

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**1188 FLATBUSH MEAT & PRODUCE INC. D/B/A
FOOD UNIVERSE**

Employer

and

Case 29-RC-255889

**LOCAL 342, UNITED FOOD AND
COMMERCIAL WORKERS UNION, AFL-CIO**

Petitioner

and

**LOCAL 1964, INTERNATIONAL
LONGSHOREMEN'S ASSOCIATION, AFL-CIO**

Intervenor

DECISION AND DIRECTION OF ELECTION

The Employer, 1188 Flatbush Meat & Produce Inc. d/b/a Food Universe, operates a grocery store in Brooklyn, New York. On February 7, 2020, Local 342, United Food and Commercial Workers Union, AFL-CIO (the Petitioner) filed a representation petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). Petitioner seeks to represent a unit of all full-time and regular part-time grocery, cashier, deli, meat, receiver and produce employees, excluding all other employees, guards, managers and supervisors as defined in the Act.

The Employer alleges that it is a member of a multi-employer association, Metro Supermarket Association (MSA). Local 1964, International Longshoremen's Association, AFL-CIO (the Intervenor) asserts that an election is not appropriate because its collective bargaining agreement with MSA, effective from April 17, 2019 until April 16, 2024, covers the petitioned-for unit and bars an election under the Board's "contract bar" doctrine. The Petitioner argues that the Intervenor has not established that the collective bargaining agreement is sufficient to bar the instant petition.

Hearing officers of the Board held a hearing in this matter on February 18 and May 28, 2020, during which the parties appeared, participated and were afforded the opportunity to be heard, to examine and cross-examine witnesses and to present evidence on the contract bar issue.¹ The Intervenor presented two witnesses in support of its position and a copy of the

¹ The Employer failed to serve its Statement of Position on the other parties, so the statement was excluded from the record. The Employer was also precluded from raising any issues at the hearing that were set forth in its position

collective bargaining agreement that it contends bars this petition was admitted into evidence. The Petitioner presented one employee/witness. At the conclusion of the first day of hearing, the record was held open to receive certain documents. The Employer was directed to submit payroll records from January 1, 2020 through the date of hearing and the Intervenor was directed to submit dues remittance records for the same period. Upon review of those records, I determined that additional testimony and evidence were needed to resolve the issues and directed that the hearing be resumed. Due to the COVID-19 pandemic, the hearing was eventually resumed and completed by video conference.

Based on the record and consistent with relevant case law, I find that the instant petition is not barred. Accordingly, I am directing an election in the unit described below.

Witness Testimony

James Lee (“Lee”) is assistant to the Employer’s president Shee Chun Lee. Shee Chun Lee is also Lee’s father. In addition to the location involved herein (the Employer), Lee’s father owns another supermarket, Lyon’s Meat and Produce (“Lyon’s”), located in Irvington, New Jersey.² Since Lee is the owner’s son and has a background in accounting, he has periodically helped out at both stores over the years in an informal capacity. Lee assumed a more formal role as assistant to the president in March 2016. In that capacity, he deals primarily with the store managers who handle the day-to-day activities and operations. He spends most of his time at Lyon’s and draws his salary from that store and not the Employer. Lee estimates that he goes to the Employer once a month or once every other month.

The Employer has been in operation since 2009, although its doing-business-as name has changed. Lee testified that his father was a member of MSA even before the Employer began operations. He is not sure in what capacity his father is a member. Specifically, he does not know whether his father is an individual member or is a member in his capacity as president of one or both of his stores. Lee’s father pays annual dues to be a member of MSA.

MSA consists of two groups: “first generation” and “second generation.” First generation is comprised of older members, including Lee’s father. Their meetings are conducted in Korean. Lee is unsure of how many times they meet or what those meetings entail but he believes that they address topics such as negotiating better prices from vendors. Lee has only attended one meeting of the first-generation group. This was about four years ago when a new president was appointed. There were about 60 people in attendance, but he was unsure how many of the attendees were actually members and how many were guests or vendors. He does not know how many members comprise MSA or how it is structured, except that there is a president and a treasurer.

statement. However, the Employer’s position is essentially the same as that of the Intervenor: that a collective bargaining agreement bars the instant petition.

² Employees at Lyon’s are represented by a different local of the Intervenor’s international union, Local 464.

The second-generation group is less formal and is comprised of the children of the first-generation group who, according to Lee, have more firsthand knowledge about what goes on in the stores. Lee has only attended one meeting of that group but understands that its purpose is to informally address areas of common concern such as plastic bans.

Lee testified that he first became aware of the collective bargaining agreement between MSA and the Intervenor two or three months before the hearing, citing the fact that he mainly handles matters pertaining to Lyon's and not the Employer. He does not know if there is a shop steward at the Employer, if there have ever been any grievances or arbitrations, or if a representation election was ever held.

David Harris has been a business agent with the Intervenor since January 2015. He testified that his duties are to "see the shops and make sure they're happy." The Employer is one of about twenty locations to which he is assigned. When Harris began working for the Intervenor, business agent Evelyn de Jesus took him around and introduced him at the Spanish-speaking markets, including the Employer. Harris does not speak Spanish but is trying to learn.

Harris testified that he goes to the Employer about once every other month and that the last time he went was on January 15, 2020. When Harris visits the store, he walks up and down the aisles, greets any workers he sees, offers them his business card and tells them to call him if they have any problems. He tries to be brief because the employees to whom he speaks are busy stocking the shelves. There is no shop steward and Harris does not meet with or speak to anyone from management when he visits the store.

There have never been any complaints, grievances or arbitrations arising from the Employer or its employees since Harris has been a business agent. Harris does not maintain a seniority list but stated that seniority could be determined from the dates of hire maintained in the Intervenor's system. He was not aware that the Employer was a "closed shop" in which all employees are required to be union members and to pay dues. Harris testified that the only way for the Intervenor to collect dues would be through payroll deductions which the Employer would then remit to the Intervenor.

Santos Ruis has worked for the Employer as the dairy manager since 2009. He reports directly to the general manager, Mr. Kim. Ruis earns \$1000 per week and works 6 days a week for 51 hours. It is his understanding that he is paid a salary rather than an hourly rate but the paycheck that was entered into the record shows that his weekly wage is computed based on regular and overtime hours totaling 51 hours per week. The only deduction shown on his paycheck is for payroll taxes.

Ruis had never heard of the Intervenor until shortly before the hearing. He was unaware that there was any union representing employees of the Employer and has never spoken to any union representatives during his tenure at the store. He has never signed any documents regarding a union and has never had union dues deducted from his paycheck. He had never seen

business agent David Harris before the day of the hearing. Ruis testified that most employees at the store speak Spanish.

Ruis was not aware that employees were entitled to a specific number of paid days off. He had heard something about 40 hours but did not know the details. He testified that if an employee wanted a day off, he or she would make arrangements through the general manager, Mr. Kim, to work on their regularly scheduled off day instead. Ruis has only been absent from work on two occasions, once in 2018 and once in 2019. In August 2018, he was out for four days in a row. The record is unclear on this point, but it appears that he was out for personal reasons and not because he was sick. His paycheck reflected that he had been credited for two days of sick pay and two days of vacation pay. Ruis missed one day of work in December 2019 because he was sick. He only worked five days the week he was sick but worked on his off day the following week to make up for the missed day. He received his regular amount of pay for both weeks and his paycheck reflected that he had worked six days both weeks rather than five days one week and seven days the next.

If Ruis were to have a problem with his paycheck or some other issue, he would go to the general manager, Mr. Kim. If Kim could not resolve the problem, employees' only other recourse would be the "boss," Shee Chun Lee.

Documentary Evidence

The **collective bargaining agreement** between the Intervenor and Metro Supermarket Association, Inc. is effective by its terms from April 17, 2019 to April 16, 2024. The recognition clause describes the bargaining unit as:

[A]ll regular full-time (40 hours) and regular part-time employees employed by the members of the Employer [MSA] at their facilities located at various locations in the States of New York, New Jersey and Connecticut including meat department, deli department, delivery and customer service, excluding all other employees, including butchers, office clerical employees and guards, professional employees and supervisors as defined in the National Labor Relations Act as amended and other employees covered by a valid, current collective bargaining agreement.

The agreement contains a union security clause which requires that all employees become and remain members in good standing of the Intervenor and provides that members who fail to "maintain financial obligations" to the Intervenor shall, upon proper notice, be discharged. The contract provides for dues checkoff, a grievance and arbitration process, and shop stewards who have super-seniority. Employees who have perfect attendance for the calendar year are entitled to an attendance bonus equivalent to 8 hours of pay. The contract provides for annual wage increases of \$0.25 beginning April 1, 2021, but contains no job classifications, job descriptions or rates of pay.

Employees are entitled to paid time off as well as vacation, although those contract provisions are confusing. Employees accrue seven days of paid time off upon completion of a probationary period but there is no indication that this is an annual accrual. After one or two years of service (depending on date of hire), employees accrue 40 hours of vacation “or the employee’s regular work week, whichever is less.” After five years, they accrue 80 hours and after ten years of service, they accrue 120 hours, but each of those provisions also contains the qualifying language “or the employee’s regular work week, whichever is less.” Given those limitations, it would appear that employees never accrue more than one full work week of vacation regardless of their tenure. The contract language is also unclear as it does not state that these amounts are accrued annually.

The final page of the contract has signature lines for representatives of the Intervenor and MSA. There are no printed names under the signature lines. Intervenor representative **David Harris** testified that the contract appeared to have been signed by the Intervenor’s president Evan Green. Harris was not involved in contract negotiations and did not know when or if bargaining sessions occurred. The signature for MSA is illegible and neither of the Intervenor’s witnesses (Lee and Harris) knew who signed on behalf of MSA. The signatures are undated but the line above them states that “the parties hereto have signed this Agreement on the day and year first above written,” apparently referring to the starting date of April 17, 2019.

Shee Chun Lee signed a separate page titled Assumption Agreement stating that he agreed to be bound by the collective bargaining agreement for its five-year term. There is no indication in what capacity he signed the agreement, for example, whether he was signing on behalf of the Employer, on behalf of Lyon’s or both. The signature is undated and there was no evidence introduced to demonstrate when it was signed. **James Lee** recognized the signature as his father’s but did not participate in negotiations for the contract and does not know when his father signed the assumption agreement. He stated that his father, who is not fluent in English, never discussed the agreement with him.

In response to the Region’s request for **payroll records**, the Employer submitted what its attorney described as a “top line summary” instead of the complete payroll records. The weekly lists show each employee’s name, department, position, hours worked, rate of pay and gross pay. The records do not contain the full names of some employees and many are listed by only their first name or first name and last initial. No deductions from gross pay are shown. When the hearing officer asked what the records purported to show, Employer’s counsel stated that the lists include all employees and all wages paid to those employees and demonstrated that employees were paid according to the wage scale set forth in the collective bargaining agreement.

The Intervenor submitted monthly **dues remittance** worksheets and checks from the Employer for February 2010 through February 2020. The records show that dues of \$25 per member were remitted for the same five members from February 2010 through May 2011. The records for June 2011 show that dues were remitted for a total of nine members, seven of whom were new. No initiation fees were paid for the new members. Monthly dues payments of \$25

per member continued until April 2012, when eight new members were added. This time, the initiation fee of \$100 per member was paid and initiation fees continued to be paid whenever new members were added. The highest number of members shown for the ten-year period was sixteen. Members were added or removed sporadically until a group of six members left in July 2015.

Membership remained the same from August 2015 until February 2020 (the last record provided), with a total of nine members: Leanfry Acosta, Oscar Albelo, Alejandro Arrieta, Joel Espinal, Maritza Mejias, Antonio Palafox, Eugenio Ruiz, Tony Tax and David Toxqui. Only two of these names match up to names on the Employer's payroll records. Joel Espinal is the meat department manager³ and David Toxqui is the grocery department manager. There is a Tony Lux who appears in the payroll records as an associate in the grocery department, but there is no Tony Lux listed in the remittance records. Likewise, Maritza Tiros is listed as a cashier on the payroll records but there is no Maritza Mejias.⁴

Analysis

When the circumstances are appropriate, the existence of a collective-bargaining agreement will preclude, or bar, a representation election involving employees covered by the contract. The major objective of the Board's contract-bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and freedom of employees' choice. See, e.g., *Seton Medical Center*, 317 NLRB 87, 88 (1995). This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time, to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative if they wish to do so. *Union Fish Co.* 156 NLRB 187, 191 (1965).

A contract can only bar a representation election if it conforms to certain requirements. These basic requirements include that the contract be in writing, signed by all parties, contain substantial terms and conditions of employment, and not exceed three years in duration⁵. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The contract bar doctrine is not prescribed by statute: it is a creation of the Board. The Board may, in its discretion, apply or waive the contract bar doctrine according to the circumstances of each case, balancing the statutory objectives of stability in labor relations and employee freedom of choice in selecting a

³ Santos Ruis testified that the meat department manager was the butcher. I note that butchers are specifically excluded from the bargaining unit in the contract between Intervenor and MSA.

⁴ To the extent that Tiros may be a married name, the records show that member names were changed or corrected in the remittance reports several times in the past: Spelling was corrected to Alenny (from Alemmy) Acosta in 2011, Acosta's last name was changed to her married name, Villa, in 2013 and the spelling of Fromrose was corrected to Fronrose, also in 2013.

⁵ The contract herein has a term of five years. Therefore, it could only serve as a bar for its first three years. See, e.g., *General Cable Corp.*, 139 NLRB 1123 (1962) (contract having a fixed term of more than 3 years operates as bar to a petition only for its first 3 years).

bargaining representative. See, e.g., *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999), citing *Appalachian Shale*.

The burden of proving that a contract is a bar to an election is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970); *Coca-Cola Enterprises, Inc.*, 352 NLRB 1044 (2008). The Board has held that where the evidence presented in support of a contract bar is vague, uncertain or inconsistent, a contract bar will not be found. *Road & Rail Services*, 344 NLRB 388 (2005).

For a contract to constitute a bar, it must be signed by all parties prior to the filing of the petition. *Appalachian Shale* at 1162; see also, *DePaul Adult Care Communities*, 325 NLRB 681 (1998). The signature requirement is “[t]he single indispensable thread running through the Board’s decisions on contract bar.” *Seton Medical Ctr.*, 317 NLRB 87, 87 (1995). The party asserting the contract bar has the burden of proving the agreement was signed by the parties before the petition was filed. *Jackson Terrace Associates*, 346 NLRB 180 (2005). An undated contract was not recognized as a bar where the evidence as to the date of its execution was vague, ambiguous, and inconsistent. *Road & Rail Services*, 344 NLRB at 389-90. The absence of an execution date in the contract does not remove it as a bar if the date of execution was before the petition and that date can be established. *Cooper Tank & Welding Corp.*, 328 NLRB 759 (1999). However, in *Roosevelt Mem’l Park*, the Board found that a party failed to meet its burden where the contract was not dated and testimony about the execution date was “vague, ambiguous, and inconsistent.” 187 NLRB at 518.

Here, there is no evidence showing when Shee Chun Lee signed the undated Assumption Agreement, and therefore it cannot be established that it was signed before the petition was filed. On that basis alone, the Intervenor has failed to meet its burden to demonstrate that the contract should bar the instant petition. However, there is also ample evidence that the contract has not been applied by the Employer or enforced by the Intervenor.

When the employer has not applied the contract to the employees covered, and the union has not sought to administer it as to them, the contract “does not establish the existence of a stabilizing labor agreement which bars a representation election.” *Tri-State Transportation Co.*, 179 NLRB 310, 311 (1969) (employees received none of the benefits set forth in the contracts: employer did not make health and welfare contributions, employer did not give employees the vacations and holidays set forth, union-security provisions were never applied, and employees never authorized dues check off).

The Intervenor provided no evidence to show that any of the terms of the collective bargaining agreement are being applied to employees of the Employer. To the contrary, all record evidence shows that the contract has not in fact been applied. There is no shop steward and no grievances have been processed. There is no evidence that employees receive the vacation, paid time off, and attendance bonuses provided for in the contract. Since the contract

does not contain wage rates, it is impossible to determine whether employees are being paid accordingly.

It is clear from the record that the Employer is not deducting dues from employees' paychecks and remitting them to the Intervenor as required. Rather, it appears that the Employer cuts a check each month for a few individuals, most of whom are not even employees of the store. The union security clause, which requires all employees to be union members in good standing, has not been applied and the Intervenor's business agent was not even aware that the Employer was a "closed shop." The remittance records show that dues were being paid on behalf of, at most, sixteen people and, for the past few years, only nine. These numbers represent less than half of the petitioned-for unit of about 35 employees.

The business agent assigned to the store could not name a single bargaining unit employee and testified that he "didn't work with management" at the store either. Santos Ruis, who has worked at the store for over ten years, had never seen the business agent before the hearing. He did not know that he was represented by a union or that he was entitled to any contract benefits. It was his understanding that if he had a work-related issue or complaint, his only recourse was the store manager.

Based on the foregoing, I find that the Intervenor has failed to provide sufficient evidence to demonstrate that at the time the petition was filed, there was a contract between the Employer and the Intervenor that met the Board's longstanding requirements to serve as a bar to an election.

Method of Election

On the first day of the hearing in this matter, the parties agreed that a manual election would be appropriate. This was, of course, before the current public health crisis created by the COVID-19 pandemic. In fact, the first resumption of this hearing, scheduled for March 18, 2020, was postponed indefinitely due to the uncertainties involved. When the hearing was eventually resumed by video conference, none of the parties stated a position on whether or not a manual election was still appropriate.

Whether an election is to be conducted by mail, manually, or some other method is an administrative matter to be determined by the Regional Director. *National Van Lines*, 120 NLRB 1343 (1958). Traditionally, most Board elections are conducted by manual voting, and there is a presumption in favor of conducting elections in this manner. *See* Section 11301.2, *Board Casehandling Manual, Part Two, Representation Proceedings*. However, when certain factors are present, this presumption may be overcome. In *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Board recognized that mail ballot elections are appropriate under specific, well-settled guidelines, such as where employees are scattered or where there is a strike, lockout, or picketing in place. The Board further found that a Regional Director may consider additional relevant factors when contemplating when to conduct a mail ballot election and that "extraordinary circumstances" could permit a Regional Director to do so. *See San Diego Gas &*

Electric, 325 NLRB at 1145. The Board has recognized that the COVID-19 pandemic presents such an extraordinary circumstance. *See, e.g., Atlas Pacific Engineering Co.*, 27-RC-258742 (NLRB May 8, 2020).

I take administrative notice of the current public health crisis created by the COVID-19 pandemic. As of June 30, there have been over 2.6 million confirmed cases of COVID-19 in the United States, and 126,161 deaths.⁶ 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.⁷ The CDC recommendations for dealing with this public health threat include, among others, the avoidance of large gatherings, the use of cloth face coverings, and social distancing. The CDC further states that the virus can survive for a short period on some surfaces, and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes.⁸ 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."⁹

Although it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its "Considerations for Election Polling Locations and Voters" states that officials should consider alternative voting methods where permitted, and that "[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19..."¹⁰

I have determined that an in-person manual election poses significant and unnecessary risks to the health and safety of Board Agents, party representatives, voters, observers and the public. The conduct of a manual election invariably requires participants to come within fewer than six feet of one another, while social distancing guidelines provided by Federal, State and Local authorities recommend that individuals remain at least six feet apart. Under the Board's manual election procedures, Board Agents conducting the election and election observers are required to spend the duration of the polling session and ballot count process together in close proximity within a confined space. Board Agents and observers will likely have to interact with voters and/or party representatives who may have questions or who may wish to raise issues about the conduct of the election. These procedures necessarily carry the risk of exposure for employees at the Employer's facility, party representatives, Board personnel, their families, and the community.

Conducting the election in this case by mail ballot significantly reduces these risks. Conducting a mail ballot election will enable Board Agents, voters, observers and party

⁶ See *Coronavirus in the U.S.: Latest Map and Case Counts*, NEW YORK TIMES, updated June 30, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

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

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

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

representatives to maintain safe social distancing throughout the polling process. I am considering measures to limit the number of people who may participate in the ballot count and other methods of maintaining social distancing between participants, including conducting the count remotely using videoconference technology. Such safety measures, which can be enacted for a mail ballot election in accordance with Board procedures, will ensure that this election is conducted with minimal risk to the participants' personal safety and public health.

I find that the current COVID-19 pandemic presents extraordinary circumstances requiring a mail ballot election in this case. Given the significant health risks to voters, observers, Board Agents, party representatives and the general public with a manual election, which often require person-to-person contact, a mail ballot is warranted here.

CONCLUSIONS AND FINDINGS

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

1. The rulings 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.
3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act and claim 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 a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time time grocery, cashier, deli, meat, receiver and produce employees employed by the Employer at its Brooklyn, New York facility, excluding all other employees, guards, managers 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 Local 342, United Food and Commercial Workers Union, AFL-CIO, Local 1964, International Longshoremens' Association, AFL-CIO or by neither.

A. Election Details

The election will be held by mail ballot. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 29, on **July 29, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 29 office by close of business on **August 19, 2020**. The mail ballots will be counted by video conference, on a date and at a time and in a manner to be determined by the Regional Director after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Francisco Guzman via telephone at (718) 765-6198 or via e-mail at Francisco.Guzman@nlrb.gov by no later than 5:00 p.m. on **August 10, 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 **July 11, 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(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 **July 20, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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 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 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: July 16, 2020



KATHY DREW-KING
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United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot are shown on Panel 3 and 5 of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on Panels 2 through 5 and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

ELECTION DETAILS: The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate voting unit by the office of the National Labor Relations Board, Region 29, on **Wednesday July 29, 2020**. Voters must return their mail ballots so that they will be received by the National Labor Relations Board, Region 29, by close of business on **Wednesday, August 19, 2020**. 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.**

Any employee who believes that he/she is eligible to vote but did not receive a ballot or who otherwise requires a duplicate mail ballot kit should communicate immediately with the National Labor Relations Board by calling Francisco Guzman the Region 29 Board Agent assigned to the case, at 718-765-6198, emailing him at Francisco.Guzman@nlrb.gov or by calling our national toll-free line at 1-844-762-NLRB (1-844-762-6572), no later than **Monday, August 10, 2020**.

Due to the extraordinary circumstances of COVID-19 and the directions of state and local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, the ballot count will take place on a date and in a manner to be determined by the Regional Director.

All ballots will be commingled and counted on a date and time to be determined by the Regional Director. In order to be valid and counted, the returned ballots must be received by the Region 29 Office prior to the counting of the ballots.

The Region will provide notice to the parties of the scheduled date for the ballot count at least 24 hours prior to the count. The count will take place virtually on a platform such as Skype, WebEx, etc., to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL
VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time grocery, cashier, deli, meat, receiver and produce employees employed by the Employer at its Brooklyn, New York facility during the payroll period ending July 11, 2020.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All other employees, guards, managers and supervisors as defined in the Act.

| | | |
|---|-----------------------------------|--|
|  <p style="text-align: center;">UNITED STATES OF AMERICA ESTADOS UNIDOS DE AMERICA National Labor Relations Board Junta Nacional De Relaciones Del Trabajo 29-RC-255889 OFFICIAL SECRET BALLOT PAPELETA SECRETA OFICIAL For certain employees of Para Ciertos Empleados De 1188 FLATBUSH MEAT & PRODUCE INC. D/B/A FOOD UNIVERSE</p>  | | |
| <p>Do you wish to be represented for collective-bargaining purposes by LOCAL 342, UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO or LOCAL 1964, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, or neither? ¿Desea usted ser representado para los fines de negociar colectivamente por LOCAL 342, UNITED FOOD AND COMMERCIAL WORKERS UNION, AFL-CIO o LOCAL 1964, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, o ninguno?</p> | | |
| <p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION</p> | | |
| <p>LOCAL 342, UNITED FOOD AND COMMERCIAL WORKERS, AFL-CIO</p> | <p>NEITHER NINGUNO</p> | <p>LOCAL 1964, INTERNATIONAL LONGSHOREMENS ASSOCIATION, AFL-CIO</p> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.</p> <p>NO FIRME O ESCRIBA SU NOMBRE O INCLUYA OTRAS MARCAS QUE REVELARÍAN SU IDENTIDAD. MARQUE UNA "X" EN EL CUADRADO DE SU ELECCIÓN SOLAMENTE. Si hace marcas dentro, o en cualquier lugar alrededor, en más de un cuadrado, puede solicitar una nueva papeleta consultando las instrucciones adjuntas. Si envía una papeleta con marcas en el interior, o en cualquier lugar alrededor, en más de un cuadrado, su papeleta no será contada.</p> <p style="text-align: center;">Vea las Instrucciones incluidas.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p> <p>La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que se pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.</p> | | |

United States of America
National Labor Relations Board

**Instructions to Eligible Employees Voting
By United States Mail**



INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at:
718-765-6198

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY August 19, 2020

RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both employers and unions to know what is expected of them when it holds an election.

If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.



NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

ESTADOS UNIDOS DE AMÉRICA
JUNTA NACIONAL DE RELACIONES DEL TRABAJO
**INSTRUCCIONES PARA EMPLEADOS ELEGIBLES
QUE VOTAN POR CORREO
DE LOS ESTADOS UNIDOS**



INSTRUCCIONES

1. MARQUE SU PAPELETA EN SECRETO PONIENDO UNA X DENTRO DEL CUADRO DE SU SELECCIÓN. NO HAGA OTRAS MARCAS EN SU PAPELETA.
2. SI ENVÍA UNA PAPELETA CON MARCAS EN EL INTERIOR, O EN CUALQUIER LUGAR ALREDEDOR, EN MÁS DE UN CUADRADO, SU PAPELETA NO SERÁ CONTADA. USTED PUEDE SOLICITAR UNA NUEVA PAPELETA LLAMANDO A LA OFICINA REGIONAL AL NÚMERO QUE APARECE ABAJO.
3. ES IMPORTANTE MANTENER EL SECRETO DE SU PAPELETA. NO ENSEÑE SU PAPELETA A NADIE DESPUÉS DE HABERLA MARCADO.
4. PONGA SU PAPELETA EN EL SOBRE AZUL Y CIERRE EL SOBRE.
5. PONGA EL SOBRE AZUL QUE CONTIENE LA PAPELETA EN EL SOBRE AMARILLO QUE TIENE LA DIRECCIÓN DE LA JUNTA NACIONAL DE RELACIONES DEL TRABAJO.
6. FIRME LA PARTE POSTERIOR DEL SOBRE DE RETORNO AMARILLO EN EL ESPACIO PROPORCIONADO. PARA SER CONTADO, EL SOBRE DE RETORNO AMARILLO DEBE SER FIRMADO.
7. NO PERMITA QUE NINGUNA PERSONA RELACIONADA CON ESTA PETICIÓN, LA COMPAÑÍA, LA UNIÓN(ES), O SUS REPRESENTANTES, O NINGÚN EMPLEADO PETICIONARIO - TOQUE, COLECTE O ENVÍE SU PAPELETA POR CORREO.
8. ENVIÉ SU PAPELETA INMEDIATAMENTE. NO SE NECESITA SELLO POSTAL.

PARA MÁS INFORMACIÓN, LLAME A LA OFICINA REGIONAL A:

718-765-6198

PARA SER CONTADA, SU PAPELETA DEBE SER RECIBIDA EN LA OFICINA REGIONAL

ANTES DE O EN EL DÍA DE 19 de agosto

DERECHOS DE LOS EMPLEADOS

Bajo la Ley Nacional de Relaciones del Trabajo, los empleados tienen el derecho a:

- Organizarse
- Formar, ingresar en, o ayudar a organizaciones obreras
- Negociar colectivamente a través de representantes seleccionados por ellos mismos
- Actuar juntamente para los fines de negociación colectiva o para otros fines de ayuda o protección mutua
- Negarse a tomar a todas o a cualesquiera estas acciones a menos que, en aquellos estados en que se permiten tales acuerdos, la organización obrera y la empresa lleguen a un acuerdo legal que requiera que los empleados paguen cuotas periódicas y cuotas de iniciación. Se puede exigir a aquellos que no son miembros de la organización obrera que se oponen al uso de sus cuotas para fines que no sean de representación, que paguen solamente su parte de los gastos de la organización obrera de sus actividades de representación (tales como la negociación colectiva, la administración de contrato, y la resolución de las reclamaciones obreras).

La Junta Nacional de Relaciones del Trabajo tiene la responsabilidad de proteger a los empleados en el ejercicio de estos derechos.

La Junta desea que todos los votantes elegibles estén informados completamente acerca de sus derechos bajo la ley federal y desea que tanto las empresas como las organizaciones obreras conozcan que se espera de ellas cuando la Junta celebra una elección. Si agentes bien sean de las organizaciones obreras o de las empresas interfieren con su derecho a una elección libre, imparcial y honrada, la elección puede ser anulada por la Junta. Cuando es apropiado, la Junta provee otros remedios, tales como la reinstalación para los empleados despedidos por haber ejercido sus derechos, incluyendo pago atrasado de parte del partido responsable por su despido.

Los siguientes son ejemplos de conducta que interfiere con los derechos de los empleados y puede resultar en la anulación de la elección.

- Amenazas de pérdida de empleo o ofertas de beneficios hechas por una empresa o por una organización obrera
- Promesas o concesiones de promociones, aumentos de sueldo, u otros beneficios para influir al voto de un empleado hechas por un partido que tenga la capacidad de cumplir tales promesas
- El despido de empleados por una empresa para desalentar o para alentar actividades sindicalistas o la causa por parte de una organización obrera de que sean despedidos empleados en orden de alentar actividades sindicalistas

La incitación sea por la empresa o por una organización obrera al prejuicio racial o religioso por medio de llamamientos de inflamación

Amenazas de fuerza o de violencia hechas a empleados por una organización obrera o por una empresa para influir a sus votas

La Junta Nacional de Relaciones del Trabajo protege su derecho a una selección libre

No se permitirá conducta impropia. Se espera que todos los partidos cooperen completamente con esta Agencia en manteniendo los principios básicos de una elección imparcial según requiere la ley. La Junta Nacional de Relaciones de Trabajo como una agencia del Gobierno de los Estados Unidos de América no endosa ninguna selección en la elección.



JUNTA NACIONAL DE RELACIONES DEL TRABAJO
una agencia del
GOBIERNO DE LOS ESTADOS UNIDOS



United States of America
National Labor Relations Board
NOTICE OF ELECTION



INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

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If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

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- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (718)330-7713 or visit the NLRB website www.nlr.gov for assistance.