

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

**THE WURLITZER MASTER TENANT LLC d/b/a
THE HOTEL SIREN**

Employer

and

Case 07-RC-261060

LOCAL 24, UNITEHERE!, AFL-CIO¹

Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue in this case is whether, in light of the continuing COVID-19 pandemic,² the Region should conduct an election for certain employees of the Employer, who are employed at its facility in Detroit, Michigan, by manual or mail ballot. The Employer argues it is possible to conduct a manual election safely. The Petitioner supports whatever method does not delay resolution of the question concerning representation.

The Employer provides hotel and hospitality services at The Siren Hotel (the Hotel) in Detroit, Michigan. Petitioner seeks to represent a unit of approximately 24 housekeeping and front desk employees. On June 12, 2020,³ the Acting Regional Director approved a stipulated election agreement (Agreement) for a manual election to take place in Room #1307 of the Hotel on August 19, for the following appropriate unit of employees (the Unit):

All full-time and regular part-time guest service agents, housekeepers, housemen, housepersons, lobby attendants, room attendants, and room inspectors employed by the Employer at its facility located at 1509 Broadway Street, Detroit, Michigan; but excluding all managers, and guards and supervisors as defined in the Act.

The agreement also provided the Regional Director to reschedule the date, time, place of the election and/or manner of the election, including converting the election to a mail ballot, after consultations with the parties.

Due to the ongoing public health emergency resulting from the global pandemic, including a surge of COVID-19 cases in Michigan, including Detroit, 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 July 22, in order to ensure the safety of the voting employees, the parties and their representatives, Board

¹ Parties' names appear as stipulated during the hearing.

² Throughout this decision, the terms "COVID-19," "Covid," and "coronavirus" are used interchangeably.

³ All dates are in 2020 unless otherwise stated.

personnel, and the general public, I revoked approval of the June 12, Agreement and set this case for hearing.

A hearing was held on August 4, by videoconference before a hearing officer of the Board. At the hearing, the parties stipulated to the same appropriate Unit as in the June 12, Agreement, as set forth above.

Although election details, including the type of election to be held, are nonlitigable matters left to my discretion,⁴ 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 in this case given the extraordinary circumstances presented by the continuing COVID-19 pandemic.

I. 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.”⁵ As of August 10, despite unprecedented efforts to limit transmission, over 161,000 deaths from COVID-19 have been reported in the United States, with nearly 5 million confirmed cases. Although Michigan has decreased its rate of new cases substantially from its peak, other states, such as Florida, Texas and California are 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, exceeded 3 million less than two weeks later on July 8, and eclipsed 4 million less than two weeks later on July 23. Official records show that on August 6, COVID-19 claimed the lives of 1,320 people.⁶ 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-19.⁷ Its recommendations for dealing with this public health threat include, among others, the avoidance of large gatherings, the use of cloth face coverings, good personal hygiene, and social distancing. The CDC further states that the virus can survive for a short period

⁴ Sec. 102.66(g)(1) of the Board’s Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

⁵ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed August 10, 2020).

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last accessed August 10, 2020).

⁷ “Coronavirus (COVID-19)” and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (last accessed August 10, 2020).

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; however, "it is unlikely to be spread from domestic or international mail, products or packaging."⁸ 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."⁹ Ultimately, the CDC highlights "the best way to prevent illness is to avoid being exposed to this virus."¹⁰

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...."¹¹

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, Governor Gretchen Whitmer issued her first stay-at-home executive order suspending all nonessential activities. The 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.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 (Containing), the Detroit Region remains at Phase Four. On June 30, Governor Whitmer announced that, due to the recent

⁸ "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 August 10, 2020).

⁹ "Running Essential Errands." <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last accessed August 10, 2020).

¹⁰ "How to Protect Yourself & Others." <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last accessed August 10, 2020).

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (updated June 22, 2020) ("Elections with only in-person voting on a single day are higher risk for COVID-19 spread ...") (last accessed August 10, 2020).

¹² "Governor Whitmer Rescinds Safer at Home Order, Moves Michigan to Phase Four of the MI Safe Start Plan" (June 1, 2020). The Office of Governor Gretchen Whitmer. <https://www.michigan.gov/whitmer/0,9309,7-387-90499-530627--,00.html> (last accessed August 10, 2020). See also, MI Safe Start (under the MI Safe Start Plan, the six phases to stop the spread of the COVID-19 and fully reopen the state are: (1) uncontrolled growth; (2) persistent spread; (3) flattening; (4) improving; (5) containing; and, (6) post-pandemic). <https://www.michigan.gov/coronavirus/0,9753,7-406-100467---,00.html> (last accessed August 10, 2020).

spike in COVID-19 cases in Michigan, the Detroit Region would not advance to the fifth phase of her reopening plan by the Fourth of July weekend, as she had originally planned.¹³ After cases began to increase, Governor Whitmer closed indoor bar service across most of the state, including the Detroit Region on July 1.¹⁴ On August 7, Governor Whitmer signed an executive order extending the state of emergency declaration related to the COVID-19 pandemic through September 4.¹⁵

Unfortunately, the state's COVID-19 cases have continued to increase with an average of 222 cases per day reported between June 18-24,¹⁶ 495 cases per day between July 8-14,¹⁷ and 726 cases per day between July 24-30.¹⁸ Starting July 31, Governor Whitmer expanded limitations on indoor gatherings statewide to no more than 10 people, and extended her order to keep all bars closed for indoor service.¹⁹

As of August 9, Michigan had reported 87,403 confirmed cases of COVID-19 in all 83 counties, with 6,249 fatalities statewide.²⁰ In Wayne County, where the Hotel is located, 26,518 individuals have tested positive for COVID-19 and 2,690 have died.²¹

¹³ Executive Order 2020-143 (COVID-19) (July 1, 2020). https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-533435--,00.html (last accessed August 10, 2020).

¹⁴ "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 August 10, 2020).

¹⁵ "Governor Whitmer Extends Declaration of Emergency as Michigan Continues to Fight COVID-19" (August 7, 2020). Office of Governor Gretchen Whitmer. <https://www.michigan.gov/whitmer/0,9309,7-387-90499-536107--,00.html> (last accessed August 10, 2020).

¹⁶ "Michigan's coronavirus cases tick back up as daily COVID-19 counts hit June high" (June 25, 2020). Fox 2 Detroit. <https://www.fox2detroit.com/news/michigans-coronavirus-cases-tick-back-up-as-daily-covid-19-counts-hit-june-high> (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) (last accessed August 10, 2020).

¹⁷ "Michigan coronavirus cases tops 70,000" (July 14, 2020). *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 August 10, 2020).

¹⁸ "Michigan reports 8 coronavirus deaths, over 730 new cases" (July 31, 2020). *The Detroit News*. <https://www.detroitnews.com/story/news/local/michigan/2020/07/31/michigan-reports-8-coronavirus-deaths-over-730-new-cases/5556978002/> ("The seven-day average of new cases grew to 726 through Friday, compared with an average of 577 a day for the previous seven-day period") (last accessed August 10, 2020).

¹⁹ "Governor Whitmer Amends MI Safe Start Order to Limit Indoor Gatherings, Save Lives" (July 29, 2020). The Office of Governor Gretchen Whitmer. https://www.michigan.gov/whitmer/0,9309,7-387-90499_90640-535163--,00.html (last accessed August 10, 2020).

²⁰ "Where We Stand with COVID-19." <https://www.michigan.gov/coronavirus> (last accessed August 10, 2020).

²¹ *Ibid*. These numbers exclude probable confirmed cases and fatalities.

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

The Employer provides room and board and other hospitality-related services in Detroit, Michigan. The Hotel also houses two restaurants, a bar, and a barbershop; however, the General Manager stated only the small eight-table restaurant, which is operated by a different tenant, is currently open. The Employer initially shut down the Hotel in response to COVID-19 and it remained closed for three months, during which time the Employer developed a reopening protocol based on guidance from the CDC, local government, the World Health Organization (WHO), and the American Hotel Lodging Association. The Employer reopened the Hotel on July 6, under these new standard operating procedures (SOPs) on protocols, among other things:

- Temperature checks for all individuals entering the Hotel, and employees record their temperature in a log at the timeclock. Anyone with a temperature over 100.4°F must leave the Hotel. Any employee exhibiting flu-like symptoms must quarantine for 14 days.
- Mandatory use of personal protective equipment (PPE). All individuals entering the Hotel (e.g., employees, guests, vendors) must wear a facemask. The Employer provides masks for anyone without them; however, anyone refusing to wear a mask is not allowed in the Hotel. Employees must wear gloves when touching common surfaces. Employees have also been provided other PPE, such as no-contact door openers, hand sanitizer, and disinfectant spray and wipes.
- Uniforms are to be sanitized after each use and changed daily.
- Plexiglass shields separate front desk employees from guests, and guests use contactless check-in and check-out procedures.
- Enhanced cleaning protocols for guest rooms and public areas. Rooms are left vacant for 24 hours before cleaning when occupancy levels allow. Rooms are disinfected using an electrostatic treatment prior to cleaning and stripping the linens, which is done with the windows open and the fans on high. Surfaces in the room are given an ultraviolet germ treatment. For guest stays of three nights or less, employees deliver a daily service bag of housekeeping items (e.g., linens, toiletries) while guests bag dirty items, which are then removed. Public areas are cleaned and disinfected at least once per shift with high-contact surfaces cleaned throughout the shift or once per hour.
- Deliveries to the Hotel are quarantined for 24 hours.
- Public areas have been marked for appropriate (6-foot) social distancing.
- Signage instructing employees and guests to utilize PPE.

The Employer maintains there have been no confirmed cases or temperature readings over 100.4°F since it reopened and, to the best of its knowledge, no employee has tested positive for COVID-19.

As of August 4, only four of the petitioned-for employees were working at the Hotel, and the Employer planned to rehire two additional employees in the Unit before August 19.

II. THE POSITIONS OF THE PARTIES

The Employer contends that, despite the ongoing pandemic, a manual election can be conducted safely. It proposes that in addition to following the COVID-19 guidelines normally in place at the Hotel, the Employer would implement and its employees at the Hotel be required to follow the Suggested Manual Election Protocols memorandum issued by the General Counsel (see GC 20-10, below). Acknowledging the dynamic nature of the ongoing pandemic, the Employer offered to allow mail balloting for employees unable to attend a manual election due to quarantining or testing positive for COVID-19.

As noted, the Union simply seeks to have the election as soon as practicable and does not have a preference for the manner in which the election is conducted.

The parties stipulated to the following election details should I determine a manual election to be appropriate:

DATE: Wednesday, August 19, 2020

HOURS: 9:00 a.m. to 12:00 p.m. (Noon)

PLACE: In Karl's Restaurant at the Employer's Detroit facility located at 1509 Broadway Street, Detroit, Michigan

Karl's is a restaurant inside the Hotel that has not yet reopened. According to the General Manager, Karl's has a normal occupancy of 85 people, so it provides enough space for the 24 known eligible voters, plus observers and Board agents, to comply with local orders limiting indoor restaurants to 50% occupancy. He estimated the dining room to be at least 40-feet by 20-feet. He noted a separate entrance and exit can be established using multiple stairwells and the two elevators accessing the restaurant have signage restricting them each to one passenger at a time. For ventilation, windows in the front and rear of the restaurant can be opened and the exposed kitchen, which leads into the dining room, has a hood vent system that can be turned on.

III. AGENCY DIRECTIVES AND LEGAL AUTHORITY

Although the Board's longstanding policy is that elections should generally be conducted manually, a Regional Director may reasonably conclude to conduct an election by mail ballot based on circumstances tending to make voting in a manual election difficult or where conducting a manual election is impractical. NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11301.2. In *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Board set 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. *Id.* at 1145. The Board also recognized "there may be other relevant factors that the Regional Director may consider in making this decision" and "extraordinary circumstances" could permit the Regional Director to

exercise discretion outside of the guidelines set forth in that decision. Thus, while the Board has expressed a general preference for manual balloting, 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, a 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 a “COVID-19 Operational Status Update” that recognized the COVID-19 pandemic as extraordinary circumstances and reiterated Regional Directors’ traditional authority to exercise discretion in ordering elections, including consideration of “safety, staffing, and federal, state, and local laws and guidance.”²²

On July 6, General Counsel Peter Robb issued GC 20-10, a memorandum 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. The suggested protocols include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer’s certification in writing that the polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenge ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agents; and provision of masks, hand sanitizers, gloves, and disinfecting wipes.

The General Counsel’s suggestions also include the Employer’s self-certification 24 to 48 hours before a manual election for how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19. However, the record does not contain any evidence the Employer tracks any of the above information for Hotel guests or other tenants or their employees in the building. This lack of information makes it difficult to confirm that a manual election will indeed be safe for all involved during the present pandemic. Moreover, following issuance of GC 20-10, the CDC updated its COVID-19 pandemic planning scenarios and clarified the definition for the percent of transmission occurring prior to symptom onset (pre-symptomatic transmission). 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 asymptomatic²³ and would neither be identified nor have sought testing. Similarly, the CDC’s August 9 update for travel during the COVID-19 pandemic continues to warn travelers: “You may feel well and not have any symptoms, but you can still spread

²² See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update> (last accessed August 10, 2020).

²³ “COVID-19 Pandemic Planning Scenarios” (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last accessed August 10, 2020).

COVID-19 to others.”²⁴ Additionally, 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 conditions in the local area as evidence the Regional Director did not abuse his or her discretion. See, for example, *Brink’s Global USA, Inc.*, Case 29-RC-260969 (unpublished) (July 14, 2020); *Sunsteel, LLC*, Case 19-RC-261739 (unpublished) (August 4, 2020). Most recently, and germane to this case, the Board recognized the current COVID-19 conditions in the Detroit Region, including a facility in Detroit, as extraordinary circumstances. *PACE Southeast Michigan*, Cases 07-RC-257046 and 07-RC-257047 (unpublished) (August 7, 2020) (denying review of Regional Director’s decision to order a mail-ballot election due to COVID-19).

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” associated with mail-ballot elections are some of the reasons the Board has traditionally preferred manual elections.²⁵ I do not discount those concerns. While I acknowledge the potential risks and effect of mail delivery procedures on the outcome of a mail-ballot election, there is no indication 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 can 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 this case.²⁶ However, my decision in this case is ultimately based on the “extraordinary

²⁴ “Travel during the COVID-19 Pandemic” (updated August 9, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (last accessed August 10, 2020).

²⁵ The Board’s general preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees’ representational desires. See, for example, *London’s Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997) (showing the Board has conducted mail-ballot elections since its earliest days).

²⁶ In its closing argument, the Employer cited *Nouveau Elevator Industries, Inc.*, 326 NLRB 470 (1998) and *Willamette Industries, Inc.*, 322 NLRB 856 (1997) in support of the manual election being “the crown jewel of Board election procedures.” While the Board upheld a regional director’s decision for a manual election in *Nouveau Elevator*, the case stands for the “broad discretion the Board has invested in the Regional Director,” as the Board noted it “would have determined to conduct some or all of the election by mail.” *Id.* at 471. The *Willamette* case is inapposite. There, the Board overruled the Acting Regional Director and ordered a manual election where the *sole*

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.

By August 19, the time of the proposed manual election, no more than 25% of the petitioned-for employees will be working at the Hotel, causing at least 75% of the Unit to secure travel, possibly by public transit, ridesharing, or other high-risk modes, in order to vote. Although Region 7 has available personnel who appear to be infection free, the virus is believed to spread through pre-symptomatic and asymptomatic individuals.²⁷ This election would also involve travel to the facility by a Board Agent and party representatives. The CDC continues to maintain: “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.**”²⁸ At this time, sending Board agents to conduct the election 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 representatives, would risk exposure 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.²⁹

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, plexiglass barriers, and a separate entrance and exit; providing masks, gloves, hand sanitizer, and disposable writing instruments and glue sticks; releasing voters gradually;³⁰ 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 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

factor he relied on for mail balloting was budgetary concern. This is clearly not the case here. See *San Diego Gas*, above at 1145 fn. 8 (“Regional Directors should not order mail ballot elections based solely on budgetary concerns”).

²⁷ “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 August 10, 2020).

²⁸ “Travel during the COVID-19 Pandemic” (updated August 9, 2020) (emphasis in original). <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (last accessed August 10, 2020).

²⁹ The parties stipulated to a 3-hour election, from 9:00 a.m. to Noon on August 19, if I order a manual election.

³⁰ Although, as noted above, only 25% of eligible voters work on site. The Employer would ostensibly have no control over when or how employees currently not working would arrive on site to vote.

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 Detroit Region 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. However, I note what appears to be a recent increase in cases in the Detroit 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; but, 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 this case.

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 commerce³¹ 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.
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.

³¹ The Employer, The Wurlitzer Master Tenant LLC d/b/a The Siren Hotel, a Michigan limited liability company, is engaged in the operation of a hotel and the provision of hospitality services at its facility located at 1509 Broadway Street, Detroit, Michigan. During the calendar year ending December 31, 2019, the Employer derived gross revenues in excess of \$500,000, and purchased and received goods valued in excess of \$5,000 directly from points outside the State of Michigan.

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:

All full-time and regular part-time guest service agents, housekeepers, housemen, housepersons, lobby attendants, room attendants, and room inspectors employed by the Employer at its facility located at 1509 Broadway Street, Detroit, Michigan; but excluding all managers, and guards and supervisors as defined in the Act.

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 24, UNITEHERE!, AFL-CIO**.

1. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 4:15 p.m. (EDT) on **Monday, August 24, 2020**, by personnel of the National Labor Relations Board, Region 7. 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 by mail and do not receive a ballot in the mail by **September 3, 2020**, should communicate immediately with the National Labor Relations Board by calling Board Agent Natalie Rygiel at 313-335-8073, Election Specialist Callie Clyburn at 313-335-8049, the Region 7 Office at (313) 226-3200 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

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 **September 28, 2020**. All ballots will be commingled and counted at 1:00 p.m. (EDT) on **October 5, 2020**. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots. If the Regional Director determines that it is unsafe for the parties to participate in an in-person count at the Regional Office, or any party prefers not to physically attend the count, the parties will participate by using Facetime to observe the count. In the case of a video count, the tally of ballots will be served on any non-physically present parties via email immediately following the count.

2. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 7, 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.

3. 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 **Thursday, August 13, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once

the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

4. 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 10 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE,

The Wurlitzer Master Tenant LLC d/b/a
The Hotel Siren
Case 07-RC-261060

Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated: August 11, 2020



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