections lack the requisite oversight and 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.<sup>19</sup> "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, 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 during the current extraordinary circumstances caused by the COVID-19 pandemic. Accordingly, I direct a mail ballot election to be conducted on the dates set forth below.

## V. CONCLUSIONS

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

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<sup>19</sup> I find the Employer's citation to *Thompson Roofing*, 291 NLRB 793 (1988) meritless. Although the Board in that case referred to the fact that mail ballot elections are more vulnerable to the destruction of laboratory conditions, it did so while championing the specific mail ballot election procedures instituted by the Board "to preserve the integrity of the election process." *Id.* at 793, fn. 1. The Board, in *Thompson Roofing*, did not cite to the mail ballot vulnerabilities in order to diminish the effectiveness of mail voting methods, but instead took the opportunity to defend mail ballot elections and the procedures put in place to ensure the integrity of such elections. The Employer's citation to *Kwik Care Ltd. v. NLRB*, 82 F.3d 1122 (D.C. Cir. 1996) as support for its claim that mail ballot elections inspire lower participation is also unpersuasive. Although the Court opined that mail ballot elections inspire lower participation, it upheld the mail ballot election in that case, finding that mail ballot elections are useful in certain situations, and are left to the discretion of Regional Directors. *Id.* at 1126.

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 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 patient dining associates, food service utility employees, food service workers, cooks, and cashiers employed by the Employer at Palm Beach Gardens Medical Center and Emergency Services, located at 3360 Burns Road, Palm Beach Gardens, Florida, excluding all managers, executive chefs, sous chefs, confidential employees, professional employees, guards and supervisors as defined in the National Labor Relations Act.

**OTHERS PERMITTED TO VOTE:** At this time, no decision has been made regarding whether the patient dining supervisor classification is included in, or excluded from, the bargaining unit, and individuals in this classification may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

## 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 1199SEIU United Healthcare Workers East.

### 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 9, 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 17, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 12 Office at **(202) 679-9360 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 30, 2020, at 10:00 a.m.** In order to be valid and counted, the returned ballots must be received in the **Region 12 office in Tampa** 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 by videoconference on

an electronic video platform to be determined by the undersigned Regional Director after consultation with the parties.<sup>20</sup>

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

**B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending on May 16, 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 patient dining supervisor classification 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.

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<sup>20</sup> The parties acknowledged at the hearing that they have the capability to attend a ballot count conducted via videoconference technology.

### 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 **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<sup>21</sup> 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.

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<sup>21</sup> The Notices of Election printed in English, Haitian Creole and Spanish shall be provided to the parties after translations to Haitian Creole and Spanish have been completed.

## 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](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.



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David Cohen, Regional Director  
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