

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

BALFOUR BEATTY COMMUNITIES, LLC

Employer

and

Case 28-RC-256955

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 953**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The petition in this matter was filed by International Union of Operating Engineers, Local No. 953 (Petitioner) on February 25, 2020,¹ under Section 9(c) of the National Labor Relations Act, as amended (the Act), seeking an election to represent a maintenance unit employed by Balfour Beatty Communities, LLC (Employer) at its facility at Fort Bliss Army Base (Fort Bliss), in El Paso, Texas (Employer's facility). There are approximately 34 employees in the unit sought.

On March 10, I approved a Stipulated Election Agreement that both parties executed, with a manual election scheduled at the Employer's facility on March 17. On March 16, an Order Postponing Election Indefinitely issued due to COVID-19. On March 19, due to the COVID-19 pandemic, the National Labor Relations Board (the Board) ordered the temporary suspension of all representation elections, including both manual and mail ballot elections, through April 3. On April 1, the Board announced it would not extend its suspension of representation elections past April 3 and would instead resume conducting elections beginning April 6.

The parties in this matter were unsuccessful in reaching an agreement as to the type of election that should be held. The Petitioner sought a mail ballot election; the Employer wanted a manual election. On May 6, an Order Resuming Processing of Petition and Revoking Approval of Stipulated Election Agreement and Order to Show Cause (Order) issued. The Order gave the parties until May 13 to show cause, if any, as to why a representation election in this matter should not be conducted by mail ballot and why a manual election must be conducted.²

¹ All dates hereafter are in 2020 unless otherwise indicated.

² The Employer filed a Request for Review of the Order with the Board. On May 27, the Board denied the Employer's Request for Review.

Upon receiving the parties' positions, on May 19 an Order Scheduling Telephonic Pre-Election Hearing issued, directing a hearing for May 28. On May 27, an Order Rescheduling Hearing and Scheduling a Videoconference Hearing issued, scheduling the hearing for June 4. On June 3, an Order Rescheduling Hearing issued, scheduling the hearing for June 11.

On June 11, a hearing on the petition was held by videoconference before a Hearing Officer of Region 28 of the Board. No issues were litigated at the hearing. The only matter addressed at the hearing was whether to direct a manual or mail ballot election given the current extraordinary circumstances arising from the COVID-19 pandemic. The Employer objects to a mail ballot election, contending that a manual election can be safely conducted at the Employer's facility. Petitioner requests a manual election, or, in the alternative, a mail ballot election, at the earliest practicable date.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, relevant Board law, and the extraordinary circumstances of a pandemic, for the reasons described more fully below, I shall direct a mail ballot election commencing on the earliest practicable date.

II. FACTUAL OVERVIEW

A. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of June 25, 2,374,282 people in the United States contracted confirmed cases of COVID-19 and 121,809 people have died from it.³ 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.⁴ Many of the measures 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.⁵ 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.⁶

A recent report published by the CDC, *COVID-19 Pandemic Planning Scenarios* (CDC Planning Report),⁷ 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

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

⁴ See *How to Protect Yourself and Others* at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁵ *Id.*

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#Domestic-Travel>.

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

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),⁸ 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.

Many state and local governments have also issued restrictions tailored to the situation in specific communities. For this petition, holding a manual election would require the travel of a Board agent and party representatives from potentially three different states to the Employer's facility located at Fort Bliss, Texas. The Resident Office processing this petition and Petitioner's counsel are located in Albuquerque, New Mexico, in Bernalillo County. The Employer has two counsel of record: one with an office in San Diego, California, in San Diego County, and the other with an office in St. Louis, Missouri, in St. Louis County. Fort Bliss, where the Employer's facility is located, is a United States Army Base situated near the New Mexico and Texas border, with its headquarters located in El Paso, Texas, in El Paso County.

With respect to the United States Army's response to COVID-19 at its bases, on March 24, the Army raised the Health Protection Condition level to Charlie (HPCON C) across all of its installations, including Fort Bliss, limiting access to essential personnel only and the numbers of access points.⁹ HPCON C means that the area is experiencing sustained community transmission, requiring individuals present to follow all HPCON C instructions and to expect cancellation of in-person gatherings and restricted ability to travel.¹⁰ On March 28, the Department of Defense issued Instruction 6200.03 Public Health Emergency Management (PHEM) within the Department of Defense, declaring that its policy that military commanders take steps to protect lives, property, and infrastructure.¹¹ Fort Bliss has a COVID-19 cloth face covering policy which requires anyone entering non-residential facilities or buildings on Fort Bliss to wear a mask or appropriate cloth face covering, when six feet of social distancing cannot be maintained.¹² Pursuant to Department of Defense policy, Fort Bliss does not release the

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

⁹ See <https://www.army.mil/article/233962/?from=cv>.

¹⁰ See <https://www.defense.gov/Explore/Inside-DOD/Blog/Article/2128863/hpcon-understanding-health-protection-condition-levels/#:~:text=When%20the%20HPCON%20is%20C,and%20restricted%20ability%20to%20travel>.

¹¹ See <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/620003p.pdf>.

¹² See <https://www.facebook.com/notes/fort-bliss-texas/fort-bliss-june-25-covid-19-update/1508756502643065/>.

number of its service members and civilians who have confirmed cases of COVID-19 or have died from COVID-19.¹³

On June 3, Texas Governor Greg Abbott announced that the State of Texas was entering Phase III of its plan to safely open the economy while containing the spread of COVID-19, allowing all businesses in Texas to operate at up to 50% capacity, with very limited exceptions.¹⁴ On June 25, Governor Abbott announced that the State of Texas will pause any further phases to open Texas as the state responds to the recent increase in positive COVID-19 cases and hospitalizations.¹⁵ On June 26, Governor Abbott issued Executive Order GA 28 limiting certain businesses and services as part of the state's efforts to contain the spread of COVID-19.¹⁶

With respect to El Paso County, Texas, on June 9, the County Judge of El Paso County (County Judge) issued its Order No. 9, "Stay Home, Stay Safe" (County Order), requiring that individuals present in El Paso County shall limit groups to no larger than ten individuals; maintain six feet of social distancing from those not in their groups; and are strongly encouraged to wear face coverings when outside their homes.¹⁷ The County Order specifies that employers must require its employees to have a face covering when either in an area or performing an activity which will necessarily involve close contact or proximity to co-workers or the public where six feet of separation from other individuals is not feasible.¹⁸ On June 18, the County Judge issued Amendment 1 to its County Order to further emphasize the need to wear face coverings to limit asymptomatic transmission of COVID-19 and to require employers to develop and implement a health and safety policy to require specified mitigating measures designed to control and reduce the transmission of COVID-19.¹⁹

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in Texas and throughout the United States. As of June 25, the following chart illustrates the confirmed cases and deaths from COVID-19 in the relevant counties in the States of Texas, New Mexico, Missouri, and California:

	Confirmed Cases COVID-19	Deaths from COVID-19
El Paso County, Texas ²⁰	5,217	126
Bernalillo County, New Mexico ²¹	1,937	85

¹³ *Id.*

¹⁴ See <https://gov.texas.gov/news/post/governor-abbott-announces-phase-iii-to-open-texas>.

¹⁵ See <https://gov.texas.gov/news/post/governor-abbott-announces-temporary-pause-of-additional-reopening-phases>.

¹⁶ See <https://gov.texas.gov/news/post/governor-abbott-takes-executive-action-to-contain-spread-of-covid-19>.

¹⁷ See <http://www.epcounty.com/admin/covid19.htm>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See <http://www.epstrong.org/results.php>.

St. Louis County, Missouri ²²	6,201	567
San Diego County, California ²³	11,961	352

B. The Employer's Operations

The Employer builds and maintains housing on military bases, including the United States Army Base at Fort Bliss. On May 12, the Employer implemented its COVID-19 Workforce Readiness Plan (COVID-19 plan) for its phased return back to business, including a COVID-19 Workplace Readiness Worksheet tailored specifically to the operations at the Employer's facility. As part of the Employer's COVID-19 plan, it has divided its staff into two teams, which it refers to as Team A and Team B, to limit the number of employees interacting with each other during each shift. The Employer has also marked its facility for social distancing and has provided unspecified types of hand sanitizer and wipes throughout its facility. Further, the Employer has a full-time cleaner at its facility that cleans its restrooms, kitchen, and high touched areas daily and also has assigned staff to do such cleaning of high touched areas multiple times per day. As of June 11 – the date of the hearing in this matter – the Employer required its employees to wear masks only if six feet distance was not possible between individuals. To the Employer's knowledge, as of June 11, none of its staff at the Employer's facility had confirmed cases of COVID-19.

III. POSITIONS OF THE PARTIES

A. Petitioner's Position - Manual Election or Mail Ballot Election as Soon as Practicable

If a manual election can be safely conducted at the Employer's facility in light of the COVID-19 restrictions on the date of the election, Petitioner requests a manual election at the Kelly Park Building at the Employer's facility from 7:30 a.m. to 9:30 a.m. and 11:30 a.m. to 2:30 p.m., either on a Tuesday or Wednesday as soon as practicable. Alternatively, Petitioner requests a mail ballot election with mail ballots to be mailed out to eligible voters as soon as practicable and returned to the Region within a reasonable time thereafter for the mail ballot count. In order to ensure that the election occur as soon as practicable, at the hearing, Petitioner agreed to waive five days out of the 10-day time period it is entitled to have the voter list before the election.

B. Employer's Position - Manual Election at the Employer's Facility

The Employer argues that voting should be conducted entirely by manual election, based on the Board's longstanding policy favoring manual elections. The Employer proposes a manual election be conducted in the Kelly Park Building at the Employer's facility from 7:30 a.m. to

²¹ See <https://cvprovider.nmhealth.org/public-dashboard.html>.

²² See <http://www.stlcorona.com/resources/covid-19-statistics1/>.

²³ See <https://www.arcgis.com/apps/opsdashboard/index.html#/96feda77f12f46638b984fcb1d17bd24>.

9:30 a.m. and 11:30 a.m. to 1:30 p.m., either on a Tuesday or Wednesday. The Employer proposes a voting area in the multipurpose room of an unspecified size with two exit doors leading to the back of the building and three entrances through a hallway (voting area). The Employer asserts that all eligible voters would be routed one-way and that floor markings would be utilized to ensure that at least a ten-foot distance is maintained between voters at all times. The Employer also proposes using a different voting area for each polling session, to minimize the touched surfaces during both polling sessions. The Employer offers to provide unspecified types of hand sanitizer at each entrance and exit as well as unspecified types of sanitizing wipes in the voting area and by the voting booth and suggested requiring that all participants wear unspecified types of masks and gloves, as necessary. The Employer also offers to provide each voter with a single use pencil or pen to vote, to eliminate any sharing of writing utensils.

IV. 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 consideration to safety considerations in the context of a pandemic.²⁴ 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.²⁵

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

²⁴ 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>.

²⁵ 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).

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.*

As evident by my previous approval of the parties’ Stipulated Election Agreement to conduct a manual election, before COVID-19 was declared a pandemic, I acknowledge that absent public health concerns, I would not order a mail ballot election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. As noted above, current Federal, State, and County public health guidance strongly recommends discouraging gatherings and non-essential travel, and a mail ballot election minimizes such risk. A manual election at the Employer’s facility at Fort Bliss would require a Board agent and all party representatives to potentially travel from New Mexico, California, and Missouri to El Paso, Texas to attend the manual election. Focusing on the Employer’s facility in El Paso County, Texas alone, as of June 25, there were 5,217 confirmed cases of COVID-19 in El Paso County and 126 El Paso County residents have died from COVID-19.

The Employer’s employees are working at the Employer’s facility because they maintain military housing at Fort Bliss, and because of the nature of the work, no alternative exists to perform their work remotely. However, the Board does have an alternative to conducting a manual election.

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate 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 must be considered in determining the appropriate method for conducting the election.

Although the Employer has offered certain accommodations in an effort to allow for some degree of social distancing and protection during the election, manual election procedures inherently require substantial interaction. 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 15 to 30 minutes 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 two voting areas of unspecified sizes at the Employer's facility for the duration of the proposed manual election spanning between four to five hours. 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 and observers might need to use a restroom at the Employer's facility, typically before and after the closing of the polls. 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.

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 directs that employees abide by certain protective measures while at work, 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. Despite the Employer's precautions to minimize the transmission and spread of COVID-19 at the Employer's facility, any election participant could be an asymptomatic carrier of the virus.

Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary if the employee were performing work duties, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election. The Board's manual election procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. Additionally, conducting manual elections under the current circumstances could disenfranchise voters, as employees may be wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation.

Since the Employer prefers a manual election and the Petitioner does not oppose a manual election if it safely occurs at the earliest practicable date, in accordance with all applicable COVID-19 related restrictions, 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 this extraordinary 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.

V. CONCLUSION

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

1. The parties stipulated and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²⁶
2. The parties stipulated and I find that 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.
3. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
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 parties stipulated and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time assistant maintenance supervisors, general maintenance technicians (turns), and general maintenance technicians (performing work orders) employed by the Employer at its facility at Fort Bliss Army Base, El Paso, Texas.

²⁶ The Employer, Balfour Beatty Communities, LLC, a Delaware limited liability company, with a place of business at Fort Bliss Army Base, Texas, is engaged in providing maintenance and property management services for privatized military family housing to the United States Government. In conducting its operations during the 12-month period ending February 25, 2020, the Employer has been engaged in providing maintenance and property management services for privatized military family housing to the United States valued in excess of \$50,000. Based on its operations described above, the Employer has a substantial impact on the national defense of the United States.

Excluded: All other employees, including office clerical employees, managers, guards and supervisors as defined in the National Labor Relations Act.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 34 employees.

VI. 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 **International Union of Operating Engineers, Local No. 953**.

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 Tuesday, July 7, 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 **Tuesday, July 14, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 28 Office at (602) 640-2160 or our 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 office by close of business (4:45 p.m.) on **Tuesday, July 21, 2020**. All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received at the Regional Office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count by video conference. A meeting invitation for the video conference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Sunday, June 28, 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 who are present in the United States may vote.

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.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Wednesday, July 1, 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.

VII. 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.

Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations, and must be accompanied by a certificate of service.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A

failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Phoenix, Arizona this 29th day of June 2020.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director