

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**DAYLIGHT TRANSPORT, LLC<sup>1</sup>**

**Employer**

**and**

**Case 31-RC-262633**

**TEAMSTERS LOCAL 63**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

On July 6, 2020,<sup>2</sup> Teamsters Local 63 (Petitioner or Union) filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent certain employees of Daylight Transport, LLC (Employer). After the Region issued a Notice of Hearing, the parties waived their right to a hearing before a Hearing Officer and entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) on July 23, 2020, which I approved the same day. The petitioned-for unit was clarified in the Stipulation to include all full-time and regular part-time dockworkers, quality coordinators, yard hostlers, and dock trainers employed by the Employer at its Fontana, California facility. There are approximately 60 employees in the petitioned-for unit.

The only issue left unresolved by the Stipulation is whether the election should be held manually at the Employer's facility or by mail ballot, considering the continuing COVID-19 pandemic.<sup>3</sup> The parties agreed, as part of the Stipulation, that they would each file their respective statements of position on this issue, and that the party proposing a manual election would, in addition to providing its argument on whether a manual election could be safely held, also provide a detailed description of the proposed election arrangements, including the location, size and layout of the room, ingress and egress, and ventilation. The manual election proponent would also explain how its arrangements would comply with the recommended protocols described in General Counsel Memorandum 20-10 (GC 20-10), and would provide statistics as to the number of its employees who have tested positive, exhibited symptoms, or been quarantined because of the current COVID-19 pandemic. In this case, the Employer is requesting that a manual election be held at its Fontana, California facility and argues that it can be held safely utilizing the protocols it has proposed for the setup and conduct of the election in an outdoor area. The Petitioner asserts that a mail-ballot election is appropriate but also proposes certain safety protocols to be followed in the event that a manual election is ordered.

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<sup>1</sup> In the Stipulation of Record for Pre-Election Hearing (Stipulation) noted herein, the parties agreed to amend all formal documents to correct the name of the Employer as captioned herein, and I approved that amendment as part of the Stipulation.

<sup>2</sup> All dates hereinafter are in 2020 unless otherwise noted.

<sup>3</sup> Throughout this decision, the terms "COVID-19," "coronavirus," and "virus" are used interchangeably.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, relevant Board law, and the extraordinary circumstances of a pandemic, for the reasons described more fully below, I shall direct a mail-ballot election commencing on the earliest practicable date.

## I. FACTUAL OVERVIEW AND POSITIONS OF THE PARTIES

### A. The COVID-19 Pandemic in the United States

On March 13, President Donald J. Trump issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”<sup>4</sup> The impact of the COVID-19 pandemic on daily life has been profound. The Centers for Disease Control and Prevention (CDC),<sup>5</sup> an agency of the United States government, has determined “[t]he best way to prevent illness is to avoid being exposed to the virus,” as there is currently no approved vaccine or antiviral treatment, and “[m]inimizing person-to-person transmission of SARS-CoV-2 is critical to reducing the impact of COVID-19.”<sup>6</sup> According to the CDC, “[t]he virus that causes COVID-19 is spreading very easily and sustainably between people” and “the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread.” *How COVID-19 Spreads*.<sup>7</sup> Many of the measures recommended by the Federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people. *How to Protect Yourself & Others*.<sup>8</sup>

The CDC has also published reports regarding pre-symptomatic and asymptomatic transmission of COVID-19, including the *Emerging Infectious Disease Journal* (Online Report) for July, “Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Pre-symptomatic or Asymptomatic.”<sup>9</sup> The Online Report emphasizes, “transmission in the absence of symptoms reinforces the value of measures that prevent the

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<sup>4</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed August 9, 2020).

<sup>5</sup> I take administrative notice of the information, guidance, and recommendations of the CDC regarding COVID-19. See “Coronavirus (COVID-19)” and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (last accessed August 9, 2020).

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last accessed August 9, 2020); “Predicting the Decay of SARS-CoV-2 in Airborne Particles.” <https://www.dhs.gov/publication/st-predicting-decay-sars-cov-2-airborne-particles-factsheet> (last accessed August 9, 2020).

<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed August 9, 2020).

<sup>8</sup> *Ibid.*

<sup>9</sup> See [https://wwwnc.cdc.gov/eid/article/26/7/20-1595\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article) (last accessed August 9, 2020). See also, “The implications of silent transmission for the control of COVID-19 outbreaks.” *Proceedings of the National Academy of Sciences of the United States of America (PNAS)*. <https://www.pnas.org/content/early/2020/07/02/2008373117> (“even if all symptomatic cases are isolated, a vast outbreak may nonetheless unfold ... we found that the pre-symptomatic stage and asymptomatic infections account for 48% and 3.4% of transmission, respectively”). This article was subsequently updated on July 28, 2020 to observe that, based on current data, that “silent transmission during pre-symptomatic and asymptomatic stages are responsible for more than 50%” of infections.

spread of [COVID-19] by infected persons who may not exhibit illness despite being infectious.” Despite these unprecedented efforts to limit transmission, as of August 10, over 5 million people in the United States have been infected with COVID-19 and 161,842 people have died.<sup>10</sup>

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 offering alternatives to in-person voting if allowed” and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”<sup>11</sup> The CDC further states 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,” but “it is unlikely to be spread from domestic or international mail, products or packaging.” *Am I at risk for COVID-19 from mail, packages, or products?*<sup>12</sup> 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.” *Running Errands*.<sup>13</sup>

## **B. The COVID-19 Pandemic in California and San Bernardino County**

Many state and municipal governments have issued restrictions responsive to the COVID-19 pandemic tailored to the particular circumstances present in specific communities. On March 4, the Governor of the State of California (Governor) declared a “State of Emergency to Help State Prepare for Broader Spread of COVID-19.”<sup>14</sup> On March 19, the Governor issued Executive Order N-33-20 ordering all individuals living in the State of California (California) to stay home, except as to maintain continuity of operations for the Federal Critical Infrastructure Sectors.

On May 4, the Governor issued a press release<sup>15</sup> announcing that based on California’s progress in meeting metrics tied to indicators, California could begin to move into Stage 2 of modifying Executive Order N-33-20 on May 8, with guidelines released on May 7. In doing so,

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<sup>10</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>11</sup> <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 August 9, 2020). See also Governor of the State of California Executive Order N-64-20. <https://www.gov.ca.gov/2020/05/08/governor-newsom-issues-executive-order-to-protect-public-health-by-mailing-every-registered-voter-a-ballot-ahead-of-the-november-general-election/> (“WHEREAS to preserve public health in the face of the threat of COVID-19, and to ensure that the November election is accessible, secure, and safe, all Californians must be empowered to vote by mail, from the safety of their own homes ...”) (last accessed August 9, 2020).

<sup>12</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (updated August 4, 2020; last accessed August 9, 2020).

<sup>13</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (updated August 3, 2020; last accessed August 9, 2020).

<sup>14</sup> See <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (last accessed August 9, 2020).

<sup>15</sup> See <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/> (last accessed August 9, 2020).

the Governor noted that the situation is “still dangerous and poses a significant public health risk.” The Governor further announced that while California would be moving from Stage 1 to Stage 2, its “counties can choose to continue more restrictive measures in place based on their local conditions, and the state expects some counties to keep their more robust stay at home orders in place beyond May 8, 2020.” Ibid. Despite these measures, however, reported cases of COVID-19 have continued to climb in California to its current level of 561,911 cases and 10,359 deaths as of August 10.<sup>16</sup>

The California Department of Public Health (CDPH) monitors data related to COVID-19 for each of California’s 58 counties, including San Bernardino County where the Fontana facility is located. If a county does not remain below established thresholds for a seven-day average for positive cases per day, elevated disease transmission, increasing hospitalization, and limited hospital capacity, it is placed on the County Monitoring List, which is then used to reinstitute health measures such as closing business sectors and restricting gatherings and travel.

On July 2, the Governor ordered 19 counties (Health Officer Orders), including San Bernardino County, that had been on the County Monitoring List for three consecutive days to “close all bars, pubs, brewpubs, and breweries, whether operating indoors or outdoors” and cease indoor services for restaurants, wineries and tasting rooms, family entertainment centers and movie theaters, zoos, museums, and cardrooms.<sup>17</sup> The Health Officer Orders also noted, “[p]ublic health studies have shown that the risk of transmission is exacerbated in indoor spaces, particularly when lacking appropriate ventilation.”

On July 13, after 29 counties, including San Bernardino County, had remained on the County Monitoring List for at least three consecutive days, the Governor expanded the restrictions from the previous Health Officer Orders to the rest of the state and reinstated additional closures for San Bernardino County and others on the County Monitoring List to include the indoor operations of gyms and fitness centers, places of worship, indoor protests, offices for Non-Critical Infrastructure Sectors, personal care services (including nail salons, massage parlors, and tattoo parlors), hair salons and barbershops, and malls.<sup>18</sup> As of August 10, San Bernardino County remained on the County Monitoring List, failing to meet the thresholds for elevated disease transmission and increasing hospitalization.<sup>19</sup> According to CDPH, San Bernardino County is “experiencing elevated disease transmission and increasing hospitalizations,” which the CDPH attributes to “1) community transmission from gatherings, 2) *workplace transmission*, 3) transmissions at state prison, state hospital, county jails and academy, and skilled nursing facilities, 4) transfer of patients from Imperial County.”<sup>20</sup> (emphasis added).

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<sup>16</sup> <https://www.Covid19.CA.Gov>.

<sup>17</sup> See <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Order%20Closing%20Indoor%20Services%20and%20Sectors-San%20Bernardino.pdf> (last accessed August 9, 2020).

<sup>18</sup> See <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf> (last accessed August 9, 2020).

<sup>19</sup> See <https://covid19.ca.gov/roadmap-counties/> (last accessed August 10, 2020).

<sup>20</sup> See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CountyMonitoringDataStep2.aspx> (last accessed August 9, 2020).

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in California and throughout the United States. As of August 10, according to data released by the San Bernardino County Department of Public Health, there were 36,072 confirmed cases of COVID-19 in San Bernardino County and 546 people have died from COVID-19.<sup>21</sup> In fact, as of August 10, San Bernardino County had the fourth highest total number positive cases and the fifth highest total number of deaths among the 58 counties in California.<sup>22</sup> In the City of Fontana, where the Employer's facility is located, the number of confirmed positive COVID-19 cases as of August 10 was 4,687, with 58 deaths.<sup>23</sup>

### **C. The Employer's Position on a Manual Election and Suggested Safety Protocols**

The Employer is a less-than-truckload (LTL) carrier of general freight operating out of Fontana in San Bernardino County, California. The Employer stated in its Statement of Position that the employees in the petitioned-for unit (the Unit) work one of two shifts: a morning/early afternoon shift for inbound freight, and an early afternoon/overnight shift for outbound freight. The facility in Fontana contains two large outdoor areas: a Trailer Staging Area (Staging Area) consisting of about 15,000 square feet, and a Trailer Staging Entrance (Entrance Area) of about 7,000 square feet.

The Employer argues that the Board traditionally favors manual elections, and that this case does not present the "unusual circumstances" that would warrant deviating from a manual election.<sup>24</sup> Moreover, the Employer asserts that an on-site election, as opposed to a mail-ballot election, would create a greater percentage of employee participation than a mail ballot election and cites a number recent mail-ballot elections to support this assertion. Moreover, according to the Employer, manual elections best preserve laboratory conditions and myriad problems that might result from the absence of direct Board supervision in a mail-ballot election.

The Employer further argues that none of the limited circumstances described in *San Diego Gas & Electric*, 325 NLRB 1143 (1998) that would warrant the use of mail ballots are present, in that the employees in the petitioned-for unit are not scattered and there is no lockout or picketing at the Employer's facility. The COVID-19 pandemic in and of itself does not justify deviating from the Board's long-standing practice of holding manual elections, since precautions such as those described in GC 20-10 can be taken to ensure a safe and fair election. Furthermore, voting in person will not subject employees to any greater health risk than they presently face at work.

Based upon the foregoing arguments, the Employer proposes a manual election to be conducted at the Employer's facility using either of the large outdoor locations described above.

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<sup>21</sup> See <https://sbccovid19.com/>.

<sup>22</sup> See [https://public.tableau.com/views/COVID-19CasesDashboard\\_15931020425010/Cases?:embed=y&:showVizHome=no](https://public.tableau.com/views/COVID-19CasesDashboard_15931020425010/Cases?:embed=y&:showVizHome=no).

<sup>23</sup> See <https://www.fontana.org/3272/Coronavirus-COVID-19>.

<sup>24</sup> *NLRB Casehandling Manual* Section 11301.5; *Outline of Law and Procedure in Representation Cases* Section 22-110.

The Employer argues that an open-air polling place provides an ideal setting for the election and that all Unit employees will have access. Moreover, according to the Employer, the area can be staged with multiple tables and outdoor canopies to ensure a “touchless election” where the Board agent will not have to touch or be within 6 feet of a voter.

Specifically, the Employer proposed the following arrangements for the manual election:

- A marked-off walkway with cones separated every 10 feet to ensure social distancing;
- A table and canopy for each observer separated by 10 feet that would allow voters to remain 6 feet away from the observers and the Board Agent;
- A table and canopy for the Board Agent to place a ballot before each voter;
- A canopy for the voting booth located at least 10 feet from the other tables;
- A table and canopy for the ballot box located at least 10 feet from the other tables and the voting booth;
- Plexiglass dividers at each location; and
- Exit from the polling place with appropriate social distancing.

Moreover, according to the Employer, either outdoor voting location set-up as described above would allow up to 20 voters to wait in line while socially distancing or even 30.<sup>25</sup>

The Employer states that it regularly takes safety precautions including heightening cleaning (including a sanitizing of the entire premises every third weekend), and also performs daily temperature checks on its employees and provides them with gloves, masks, and hand sanitizer. In addition to these every-day practices and the arrangements proposed above, the Employer asserts that it will also meet all the recommended protocols in GC 20-10.

The Employer admits that during the past three months, five of its employees have tested positive for COVID-19, two of whom still remain out and three of whom have been cleared by a doctor to return to work as of the date of this Order. In addition, 10 other employees have been out on COVID-19 related leaves even though they have not tested positive for the virus, and another 9 employees who have not tested positive are currently out on “some sort of protected leave.” The Employer estimates that there are currently about 60 employees in the petitioned-for Unit.

The Employer requests that a manual ballot election be held on August 13, 2020, from 9:00 a.m. to 11:00 a.m. and from 4:00 p.m. to 6:00 p.m. in one of its two outdoor locations utilizing the safety protocols described above.

#### **D. The Petitioner’s Position**

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<sup>25</sup> In addition to this narrative description, the Employer provided photographs showing the proposed set-up. The photos show a long line of orange cones down what appears to be a long driveway, within which voters could line up while maintaining social distancing, as well as the open-side canopies covering the two tables for the observers, the table to the Board agent and ballots, and the table with the voting booth directly across the driveway from the Board agent.

The Petitioner argues that given the current COVID-19 numbers in California, and particularly in the city of Fontana where the Employer's facility is located, a mail ballot election would provide the maximum safety for all involved.

In the event that a manual election is ordered, the Petitioner agrees on most if not all of the safety protocols proposed by the Employer, including holding the election outdoors in the Trailer Staging Area that would allow for 6-foot distancing between observers, Board agents, and voters. The Petitioner states that it also agrees that voters would have separate ingress and egress to the voting area, which itself would have separate tables 6 feet apart for the Observers, Board agents, ballot box, and voting booth. No more than 5 voters would be allowed in the voting area at any time, with additional employees waiting to vote lined up 6 feet apart outside the voting area consistent with the floor markings. Given these arrangements, according to the Petitioner, no voter release schedule would be required.

The Petitioner also suggests that other materials would be required to ensure a safe manual election, including disposable pencils, glue stick or tape to seal envelopes, plexiglass barriers, and sufficient masks, gloves, wipes, and hand sanitizer for all parties. Plexiglass barriers should also be provided to separate the parties from one another. Observers should be limited to one per party. With regard to the pre-election conference and the ballot count, the Petitioner proposes that no more than two representatives of each party be present.

Notwithstanding the preceding precautions, the Petitioner's position is that a mail ballot election would be more appropriate given the extraordinary circumstances presented by the COVID-19 pandemic, and particularly given the current state of infection in San Bernardino County and specifically in the city of Fontana. Moreover, the Petitioner argues that the risk of COVID-19 spread is increased the more closely a person interacts with others and the longer that interaction is. Thus, a mail-ballot election would eliminate the risk to the Board agent and election observers, who presumably spend the most time in the polling area and are exposed to the greatest number of people throughout the course of the day.

In further support of its argument for a mail ballot election, the Petitioner argues that it would comply with the State's most recent stay-at-home directives limiting gatherings of people from multiple households in an indoor or outdoor place. Moreover, a mail ballot election would allow employees in the petitioned-for Unit to vote if they are ill or otherwise absent from work because of COVID-19.

The Petitioner requests that a mail ballot election be ordered and commence not later than August 20.<sup>26</sup>

## **II. AGENCY DIRECTIVES AND LEGAL AUTHORITY**

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot

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<sup>26</sup> Although the Petitioner suggests certain safety protocols in the event that a manual election is ordered, the Petitioner does not propose a date or time for such an election.

elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. Regional Directors have an obligation to appropriately exercise their discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.

Although the Board prefers to conduct manual elections over conducting mail ballot elections, the Board has acknowledged that circumstances may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted." *Id.*; see also *NLRB Casehandling Manual (Part Two) Representation Procedures* Sec. 11301.2 (Casehandling Manual).<sup>27</sup> Thus, "[o]nly where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him [or her] to conduct representative elections will the Board nullify an election and prescribe other election standards." *National Van Lines*, 120 NLRB at 1346.

The Board has determined that there are some instances in which a mail ballot election is appropriate because "of circumstances that would tend to make it difficult for eligible employees to vote in a manual election." *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that "extraordinary circumstances" may warrant a departure from the specific guidelines articulated in that case. *Id.*

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, a Regional Director may exercise discretion to order a mail ballot election where conducting an election manually is not feasible and, under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. In addressing the COVID-19 pandemic, the Board has recognized the discretion afforded to Regional Directors in election matters. In this regard, when the Board issued an announcement titled "COVID-19 Operational Status"<sup>28</sup> on April 17 regarding the COVID-19 pandemic, it stated in pertinent part:

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<sup>27</sup> I note the provisions of the *Casehandling Manual* are not binding procedural rules; the *Casehandling Manual* is issued by the General Counsel, not the Board, and is intended to provide guidance to regional personnel in the handling of representation cases. *Patient Care*, 360 NLRB 637, 638 (2014) (citing *Solvent Services*, 313 NLRB 645, 646 (1994)); *Superior Industries*, 289 NLRB 834, 837 fn. 13 (1988); *Aaron Medical Transportation, Inc.*, 2013 WL 6673598 (2013) (unpublished) (citing *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn.4 (2007)); *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn.5 (1995). See also *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 fn. 5 (1979).

<sup>28</sup> See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

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 a memorandum titled “Suggested Manual Election Protocols.” (GC 20-10). In that memorandum, the General Counsel acknowledges that the protocols suggested therein are not binding on Regional Directors because the Board, not the General Counsel, has authority over matters of representation, and he reiterates that Regional Directors have the authority, delegated by the Board, to make “initial decisions about when, how, and in what manner all elections are conducted.” The General Counsel further notes Regional Directors have, and will:

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 locality.

Among other suggestions in GC 20-10, 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, come into contact with someone who tested positive within the preceding 14 days, are not awaiting test results, and are not exhibiting COVID-19 symptoms. 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.

I note that the Board has denied review of Regional Directors’ decisions to conduct mail ballot elections due to local COVID-19 circumstances although employers have offered to follow the same or similar protocols as those identified in GC 20-10. See, for example, *Johnson Controls, Inc.*, Case 16-RC-256972 (Order dated May 18, 2020) (denying review where employer had zero COVID-19 cases, daily screened all individuals accessing the facility for symptoms, mandated face coverings and social distancing, and offered an outdoor election with plexiglass barriers, sanitizer, single-use writing utensils, floor markings for social distancing, masks, and gloves).<sup>29</sup> Recently, on July 14, the Board, in an Order denying a request for review in *Brink’s Global Services USA, Inc.*, Case 29-RC-260969, addressed a mail ballot determination in the context of the COVID-19 pandemic and with consideration of GC 20-10. In footnote 2 to that Order, the Board found the COVID-19 pandemic to be “extraordinary circumstances” as contemplated by *San Diego Gas*. With respect to GC 20-10, the Board did not formally adopt its guidance, noting only the following: “The Board will continue to consider whether manual

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<sup>29</sup> The Regional Director’s Decision and Direction of Election, dated May 7, 2020, and the Board’s May 18, 2020 Order are available on the Board’s public website at <https://www.nlr.gov/case/16-RC-256972>.

elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.”<sup>30</sup>

### **III. ANALYSIS**

The circumstances surrounding the COVID-19 virus are extraordinary. Whether a mail ballot election is appropriate requires considering in each case both the public health concerns presented by the COVID-19 pandemic and the Board’s stated preference for manual elections. I recognize that the Board has traditionally preferred manual elections. However, I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety concerns in the context of a pandemic. Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.

I acknowledge that absent the public health concerns arising from the pandemic, I likely would order a manual election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. I recognize a limited degree of reopening has begun, in the United States generally and in California specifically. I also recognize that in San Bernardino County, not only does COVID-19 remain present in the local community, but an ongoing surge in confirmed cases presents a significant health risk. As noted above, current Federal, State, and San Bernardino County public health guidance strongly recommends discouraging gatherings to reduce the risk of exposure to and spread of COVID-19, and a mail ballot election minimizes such risk.

Thus, based on the facts outlined above and for the reasons detailed below, I find that it is appropriate to direct a mail ballot election in this case because: the current pandemic conditions constitute extraordinary circumstances that merit deviation from a manual election; a mail ballot election is the safest method of conducting an election under the circumstances; and, in comparison to a manual election, a mail ballot election avoids disenfranchising voters due to the pandemic.

#### **A. The Risks Associated With the COVID-19 Pandemic Constitute Extraordinary Circumstances**

Although questions regarding the transmission of SARS-CoV-2 and the nature of COVID-19 abound, the basics of the pandemic from a public health perspective are at this point quite familiar: it is a contagious virus, for which there is currently no approved vaccine or antiviral treatment, that often causes a serious, and at times fatal, illness. I find the COVID-19 pandemic presents extraordinary circumstances that make conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the employees’ union representation preferences in light of the current COVID-19 situation in San Bernardino County, as well as the fact there have been and are active cases and exposures amongst the Employer’s employees . The safety of the voters, the observers, the party representatives, and the Board agent conducting the election must be considered in determining

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<sup>30</sup> The Order is available on the Board’s public website at <https://www.nlr.gov/case/29-RC-260969>.

the appropriate method for conducting the election. The Employer's employees remain working at the Employer's facility because they perform essential services, and because of the nature of the work, no alternative exists to perform their work remotely. However, the Board does have an acceptable alternative to conducting a manual election.

Manual election procedures inherently require substantial interaction, and that interaction generates risk. I appreciate the Employer's efforts to mitigate this risk by making certain accommodations in an effort to allow for a degree of social distancing and protection during the election consistent with GC 20-10. I recognize that these accommodations and the GC 20-10 manual election protocols might reduce the risk of transmission, but given the current high incidence of COVID-19 at the locality where the election would take place and the substantial inevitable interaction and potential exposure associated with a manual election, the protocols do not alleviate my concerns about conducting a manual election under the current situation at this locality. In this regard, I find the fact there are employees currently infected with COVID-19 to be significant.

With respect to the inevitable interactions and risk of exposure necessitated by a manual election, voters, observers, and party representatives, as well as the Board agent, would all need to travel to and appear at the Fontana facility to participate in the election. Party representatives, the observers, and the Board agent usually would gather for approximately 15 to 30 minutes for the pre-election conference, including inspection of the voting area, though I recognize that GC 20-10 suggests that this may could take place by video. More significantly, even though it is an outdoor area, the Board agent and observers would need to share the same area for a period of at least four hours, i.e. the two 2-hour voting periods plus the vote count. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent, although GC 20-10 does suggest the use of multiple voter lists. The Board agent must provide a ballot to each voter, which per GC 20-10 could be done by placing a single ballot on a table, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. Given the span of the election, the Board agent and observers might need to use a restroom at the Fontana facility, typically before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, which is typically done in the same voting area, with the observers, party representatives, and other employees who wish to attend. The vote count, thus, would extend the time that the observers and the Board agent would spend together beyond simply the voting period windows. In addition to the Board agent and observers being exposed to each other for an extended period of time, they also would be exposed, albeit briefly, to many people during the course of conducting the election. Furthermore, the Employer's proposed two separate voting periods, the first starting at 9:00 a.m. and the last ending at 6:00 p.m., raise additional concerns because such an election likely would require the Board agent coming from the Regional Office in West Los Angeles to spend the entire day in a public place in San Bernardino County, further increasing the Board agent's potential exposure to COVID-19.<sup>31</sup>

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<sup>31</sup> I also note that the Mayor of the City of Los Angeles issued a new order on August 7, 2020 requiring residents of the City of Los Angeles to remain at home, with some exceptions (August 7, 2020 Order); see "[Public Order Under](#)

As noted above, the Employer has incorporated many of the accommodations used to combat the spread of COVID-19 in its plan for a manual election, such as social distancing, the use of plexiglass shields, and face coverings. However, in my view, in light of the current circumstances in San Bernardino County and the fact employees of the Employer are currently infected with COVID-19, the substantial interaction and exposure inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and protective measures proposed by the Employer or suggested by GC 20-10. For example, although the Employer directs that employees abide by certain protective measures while at work, it cannot police employees' adherence to those measures in the polling area and the Board agent cannot also police employees' adherence to those measures at the locations outside the polling area. Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line who might not normally in the course of his work interact with others, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election and potentially unwittingly expose others to the virus. The fact that five of the Employer's employees have tested positive within the last few months, including several who had not yet been able to work at the time briefs in this matter were submitted, and that ten other employees have been out on COVID-19 related leaves, highlights the fact the risk of exposure to somebody at the Employer's facility with COVID-19 is not just theoretical.

Furthermore, the fact that a large percentage of virus transmission is through pre-symptomatic or asymptomatic carriers exacerbates the risk for all election participants. According to the CDC, the "current best estimate" is that 50% of COVID-19 transmission occurs while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic<sup>32</sup> and would neither be identified nor have sought testing. Setting aside the observers and Board agent who must remain in the polling area at all times during the voting period, the potential for exposure to COVID-19 from a pre-symptomatic or asymptomatic carrier voter would not be limited to the few minutes that voter would be in the polling area, as a forthcoming study published by the CDC concluded that the COVID-19 virus can survive for several hours in the air and maintain its infectivity.<sup>33</sup> Thus, if a pre-symptomatic or asymptomatic carrier voter entered the polling room and released – through a cough, a sneeze, or simply from speaking – the

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[City of Los Angeles Emergency Authority](#)" (revised August 7, 2020; last accessed August 9, 2020). Although a Board agent traveling from the City of Los Angeles to Fontana to conduct the election would not necessarily violate the August 7, 2020 Order, I do note that a Board agent traveling from Los Angeles for the election (including – as noted above – having to spend a large part of the day in some public place in San Bernardino County) would be counter to the August 7, 2020 Order's directive that "Angelenos must minimize contact with others as much as possible," insofar as it is possible here to eliminate such contact by conducting a mail ballot election.

<sup>32</sup> "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last accessed August 9, 2020). See also "Temporal dynamics in viral shedding and transmissibility of COVID-19" (April 15, 2020). *Nature*. <https://www.nature.com/articles/s41591-020-0869-5> ("We estimated that 44% ... of secondary cases were infected during the index cases' presymptomatic stage ...")

<sup>33</sup> "Persistence of Severe Acute Respiratory Syndrome Coronavirus 2 in Aerosol Suspensions." *Emerging Infectious Diseases Journal*, Volume 26, No. 9 – September 2020 (Early Release). [https://wwwnc.cdc.gov/eid/article/26/9/20-1806\\_article](https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article) (last accessed August 9, 2020). See also, "Predicting the Decay of SARS-CoV-2 in Airborne Particles." <https://www.dhs.gov/publication/st-predicting-decay-sars-cov-2-airborne-particles-factsheet> (last accessed August 9, 2020).

COVID-19 virus into the air through droplets of saliva, the observers and the Board agent would potentially be exposed to the virus for the remainder of the election and the vote count, and any subsequent voter would likewise be potentially exposed. Although this may be somewhat ameliorated by conducting the voting outdoors, the number of people to whom the observers and the Board agent will be exposed to over an extended period of time still presents significant risk. Further, a manual election would require a Board agent to travel approximately 60 miles at a time when travel is discouraged.

The parties do not disagree as to the number of employees in the petitioned-for unit who have been affected in some way by COVID-19, either by contracting the virus or by exposure to and subsequent quarantine or other required leave. The Employer admits that it is aware of 15 employees so affected, which is about a quarter of the entire 60-person petitioned-for unit. This is not an insignificant percentage of the unit, and, given the documented increase in cases in San Bernardino County and in Fontana in particular, it is not unreasonable to assume that the same or even greater number of employees will continue to be exposed to COVID-19 between now and a manual election and, therefore, be capable of infecting others.

Thus, taken together, I find holding a manual election at the Fontana facility under these circumstances would entail significant risk to all involved. Accordingly, I find this risk constitutes extraordinary circumstances that make a mail ballot election appropriate.

#### **B. Disenfranchisement is a Greater Risk in a Manual Election**

I acknowledge the Employer's concerns about a lower participation rate in mail ballot elections, and I agree with the Employer that absent the current pandemic, I likely would order a manual election in this case. However, I do not find that concerns regarding the potential for lower participation invalidate the extraordinary circumstance that is the basis for my decision. Moreover, I also note that conducting manual elections under the current circumstances poses a risk of disenfranchising voters.

The Board's manual election procedures do not contain an absentee or remote voting option; if a manual election is ordered, an employee must appear in person at the polls to vote. As noted above, the Employer acknowledged that a number of employees, about a quarter of the petitioned-for unit, have been unable to report to work because they contracted COVID-19 or have been exposed to or otherwise affected by the virus. Obviously, any employee currently infected or infected between now and the date of a manual election and who remained infected on the date of the election would be unable to vote. Moreover, any voter exposed to the virus or awaiting test results and subject to the recommended 14-day quarantine period would likewise be unable to vote in the election. In light of the current conditions in San Bernardino County and the number of the Employer's employees who have been affected by the virus to date, the potential for such voter disenfranchisement is real. Furthermore, during the current public health crisis, employees may be disenfranchised because they are wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation. Finally, the Employer's regular practice of taking employees' temperatures daily may raise the possibility of voters being turned away on the day of the election. I am not critical of the practice, and indeed it seems to be a conscientious effort to help

identify those who could spread the virus, but it does pose concerns regarding access to the polls. A mail ballot election would avoid the potential disenfranchisement of employees who are unable to vote because they contracted COVID-19, recently were exposed to it, or simply had a fever on the day of the election.

### **C. A Mail Ballot Election is Appropriate Under the Current Extraordinary Circumstances**

While I do not find a manual election to be impossible, I have determined that, under the current circumstances in San Bernardino County, which – as noted above – is “experiencing elevated disease transmission and increasing hospitalizations,”<sup>34</sup> conducting a mail-ballot election is the most responsible and appropriate method of holding an election without undue delay. Admittedly, the suggested manual election protocols outlined in GC 20-10, along with the Employer’s proposed procedures for a manual election, would reduce the risk of contracting COVID-19 if exposed to it during the election. However, even assuming these protocols could adequately be enforced without disenfranchising voters or postponing or canceling the election, there is no evidence in the record or publicly available, and backed by scientific studies, to establish that following these protocols would reduce the risk to an acceptable level under current circumstances at the location where the election would take place. To the extent that the protocols would reduce the risk, I find that the remaining risk of exposure to and of contracting COVID-19 given the current conditions in the State of California and in San Bernardino County specifically still establishes the kind of “extraordinary circumstances” that make directing a mail ballot election appropriate. Moreover, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages alternative methods of voting if allowed during this extraordinary COVID-19 pandemic.

In sum, in accordance with the Board’s duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees’ union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency’s obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

## **IV. CONCLUSIONS AND FINDINGS**

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<sup>34</sup> See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CountyMonitoringDataStep2.aspx> (last accessed August 9, 2020). See also, “Coronavirus now spreading faster in suburbs like Orange County than in L.A. County.” (July 17, 2020) *Los Angeles Times* (“The community spread has brought other grim consequences ... in San Bernardino County, the number [of its hospitalized patients with confirmed coronavirus infection] has more than quadrupled ...,” and noting that San Bernardino County’s number of new COVID-19 cases over the preceding 14 days per 100,000 residents increased from 222 on July 1 to 408 on July 15). <https://www.latimes.com/california/story/2020-07-17/coronavirus-is-now-spreading-faster-in-the-suburbs-than-in-la-county> (last accessed August 9, 2020).

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>35</sup>
2. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or other bar, to this proceeding.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated and I find that the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and regular part-time dockworkers, quality coordinators, yard hostlers, and dock trainers employed by the Employer at its Fontana, California facility.

**Excluded:** All other employees, drivers, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act, as amended.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 60 employees.

### **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 **TEAMSTERS LOCAL 63**.

#### **A. Election Details**

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<sup>35</sup> The Employer, Daylight Transport, LLC, a California limited liability company, with a place of business in Fontana, California, the only location in this matter, is an expedited less-than-truckload (LTL) carrier of general freight commodities. During the past 12 months, a representative period, the Employer purchased and received goods, at its Fontana, California location, valued in excess of \$50,000 directly from points outside the State of California.

For the reasons I have explained above, the election will be conducted by mail.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **5:00 p.m. on Wednesday, August 19, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 31. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Wednesday, August 26, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310) 235-7352 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

The returned ballots must be received by the Region 31 office by **5:00 p.m. on Wednesday, September 9, 2020**. All ballots will be commingled and counted by the Region 31 office at **2:00 p.m. on Friday, September 11, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

## **B. Voting Eligibility**

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, August 8, 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 by mail as described above.

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 **Friday, August 14, 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.** The Petitioner has waived its right to possess the voter list for 10 days prior to the date of the election and waives its right to file objections over this issue.<sup>36</sup>

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](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

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

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

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

#### **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 in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. English and Spanish-language versions of the Notice of Election will be sent by the Region separately. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates

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<sup>36</sup> Although the Stipulation erroneously refers to the waiver in relation to "the date of the hearing," the Region has confirmed with the Petitioner that it is waiving its right to have the voter list for 10 days prior to the date of the election.

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 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.

**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](http://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](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, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. 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.

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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 at Los Angeles, California this 12th day of August 2020.

*Mori Rubin*

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