

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**EUGENE FREEZING & STORAGE CO. d/b/a  
SNO TEMP COLD STORAGE CO.**

**Employer**

**and**

**Case 19-RC-255017**

**TEAMSTER LOCAL UNION NO. 670 affiliated  
with INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

**Petitioner**

**SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION**

By its petition, Teamster Local Union No. 670 affiliated with International Brotherhood of Teamsters (“Petitioner”) seeks to represent a unit of approximately 26 employees employed by Eugene Freezing & Storage Co., d/b/a Sno Temp Cold Storage Co. (“Employer”) at the Employer’s Albany, Oregon facility. When the petition was filed the Employer took the position that the petitioned-for unit was not an appropriate unit, and a pre-election hearing was held. On that record I issued a Decision and Direction of Election (“original Decision”) finding the petitioned-for unit appropriate and directing a manual election take place on March 18, 2020<sup>1</sup>, at the Albany facility.

Due to the COVID-19 pandemic, that election did not occur, and no election has taken place to date. On May 15, an Order to Show Cause issued directing the parties to address why the election in this matter should not be conducted by mail ballot, and how a manual election would be feasible given the current pandemic, stay at home directives, and my concern for protecting the safety of the Agency’s employees, the voting employees, the parties, the party representatives, and the public.

In response, the Employer takes the position that a manual election remains the only appropriate method to conduct the instant election, while Petitioner takes the position that a mail ballot election should take place as practicable. For the reasons addressed below, I have directed a mail ballot election. This Supplemental Decision and Direction of Election (“supplemental Decision”) only addresses the method of the election, it does not address or alter any of my other findings in the original Decision.

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<sup>1</sup> All dates herein are 2020.

## **BACKGROUND**

The Employer operates temperature-controlled warehouses at multiple locations in Oregon. On January 22, Petitioner filed the petition in the instant case, seeking to represent employees employed at the Employer's Albany, Oregon location. In response the Employer opposed the petition, asserting that the only appropriate unit is a multi-facility unit and must also include, at a minimum, employees in the same classifications working out of its Eugene, Oregon facility.

A pre-election hearing to take evidence on this issue was held on February 4, before a Hearing Officer of the National Labor Relations Board ("Board"). On February 28, the original Decision issued finding that the petitioned-for unit was an appropriate unit and directing a manual election. The election was to be held on March 18 at the Albany facility.

Following the issuance of the original Decision, but before the election, the COVID-19 pandemic profoundly changed life in the United States. Days prior to the election, on March 16, the Board directed all employees, other than minimal staffing as needed to handle mail, to telework in light of the ongoing coronavirus pandemic, and the scheduled election did not take place on March 18. On March 19, the Board announced it was suspending all representation elections through and including April 3 due to the pandemic.

Thereafter, on March 23, Oregon Governor Kate Brown issued an executive order banning public gatherings, ordering the public to stay at home, and closing non-essential businesses in response to the growing pandemic. This statewide order included Linn County, where the facility is located. The facility, as part of the food supply chain, continued to operate as an essential business, although with some modifications in its standard operations.

On April 1, the Board announced that the suspension of elections would end on April 3 as measures were available to permit some elections to take place, deferring to the Regional Directors to use their discretion to determine on a case-by-case basis whether an election can be held in a "safe and efficient" manner. On April 15, I approved a stipulation that rescheduled the directed election to take place on May 14 at the Albany facility.

On May 8, I postponed the rescheduled manual election due to the ongoing public health emergency and the State and Agency restrictions in place, described above. At that time, I determined that it did not appear that it was practical, safe, or socially responsible to conduct a manual election in this case in the foreseeable future. Rather, in order to meet the Board's goal of conducting elections as early as practicable, it appeared that a mail ballot election was warranted, and I sought to obtain the parties' agreement to hold a mail ballot election in lieu of a manual election. The Employer did not agree to a

mail ballot election, and accordingly on May 15, I issued the Order to Show Cause in the instant case.<sup>2</sup>

Oregon currently has a State of Emergency in effect until at least July 6, 2020. As with many states, emergency orders have resulted in the closure of many businesses and restrictions on when and where residents congregate. Oregon has instituted a phased reopening plan on a county-by-county basis, and Linn County entered phase 1 of this program – allowing for limited reopening of restaurants, bars, and personal services, as well as certain gatherings of up to 25 people with social distancing – on May 15, 2020. As of the date of this decision approximately 117 residents of Linn County have tested positive for COVID-19, and nine have died.

### **BOARD'S STANDARD**

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" and that circumstances in place at the time – federal, state, and local government directives

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<sup>2</sup> The Board has held that a Regional Director cannot order a mail ballot election where the parties' stipulated election agreement calls for a manual election, absent special circumstances. *T&L Leasing*, 318 NLRB 324 (1995). Although the parties entered into a stipulation regarding election details on April 15, and I approved that stipulation for the purpose of attempting to conduct a timely election, I subsequently postponed that election for the reasons stated. The election I order here is a modification to the election directed in the original Decision, *not* a modification of the April 15 stipulation, and accordingly I do not find it necessary to consider whether "special circumstances" are present here in the *T&L Leasing* context.

limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for the Regional Director to, after considering the conditions surrounding a manual election, direct a mail ballot election in that case.

### **POSITIONS OF THE PARTIES**

The Employer maintains that due to the unreliability of mail ballot elections, the reopening of Linn County, and the safety measures it has and will implement, a manual election is possible in this case. Although not addressed by the Order to Show Cause the Employer has additionally requested that, because of the delay that has occurred, I order a new payroll eligibility date and a new voter list reflecting these changes.<sup>3</sup>

The Employer does not elaborate on its first point; presumably it is a reference to concerns regarding mail ballot elections that have been previously addressed by the Board. See *California Pacific Medical Center*, 357 NLRB 197, 198 (2011). The Employer addresses its second point in detail, arguing that, in allowing Linn County to move to phase 1 of the reopening plan, the State of Oregon is recognizing that COVID-19 no longer poses an emergency health threat and that with proper precautions citizens may safely begin to resume normal activities.

In support of its third point the Employer notes it has implemented procedures in the workplace, such as the required use of face coverings, maintaining recommended distances between employees, eliminating unnecessary business travel, increased sanitation, and designating officials as responsible for enforcing these measures, that are a direct response to the COVID-19 risk. Further, in preparation for a manual election, the Employer commits to: (1) providing a well-ventilated voting location that will allow the involved individuals to maintain U.S. Centers for Disease Control social distancing during the pre-election conference and the balloting; (2) requiring the use of, and supplying, facial coverings and disposable gloves for the Board agent, observers and party representatives; (3) providing a supply of writing implements sufficient for single use by each voter; (4) providing an adequate supply of sanitizer and sanitizing wipes for cleaning surfaces, including the voter booth; and (5) a deep cleaning of any voting location prior to the election.

In addition to these points, the Employer also argues the Board's Order in *Atlas Pacific Engineering Company* is inapposite to the present case. The Employer notes that the Order in *Atlas Pacific Engineering Company* issued on May 8, and that between May 8 and the present date circumstances in Linn County have improved, as demonstrated by its partial reopening. Further, the Employer argues that a mail ballot election would essentially relocate the election from Linn County to Multnomah County, where the Board's Portland, Oregon Subregional office is located, one of the few counties not in

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<sup>3</sup> In support of its contention that a new voter list should be ordered, the Employer notes that since the original eligibility date was set four of the 25 employees eligible to vote have quit, transferred, or have been terminated, and it has also hired two new employees.

phase 1 of the reopening plan due to the more severe nature of its COVID-19 outbreak. The Employer maintains that a mail ballot vote count in Portland would bring together the same number of Board agents, party representatives and observers as a manual election, but merely in a more dangerous space.

In contrast with the Employer, Petitioner supports the contention that it does not appear that it is practical, safe, or socially responsible to conduct a manual election in this case in the foreseeable future. It argues that a mail ballot election is the appropriate way to conduct the election in this case because it is the safest of the available Board procedures and will avoid further delay. Petitioner also notes the Board's Order in *Atlas Pacific Engineering Company*, and asserts the extraordinary circumstances created by the COVID-19 pandemic continue to be in place even if reopening has started.

### ***A MAIL BALLOT ELECTION IS APPROPRIATE***

The Board's longstanding preference for manual elections is not in dispute, absent public health concerns a manual election would be appropriate here, and indeed a manual election would have already been held if the COVID-19 pandemic had not intervened. However, the current pandemic did occur, and is changing many aspects of the economy, public health, and the workplace. I have directed a mail ballot election here precisely because of this intervening event.

As stated in the Order to Show Cause, I do not find it practical, safe, or socially responsible to conduct a manual election in the foreseeable future. Each of these conclusions is based on a manual election requiring voters to physically congregate at a time when Federal and Oregon guidelines recommend avoiding unnecessary social contact and conducting business remotely when possible.

Turning to the Employer's specific points, I do not dispute that the Board has at times expressed reservations about mail ballot elections, the first of the Employer's stated objections. These are concerns that the Board has already considered in stating its preference for manual elections. That preference was the reason a manual election was directed in the original Decision. However, circumstances have changed, and while the mail ballot procedure may not be the Board's preferred procedure, it is one of the Board's procedures available for conducting an election, and the appropriate circumstances for a mail ballot exist here.

Regarding the Employer's second contention, that the emergency conditions of the pandemic – the extraordinary circumstances – have passed, I do not agree. The beginning of a phased reopening does not mean a complete return to “normal operations” in the sense that no risk is associated with congregating. Indeed, the Employer acknowledges that risk still exists and that measures must be taken to try to minimize the possible transmission of COVID-19, as reflected in the steps the Employer would take in making a manual election as safe as possible, its third argument. In directing a mail ballot election I do not find the Employer's proposal flawed or deficient, but it remains the case that bringing all those involved in an election together in a shared physical space presents

a likely health risk, or at least a greater health risk than a mail ballot election. I do not find that compelling reasons exist for this risk when the mail ballot procedure is available.

The Employer argues that a mail ballot election essentially relocates the election from Linn County to Multnomah County, a county with a more severe COVID-19 outbreak. I have addressed this concern by directing the ballot count to be conducted by videoconference if necessary, as discussed in detail in a following section.

At one point a manual election was appropriate in this case, but a public health crisis intervened and changed the present circumstances. Although the public health risks may be diminishing, they do remain, and the Subregional office conducting the election remains in a mandatory telework status. In total, I find the current circumstances surrounding the COVID-19 pandemic in Oregon and Linn County constitute extraordinary circumstances as contemplated by *San Diego Gas & Electric*. I have directed a mail ballot election accordingly.

Finally, I do not find it necessary to order a new eligibility date in this case. Approximately three months have passed since the original eligibility date was set, but the delays have been caused by unforeseen circumstances that are no fault of the parties, and resetting the eligibility date would compromise the certainty for the parties regarding who will vote that comes with establishing an eligibility date. I do not find the unexpected delay here requires revisiting the eligibility date previously ordered at this stage of the representation case process. Additionally, post-election procedures remain available if eligibility concerns persist. Absent a change in the eligibility date I do not find it is necessary to order a new voter list. See *Casehandling Manual Part Two Representation Proceedings*, Sec. 11312.1(j); *Tekweld Solutions*, 361 NLRB 201, 201 (2014).

## **CONCLUSION**

For the reasons stated, I find a manual election is not feasible given the current pandemic, stay at home directives, and my concern for protecting the safety of the Agency's employees, the voting employees, the parties, the party representatives, and the public. Given that I do not find it practical, safe, or socially responsible to conduct a manual election in the foreseeable future, I have directed a mail ballot election in the following section. This Supplemental Decision only addresses the election details, it does not address or alter any of my substantive findings in the original Decision, including the appropriate unit.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate in the original Decision. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Teamster Local Union No. 670 affiliated with International Brotherhood of Teamsters.**

### **A. Election Details**

I have determined that a mail ballot election will be held. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **4:30 p.m. on Tuesday, June 16, 2020**, ballots will be mailed to voters from the office of the National Labor Relations Board, Subregion 36 Office, 1220 SW 3rd Ave., Suite 605, Portland, OR 97204-2170. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Tuesday, June 30, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 Office at **503-326-3085** or our national toll-free line at **1-866-762-NLRB (1-866-762-6572)**.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 36 Office by **4:30 p.m. on Tuesday, July 14, 2020**. All ballots will be commingled and counted by an agent of Subregion 36 of the National Labor Relations Board on **Friday, July 17, 2020 at 3:00 p.m.**, likely via a videoconference to be arranged by Subregion 36. In order to be valid and counted, the returned ballots must be received at the Subregion 36 Office by **4:30 p.m. on Tuesday, July 14, 2020**. No ballots will be counted that are received after the due date. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count. However, if I determine at a later date that the ballot count can be safely held at the Subregion 36 Office, the Subregion 36 Office will inform the parties with sufficient notice that the count will be held in the Subregion 36 Office.

### **B. Voting Eligibility**

Voting eligibility remains as described in the original Decision.

### **C. Voter List**

The voter list requirements are described in the original Decision.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies 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.

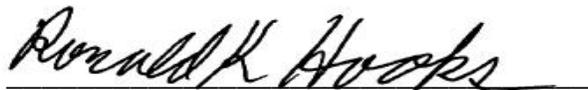
### **RIGHT TO REQUEST REVIEW**

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 Supplemental 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.nlrb.gov](http://www.nlrb.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 Seattle, Washington on the 5<sup>th</sup> day of June, 2020.



Ronald K. Hooks, Regional Director  
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