

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

**NEW MEXICO GAS COMPANY**

**Employer**

**and**

**Case 28-RC-257781**

**UNITED ASSOCIATION OF PLUMBERS AND  
PIPEFITTERS LOCAL 412**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner seeks to represent a unit of the Employer's field operations employees. The Petitioner seeks a mail ballot election due to the employee and public health risks posed by the COVID-19 pandemic and the geographic scattering of unit employees.

The Employer asserts that a mail ballot election is not appropriate and the appropriate means of determining the union representation preference of the employees in the petitioned-for unit is to conduct a mixed manual and mail ballot election.

A hearing officer of the National Labor Relations Board (the Board) conducted a videoconference hearing.<sup>1</sup> As explained below, based on the record, the arguments of the parties, and relevant Board law, I have determined that I must proceed with conducting an election without delay and in the most responsible and appropriate manner under the circumstances. I am, therefore, directing a mail ballot election commencing on the earliest practicable date. There are approximately 290 employees in the petitioned-for unit.

**I. FACTS**

**A. The Employer's Operations**

The Employer, a public utility headquartered in Albuquerque, New Mexico, transports and distributes natural gas. The Employer has exclusive rights to distribute gas to customers in its service territory, which covers 26 of 33 counties in the State of New Mexico. The Employer is the largest natural gas utility in the State of New Mexico. The Employer has approximately 520,000 customers, including residential, commercial, industrial, and transport customers. It is regulated by the New Mexico Public Regulation Commission and the Department of Transportation, and it maintains its own set of safety protocols.

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<sup>1</sup> The hearing was initially scheduled to commence on March 18, 2020, at the Board's Resident Office in Albuquerque, New Mexico, but, due to extraordinary circumstances caused by the COVID-19 pandemic, the hearing was postponed, and, ultimately, was conducted on June 11, 2020, by videoconference.

The Employer's operations are administratively divided into six regions:

1. the Metro Region, covering Albuquerque, New Mexico, and surrounding areas;
2. the Northwest Region, covering Farmington, Gallup, and Grants, New Mexico, and surrounding areas;
3. the Northcentral Region, covering Santa Fe, Española, and Taos, New Mexico, and surrounding areas;
4. the Northeast Region, covering Clovis, Portales, Tucumcari, and Clayton, New Mexico, and surrounding areas;
5. the Southeast Region, covering Roswell, Artesia, Carlsbad, and Lovington, and surrounding areas; and
6. the Southwest Region, covering Alamogordo, Anthony, Truth or Consequences, and Silver City, and surrounding areas.

The Employer has three Operations Managers in the Metro Region and one Operations Manager in each of its other Regions. The Operations Managers report to the Employer's Director of Operations, who reports to its Vice President of Operations. The Employer employs 29 Operations Supervisors, with 9 belonging to the Metro Region and the rest assigned to the Employer's other Regions.

The Employer has a total of 22 facilities, including 2 facilities in Albuquerque and others spread throughout its other Regions. The Employer employs field operations employees, regional operations employees, and administrative employees at its facilities.

According to the Employer, it employs more than 10 employees at the following facilities:

Alamogordo	13 employees
Albuquerque (2 facilities)	108 employees
Anthony	10 employees
Carlsbad	15 employees
Clovis	15 employees
Espanola	10 employees
Farmington	23 employees
Gallup	11 employees
Roswell	17 employees
Santa Fe	25 employees
Silver City	11 employees
Total	257 employees

According to the Employer, it employs fewer than 10 employees at the following facilities:

Artesia	4 employees
Belen	7 employees
Bernalillo	0 employees
Chama	2 employees
Clayton	2 employees
Grants	4 employees
Lovington	5 employees
Taos	7 employees
<u>Truth or Consequences</u>	<u>6 employees</u>
Total	39 employees

## **B. The COVID-19 Pandemic**

The impact of the COVID-19 pandemic on daily life has been profound and well-documented. As of July 16, 2020, 3,483,832 people in the United States have been infected with COVID-19 and approximately 136,938 people have died from it.<sup>2</sup> The Centers for Disease Control and Prevention (CDC) determined that the best way to prevent the illness is to avoid being exposed to the virus.<sup>3</sup> Many of the measures recommended by the Federal and state governments to prevent the spread of the virus are well-known at this point: maintain a 6-foot distance between individuals, work or engage in schooling from home, avoid large social gatherings, avoid discretionary travel, and practice good hygiene.<sup>4</sup>

Many state and municipal governments have also issued restrictions responsive to the COVID-19 pandemic tailored to the particular circumstances present in specific communities. Specifically, on March 11, 2020, the Governor of New Mexico, Michelle Lujan Grisham (the Governor) invoked her authority under the All Hazards Emergency Management Act and issued her initial Executive Order 2020-004, declaring a state-wide public health emergency to prevent the spread of the COVID-19 virus.<sup>5</sup> That initial order has been renewed and extended six times, most recently until July 30, 2020.<sup>6</sup>

On March 24, 2020, the Secretary of the State of New Mexico Department of Public Health issued State of New Mexico Public Health Order 03-23-2020, “Public Health Emergency Order Closing All Business and Non-Profit Entities Except for Those Deemed Essential and

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<sup>2</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>3</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>4</sup> See *The President’s Coronavirus Guidelines for America* at <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/>; CDC, *How to Protect Yourself and Others* at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>5</sup> Executive Order 2020-004 at <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-004.pdf>.

<sup>6</sup> Executive Order 2020-053 at <https://cv.nmhealth.org/wp-content/uploads/2020/07/Executive-Order-2020-053.pdf>.

Providing Additional Restrictions on Mass Gatherings Due to COVID-19,” requiring that, effective March 24, 2020, people limit their time away from their place of residence or property except to conduct or participate in certain essential activities or functions.<sup>7</sup>

On April 30, 2020, the New Mexico Department of Health (NMDOH), issued an order in conjunction with the office of the Governor addressing conducting of the state’s upcoming primary election, expressly permitting election-related facilities to operate subject to certain requirements designed to minimize the risk of spreading the COVID-19 virus through in-person voting. The Governor’s Order noted that the enumerated safeguards will not entirely eliminate the heightened risks associated with in-person voting, however, and encouraged all eligible voters to apply for absentee ballots and to vote by mail.<sup>8</sup>

On June 1, 2020, the NMDOH issued a Public Emergency Order reiterating and amending its prior orders closing all businesses and non-profit entities except for those deemed essential. Acknowledging the increase in COVID-19 cases since its initial Order, the June 1, 2020, Order reiterated the need to enforce the wearing of face coverings and observe social distancing, in addition to adding additional restrictions on mass gatherings. The Order further urged all residents to stay at home for all but the most essential activities and services and to avoid non-essential travel, including airplane travel.<sup>9</sup>

On July 1, 2020, the Governor issued an Executive Order reiterating an earlier Order<sup>10</sup> and stating, *inter alia*:

Because some individuals infected with COVID-19 are asymptomatic or have very mild symptoms, travelers may be unaware that they are carrying the virus. For this reason, persons arriving in New Mexico’s airports must self-isolate for a period of time sufficient to ensure that the public health and safety is not jeopardized.

The period of quarantine was defined as 14 days from date of entry or the duration of the visit, whichever was shorter. This restriction did not apply to federal employees or those employed by a federal agency or national defense contractor.<sup>11</sup>

As of July 1, New Mexico had over 13,000 reported cases of COVID-19 and more than 500 related deaths. Accordingly, the NMDOH issued a mandatory 14-day self-quarantine order

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<sup>7</sup> 03-23-2020 Public Health Emergency Order at <https://cv.nmhealth.org/wp-content/uploads/2020/03/SignedPHO03-24-2019.pdf>.

<sup>8</sup> 04-30-2020 Public Health Emergency Order at <https://cv.nmhealth.org/wp-content/uploads/2020/05/04.30.20-polling-PHO.pdf>.

<sup>9</sup> 06-01-2020 Public Health Emergency Order at <https://cv.nmhealth.org/wp-content/uploads/2020/06/060120-PHO.pdf>.

<sup>10</sup> Executive Order 2020-037 at <https://cv.nmhealth.org/wp-content/uploads/2020/06/Executive-Order-2020-037.pdf>.

<sup>11</sup> Executive Order 2020-054 at <https://cv.nmhealth.org/wp-content/uploads/2020/07/Executive-Order-2020-054-2.pdf>.

for all out-of-state travelers entering New Mexico by either air or vehicle, again excluding individuals employed by a federal agency. This order reiterated the earlier stay-at-home order except for outings deemed absolutely necessary for health safety, and welfare.<sup>12</sup> Since the initial March 11, 2020, order, public gatherings have been restricted to 5 or fewer persons.

### **C. The Employer's Response to the Current COVID-19 Pandemic**

The Governor has designated the Employer an essential business providing essential service to the public. Unlike the facilities of other businesses deemed nonessential, the Employer's facilities have stayed open and operating since the beginning of the COVID-19 pandemic. Thus, all field operations employees, including those in the petitioned-for unit, were deemed essential workers and have continued to work.

The Employer has also made certain operational adjustments to attempt to limit exposure of its employees to COVID-19.

Those who could work from home were instructed by the Employer to do so. The Employer has no immediate plans to have these employees physically return to work but is studying the different requirements of each office in order to develop a reentry plan to be effectuated about Labor Day. Those employees who must come into one of the Employer's facilities to perform their work have been limited to 4 to 5 at one time and must observe social distancing. Field operations employees generally do not come to the office daily, since they have everything they need in their trucks, but they may occasionally come to attend safety meetings, replenish supplies, or clarify work orders. Some field operations employees who have larger trucks that generally cannot be parked at their homes and who need to pick up materials on a regular basis, have to report to their assigned facilities more frequently.

Service technicians, who are responsible for initiating and disconnecting service, generally work alone. They have their work orders sent to them and keep their tools and equipment in their trucks, limiting the number of times they need to go into their assigned facilities. The Employer also limits the number of work orders requiring service technicians to enter customer homes on a given day. Dispatchers and service technicians ask customers if they have flu-like symptoms before service technicians enter customer homes or locations. If a customer reports no symptoms, service technicians wear a face covering and hand sanitizer. If a customer reports symptoms, service technicians can also wear a tie-back suit, booties, and a face shield. If a service technician needs to return to his or her assigned facility after a service call, the service technician must decontaminate with hand sanitizer and dispose of their personal protective equipment.

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<sup>12</sup> 6-30-2020 Public Health Emergency Order at <https://cv.nmhealth.org/wp-content/uploads/2020/07/063020-PHO-1.pdf>; see also [www.cv.nmhealth.org](http://www.cv.nmhealth.org).

Construction and maintenance employees generally work in crews and need to report to their assigned facilities to get their trucks, receive their assignments, and pick up materials. However, they must wear face coverings even when working outside.

Line spotters are permitted to keep their trucks at home and use an automated system to receive their worksites, thus limiting their need to enter the Employer's facilities.

Inspectors inspect contractors performing work for the Employer. They wear face coverings and observe social distancing even while working outside. Contractors are also required to wear face coverings.

The Employer presented evidence that it knew of no employee who had tested positive for COVID-19 as of the date of the hearing. The Employer does not take employees' temperatures and does not require employees to undergo COVID-19 testing unless they have had a known exposure to the virus or have displayed symptoms. The Employer requires that employees self-report COVID-19 symptoms and requires employees displaying symptoms to self-isolate, undergo testing, and refrain from returning to work until they have received a negative result. The Employer also performs some form of trace testing. Shortly before the hearing, 8 employees from one of the Employer's facilities in Albuquerque were asked to self-quarantine.

The Employer further presented evidence that it had refrained from engaging in any campaign relating to the instant petition and testimony that it would require extended time for campaigning before the commencement of any election due to the social distancing protocols to which it must adhere to campaign safely.

#### **D. The Employer's Proposed Election Arrangements**

The Employer has proposed that a mixed manual and mail ballot election be conducted. The Employer proposes that manual polls be held at the 11 locations where the Employer employs more than 10 employees, making in-person voting available for 257 employees. The Employer alternatively proposes that manual polls be held at as few as 4 locations: Albuquerque, Santa Fe, Farmington, and Roswell. The Employer proposes that mail ballots be sent to the employees employed at the 9 facilities where the Employer employs fewer than 10 employees, making mail ballot voting available for 39 employees.

The Employer presented evidence that, in previous mixed manual and mail ballot elections conducted by the Board among the Employer's employees, there was 90 to 95 percent voter turnout.

The Employer submitted a detailed safety protocol that it would implement at each of the 11 proposed manual balloting sites, including, *inter alia*, flow charts showing the separate ingress and egress of the voters, along with diagrams for the placement of the tables for observers and the Board Agent allowing for proper social distancing.<sup>13</sup> Further safety measures would include cleaning and disinfecting of the voting rooms prior to the opening of the polls, and

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<sup>13</sup> The Board Agent would, of course, be free to reconfigure the room and move the table if he or she so desired.

ensuring that no one would enter them until the Board Agent arrived. Plexiglass partitions would be erected to minimize exposure of the observers and the Board Agent to the voters, and the Board Agent could pass the ballot to the voter under the plexiglass to avoid direct contact. The Employer would further provide individual bags containing the face masks, gloves, and pens that could be picked up by each voter prior to entering the polling area. Voters would be instructed to line up at least 6 feet apart outside their respective polling areas and then be allowed into the polling area one at a time. To avoid overcrowding outside the polling area, the Employer has proposed to release employees at a prearranged time at the rate of about 5 every 15 minutes or 10 every 20 minutes, with the exact schedule would be developed with the Board Agent.<sup>14</sup>

The Employer proposed that the manual elections at the 11 facilities named above take place over two days to allow for travel. Specifically, the Employer proposed two 3-hour sessions at the Albuquerque facility: one in the morning and another in the afternoon. The remaining locations would have one 2-hour voting session each: half the locations in the morning and the other half in the afternoon.

## **II. THE PARTIES' POSITIONS**

The Employer seeks for the Board to stay the petition and conduct a mixed manual and mail ballot election once conducting such an election accords with government mandates issued in response to the COVID-19 election. The Employer asserts that the Board prefers to conduct manual elections and that, in the past, mixed manual and mail ballot elections conducted among the Employer's employees have had high voter turnout.

The Petitioner asserts that a mail ballot election is a safe and appropriate means of determining the unit employees' union representation preference in light of the employee and public health risks posed by the COVID-19 pandemic and the geographic scattering of unit employees.

## **III. ANALYSIS**

The Board is charged, under Section 9 of the Act, 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 that function must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. Therefore, I have decided to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.

Although the Board prefers conducting manual elections over 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

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<sup>14</sup> The Employer presented a doctor who primarily practices in occupational and environmental medicine, including treatment for work-related traumatic injuries, who testified that the use of masks, in particular, and, also, gloves, plexiglass, and social distancing, would aid in conducting a safe election.

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 whether the voters are able to read and understand a mail ballot. *Id.* at 1145. The Board stated 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 COVID-19 pandemic presents an extraordinary circumstance that make conducting a mail ballot election the most responsible and appropriate method for holding 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, the Board Agents conducting the election, and the public must be considered in determining the appropriate method for conducting the election.

The Employer has proposed election arrangements it contends adhere to and even in some instances exceed State guidelines and regulations. The Employer’s proposed arrangements further include many (though not all) of the protocols suggested by the General Counsel in Memorandum GC 20-10, “Suggested Manual Election Protocols” (Jul. 6, 2020), issued after the hearing. In addition, the Employer has implemented measures to try to prevent exposure of its employees to the virus generally.

However, notwithstanding these proposed election arrangements and the Employer’s general safety protocols, manual election procedures inherently require substantial interaction. Voters, observers, party representatives will all need to appear at the Employer’s facility to participate the election. Party representatives, the observers, and the Board agent will have to gather for the pre-election conference, including the check of the voter list. The Board agent and observers will need share a conference room, albeit a large one, for the duration of the election. The observers will need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers. The Board agent must hand a ballot to each voter, which each voter must then then mark in a voting booth and then put 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. Board agents must also commingle and count the ballots cast by all voters at the end of the election.

Moreover, the Employer's proposed election arrangements would require Board Agents to appear at 11, or, alternatively 4, polling locations, requiring substantial travel. Currently, the Board only employs 3 Board agents in its Albuquerque Resident Office, so that the conduct of an election in the manner proposed by the Employer would require Board agents from the Phoenix Regional Office and/or the Las Vegas Resident Office to travel to New Mexico to staff some of the polling locations, potentially requiring air travel and overnight stays and exposing other election participants to Board Agents from locations with greater COVID rates than New Mexico.<sup>15</sup>

For these reasons, I have determined that the manual polling proposed by the Employer at 11, or, alternatively, 4, of its locations cannot be conducted in a manner that would adequately protect the safety of all participants in the present circumstances.

In addition, conducting a manual election under the present circumstances may disenfranchise voters. The Employer's protective measure of requiring employees with COVID-19 symptoms and exposure to quarantine pending testing results may result in employees being unable to participate in manual polling. Further, during the current public health crisis, 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. Although the Employer asserts that the Board's past mixed manual and mail ballot elections among its employees have drawn very high rates of voter turnout, those elections have drawn high turnout even though they were conducted in part by mail, suggesting that mail balloting also contributed to the turnout. Moreover, those elections were not conducted in circumstances where appearance at a manual polling location could present health risks to participants or where the Employer had measures in place to minimize how often employees would have to appear at the Employer's facilities.

Particularly in light of the challenges presented by the COVID-19 pandemic, I find that the geographic scattering of the Employer's employees also favors the conduct of a mail ballot election at this time. In *San Diego Gas*, the Board specifically recognized geographic scattering of employees as an "extraordinary circumstance" that could warrant the conduct of a mail ballot election. 325 NLRB at 1145.

The employees in the petitioned-for unit are scattered throughout over 20 locations across the State of New Mexico, with some of the Employer's facilities being as far as 500 miles apart. The Employer argues that the employees in the petitioned-for unit are not technically scattered, since a distinct group of employees is dedicated to a particular location. However, even though employees are assigned to dedicated locations, the Employer has taken steps to measure how often they appear at those locations. Moreover, in *San Diego Gas*, the Board determined that a Regional Director may appropriately take into account considerations of economy and efficient use of Agency resources where other factors are present that suggest the propriety of using mail ballots. *Id.* In the present circumstances, I find that in light of the risks and challenges presented

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<sup>15</sup> As of July 16, 2020, in Arizona, 131,354 people, 1,831 per capita, had tested positive; in Nevada, 30,673 people, 1,010 per capita, had tested positive; and, in New Mexico, 15,841 people, 756 per capita, had tested positive. See <https://www.cdc.gov/covid-data-tracker/#cases>.

by conducting manual polling due to the COVID-19 pandemic and in light of efficiency and economy considerations, the geographic scattering of employees militates against conducting manual polling at this time.

In addition to seeking a mail ballot election, the Employer presented evidence that it had refrained from campaigning since the beginning of the COVID-19 pandemic and suggested that the scheduling of a later election date was warranted to accommodate its desire to campaign while also allowing for social distancing. However, the Board's Rules and Regulations require that I direct the election on the earliest practical date, and the Employer's choice and desires as to the timing and method of its campaigning is not a consideration in determining the earliest practicable date. I am, therefore, directing that the election commence on the earliest practicable date.

In sum, having considered the present circumstances and the nature of the Employer's statewide operations, I have determined that conducting a mail ballot election on the earliest practicable date is the most expeditious and appropriate means of determining the union representation preference of the employees in the petitioned-for unit.

#### **IV. CONCLUSION**

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 parties stipulated, and I find, that 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.<sup>16</sup>
3. 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.
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.

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<sup>16</sup> The Employer, New Mexico Gas Company, a Delaware corporation with offices and places of operation across the State of New Mexico, is engaged in the business of public gas distribution, and, during the 12-month period ending March 9, 2020, the Employer, in the course and conduct of its business operations described above, purchased and received goods valued in excess of \$50,000 directly from points located outside the State of New Mexico.

5. The parties stipulated, and I find, that 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:

**Included:** All full-time and regular part-time field operations employees, including craftsmen, crewmen, senior crewmen, corrosion technicians, senior corrosion technicians, foremen, gas systems technicians, senior gas systems technicians, inspectors, leak survey technicians, line spotters, senior line spotters, operations representatives, senior operations representatives, measurement control specialists, measurement control technicians, senior measurement control technicians, operations construction coordinators, service technicians, and senior service technicians, employed by the Employer.

**Excluded:** All other employees, office clericals, guards, and supervisors as defined in the Act.

There are approximately 290 employees in the unit found appropriate.

## V. 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 **United Association of Plumbers and Pipefitters Local 412**.

### 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 **Monday, August 3, 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 **Monday, August 10, 2020** should communicate immediately with the National Labor Relations Board by either calling the National Labor Relations Board, Region 28 Office at (602) 640-2160 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 Resident Office by close of business (4:45 p.m.) on **Monday, August 17, 2020**.

All ballots will be commingled and counted at a location to be determined by the Regional Director at **10:00 a.m. on Monday, August 24, 2020.**<sup>17</sup> 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.

### **Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **July 12, 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.

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.

### **B. 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 **July 24, 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

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<sup>17</sup> 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.

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

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

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.

### **C. 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.

## **VI. 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 shall 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](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. 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 22<sup>nd</sup> day of July 2020.

*/s/ Cornele A. Overstreet*

Cornele A. Overstreet, Regional Director