

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

TRANSDEV SERVICES, INC.

Employer

and

**Cases 07-RD-255421
07-RC-261835**

SANDY HARRIS

Petitioner Case 07-RD-255421

Involved Party Case 07-RC-261835

and

AMALGAMATED TRANSIT UNION, LOCAL 1778¹

Union Case 07-RD-255421

Petitioner Case 07-RC-261835

**DECISION AND DIRECTIONS OF ELECTIONS
AND ORDER SEVERING CASES**

On January 29, 2020,² Petitioner/Involved Party Sandy Harris (Petitioner Harris) filed a petition in Case 07-RD-255421 seeking to decertify Amalgamated Transit Union, Local 1778 (Union) as the exclusive collective bargaining representative of all drivers and utility workers (the driver and utility worker unit) employed by the Employer at its Lansing, Michigan facility (Lansing facility).³ On February 6, after the parties reached a stipulated election agreement in Case 07-RD-255421 but before the February 7, scheduled hearing, the Union filed an unfair labor practice charge in Case 07-CA-255953, alleging that the Employer violated Section 8(a)(1) of the Act by interfering with employees' Section 7 rights. Thereafter, I declined to approve the parties' stipulated election agreement and by letter dated March 20, advised all parties that further processing of the petition in Case 07-RD-255421 would be held in abeyance pending the investigation of the charge.⁴ On April 29, I approved an informal Board settlement agreement in Case 07-CA-255953 and thereafter on June 16, issued an Order Rescheduling Hearing in Case 07-RD-255421 to begin on June 24.⁵

¹ Union/Petitioner's name appears as amended by stipulation of the parties.

² All dates are in 2020 unless otherwise stated.

³ The Union has represented the driver and utility worker unit since about November 5, 2018, at which time I issued a Certification of Representative in Case 07-RC-228354.

⁴ On April 2, Petitioner Harris filed a request for review with the Board concerning my March 20, decision to hold further processing of Case 07-RD-255421 in abeyance pending investigation of Case 07-CA-255953.

⁵ On June 17, the Board informed Petitioner Harris that it was declining to rule on her April 2, request for review in Case 07-RD-255421 and considered it moot given my approval of the informal Board settlement agreement in Case 07-CA-255953 and decision to resume processing the election petition in Case 07-RD-255421.

On June 18, before the scheduled June 24, hearing in Case 07-RD-255421 could be held, the Union filed a petition in Case 07-RC-261835, seeking to represent all dispatchers (the dispatcher unit) employed by the Employer at its Lansing facility. The dispatcher unit sought by the Union consists of approximately five dispatchers. The Union seeks a self-determination election under the Board's *Armour-Globe*⁶ doctrine to determine whether these employees wish to be included in the existing driver and utility worker unit of approximately 100 driver and utility workers already represented by the Union.

By Order Consolidating Petitions and Scheduling Hearing dated June 23, I consolidated Cases 07-RD-255421 and 07-RC-261835 for hearing which took place on July 9. At the hearing, the parties entered into a stipulation, which I approved, regarding the appropriateness of the driver and utility work and dispatcher units and concerning certain election processes for both of these cases. Per the approved stipulation, I will initially direct an election in Case 07-RD-255421, as set forth below, to determine whether the Union continues to represent employees in the driver and utility unit. In the event the Union is certified as the exclusive representative of the driver and utility unit in Case 07-RD-255421, I will thereafter direct a self-determination election in Case 07-RC-261835, as set forth below, to determine whether the petitioned-for dispatchers wish to be represented by the Union in the driver and utility unit.⁷ In the event that the Union is *not* certified as the exclusive representative of the driver and utility worker unit in Case 07-RD-255421, I will direct a stand-alone representation election in Case 07-RC-261835, as set forth below, to determine whether the Union is the exclusive representative of the dispatcher unit.⁸

The sole issue presented is whether the elections should be conducted in person or by mail ballot, which is a non-litigable matter.⁹ The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration at the hearing. The Employer and Petitioner Harris argue that manual elections are

⁶ *Globe Machining & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

⁷ However, per the approved stipulation, I will not direct such self-determination election in Case 07-RC-261835 until (1) any challenges or objections to the election in Case 07-RD-255421 are resolved and (2) the Board denies any Requests for Review that are filed therein. If the Board grants Review of any of my actions in Case 07-RD-261835, then I will give further consideration to the parties' stipulation regarding the election in Case 07-RC-261835 based upon the findings of the Board.

⁸ However, per the approved stipulation, I will not direct such stand-alone representation election in Case 07-RC-261835 until (1) any challenges or objections to the election in Case 07-RD-255421 are resolved and (2) the Board denies any Requests for Review that are filed therein. If the Board grants Review of any of my actions in Case 07-RD-261835, then I will give further consideration to the parties' stipulation regarding the election in Case 07-RC-261835 based upon the findings of the Board.

⁹ See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

appropriate, and it is possible to conduct manual elections safely. The Union argues that mail ballot elections are appropriate under the COVID-19¹⁰ pandemic circumstances at this time.

In carefully considering the arguments made by the Employer and Petitioner Harris on this issue, I find that a mail ballot election in the initial election in Case 07-RD-255421 is the only feasible means for a timely, safe, and effective election under the extraordinary circumstances presented by the current and ongoing COVID-19 pandemic. Given the ever-changing nature of this pandemic, my decision described below to order a mail ballot election will only apply to the initial decertification election to be conducted in Case 07-RD-255421. I will address whether a manual or mail ballot election is appropriate in the representation election to be later held in Case 07-RC-261835 based on the public health conditions presented at that time.

I. PROCEDURAL MATTER

A. Employer's Motion for Leave to File Untimely Statement of Position

My June 23, Order Consolidating Petitions and Scheduling Hearing stated that “[p]ursuant to Section 102.63(b) of the Board’s Rules and Regulations, the Employer must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by **no later than noon Eastern time on June 30, 2020.**” (emphasis added). The Employer does not dispute that it was untimely in filing its statement of position and attachments with the Region and serving it on the parties.¹¹ The Employer also does not dispute that it did not make any effort prior to the due date to request an extension of time to file its statement of position. During the hearing, the Employer moved for leave to file its untimely statement of position. The Employer argued that COVID-19 issues in its counsel’s office resulted in office staff working remotely and prevented a timely filing of its statement of position. Petitioner Harris and the Union did not respond to the Employer’s motion. During the hearing, I denied the Employer’s motion.

The Board's Rules and Regulations are not optional regarding the Employer’s failure to timely file its statement of position as required in my June 23 order. *See, Brunswick Bowling Products, LLC*, 364 NLRB No. 96, slip op. at 2-3 (2016) (concluding that a Regional Director erred in receiving a union's untimely (three hours late) statement of position into evidence and in failing to preclude the union from raising issues addressed therein, and noting that the union did not file a motion for an extension of time to file and serve its statement of position). Thus, the Employer’s motion was properly denied.

¹⁰ Throughout this decision, the terms “COVID-19,” “COVID,” and “Coronavirus” are used interchangeably.

¹¹ The Region’s electronic case filing system notes receipt of the Employer’s statement of position at 1:01 p.m. on June 30.

II. FACTUAL OVERVIEW

A. The COVID-19 Pandemic Generally

On March 13, President Donald J. Trump, issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”¹² As of July 21, despite unprecedented efforts to limit transmission, over 141,000 deaths from COVID-19 have been reported in the United States, with over 3.6 million confirmed cases.¹³ There is currently no approved vaccine or antiviral treatment.

I 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, regarding COVID-19.¹⁴ 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.¹⁵ To avoid the unlikely possibility of contracting COVID-19 through the mail,¹⁶ 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.”¹⁷ 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 “officials should consider alternatives to in-person voting if allowed” and “[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...”¹⁸

¹² <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed July 17, 2020).

¹³ Johns Hopkins University & Medicine. *Coronavirus Resource Center*. <https://coronavirus.jhu.edu/map.html> (last accessed July 17, 2020).

¹⁴ “Coronavirus (COVID-19)” and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (last accessed July 21, 2020).

¹⁵ “Coronavirus Disease 2019 (COVID-19), Frequently Asked Questions, Prevention, Am I at risk for COVID-19 from mail, packages, or products?” <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last accessed July 17, 2020).

¹⁶ “Running Essential Errands.” <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (“Although the virus can survive for a short period on some surfaces, it is unlikely to be spread from domestic or international mail”) (last accessed July 17, 2020).

¹⁷ “Running Essential Errands,” above.

¹⁸ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (“Elections with only in-person voting on a single day are higher risk for COVID-19 spread ...”) (last accessed July 17, 2020).

B. 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. Michigan imposed strict guidelines early in the pandemic when, on March 23, Michigan Governor Gretchen Whitmer issued her first stay-at-home executive order suspending all nonessential activities. These stay-at-home orders thereafter extended through May 31. On June 1, Governor Whitmer rescinded the stay-at-home orders and announced the state was ready to transition to phase four, the “improving” phase, of her 6-step Michigan Safe Start Plan, for the reopening and easing of restrictions in the state.¹⁹ 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, Central Michigan, including the Lansing Region, remains at phase four. As of June 30, Governor Whitmer announced that, due to the recent spike in COVID-19 cases in Michigan, Central Michigan would not advance to the fifth phase of her reopening plan by the Fourth of July weekend, as she had originally planned.²⁰ Unfortunately, the state’s coronavirus cases have continued to increase with an average of 222 cases per day reported between June 18-24,²¹ and 495 cases per day between July 8-14.²² On July 1, Governor Whitmer closed indoor bar service across most of the state, including the Lansing area, a move backward on reopening Michigan.²³ Specifically, the Lansing Region where the Employer’s Lansing facility is located has been recently linked to a coronavirus outbreak and deemed a “high-risk” area by the state.²⁴ Additionally, on July 14, Governor Whitmer signed an executive order extending the state of emergency declaration related to the

¹⁹ 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.

²⁰ See <https://www.freep.com/story/news/local/michigan/detroit/2020/06/30/gov-whitmer-puts-brakes-moving-phase-5-recovery-coronavirus/5350091002/>.

²¹ “Michigan’s coronavirus cases tick back up as daily COVID-19 counts hit June high.” Fox 2 Detroit. <https://www.fox2detroit.com/news/michigans-coronavirus-cases-tick-back-up-as-daily-covid-19-counts-hit-june-high> (last accessed July 17, 2020) (average of 177 cases a day between June 4-10; 159 cases a day between June 11-17; 222 cases a day between June 18-24).

²² “Michigan coronavirus cases tops 70,000.” *The Detroit News*. <https://www.detroitnews.com/story/news/local/michigan/2020/07/14/michigan-coronavirus-cases-top-70000/5436822002/> (“The seven-day average of new coronavirus cases in Michigan is up to 495 daily from 394 daily for the previous seven-day period, according to state data”) (last accessed July 17, 2020).

²³ “Gov. Gretchen Whitmer closes Michigan indoor bar service, except for Up North.” *Detroit Free Press*. <https://www.freep.com/story/news/local/michigan/detroit/2020/07/01/gov-whitmer-closes-michigan-indoor-bar-service-except-up-north/5354417002/> (last accessed July 17, 2020).

²⁴ <https://www.clickondetroit.com/news/local/2020/07/11/184-coronavirus-covid-19-cases-now-linked-to-outbreak-at-east-lansing-bar/>; <https://www.fox2detroit.com/news/lansing-region-moved-back-to-high-risk-for-spread-of-covid-19-grand-rapids-moved-to-medium-high> (“The state of Michigan has moved the Lansing region back to ...'high risk'.”) (last accessed July 17, 2020)

COVID-19 pandemic until August 11.²⁵ Most recently, on July 15, Governor Whitmer advised the state that “if the current trajectory of coronavirus cases continues, the state will be moved back to phase three of her reopening plan, meaning parts of the economy that reopened within the last month would be shut down once again.”²⁶

As of July 17, Michigan had reported 74,725 confirmed cases of COVID-19 in all 83 counties, with 6,135 fatalities statewide.²⁷ Although Michigan has decreased its rate of new cases substantially from its peak, other states, such as Florida, Texas and California 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, and 3 million less than two weeks later.

C. The Employer’s Operations and COVID-19 at the Employer

The Employer provides public transit bus services for the Lansing area. The Lansing facility is a single building consisting of a break room, a training room, and a garage area, presumably from which buses leave and enter the facility. Since the onset of the pandemic, the Employer has imposed COVID guidelines for its employees to follow, however, the record does not describe such guidelines in detail stating only that they are consistent with CDC guidelines. Although the Employer contends that as of the time of the hearing no employees had tested positive for coronavirus in the last 14 days, the Union asserts that there have been three known COVID cases of employees at the Lansing facility.²⁸

III. THE POSITIONS OF THE PARTIES

The Employer and Petitioner Harris contend that despite the ongoing pandemic, manual elections in these cases can be conducted safely. They propose that in addition to normally following COVID guidelines in place at the Lansing facility, the Employer would implement and its employees at the Lansing facility would be required to follow these strict precautions in preparation for a manual election:

- provision of a spacious well-ventilated garage area at the Lansing facility capable of providing social distancing and separate entrance and exit ways;
- mandatory mask-wearing with masks and gloves available on-site;
- limitation of large gatherings at election site by posting a suggested schedule of employee voting times and/or releasing voters gradually to vote;
- hand sanitizer provided throughout election area;

²⁵ Executive Order 2020-151 went into effect July 14. https://content.govdelivery.com/attachments/MIEOG/2020/07/14/file_attachments/1495465/EO%202020-151%20Emerg%20declaration.pdf.

²⁶ <https://www.clickondetroit.com/news/local/2020/07/15/michigan-will-have-to-return-to-phase-3-of-reopening-plan-if-covid-19-spike-continues-whitmer-says/> (last accessed July 17, 2020).

²⁷ “Where We Stand with COVID-19.” <https://www.michigan.gov/coronavirus> (last accessed July 21, 2020).

²⁸ In its brief, the Employer states that there have been no reported coronavirus cases at the Lansing facility since April 2020.

- single-use disposable writing instruments and glue sticks for voting procedures;
- limitation on number of election observers.

The Employer also proposes various additional safety measures which could be implemented for manual elections to reduce the risk of COVID-19, including those suggestions included in General Counsel Memorandum 20-10 (July 6, 2020) entitled “Suggested Manual Election Protocols” (GC 20-10). The Employer and Petitioner Harris argue that if all of these precautions are implemented, the elections can be conducted safely and will provide voters the best opportunity to exercise their right to vote. In its brief, the Employer also argues that the United States mail is not reliable, particularly during the current pandemic, which could result in the disenfranchisement of mail ballot voters.

As noted, the Union opposes any manual election and contends that only a mail ballot election is appropriate under the COVID-19 pandemic circumstances at this time.

IV. AGENCY DIRECTIVES AND LEGAL AUTHORITY

Section 11301.2 of the NLRB Casehandling Manual (Part Two) Representation Proceedings 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.

The Manual 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*, 325 NLRB at 1145. Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the Manual indicates that a 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. *Ibid.*

On April 17, 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 July 6, General Counsel Peter Robb issued GC 20-10 setting forth suggested election protocols while specifically noting that it is not binding on Regional Directors because the Board not the General Counsel has authority over matters of representation. Among other things, the General Counsel proposes self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or come into contact with someone who tested positive within the preceding 14 days, and are not awaiting test results, along with identifying the number of individuals exhibiting COVID-19 symptoms. However, the CDC's "current best estimate" is that 50% of COVID-19 transmission occurs while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic²⁹ and would neither be identified nor have sought testing. Moreover, GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation. A mail-ballot election avoids these concerns.

Recently, the Board has denied review of several mail ballot elections ordered by Regional Directors under the current COVID-19 circumstances, citing the local, state and federal directives and the current pandemic conditions in the local area as evidence that the Regional Director did not abuse his or her discretion. See *TDS Metrocom LLC*, 18-RC-260318 (unpublished June 23, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (unpublished June 12, 2020); and *Roseland Community Hospital*, 13-RC-256995 (unpublished May 26, 2020).³⁰ Most recently, on July 14, 2020, the Board again affirmed that it will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election. See *Brink's Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020).³¹

²⁹ "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last accessed July 17, 2020).

³⁰ In these decisions, the Board also cited to the fact that the Regions involved were under mandatory telework. Although Region Seven is not currently under mandatory telework as of the time of this decision, operating practices, safety protocols and telework status of employees is closely monitored based on local conditions and recently, local conditions reflect an increase in the number of COVID cases. In exercising my discretion to order a mail ballot under these circumstances, I rely on the remaining factors identified by the Board in its April 17 announcement and as I have described above.

³¹ The Decision and Direction of Election in *Brinks Global* issued after the NLRB Agency lifted its mandatory telework requirement.

V. ANALYSIS

The circumstances surrounding the COVID-19 virus are extraordinary. Whether a mail-ballot election is appropriate in each of these cases 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" associated with mail-ballot elections are some of the reasons the Board has traditionally preferred manual elections. I do not discount those concerns. Acknowledging the inherent risks and effect of mail delivery procedures on the outcome of a mail ballot election, as noted by the Employer,³² there is no indication that the United States Postal Service is unable to deliver mail. Further, I note that any mail ballot election, held at any time under any circumstances, includes procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. Additionally, the return date for mail ballots could be extended to accommodate voters who may not be regularly residing at their residence or may be quarantining their mail.

Absent the present pandemic, manual elections would almost certainly be held in these cases. However, my decision in these cases is ultimately based on the "extraordinary circumstances" presented by this ever-changing public health emergency. I recognize a degree of reopening has begun, in the United States generally and in Michigan specifically. At the same time, it is undisputed 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.

Although Region 7 has available personnel who would appear to be infection free, the virus is believed to spread through pre-symptomatic and asymptomatic individuals.³³ This election would also involve travel to the facility by a Board Agent and party representatives. The CDC continues to maintain that "[b]ecause travel increases your chances of getting infected and spreading COVID-19, staying home is the best way to protect yourself and others from getting sick."³⁴ At this time, sending Board agents to conduct the election in Case 07-RD-255421 would risk the exposure of everyone at the facility. Eligible voters, along with other employees who may come into contact with the Employer's participants, Board agents, and party

³² The Employer attached to its brief two internet news articles: a 2017 Southern California Public Radio website article entitled "Some California voters don't trust Post Office to mail ballots, study says" and a May 29, 2020 Thompson Reuters article entitled "Black voters don't trust mail ballots. That's a problem for Democrats." I find neither of these articles to be particularly relevant to this proceeding. The first article is outdated and discusses the voting system for elected public officials in California and the second article pertains specifically to the upcoming 2020 U.S. Presidential election.

³³ "Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic" (May 4, 2020). *Emerging Infectious Diseases Journal* (Online Report). Centers for Disease Control and Prevention. https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article (last accessed July 17, 2020).

³⁴ U.S. Center for Disease Control and Prevention, Coronavirus in the United States- Considerations for Travelers available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (accessed July 17, 2020).

representatives, would risk being exposed to the virus and spreading it to participants, the community, and their families. Therefore, the number of people placed at risk for exposure is much greater than just the number of employees eligible to vote.³⁵

I recognize the Employer has attempted to mitigate the risk to voters and its participants by proposing various safety measures to mitigate COVID-19, including conducting the election in a large room with markings for social distancing; providing masks, gloves, hand sanitizer, and disposable writing instruments and glue sticks; releasing voters gradually; and limiting the number of election observers. It also agrees to abide by the suggestions made in GC 20-10. I have carefully considered the Employer's proposals and the suggestions in GC Memo 20-10. Ultimately, as GC 20-10 recognizes, the decision to conduct the election by mail ballot is within my discretion. At this time, as I have already described, we have not reached a safe enough juncture in the pandemic. 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 which can be avoided by a mail-ballot election 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.

My decision is also based on the undisputed continued presence of the virus in the Lansing Region/Central Michigan area and the severity of the COVID-19 risk. In relying on these considerations, I am mindful of the Employer's position that it has operated without an employee testing positive for COVID-19 in the last two weeks. However, I note what appears to be a recent increase in cases in the Lansing Region. 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.

I have determined that the most appropriate course of action at this time is to follow accepted guidance to limit in-person contact and travel within the state. I find the circumstances at this time make it appropriate to a hold mail-ballot election in Case 07-RD-255421.

VI. CONCLUSIONS

Based upon the entire record in these matters³⁶ and for the reasons set forth above, I initially direct a mail-ballot election in Case 07-RD-255421 to be conducted in accordance with the election details discussed below. Thereafter, I direct an election in Case 07-RC-261835 to be conducted in accordance with the Direction of Election in Case 07-RC-261835, below. I conclude and find as follows:

³⁵ The parties propose an all-day election period lasting more than 6 hours from 5:30 a.m. to 7:30 a.m., 2:30 p.m. to 4:30 p.m., and 6:30 p.m. to 8:30 p.m.

³⁶ The Employer filed a post-hearing brief which has been duly considered.

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 commerce³⁷ within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.³⁸
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:

Case 07-RD-255421: All full-time and regular part-time drivers and utility workers employed by the Employer at its facility located at 1415 Lake Lansing Road, Lansing, Michigan; but excluding all road supervisors, safety supervisors, mechanics, dispatchers, office clerical employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.

6. The following employees of the Employer constitute a unit and a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Case 07-RC-261835: All full-time and regular part-time dispatchers employed by the Employer at its facility located at 1415 Lake Lansing Road, Lansing, Michigan; but excluding all road supervisors, safety supervisors, mechanics, office clerical employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.

VII. ORDER SEVERING CASES

An Order Consolidating Petitions and Scheduling Hearing having issued on June 23, and the undersigned having fully considered the matter,

³⁷ The parties stipulated to the following commerce facts: The Employer, Transdev Services, Inc., a Maryland corporation with an office and place of business located at 1415 Lake Lansing Road, Lansing, Michigan, is engaged in providing public transit services. During the calendar year ending December 31, 2019, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its Lansing facility goods valued in excess of \$5,000 directly from points outside the State of Michigan.

³⁸ The parties stipulated at the hearing that the Union is a labor organization within the meaning of the Act.

IT IS HEREBY ORDERED that Case 07-RD-255421 be, and it hereby is, severed from Case 07-RC-261835.

VIII. **DIRECTION OF ELECTION – CASE 07-RD-255421**

The National Labor Relations Board will conduct a secret ballot election in Case 07-RD-255421 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 **AMALGAMATED TRANSIT UNION, LOCAL 1778**.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 7. At 2:00 p.m. (EST) on **August 5, 2020**, the Region will mail ballots to the eligible voters. 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 they are eligible to vote and did not receive a ballot in the mail by August 14, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 7 Office at (313) 226-3200 or our national toll-free line at 1-844-762-6572 (NLRB).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 7 Regional Office by close of business, 4:45 p.m. (EST), on August 27, 2020. The mail ballots will be commingled and counted at 1:00 p.m. on September 3, 2020. The method for the count will require virtual participation and will be determined by the 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 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are 1) employees who have quit or been discharged for cause since the designated payroll period; 2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and 3)

employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

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

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 elections and copies must remain posted until the end of the elections. 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.

IX. RIGHT TO REQUEST REVIEW – CASE 07-RD-255421

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review in Case 07-RD-255421 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.³⁹ 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.

X. DIRECTION OF ELECTION – CASE 07-RC-261835

Per the approved stipulation of the parties, in the event that the Union is certified as the exclusive representative of the driver and utility unit in Case 07-RD-255421, the National Labor Relations Board will conduct the following secret ballot election among the employees in the dispatcher voting group found appropriate above: employees will vote whether or not they wish

³⁹ 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.

to be represented for purposes of collective bargaining by **AMALGAMATED TRANSIT UNION, LOCAL 1778** as part of the existing unit of employees in the following classifications:

All full-time and regular part-time drivers and utility workers employed by the Employer at its facility located at 1415 Lake Lansing Road, Lansing, Michigan; but excluding all road supervisors, safety supervisors, mechanics, dispatchers, office clerical employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.

The question on the ballot for this self-determination election in Case 07-RC-261835, as set forth in the approved stipulation, will be:

“Do you wish to be represented for purposes of collective bargaining by **Amalgamated Transit Union, Local 1778**?”

The choices on the ballot will be "Yes" or "No"

If a majority of valid ballots are cast for the Union, the employees in the petitioned-for dispatcher unit will be taken to have indicated their desire to be included in the existing driver and utility worker unit represented by the Union.

If a majority of valid ballots are not cast for representation, the employees in the petitioned-for dispatcher unit will be taken to have indicated their desire to remain unrepresented.

Per the approved stipulation of the parties, in the event that the Union is *not* certified as the exclusive representative of the driver and utility unit in Case 07-RD-255421, the National Labor Relations Board will conduct the following secret ballot election among the employees in the dispatcher unit found appropriate above: employees will vote whether or not they wish to be represented for purposes of collective bargaining by **AMALGAMATED TRANSIT UNION, LOCAL 1778** as a stand-alone dispatcher unit.

The question on the ballot for this election in Case 07-RC-261835, as set forth in the approved stipulation, will be:

“Do you wish to be represented for purposes of collective bargaining by **Amalgamated Transit Union, Local 1778**?”

The choices on the ballot will be "Yes" or "No".

If a majority of valid ballots are cast for the Union, the employees in the petitioned-for dispatcher unit will be taken to have indicated their desire to be represented by the Union in a stand-alone dispatcher unit.

If a majority of valid ballots are not cast for representation, the employees in the petitioned-for dispatcher unit will be taken to have indicated their desire to remain unrepresented.

The details regarding the election in Case 07-RC-261835 will not be established at this time. When appropriate, and after consultation with the parties, the Regional Director will issue a letter setting forth the election arrangements.⁴⁰

XI. RIGHT TO REQUEST REVIEW – CASE 07-RC-261835

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review in Case 07-RC-261835 may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.⁴¹ 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. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties

⁴⁰ The Notice of Election in Case 07-RC-261835 will communicate to the voters whether they are considering representation in a stand-alone dispatcher unit or inclusion in the existing driver and utility unit.

⁴¹ 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.

retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.⁴²

Signed at Detroit, Michigan this 22nd day of July 2020.



Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

⁴² This impoundment process is applicable only to Case 07-RC-261835, which was filed after May 31, 2020, when certain of the Board's announced 2019 Rule Modifications to Representation Case Procedures became effective. Case 07-RD-255421 predates the modifications.