

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

**HENRY FORD MACOMB HOSPITAL
CORPORATION, d/b/a HENRY FORD
MACOMB HOSPITAL - MT. CLEMENS CAMPUS¹**

Employer

and

Case 07-RC-256592

**LOCAL 9699, INTERNATIONAL UNION,
UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this case is whether, in light of the continuing COVID-19 pandemic,³ the Region should conduct an election for healthcare workers who are employed at an adult inpatient psychiatric acute care hospital by manual or mail ballot. The Employer argues that a manual election is appropriate and that it is possible to conduct a manual election safely. Petitioner does not take a position on whether an election should be conducted by manual or mail ballot and does not oppose the Employer's request for a manual election.

The Employer provides health care services and behavioral medicine programs for adults at its inpatient psychiatric acute care facility located in Mt. Clemens, Michigan (the Mt. Clemens facility). Petitioner seeks to represent a unit of approximately 80 registered nurses (RNs), clinical care coordinators, licensed practical nurses (LPNs), and mental health technicians employed by the Employer at its Mt Clemens facility.⁴ On February 28, 2020,⁵ I approved a Stipulated Election Agreement (Agreement) in this case, in which the parties agreed to a manual election on March 16 in the first-floor lobby conference room located at the Employer's Mt. Clemens facility, for the following Units of the Employer's employees:

¹ The Employer's name appears as corrected at the hearing.

² Petitioner's name appears as amended by stipulation of the parties.

³ Throughout this decision, the terms "COVID-19," "COVID," and "Coronavirus" are used interchangeably.

⁴ Petitioner's original petition also included health unit clerks, also known as unit secretaries. However, at the hearing the parties stipulated that the eligibility of the three existing health unit clerks would not be resolved at this time. Rather, the health unit clerks will vote under challenge and their eligibility will be resolved at a later time, if necessary.

⁵ All dates are in 2020 unless otherwise indicated.

VOTING GROUP - UNIT A (PROFESSIONAL UNIT):

All full-time and regular part-time registered nurses (RNs) and clinical coordinators employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding licensed practical nurses, mental health technicians, managers and guards and supervisors as defined in the Act.

VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT):

All full-time and regular part-time licensed practical nurses (LPNs) and mental health technicians employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding registered nurses, clinical coordinators, managers and guards and supervisors as defined in the Act.

On March 13, at the request of the Employer, the Region indefinitely postponed the March 16 election due to public health and safety concerns related to the COVID-19 pandemic. On March 19, the Board temporarily suspended all Board-conducted elections through April 3. On April 1, the Board announced that beginning April 6, Regional Offices would resume processing elections noting that “conducting representation elections is core to the NLRB’s mission” and further noting that “appropriate measures are available to permit elections to resume in a safe and effective manner, which will be determined by the Regional Director.”

Following the Board’s April 1 announcement, the Region inquired whether the parties would agree to proceed with the election in Units A and B by stipulating to holding the election via mail ballot in light of ongoing issues related to the pandemic. While Petitioner indicated that it would agree to a mail ballot election, the Employer opposed such proposal based on “Board policy [which] prefers use of manual elections over mail ballot elections” and took the “position that a manual election should be conducted on the Hospital premises after the current [State of Michigan] “stay home” orders are lifted.” I considered the parties’ positions and on April 14, based on the ongoing COVID-19 emergency and the nature of the Employer’s acute health care operations, I ordered that the election in this case be held in abeyance until such time that a manual election could be safely conducted at the Employer’s facility.

After my April 14 Order, due to the ongoing public health emergency, the Region sought to obtain the parties’ stipulation to amend the Agreement to provide for a mail-ballot election in lieu of a manual election. However, no such stipulation was reached. Thereafter, on June 16, in order to ensure the safety of the voting employees, the parties and their representatives, Board personnel, and the general public, I revoked my approval of the February 28 Agreement and set this case for hearing.

A hearing was held on June 25 by videoconference before a hearing officer of the Board. At the hearing, the parties stipulated to the same two appropriate Units (collectively, the Unit) as in the February 28 Agreement, as follows:

VOTING GROUP - UNIT A (PROFESSIONAL UNIT):

All full-time and regular part-time registered nurses (RNs) and clinical coordinators employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding licensed practical nurses (LPNs), mental health technicians, managers and guards and supervisors as defined in the Act.

VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT):

All full-time and regular part-time licensed practical nurses (LPNs) and mental health technicians employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding registered nurses (RNs), clinical coordinators, managers and guards and supervisors as defined in the Act.

Although election details, including the type of election to be held, are nonlitigable matters left to my discretion,⁶ the parties were permitted to present their positions as well as witnesses and documentary evidence as to the mechanics of this election at the hearing. I have carefully considered those positions and arguments, and for the reasons discussed below, I find that a prompt mail ballot election is appropriate given the extraordinary circumstances presented by the continuing COVID-19 pandemic.

I. FACTUAL OVERVIEW

A. The COVID-19 Pandemic Generally

At the outset, I take administrative notice of the current public health crisis in the United States 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.⁷ 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.⁸ 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.⁹ 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."¹⁰

⁶ See, *Representation-Case Procedures*, 84 Fed. Reg. 65924, 65944, fn. 82 (2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). See also, *2 Sisters Food Group, Inc.*, 357 NLRB 1816, 1819 (2011); *Halliburton Services*, 265 NLRB 1154, 1154 (1982).

⁷ 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>

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

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>.

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

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....”¹¹

B. COVID-19 and Healthcare Workers Generally

Healthcare workers are among employees at the highest risk of contracting COVID-19. According to the CDC, “Healthcare workers (HCWs) are not only at higher risk of infection but can also amplify outbreaks within healthcare facilities if they become ill. Identifying and managing HCWs who have been exposed to a patient with COVID-19 is of great importance in preventing healthcare transmission and protecting staff and vulnerable patients in healthcare settings.

C. The COVID-19 Pandemic in the State of Michigan

In addition to the federal recommendations described above, many state and local governments have issued COVID-19 restrictions tailored to the particular conditions in their communities. Detroit and its surrounding metropolitan areas in Southeast Michigan, including Macomb County, have been strongly affected by the virus with multiple confirmed cases and deaths. Michigan imposed strict guidelines early in the pandemic when, on March 23, the Michigan Governor Gretchen Whitmer issued her first stay-at-home executive order suspending all non-essential activities. These stay-at-home orders thereafter extended through May 31. On June 1, Governor Whitmer rescinded the stay-at-home orders and announced that the state was ready to transition to phase four, the “improving” phase, of the six-step Michigan Safe Start Plan, for the reopening and easing of restrictions in the state.¹² Under the Safe Start Plan, the state’s 83 counties were divided into eight regions. While certain regions in the state, largely in northern Michigan and the Upper Peninsula, have advanced to phase five, Southeast Michigan, including Detroit and the surrounding metropolitan areas, remain at phase four. As of June 30, Governor Whitmer announced that due to the recent spike in coronavirus cases in Michigan, Southeast and Central Michigan will not advance to the fifth phase of her reopening plan by the Fourth of July weekend, as she had originally planned.¹³ Unfortunately, the state's coronavirus cases have recently increased with an average of 222 cases per day reported between June 18-24.¹⁴ Public health experts continue to advise individuals to avoid unnecessary social contact and to conduct business remotely when possible in order to avoid spikes in cases in the coming

¹¹ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

¹² See <https://www.michigan.gov/coronavirus/0,9753,7-406-100467---,00.html>. Under the Safe Start Plan, the six phases to stop the spread of the coronavirus (COVID-19) and fully reopen the state are: uncontrolled growth; persistent spread; flattening; improving; containing; and post-pandemic.

¹³ See <https://www.freep.com/story/news/local/michigan/detroit/2020/06/30/gov-whitmer-puts-brakes-moving-phase-5-recovery-coronavirus/5350091002/>.

¹⁴ See <https://www.fox2detroit.com/news/michigan-reports-236-new-covid-19-cases-and-four-additional-deaths-linked-to-the-virus>.

weeks.¹⁵ Congregate care restrictions remain in place, and hospital restrictions are determined by the individual facilities. Additionally, on June 18 Governor Whitmer signed an executive order extending the state of emergency declaration related to the COVID-19 pandemic until July 16.¹⁶

As of June 30, Michigan ranks twelfth in the nation in confirmed COVID-19 cases with 63,497 confirmed cases and 6,161 deaths.¹⁷ 7,317 of those confirmed cases and 907 of those deaths were in Macomb County. Macomb County has reported 837 cases per 100,000 people, which is higher than both the national average of 787.7 per 100,000 and the Michigan average of 703.1 per 100,000.¹⁸

Although Michigan has decreased its rate of new cases substantially from its peak, other states, such as Arizona, Florida, and Texas are emerging as the country's latest epicenters after reporting recent record numbers of new infections. Confirmed coronavirus cases in the United States surpassed 2.5 million on June 28 as case counts increase significantly every day.¹⁹ And in Michigan, Macomb County itself is one of only 20 counties that have seen an increase in COVID cases over the last 14 days.²⁰

D. The Employer's Operations

The Employer leases its Macomb facility from and shares the same five-story building with Select Specialty Hospital. Select Specialty Hospital is a long-term acute care hospital that cares for critically ill long-term care patients. The lobby/ground floor provides an entrance to the building from the parking lot and is shared between the Employer and Select Specialty. The first and fourth floors are patient care floors occupied by the Employer and the second and fifth floors are patient care floors occupied by Select Specialty. The third floor is vacant.

The Employer operates two units and three around-the-clock shifts: first/day shift; second/afternoon shift; and third/midnight shift. During the day and afternoon shifts, there are approximately four nurses, two mental health technicians and one health unit clerk assigned per unit. During the midnight shift, there are approximately two nurses and two mental health technicians assigned per unit. While there is limited record evidence that three clinical care coordinators work on the day shift and two work on the midnight shift, it is unknown how many clinical care coordinators are regularly assigned per unit.

¹⁵ See Joel Achenbach, *Coronavirus hot spots erupt across the country; experts warn of second wave in South*, WASHINGTON POST, May 20, 2020, https://www.washingtonpost.com/health/coronavirus-hot-spots-erupt-across-the-country-experts-warn-of-possible-outbreaks-in-south/2020/05/20/49bc6d10-9ab4-11ea-a282-386f56d579e6_story.html.

¹⁶ Executive order 2020-127 went into effect on June 18 and is in the record.

¹⁷ See <https://www.cdc.gov/covid-data-tracker/index.html#cases>.

¹⁸ See <https://www.cdc.gov/covid-data-tracker/#county-map>

¹⁹ See <https://www.washingtonpost.com/nation/2020/06/28/coronavirus-live-updates-us/>

²⁰ See <https://www.nytimes.com/interactive/2020/us/michigan-coronavirus-cases.html>

E. COVID-19 at the Mt. Clemens Facility

Since the beginning of the pandemic, the Employer instituted a no-visitor policy at the Mt. Clemens facility which remains in effect to date. The Employer also implemented strict COVID screening procedures for incoming patients early on including mandatory coronavirus testing, screening for symptoms, and regular temperature checks. Patients in the Employer's care regularly have their temperatures checked three times per day. Staff must also regularly log symptoms and have their temperatures checked daily. Masks are mandatory for all staff and patients who leave their rooms, and other personal protective equipment (PPE) such as gloves, goggles and gowns are available for all staff and patients. Social distancing is practiced whenever possible. Since the pandemic, the Employer has also instituted strict and increased cleaning/disinfecting procedures for all of its "high-touch surface" areas throughout the Mt. Clemens facility. For the most part, the Employer has maintained the above protocols at its Mt. Clemens facility to date. One recent change has been that the Employer no longer prohibits vendors and contractors from coming on-site. However, all individuals entering the facility must be screened for COVID symptoms and undergo temperature checks and counseling regarding the Employer's policies for mandatory masks and handwashing.

Select Specialty has largely agreed to adhere to the Employer's above COVID-19 protocols and procedures since they were implemented. Recently, however, Select Specialty loosened its no-visitor policy to allow one visitor per patient. Such visitors are monitored by Select Specialty without the Employer's involvement. In monitoring visitors, Select Specialty has a strict sign-in and out procedure, conducts general COVID screening and temperature checks, and enforces a mandatory mask policy.

The Employer and its partner psychiatric facility, Henry Ford Kingswood Hospital (Kingswood) in Ferndale, Michigan made an agreement at the commencement of the pandemic that Kingswood would treat all COVID-19 positive patients from the Mt. Clemens facility. Accordingly, any suspected coronavirus patients at Mt. Clemens are immediately sent into isolation and transferred to Kingswood. The record demonstrates that to date, five Mt. Clemens patients tested positive for COVID-19, all of whom were immediately transferred to Kingswood. The last of these test-positive patients occurred in April. Also, to date, two of the Employer's healthcare employees tested positive for COVID at the Mt. Clemens facility. The last test-positive case was on April 27.

II. THE POSITIONS OF THE PARTIES

The Employer contends that despite the ongoing pandemic, a manual election can be conducted safely. The Employer proposes that in addition to normally adhering to recommended federal/CDC, state/Michigan and Employer/system-wide²¹ COVID-19 protocols and precautions (e.g., undergoing daily COVID symptom checks, utilizing increased sanitation procedures, wearing masks and other PPE when caring for patients), the Employer would implement and its

²¹ The Employer's parent corporation is Henry Ford Health System.

healthcare employees at the Macomb facility would be required to follow these strict precautions in preparation for a manual election:

- provision of largest 1600 square foot Bayley conference room at the Macomb facility with direct ground floor access to and from parking lot;
- deep cleaning/sanitization and sterilization of election site day before election;
- mandatory mask-wearing (from time of entering to leaving building) with masks and gloves available on-site;
- all persons entering election area screened for COVID symptoms and checked for temperature via infrared no-touch temperature scanning – individuals who deny symptoms and are afebrile (i.e., fever less than 100.4°F/38°C) will be issued an “authorized for entry” sticker to the election site;
- limitation of large gatherings at election site by posting a suggested schedule of employee voting times and/or releasing voters gradually to vote;
- foaming hand sanitizer and wipes placed in multiple places in election area;
- single-use disposable writing instruments for voting procedures;
- sanitization of election area and voter surfaces in between polling periods.²²

The Employer argues that if all of these precautions are implemented, the election can be conducted safely. The Employer also argues that the pandemic situation has improved dramatically in recent weeks and there has been a tremendous decrease in COVID infections in Macomb County. Thus, the extraordinary circumstances that existed are no longer present, and the current status of federal, state and local laws and guidance present no barrier to a manual election at the Macomb facility.

As previously noted, Petitioner does not take a position on whether an election should be conducted by manual or mail ballot and does not oppose a manual election.

III. AGENCY DIRECTIVES AND LEGAL AUTHORITY

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

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

²² In the event of a manual election, the parties agreed to two separate polling periods from 6:15 a.m. to 8:15 a.m., and 2:15 p.m. to 4:15 p.m.

The Manual Section sets forth several types of conditions favoring mail-ballot elections, including situations where eligible voters are “scattered,” either geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. Finally, this Section states that “[u]nder extraordinary circumstances, other relevant factors may also be considered by the regional director,” citing *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the Manual indicates that the regional director may use discretion to order a mail ballot election where conducting an election manually is not feasible, and that under extraordinary circumstances, the regional director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. See *ibid*.

On April 17, 2020, the Board issued an announcement regarding the COVID-19 pandemic titled, “COVID-19 Operational Status,” which states in pertinent part:

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance. Regional Directors, in their discretion, may schedule hearings through teleconference or videoconference, although the latter may involve delays due to limited availability.

On May 8, 2020, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated “extraordinary circumstances” beyond the considerations described above, and that circumstances in place at the time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for directing a mail ballot election in that case after considering the conditions surrounding a manual election.²³

IV. ANALYSIS

The circumstances surrounding the COVID-19 virus are extraordinary. Whether a mail ballot election is appropriate in this case requires considering both the public health concerns presented by the COVID-19 pandemic and the Board’s stated preference for manual elections. Manual elections are the preference of the Board, and I recognize the “potential problems”

²³ *Atlas Pacific Engineering Company*, 27-RC-258742, at fn. 1 (May 8, 2020).

associated with mail ballot elections are some of the reasons that the Board has traditionally preferred manual elections. I do not discount those concerns.

Absent the present pandemic, a manual election would almost certainly be held in this case. To the extent that either party contends that the petitioned-for employees are so “scattered” as to time, scheduled to multiple shifts at a facility operating at all times, this is unlikely to be a sufficient basis for a mail ballot election. Prior to the current pandemic the Board regularly conducted manual elections under similar circumstances, and the schedules proposed by the Employer are consistent with how the Board would typically schedule such an election.

However, my decision in this case is ultimately based on the “extraordinary circumstances” presented by this public health emergency. I recognize that a degree of reopening has begun, in the United States generally and in Southeast Michigan specifically. At the same time, it is not disputed that COVID-19 remains present in the community and presents a well-established and significant health risk. There is no easily identifiable bright line that can designate when “extraordinary circumstances” have passed while the increased risk of transmission in group activities remains.

Ultimately, as the Board has made clear, this is a question of discretion. While the Employer has presented a comprehensive plan for a manual election, I find the circumstances of this case make it appropriate to hold a mail ballot election. I find that the extraordinary circumstances presented by the COVID-19 pandemic remain present here for several reasons. First, my decision is based on the undisputed continued presence of the virus in the Detroit/Southeast Michigan area, the growing number of COVID cases in Macomb County, and the severity of the COVID-19 risk. In relying on these considerations, I am mindful of the Employer’s position that the pandemic situation in Michigan has improved overall in recent weeks and there has been a tremendous decrease in COVID infections in Macomb County from its high point. However, I note what appears to be a recent increase in cases in Macomb County. It is not possible for me to know if this represents an increasing number of infections, a reflection of more widespread testing, better reporting, or simply a momentary spike in cases. However, it does raise the possibility that, if I order a manual election, I will be directing voters and others to congregate under circumstances more dire than those faced today. A mail ballot election avoids this risk.

Second, my decision is also based on the Employer’s role as a health care provider. While COVID-19 is present in all aspects of the community, hospitals, where the virus is more likely to be found and to spread quickly, present a special risk. The Employer is no doubt aware of this, as demonstrated by its ongoing restriction on regular visitation to its facilities. I recognize the Employer has attempted to mitigate the risk to voters and its patients by proposing to conduct the election in a large ground floor conference room with direct access to the parking lot. However, in any manual election voters will still physically come together in a single location, even if dispersed over time and socially distanced. This represents an increased risk to all those participating. A mail ballot election avoids this risk. Even a manual election following the Employer’s comprehensive plan to address these risks still involves physical interactions, congregating, and, in my view, increased risk of infection. Here, the Board’s mail ballot procedure is an established procedure that avoids these risks. Although the mail ballot procedure

may not be the Board's preferred procedure, it is one of the ways in which the Board conducts an election when circumstances dictate. Under the circumstances presented, I find it prudent to order a mail ballot election.²⁴

Finally, I note that the Employer's employee list attached to its statement of position lists 10 RNs employed on a contingent basis. At the hearing, the Employer and Petitioner stipulated that such RNs should be eligible to vote if they regularly averaged four hours or more per week for the last quarter prior to the eligibility date. This is the eligibility formula set forth in *Davison-Paxon Co.*, 185 NLRB 21, 24 (1970) (finding employees who regularly average four hours or more per week for the last quarter prior to the eligibility date have a sufficient community of interest for inclusion in the unit). Accordingly, contingent RNs are eligible to vote in the election ordered herein if they regularly average four hours or more of work per week during the quarter immediately prior to the eligibility date.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I direct a mail-ballot election to be conducted in accordance with the election details discussed below and 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 commerce²⁵ within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
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.²⁶
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) 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:

²⁴ The Board has upheld regional directors' decisions to direct mail ballot elections due to the current COVID-19 pandemic for employees of other health care employers. See, *Roseland Community Hospital*, Case 13-RC-256995 (May 26, 2020); and *Twinbrook Health & Rehabilitation Center*, Case 06-RC-257382 (June 5, 2020).

²⁵ The parties stipulated to the following commerce facts: During the calendar year ending December 31, 2019, the Employer, in conducting its operations derived gross revenues in excess of \$250,000, and during the same period of time, the Employer purchased and received at its Mt. Clemens, Michigan facility goods valued in excess of \$5,000 directly from points outside the State of Michigan.

²⁶ The parties stipulated at the hearing that Petitioner is a labor organization within the meaning of the Act.

VOTING GROUP - UNIT A (PROFESSIONAL UNIT):

All full-time and regular part-time registered nurses (RNs) and clinical coordinators employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding licensed practical nurses, mental health technicians, managers and guards and supervisors as defined in the Act.

VOTING GROUP - UNIT B (NON-PROFESSIONAL UNIT):

All full-time and regular part-time licensed practical nurses and mental health technicians employed by the Employer at its facility located at 215 North Avenue, Mount Clemens, Michigan; but excluding registered nurses, clinical coordinators, managers and guards and supervisors as defined in the Act.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether health unit clerks are included in, or excluded from, the bargaining unit, and individuals in this classification may vote in the election in Voting Group Unit B but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

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 9699, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO.**

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining units by personnel of the National Labor Relations Board, Region 18 (Minneapolis, Minnesota), on July 15, 2020 at 4:30 p.m. (CDT). 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.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 18 office at 612-348-1757 by no later than 4:30 p.m. (CDT) on July 29, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 18 office, by close of business, 4:30 p.m. (CDT), on August 5, 2020. The mail ballots will be commingled and counted at the Region 18 office located at

Federal Office Building, 212 Third Avenue South, Suite 200, Minneapolis, Minnesota at 3:00 p.m. (CDT) on August 12, 2020. The method for the count will require virtual participation and will be determined by the undersigned Regional Director prior to the count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the bi-weekly payroll period ending July 4, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all contingent RNs who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classification whose eligibility remains unresolved as specified above and in the Notice of Election.

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, including health unit clerks, whose eligibility has not been resolved.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by Wednesday, July 8, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used

but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-ruleseffective-april-14-2015.

The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The list must also be served electronically on the other parties named in this decision.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and 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.²⁷ A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Signed at Detroit, Michigan this 6th day of July 2020.



Terry Morgan, Regional Director
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²⁷ On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.