

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

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POTLATCH/DELTIC	*	
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Employer	*	
	*	
and	*	Case 15-RC-257449
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INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	*	
	*	
Petitioner	*	
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ORDER DIRECTING MAIL-BALLOT ELECTION

On March 4, 2020¹, International Association of Machinists and Aerospace Workers, AFL-CIO (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act (the Act), as amended, seeking to represent certain employees of Potlatch/Deltic (the Employer). On March 13, I approved a stipulated election agreement signed by the Petitioner and the Employer specifying that a manual election would be held on April 2. However, on March 19, citing the ongoing COVID-19 pandemic, the Board issued a general order suspending all representation elections until April 3. Consequently, the election was cancelled.

On April 1, the Board issued an order resuming elections as of April 6. Nevertheless, the order noted that, while conducting representation elections is core to the Board’s mission, “appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director.” Because there is a dispute in this matter,

¹ All dates are in 2020, unless otherwise indicated.

pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Accordingly, I issued a Notice to Show Cause on April 22, and based on the responses submitted by the parties, I make the following findings and conclusions.

I. ISSUES UNDER CONSIDERATION

This case requires me to consider and decide two issues: (a) whether it is necessary to hold a hearing to determine why I should not order a mail-ballot election; and (b) whether I should order a mail-ballot election due to the COVID-19 pandemic. As will be explained in further detail below, I have determined that it is unnecessary to hold a hearing in this matter and that a mail-ballot election should be conducted in light of the continuing “extraordinary circumstances” created by COVID-19.

II. POSITION OF THE PARTIES

A. The Petitioner’s Position

The Petitioner declined to submit a response to the Notice to Show Cause. Because the Notice required responses regarding the need for a hearing and as to whether there was opposition to a mail-ballot election, I conclude the Petitioner does not want a hearing and is not opposed to a mail-ballot election.

B. The Employer’s Position

On April 29, the Employer submitted its response to the Notice to Show Cause setting forth its position as to why I should hold a hearing and opt to conduct the election manually, instead of by mail. Regarding the former issue, although the Employer gives great detail in its position regarding the safety measures it has and will take to protect employees and the Board Agent the Employer requests, without further explanation or any indication of information that needs to be developed, that I conduct a hearing so it can outline its manual election proposal.

Regarding the second issue, the Employer provides a detailed explanation regarding why a mail-ballot is inappropriate and why it prefers that I conduct a manual election instead. In its response, the Employer explained its operations at the facility, and the various procedures it has put in place to keep employees safe. The Employer highlighted that no employees at the facility have tested positive for the COVID-19 virus, that the facility is a large sawmill spanning over 100 acres of rural timberlands, the large size of the intended voting area, and the lack of regular public tours, visitors, or other gatherings at the facility.

Additionally, the Employer explained the various safety measures it has, and would, put into place to ensure the election can be conducted safely, including: before starting their shift, employees will be asked a series of safety questions while still in their car; employees and visitors must have their temperature taken and complete a screening questionnaire; individuals who are not able to pass the screening will be sent home and not allowed to return without medical clearance; sanitizing/cleaning products are available at the facility; the plant is being “deep cleaned” on a regular basis; the voting area will be marked with tape every 6 feet to signify social distancing thresholds; employees are aware of the Employer’s expectation that they engage in social distancing; and masks/gloves are available.

Finally, the Employer provided a legal analysis, accompanied by case citations, in support of its position that, not only is a mail-election not necessary based on safety concerns, but that manual elections have long been the Board’s preference except when employees are “scattered.”

III. ANALYSIS AND FINDINGS

A. A Hearing is Unwarranted

A pre-election hearing is typically convened when it is necessary to resolve disputed issues concerning the composition of a petitioned-for-unit. At the hearing, a hearing officer is charged

with developing a complete record and, to achieve that end, the parties are permitted to proffer testimonial and documentary evidence to support their respective positions regarding how the disputed issues should be resolved. The purpose of this exercise is to enable a Regional Director to discharge his or her duty under Section 9(c) of the Act to determine whether a question concerning representation exists.

Here, the Employer requests, without explanation or supporting legal citations, that I hold a hearing in order to enable it to outline its proposal to hold a manual election. Some compelling facts convince me that it is unnecessary to hold a hearing to determine why I should not order a mail-ballot election in this case. First, convening a hearing is unwarranted because there is absolutely no dispute among the parties regarding the composition of the unit. Previously, the parties agreed which employees would, and would not be, permitted to vote in the election and consummated their agreement in a stipulated election agreement. Neither party has sought to revoke their previous agreement regarding the unit composition or proposed any modifications to the unit in response to the Notice to Show Cause. Therefore, it is unnecessary to incur the expense of convening a hearing to develop a record to resolve traditional hearing issues, such as unit scope and voter eligibility issues, since the unit composition issue is firmly settled.

Second, a hearing is not warranted because I have accepted as true all facts and evidence proffered, and representations made, by the Employer in its answer to the Notice to Show Cause including, *inter alia*, the fact that the employees in this instance are not scattered and the precautions it intends to take to ensure that a manual election is safely and effectively conducted at its facility. In its response, the Employer never indicated that it has, or would like the opportunity to present, additional facts supporting its position at a hearing. The Employer's answer constituted its full and complete response to the Notice to Show Cause and I have thoroughly

reviewed and thoughtfully considered the evidence and arguments supporting the response. Accordingly, it is unnecessary to expend Agency resources holding a hearing since doing so will only result in the Employer presenting the same evidence it submitted, and I have accepted, in response to the Notice to Show Cause. Further, contrary to any traditional need for a hearing to present evidence regarding disputed issues, the only issue to be determined is whether Agency employees will be put at unnecessary risk outside of the Employer's control given the circumstances surrounding the COVID-19 virus.

In light of the above, I have concluded that a hearing is not necessary and will not be held in this matter.

B. A Mail-Ballot Election is Warranted

In light of my decision not to hold a hearing, the only remaining issue is whether a mail-ballot election should be conducted in this case. While I fully recognize that Board elections should, as a general rule, be conducted manually, I find that the "extraordinary circumstances" created by COVID-19 warrant deviating from this method.

I note the Board has held in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), that a regional director does not abuse her discretion if she orders a mail-ballot election based solely on the safety of Board agents. See, *Atlas Pacific Engineering Company*, 27-RC-258742 (May 8, 2020). There is no dispute the Board prefers manual elections. Also, however, there is no dispute mail-ballot elections are a normal part of the Board's procedures; in other words, they are not an *ad-hoc* procedure the Board recently concocted. While, normally, mail-ballot elections are conducted because employees are "scattered" (as that term is meant in Board law), the Board's rules and regulations do not account for the current circumstances – a global pandemic. The

regulations do, however, as elucidated by *San Diego Gas & Electric*, allow for Regional Directors to exercise discretion when scheduling elections based on “extraordinary circumstances.”

In exercising my discretion to order a mail-ballot election in this case, I rely on several factors. As an initial matter, I take administrative notice of the pandemic health situation that currently exists in the United States, and which continues to affect the way that individuals, businesses organizations, and governments conduct their daily operations. The COVID-19 virus is infecting people and spreading easily from person to person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. On March 13, the President of the United States proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency. This situation poses a serious public health risk. I note that, under order of the President of the United States, federal government employees are to avoid unnecessary social contact and that government business should be conducted remotely when possible. Similarly, most businesses in Arkansas, as well as government offices, are under similar, though less strict, orders of the Governor of Arkansas.

I am not persuaded by the relatively low number of positive cases in the County of Columbia, the location of the Employer’s facility. At the present time, the Arkansas Department of Health has reported 13 confirmed cases of COVID-19, and two deaths, in that county. While the various state and local governments of Arkansas have taken steps to prevent or slow the spread of the virus, and the number of infected individuals in Arkansas has been less than those in other states, nevertheless, as the state “reopens” during the following weeks, it is unknown if the number of infections will decrease or increase, and/or if the state will see a spike in cases as the result of its residents increasing interactions. Consequently, the current low number of positive cases in Columbia County fails to persuade me that it is necessary to hold a manual election.

Additionally, conducting a manual election in this case will require a significant degree of exposure, not only to the Board agent, but also to the observers and employees. Conducting a manual election would require significant travel on the part of the Board agents. The Employer's facility is approximately 130 miles from the closest agent's working location, resulting in a two to two-and-a-half-hour drive to the Employer's facility, one-way, for the Board agents. Under the current proposed schedule, the Board agents would be required to stay in a hotel the night before the election. In addition, the Board agents would be in the polling place for an extended time period, from 6:30 a.m. until 11:45 a.m., and again from 4:30 p.m. to 8:00 p.m. The time-gap between voting sessions means the Board agents will necessarily remain in public or semi-public spaces. This extended period of time (either during the election or between voting sessions) places an unnecessary risk of exposure to the Board agents. The times of the voting sessions also mean the Board agent would likely have to stay another night at a hotel. Further, because the Board agent will be required to wear a mask and remain in the polling area for the entirety of the polling sessions and that one of those sessions is over 5 hours, it will be necessary to send a second Board agent so that the agent can get some respite. Based on social distancing guidance, this will require the Agency to either send two cars so that the agents can socially distance from each other or require the agents to wear masks during the extended drive to the Employer's facility. Given all of this, holding a mail-ballot election minimizes the risks posed to the Board agents, and complies with both the U.S Government's and the State of Arkansas' orders. While various precautions would be taken by the Employer to ensure safety, a manual election would place over 160 employees, observers, and the Board agents in very close proximity to each other for a substantial period of time. While helpful, the accommodations offered by the Employer do not alleviate my concern that two Board agents will be placed at risk.

In addition to the safety concerns noted above, a manual election is also undesirable in the current climate because such an election could lead to decreased voter turnout and voter disenfranchisement. If a manual election is ordered, unit employees would be required to appear at the facility in order to exercise their right to vote. However, an employee who is ill or manifesting symptoms unrelated to COVID-19 may opt to remain at home, and not vote, due to fear of failing the Employer's screening protocol. Alternatively, given the importance of the election, the ill employee may feel compelled to report to the facility in order to allow his voice to be heard in the election. While the Employer plans to screen employees when they arrive to work on the day of the election, these screening procedures are not infallible and may result in a COVID-infected employee, particularly those that are asymptomatic, entering the facility. Further, the testing procedures proposed by the Employer will also result in the disenfranchisement of employees who have high temperatures not caused by COVID-19 since all employees who have fevers will be sent home and not allowed to cast a vote. The risks of low voter turnout and voter disenfranchisement are simply not present with a mail-ballot election since all unit employee will have an opportunity to vote.

While I appreciate the extraordinary efforts the Employer has offered to make to facilitate a manual election, the Region cannot safely hold a manual election at this time at this location given the current dangers posed by COVID-19. Furthermore, the safety measures proposed can introduce new problems. For example, the long polling sessions, lasting several hours with small groups of employees being released on a schedule, may help to eliminate voters congregating in line while waiting to vote, but also increases the time the Board agents and observers must spend together carrying out their election-related duties all while wearing masks. As with the other issues noted above, a mail-ballot election alleviates this exposure and guarantees overall safety.

Therefore, I conclude that a mail-ballot election is warranted and will protect, not only the rights, but also, the safety of all parties.

IV. ADDITIONAL FINDINGS

Based on the stipulated election agreement signed by the parties, I hereby make the following additional findings:

The Employer, an employer within the meaning of Section 2(2) of the Act, is a Washington corporation engaged in the operation providing lumber forestry services at its location in Waldo, Arkansas. Within the past 12 months, a representative period, the Employer purchased and received goods and materials at its Waldo facility valued in excess of \$50,000 directly from points located outside of the State of Arkansas. Based on this, the Employer is engaged in commerce and affects commerce within the meaning of Section 2(6) of the Act.

The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All hourly full-time and regular part-time production and maintenance employees employed by the Employer at its Waldo, Arkansas, facility. **Excluded:** All office clerical and professional employees, managerial employees, guards, and supervisors as defined by the Act.

There is no contract bar or any other bar to an election.

V. CONCLUSION

The risks of COVID-19 are somewhat unknown and, while these employees are required to appear at work because no other alternative exists for them, there is an alternative to a manual election – a mail-ballot election. A mail-ballot election would limit and/or avoid all in-person

contact between the Board agent(s), observers, and voters. Therefore, in an effort to ensure the safety of everyone during the ongoing pandemic, I believe a mail-ballot election is warranted.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The 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. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

Eligibility to Vote

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, 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.

List of Eligible voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 US 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before June 10, 2020. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to 504-589-4069. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. 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: June 3, 2020

/s/

M. KATHLEEN McKINNEY
REGIONAL DIRECTOR
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