

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

**OZARK AUTOMOTIVE DISTRIBUTORS, INC.
DC¹**

Employer

and

Case 10–RC–263025

**TEAMSTERS LOCAL 391 AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

On July 13, 2020,² Petitioner Teamsters Local 391 affiliated with International Brotherhood of Teamsters filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of Employer Ozark Automotive Distributors, Inc. DC, at its distribution center located at 4750 McConnell Center Drive in Greensboro, North Carolina. A hearing officer of the National Labor Relations Board conducted the hearing in this matter via videoconference on August 4. The parties timely submitted post-hearing briefs, which I have carefully considered.

The sole issue in this matter is whether, given the constraints of the COVID-19 pandemic, to conduct an election only by mail balloting or by a mix of mail balloting and manual balloting. The Employer contends that, by taking certain precautions, the Board may safely conduct a mixed mail-manual ballot election. Although the Petitioner originally agreed with the Employer that a mixed mail-manual ballot election is appropriate, in a post-hearing submission, it changed its position and now contends that the election must be conducted solely by mail.³ Pursuant to the

¹ I have corrected the Employer's name to conform with the parties' stipulation in Board Exhibit 2.

² All dates are for the year 2020.

³ On August 13, 2020, the Petitioner filed an Emergency Motion to Amend and Supplement Post-Hearing Brief, in which it made certain representations and asked to change its position from supporting in most respects the Employer's contention that the election should be a mixed mail-manual ballot election to its contention that only a mail-ballot election is appropriate. In its Motion, the Petitioner represented, among other things, that a manager had tested positive for COVID-19. On August 18, the Employer filed a response to the Motion in which it identified the manager and the date on which that individual tested positive. The Employer contends that, if I were to grant Petitioner's Motion, I must reopen the record for additional evidence. I find that the evidence obtained is sufficient and that the represented facts, if true, do not warrant reopening the record.

provisions of Section 3(b) of the Act, the Board has delegated the authority to decide this matter to me.

Having considered the parties' positions and the entire record, I am directing this election to be conducted only by mail ballot. To give context for my discussion of this matter, I begin with facts relating to the Employer's operations and the petition. I then review Board law on election methods and recent cases arising during the COVID-19 pandemic. Next, I summarize the parties' positions. Following those summaries, I discuss the application of Board law to the facts of this case. Finally, I conclude with my findings.⁴

II. FACTS

The Employer is a Missouri corporation with an office and distribution center located at 4750 McConnell Center Drive in Greensboro, North Carolina. From this location, the Employer distributes automotive after-market parts, tools, supplies, equipment, and accessories to retail outlets.

The Petitioner seeks to represent a unit of all full-time DOT Route Drivers employed by the Employer at its Greensboro distribution center, excluding all City/Counter Drivers, office clerical employees, all other team members, managers, guards, and supervisors within the meaning of the Act. There are approximately 72 drivers in the petitioned-for unit.⁵

At hearing, the Employer's regional distribution center director testified DOT Route Drivers fell into one of three types: route drivers, relay drivers, or satellite drivers. Route drivers physically report to the Greensboro distribution center for work every day before making deliveries to retail stores. Relay drivers deliver the Employer's goods to its satellite locations, and they may also make deliveries to retail stores. According to the director, "some" relay drivers physically report to the distribution center on a daily basis. Satellite drivers essentially do the same work as route drivers, but they report to the satellite locations instead of the distribution center to pick up the goods to be delivered to stores.

Accordingly, I deny Petitioner's Motion except to record its change in position on the nature of the election it seeks.

⁴ As to preliminary matters, the parties stipulated that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, the Petitioner is a labor organization within the meaning of the Act, and that the petitioned-for unit is an appropriate unit. The parties have also stipulated that there is no contract bar or other bar in existence that would preclude the processing of this petition.

⁵ At hearing, the Employer's counsel stated that Employer has employed 71 or 72 DOT Route Drivers since March. The Employer's regional distribution center director testified that the Greensboro distribution center has a budget for 73 drivers.

III. BOARD LAW & RECENT CASES

It is well settled that the Board leaves decisions on the mechanics of an election, including the method, to the discretion of its Regional Directors. *Ceva Logistics US*, 367 NLRB 628, 628 (2011), and cases cited in that decision. In *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), the Board articulated certain guidelines for its Regional Directors to consider when deciding whether to conduct a mail-ballot election:

[T]he Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are “scattered” because of their job duties over a wide geographic area; (2) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

In addition to the above, the Board recognized that its Regional Directors may consider “other relevant factors,” and that “extraordinary circumstances” may permit a mail-ballot election for reasons other than those the Board explained in its guidelines. *Id.*

Although the Board has expressed a general preference for manual balloting, it has never hesitated to ballot by mail when the circumstances warrant it. Indeed, the Board’s preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees’ representational desires. The Board noted as follows in *London’s Farm Dairy*, 323 NLRB 1057 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

Id. at 1058.

Additionally, the Board has recently denied employers’ requests for review in other cases regarding Regional Directors’ decisions on the method for elections. In each of the cases listed below, the Board noted that the COVID-19 pandemic presented extraordinary circumstances warranting a mail-ballot election. The Board also noted in each of these cases that it “will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.”

1. In *Pace Southeast Michigan*, Case 07–RC–257046 (August 7, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer proposed holding the election in large room with markings for social distancing, and providing plexiglass dividers, personal protective equipment, and hand sanitizer.
2. In *Sunsteel LLC*, Case 19–RC–261739 (August 4, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer proposed a voting area with separate entrances for entering and exiting; floor markings for foot traffic and for social distancing; scheduled release times for voters; sufficient spacing for safe distancing between the voting booth and the separate tables for the Board agent, observers, and ballot box; plexiglass barriers; and cleaning consistent with guidelines established by the Centers for Disease Control and Prevention, or CDC.
3. In *Brink’s Global Services USA*, Case 29–RC–260969 (July 14, 2020), the Board denied review of that Regional Director’s decision to conduct a mail-ballot election, even though the employer represented that it could provide a clean, safe polling place; protective equipment, such as masks and gloves; and sufficient space for social distancing.

IV. THE PARTIES’ POSITIONS

A. The Employer’s Position

The Employer requests a mixed mail-manual ballot election for the petitioned-for drivers. The Employer asserts that, on a daily basis, about two-thirds of the 72 drivers report to the Greensboro distribution center, and that these drivers should vote manually. For the remaining one-third, the Employer asserts that they do not regularly report to the distribution center, and so they should vote by mail ballot.

For the manual balloting, the Employer requests an election to be held in its main training/meeting room at its distribution center on Thursday, August 27, or another Thursday after. The Employer notes that Thursdays are best due to its high operational demands on days earlier in the week and the low likelihood for higher voter turnout on Fridays. The Employer proposes one block of time for voting to occur between 7 p.m. and 10 p.m.

With respect to safeguards to combat the possible spread of novel coronavirus during the manual portion of an election, the Employer has noted the following:

- all individuals will wear face masks;
- face shields will be available to the Board agent and observers;

- before entering the building, voters will be screened, which will include a temperature check and asking the voters a series of questions to discern their potential risk of infection;⁶
- voters will use a separate entrance at the front of the distribution center to allow them to enter the building closer to the voting area;
- the Employer will place stickers on the ground to direct the flow of foot traffic and to direct individuals on where to stand;
- the main training/meeting room is approximately 1,500 square feet (32 feet by 48 feet), and is large enough to allow for social distancing;
- the hallway/foyer area outside the training/meeting room is sufficiently spacious to allow voters to social distance while waiting their turn to vote;
- voters will use separate doorways to enter and exit the room;
- the Employer will provide individual tables for each observer and Board agent, and the tables will each be separated by at least 7 feet;
- each voter will receive a new pencil for voting, as well as wipes, tissues, and hand sanitizer; and
- for the pre- and post-election conferences, only two representatives from each party will be present.

Specific to the third bullet point above, the screening of voters, the Employer takes the position that this screening should be done by a supervisor or manager. The Employer argues against the Petitioner’s proposal to have a second observer for the Petitioner present for the screening. In so arguing, the Employer states that the Petitioner may file objections to any perceived improper conduct arising during the screening process.

In detailing the above procedures, the Employer states that these measures, at minimum, fully comply with the provisions set forth in GC Memorandum 20-10 on “Suggested Manual Election Protocols,” as well as any additional preventative measures recommended by the CDC.⁷

Aside from the safety measures the Employer plans to take for a manual election, the Employer has presented extensive evidence with respect to its early and continuing efforts to

⁶ At hearing, the Employer’s vice president of treasury and government affairs testified to the specific screening questions that management asks its employees before they enter the distribution center. Those questions include the following:

- Have you traveled?
- Have you been exposed to someone else with COVID?
- Have you experienced within the past 14 days any of these particular symptoms?

⁷ The Employer points specifically to the CDC’s recommendations on its website at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

proactively guard against the impact of the novel coronavirus and its disease, COVID-19. In early March, the Employer formed a preparedness committee, and it quickly adopted CDC guidance as the benchmark for its own programs to mitigate the risks and impact of COVID-19. The Employer has implemented many safeguards, which include, among others, the following: requiring masks at all times, mandatory social distancing in all work and break areas, cleaning at least every four hours, and hand sanitizer at multiple locations through the distribution center. At hearing, the Employer noted that none of the employees in the petitioned-for unit had tested positive for COVID-19, and only 9 employees had tested positive out of the approximately 600 employees who had worked at the distribution center from March until the date of the hearing.⁸

In opposition to the prospect of an election conducted solely by mail ballot, the Employer asserts that Board caselaw favors a mixed mail-manual ballot election in this case. Citing to *San Diego Gas*, the Employer argues that mail balloting is appropriate for the one-third of employees scattered due to their physical locations. For the other two-thirds employees who report to the distribution center every day, the Employer states that they are not scattered in location or time, nor are they involved in a strike, lockout, or picketing.

Noting that the Board in *San Diego Gas* also provided for mail-ballot elections under “extraordinary circumstances,” the Employer also argues that its proposed procedures for a manual election, as well as its track record of implementing safeguards at its distribution center, warrant a mixed mail-manual ballot election.

Additionally, the Employer points to the dissenting Board members’ opinion in *San Diego Gas*, in which those dissenting members state that average voter participation in mail-ballot elections is lower than in manual elections. *San Diego Gas*, 325 NLRB at 1151.

More generally, the Employer quotes the Board’s decision in *Mission Industries*, 283 NLRB 1027 (1987), for the proposition that mail-ballot elections are “more vulnerable to the destruction of laboratory conditions.” *Id.* at 1027. The Employer also points to *Thompson Roofing*, 291 NLRB 743, (1988), stating that only manual balloting allows for a Board agent to personally oversee the election, protect ballot secrecy, guard against partisan influence, and otherwise uphold the integrity of the process. *Id.* at 743 fn. 1.

B. The Petitioner’s Position

In its post-hearing brief, the Petitioner agreed with the Employer that the election in this case should be a mixed mail-manual ballot election. As indicated above, the Petitioner thereafter changed its position and argues that only a mail-ballot election is appropriate.

⁸ The record contains no details as to when the nine cases of COVID-19 occurred at the Employer’s distribution center. Aside from not being any of the employees in the petitioned-for unit, the record also lacks details as to which positions those nine employees held and with whom they had regular contact.

V. DISCUSSION

Although the Board’s longstanding policy favors manual elections, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. NLRB Casehandling Manual Part Two Representation Proceedings, Sec. 11301.2. As explained above, this includes four specific situations addressed by the Board: when voters are “scattered” over a wide geographic area; when voters are “scattered” in time due to their schedules; when voters are involved in strikes, lockouts, or picketing; and in situations involving extraordinary circumstances. *San Diego Gas*, 325 NLRB at 1145. The issue in the present matter deals with two of these situations: whether voters are geographically scattered and whether the public health concerns presented by the COVID-19 pandemic constitute extraordinary circumstances.

As further discussed below, I find that the continuing COVID-19 pandemic constitutes such extraordinary circumstances warranting a mail-ballot election in this case.

A. **Geographic Scattering of Some Drivers**

Although I ultimately find that a mail-ballot election is appropriate due to the COVID-19 pandemic, I address the Employer’s proposal that two-thirds of petitioned-for unit vote by mail. Here, the record is insufficient with respect to the geographic scattering of some of the drivers. The Employer states in its position statement that its satellite drivers do not report to the Greensboro distribution center on a daily basis. However, the Employer has provided no details as to the satellite locations to which those drivers report for work. Additionally, as the Employer’s regional distribution center director testified, some of the relay drivers also do not report to the distribution center on a daily basis, and the record similarly lacks details as to these drivers’ locations.

While the lack of these details would usually constitute sufficient reason to reopen the record, I find this unnecessary for this case. Here, my determination with respect to the extraordinary circumstances warranting a mail-ballot election moot the need pass on the geographic scattering of the satellite drivers and some of the relay drivers.⁹

B. **The Employer’s Caselaw**

Turning to the Employer’s cited Board cases, I find the Employer’s legal arguments unpersuasive. With respect to *San Diego Gas*, the Employer’s reliance on one aspect of the dissenting Board members’ opinion in that case—that mail-ballot elections result in lower voter turnout than manual elections—ignores two important points: first, the majority in *San Diego Gas* provided a response to the dissent; and second, the Board has never overturned the majority holding in that case. On the former point, the majority in *San Diego Gas* stated that

⁹ Additionally, because I am ordering a mail-ballot election in this case, I find it unnecessary to pass on the parties’ disagreement regarding the presence of a second observer for the employee screenings that would take place during a manual election.

because mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections.

San Diego Gas, 325 NLRB at 1146. Given the constraints of the current pandemic, in which many federal, state, and local governments have cautioned individuals against unnecessary travel,¹⁰ I find that the present case is of the type contemplated by the majority in *San Diego Gas*.¹¹

Regarding the Employer’s reliance on *Mission Industries*, the Employer reads its cited portion of this case in isolation. In *Mission Industries*, the Board considered objections in a mail-ballot election where an envelope identification stub was missing. The full sentence for the Employer’s quoted text in *Mission Industries* is as follows:

As noted in *Brink’s Armored Car*, 278 NLRB 141 (1986), mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections, due to the absence of direct Board supervision over employees’ voting.

Mission Industries, 283 NLRB at 1027. The Board immediately followed this by noting that it had developed procedures to combat that vulnerability:

Accordingly, the Board has adopted mail ballot election procedures, including the use of an identification stub, designed to preserve the integrity of the election process and to ensure that no reasonable doubt is raised about the fairness or validity of that process.

Id. Read in context, the Board effectively stated that its procedures for mail-ballot elections combat any vulnerabilities posed by the absence of Board supervision at the time employees cast their votes. Consequently, I find the Employer’s reliance on *Mission Industries* to be misplaced.

Similarly, the Employer’s isolated reading of one section of *Thomas Roofing* ignores the Board’s full message in that case. In citing to *Thompson Roofing*, 291 NLRB at 743 fn. 1, the

¹⁰ For example, the CDC’s webpage on “Travel during the COVID-19 Pandemic” states, “Travel increases your chance of getting and spreading COVID-19. **Staying home is the best way to protect yourself and others from COVID-19.**” (Emphasis in original.) See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html> (last visited August 16, 2020).

¹¹ The Employer also cites to *Shepard Convention Services, v. NLRB*, 85 F.3d 671 (D.C. Cir. 1996). The Board is not bound precedentially by decisions of the Courts of Appeals. However, in as much as *Shepard Convention* supports the argument that manual ballots encourage greater voter participation than mail-ballot elections, I rely on my discussion of the Board majority’s reasoning in *San Diego Gas* to support my finding that a mail-ballot election is warranted in this case.

Employer states, “the Board explained that manual balloting alone enables the agency to personally preside over the election, protect ballot secrecy, guard against partisan influence, and otherwise take the steps necessary to uphold the integrity of the representation process.”¹² However, the Board makes no such sweeping declarations in that case. In *Thompson Roofing*, the Board adopted a Regional Director’s report and recommendation concerning determinative challenges. In discussing one of those challenges in footnote one of its decision, the Board stated its agreement with the Regional Director that the Board agent appropriately voided a mail ballot for which the voter had printed his name, rather than signing it, on the return envelope. Echoing its decision in *Mission Industries*, the Board reaffirmed its mail-ballot elections procedures, stating that the procedures “are necessary because mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over the employees’ voting.” *Thomas Roofing*, 291 NLRB at 743 fn. 1. Again, I find the Employer’s reliance on its chosen caselaw to be misplaced.

C. The Prevailing Circumstances of COVID-19 in Guilford County, North Carolina

North Carolina Governor Roy Cooper issued Executive Order No. 116 on March 10, which placed the State of North Carolina under a state of emergency due to the COVID-19 pandemic.¹³ On March 27, Governor Cooper issued Executive Order No. 121, which included a stay-at-home order.¹⁴ By May 5, North Carolina had developed a three-phased approach to lifting restrictions in place to slow the spread of COVID-19, and the state entered Phase 1 under Governor Cooper’s Executive Order No. 138. In entering Phase 1, Governor Cooper modified the stay-at-home order to allow for additional activities outside the home while still observing certain recommendations to promote social distancing and reduce transmission.¹⁵ Subsequently, Governor Cooper issued Executive Order No. 141 on May 20, in which he lifted the stay-at-home order and moved the state to Phase 2. Under Phase 2, restrictions on mass gatherings were eased such that indoor gatherings could have no more than 10 people together, and outdoor gatherings could have no more than 25 people together. Despite its progress through May, North Carolina stills remains at Phase 2. Executive Order No. 151, issued July 16, extended Phase 2 until August 7; and Executive Order

¹² Emp. Br. at 8.

¹³ I have taken administrative notice of all executive orders cited in this decision.

¹⁴ The initial stay-at-home order allowed travel only for “Essential Activities.” As defined in Executive Order No. 121, essential travel was allowed for the following reasons: for health and safety, for necessary supplies and services, for outdoor activity, for certain types of work, to take care of others, to travel to places of worship, to receive goods and services, and to travel between places of residence.

¹⁵ Executive Order No. 131 made the following recommendations: maintain six feet social distancing from others, except for family or household members; wear a face covering in all public spaces, as well as outdoors when social distancing is not possible; carry and use hand sanitizer frequently; wash hands as frequently as possible; regularly clean high-touch surfaces; stay at home if sick.

No. 155, issued July 16, extended Phase 2 until September 11. Notably in Executive Order No. 155, Governor Cooper stated that “North Carolina’s daily case counts of COVID-19, the percentage of COVID-19 tests that are positive, emergency department visits for COVID-19-like illnesses, and hospitalizations for COVID-19 are no longer increasing, but remain at a high level.”

As of the writing of this decision, North Carolina’s Department of Health and Human Services reports 142,952 lab-confirmed cases of COVID-19 in the state,¹⁶ with 2,347 deaths resulting from the disease.¹⁷ Guilford County, where the Employer’s distribution center is located, accounts for 5,959 of those cases and 158 of those deaths. Of the 100 counties in North Carolina, Guilford County has the fourth largest amount of cases and the third largest amount of deaths.¹⁸

Specific to the Employer’s operations in Guilford County, I am troubled by the nine positive COVID-19 cases at its distribution center. As noted above at footnote eight, other than the fact that none of the petitioned-for drivers were among the nine individuals who tested positive, the record contains no additional details as to when the afflicted individuals contracted the disease, the positions held by those individuals, or with whom those individuals had contact. Although the Employer has proposed screening questions to assess employees’ risk for possibly having contracted COVID-19, the usefulness of such screening questions is debatable based on the CDC’s assessment of transmission of COVID-19 in non-symptomatic individuals. The CDC has stated that its “current best estimate” is that 50 percent of COVID-19 transmission occurs prior to the onset of symptoms, and that 40 percent of people with COVID-19 are asymptomatic. However, the CDC also recognizes that these estimates remains uncertain.¹⁹ In a state that continues to experience high levels of COVID-19 cases and emergency department visits for COVID-19-like illnesses, as is the case in North Carolina, the CDC’s data on transmission of this illness without symptoms is troubling. When adding to those troubles the uncertainty around the nine individuals at the Employer’s distribution center who tested positive for COVID-19, I find that only a mail-ballot election sufficiently assuages these serious health concerns.

D. The Election Method for this Case

Based on all the above, I find that the ongoing COVID-19 pandemic presents extraordinary circumstances warranting a mail-ballot election. Although I commend the Employer’s early and

¹⁶ See <https://covid19.ncdhhs.gov/dashboard> (last visited August 16, 2020).

¹⁷ See the NCDHHS website cited above in fn. 16.

¹⁸ See the NCDHHS website cited above in fn. 16. The counties with greater numbers of COVID-19 cases are Mecklenburg (23,110 cases), Wake (12,714 cases), and Durham (6,409 cases). The counties with greater numbers of COVID-19 related deaths are Mecklenburg (257 deaths) and Wake (182deaths). I find the ratio of deaths to positive cases in Guilford County to be alarming when compared with the counties that have a larger number of cases.

¹⁹ “COVID-19 Pandemic Planning Scenarios,” updated July 10, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last visited August 16, 2020).

continuing efforts in protecting its employees while providing its essential services to the public and its customers, and while I also fully appreciate the Employer’s willingness to take certain steps in attempting to reduce the risk of COVID-19 transmission, I am not sufficiently satisfied that the risk posed by COVID-19 is sufficiently ameliorated by the Employer’s proposal. Here, I find that a mail-ballot election, which removes the need for any person-to-person contact, is the safest election method for all involved parties.

VI. CONCLUSION

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time DOT Route Drivers employed by the Employer at its facility located at 4750 McConnell Center Drive, Greensboro, North Carolina, excluding all City/Counter Drivers, office clerical employees, managers, guards, and supervisors within the meaning of the NLRA, as amended, and all other team members.

VII. 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 391 affiliated with International Brotherhood of Teamsters.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. The National Labor Relations Board, Region 10 will mail ballots to voters at 2:00 PM on **Wednesday, September 9, 2020**. After receiving their ballots, voters who wish to vote must appropriately mark their ballots and return them in the provided return envelopes. Voters must sign the outside of the envelope in which they return their ballots. Any ballot received in an unsigned envelope will automatically be void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 10, Subregion 11 office by close of business on **Thursday, September 30, 2020**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, September 18, 2020, should communicate immediately with the National Labor Relations Board by either calling the Subregion 11 Office at (336) 631-5201 and asking to speak with Board Agent Ingrid Jenkins or the Information Officer of the Day, or calling our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities, including but not limited to safer-at-home orders, travel restrictions, social distancing, and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually on **Thursday, October 1, 2020** beginning at 10:00 AM. The count will take place virtually on a platform (such as Skype, Zoom, or WebEx) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those unit employees who were employed by the Employer during the payroll period ending **Saturday, August 15, 2020**, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike that 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 service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility; (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(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional director and the parties by **Thursday, August 20, 2020**. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.

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

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

Failure to comply with these 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. Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on Thursday, September 3, 2020**. If the Employer does not receive copies of the notice by **Wednesday, September 2, 2020**, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on non-posting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. If special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

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, 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 18, 2020



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