

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20**

CALIFORNIA FORENSIC MEDICAL GROUP

Employer

and

Case 20-RC-257148

NATIONAL UNION OF HEALTHCARE WORKERS

Petitioner

DECISION AND DIRECTION OF ELECTION

California Forensic Medical Group (Employer) operates two psychiatric care programs at the Sonoma County Jail, located in Santa Rosa, California. National Union of Healthcare Workers (Petitioner or Union) seeks by the instant Petition to represent professional and non-professional employees in a bargaining unit (“Unit”) of employees employed in these two programs: the Foundational Mental Health Program (“foundation program”) and the Jail Based Competency Program (“competency program”).¹

The Employer contends that a bargaining unit consisting of employees employed in both programs is not appropriate. The Employer does not contend that the petitioned-for Unit excludes employees that should be included in the Unit. Rather, it takes the position that the five employees in the competency program do not share a sufficient community of interest with the 70 employees in the foundation program to constitute an appropriate unit. Regarding the manner of election, the Employer asserts that a manual election should be directed, while Petitioner takes the position that the extraordinary circumstances of the COVID-19 pandemic are such that I should direct a mail-ballot election.

A hearing officer of the National Labor Relations Board (Board) held a hearing on May 13, 2020, in this matter. Both parties made an oral argument at the conclusion of the hearing. Based on the record evidence and relevant Board cases, I find the petitioned-for Unit is an appropriate bargaining unit. Additionally, I find that, under the circumstances of this case, a mail-ballot election is appropriate. I have directed an election accordingly.

THE EMPLOYER’S OPERATIONS

Sonoma County (“the County”) operates two jail facilities in Santa Rosa, California. Both facilities, the Sonoma County Main Adult Detention Facility and the North County Detention Facility, located approximately 6 miles apart, act as a holding facility for those individuals who are incarcerated for a limited period, including those awaiting a criminal

¹ In seeking to combine professional and non-professional employees in a single bargaining unit, Petitioner is seeking an election consistent with *Sonotone Corp.*, 90 NLRB 1236 (1950).

trial.² As part of operating the jail in a safe and secure manner, the County contracts with the Employer to provide basic mental health services for the inmate population. The foundation program that provides these services employs approximately 70 individuals in a variety of medical classifications, such as nurses, and mental health classifications, including counselors, social workers and therapists.

The State of California contracts with the Employer to operate a smaller program tailored to a much more specific goal at the jail: assisting individuals facing felony charges, but whom have been found incompetent to stand trial, to become competent. Approximately three individuals are currently employed in the felony competency program.³ The California Department of State Hospitals administers the program.

An additional individual is employed in the competency program, working with detainees facing misdemeanor charges, a program funded by the County. Although the funding sources and detainees differ, the felony and misdemeanor competency programs are operated as a single program by the Employer. The Employer also operates a medical program at the jail that is responsible for the physical health of detainees. Those employees are not at issue here.

The foundation program employs approximately 42 professional employees, including 18 registered nurses, three nurse practitioners, one physician's assistant, 19 mental health professionals – licensed clinical social workers, licensed marriage family counselors, substance abuse counselors and others – and one discharge planner. Approximately 28 non-professional employees are also employed in the program, including 18 licensed vocational nurses, three certified nursing assistants, two administrative assistant clerks, three medical records clerks, one licensed psychiatric technician, and one dental assistant.⁴ The competency program is much smaller, employing a registered nurse, two mental health professionals, and an administrative assistant clerk. The Employer also employs psychiatrists that provide mental health care, including prescribing medication.⁵ At least one psychiatrist works with the detainees in the competency program.

The record does not detail the skills and training of the employees in either the foundation program or the competency program, although some basic conclusions can be drawn from certain classifications, i.e. registered nurses have the skills and training necessary to hold that license.

The job functions of the employees at issue are similar but are tailored to their respective programs. Any detainee that is prescribed medication by the staff psychiatrists, or who is enrolled in group sessions at the psychiatrist's direction, is considered part of the foundation program. Accordingly, the foundation program employees monitor the mental health of the detainees and chart this information. This can involve routine assessments of a detainee's condition, or crisis intervention such as a suicide risk. The foundation program

² Throughout the record there is little or no distinction between the two facilities. Consistent with the parties and the witnesses, in this Decision I refer to the two facilities collectively as a single "jail" in addressing the community of interest at issue.

³ An additional position is currently vacant.

⁴ The Employer identifies the licensed vocational nurses as licensed practical nurses.

⁵ Petitioner does not seek to include these individuals in the Unit.

employees also conduct group sessions for detainees. These sessions address issues such as substance abuse treatment, moral recognition training, and cognitive behavioral therapy.

Employees in the competency program similarly monitor and chart the condition of detainees and conduct group sessions. The competency program group sessions are focused exclusively on restoring competency, addressing issues such as the terminology used in court and how to communicate with lawyers and court officers. The charting performed by these employees contains the usual mental-health assessment information, but also includes specific information that allows the State of California to assess whether progress is being made toward competency. If, during these sessions, it is determined that something beyond the scope of the competency program is an issue, from a medication reaction to a suicide risk, the competency program employee reports this to the foundation program employees and the appropriate psychiatrist.

The record evidence indicates that, in practice, the lines between the programs are not strict. The registered nurse employed in the competency program indicated that she has been directed by a psychiatrist to draw blood from, and give medications to, detainees outside the competency program. The same nurse has also been provided the opportunity to work in the foundation program. The jail is closed on seven "court holidays" in addition to the holidays recognized by the Employer. On those days, the foundation program and medical program, which operate on a 24-7 basis, are open while the competency program is not. The nurse employed in the competency program testified that on these court holidays she will take a day of leave or work in the foundation or medical program.

As can be inferred from the above, contact also appears regular. The employees of both the foundation and competency program share the same office space. While the 10-12 detainees typically enrolled in the competency program are housed in a single cluster of cells, the record does not indicate that this physically separates the competency program employees from their coworkers at the jail. There is no evidence that the foundation program employees and competency program employees are using separate spaces or locations in performing their work.

As noted, the foundation program operates on a 24-7 basis, while employees in the competency program work 9-to-5 weekday schedule. Both the foundation and competency program are supervised by the Employer's Mental Health Director.

COMMUNITY OF INTEREST

The Community of Interest Standard

When examining the appropriateness of a unit, the Board need not determine whether the unit sought is the only appropriate unit or the most appropriate unit, but rather whether it is "an appropriate unit." *Wheeling Island Gaming*, 355 NLRB 637, 637 n.1 (2010), citing *Overnite Transportation Co.*, 322 NLRB 723 (1996). If the petitioned-for unit is deemed inappropriate, the Board considers alternate unit proposals. *Overnite Transportation*, 322 NLRB at 723 ("[t]he Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining").

To determine whether a unit is appropriate, the Board considers whether the petitioned-for employees share a community of interest. *PCC Structural, Inc.*, 365 NLRB No. 160 (2017). In making a community of interest determination, the Board considers its traditional factors; whether the employees: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structural, slip op. at 11* (citing *United Operations*, 338 NLRB 123 (2002)). The Board considers all the factors together, as no single factor is controlling. *Id.*

In the present case, the Employer's position is that the petitioned-for unit is inappropriate because the employees employed in the foundation program do not share a community of interest with the employees in the competency program. After carefully considering the record evidence, and addressing the above factors in turn, I find that a community of interest does exist between the foundation and competency program employees, and the petitioned-for Unit is appropriate.

A Community of Interest Exists Between the Foundation and Competency Program Employees

First, regarding whether the foundation and competency programs are separate departments, I find the evidence mixed. The evidence establishes that these are two programs, with a different focus, but there is no organizational chart or any other record evidence that demonstrates how the mental health and medical programs are organized at the jail. The Employer appears to argue that these separate programs are the equivalent of two departments – with distinct operating budgets and reporting – because the foundation program is funded by the County and the competency program is funded by the State. However, this distinction fails to delineate the Employer's operations because the misdemeanor portion of the competency program, 20 percent of that program, is funded by the County. Ultimately, it appears that some administrative division exists between the programs, but because the dividing line is blurred, I find this factor does not weigh strongly in the community of interest consideration.

Regarding the skills and training of the employees, the record evidence is minimal. The foundation program employs registered nurses, mental health professionals, and an administrative assistant clerk. The registered nurses share a license, and that is significant. The record does not contain enough information regarding the skills and training of the mental health professionals and administrative assistant clerk positions to draw conclusions.

The record contains more evidence regarding job functions, and this evidence supports finding a community of interest among the employees in the petitioned-for unit. Specifically, the employees in both the foundation and competence programs monitor the mental health of detainees, chart their status, and conduct group sessions to reach certain goals. There are differences in these goals: a group session with the foundation program may focus on dealing with substance abuse while the competency program is always focused on building toward competence, but the mechanisms of how employees perform their work to meet these goals are the same.

One of the strongest factors favoring finding a community of interest between the petitioned-for employees is the cooperation and temporary interchange between programs. The record contains evidence of competency program nurses performing duties in the foundation program, discrete tasks such as injecting medication or more general participation such as working a shift in the foundational program on a court holiday. This combines elements of several community of interest factors, and whether defined as evidence of a high degree of functional integration or temporary interchange, I find this type of crossover work manifests a community of interest. I also note that the employees in the program share information beyond merely charting, such as the competency program nurse providing information to the foundation program employees to augment their care of a detainee in the overnight hours.

Although details in the record regarding the contact between employees is minimal, it is apparent that employees in both programs are working in the same location, including shared office space. From this, it seems reasonable to infer that at least some contact is taking place during weekday shifts when the competency program employees are working. I do find that the different working hours, with foundation employees working a 24-7 schedule and competency program employees working a weekday schedule, is a significant difference in their terms and conditions of employment. However, this is somewhat balanced by this being the only difference in terms and conditions of employment identified in the record.

Finally, and of particular significance, I note that the foundation and competency program employees are both supervised by the Mental Health Director. On balance, I find the similar job functions, functional integration and/or temporary interchange, and shared supervision are strong evidence of a community of interest among the employees in the petitioned-for unit. Although I recognize that the hours of work of employees in the programs differ, I do not find that this factor outweighs the factors detailed above supporting a community of interest. Having found the petitioned-for unit appropriate, I shall direct an election among that Unit, as set forth below.

MAIL BALLOT ELECTION

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may

reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, supra at 1145.

On May 8, 2020, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated “extraordinary circumstances” beyond the considerations described above, and that circumstances in place at the time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for directing a mail ballot election in that case after considering the conditions surrounding a manual election.

Here, Petitioner argues that the instant case is appropriate for a mail ballot election due to the ongoing public health concerns regarding the COVID-19 pandemic, and particularly due to the risk detention facilities face during the pandemic. In response, the Employer argues first that the election should be stayed indefinitely, and second, absent a stay, the election should be conducted manually.

With respect to the first issue, as noted by the Board’s recent unpublished decision in *Crozer-Chester Medical Center*, Case 04-RC-257107, the Board’s general obligation is to maintain operations to the extent that it is safe and feasible to do so. After a brief pause at the beginning of the COVID-19 pandemic, the Board has resumed conducting representation elections where appropriate measures are available to permit a safe election. I have determined that in this case a mail ballot election permits a safe election to take place. For the reasons stated, and the record as a whole, I deny the Employer’s request to postpone this election indefinitely.

Regarding a mail-ballot election, the Employer is correct that, under normal circumstances, I would almost certainly direct a manual election for these units as that is the Board’s usual practice and the employees at issue are not scattered.⁶ However, the current pandemic does not present normal circumstances. It is well-established that the pandemic has impacted California generally and Sonoma County and Santa Rosa specifically. Although requirements have been eased and a slow reopening has begun in certain California counties, guidelines continue to be in place at the Federal, state and local level recommending avoiding unnecessary travel, social contact, and conducting business remotely when possible.

In addition to general guidance addressing social distancing, I also specifically note that detention facilities face special risks from the COVID-19 pandemic. The

⁶ Petitioner argues schedule documents in the record demonstrate that voters are scattered, in that certain employees are infrequently scheduled. The schedules demonstrate variation in employee scheduling, but I do not rely on “employee scatter” as a basis for my mail-ballot determination.

Centers for Disease Control and Prevention *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* highlights how, as shared living spaces with detainees in close proximity, detention facilities face the heightened potential for COVID-19 to spread once introduced.

Regarding the facilities at issue here, I note the County responded to this risk by suspending visitation at both Main Adult Detention Facility and the North County Detention Facility effective March 23, 2020. Indeed, several of the items the Employer mentions as a basis for the jail being a safe location to conduct a manual election – suspending inmate transfers, quarantining new intakes, verbal and temperature screenings – are County measures attempting to mitigate the special risks posed by COVID-19 to a detention facility.

Although certain safety measures, if obeyed by everyone and carried out to perfection, might limit some close interaction and mitigate some of the unnecessary risks associated with conducting a manual election here, the Board's mail-ballot process all but eliminates the inherent safety risks and equally ensures that employees can conveniently and freely exercise their right to vote. While the Board certainly prefers manual balloting, it does not shy away from balloting by mail when the circumstances warrant it. Indeed, the Board's preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employee's representational desires. As the Board noted in *London's Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

In sum, the Board's mail-ballot procedures are tried and true, and provide a proven, suitable, and safer alternative to manual balloting in these circumstances.⁷

⁷ See the majority opinion in *London's Farm Dairy, Inc.*, supra, in which the Board dispatched with the unsubstantiated notion that balloting by mail is somehow less effective or lends itself to subterfuge, coercion, invasion of privacy or other abuse. As the Board observed then, "Indeed, in the 62-year history of the Act, there has been only one reported instance of such abuse, see *Human Development Assn.*, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act (RLA), under which the use of mail ballots in representation elections has been the rule and not the exception." Also note that no manual election has been conducted by the National Mediation Board (NMB) under the RLA since 1987. Simply put, the Board has a long and proud tradition of conducting manual- and mail-ballot elections alike. It

CONCLUSIONS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁸
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. 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.
5. The following employees of the Employer constitute voting groups appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

VOTING GROUP A (PROFESSIONAL):

Included: All full-time, regular part-time and per diem Nurse Practitioners, Registered Nurses, Substance Abuse Counselors, Physician's Assistants, Licensed Clinical Social Workers, Marriage Family Therapists, Licensed Counselors, Licensed Marriage Family Therapists, and Discharge Planners employed by the Employer at its facilities located at 2777 Ventura Ave, Santa Rosa, California and 2254 Ordinance Rd, Santa Rosa, California.

Excluded: All other employees, confidential employees, employees represented by other labor organizations, guards and supervisors as defined by the Act.

simply prefers manual elections when, unlike here, they are feasible, safe, and practical to conduct.

⁸ During the hearing the parties stipulated to the following commerce facts:

California Forensic Medical Group, a California corporation, with facilities located at 2777 Ventura Ave, Santa Rosa, California and 2254 Ordinance Rd, Santa Rosa, California is engaged in the operation of a forensic treatment center which provides health care services on behalf of the Sonoma County Jail. During the past 12 months, a representative period, the Employer has derived gross revenues in excess of \$250,000 from the operation of this facility and has purchased and received goods valued in excess of \$5,000, directly from sources located outside the State of California.

VOTING GROUP B (NON-PROFESSIONAL):

Included: All full-time, regular part-time and per diem Licensed Vocational Nurses, Certified Nursing Assistants, Administrative Assistant Clerks, Unit Secretaries, Medical Records Clerks, Clerks, Dental Assistants, and Licensed Psychiatric Technicians employed by the Employer at its facilities located at 2777 Ventura Ave, Santa Rosa, California and 2254 Ordinance Rd, Santa Rosa, California.

Excluded: All other employees, confidential employees, employees represented by other labor organizations, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups found appropriate above. In conformance with Section 9(b)(1) of the Act, I shall seek the consent of the professional employees (Voting Group A) before including them in a combined unit. As a result, Voting Group A will be presented two questions:

1. Do you desire to be included in the same unit as the non-professionals in Voting Group B for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)?

Voting Group B will be presented a single question:

Do you desire to be represented for the purposes of collective bargaining by NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)?

If a majority of the professional employees voting in **VOTING GROUP A** vote “Yes” to the first question on the ballot, indicating their desire to be included in a unit with non-professional employees in **VOTING GROUP B**, they will be so included, and their votes on the second question on the ballot regarding whether or not they wish to be represented for purposes of collective bargaining by **NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)** will be counted together with the votes of the non-professional employees in **VOTING GROUP B** to decide the question concerning representation for the overall unit consisting of the employees in **VOTING GROUP A and VOTING GROUP B**. If, on the other hand, a majority of the professional employees voting in **VOTING GROUP A** do not vote “Yes” to the first question on the ballot, their ballots will be counted separately to decide the question concerning representation in a separate bargaining unit.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 20, on June 16, 2020. Voters must return their mail ballots so that

they will be received in the National Labor Relations Board, Region 20 office by close of business on July 7, 2020. In order to be valid and counted, the returned ballots must be received at the Region 20 office prior to the counting of the ballots.

All ballots will be commingled and counted at a location to be determined by the Regional Director at 10 am on July 13, 2020.⁹

Any person who has not received a ballot by June 23, 2020, should immediately contact the Region 20 office at **(415) 356-5130**, or our national toll-free line at **1-866-667-NLRB (1-866-667-6572)**.

B. Voting Eligibility

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

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **June 5, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will not 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

⁹ If, on the date of the count, the Region 20 office is closed, or if the Board agent conducting the count is working remotely due to COVID-19 concerns, the count will be done remotely. In that event, the parties will be provided information on how to participate in the count by videoconference.

list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the forthcoming Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

RIGHT TO REQUEST REVIEW

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

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

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

Dated at San Francisco, California this 3rd day of June 2020.



Jill H. Coffman
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National Labor Relations Board
Region 20
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