

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

**THOMAS JEFFERSON UNIVERSITY**

**Employer**

**and**

**Case 04-RD-259223**

**ERIC TODD KEENY**

**Petitioner**

**and**

**LAW ENFORCEMENT OFFICERS  
PROFESSIONAL ASSOCIATION**

**Union**

**and**

**INTERNATIONAL UNION, SECURITY, POLICE,  
AND FIRE PROFESSIONALS OF AMERICA**

**Intervenor**

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

Section 9(b)(3) of the Act precludes a union that accepts non-guards as members, or that affiliates with a union that accepts non-guards as members, from representing security guards. This case raises the question of whether a union that was already certified to represent a unit of security guards lost its right to do so because it briefly affiliated with a union that accepts non-guards as members. An additional issue is whether, if an election is directed, it should be conducted manually or by mail ballot.

The Employer, Thomas Jefferson University, operates a university and an acute-care hospital in Philadelphia, Pennsylvania (Philadelphia campus). Eric Todd Keeny (Petitioner) filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to remove the Law Enforcement Officers Professional Association (LEOPA) as the collective-bargaining representative of a unit of security guards employed by the Employer at the Philadelphia campus. The Employer and the Petitioner contend that LEOPA is disqualified from representing the Employer's security guards and that its certification of representative should be revoked under Section 9(b)(3) because it affiliated with Service

Employees International Union, Local 32BJ (Local 32BJ), a labor organization that admits non-guards to membership.<sup>1</sup>

On April 23, 2020<sup>2</sup>, the Employer filed an addendum to its Statement of Position arguing that LEOPA's certification of representative should be revoked immediately because it was affiliated with Local 32BJ, and that the petition should be dismissed because it raises no question concerning representation. On April 27, I issued a Notice to Show Cause to all parties on the Section 9(b)(3) affiliation issue. Thereafter, I concluded that the issue of LEOPA's status would best be resolved by administrative hearing.

A hearing was held via videoconference on May 18 before a hearing officer of the National Labor Relations Board (Board).<sup>3</sup> Having considered the evidence and the arguments presented by the parties and as discussed below, I have concluded that LEOPA is not disqualified from representing the petitioned-for unit of security guards because it is not presently affiliated with Local 32BJ. Accordingly, I have directed a decertification election.

In this Decision, I will first address the question of LEOPA's status under Section 9(b)(3) by discussing the history of its relationship with Local 32BJ and setting forth the relevant legal analysis. Then, I will address whether to direct a manual or mail-ballot election given the current extraordinary circumstances arising from the COVID-19 pandemic. Election details, including the type of election to be held, are nonlitigable matters left to the discretion of the Regional Director, but the parties were permitted to orally argue their position as it relates to the mechanics of this election. For the reasons discussed below, I find that a prompt mail-ballot election is appropriate.

## **I. LEOPA'S STATUS UNDER SECTION 9(b)(3) OF THE ACT**

### **a. Factual Overview**

#### *i. LEOPA's certification and negotiations with the Employer*

On March 11, 2019, LEOPA filed a petition seeking to represent the Employer's security guards in Case 04-RC-237380. Following a Board election, LEOPA was certified on April 15,

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<sup>1</sup> In its Statement of Position, LEOPA likewise sought to challenge the Section 9(b)(3) status of the Intervenor, International Union, Security, Police, and Fire Professionals of America (SPFPA). Because this Statement of Position was not timely filed as required under Section 102.66(d) of the Board's Rules and Regulations (Board's Rules), LEOPA was precluded from litigating the issue.

<sup>2</sup> All dates are in 2020 unless otherwise indicated.

<sup>3</sup> During the hearing, LEOPA moved to dismiss "the hearing" on the basis that the evidence had failed to show that it was affiliated with a non-guard union. I am treating its motion as one for summary judgment on the issue of its affiliation with Local 32BJ. Pursuant to Section 102.65(a) of the Board's Rules, the motion is denied.

2019 as the collective-bargaining representative of about 90 employees in the following unit (the Unit):

All full-time and regular part-time security officers employed by the Employer at the Center City campus of its University and Hospital in Philadelphia, PA; excluding all other employees, Jefferson police officers, and supervisors as defined in the Act.

According to LEOPA President Pablo Rivera, after LEOPA was certified, it commenced negotiations with the Employer for a collective-bargaining agreement. LEOPA's bargaining committee included Rivera, Vice-President Peter Luck, and two employees. The parties have bargained for more than a year, but they have not yet reached agreement. The last bargaining session before the hearing was on March 4; the parties have held no further meetings because of the COVID-19 pandemic.

Rivera testified that during the 2019 organizing campaign and throughout its contract negotiations with the Employer, LEOPA received no assistance from Local 32BJ and had no discussions with Local 32BJ regarding LEOPA's bargaining strategies.

*ii. Events surrounding LEOPA's agreement with Local 32BJ*

Petitioner Keeny, a Unit member, testified that around February 10, fellow security officer Carl Abbott posted a typewritten document on the employees' locker room door announcing a meeting for Unit members with Local 32BJ's Deputy Director, Timothy Finucan. While Abbott is a LEOPA delegate and member of its bargaining committee, there is no evidence that he was acting as an agent of LEOPA when he posted the announcement. The notice indicated that the meeting would be held at a restaurant on February 20 so Unit members could meet Finucan. The posting was not prepared on LEOPA's letterhead and it did not contain any insignia related to LEOPA.

Keeny and four other Unit employees attended the meeting. During the meeting, Finucan discussed Local 32BJ's prospective role in representing Unit employees. He told them Local 32BJ would represent employees in disciplinary actions, grievance meetings, arbitrations, and contract negotiations. He did not provide details, but stated only that Local 32BJ would participate in grievance and arbitration meetings and would have legal advice available to employees. Finucan also told employees that Local 32BJ had experience negotiating major contracts. Some employees asked what Local 32BJ could do to help improve their salaries, a point of contention between employees and LEOPA given LEOPA's inability to secure a salary increase. Finucan replied that he could not make any promises. Finucan made no mention of an affiliation agreement with LEOPA during the meeting, and no LEOPA official participated; indeed, there is no evidence LEOPA even knew about the meeting. In Keeny's opinion, Finucan was making a pitch to Unit employees for Local 32BJ representation. After the February 20 meeting, there were no further meetings with employees concerning Local 32BJ's possible representation of them.

On April 21, LEOPA President Rivera signed a servicing agreement with Local 32BJ, effective from April 8 until either the expiration of a collective-bargaining agreement between LEOPA and the Employer or April 8, 2023, whichever came later. Pursuant to the terms of the agreement, Local 32BJ would act as the designated agent of LEOPA and provide professional services to LEOPA members in grievance procedures, at arbitration hearings, and at labor-management meetings; it would also appear before the Board and engage in collective-bargaining negotiations on LEOPA's behalf. The agreement further provided that it could be altered, amended or rescinded by mutual written agreement of the parties. Although not specified in the agreement, Rivera testified that it covered only the Unit, not other bargaining units represented by LEOPA. In compliance with the terms of the agreement, Rivera sent a message that same day to the Employer's chief negotiator, Fred D'Angelo, informing him that effective immediately Local 32BJ was representing LEOPA as the collective-bargaining agent with respect to all terms and conditions of employment of employees in the Unit. The message identified Local 32BJ Deputy Director Finucan as the new point of contact.

There is conflicting testimony as to when LEOPA and Local 32BJ began discussing the servicing agreement. Petitioner Keeny testified that during an April 15 telephone conversation, LEOPA Vice-President Luck told Keeny that he had a draft of the agreement on his desk for consideration. Rivera, on the other hand, testified that the first time he had any contact with Local 32BJ regarding the agreement was April 20. Rivera testified that there was no reason for the retroactive effective date of April 8.

On April 22, LEOPA delegate Amaro Arcadia emailed the Employer requesting to process a Unit grievance to the next step. Arcadia copied several individuals in her email, among them an "mdonnon@SEIU32BJ.org," an apparent representative of Local 32BJ. According to Rivera, the Union did not inform employees about its servicing agreement with Local 32BJ and did not direct its delegates to include Local 32BJ's representatives in grievance emails, so there was no explanation why a Local 32BJ representative was copied. Rivera further testified that he did not know the identity of the copied representative. The email describes a first-step grievance meeting held via conference call on April 17. According to the email, participants included Luck, security officers Arcadia and Abbott, and Employer representatives Sergeant Courtney Williams and Director of Police/Security James Kerrigan, but no Local 32BJ officials.

*iii. The cancellation of the agreement between LEOPA and Local 32BJ*

As noted above, on April 23 the Employer filed a document with the Board urging that it revoke LEOPA's April 15, 2019 certification based on the servicing agreement. On April 24, in response to the Employer's contention, LEOPA and Local 32BJ executed a letter canceling the agreement between the two labor organizations. The letter stated that although the servicing agreement was made retroactive to April 8, it had been signed on April 21, and noted that no consideration or compensation was exchanged between the labor organizations and no work was done pursuant to the agreement. Also on April 24, LEOPA Vice-President Luck sent an email to Employer's counsel and an agent of the Board stating that the servicing agreement was cancelled and had never been implemented. LEOPA did not issue any communication to the employees in

the Unit about the cancellation of the agreement because it had never informed them of its affiliation with Local 32BJ.

There is no evidence that before April 21, Local 32BJ engaged in any representational activity or duties related to employees in the Unit. Additionally, the parties stipulated on the record that Local 32BJ never attended a bargaining session with the Employer on behalf of LEOPA.

**b. The Position of the Parties**

*i. The Employer's Position<sup>4</sup>*

The Employer maintains that LEOPA's certification of representative should be revoked pursuant to Section 9(b)(3) because it affiliated with Local 32BJ, a union that accepts non-guards as members. According to the Employer, LEOPA sought affiliation with Local 32BJ and ceded total control of its representational responsibilities. Finally, the Employer argues that since the date LEOPA canceled the servicing agreement with Local 32BJ, it has not engaged in any actions to represent Unit employees, and therefore has failed to affirmatively establish that it still represents those employees.

*ii. Petitioner's Position*

Petitioner asserts that LEOPA's certification of representative should be revoked under Section 9(b)(3) because LEOPA affiliated with Local 32BJ for more than 60 days, beginning on February 20 when a Local 32BJ representative met with Unit employees. He further argues that there was an indirect affiliation between Local 32BJ and LEOPA once they executed the servicing agreement, and that the cancellation of the servicing agreement is not dispositive of the affiliation question.

*iii. LEOPA's Position*

LEOPA asserts that the certification of representative should not be revoked because the servicing agreement with Local 32BJ was in effect for just 72 hours and Local 32BJ never took any actions to assist LEOPA pursuant to the agreement.

*iv. SPFPA's Position*

SPFPA, as a participating Intervenor, takes no position regarding the affiliation under Section 9(b)(3).

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<sup>4</sup> The Employer contends that the facts set forth in the Region's Notice to Show Cause should be deemed true because LEOPA failed to respond to the Notice. As noted above, following the issuance of that Notice, the Region determined that a hearing was necessary to resolve the 9(b)(3) issue.

**c. Board Law on Section 9(b)(3) affiliation of guard and non-guard labor organizations**

Section 9(b)(3) of the Act prohibits the Board from certifying a union as the representative of a unit of guards if the union admits non-guards to membership or is affiliated, directly or indirectly, with an organization that admits non-guards to membership. 29 U.S.C. § 159(b)(3); see, e.g., *Brinks, Inc.*, 274 NLRB 970, 970–71 (1985); *Stewart-Warner Corp.*, 273 NLRB 1736, 1737 (1985); *International Harvester Co.*, 145 NLRB 1747, 1749–51 (1964); *Mack Mfg. Corp.*, 107 NLRB 209, 212 (1953). Indirect affiliation between a guard union and a non-guard union is established when “the extent and duration of [the guard union's] dependence upon [the non-guard union] indicates a lack of freedom and independence in formulating its own policies and deciding its own course of action.” *Lee Adjustment Center*, 325 NLRB 375, 376 (1998) (quoting *Wells Fargo Guard Servs.*, 236 NLRB 1196, 1197 (1978), quoting *Magnavox Co.*, 97 NLRB 1111, 1113 (1952)). However, the affiliation must be shown by definitive evidence. See, e.g., *Children's Hosp. of Michigan*, 317 NLRB 580, 581 (1995), enfd. sub nom. *Henry Ford Health Sys. v. N.L.R.B.*, 105 F.3d 1139 (6th Cir. 1997); *Burns Sec. Servs.*, 278 NLRB 565, 568 (1986). In determining whether to revoke a certification of representative under 9(b)(3), the Board “has refused to find indirect affiliation where, on the record, it appeared that the assistance and advice once received by the guard union from the non-guard union had, in fact, terminated.” *Lee Adjustment Center*, supra at 376 (quoting *International Harvester Co.*, supra at 1749).

**d. Analysis of the affiliation issue under Section 9(b)(3) of the Act.**

The record evidence establishes that, at least by April 15, LEOPA and Local 32BJ had discussed an affiliation arrangement under which Local 32BJ would assume representational responsibilities for the Unit. Those conversations resulted in a servicing agreement executed by both labor organizations on April 21, and that same day LEOPA notified the Employer of the unions’ affiliation. The record further establishes, however, that LEOPA severed its affiliation with Local 32BJ on April 24. That day, both labor organizations executed a letter canceling the agreement and indicating that Local 32BJ had provided no services under it, nor received any consideration. LEOPA Vice-President Luck emailed the Employer that same day to give notice that the agreement had been canceled.

LEOPA President Rivera testified without contradiction that Local 32BJ never provided any assistance or services to LEOPA, and that during its organizational campaign LEOPA received no assistance from Local 32BJ. Furthermore, the parties stipulated that Local 32BJ did not participate in any labor-relations meetings with the Employer on behalf of LEOPA. During the parties’ bargaining for a first contract, LEOPA received no assistance from Local 32BJ with negotiations, and Local 32BJ representatives did not participate in any bargaining sessions. No evidence was offered to rebut the showing that Local 32BJ never provided assistance to LEOPA or that the unions severed their indirect affiliation on April 24. While it appears that Local 32BJ was copied on a LEOPA grievance email on April 22, there is no evidence that Local 32BJ participated in a grievance meeting or provided any assistance or representation related to that grievance. The evidence thus failed to establish that Local 32BJ provided any assistance to

LEOPA. Finally, there is no evidence to support a finding that LEOPA knew of or sanctioned the meeting held by Local 32BJ's representative with employees of the Unit on February 20.

As previously noted, definitive evidence is required to show that a guard union has lost the freedom to formulate its own policies and decide its own course of action based on its dependence on a non-guard union. *Lee Adjustment Center*, 325 NLRB 375, 376 (1998). While the servicing agreement may have provided such definitive evidence while it was effective, its cancellation nullified its significance, and there is no other evidence that Local 32BJ assisted LEOPA in any way.

The cases cited by the Employer are distinguishable. In *Armored Transp. Inc.*, 269 NLRB 683 (1984), the Board found affiliation where two individuals seeking to represent guard employees by signing the representation petition were also business agents of a non-guard union charged with negotiating and administering collective-bargaining agreements on a full-time basis. In *Stewart-Warner Corp.*, 273 NLRB 1736 (1985), the Board found affiliation where a non-guard union drafted the election petition, solicited employee signatures on the petition, and provided continuous advice and assistance to a guard union. In *Mack Mfg. Corp.*, 107 NLRB 209, 211-12 (1953), the Board relied on evidence that the non-guard union organized most of the guards and told the employer that guards would report grievances to it. And in *International Harvester Co.*, 145 NLRB 1747 (1964), the Board revoked the certification of a guard union based on evidence that it continued to accept financial aid from a non-guard union, permitted the non-guard union to participate in its affairs, act as its negotiator, organize and conduct its strike, and set the terms for the settlement of the strike. In sum, the cases cited contained definitive evidence of substantial assistance from the non-guard union to the guard union. Here, there is no evidence Local 32BJ provided any services or assistance to LEOPA, and there is no servicing agreement in effect.

I therefore find that LEOPA is not affiliated with Local 32BJ, and so is not disqualified from representing the Unit under Section 9(b)(3) of the Act.

## **II. TYPE OF ELECTION: MANUAL OR MAIL**

### **a. Factual Overview**

At the outset, I take administrative notice of the current public health crisis in the United States created by the COVID-19 pandemic, which affects how individuals, businesses, organizations, and governments conduct their daily operations. 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 recommendations for dealing with this public health threat include the avoidance of gatherings of more than ten people, the use of cloth face coverings, and social distancing, among other recommendations. The CDC further states:

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

Although the virus can survive for a short period on some surfaces, it is unlikely to be spread from domestic or international mail, products or packing. However, it may be possible that people can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.<sup>6</sup>

To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises:

After 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>7</sup>

Further, although not directly addressing Board elections, the CDC has issued guidance on elections in general. Its “Recommendations for Election Polling Locations” states that officials should encourage mail-in voting where permitted.<sup>8</sup>

In addition, many state and local governments have issued COVID-19 restrictions tailored to the particular conditions in their communities. In March, Pennsylvania issued a Proclamation of Disaster Emergency, directed the closure of non-life sustaining businesses, and ultimately issued a statewide Stay-at-Home order. The same month, Philadelphia issued a Declaration of Extraordinary Circumstance, prohibited operation of non-essential businesses, and issued an order forbidding individuals from congregating.

On April 20, Governor Wolf announced a plan for phased reopening and easing of restrictions using a system of colored phases. While Philadelphia moved to the yellow phase on June 5, many restrictions remain in place: retail businesses that reopen are highly circumscribed in their operations; there are limitations on public gatherings; restaurants and bars remain closed to in-person business; and gyms, salons, malls, movie theaters and other entertainment venues remain closed. The stay-at-home order has been lifted, but telework must continue where feasible. As of June 8, there were 19,110 COVID-19 cases in Philadelphia County out of 75,943 positive cases in Pennsylvania, constituting 25% of the total positive cases.<sup>9</sup>

The Employer’s Philadelphia campus comprises about 14 different clinical and academic buildings, including the hospital, over a nine-block area. Unit employees are dispersed among the 14 buildings and work three shifts: 8:00 a.m. to 4:00 p.m.; 4:00 p.m. to 12:00 a.m.; and 12:00 a.m. to 8:00 a.m.

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<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself> .

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

<sup>9</sup> <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx> .

**b. Position of the Parties**

All parties but LEOPA urge that I direct a mail-ballot election, emphasizing the serious safety concerns created by the COVID-19 pandemic. The Employer asserts that there is no safe way to have 90 voters vote in one location because it would be impossible to maintain social distancing protocols. Moreover, the employees are dispersed throughout the campus; requiring them to travel within the campus would expose them to increased risk of infection.

LEOPA opposes a mail-ballot election, arguing that because the employees in the Unit are required to physically show up to work, they Employer should allow for a location within its facility to have a manual election.

**c. Analysis**

Section 11301.2 of the Board's Casehandling Manual (Representation) provides, in part:

The Board's longstanding policy is that representation elections should, as a general rule, be conducted manually. The Board has also recognized, however, that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done. In these instances, the regional director may reasonably conclude that conducting the election by mail ballot or a combination of mail and manual ballots would enhance the opportunity for all to vote.

The Manual Section sets forth several types of conditions favoring mail-ballot elections, including situations where eligible voters are "scattered," geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. Finally, this Section states that "[u]nder extraordinary circumstances, other relevant factors may also be considered by the regional director," citing *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the Manual indicates that the regional director may use discretion to order a mail-ballot election where conducting an election manually is not feasible, and that under extraordinary circumstances, the regional director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. See *San Diego Gas and Electric*, supra.

The circumstances surrounding the COVID-19 virus are nothing but extraordinary. The Philadelphia area has been strongly affected by the virus, and while its spread has slowed, each day continues to bring more confirmed cases and deaths.

The Board has already 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 conducted 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 . . . . 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.<sup>10</sup>

Given the extraordinary circumstances caused by the COVID-19 pandemic that still face the Commonwealth of Pennsylvania, and especially the City of Philadelphia where the Employer is located, and given that Unit employees work in a hospital complex, where the virus is most likely to be found and to spread, I find it appropriate to exercise my discretion to direct a mail-ballot election. As previously discussed, the City of Philadelphia is just emerging from the most restrictive reopening phase in Pennsylvania, and in its new phase there remain restrictions on gatherings of more than 25 people – although the Philadelphia Department of Health recommends that no gatherings of any size occur until the green phase – and a directive to businesses that have worked remotely to continue doing so.

Furthermore, manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board agent, all of whom must be present at the Employer's facility. Party representatives, the observers, and the Board agent would need to gather for approximately 30 minutes for the pre-election conference, including the check of the voter list and the parties' inspection of the voting areas. The Board agent and observers would share a voting area for the duration of the proposed manual election, likely spanning multiple hours. The observers would need to check in voters on the voter list. The Board agent must provide a ballot to each voter and count the ballots cast by all voters at the end of the election, typically in the same voting area, with the observers, party representatives, and other employees who wish to attend. In these circumstances, the inherent interaction presents a significant risk for all election participants. Most of the parties involved in this case have expressed apprehension with respect to these risks, especially in a hospital setting and in an area with the greatest percentage of positive COVID-19 cases in Pennsylvania. Under the current circumstances, conducting a mail-ballot election is the most appropriate method of holding an election.

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<sup>10</sup> *Atlas Pacific Engineering Company*, 27-RC-258742, fn. 1 (May 8, 2020); see also *Touchpoint Support Services, LLC*, 07-RC-258867, fn. 1 (May 18, 2020) (Unpublished order).

For the foregoing reasons, I direct a mail-ballot election to be conducted in accordance with the election details discussed below

### **III. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

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 in this case.
3. The parties stipulated and I find that Law Enforcement Officers Professional Association (LEOPA) and International Union, Security, Police & Fire Professionals of America (SPFPA) are labor organizations within the meaning of Section 2(5) of the Act.
4. The parties stipulated and I find that Law Enforcement Officers Professional Association (LEOPA) represents the employees of the Employer in the unit described below.
5. The parties stipulated and I find that that there is no collective-bargaining agreement covering any of the employees in the Unit, and there is no contract bar or other bar to an election in this matter.
6. 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) of the Act.
7. 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:

***Included:*** All full-time and regular part-time security officers employed by the Employer at the Center City Campus of its University and Hospital in Philadelphia, PA.

***Excluded:*** All other employees, Jefferson police officers, and supervisors as defined in the Act.

### **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 Law Enforcement Officers Professional Association.

### **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 on June 22, 2020. Voters must return their mail ballots so that they will be received by close of business on August 10, 2020. The mail ballots will be counted on Monday, August 17, 2020 at 10:00 a.m. at a location to be determined, either in person or otherwise, after consultation with the parties, provided the count can be safely conducted on that date.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region Four office no later than 5:00 p.m. on July 6, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending June 6, 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.

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

### **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Acting 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 Acting Regional Director and the parties by June 10, 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 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).

The list must 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. The list must also be served electronically on the other parties named in this decision.

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

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

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

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies 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 must be E-Filed through the Agency's website. 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. Responsibility for the receipt and usability of the request for review rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. 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.

Signed at Philadelphia, Pennsylvania this 8<sup>th</sup> day of June 2020



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**RICHARD P. HELLER**  
Acting Regional Director, Region Four  
National Labor Relations Board