

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

**NP TEXAS LLC d/b/a TEXAS STATION
GAMBLING HALL AND HOTEL**

Employer

and

Case 28-RC-261253

**LOCAL JOINT EXECUTIVE BOARD
OF LAS VEGAS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Local Joint Executive Board of Las Vegas (the Petitioner) seeks to represent a unit of employees employed by NP Texas LLC d/b/a Texas Station Gambling Hall and Hotel (the Employer or Texas Station) at its hotel and casino in North Las Vegas, Nevada. The Petitioner seeks to conduct a mail ballot election.

The Employer maintains that: (1) the petition should be dismissed because all of the employees in the petitioned-for unit have been permanently terminated; (2) two alleged discriminatees named in unfair labor practice charges filed against the Employer should not be permitted to vote in any directed election because they too would have been terminated on May 1, 2020, along with the other employees in the petitioned-for unit, even if not for the alleged discrimination against them; and (3) conducting a mail ballot election is not appropriate.¹

On June 16, 2020, a hearing officer of the Board held a hearing in this matter and the parties provided witness testimony, documentary evidence, and orally argued their respective positions prior to the close of the hearing. As explained below, based on the record and relevant Board law, I find that: (1) the Employer has not established that it has permanently closed its Texas Station hotel and casino or that the employees in the petitioned-for unit do not have a reasonable expectation to return to work; (2) the two alleged discriminatees named in unfair labor practice charges filed against the Employer should be permitted to vote subject to challenge; and (3) conducting a mail ballot election is appropriate.

I. BACKGROUND AND FACTS

The Employer is a Nevada corporation with an office and place of business in North Las Vegas, Nevada, and has been engaged in the operation of a hotel and casino, providing food, lodging, entertainment, and gaming.

¹ The Employer's position statement also contested the appropriateness of the unit. However, during the hearing the Employer decided that it was no longer contesting the appropriateness of the unit, and the parties agreed to the appropriate unit in Board Exhibit 2, as modified and agreed to on the record.

On March 18, 2020, the Governor of Nevada, Steve Sisolak, issued Declaration of Emergency Directive 002, wherein gaming establishments were ordered to cease operations until April 16, 2020. After being notified that this action would take place, on March 17, 2020, the Employer's parent company, Station Casinos,² issued a letter to all employees, with the subject line "Temporary Closure of All Station Casinos Properties," stating that it would be closing all twenty of its Las Vegas properties to the public. The letter also stated that Station Casinos would continue to offer regular pay and health benefits to all hourly and salaried full-time employees through April 30, 2020. Three employees testified that their first line supervisor and/or manager told them at that time that Texas Station was temporarily closing and the Employer would notify them when it reopened. Each of the three employees also testified that they wanted to return to work for the Employer.

On March 31, 2020, the Governor issued Declaration of Emergency Directive 010 Stay at Home Order, wherein the State's stay at home order and directives promulgated pursuant to the initial declaration were extended to April 30, 2020. On April 8, 2020, Station Casinos issued another letter to all employees, with the subject line "Extension of Regular Pay and Health Benefits Through May 15, 2020." The letter referenced the Governor's extension of the statewide closure of casinos through April 30, 2020, and extended the pay and health benefits of its full-time and salaried employees through April 30, 2020.

On April 29, 2020, the Governor issued Declaration of Emergency Directive 016, wherein it was ordered that gaming operations remain closed until the Nevada Gaming Control Board determined that operations may safely resume. The directive remained in effect until May 15, 2020.

On May 1, 2020, Station Casinos issued a letter to all employees. In the letter, it referenced that the state-mandated closure of the casinos had been extended to at least May 15, 2020. The letter stated that when it was permitted to reopen, it would do so in phases. In the first phase, six Station Casinos properties and its Wildfire division (consisting of ten smaller properties) would reopen. The letter stated, regarding its four other properties, including Texas Station, "we will look at reopening them once we have had a chance to assess how our business is performing in a post COVID-19 world." The letter stated that there would be meaningful staffing level reductions but that it was "hopeful though that Las Vegas will rebound swiftly and allow us to rehire many of our valued team members when we emerge on the other side of this crisis." Additionally, the letter stated that full-time employees who are laid off would be paid through May 16, 2020, and would have their medical, dental, and vision benefits extended through September 30, 2020. Indeed, the Employer's Person Management system listed for each terminated employee the following: "Action: Involuntary Termination" and "Action Reason: Lack of Work/Layoff."

² Station Casinos LLC operates ten casinos, including Texas Station, in addition to ten smaller properties in its Wildfire division.

Accordingly, Station Casinos, its Senior Vice President – Human Resources, issued letters to each of its Texas Station employees, including all of the employees in petitioned-for unit. The letters referenced the Governor’s directives issued to date and stated that Station Casinos “made the difficult decision to temporarily close its Texas Station casino effective May 1, 2020, and your employment will end at that time.” The letters for full-time employees also stated that employee benefits plans would continue, with Station Casinos paying all premiums, until September 30, 2020.

On May 7, 2020, the Governor issued Declaration of Emergency Directive 018, wherein it ordered that gaming operations would remain closed through the State’s Phase One reopening plans. The directive remained in effect through May 30, 2020.

On May 19, 2020, the Chief Financial Officer (CFO) of Red Rock Resorts, a publicly traded company that manages Station Casinos, delivered prepared remarks explaining that there were plans to reopen certain casinos as part of Red Rock Resorts’ Phase One reopening plans. The CFO stated, “We remain hopeful that Las Vegas and our business will rebound quickly and allow us to rehire many of these valued team members when we emerge on the other side of this crisis.” The CFO also stated that “we remain hopeful that casinos will be permitted to reopen in the coming weeks.” Regarding its four other non-Phase One casinos, including Texas Station, the CFO stated, “we will look at reopening these properties once we have had a chance to fully assess how our first-to-open properties are performing post-crisis, as well as the recovery of the Las Vegas market and the economy as a whole.” At this point, there was no set date for the reopening of any properties because of the State’s directives.

On May 28, 2020, the Governor issued Declaration of Emergency Directive 021 – Phase Two Reopening Plan, wherein it ordered the Nevada Gaming Control Board to promulgate requirements for a phased and incremental resumption of gaming operations, with openings commencing no sooner than June 4, 2020. Station Casinos had been notified of the Governor’s action and issued a memorandum to all its employees on May 27, 2020, with the subject line “June 4 Reopening Date for Phase One Properties and Extension of Regular Pay and Health Benefits Through June 3, 2020.” The letter stated that six of its properties were reopening along with its Wildfire division on June 4, 2020.

A June 9, 2020, news article titled, “Las Vegas reopened. People showed up,” included a quote from the Chief Operating Officer of Station Casinos stating that he was “incredibly pleased with the positive response and turnout,” in reference to the reopening of Las Vegas casinos on June 4, 2020. On at least June 11, 2020, the marquee outside of Texas Station stated, in part, “STAY SAFE, WE’LL BE BACK!” On at least June 15, 2020, the Texas Station website had a pop-up window that stated “We are temporarily closed and currently not taking reservations. We look forward to opening soon and welcoming you back.”

The documentary evidence submitted at the hearing shows that the Employer’s human resources policy titled, “Reductions in Force (revised 2012),” indicates that employees affected by a reduction in force will receive a preference for open positions. Specifically, it states that, “If

a laid off Team Member returns to a position within the Company within 90 days, the Team Member will be reinstated with his or her original hire date.” If, as the evidence shows, the petitioned-for unit employees were terminated and/or laid off effective May 1, 2020, the 90-recall period would presumably end August 1, 2020.

The Executive Vice President (EVP) and Chief Legal Officer (CLO) of Red Rock Resorts and Station Casinos LLC, testified that should Texas Station reopen within 90 days of May 1, 2020, the Employer’s policies provide for recall rights for the terminated employees. He also testified that if Texas Station reopened after 90 days, the Employer would “cast a wide net and try to bring back the best employees that we could,” and “literally anybody would be eligible for hiring at that point.” Regarding the CFO’s statement that Station Casinos hoped to rehire many of its valued team members during the at the quarterly earnings call on May 19, 2020, the EVP and CLO testified that that statement was not policy but “was a statement of hope and expectation.” There is no history of similar mass layoffs of discharges at Texas Station.

As of June 16, 2020, the date of the hearing in this matter, none of the remaining four non-Phase One properties had reopened to the public. The EVP and CLO testified that he did not “anticipate that a decision will be made about what to do about Texas Station for quite some time.” The EVP and CLO testified that he would “guess that the decision on Texas Station . . . would be the last decision that we would make,” and would “likely to be at the very tail end of our decision-making process.” However, the EVP and CLO also testified that the Employer was “not displeased with the way that they [Phase One casinos] have reopened” and that “[t]here was apparently a great deal of pent-up demand.” The EVP and CLO testified that “[i]t is possible that we will open one or more of those properties [non-Phase One casinos]” but that “[i]t is also possible that one or more of those properties will never reopen.” The EVP and CLO testified that the company has not “made the decision to say that Texas Station is currently closed” and said that “until such time as that decision is made, temporarily closed is the way to describe it.” However, the evidence demonstrates that no employees have been told that Texas Station will not reopen.

Finally, the testimony provided at the hearing demonstrates that Texas Station is a locals casino. It was the consensus from witness testimony that it was the general expectation that the locals casino market would recover prior to the Las Vegas Strip casino market recovering.

In sum, the Employer presented evidence and argued that due to the COVID-19 pandemic, the Employer closed the Texas Station casino, terminated the petitioned-for employees on May 1, 2020, and has no current plans to reopen the Texas Station casino or to recall the terminated employees in the foreseeable future. Conversely, the Petitioner presented evidence and argued that the Employer has temporarily closed its Texas Station casino and that petitioned-for unit employees have a reasonable expectation to be recalled.

II. ANALYSIS AND FINDINGS

A. The Employer Has Not Demonstrated That It Permanently Closed Texas Station Casino

1. Relevant Legal Precedent

The Board will not direct an election where a permanent closure of business operations is imminent and certain. See *Davey McKee Corp.*, 308 NLRB 839 (1992); *Hughes Aircraft Company*, 308 NLRB 82, 83 (1992). The Board, however, “will not dismiss an election petition based on conjecture or uncertainty concerning an employer's future operations, . . . , or evidence of cessation that is conditional or tentative.” *Retro Environmental, Inc./Green Jobworks, LLC*, 364 NLRB No. 70, slip op. at 6 (2016), citing *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

Additionally, the test for evaluating the eligibility of laid-off employees is “whether there exists a reasonable expectancy of employment in the near future.” *Pavilion at Crossing Pointe*, 344 NLRB 582, 583 (2005); *Madison Industries*, 311 NLRB 865, 866 (1993) (citing *Apex Paper Box Co.*, 302 NLRB 67 (1991) as the appropriate test). In determining whether employees have a reasonable expectation of recall, the Board examines several factors, including what the employees were told about the likelihood of recall, the circumstances surrounding the layoff, and the employer’s past experience and future plans.” *Id.* A mere assertion of permanent layoff is insufficient to rebut the presumption that layoffs are temporary. *Intercontinental Mfg. Co.*, 192 NLRB 590, 590 fn. 4 (1971).

2. Application

I have considered the Employer’s argument and have determined that the Employer has presented insufficient evidence to establish that the closure of the Texas Station is permanent or definite. Rather, the evidence shows that the current cessation in business is conditional and temporary. Indeed, a decision to permanently close Texas Station has not been made and its temporary closure may end depending on the performance of the Station Casinos’ Phase One properties, the recovery of the Las Vegas market, and the economy as a whole.

Additionally, the evidence shows that the petitioned-for unit employees have a reasonable expectancy of employment in the near future. The Employer’s public statements, e.g. the marquee outside Texas Station, the statements made during the quarterly earnings call, supervisors’ statements to individual employees, the Employer’s human resources policies, and the testimony of the Employer’s own witnesses shows that the Employer has not permanently closed its Texas Station casino and that it may reopen depending on the factors described above.

Additionally, the Employer has not announced and/or does not have current plans to fundamentally change the nature of its business at Texas Station. See *MJM Studios of New York*, 336 NLRB 1255 (2001). The Employer’s witness testimony, through the EVP and CFO, that the

employees may reapply for work with the Employer, even after the 90-day recall period, also provides employees with a reasonable expectancy of employment in the near future. See *Band-Age, Inc.*, 217 NLRB 449, 449 (1975), *enfd* 534 F.2d 1 (1st Cir. 1976) (statement that employer would take applications from anyone interested in returning to work gave employees an expectation of reemployment). Accordingly, I find that the petitioned-for employees are laid off employees with the reasonable expectation of recall.

In sum, the Employer has failed to present sufficient evidence to suggest that the Texas Station casino is permanently and definitely closed and has failed to show that petitioned-for unit employees do not have a reasonable expectancy of employment in the near future.

B. Alleged Discriminatees Named in Unfair Labor Practice Charges Are Permitted to Can Vote Subject to Challenge

The Employer, through its position statement and argument made at hearing, argues that that employees named as discriminatees in unfair labor practice cases should not be permitted to vote in any election in this matter because they would have been discharged, along with the other petitioned-for unit employees, on May 1, 2020. These alleged discriminatees are named in the unfair labor practice charges in Cases 28-CA-245647, 28-CA-252964, and 28-CA-257677. Because I have determined that the Employer has failed to meet its burden showing that Texas Station casino has permanently and definitely closed or that the petitioned-for employees do not have a reasonable expectation of return to work, I find that the alleged discriminatees are eligible to vote subject to challenge. See *Machinists (IAM Representatives Assn.)*, 159 NLRB 137 (1966); *Tetrad Co.*, 122 NLRB 203 (1959).

C. The Conduct of a Mail Ballot Election Is Appropriate

I have determined that the conduct of a mail ballot election is appropriate in the present circumstances.

1. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of June 30, 2020, 2,581,229 people in the United States had contracted confirmed cases of COVID-19, and 126,739 people had died from it;³ and 15,095 people in Clark County, Nevada had contracted confirmed cases of COVID-19, and 416 people had died from it.⁴

The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus.⁵ Many of the measures

³ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴ See <https://nvhealthresponse.nv.gov/>.

⁵ See *How to Protect Yourself and Others* at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

recommended by CDC to prevent the spread of the virus are well-known at this point: maintain a six-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene.⁶ With respect to travel, the CDC advises that travel increases the chances of getting and spreading COVID-19, and recommends that before traveling, individuals should learn if COVID-19 is spreading in their local area or in any of the places they are going.⁷

A recent report published by the CDC, *COVID-19 Pandemic Planning Scenarios* (CDC Planning Report),⁸ contains a best estimate that 35% of individuals infected with COVID-19 are asymptomatic, meaning that they never exhibit symptoms during the course of their COVID-19 infection, yet they are just as infectious as symptomatic individuals. This CDC Planning Report further estimates that the mean time from exposure to symptom onset of COVID-19 is approximately six days.

Further, although not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections, *Considerations for Election Polling Locations and Voters* (CDC Election Guidance),⁹ stating that officials should offer alternatives to in-person voting if allowed. Specifically, this CDC Election Guidance provides as follows:

Maintaining Healthy Operations

- **Where available in your jurisdiction, offer alternative voting methods that minimize direct contact and reduce crowd size at polling locations**
 - Consider offering alternatives to in-person voting if allowed in the jurisdiction.

Like much of the United States, Nevada responded to the initial COVID-19 outbreak by instituting an emergency order to restrict social gathering and movement in March of 2020. In response to an improved public health situation in early May 2020, a phased reopening began. On May 28, 2020, Nevada entered the second phase of this plan, which allows public and private gatherings of 50 or fewer people.¹⁰ Further, as noted above, Nevada it allowed casinos to reopen on June 4, 2020. However, on June 29, 2020, Nevada extended the second phase of its plan, citing increased COVID-19 test positivity rates, an increased 7-day average of new cases, and

⁶ *Id.*

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#Domestic-Travel>.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹⁰ See [http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_(Attachments)/).

increased hospitalizations.¹¹ The Governor's office warned that if statewide trends do not improve or get worse, the Governor will not hesitate to take any action necessary to protect the public and prevent exceeding hospital capacity, including reinstating previous restrictions.¹² Although Nevada remains in the second phase of its reopening plan, the directive concerning the second phase of the plan provides:

All Nevadans are strongly encouraged to stay in their residences to the greatest extent possible. Recognizing that COVID-19 is still present in Nevada and highly contagious, Nevadans are advised that they are safer at home and should avoid interpersonal contact with persons not residing in their households to the extent practicable.

2. Positions of the Parties

Petitioner seeks a mail ballot election because: (1) the Texas Station hotel and casino has been closed since March 17, 2020, employees have not reported to work since then, and there is therefore no central point where employees gather where an election can be held; (2) a mail ballot election is the most appropriate method to conduct an election in light of the COVID-19 pandemic and related governmental guidance, as a manual election would require gathering of Board agents, party representatives, and observers to gather in an indoor space with hundreds of voters entering and exiting in the course of the election.

The Employer contends that a manual election should be held because manual elections are the preferred and most reliable means of determining employees' union representation preference and because participants could wear masks and could socially distance during the election, given the availability of large conference rooms in which the election could be conducted at the Employer's facilities.

3. Analysis

Under Section 9 of the Act, the Board is charged with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. I am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due

¹¹ <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/06/Declaration-of-Emergency-Directive-026-re-Phase-2-Extension.6-29-20-1.pdf>

¹² See <https://nvhealthresponse.nv.gov/wp-content/uploads/2020/06/6.29-Phase-2-extension.pdf>.

consideration to safety considerations in the context of a pandemic.¹³ Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.¹⁴

Although the Board prefers conducting manual elections over conducting mail ballot elections, the Board has made it clear that mail ballot elections need not be reserved only for the most extraordinary circumstances, reasoning that “neither our precedent nor common sense supports such a stringent approach to the use of mail ballots.” *Sutter Bay West Hospitals*, 357 NLRB 197, 198 (2011). Indeed, the Board has always acknowledged that circumstance may necessitate adaptations on the Board’s part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that “circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions.” 120 NLRB at 1346, citing *Shipowners’ Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, “[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted.” *Id.*

The Board has determined that there are some instances in which a mail ballot election is appropriate because “of circumstances that would tend to make it difficult for eligible employees to vote in a manual election.” *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that extraordinary circumstances may warrant a departure from the specific guidelines articulated in that case. *Id.*

I find that the extraordinary circumstances presented by the COVID-19 pandemic and the fact that the Employer’s employees have not reported to work at the Employer’s facility since March 17, 2020 make the conduct of a mail ballot election the most responsible and appropriate

¹³ In its April 17, 2020 press release, the Board stated that Regional Directors have discretion with respect to when, where and if an election can be conducted in accordance with existing Board precedent and the Board specifically noted that Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state, and local laws and guidance. See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

¹⁴ See, *Atlas Pacific Engineering Company*, 27-RC-258742 (Order Denying Request for Review, May 8, 2020); *Touchpoint Support Services, LLC*, 07-RC-258867 (Order Denying Request for Review, May 18, 2020); *Johnson Controls, Inc.*, 16-RC-256972 (Order Denying Request for Review, May 18, 2020); *Roseland Community Hospital*, 13-RC-256995 (Order Denying Request for Review, May 26, 2020); *Seminole Electric Cooperative, Inc.*, 12-RC-256815 (Order Denying Request for Review, May 28, 2020); *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144 (Order Denying Request for Review, May 28, 2020); *Twinbrook Health & Rehabilitation Center*, 06-RC-257382 (Order Denying Request for Review, June 5, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (Order Denying Request for Review, June 12, 2020); *TDS Metrocom, LLC*, 18-RC-260318 (Order Denying Request for Review, June 23, 2020); *Roseland Community Hospital*, 13-RC-259788 (Order Denying Request for Review, June 25, 2020).

method for conducting a secret ballot election to determine the unit employees' union representation preferences at this time. The safety of the voters, the observers, the party representatives, and the Board agent conducting the election and the possibility that voters may be disenfranchised by a particular election arrangement must be considered in determining the appropriate method for conducting the election.

Although the Employer asserts that it has large spaces in which an election could be held and that voters could wear masks during the election, voters, observers, and party representatives would all need to appear at the Employer's facility to participate in the election. Party representatives, the observers, and the Board agent would have to gather for approximately one hour for the pre-election conference, including the check of the voter list and the parties' inspection of the voting area. The Board agent and observers would need to share a voting area at the Employer's facility for the duration of the proposed manual election. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. The Board agent must provide a ballot to each voter, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent must also count the ballots cast by all voters at the end of the election, typically held in the same voting area, with the observers, party representatives, and other employees who wish to attend. Moreover, given the locations of the party representatives and the number of Board agents needed to staff an election for bargaining unit the size of the petitioned-for unit, party representatives and Board agents would likely have to travel from out of state to participate in the election.

In these circumstances, the substantial interaction inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and other protective measures proposed by the Employer. Although the Employer asserts that voters can engage in certain protective measures during the election, it cannot police employees' adherence to those measures in the polling areas, and the Board agent cannot also police employees' adherence to those measures at the locations outside the polling areas.

Conducting a manual election under the current circumstances could also disenfranchise voters. Employees have not reported to work at the Employer's facility since March 17, 2020. In these circumstances, voters may choose not to travel to the election site, both because they are not reporting to work on a regular basis and because they may be wary of participating in an election process involving the degree of interaction required to conduct a manual election at this time.

I do not take my determination to conduct a mail ballot election lightly. I do not find that a manual election is impossible, or that a mail ballot election is the only option. However, I have determined that, under the current circumstances, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. In fact, directing a mail ballot election is consistent with current CDC guidance on elections, which

acknowledges the inherent risk of in-person elections and, thus, encourages alternatives to in-person voting if allowed during the COVID-19 pandemic.

In sum, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees' union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency's obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

III. CONCLUSION

For the foregoing reasons, I find that: (1) the Employer failed to meet its burden showing that Texas Station has been permanently and definitely closed and that the employees do not have a reasonable expectancy to return to work in the near future; and (2) the alleged discriminatees named in pending unfair labor practice charges against the Employer are eligible to vote subject to challenge.

Based upon the entire record in this matter and in accordance with the discussion 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 herein.¹⁵
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

¹⁵ NP Texas LLC d/b/a Texas Station Gambling Hall & Hotel, a Nevada corporation with an office and place of business in North Las Vegas, Nevada, has been engaged in the operation of a hotel and casino, providing food, lodging, entertainment, and gaming. During the 12-month period ending May 28, 2020, the Employer, in conducting its business operations described above, derived gross revenue in excess of \$500,000. During the same period, the Employer purchased and received at its Nevada facility goods valued in excess of \$50,000 directly from points outside the State of Nevada.

Included: All full-time and regular part-time banquet bartenders, banquet food servers, banquet porters, bar porters, bartenders, beverage servers, bus persons, butchers, catering cooks, catering pantry workers, catering stove persons, concession workers, cooks, cook helpers, counter attendants, lead counter attendants, food servers, guest room attendants, host/cashiers, house persons, kitchen runners, kitchen workers, pantry workers, porters, utility porters, room runners, runners, sprinters, stove persons, VIP bartenders, and TDR attendants employed by the Employer in North Las Vegas, Nevada.

Excluded: All other employees, front desk employees, valet parkers, gaming employees (dealers, slot attendants, cage cashiers), inspectresses, engineering and maintenance employees, office clerical employees, guards, managers, and supervisors as defined by the Act.

There are approximately 403 employees in the petitioned-for unit.

IV. DIRECTION OF ELECTION

The National Labor Relations Board (the 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 Joint Executive Board of Las Vegas.

A. Election Details

I have determined that a mail ballot election will be held for the reasons I have explained above.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. At 2:00 p.m. on Thursday, July 16, 2020, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Thursday, July 23, 2020, should communicate immediately with the National Labor Relations Board by either calling the National Labor Relations Board, Region 28, Las Vegas Resident Office at (702) 388-6416 or the Board's national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28, Las Vegas Resident Office by close of business (4:45 p.m.) on Thursday, July 30, 2020.

All ballots will be commingled and counted at a location to be determined by the Regional Director at **10:00 a.m. on August 6, 2020**.¹⁶ The parties will be permitted to participate in the ballot count, which may be held by videoconference. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **June 27, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.¹⁷

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 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.

¹⁶ If, on the date of the count, the Region 28 office is closed, or the staff of the Region 28 office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.

¹⁷ Based on my finding that the Employer has not established that the employees whose employment was terminated on May 1, 2020, lack a reasonable expectation of return to work, all employees employed by the Employer in classifications in the petitioned-for unit as of **April 30, 2020**, are eligible to vote and are considered to be employed during the payroll period ending July 27, 2020, for purposes of the election. Accordingly, the Employer is directed to include those employees on the Voter List notwithstanding the Employer's contention that they were permanently terminated.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 7, 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 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.

V. RIGHT TO REQUEST REVIEW

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

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

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

Dated at Phoenix, Arizona this 2nd day of July 2020.

/s/ *Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director