

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

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**GULF COAST HEALTH AND  
REHABILITATION, LLC**

**Employer**

**and**

**Case 15-RC-262845**

**RETAIL, WHOLESALE AND DEPARTMENT  
STORE UNION, LOCAL 932**

**Petitioner**

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**DECISION AND DIRECTION OF ELECTION**

By its July 13, 2020 petition filed under Section 9(c) of the National Labor Relations Act (the Act), as amended, Retail, Wholesale and Department Store Union, Local 932 (Petitioner) seeks to represent all regular full-time, part-time, and PRN CNAs, nursing assistants, dietary aids, cooks, housekeeping assistants, and central supply employees employed by Gulf Coast Health and Rehabilitation, LLC<sup>1</sup> (Employer) at its Mobile, Alabama facility. The parties have stipulated, and I find, that the agreed upon unit described above is appropriate for purposes of collective bargaining.

A hearing was held by Zoom on July 31, 2020<sup>2</sup> before a hearing officer of the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned, and I hereby make the following findings.

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<sup>1</sup> The correct legal names for the Petitioner and Employer as used herein, and captioned above, appears as stipulated by the parties at hearing.

<sup>2</sup> Hereinafter all dates occurred in 2020, unless otherwise noted.

## I. ISSUE TO BE DECIDED

The only issue presented in this matter, as discussed in more detail below, is how and when the election should be conducted. Election voting method is not a litigable issue at a pre-election hearing, but in light of the challenges caused by the COVID-19 pandemic, I allowed the parties to present their positions as to the mechanics of this election by oral argument at the hearing. I have carefully considered the record evidence, as well as the positions and arguments presented by the parties on this single issue. For the reasons discussed below, I find that a prompt mail ballot election should be conducted in light of the continuing extraordinary circumstances presented by the COVID-19 pandemic.

## II. FACTS

At the outset, I take administrative notice of the current public health crisis in the United States created by the COVID-19 pandemic. The COVID-19 virus is infecting people and spreading easily from person to person. Indeed, from July 13 through August 2, the United States saw a 7-day moving average with at least 60,000 cases *per day*, with 66,000 cases *per day* from July 18 through July 26.<sup>3</sup> As of August 5, the 7-day moving average was 56,651 cases *per day*. *Id.* I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States government.<sup>4</sup> The CDC states:

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet). COVID-19

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<sup>3</sup> <https://www.cdc.gov/covid-data-tracker/#trends> (last visited on August 6, 2020).

<sup>4</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

seems to be spreading easily and sustainably in the community (“community spread”) in many affected geographic areas.<sup>5</sup>

Additionally, “COVID-19 can be spread by people who do not have symptoms and do not know that they are infected.” *Id.* Importantly, the CDC has instructed that cloth face coverings are not a substitute for proper social distancing.<sup>6</sup> The CDC further states that it is unlikely that the coronavirus will be spread from domestic or international mail, products or packaging.<sup>7</sup> To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: “[a]fter 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.”<sup>8</sup>

As of August 6, the pandemic has resulted in at least 93,402 confirmed COVID cases, along with 1,654 confirmed deaths, in the State of Alabama where a manual election in this case would be held.<sup>9</sup> On March 13, Alabama Governor Kay Ivey declared a state public health emergency in the State, and shortly thereafter the Alabama State Health Officer issued a series of Stay at Home orders suspending certain public gatherings to protect Alabamians and to mitigate the spread of COVID-19 by decreasing the opportunities for transmission of the virus and in an effort to decrease the risk of community spread. On May 8, the Alabama State Health Officer issued a Safer at Home order, and the State moved into Phase One of reopening. An amended version of that Order is still in effect.

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<sup>5</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

<sup>8</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

<sup>9</sup> <https://alpublichealth.maps.arcgis.com/apps/opsdashboard/index.html#/6d2771faa9da4a2786a509d82c8cf0f7> (last visited on August 6, 2020).

Since the State of Alabama began its phased reopening of the economy, like many states it has seen a noticeable spike in the number of confirmed cases. As of August 6, there have been 19,739 confirmed new COVID cases within the last 14-days. Moreover, Mobile County, where the Employer’s facility is located, is currently within the “High” range of rate transmission according to the State of Alabama’s color-coded health guidance system. Mobile County has recorded 9,420 confirmed cases and 204 deaths. An overwhelming number of those cases are located within the city of Mobile where the Employer’s facility is located.<sup>10</sup> According to the Alabama Public Health Department, counties that are in the “High” transmission risk category should avoid groups of more than 20 people, limit out-of-state travel and in-person meetings, avoid taking non-essential trips, and work from home when possible.<sup>11</sup>

Additionally, conducting a manual election in this case will necessitate the participation of at least two Board Agents from the State of Louisiana given the mechanics of the Employer’s proposed election. Current information shows that 127,246 cases of COVID-19 have been reported in Louisiana, with 4,028 of those cases resulting in death.<sup>12</sup> Moreover, as of August 6, 10,573 cases have been reported in Orleans Parish, where Region 15’s office is located, with 561 of those cases resulting in death.<sup>13</sup> Indeed, on July 24, New Orleans Mayor LaToya Cantrell announced new restrictions being put into place in order to suppress the increasing community spread that is taking place since the city began Phase Two of its economic reopening.<sup>14</sup>

The record is clear that the petitioned-for unit employees work in a skilled nursing healthcare facility. The Employer’s facility has documented COVID-19 cases amongst its

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<sup>10</sup> <https://www.cityofmobile.org/COVID-19/> (last visited August 6, 2020)

<sup>11</sup> <https://www.alabamapublichealth.gov/covid19/guidance.html>

<sup>12</sup> <http://ldh.la.gov/Coronavirus/> (last visited August 6, 2020)

<sup>13</sup> <https://experience.arcgis.com/experience/746f03e88d204a2b82a7b958ea744bba/> (last visited August 6, 2020)

<sup>14</sup> <https://ready.nola.gov/incident/coronavirus/mayor-cantrell-announces-new-restrictions-to-help/>

workforce as well as the residents at the facility. As of the hearing date, the Employer had at least 11 employees who have tested positive for COVID-19, along with several residents who tested positive. Accordingly, on July 19 the Employer dedicated a specific hall within its facility as a COVID-positive wing where residents who have tested positive for the virus are currently residing. The residents within the COVID-positive wing are being cared for by at least two members of the petitioned-for unit.

As of May 24, an estimated 168,000 health care workers in the United States had the virus. Of those, Alabama ranked among the states with the highest number of reported cases with 1,708.<sup>15</sup> As of mid-June, at least 679 healthcare workers in the United States had died from the virus.<sup>16</sup> And as the numbers of new cases have spiked in recent weeks throughout the United States, healthcare workers again find themselves without sufficient PPE, leaving them more susceptible to COVID-19 infection.<sup>17</sup> According to the United States Department of Labor, Occupational Safety and Health Administration, healthcare workers who provide care to members of the general public not known or suspected to have COVID-19 are at medium risk of infection, and healthcare workers who enter a known or suspected COVID-19 patient's room and/or provide care for a known or suspected COVID-19 patient are at high risk of infection.<sup>18</sup> Based on that information, this case involves employees that are both at medium and high risk of infection.

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<sup>15</sup> <https://www.registerednursing.org/cdc-estimates-nurse-healthcare-worker-covid19-cases-likely-understated/28/>

<sup>16</sup> <https://www.theguardian.com/us-news/2020/jun/17/covid-19-coronavirus-healthcare-workers-deaths>

<sup>17</sup> <https://www.washingtonpost.com/health/2020/07/08/ppe-shortage-masks-gloves-gowns/>

<sup>18</sup> <https://www.osha.gov/SLTC/covid-19/healthcare-workers.html>

### **III. POSITIONS OF THE PARTIES**

#### **A. The Employer/Petitioner's Position**

The Employer argues that the instant election can be safely held at its facility such that a manual election is appropriate in this case. In response to the pandemic, the Employer has instituted measures for the safety of its residents and employees, including prohibiting all visitors from entering the facility except for those on authorized business purposes. All individuals entering the Employer's facility undergo a temperature check and a questionnaire. If an employee receives a positive test or has COVID symptoms, then the employee is quarantined and not permitted to work. Moreover, the Employer uses air scrubbers throughout the facility to clean the air, and also utilizes hand sanitizer and full personal protective equipment, including N95 masks, for protection. Employees are tested weekly for COVID-19. On the day of the election, the Employer contends that no individual will be allowed on the premises who registers a fever.

The Employer proposes using two polling locations: one for employees who are under quarantine on election day or who are assigned to work in the COVID wing, and a second location for all other employees. For both polling locations, the Employer proposes several measures to limit contact between the Board Agent(s), observers, and participants, including the use of 12-foot tables such that the Board Agent and observers can maintain proper social distance, plexiglass barriers, and ground markers spaced at six foot intervals for those voters waiting in line. Further, the Employer maintains that the use of personal protective equipment, temperature screenings, hand washing/hand sanitizer, single use writing instruments, and sanitization of the common touch surfaces in the voting area will allow for a safely run manual election.

Specific to the polling location for quarantined employees or employees assigned to the COVID wing, those employees would vote in a separate location of the facility. The Employer proposes that the Board Agent(s) and observers would be located within a “sun room” and be seated behind glass doors that open into a courtyard. The voting booth and ballot box would be located in the courtyard, just outside the sun room’s glass doors. The employees voting in this location would approach the glass doors, communicate with the Board Agent(s) and observers through the glass door, and then step back behind a taped line in order to maintain social distancing requirements. The Board Agent(s) would then open the glass doors, place a ballot in the voting booth, and return to the sun room behind the glass doors. The employee would then enter the voting booth, mark the ballot, and place the ballot in a voting box that will also be placed in the courtyard near the voting booth.

As an alternative, the Employer has proposed the use of a mixed manual-mail election. In that scenario, any employee under quarantine at the time of the election and/or scheduled to work in the COVID wing at the time of the election would receive a ballot in the mail. All other employees would vote in person at a manual election held at the Employer’s facility.

The Employer argues that manual elections are the preferred method of voting by the Board. It contends that a manual election can be held safely at its facility given the number of safety protocols in place and the fact that the petitioned-for employees have been working in this environment since the pandemic began, and are in a position to participate in this election in a safe manner. Additionally, the Employer questions the reliability of the United States Postal Service, argues that mail service is entirely unreliable at this time, and notes that a mail ballot kit will only reach those employees who have a correct and updated mailing address on file with the

Employer. Finally, the Employer argues that mail ballot elections have the tendency to suppress voter turnout

### **B. The Union's Position**

The Union submits that this matter should be conducted via mail-ballot. In order to protect the safety of all election participants, including the petitioned-for employees, observers, Board Agent(s), and all other participants, the Union maintains that a mail ballot is the safest method for voting in this case. Because the virus is unpredictable and conditions are often changing, the Union argues that a mail ballot election will ensure that all petitioned-for employees have an opportunity to vote.

## **IV. ANALYSIS AND FINDINGS**

### **A. Board Law and Guidance**

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

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

The Manual Section sets forth several types of conditions favoring mail-ballot elections, including situations where eligible voters are "scattered," either geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. This Section states that "[u]nder extraordinary circumstances, other relevant factors may also be considered by the regional director," citing *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the Manual indicates that the Regional Director may use discretion to order a mail ballot election where

conducting an election manually is not feasible, and that under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote.

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.

The Board has already applied the guidelines in *San Diego Gas & Electric* to the extraordinary circumstances created by the COVID-19 pandemic in numerous unpublished Orders, including on May 8 in *Atlas Pacific Engineering Company*, Case 27-RC-258742. There, the Regional Director in Region 27 directed a mail-ballot election notwithstanding the employer’s argument that a manual election could be safely conducted among engineering employees at its facility. The Board stated that in determining whether the COVID-19 pandemic constituted an extraordinary circumstance, the Regional Director properly considered the detailed plan for conducting a manual election in a safe manner proposed by the Employer. The Board then denied the employer’s request for review of the Regional Director’s Decision and Direction of Election, stating:

[i]n finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework ..... Under all of the foregoing

circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.<sup>19</sup>

Furthermore, and as referenced above, the General Counsel recently issued guidance as it pertains to manual elections being conducted during this pandemic. In his memorandum, the General Counsel provides suggested manual election protocols for conducting manual elections in this current environment. Importantly, the General Counsel reaffirmed, on multiple occasions in his four-page memorandum, that Regional Directors have authority delegated by the Board to make initial decisions about when, how, and in what manner all elections are conducted.

According to the General Counsel, Regional Directors:

have made, and will continue to make, these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locally.

#### **B. A Mail-Ballot Election is Warranted**

The circumstances surrounding the COVID-19 virus are nothing but extraordinary. Given the extraordinary circumstances caused by the continuous spreading of COVID-19 that still exist in the State of Alabama and the entirety of the United States and most particularly at this facility that actually has an area dedicated to treating COVID-19 patients, I find it appropriate to exercise my discretion to direct a mail ballot election in this case. Not only do I derive such discretion from extant case law, the Board and General Counsel have specifically emphasized Regional Director's discretion in directing elections during these unprecedented times.

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<sup>19</sup> *Atlas Pacific Engineering Company*, 27-RC-258742, at fn. 1 (May 8, 2020).

In so finding, I have considered the Employer's proffered plan to safely run a manual election at its facility, and while I acknowledge and appreciate the careful consideration paid to this issue by the Employer, I find that its election arrangements are inadequate under these extraordinary circumstances. Of significant importance in this case is the location where the petitioned-for unit employees work, namely a skilled nursing healthcare facility where both residents and employees have confirmed COVID-19 infections. The seriousness of the disease, and the increased risk of infection to those throughout the facility, is highlighted by the Employer's decision to create a COVID-19-specific wing. To be clear, conducting a manual election in this case at the Employer's facility would require me to knowingly force party representatives and Board Agent(s) to enter—and stay for a significant period of time—at a facility that has both residents and employees who have tested positive for COVID-19. Doing so would also subject petitioned-for employees to further risk of exposure beyond what they experience on a daily basis during their working hours. I am not willing to do so, given the clear alternative available in a mail-ballot election.

Even though the Employer intends to take precautions to attempt to ensure safety, a manual election would place employees, observers, and Board Agents in very close proximity to each other for a substantial period of time. Manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board Agent(s), all of whom must be present at the Employer's facility. All but the voters would need to gather for the pre-election conferences, including the check of the voter list and the parties' inspection of the voting areas. The Board Agent(s) and observers would then share a voting area for the duration of the proposed manual election, an exposure sufficient to risk exposure to the virus.

The observers would need to check in voters on the voter list, and the Board Agent(s) would provide a ballot to each voter.

While it is contemplated that all participants will wear masks and face coverings, there are circumstances recognized by the Governor of Alabama where face coverings cannot be worn, for instance for individuals with medical issues, and thus it is entirely possible that at some point in this election, certain participants will be gathered within 6 feet of each other without facial coverings. Furthermore, should voters fail to heed the 6-foot markers or proper social distancing guidelines, there is a distinct risk of many voters—larger than the 20-person threshold suggested by the State of Alabama in high risk counties—congregating in a small, confined space. In either circumstance, the risk of exposure to all participants is significant. Moreover, challenged ballot procedures necessarily require the Board Agent(s), observers, and challenged voters to share a confined and close-proximity space to deal with each challenged ballot. Further, at the conclusion of the election, the Board Agent(s) will conduct the vote count in the same voting space, with the observers, party representatives, and other employees who wish to attend.

In addition to the above, a manual election will likely require travel on the part of multiple Board Agents given the Employer's proposal for multiple voting locations, who are based out of the Region 15 New Orleans office. As noted earlier, New Orleans has been a known hot-bed for infections since mid-March 2020; the State of Louisiana has over 125,000 confirmed COVID-19 cases. The Employer's facility is located approximately 150 miles from the Regional office in New Orleans. Furthermore, since carpooling is necessarily at odds with CDC guidelines regarding social distancing, Board Agents would need to travel in separate vehicles. Holding a mail ballot election, and minimizing travel as recommended by the

Governor of Alabama, would be the safest option as non-essential travel should generally be avoided at this time.

Moreover, the policies and protocols implemented by the Employer in response to the pandemic further highlight the potential for voter disenfranchisement or disruption to the election. Any employee or visitor, including Union representatives or the Board Agent(s) assigned to conduct the election, who register a fever during the temperature screening would be denied entrance to the Employer's facility and would be unable to participate in the election.<sup>20</sup> An employee who is ill or manifesting symptoms unrelated to COVID-19 may opt to remain at home, and not vote, due to fear of failing the Employer's screening protocol. Alternatively, given the importance of the election, the ill employee may feel compelled to report to the facility in order to allow his voice to be heard in the election, thereby endangering all election participants. While the Employer plans to screen employees when they arrive to work on the day of the election, these screening procedures are not infallible and may result in a COVID-infected employee, particularly those that are asymptomatic, entering the facility. These scenarios may not only result in voter disenfranchisement, or the potential transmission of the virus by asymptomatic employees or ill employees without a fever, but also the last-minute cancellation of the election should the affected person(s) be the Board Agent(s) tasked with conducting the election.

The above is not meant to penalize the Employer for instituting necessary, and in some instances required, protocols in an effort to ensure the safety of its employees and visitors. It is

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<sup>20</sup> Temperature screening, implemented in response to the pandemic, would also deny entry to any voter or participant who may be experiencing an illness unrelated to COVID-19. A temperature of 100 degrees, in a pre-COVID-19 voting environment, would not prevent a voter from accessing the polling site. Now, however, conducting a manual election in the midst of this pandemic not only risks the disenfranchisement of individuals affected by COVID-19, but also those not currently infected with the virus.

certainly no fault of the Employer that this petition is being processed during a pandemic that has necessitated the implementation of protocols and policies which, by their very nature, call into question the propriety of manual elections at this time. On the contrary, it is meant to stress the unique and unpredictable nature of this pandemic, and the resultant risks of proceeding to a manual election in these extraordinary times, all of which can be alleviated with a mail ballot election. Voting by mail ballot in this case eliminates any concern that employees, Union representatives, or the Board Agent(s) assigned to conduct the election would be denied entry to the Employer's facility on the date of the election. It also alleviates any undue stress of entering a facility with known COVID-19 transmission. Indeed, a mail ballot election will allow all petitioned-for employees the opportunity to vote safely.

For many of the same reasons discussed above, I find the Employer's alternative suggestion to use a mixed manual-mail election to be unworkable. For the manual portion of the election, the same concerns raised above regarding risk of virus transmission to all election participants are still present, especially in light of the election taking place at a facility with known infections. Moreover, allowing those employees under quarantine or who will be assigned to work the COVID wing during the week of election to vote by mail is not feasible. The Region must implement a deadline by which mail ballots need to be mailed, as well as a deadline by which the mailed ballots must be returned to the Regional office. As we know, virus transmission continues to occur daily, and there is a significant risk that an employee, who was not under quarantine at the time mail ballots were distributed, becomes infected. Thus, that employee would not have received a mail ballot, yet is prevented from voting in person due to the quarantine and/or being unable to pass the temperature screen, and is ultimately disenfranchised.

If the solution to that problem is to have a non-quarantine manual voting location, a quarantine manual voting location, along with a mail-ballot option, the logistics become even more problematic with the same risks and concerns raised above. Additionally, there is significant risk of employee disenfranchisement if employees are unsure of which voting method they are to utilize depending on whether they have tested positive for the virus, are awaiting results of a COVID-19 test, or are otherwise showing signs of the virus, all of which can change daily. The complications of a mixed-manual election can be entirely avoided by directing a mail-ballot election to begin with.

The Board recognized in *San Diego Gas & Electric*, supra, that extraordinary circumstances may be cause for a Regional Director to direct voting by mail ballot in situations other than the three outlined by the Board in that decision. What makes the current pandemic truly an “extraordinary circumstance” is the day-to-day uncertainty and rapidly evolving environment in which we find ourselves. As businesses have reopened and people around the State of Alabama have reentered a less-restricted public life, community spread of COVID-19 has increased. This up-tick in community spread has led to state-wide mask-mandates, continuation of mandatory 14-day quarantines for positive COVID cases, prohibition on all non-work related gatherings of any size that cannot maintain a consistent six-foot distance between persons, and the continued restrictions on business that have reopened. As discussed above, this election necessitates the gathering of individuals at a time, and in a County, where it is recommended that gatherings be restricted to 20 people or fewer due to the high-risk-of-transmission assessment of the Alabama Department of Health. It would also necessitate the gathering in a healthcare facility with confirmed cases of COVID-19; an unnecessary risk given the clear alternative.

Based on the risk factors discussed above, and the continued uncertainty that this pandemic creates, I have determined that voting by mail significantly decreases the risk of COVID-19 transmission among election participants and voter disenfranchisement as compared to an in-person manual election. The Employer's remaining arguments favoring a manual election over a mail ballot election are unavailing. "From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail." See *London Farm Dairy*, 323 NLRB 1057 (1997) (internal citations omitted). The Employer argues that the mail is unreliable, however, a sufficient amount of time will be given for employees to return their ballot by mail in order to account for any potential delays in mail distribution. While long-standing Board policy favors manual elections, mail ballot elections continue to be an often-utilized voting method and continue to have their place in circumstances where manual elections are prohibitively challenging, including the extraordinary circumstances caused by this global pandemic.

#### **V. ADDITIONAL FINDINGS**

Based upon the entire record in this matter, including the stipulations of the parties, I also conclude and find as follows:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act based on the following stipulated commerce facts:

The Employer is a limited liability company incorporated in the State of Alabama with an office and place of business in Mobile, Alabama where it is engaged in the business of providing skilled nursing services. Within the past twelve (12) months, a representative period, the Employer derived gross revenues in excess of \$100,000 and, during the same period, has purchased and received goods and materials at its Mobile, Alabama facility valued in excess of \$50,000 directly

from points located outside the State of Alabama. Based on this, the Employer is engaged in commerce that affects commerce within the meaning of Section 2(6) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

There is no collective-bargaining agreement covering any of the petitioned-for employees, and there is no contract or other bar in existence which would preclude processing this petition to an election.

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.

The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All regular full-time, regular part-time, and PRN CNAs, nursing assistants, dietary aids, cooks, housekeeping assistants, and central supply employees employed by Gulf Coast Health and Rehabilitation, LLC.

**Excluded:** All other employees, RNs, LPNs, maintenance employees, financial specialists, admissions coordinators, office assistants, and managers, supervisors, and guards as defined by the Act.

## VI. CONCLUSION

The risks of COVID-19 are somewhat unknown and, while these employees are required to appear at work because no other alternative exists for them, there is an alternative to a manual election – a mail-ballot election. A mail-ballot election would limit and/or avoid all in-person contact between the Board agent(s), observers, and voters, and avoid those same individuals congregating in a facility where known COVID-19 transmission exists. Therefore, in an effort to ensure the safety of everyone during the ongoing pandemic, I believe a mail-ballot election is warranted.

## VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Retail, Wholesale and Department Store Union, Local 932. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### Eligibility to Vote

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, 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.

### List of Eligible voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 US 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before August 18, 2020. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to 504-589-4069. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a

minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

### **VIII. 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 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](http://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, 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 10, 2020

 by hpj

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**M. KATHLEEN McKINNEY  
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NATIONAL LABOR RELATIONS BOARD  
REGION 15  
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