

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

TREDROC TIRE SERVICES, LLC,

Employer,

and

Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

**TREDROC’S REQUEST FOR REVIEW OF REGIONAL DIRECTOR’S
DECISION AND DIRECTION OF ELECTION AND REQUEST FOR
IMMEDIATE STAY OF MAIL BALLOT ELECTION**

Pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, Tredroc Tire Services, LLC (“Tredroc” or the “Employer”) requests immediate review of the Decision and Direction of Election (the “Decision”) issued by the Regional Director (“RD”) for Region 13 on August 12, 2020 requiring a thirteen (13) person voting unit to vote by mail.¹

This request is not undertaken lightly given the current pandemic, but it is clear the RD believes, contrary to the guidance provided in GC-20_10, that **no** manual elections can be safely conducted (regardless of the size of the unit, the locality, and protections undertaken) and that GC-20-10 can be ignored by the Region because it has not been formally adopted by the Board. Moreover, in reaching his decision, the RD ignored the Employer’s proposed election plan, as the decision fails to even assess the many safety protections included in that plan. Indeed, it appears

¹ The Decision and accompanying letter from the acting Regional Director are attached as Exhibit A.

that the RD had already drafted a decision ordering a mail ballot election, and simply waited for the Employer to file its post-hearing brief before issuing a rote decision rejecting a manual election.

In addition, in the RD ignored, without explanation, the parties' express agreement that the election not be conducted until August 21 at the earliest, as well as the Employer's request that balloting be conducted on August 28 if the Region were to order a mail ballot election.² Last but not least, the RD's Decision effectively bars the Employer from conducting group meetings with employees as of 5:00 p.m. August 18, whereas the Union is free (despite the pandemic) to meet with individuals and groups of employees through mid-September when the mailed ballots must be returned. Accordingly, the Employer respectfully requests review of the RD's decision, and also moves the Board to stay the election pending its review of this matter. As set forth in greater detail below, the RD abused his discretion in ordering a mail ballot election to take place beginning Wednesday, August 19, with ballots being returned September 14. Therefore, the Employer respectfully requests that the Board grant this Request for Review. The Employer further requests that the Board immediately stay the distribution of mail ballots scheduled to commence on August 19, 2020, as ordered by the RD until this Request for Review is considered or granted.

OVERVIEW

This case presents a compelling opportunity for the Board to confirm that—even during the COVID-19 pandemic—a manual election, the method the Board has long preferred, is appropriate under the right circumstances. The RD cites general concerns about the COVID-19 pandemic, but pays very little attention to the circumstances of *this particular case* that weigh in

² The petition filed by Petitioner expressly requested a manual election. As set forth in greater detail below, the Petitioner apparently changed its mind, and requested a mail ballot election less than 24 hours before the R-case hearing in this matter, but has never amended the petition to request a mail ballot election. Accordingly, the Employer also requested that the Region dismiss the petition if a mail ballot election was to be ordered, which would have permitted the Petitioner to request a mail ballot election with a properly filed petition. The Regional Director ignored this request as well.

favor of conducting a manual election. The RD's decision orders a mail ballot election, a departure from officially reported Board precedent favoring manual elections. *See San Diego Gas & Electric*, 325 NLRB 1143 (1998).

There may be some cases where the COVID-19 pandemic justifies a mail ballot election, but this is not one of those cases. The Regional Director has ordered a mail ballot election in this case featuring a small voting group of 13 employees who are deemed "essential" workers, and therefore have been reporting to work at the Employer's facility for weeks during the COVID-19 pandemic. These employees have been able to report to work on a daily basis and maintain a safe and sanitary environment—indeed, there have been no confirmed COVID-19 cases at the Employer's Elk Grove Village facility that is subject to the petition. Moreover, the Employer has gone beyond what the General Counsel recommends in his Memorandum 20-10 in creating a detailed plan to make sure the election is conducted as safely as possible. In addition, suburban Cook County, Illinois, where the Employer's facility is located, continues to maintain COVID-19 infection levels well below the State of Illinois' targets.

The Regional Director barely mentioned any of these facts in his Decision. "A Regional Director's discretion...is not unfettered." *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). To that end, the RD should at least be required to seriously weigh the facts and compelling Board policy when making determinations in election matters. Instead, in this case, the RD focuses exclusively on the "extraordinary" circumstances of the COVID-19 pandemic in ordering a mail ballot election, but gives almost no consideration to the Board's preference for manual elections, the General Counsel's efforts to balance safety and the Board's preference for manual elections as set forth in GC Memo 20-10, or the particular facts of the voters' situation in this case that make a manual election feasible and preferable, even in the midst of the COVID-19 pandemic. Such a

failure to take all considerations seriously into account, and to privilege one such consideration at the expense of others, is an abuse of discretion.

PROCEDURAL BACKGROUND

Petitioner filed the petition at issue in this case on July 15, 2020,³ seeking to represent thirteen (13) Tredroc tire technicians at its Elk Grove, Illinois facility. [Exhibit B – Petition]. Petitioner requested a manual election, and as of Friday, July 31, Petitioner maintained its support for a manual election in accordance with traditional NLRB protocols. To that end, and at the request of the Region, the Employer submitted a detailed election plan (that originally included two different voting options) to meet the Region’s request for a safely conducted manual election. [See Exhibits D-1, D-2, and D-3].⁴ Upon being advised by the Region that it considered the protocols issued by the General Counsel in Memorandum 20-10 (“GC Memo 20-10”) to be “minimum” safety protocols, Tredroc submitted a revised plan that *exceeded* those protocols on July 31. The safety protocols include:

- A 90-minute voting period (or 120-minute voting period as discussed at the hearing [Ex. C – Aug. 4 Hearing Transcript, pp. 21-22], for a total of 13 possible voters. This gave each voter at least a 7-minute window to go through the balloting area and ample time for appropriate sanitary measures.
- The proposed release of voters in groups of 3 every 15 minutes during this voting period to cast their ballots, with reminders to all employees at the 60- and 75-minute marks that the polls remained open for 30 and 15 minutes respectively. [Ex. D-1].
- 5 separate tables, located more than 6 feet apart, for voting, the ballot box, the NLRB agent, and two observers – protected by Plexiglas shields. [Exs. D-1, D-2, and D-3].

³ All dates are 2020 unless otherwise stated.

⁴ Exhibit D is the Affidavit of the Employer’s Director of Operations, Gil Applegate. There are 4 attachments that are identified in Exhibit D. These attachments will be referenced as “Ex. D-1,” Ex. D-2,” Ex. D-3,” or Ex. D-4” in accordance with how they are identified in the Affidavit. The paragraph numbers of the Affidavit will simply be referenced as “Ex. D ¶ __.”

- A one-way walkway that assured participants of social distancing, with all eligible employees and election participants also wearing face coverings. [Exs. D-1, D-2, and D-3].
- The certifications required by GC Memo 20-10. [Ex. D-1].

Later that day, the Region requested information about the ventilation systems where the election would take place, specifically wanting to know whether the Employer had conducted inspections of the system to ensure they comply with current standards. The Employer subsequently had the ventilation system cleaned and inspected, and confirmed that it complies with ASHRAE standard 180-2018, as the Region requested. [Exs. D ¶10 and D-4]. The Region never advised the Employer that its plans to safely conduct a manual election did not meet or exceed the specifications outlined in GC Memo 20-10.

However, around noon on Monday, August 3, counsel for the Employer was informed that Petitioner had “changed its mind,” and was requesting a mail ballot election. At the hearing, which took place the next morning, the only bases for this change of heart articulated by Petitioner were vague concerns of: (1) an “uptick” in community spread of COVID-19 in Chicago; and (2) unidentified potential “interference” with laboratory conditions. [Ex. C, pp. 16-17]. For example, Petitioner articulated concerns about employees “standing in line”. [*Id.*, p. 17]. The Region would not allow the Employer to submit evidence, including its written plan, diagrams of the voting area, and photographs of the voting area, demonstrating its compliance with GC Memo 20-10. [*Id.*, pp. 12-13]. The Employer submitted its nine page post-hearing brief to the Region late in the afternoon on Tuesday, August 11, articulating the reasons why a mail ballot election would not be appropriate. [Ex. E – Employer’s Post-Hearing Brief].

Less than 24 hours later, on the afternoon of Wednesday, August 12, the Employer received the Regional Director’s decision ordering a mail ballot election, along with an 8-page single-

spaced letter purporting to explain why a mail ballot was required in this particular case. [Ex. A]. Although the decision contains multiple references, it is clear the decision had been pre-generated, with the Region occasionally updating existing health statistics. For example:

- Page 3 and Footnote 10 of the RD’s letter ordering a mail ballot election contains a link to the Cook County Board of Health’s COVID-19 Surveillance Data) and cites to 106,736 positive cases of COVID-19, with new infections rising in Cook County. In fact, clicking on the link in Footnote 10 establishes suburban Cook County has approximately 45,000 COVID-19 cases (excluding Chicago), and that the 7-day moving average has been trending down in August. Suburban Cook County is where the election would take place. Only one of the thirteen (13) voters lives in Chicago (which has a higher number of cases). (See Ex. A, RD Letter ordering mail ballot, p.3 n.10)
- The RD’s letter also cites to “new” restrictions imposed by the Mayor of Chicago. However, Chicago remains at Phase 4 re-opening, with restaurants and gyms remaining open (with some limitations). (See Ex. A, p.3).

The RD’s letter then proceeded to recite other general safety concerns (such as the virus being spread by respiratory droplets) and their being potential for voters being in line, while ignoring the fact that the observers and participants would be wearing CDC-approved face coverings, with the observers and NLRB agent also protected behind Plexiglas shields, and the voting times and number of voters and proposed release schedule ensured that social distancing protocols could be followed effectively. Relying on these generalized safety concerns, the RD then ordered a mail ballot election. (See Exhibit A, RD’s Letter).

STANDARD

In *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Board affirmed its “longstanding policy” that representation elections should generally be conducted manually. *Id.* at 1144. This is because of the recognized “value of having a Board agent present at the election,” as well as empirical evidence showing that the voter participation rate is generally higher in elections conducted manually than in mail ballot elections.” *Id.* at 1146. Because of this strong preference for manual elections, the *San Diego Gas & Electric* Board articulated only three specific scenarios

where Regional Directors should consider mail ballot elections: where the voters are scattered; where the voters' schedules are scattered; and situations where there is an ongoing strike or lockout. *Id.* at 1145. Otherwise, it is only in "extraordinary" situations that Regional Directors should consider mail ballot elections.

As to the applicability of the "extraordinary" situations language to the COVID-19 pandemic, the Board noted in a recent case that it "would 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." *Sunsteel, LLC*, 19-RC-261739 (Aug. 4, 2020). The RD in this case failed to take into account the particular circumstances prevailing in the Employer's area, and simply ignored GC Memo 20-10. His failure to do so constitutes an abuse of discretion which provides appropriate grounds for the Board to grant this Request for Review.

ARGUMENT

A. The Decision Fails to Analyze the Particular Circumstances at the Employer's Facility, and Wholly Disregards GC Memo 20-10.

In his Decision, the RD departs from the Board's preferred method of conducting elections, *i.e.*, manually, and does not cite any of the specific reasons for a mail ballot election discussed in *San Diego Gas & Electric*. Rather, he relies upon the "extraordinary" circumstances language to find that the existence of the COVID-19 virus constitutes such circumstances, requiring a mail ballot election. Moreover, the RD ignored the safety protocols the Employer put in place to ensure a safe election, and instead focuses on general information about the virus and how it spreads. Indeed, the RD states that he "appreciates" the Employer's efforts to comply with GC Memo 20-10, but "given the current incidence of COVID-19 in our region and the substantial inevitable interaction and potential exposure associated with a manual election, the [GC Memo 20-10]

protocols do not alleviate my concerns about conducting a manual election under the current circumstances.” [Ex. A, p. 5].

With that statement, and accompanying failure to engage with the protocols as they apply to the Employer’s specific situation, the RD effectively states that the protocols specified in GC Memo 20-10 are irrelevant, and that mail ballots will be ordered for the foreseeable future, no matter what. Indeed, the RD intimates that he was not required to consider the protocols in GC 20_10, noting “the Board did not formally adopt GC 20-10…” (Ex. A, RD Letter, p. 5). The bulk of the Decision is a discussion of the history of the COVID-19 virus in Illinois, the number of confirmed cases in the Chicago area, and information about how the virus spreads. However, this information is not *particular to this case*, and, in any event, does not speak to the fact that ***the protocols outlined in GC Memo 20-10 were designed precisely to counter those very concerns.*** If the Regional Director can effectively order a mail ballot election because of non-particularized concerns about the spread of the virus—even when the Employer has exceeded the recommended protocols—then GC Memo 20-10 is rendered worthless, with manual elections effectively nullified for the foreseeable future. In other words, if the general concerns about the COVID-19 virus were not present to begin with, then there would be no need for GC Memo 20-10.

GC 20_10 was a collaborative effort between the General Counsel’s office and the Regions to develop protocols to be evaluated to determine if a manual election could be safely conducted. The Regional Director should have at least evaluated the particular facts he was confronted with in this particular case, and balance the risks, the safety precautions mitigating those risks, as well as the Board’s preference for manually conducted elections—which is a balance GC Memo 20-10 attempts to strike. Simply ignoring GC 20_10 and the Employer’s efforts to go above and beyond its recommendations was an abuse of discretion.

B. The Employer's Safety Protocols Comply with GC Memo 20-10, and a Manual Election in this Instance Presents Little, if any, Additional Risk of Exposure.

The Region's failure to deal with the facts of this particular case in ordering a mail ballot election are prejudicial, as the circumstances of this particular case make a manual election especially feasible. First, all of the eligible voters in this small unit are, and have been, regularly reporting to the facility where the election would take place exposing them to no additional risk in holding the election at the Employer's facility. Second, the Employer's safety protocols exceed what is recommended in GC Memo 20-10, further lessening any risk of exposure to the COVID-19 virus for the two (2) additional visitors to the facility on the day of the election. Finally, suburban Cook County, where the Employer's facility is located, is maintaining an infection rate well below the target rate set by Illinois Governor Pritzker, dispelling the notion of an ominous uptick in infection rates.

All but two of the parties who would be involved in a manual election are—and have been—regularly reporting to the facility where the election would take place for their jobs. All employees are socially distancing where possible, and when it is not possible, they are required to wear masks. Thus, as to all 13 eligible voters and Tredroc's observer, showing up for the election presents virtually no additional risk. [Ex. C, pp. 14-15]. *Moreover, there has not been a single confirmed case of COVID-19 at the facility. There would thus be very little risk to the Petitioner's observer and the Board agent being present on-site for, at most, a two-hour period to conduct the election in the manner that the Board has long preferred.* Additionally, as concerns the Board agent, travel should not be a real concern in this case. Tredroc's facility where the election would

take place is located in Elk Grove Village, Illinois, just outside of Chicago and within easy driving distance.⁵

Not only is there little additional risk to conducting a manual election in this instance, Tredroc has created, and is committed to following, a detailed plan—which exceeds what is recommended by GC Memo 20-10—to ensure a safe election environment. [Exs. D-1, D-2, and D-3]. Tredroc created this plan and submitted it to the Region before the Petitioner’s about-face on the manual election/mail-ballot issue. In addition to the written plan, Tredroc submitted a diagram, photographs of the election area setup, and a video walkthrough of the area showing exactly how it proposes the election to proceed. These exhibits show, among other things, separate tables for each observer, the Board agent, and the voting booth, all spaced at least 6-feet apart; Plexiglas shields in front of each observer and the Board agent; a marked path on the floor from the entrance past the Board agent, to the voting booth, and finally to a separate exit. [*Id.*]. Contrary to what the RD perplexingly claims in the Decision, the diagram and photographs show clearly that the tables are spaced at least 6-feet apart, with a walking path for the voters that is at least 6-feet away from the Board agent and the observers.

Moreover, the written plan details describe, among other things, Tredroc’s arrangements for tracking every person who enters the building where the election would take place and ensuring they have not been exposed to the COVID-19 virus for 14 days prior to the election, requiring everyone to wear CDC-approved masks and gloves, and sanitizing the voting area after each voter. [*Id.*]. The Regional Director notes in his Decision that the Employer failed to provide the Region with information about its ventilation system. However, the Region made one request for such

⁵ The Employer would also note that despite its professed concern over the increase in COVID-19 cases, Petitioner declined to state that they would refrain from individual or group meetings and/or home visits while the petition is pending.

information late in the afternoon on Friday, July 31, the last work day before Petitioner “changed their mind” about a manual election. Besides, there is no requirement regarding ventilation systems in GC 20_10. Nevertheless, the Employer’s HVAC system was professionally inspected on August 5, and it was confirmed that the system meets ASHRAE Standard 180-2018. [Exs. D ¶10 and D-4]. So as to the ventilation system, there should be no concerns. Finally, the Employer’s plan to release the employees to vote in groups of 3 every 15 minutes leaves ample time—in a group of only 13 voters in a 90 or 120-minute window—to avoid lines, remain socially distant, and for sanitation procedures to occur between voters. If there is concern about “congestion” in this case, as the Regional Director says in his Decision, then it is hard to imagine when such a concern would *not* be present.

Finally, the current situation in the Chicagoland area is not as dire as the RD would make it seem. In fact, since June 26, Illinois has been in Phase 4 out of 5 of its “Restore Illinois” plan. This means, for instance, that gatherings of up to 50 people are allowed, restaurants and bars are re-opened, and travel has resumed.⁶ In other words, Illinois is now on a much more stable footing than what it was months ago when many of the decisions ordering mail ballot elections were decided. In addition, and contrary to what Petitioner and the RD apparently believe, suburban Cook County, where Tredroc’s facility is located, is not experiencing an ominous increase in cases of the virus. As of August 13, suburban Cook County reported a 5.9% 7-day average COVID-19 test positivity rate, with increases on only 3 out of the last 10 days.⁷ Thus, suburban Cook County remains well below the state’s 8% target positivity rate and the target of less than 7 out of 10 days

⁶ <https://coronavirus.illinois.gov/s/restore-illinois-phase-4>

⁷ <https://www.chicagotribune.com/coronavirus/ct-viz-covid-19-illinois-cases-metrics-20200807-rqesiwwvjvbpshsrb73xsxmca-htmlstory.html>

of increases. In other words, a manual election can be safely conducted and the Regional Director's failure to do so was an abuse of discretion.

C. The Regional Director's Decision Ignores the Parties' Agreement for an August 21 Voting Date and Effectively Bars the Employer from Meeting with its Employees for One Month, While Permitting Petitioner to Continue Campaigning.

Prior to Petitioner's change in heart concerning a manual v. mail ballot election, the parties had agreed upon an August 21 date for the election. During the hearing in this matter, counsel for the Employer noted this agreed upon date for the election, and also requested an August 28 voting date if the Region was going to order a mail ballot election. [Ex. C, p. 16]. The Employer's reason for doing so was obvious – under *Guardsmark, LLC*, 363 NLRB No. 103 (2016), the Obama Board overturned 50 years of precedent, and held that an employer is prohibited from conducting group meetings in the 24-hour period before the ballots are mailed. If a mail ballot election was to be ordered, the Employer sought at least a reasonable amount of time to be able to discuss the election with its employees, as permitted under 8(c) of the NLRA. 29 U.S.C. § 158(c).

The RD ignored the parties' agreement, and ordered the ballots to be mailed on Wednesday, August 19, with a deadline of September 14 for the ballots to be returned without any explanation as to the basis for that decision. [Ex. A]. In doing so, and taking into account the limitations imposed by *Guardsmark, LLC*, the Regional Director effectively eliminated nearly one week for the Employer to communicate with its employees, and bars the Employer from meeting with employees for nearly one month, while permitting the Union to continue to meet with groups of employees during this same period. His failure to accommodate the parties' agreement concerning an August 21 voting date, or the Employer's request for an August 28 balloting date if a mail ballot was ordered, constituted an abuse of discretion. Moreover, the Employer respectfully

submits that the Board's previous decision in *Guardsmark, LLC*, 363 NLRB No. 103 (2016) should be overturned for the reasons set forth in Member Miscimarra's dissent in that case.

CONCLUSION

The Regional Director departed from Board precedent in ordering a mail ballot election without seriously assessing the facts of the case at hand. The phrase "COVID-19" or "pandemic" is used as a sort of rhetorical trump card, shunting aside all other considerations as not worth any consideration. The Board has long preferred a manual election because elections overseen by a Board agent are more secure, and voter turnout is maximized in manual elections. As explained above, those policy considerations were not contemplated by the Regional Director in this case. For all of the foregoing reasons, Tredroc requests that the Board grant review, vacate the Regional Director's Decision, stay the mail ballot election, and order a manual ballot election.

Dated: August 14, 2020

Respectfully submitted,



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Exhibit A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

**ANTIOCH TIRE, INC., d/b/a TREDROC TIRE
SERVICE**

Employer

and

Case 13-RC-263043

**LOCAL LODGE 701, INTERNATIONAL
ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (Act), a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

I. DECISION

No issues were raised concerning a question concerning representation.

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

Included: All full-time and regular part-time road service truck tire employees and shop tire technicians, including inside technicians, outside technicians, OTR technicians and route drivers, employed at 2450 Lunt Avenue, Elk Grove Village, Illinois 60007.

Excluded: All other employees, managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

There are approximately 13 eligible voters in the unit.

¹ Upon the entire record in this proceeding, I find:

- 1) The hearing officer's rulings made at the hearing are free from prejudicial error and are 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.
- 3) The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
- 4) The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.
- 5) 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.

II. CONCLUSION

Based on the foregoing and the entire record herein,² I find that it is appropriate to conduct an election in the unit set forth above.

III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL-CIO.

A. Election Details

I direct that the election be conducted by mail ballot. Since pursuant to the Board's Rules and Regulations, Section 102.66(g)(1), the type of election is not a litigable issue, my rationale for directing a mail ballot election is set forth in a separate letter.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 p.m. on **Wednesday, August 19, 2020**, from the National Labor Relations Board, Region 13, 219 S. Dearborn Street, Suite 808, Chicago, IL 60604. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by August 26, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Ballots will be due on **Monday, September 14, 2020**. All ballots will be commingled and counted on **Wednesday, September 16, 2020** at 10:00 a.m. via videoconference. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the weekly payroll period ending **August 9, 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

² The Employer filed a brief setting forth its arguments as to why a manual election should be conducted in this matter. However, as noted, under the Board's Rules and Regulations, the type of election is not a litigable issue.

strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(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 **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.**

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

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. 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.

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.³ 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.

Although 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, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties

³ On October 21, 2019, the General Counsel issued GC Memorandum 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

Antioch Tire, Inc., d/b/a TredRoc Tire Service
Case 13-RC-263043

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 Chicago, Illinois this 12th day of August 2020.

/s/ Paul Hitterman

Paul Hitterman, Acting Regional Director
National Labor Relations Board, Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, Illinois 60604-2027



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027

Agency Website: www.nlr.gov
Telephone: (312)353-7570
Fax: (312)886-1341

August 12, 2020

Mark L. Keenan
Barnes & Thornburg LLP
3475 Piedmont Road N.E., Suite 1700,
Atlanta, GA 30305-3327
mark.keenan@btlaw.com

William J. LePinske, Grand Lodge Representative
District Lodge 10, International Association
of Machinists and Aerospace Workers, AFL-CIO
1901 South Meyers Road, Suite 210
Oakbrook Terrace, IL 60181
wlepinske@iamaw.org

Re: Antioch Tire Inc., d/b/a TredRoc Tire
Service
Case 13-RC-263043

Dear Mr. Keenan and Mr. LePinske:

Upon an administrative investigation and after careful consideration of the circumstances in the above-captioned case where the Region has directed an election, I have determined that a secret ballot election be conducted by U.S. mail.

On April 1, 2020¹ the NLRB announced that it would not extend the suspension of elections past April 3 and would “permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors.” On July 6, 2020, the General Counsel issued Memorandum GC 20-10 providing suggested manual election protocols for Regional Directors to consider when making the decision whether to proceed with a manual or mail ballot election.

The Employer requests a manual election while the Petitioner currently requests a mail ballot election. During the administrative hearing regarding the above referenced petition, the Petitioner said that a mail ballot would be preferable to a manual ballot in part due to the increasing number of COVID-19 cases in Illinois as well as concerns with the Employer’s proposed election plan. Upon review of the state of the pandemic in the region and the proposed manual election plan, I have concluded that a mail ballot election is appropriate.

¹ All dates hereafter are in 2020.

Background

COVID-19 in Chicago and Cook County

The pandemic health situation that exists in the United States affects the way that individuals, businesses, organizations and governments conduct their daily operations. The virus that causes COVID-19 is infecting people and spreading easily from person-to-person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. The Center for Disease Control (CDC) has also issued guidelines to help respond to this emerging public health threat. This situation poses serious health risks. In guidance to employers, the CDC suggests conducting daily health checks, encouraging employees to wear masks, implementing social distancing policies and improving workplace ventilation².

On March 9, Governor JB Pritzker declared all counties in the State of Illinois disaster areas due to the outbreak of COVID-19. On March 20, in response to the rapid spread of COVID-19 throughout Illinois and for the preservation of public health and safety, Governor Pritzker issued Executive Order 2020-10 directing individuals to stay at home and imposing social distancing requirements. On April 1, Governor Pritzker issued Executive Order 2020-18 extending Executive Order 2020-10 through April 30. On April 23, Governor Pritzker announced the extension of the Stay at Home order, with some modifications, through May 30. Thereafter, the State of Illinois began a phased re-opening and has been in Phase 4 since June 26³.

Infections of COVID-19 have continued to spread in other parts of country prompting the City of Chicago to issue a quarantine order on July 2 initially covering travelers from 15 states where infection rates were greater than 15 new daily cases per 100,000 residents⁴. Cook County followed suit, issuing quarantine guidance⁵ on July 17. As of July 28, that list for both jurisdictions had grown to include 22 states mirroring a growing number of new cases nationwide.

By the end of July, COVID-19 rates of infection in Chicago and Cook County had increased to the point that local government re-imposed restrictions in the City of Chicago⁶ on July 24 and announced new restrictive guidance for Cook County⁷ on July 31. These same facts

² <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
and the State of Illinois Department of Health (IDPH) has issued its own guidelines
(<https://www.dph.illinois.gov/covid19/community-guidance/workplace-health-and-safety-guidance>)

³ <https://www.dph.illinois.gov/restore/restore-faqs>

⁴ <https://www.chicago.gov/city/en/sites/covid-19/home/emergency-travel-order.html>

⁵ July 17, Press Release "Cook County Public Health issues emergency travel guidance for travelers to suburban Cook County from COVID-19 hotspots"

⁶ https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2020/july/BACPCOVIDRestrictions.html

⁷ <https://cookcountypublichealth.org/communicable-diseases/covid-19/mitigation-guidance/>

coupled with rising rates throughout Illinois led the States of New York, New Jersey and Connecticut to impose a mandatory quarantine⁸ on all travelers coming from Illinois on July 28.

At the time of issuance of the Direction of Election there had been 194,080 positive tests for COVID-19 in the State of Illinois and 7,636 related deaths with these numbers continuing to rise daily⁹. In Cook County where the Employer is located, 106,736 people tested positive for COVID-19 and the number of new COVID-19 infections is rising¹⁰. These numbers may not be fully representative of the extent of those infected due to virus testing limitations.

Administrative Investigation and Hearing

Both the Petitioner and the Employer initially requested a manual election. The Employer submitted an election plan for administrative review that largely tracked GC Memorandum 20-10 (*hereinafter* GC 20-10). The proposal included pictures and videos as well as schematics to demonstrate entrance and exit from the polling place. The Employer plan also included an instruction that management would release the voters from the workplace in groups of 3 to cast their ballots.

There are a few concerns with the Employer's proposal. First, although it included plexiglass barriers, those barriers were too short to protect either the Board Agent or observers seated behind tables from voters walking past them. Second, it did not appear that there was six feet of separation between the observers and anyone walking by their tables. Third, the Employer's releasing plan is opposed by the Petitioner.

The COVID-19 virus spreads through airborne transmission.¹¹ To address concerns about risks of virus spread in the proposed voting facility, the Region asked the Employer to provide information about its ventilation system. This would include information about the system in place as well as steps that the Employer had taken to implement CDC guidance on using ventilation system to help reduce the risk of transmission in the workplace¹². The Employer never provided documentation regarding the type of ventilation system or whether it was following CDC guidelines in its use of the ventilation system to reduce risk of virus transmission. Without this information, the Region is unable to assess whether the air quality and circulation in the facility is safe.

⁸ <https://www.governor.ny.gov/news/governor-cuomo-announces-individuals-traveling-new-york-three-additional-states-puerto-rico-and/> <https://covid19.nj.gov/faqs/nj-information/travel-information/which-states-are-on-the-travel-advisory-list-are-there-travel-restrictions-to-or-from-new-jersey> see also <https://portal.ct.gov/Coronavirus/travel>

⁹ <https://www.dph.illinois.gov/covid19/covid19-statistics>.

¹⁰ <https://www.chicago.gov/city/en/sites/covid-19/home/covid-dashboard.html> <https://ccdphcd.shinyapps.io/covid19/>
This figure includes both Cook County and Chicago statistics.

¹¹ <https://www.who.int/news-room/q-a-detail/q-a-how-is-covid-19-transmitted> and see also, fn. 16 below and surrounding text

¹² <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

The Petitioner stated on the record that it had changed its position from manual to a mail ballot for three reasons. First, the increasing number of new COVID-19 cases in the area has made it unsafe to hold a manual election. Second, the Employer's election plan to release workers to vote made it impossible for the election to be conducted under laboratory conditions, and third, they were concerned that unit members could be called away to perform truck service work off-site during the election and not vote.

The Employer did not provide any information not already in the investigative file. The Employer argues in its Post-Hearing Brief that, 1) the NLRB has a strong preference for manual ballots, 2) the shelter-in-place orders for Cook County have been lifted and therefore the circumstances are no longer extraordinary, and 3) its submitted election plan complies with all of the requirements of GC 20-10 and there have been no reported COVID-19 cases at the facility where the election would be held.

Agency Authority

The Board's longstanding policy is that representation elections should, as a general rule be conducted manually. The Board has also recognized, however, that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done. NLRB Casehandling Manual (Part Two) Representation Procedures Sec.11301.2 (Casehandling Manual)¹³. In *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), the Board set forth several types of conditions favoring mail-ballot elections, including situations where eligible voters are "scattered," either geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. Finally, the Casehandling Manual and the Board's decision in *San Diego Gas* recognize there may be "extraordinary circumstances" under which other relevant factors should be considered by a Regional Director.

Recently, on July 14, the Board denied a request for review of a mail-ballot determination in the context of the COVID-19 pandemic (*Brink's Global Services USA, Inc.*, Case 29-RC-260969). The Board found the COVID-19 pandemic to be "extraordinary circumstances" as contemplated by *San Diego Gas* in footnote 2 of its Order. The Board did not formally adopt GC 20-10, noting simply: "The Board will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the

¹³ I note the provisions of the Manual are not binding procedural rules; the 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).

election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.”¹⁴

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.

As the Board made clear in *Brink’s Global Services USA, Inc.*, Case 29-RC-260969 decisions on “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.”

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 Cook County. The employees who would be voting are also engaged with the public to a certain extent as part of their job duties and they are at risk of exposure on a regular basis. The safety of the voters, the observers, the party representatives, and the Board Agent conducting the election must be considered in determining the appropriate method for conducting the election.

I appreciate the Employer’s willingness to make accommodations 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 may reduce the risk of transmission, but given the current incidence of COVID-19 in our region 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 circumstances.

Manual elections require the participants to share the same space for an extended period, starting with the election and continuing through the vote count. During this time there is substantial interaction and exposure among the participants which presents a significant risk despite the social distancing and protective measures proposed by the Employer or suggested by GC 20-10.

Compounding the risk that someone can transmit the virus without exhibiting symptoms, there is scientific evidence that the virus that causes COVID-19 is capable of surviving in the air for several hours.¹⁵ As a practical matter this means that if a pre-symptomatic or asymptomatic

¹⁴ The *Brink’s* Order is available on the Board’s public website at <https://www.nlr.gov/case/29-RC-260969>. On June 25, 2020 when the Regional Director ordered a mail ballot election the rate of new positive tests in New York City was 1.45%. The current rate in Cook County is 5.8%

¹⁵ “Persistence of Severe Acute Respiratory Syndrome Coronavirus 2 in Aerosol Suspensions.” *Emerging Infectious*

carrier entered the polling room to vote and released – through a cough, a sneeze, or simply by speaking – the COVID-19 virus into the air, subsequent voters would also be exposed. In addition, observers and the Board Agent, 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.

This is especially concerning because a confined, indoor location – such as the proposed polling place – is essentially the ideal place for the COVID-19 virus to survive in the air.¹⁶ Some of this risk might be mitigated through adequate ventilation. The Region asked the Employer specifically about its ventilation system in order to clarify potential exposure risks, the Employer provided no information on the type or condition of its current ventilation system.

Additionally, conducting manual elections under the current circumstances could disenfranchise voters. If any employee displays symptoms during the 10 days before the election, the state-wide quarantine requirement¹⁷ could result in employees being unable to participate in a manual election, and the Board’s manual election procedures do not contain an absentee or remote voting option; an employee must appear in person at the polls to vote. Similarly, any voter who had within the previous 14 days merely been in direct contact with somebody with COVID-19 (or with somebody who is awaiting test results for COVID-19 or who has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) would be expected to quarantine and be unable to vote.¹⁸

While I do not find a manual election to be impossible, I have determined that, under the current circumstances in Cook County, which is experiencing increasing disease transmission and hospitalizations,¹⁹ conducting a mail-ballot election is the most responsible and appropriate method of holding an election without undue delay. 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 Cook County still creates the kind of “extraordinary circumstances” that make directing a mail ballot election appropriate. Moreover, directing a mail ballot election is consistent with current CDC COVID-19 pandemic guidance on elections, which acknowledges the inherent risk of in-person elections and encourages alternative methods of voting where they are allowed²⁰.

Diseases Journal, Volume 26, No. 9 – September 2020 (Early Release). https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article. 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>

¹⁶ “Predicting the Decay of SARS-CoV-2 in Airborne Particles (“The results demonstrate that stability of the virus is dependent on environmental conditions. The greatest stability was observed under cool, dry, and dark conditions, similar to those found indoors.”), *Id.*

¹⁷ <https://www.dph.illinois.gov/covid19/community-guidance/home-quarantine-guidance>

¹⁸ *Id.*

¹⁹ See footnotes 6 and 7 above.

²⁰ The CDC has issued guidance on elections in general. Its *Considerations for Election Polling Locations and Voters* states that 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.” <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

In sum, in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections and to do so in a manner that ensures the safety of all participants, avoids the potential for disenfranchisement of employees, and ensures 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.

Pursuant to the Direction of Election in this matter, please be advised that a mail ballot election will be conducted in the following manner:

Those eligible to vote are:

Included: All full-time and regular part-time road service truck tire employees and shop tire technicians, including inside technicians, outside technicians, OTR technicians and route drivers, employed at 2450 Lunt Avenue, Elk Grove Village, Illinois 60007

Excluded: All other employees, managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 13, on Wednesday, August 19, 2020. Voters must return their mail ballots so that they will be received in the National Labor Relations Board by close of business on Monday, September 14, 2020. The mail ballots will be counted by via electronic means at 10:00 a.m. on Wednesday, September 16, 2020 with party representatives participating remotely.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 13 office by August 26, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

Notice Posting Requirement

Section 102.67(k) of the Board's Rules and Regulations requires employers to post the Board's official Notice of Election (attached) in conspicuous places at least 3 working days, not including Saturdays, Sundays, and holidays, prior to 12:01 a.m. of the day of the election.

Therefore, the enclosed notices must be posted prior to 12:01 a.m. on August 14, 2020.

Failure to comply with this posting requirement is grounds for setting the election aside whenever proper and timely objections are filed. Section 102.67(k) also provides that a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice, if it is responsible for the nonposting.

Very truly yours,

/s/ Paul Hitterman

Paul Hitterman
Acting Regional Director

cc: Keri Ruth, General Manager
Tredroc Tire Services, LLC
2450 Lunt Ave.
Elk Grove Village, IL 60007
kruth@tredroc.com

William H. Haller, Associate General Counsel
International Association of Machinists and
Aerospace Workers (IAM&AW), AFL-CIO
9000 Machinists Place, Suite 202
Upper Marlboro, MD 20772
whaller@iamaw.org

Exhibit B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 13-RC-263043	Date Filed 7/15/20

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlrb.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer: Tredroc Tire Services, LLC	2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 2450 Lunt Ave, Elk Grove Village, IL 60007
--	---

3a. Employer Representative - Name and Title: Keri Ruth, General Manager	3b. Address (if same as 2b - state same): Same
--	--

3c. Tel. No. 847-956-3600	3d. Cell No. 224-406-3184	3e. Fax No. 847-472-9201	3f. E-Mail Address kruth@tredroc.com
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4a. Type of Establishment (Factory, mine, wholesaler, etc.) Garage	4b. Principal Product or Service Mobile Tire Repair Service	5a. City and State where unit is located: Elk Grove Village, IL
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5b. Description of Unit Involved: Included: All full-time and regular part-time service technicians, including: road technicians, shop technicians journeymen, apprentices and drivers who are employed by the employer at their 2540 Lunt Ave Elk Grove Village, IL facility. Excluded: All other employees, including office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the act.	6a. Number of Employees in Unit: 13	6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---	---

Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state) NONE	8b. Address:
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8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
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8g. Affiliation, if any:	8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
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9. Is there now a strike or picketing at the Employer's establishment(s) involved? NO If so, approximately how many employees are participating? _____ (Name of Labor Organization) _____, has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)
NONE

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address

11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election: Any such election
 Manual Mail Mixed Manual/Mail

11b. Election Date(s): August 12, 2020	11c. Election Time(s): 7:00 - 8:00 a.m. AND 3:00 - 4:00 p.m.	11d. Election Location(s): Lunchroom
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12a. Full Name of Petitioner (including local name and number): Local Lodge 701, International Association of Machinists and Aerospace Workers, AFL-CIO	12b. Address (street and number, city, State and ZIP code): 1901 S. Meyers Rd, Suite 210 Oakbrook Terrace, IL 60181
---	--

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state):
International Association of Machinists and Aerospace Workers, AFL-CIO

12d. Tel. No. 815-280-6400	12e. Cell No. 815-214-4587	12f. Fax No. 815-280-6345	12g. E-Mail Address wlepinske@iamaw.org
--------------------------------------	--------------------------------------	-------------------------------------	---

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding. 13a. Name and Title: William J. LePinske, Grand Lodge Representative	13b. Address (street and number, city, State and ZIP code): 1901 S. Meyers Rd, Suite 210 Oakbrook Terrace, IL 60181
--	--

13c. Tel. No. 815-280-6400	13d. Cell No. 815-214-4587	13e. Fax No. 815-280-6345	13f. E-Mail Address William J. LePinske
--------------------------------------	--------------------------------------	-------------------------------------	---

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) William J. LePinske	Signature 	Title Grand Lodge Representative	Date 7/15/2020
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**WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Exhibit C

**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:

Case No.: 13-RC-263043

**TREDROC TIRE SERVICES LLC
Employer**

And

**LOCAL LODGE 701, INTERNATIONAL
ASSOCIATION OF MACHINISTS &
AEROSPACE WORKERS, AFL-CIO
Petitioner**

**Place: Via Teleconference
Date: 08/04/20
Pages: 1-28
Volume: 1**

OFFICIAL REPORTERS

**Veritext
Mid-Atlantic Region
1801 Market Street, Suite 1800
Philadelphia, PA 19103
215-241-1000**

1 UNITED STATES OF AMERICA
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD
3 REGION 13

4 TREDROC TIRE SERVICE, LLC)
5)
6 Employer,)

7 AND) No. 13-RC-263043

8 LOCAL LODGE 701,)
9 INTERNATIONAL ASSOCIATION)
10 OF MACHINISTS & AEROSPACE)
11 WORKERS, AFL-CIO,)
12)
13 Petitioner.)

14 The above entitled matter came on for
15 hearing remotely, pursuant to notice, before LISA
16 FRIEDHEIM-WEIS, Hearing Officer, on Tuesday,
17 August 4, 2020, at 9:00 a.m.
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A P P E A R A N C E S

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On behalf of the Employer:

BARNES & THORNBURG, LLP
3475 Piedmont Road, N.E.
Suite 1700
Atlanta, Georgia 30305-3327
BY: MR. MARK KEENAN
(404) 264-4044
mark.keenan@btlaw.com

On behalf of the Petitioner:

DISTRICT LODGE 10, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO
1901 South Meyers Road
Suite 210
Oakbrook Terrace, Illinois 60181
BY: MR. WILLIAM J. LEPINSKE
(815) 280-6400
wlepinske@iamaw.org

A L S O P R E S E N T

On behalf of the NLRB:

Mr. Michael Burros

On behalf of the Petitioner:

Mr. Mike Wendling

* * * *

E X H I B I T I N D E X

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EXHIBIT	IDENTIFIED	IN EVIDENCE
BOARD'S		
No. 1 (a) -1 (e)	5	6
No. 2	7	8
No. 3	9	10

1 THE HEARING OFFICER: The hearing will
2 be in order. This is a formal hearing in the
3 matter of Tredroc Tire Services, LLC, Case
4 No. 13-RC-263043 before the National Labor
5 Relations Board. The Hearing Officer appearing for
6 the National Labor Relations Board is Lisa
7 Friedheim-Weis joined with colleague Mike Burros.

8 All parties have been informed of
9 the procedures at formal hearing before the Board
10 by service of a description of procedures and
11 certification and decertification cases with a
12 Notice of Hearing. I have additional copies of
13 this document for distribution if any party wants
14 more.

15 Will Counsel or party
16 representatives please state their appearances for
17 the record. For the Petitioner.

18 MR. LePINSKE: William LePinske.

19 THE HEARING OFFICER: For the Employer.

20 MR. KEENAN: Mark Keenan, Barnes &
21 Thornburg.

22 MS. FRIEDHEIM-WEIS: Are there any other
23 appearances?

24 (No response.)

25 MS. FRIEDHEIM-WEIS: Let the record show

1 no response.

2 Are there any other persons,
3 parties or labor organizations in the hearing room
4 who claim an interest in this proceeding?

5 (No response.)

6 THE HEARING OFFICER: Let the record
7 show no response.

8 I now propose to receive the formal
9 papers. They've been marked for identification
10 previously as Board Exhibits 1(a) through 1(e)
11 inclusive, Exhibit 1(e) being an index and
12 description of the entire exhibit. Let me share my
13 screen and share that with the parties. The court
14 reporter has been e-mailed a copy. Let's scroll
15 through. And I'll e-mail at the close of the
16 hearing the parties a copy so you have it for your
17 files.

18 This is the 1(e), index. It looks
19 like Mike is back so I'm admitting him.

20 1(d) -- sorry, someone e-mailed me
21 and the e-mail is blocking my arrow.

22 1(d), 1(c), 1(b), the petition, and
23 the certificate of service of the petition 1(a).

24 Are there any objections to the
25 receipt of Board Exhibit 1, the formal papers, into

1 the record?

2 MR. KEENAN: No objection from the
3 Employer. We would note -- and I know it's not the
4 Region's usual practice to have either the Position
5 Statement or in these unusual circumstances the
6 Employer's plan for compliance with manual election
7 admitted as the formal papers, but we would request
8 that those be included as part of the common
9 papers.

10 THE HEARING OFFICER: The Employer's
11 Position Statement will be entered as Board
12 Exhibit 3, and we can have further discussion about
13 the Employer's compliance papers but those are
14 rejected.

15 MR. KEENAN: Thank you.

16 THE HEARING OFFICER: Union, any
17 objection to the formal papers?

18 MR. LePINSKE: No.

19 THE HEARING OFFICER: So hearing no
20 objection, the formal papers are received in
21 evidence.

22 Are there my motions to intervene
23 in these proceedings to be submitted to the Hearing
24 Officer for ruling by the Regional Director at this
25 time?

1 (No response.)

2 THE HEARING OFFICER: Let the record
3 show no response.

4 Moving on to Board Exhibit 2. The
5 parties to this proceeding have already executed a
6 document which has been marked as Board Exhibit 2.
7 That exhibit contains a series of stipulations,
8 including among other things that the Petitioner is
9 a labor organization within the meaning of the Act.
10 There's no contract bar. The Employer meets the
11 jurisdictional standards of the Board, the
12 eligibility cutoff date and the union inclusions
13 and exclusions. So let me share the screen and let
14 the parties take a look at what they've already
15 signed as Exhibit 2, Board Exhibit 2.

16 Can everyone see Board Exhibit 2 on
17 the screen?

18 MR. LePINSKE: Yes.

19 MS. FRIEDHEIM-WEIS: So this is the
20 document that was circulated by Mike Burros of my
21 office yesterday and which you'll see that you
22 each -- that Mark Keenan and Bill LePinske signed
23 yesterday and I have signed electronically as well
24 dated 8-3-2020 and that document is in the same
25 condition as it was when you sent it to us and each

1 party will be sent a fully executed copy by e-mail
2 as soon as the hearing closes.

3 Are there any objections to the
4 receipt of Board Exhibit 2?

5 MR. KEENAN: No objection from the
6 Employer.

7 MR. LePINSKE: No.

8 THE HEARING OFFICER: So hearing no
9 objection, Board Exhibit 2 is received into
10 evidence.

11 Moving on to some reminders. The
12 parties are reminded that prior to the close of the
13 hearing the Hearing Officer will, shortly, solicit
14 the parties' positions on election details,
15 including the type, mail/manual or partial
16 mail/manual, best days of the week, times and
17 locations for conducting the election, a date in
18 which an election could not occur, including the
19 reason, where and how to conduct the count of
20 ballots but will not permit litigation of those
21 issues. The Hearing Officer will also inquire as
22 to the need for foreign language ballots and
23 Notices of Election and the proposed number of
24 observers for each party for each polling period
25 including the reasons. Please have relevant

1 information with respect to these issues available
2 at that time which is coming momentarily.

3 The parties have been advised that
4 the hearing will continue from day-to-day. This
5 will not be applicable as this hearing will only be
6 one day. The parties are also advised that upon
7 request any parties entitled to a reasonable period
8 at the close of the hearing for oral argument which
9 shall be included in the transcript of the hearing.
10 Any party desiring to submit a brief to the
11 Regional Director shall be entitled to do so within
12 five business days after the close of the hearing.
13 Prior to the close of the hearing and for good
14 cause, the Hearing Officer may grant an extension
15 of time to file a brief not to exceed an additional
16 10 business days.

17 The Employer has completed and I
18 have marked for identification as Board Exhibit 3 a
19 Statement of Position in this matter. So let me
20 call that up and share my screen.

21 Is everyone seeing the Employer's
22 Statement of Position dated July 15th?

23 MR. LePINSKE: Yes.

24 MR. KEENAN: Yes.

25 THE HEARING OFFICER: And we're looking

1 at the first page. Let's scroll down.
2 Attachment B and C, list of employees the Employer
3 believes are eligible. So everyone can see that
4 two-page Statement of Position?

5 MR. KEENAN: Yes.

6 MR. LePINSKE: Yes.

7 THE HEARING OFFICER: My understanding,
8 Mr. LePinske, is through some inadvertent mistake
9 we'll call it on behalf of the Employer that this
10 was not served on the Union?

11 MR. LePINSKE: That's correct. It was,
12 not served on the Union. Lisa, I did receive it.
13 It just was not served on the Union in a timely
14 fashion according to Board Rules 120.53.

15 THE HEARING OFFICER: Okay. I also want
16 to make clear and have the Union's position know
17 that there are no unit issues. The Union and the
18 Employer are in full agreement as to inclusions and
19 exclusions.

20 MR. LePINSKE: Correct.

21 MS. FRIEDHEIM-WEIS: Are there any
22 objections to the receipt of Board Exhibit 3, the
23 Employer's Statement of Position?

24 MR. KEENAN: No.

25 THE HEARING OFFICER: All right.

1 Hearing no objection, Board Exhibit 3 is received.

2 So as I mentioned a moment ago, the
3 parties were going to be given an opportunity to
4 present their positions and any issues they have
5 which is why we are at hearing. So let me go to
6 the Employer first.

7 Mr. Keenan, if you would state
8 whatever issues the Employer may have and state
9 your position.

10 MR. KEENAN: Certainly. The issues we
11 noted in the position statement which the Region
12 considers --

13 THE COURT REPORTER: Mr. Keenan, can you
14 speak up, please. I can't hear you.

15 MR. KEENAN: I'm sorry, let me move the
16 laptop a little closer.

17 THE COURT REPORTER: Thank you, sir.

18 MR. KEENAN: -- is we believe the open
19 issues are the election date, particularly if the
20 Region is in fact considering a mail ballot
21 election and then the issue of whether a manual
22 election or mail ballot election is appropriate.
23 The petition actually specifically requests in 1(b)
24 a manual election. The Employer agrees with that.

25 Do you want me to go ahead and

1 articulate the reason for a manual election or do
2 you want me to hold off?

3 THE HEARING OFFICER: You can state your
4 full position as much as you'd like to.

5 MR. KEENAN: Okay. The petition 1(b)
6 does specifically request a manual election. The
7 voting unit consists of 13 employees. We had
8 submitted a detailed plant plan that fully complies
9 with the General Counsel's guidelines in GC-20. We
10 had previously submitted to the Hearing Officer and
11 to the Petitioner proposed Employer Exhibit 1 which
12 was our compliance plan for a manual election;
13 Employer Exhibit No. 2 which was a diagram showing
14 locations of the voting booths, observer tables,
15 pathway through the election; Employer Group
16 Exhibit 3 which was a series of photographs
17 demonstrating compliance with the GC-20; and
18 Employer Exhibit No. 4 which was a video taken
19 actually walking through the proposed voting area.
20 We would submit those as evidence at this time.

21 THE HEARING OFFICER: The Region has
22 considered your proffer of those exhibits. They
23 are rejected from the record in that they were
24 submitted during the investigatory phase of this
25 case. You may certainly add and refer to them

1 during your brief, but they will not be included as
2 part of the record.

3 Do you have anything further to
4 state regarding your position on the issue at hand,
5 mail versus manual ballot?

6 MR. KEENAN: Just needed that ruling on
7 the record. The voting unit consists of 13
8 Employees. The Petitioner and the Employer as of
9 Friday, it was our understanding, we were in
10 agreement on a manual election and a 90-minute
11 voting period spread over the lunch hour -- lunch
12 is 90 minutes essentially and all employees are
13 regularly at the facility in question and that is
14 more than enough time for parties to either have a
15 relief schedule for the 13 employees on their round
16 with appropriate social distancing, face coverings,
17 enter a voting area. It is well established that a
18 manual election is highly preferred. There are
19 exceptions to that permitting mail ballot election
20 but GC-20 specifically still outlines a preference
21 in guidelines with the conduct of a manual election
22 all of which were met by the Employer plan.

23 As of yesterday, our understanding
24 is the IAM's objection is to now holding a manual
25 election despite stating they wanted a manual

1 election in the petition, is concerned about the
2 Employer somehow monitoring who is and who isn't
3 voting which is theoretically an issue in every
4 manual election the Region conducts, so that's no
5 basis for not holding a manual election.

6 And the second basis being an
7 increase in Illinois and in the Chicago area of
8 COVID cases. With respect to the second issue of
9 the first issue isn't really an issue for not
10 holding a manual ballot election. We would note
11 that Illinois is not currently under a
12 shelter-in-place order. All 13 employees are
13 regularly and routinely reporting to the facility
14 for work so that fully complies with the Board's
15 normal preference for holding a manual election.
16 The employees when they are not social distancing
17 are all wearing face coverings and the election
18 plan provides both protection for the employees,
19 the NLRB agent assigned to the election, as well as
20 the IAM's representatives and the company
21 representatives who would be present for the
22 preelection conference.

23 The reality of the situation is
24 that we are only going to have a total of two
25 outsiders coming to this facility for the election.

1 That would be an IAM representative and the NLRB
2 election specialist. So traveling for the manual
3 election is not a significant burden. It's not as
4 if we're moving from one city to another. This is
5 Elk Grove Village just outside the City of Chicago,
6 and we're introducing only two individuals who will
7 be wearing face coverings and the NLRB specialist
8 will have a face covering and will be behind a
9 Plexiglass shield as will both observers.

10 With respect to the IAM's concern
11 about the increase in the number of cases, at least
12 as far as I know prior to the election, the IAM
13 presumably once it gets the excelsior list will be
14 conducting home visits. They will be having union
15 meetings with the employees in an attempt to
16 persuade the employees to vote in favor of union
17 representation. So that's somewhat in conflict
18 with the articulated concern that they're worried
19 about potential exposure between the employees and
20 outsiders of Corona virus infection or a COVID
21 infection. They're doing group meetings. We're
22 doing home visits. It would certainly seem like
23 the facility where the 13 employees regularly
24 report to supports the manual election being
25 conducted.

1 And the only other issue with
2 respect to the election date is the parties have
3 tentatively agreed to August 21st for a manual
4 election. If the Region ends up submitting a -- or
5 concluding that only a mail ballot election is
6 appropriate, then we would request that the ballots
7 be mailed out on Friday, August 28th.

8 THE HEARING OFFICER: Thank you.

9 Mr. Keenan.

10 Mr. LePinske, what is the Union's
11 position?

12 MR. LePINSKE: While the union had
13 originally petitioned for a manual ballot election,
14 there are a couple of main issues we see moving
15 forward in that fashion. One of which is the -- as
16 the Employer's Counsel had alluded to, the increase
17 in the numbers of COVID cases in and around the
18 City of Chicago.

19 When the Union initially filed the
20 petition on the 15th of July, the area had not
21 realized the full increase from the 4th of July
22 holiday weekend at which point the numbers after
23 that have been climbing if you have been following
24 the news in Chicago to the point where most school
25 districts are even moving away from opening schools

1 in person or delaying the opening of the schools
2 until they see what happens.

3 The other issues that we had with a
4 manual ballot include -- with the Employer's plan
5 that they laid out, it would be harder than usually
6 even if a normal, manual ballot election to
7 maintain proper laboratory conditions particularly
8 with this schedule which may be the only way to
9 actually prevent a line of people from going to
10 vote.

11 We have concerns there.
12 Furthermore, we see no reason not to move to a mail
13 ballot election here. We've held several other
14 cases where they've done it. (Inaudible) without
15 having to worry about the Employer seeing who does
16 and does not vote.

17 The other issue we had was trying
18 to agree on a time. The Employer, you know, has
19 stated that they believe everybody is in the shop
20 during the lunch period time. We surveyed almost
21 the entire bargaining unit who state that that's
22 categorically not true and in fact the early
23 morning vote would likely be the only way to ensure
24 that everybody was able to be present for a manual
25 ballot election.

1 THE HEARING OFFICER: Thank you. So I
2 just want to clarify with the parties. I think
3 I've heard from both sides. There's no dispute
4 that there are 13 potential employees in the
5 bargaining unit. Is that the correct number? From
6 the Employer and from the Union, I'd like to hear
7 if that is a yes.

8 MR. KEENAN: That is a yes.

9 MR. LePINSKE: The list that the
10 Employer had submitted with their Statement of
11 Position accurately reflects the bargaining unit.

12 THE HEARING OFFICER: Okay. So that's
13 clear as to the numbers. And we've got the
14 parties' positions as to mail versus manual.

15 I will note for the record -- I
16 know that both parties know this but according to
17 NLRB policy and the Hearing Officer's Guide, the
18 mechanics of an NLRB election, including date,
19 time, place of the election and/or whether the
20 election should be conducted by mail or manually is
21 not a litigable issue. I'm making that clear for
22 the record, but I do need to explore election
23 details.

24 In the event that an election is
25 directed, so we have that information on the

1 record, if a manual election is directed, it will
2 be scheduled for the earliest date practicable. If
3 an election is directed, does any party who is
4 entitled to receive the voter list wish to waive
5 the 10-day or any portion of the 10-day
6 requirement.

7 Mr. LePinske, what's your position
8 on that?

9 MR. LePINSKE: Yes, we would be willing
10 to waive days of the voter list.

11 THE HEARING OFFICER: The entire period
12 or a portion thereof?

13 MR. LePINSKE: We can waive the entire
14 portion.

15 THE HEARING OFFICER: All right. I
16 think it's safe to assume based on the half an hour
17 that we've been on the phone neither party has
18 changed its position as to mail versus manual
19 election.

20 Each party stands where it stands;
21 is that correct?

22 MR. KEENAN: Ms. Weis, if I can comment
23 on one thing. The IAM had raised with us concerns
24 after discussions about for a manual election of
25 warning -- voting period versus the lunch break.

1 The employees start -- they don't all start at the
2 same time. They're all working the day shift
3 primarily except for I think one does the night
4 service calls. But if the IAM -- even with the
5 staggered start times is amendable to the manual
6 election of a broader start period in the morning,
7 say from 7:30 to 9:30. That then guarantees even
8 more so time for social distancing between the
9 voters and addresses their concern about whether or
10 not all the employees are being present. The
11 Employer is amendable to that.

12 THE HEARING OFFICER: Well, before
13 Mr. LePinske answers, he can certainly give his
14 opinion on the voting time should the Director rule
15 for a manual election. The methodology of mail
16 versus manual election is still left to the sole
17 discretion of the Regional Director.

18 MR. KEENAN: Understood.

19 THE HEARING OFFICER: With that in mind,
20 Mr. LePinske, do you have a comment on Mr. Keenan's
21 offer as to hours if we were to order a manual
22 election?

23 MR. LePINSKE: Yes. If there's going to
24 be a single balloting time, the Union's preference
25 would be for first thing in the morning perhaps for

1 an hour and a half. I would say 7:00 to 8:30 to
2 ensure that everyone had an opportunity to vote.
3 We surveyed the bargaining unit and just asked them
4 what would be the most opportune time for them to
5 do it.

6 The very nature of this Employer's
7 business is doing road call service tire repairs.
8 Many of these are on the side of the road. The
9 bargaining unit had concerns for being called out
10 on a job in the middle of the day. You know, we
11 had informed them if an election agreement was
12 secured, that they had the right to go vote, but
13 they had concerns with leaving vehicles on the side
14 of the road partially repaired and come back and
15 vote and have to leave again. Their preference and
16 what they saw is being realistic for everybody to
17 have an opportunity would be for first thing
18 morning.

19 THE HEARING OFFICER: Mr. Keenan.

20 MR. KEENAN: My only comment would be
21 that the Union previously indicated that they
22 thought a broader voting period would provide more
23 opportunity to vote. We share the IAM's interest
24 in sharing a full opportunity for the employees to
25 vote. So we would still recommend a 90 or even a

1 120-minute voting period. Again, given the
2 staggered start times for the employees, 7:30 is
3 fine as a starting time, but we would recommend
4 7:30 to 9:00 or 7:30 to 9:30.

5 THE HEARING OFFICER: Mr. LePinske.

6 MR. LePINSKE: I would agree. One and a
7 half hour to two hours.

8 THE HEARING OFFICER: So if a manual
9 election were to be ordered, am I hearing correctly
10 from both parties that the preference would be 7:30
11 to 9:00 a.m. or 7:30 to 9:30 a.m. Mr. LePinske?

12 MR. LePINSKE: I would actually say 7:00
13 to 9:00. Either 7:00 to 8:30 or 7:00 to 9:00.

14 THE HEARING OFFICER: Mr. Keenan?

15 MR. KEENAN: 7:00 to 9:00 is acceptable.

16 THE HEARING OFFICER: All right.

17 Keeping in mind that still the Region will be
18 deciding whether there is a manual election versus
19 a mail election but it sounds like the parties --
20 if a manual election were to be ordered for this
21 unit on which the parties agree, both parties agree
22 7:00 a.m. to 9:00 a.m. would be the preferred time.
23 So let's move on to the next issue at hand.

24 Does any party anticipate the need
25 for the Notice of Election and the ballots to be

1 translated into any languages, and if so, which?

2 Mr. LePinske?

3 MR. LePINSKE: Yes. We would need all
4 related materials to be translated into Spanish.

5 THE HEARING OFFICER: Mr. Keenan?

6 MR. KEENAN: Agreed.

7 THE HEARING OFFICER: Is either party
8 requesting either a bilingual Board Agent or an
9 interpreter as well or is it sufficient to have the
10 written materials in Spanish as well as in English.
11 Mr. LePinske?

12 MR. LePINSKE: I think a bilingual Board
13 Agent would be preferable.

14 THE HEARING OFFICER: Mr. Keenan?

15 MR. KEENAN: We think the written
16 materials are sufficient, but we have no objection
17 to a bilingual Board Agent.

18 THE HEARING OFFICER: Do we have any
19 knowledge, an educated guesstimate, as to how many
20 of the 13 have their primary language as Spanish as
21 opposed to English?

22 MR. LePINSKE: I know three for sure are
23 bilingual and the remainder are varying levels of
24 speaking fluent English.

25 MR. KEENAN: Our understanding is that

1 the majority of the employees' primary language is
2 Spanish but all of them understand English.

3 THE HEARING OFFICER: All right. Thank
4 you.

5 We already have in one of the Board
6 exhibits, the on-site representative for the
7 Employer, so that is in the record. The Regional
8 Director will issue a decision in this matter as
9 soon as practicable and will immediately transmit
10 the documents to the parties and their designated
11 representatives by e-mail, facsimile or by
12 overnight mail if neither has an e-mail address nor
13 facsimile number which is not the case in this
14 case.

15 Prior to this hearing, the parties
16 were provided Form NLRB 5580, description of voter
17 list requirement after hearing and certification
18 and decertification cases which explains the
19 Employer's obligation to furnish a voter list
20 should an election be directed in this matter. Any
21 party is entitled by request at the close of the
22 hearing for oral argument.

23 Does any party wish to make such a
24 request at this time?

25 MR. KEENAN: The Employer will submit a

1 post-hearing brief.

2 MR. LePINSKE: No.

3 THE HEARING OFFICER: All right. I
4 believe as I already stated but let me reiterate
5 that any parties desiring to submit a brief to the
6 Regional Director shall be entitled to do so within
7 five business days after the close of the hearing.
8 Copies of the brief shall be served on all other
9 parties to the proceeding and a statement of such
10 service shall be filed with the Regional Director
11 together with the briefs. No reply briefs may be
12 filed except upon special permission by the
13 Regional Director. And since both parties have
14 already stated they will be filing post-hearing
15 briefs, I won't ask if anyone wants to waive. So
16 five business days from today. So briefs will be
17 due on August 11th.

18 The parties are reminded that
19 pursuant to Section 102.5 of the Board's Rules and
20 Regulations, briefs and any other case documents
21 must be filed electronically or through our
22 e-filing system through the agency's website
23 www.NLRB.gov. Unless the party filing said
24 documents does not have access to the means for
25 filing electronically or if filing electronically

1 would impose an undue burden. Briefs or other
2 documents filed by means other than e-filing must
3 be accompanied by a statement explaining why the
4 following party does not have access to the means
5 for filing electronically or that filing
6 electronically would impose an undue burden.

7 So before closing the record, I am
8 making certain, Yvette, court reporter, that you
9 have Board exhibits 1, 2 and 3; is that correct?

10 THE COURT REPORTER: I do. But I do
11 need copies of Employer 1 and 2 to put into the
12 rejected file.

13 THE HEARING OFFICER: They are not being
14 put into the rejected file. The Regional Director
15 has explicitly stated that they will not be placed
16 in the rejected file so they are not going to be
17 part of the record.

18 Do we have an estimated number of
19 pages for this transcript?

20 THE COURT REPORTER: Yes. 25.

21 THE HEARING OFFICER: 25 pages.

22 The parties are reminded if they
23 wish they should request an expedited copy of the
24 transcript from the court reporter. If there's
25 nothing further, the hearing will be closed.

1 MR. KEENAN: I'll go ahead and request
2 the expedited transcript while we have everybody
3 here.

4 THE COURT REPORTER: Got it, sir.

5 THE HEARING OFFICER: Anything else from
6 the Petitioner or the Employer?

7 MR. KEENAN: Not from the Employer.

8 MR. LePINSKE: No.

9 THE HEARING OFFICER: All right.
10 Hearing nothing further, the hearing is now closed.
11 We're off the record.

12 (Thereupon, 9:50 a.m. the
13 hearing was concluded.)

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1 CERTIFICATION

2
3 This is to certify that the attached
4 proceedings before the National Labor Relations
5 Board (NLRB), Region 13, in the matter of Tredroc
6 Tire Service, LLC, and Local Lodge 701,
7 International Association of Machinists & Aerospace
8 Workers, AFL-CIO, Case No. 13-RC-263043, at
9 Chicago, Illinois, on August 4, 2020, was held
10 according to the record, and that this is the
11 original, complete and true and accurate transcript
12 that has been compared to the recording, at the
13 hearing, that the exhibits are complete and no
14 exhibits received in evidence or in the rejected
15 exhibit files are missing.

16 

17
18 YVETTE BIJARRO-RODRIGUEZ, CSR
19 LICENSE No. 084-003734
20
21
22
23
24
25

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Exhibit D

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

TREDROC TIRE SERVICES, LLC,

Employer,

and

Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

AFFIDAVIT OF GIL APPLGATE

I, Gil Applegate, being first duly sworn upon oath, state as follows:

1. My name is Gil Applegate. I am a competent adult, over the age of 18, and have personal knowledge of the facts set forth in this Affidavit.
2. I am Director of Operations for Tredroc Tire Services, LLC (“Tredroc”), the employer in the above-captioned case.
3. In my role as Director of Operations, I am responsible for, among other things, implementing Tredroc’s safety policies and procedures, which includes maintaining a safe and healthy environment for all employees during the COVID-19 pandemic.
4. Tredroc has been deemed an “essential business” by the State of Illinois and has therefore remained operational since the outbreak of the COVID-19 pandemic.
5. Tredroc has maintained appropriate social distancing, sanitation, and when social distancing cannot be maintained, mask requirements during the COVID-19 pandemic in order to maintain a safe environment.

6. There has not been a single confirmed case of the COVID-19 virus at Tredroc's Elk Grove Village, Illinois facility—the location implicated in the instant petition for election.

7. I was in charge of putting together Tredroc's plan to safely conduct a manual election which was requested by the Board. A true and accurate copy of this written plan is attached hereto as Exhibit 1. This plan is designed to fully comply with the General Counsel's Memorandum 20-10, "Suggested Manual Election Protocols."

8. The room where the voting would take place contains more than enough space for all observers and the voters to participate in the election while maintaining a distance of at least six (6) feet. A diagram of the proposed setup of the election is area is attached hereto as Exhibit 2, and photographs of the area, which I took, are attached hereto as Exhibit 3. Exhibit 2 is a true and accurate copy of the diagram I created, and Exhibit 3 is a true and accurate copy of the photographs I took.

9. As shown in Exhibits 2 and 3, there is at least six (6) feet of space between each of the tables marked for the Board agent, the Petitioner's observer, the Employer's observer, and the voting booth. In addition, as shown in Exhibit 3, I marked a walking path on the floor for the voters to enter the room, vote, and exit out a separate door, all the while maintaining a distance of at least six (6) feet from the other people in the room.

10. In addition, on August 5, 2020, I had the HVAC system for the Employer's corporate headquarters—the facility where the election would take place—professionally inspected and cleaned. The HVAC system is up to the ASHRAE Standard 180-2018. A true and accurate copy of the invoice from this inspection and cleaning is attached hereto as Exhibit 4.

11. In addition, Tredroc will provide adequate protective equipment to ensure a safe election. As shown in Exhibit 3, Tredroc will provide plexiglass shields for the Board agent and

for each of the observers. Moreover, Tredroc commits to providing, and requiring the use of, CDC-approved masks for the observers and for the voters, as set forth in Exhibit 1.

12. In order to minimize crowding, the thirteen (13) voters will be released in groups of three (3) during a 90 or 120-minute period to vote.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

AUG 13, 2020
Date



Gil Applegate

Exhibit D-1

Tredroc Tire Services' Plan for Safety During Manual Election (13-RC-263043)

Date and Time

Tredroc Tire Services (the “Employer”) requests that the election in Case No. 13-RC-263043 take place as a manual election on Friday, August 21, 2020 during the 11:30 am – 1:00 pm CDT hour (an extended voting period requested by the Union). The Employer will release the voters in groups of 3 every 15 minutes during this voting period to cast their ballots. Additionally, the Employer will remind the voters after 60 minutes that the polls will be open for an additional 30 minutes, and also at 75 minutes that the polls will be open for an additional 15 minutes. All employees in the petitioned-for unit will be available to cast a ballot within a time frame sufficient for each to vote and for the sanitation procedures outlined below to take place between each voter.

Location and Setup for Social Distancing

The Employer proposes for the election to take place in a spacious, open area (used as a cubicle area) in its corporate headquarters building, which is attached to the building where the voters work. (See attached photographs and diagram). There are two separate entrances directly from the work area that can be used by the voters to enter and exit the polling area. There are no supervisors or managers on this floor of the building, and it is easily accessible to the voters. In fact, there is only one employee currently working as a data entry clerk in this large area, and the employee works in a private office on the back wall. That employee will not be working in that office during the voting times. The Employer has five separate flat top tables it can set up in this area more than six feet apart, one for each of the observers, the Board agent, the voting booth, and the ballot box. (See attached diagram, photographs, and videos). Further, the Employer will provide a Plexiglas shield to put in front of each of the observers’ and the Board agent’s tables to provide more protection. Additionally, the Employer will mark a path on the floor from the entrance, to the voting booth and ballot box, to a separate exit door. The employees will be able to walk in the entrance, approach the voting booth, and leave via a separate door—all while maintaining a distance of well over six feet from the nearest person.

All observers and voters will be required to wear CDC-approved masks to any pre-election conference, the election itself, and the ballot counting. This requirement will be posted by the employer in a conspicuous location next to the Notice of Election so all voters are aware of the requirement in advance.

Finally, between each voter, the NLRB election specialist will sanitize the voting booth surface and the area surrounding the ballot box under the observation of both observers.

Items the Employer Will Provide

The Employer will provide a sufficient number of disposable pencils without erasers to each voter can use their own pencil. Additionally, the Employer will provide tape so that challenged ballots can be sealed. Finally, the Employer will provide masks, hand sanitizer, gloves, and wipes for the observers.

Certifications

For the 14 days prior to the election, the Employer will track whether any person who enters the corporate headquarters building where the election is to take place falls into any of the categories listed on “Attachment A” to the General Counsel’s Memorandum GC 20-10. The Employer will complete and submit the Certification (“Attachment A”) between 24 and 48 hours prior to the date and time of the election. The area in which the election will take place is currently a very low-traffic area, with the vast majority of the employees who normally work in that area working remotely. There are only 3 or 4 employees working in this area 2 days per week, with only 1 person working in the area full-time.

Each observer, representative or other party participating in the pre-election conference, observing the election, or participating in the ballot count will complete and submit the Certification attached as “Attachment B” to the General Counsel’s Memorandum GC 20-10 prior to the pre-election hearing.

Finally, the Employer agrees that it will notify the Regional Director within 14 days after the election if anyone entering the facility on the day of the election:

- Has tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19 despite not being tested) within the prior 14-days;
- Is awaiting results of a COVID-19 test;
- Is exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath, or;
- Has had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

Exhibit D-2

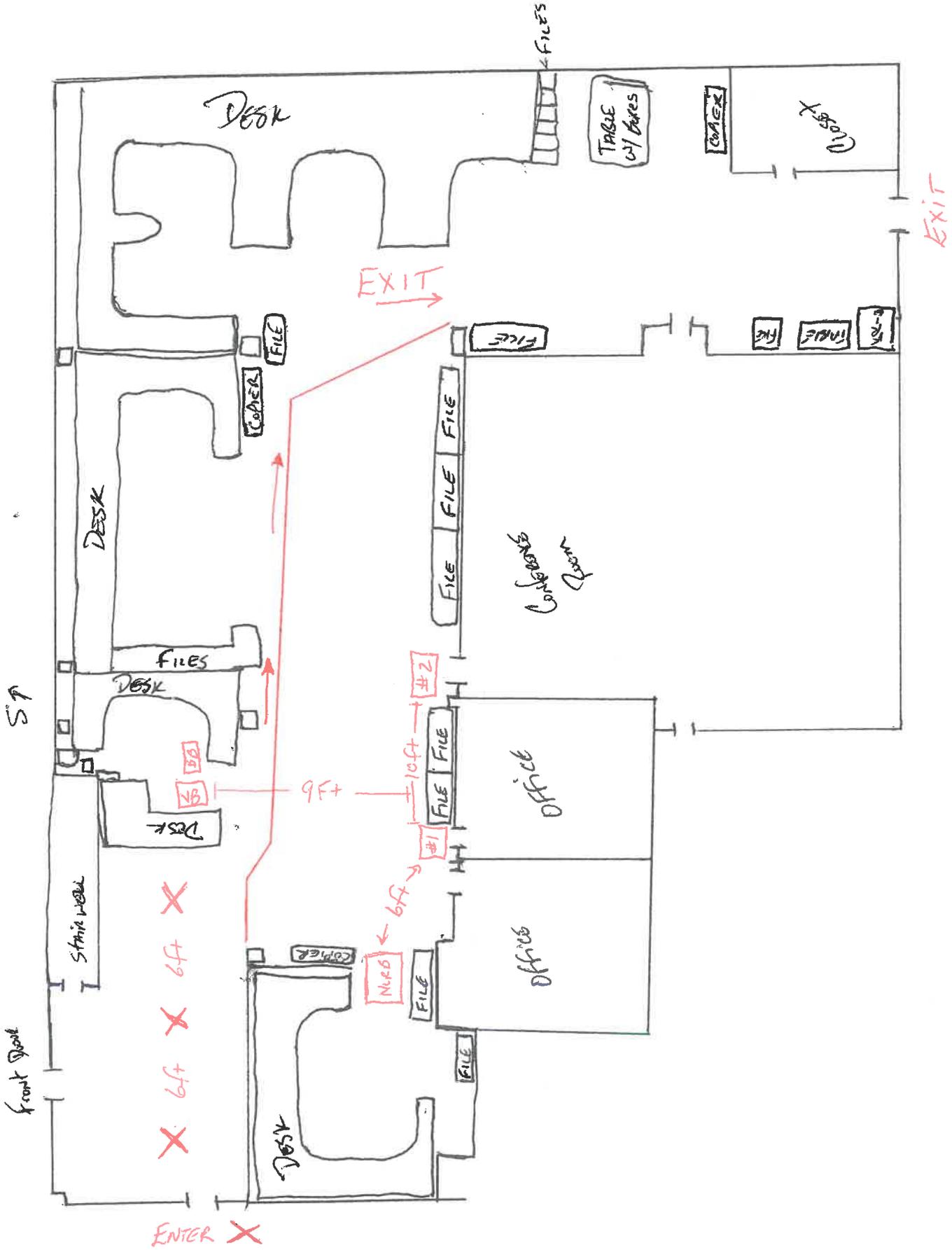


Exhibit D-3



OBSERVE
#1

NLRB



OBSERVE
#2

OBSERVE



NLRB

bizhub c227

bizhub
SECURE



WRITE BOOTH

UNITED STATES
POSTAL SERVICE
EST. 1775



VOTE
BOOTH

Ballot
Box
DESK

Exhibit D-4

Dabek Mechanical Inc
P.O. Box 388
Antioch, IL 60002 US
(847) 587-9903
john@dabekhc.com

Invoice

BILL TO
S20-15285 Tredroc Corporate 2450 Lunt Ave. Elk Grove Village, IL 60007

SHIP TO
S20-15285 Tredroc Corporate 2450 Lunt Ave. Elk Grove Village, IL 60007

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
S20-15285	08/05/2020	\$800.00	08/05/2020	Due on receipt	

DATE	DESCRIPTION	RATE	AMOUNT
08/05/2020	Elk Grove Village location. HVAC maintenance for corporate office, sales office, and tire shop. Inspect and clean corporate office system per ASHRAE Standard 180-2018. Replace air filters, wash condensing units on roof and check operation. Remove and clean all air registers and grills in corporate office. Open up evaporator coil cases and clean drain pans as well as possible.	800.00	800.00

Thank you for your business.
Your prompt payment is greatly appreciated!

BALANCE DUE

\$800.00

Exhibit E

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

TREDROC TIRE SERVICES, LLC,

Employer,

and

Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

POST-HEARING BRIEF OF EMPLOYER

Tredroc Tire Services, LLC (“Tredroc” or the “Employer”) respectfully submits its post-hearing brief in support of its position that a manual election is warranted in this matter.

THE FACTS

The petition in this matter was filed by Petitioner on July 15, 2020 requesting a manual election. GC Ex. 1(b). Up until Friday, August 1, Petitioner and Counsel for the Employer had actively discussed voting mechanics for an in-person election, including dates and times with Petitioner’s only articulated issue being the length of time the polls would be open, and the time for the election. See Employer Ex. 5.¹ In fact, the parties had multiple email exchanges discussing election details. See Employer Ex. 5. As of Friday, August 1, Petitioner fully supported a manual election in accordance with traditional NLRB protocols as manual elections maximize voter

¹ Employer Exhibit 5 is an email exchange primarily between Counsel for the Employer and Petitioner. It was not submitted during the hearing as the Region had previously advised that the issue of manual v. mail ballot election was not litigable. The Employer is under the understanding that the Region is fully aware the IAM supported a manual election to maximize voter participation up until the day before the hearing in this matter, as it was the Region’s representative (Mike Burros) who contacted Employer’s counsel to inform him the hearing would go forward on August 4 because the Petitioner had “changed its mind” on the issue of a manual election.

turnout – a goal shared by both sides. (Employer Ex. 5). To that end, and as requested by the Region, the Employer submitted a detailed election plan (that originally included two different voting options) to meet the Region’s request for a safely conducted manual election. Upon being advised by the Region that the Region considered the GC’s guidelines (GC-20_10) “minimum” safety protocols, on July 31, the Employer submitted a revised manual election proposal that exceeded the guidelines in GC-20_10. See Employer’s Exs. 1, 2, 3.² The safety precautions included the following:

- A 90-minute voting period (or 120-minute voting period as discussed at the hearing (Tr. 21-22) for a total of 13 possible voters. This gave each voter at least a 7-minute window to go through the balloting area and ample time for appropriate sanitary measures.
- The proposed release of voters in groups of 3 every 15 minutes during this voting period to cast their ballots, with reminders to all employees at the 60- and 75-minute marks that the polls remained open for 30 and 15 minutes respectively.
- 5 separate tables, located more than 6 feet apart, for voting, the ballot box, the NLRB agent, and two observers – protected by Plexiglas shields.
- A one-way walkway that assured participants of social distancing, with all eligible employees and election participants also wearing face coverings.
- The certifications required by GC-20_10.

The Employer was never advised that its revised manual election plan did not meet or exceed the specifications of GC-20_10.

It was not until early afternoon on August 3 that the Region communicated that the IAM had “changed its mind” on a manual election, which prompted a telephone conference between the

² During the hearing, the Hearing Officer rejected Employer’s Exhibits 1, 2 and 3 which set forth the Employer manual election safety protocols on the grounds the issue was non-litigable. The Hearing Officer also refused to identify the exhibits as rejected exhibits on the same grounds, despite that fact that in doing so, the Hearing Officer was willfully failing to create a complete record. The rejected exhibits were Employer’s Ex. 1 (Tredroc written plan for compliance with GC 20_10); Employer’s Ex. 2 (Floor diagram/layout outlining observer and balloting table and distances) and Employer’s Ex. 3 (photos of proposed voting area including Plexiglas shields for observers, etc.). The Employer had also submitted a video (Employer Ex. 4) reflecting the voter’s path through the proposed voting area. It is the Employer’s understanding that the Region has possession of all these documents.

IAM's representative and counsel for the Employer, in which they discussed the voting mechanics. See Employer Ex. 6.³ As noted in both Employer Ex. 6, as well as during the hearing, the IAM's only articulated bases for requesting a mail ballot election were because of vague concerns of: (1) an "uptick" in community spread of COVID-19 in Chicago; and (2) unidentified potential "interference" with laboratory conditions. (Tr. 16-17). For example, the IAM articulated concerns about employees "standing in line". (Tr. 17). The Employer's voting plan eliminates this concern with release times, and an adequate window of time to avoid a line, and ensured that any voters in line would be socially distant. Frankly, it is quite simple to eliminate the possibility of voters standing in line given the 90-120 minute window for 13 voters discussed at the hearing. (Tr. 21-22).

As detailed below, the Petitioner's eleventh-hour change of heart is based on specious concerns that do not support deviating from the Board's long-standing preference for manual elections. The Petitioner's vague and unspecified concerns about the COVID-19 virus should not be sufficient to outweigh the Board's preference for manual elections. Accordingly, the Region must order a manual ballot election. As noted during the hearing, the parties agree that if a manual election takes place, a voting time of 7:00 a.m.-8:30 a.m. or 7:00 a.m.-9:00 a.m. will ensure that all voters may safely participate in this NLRB election. (Tr. 21-22).

³ Employer Exhibit 6 is a second email exchange on August 3 between Counsel for the Employer and Petitioner. It was not submitted during the hearing as the Region had previously advised that the issue of manual v. mail ballot election was not litigable. Employer Exhibit 6 documents the IAM's change in preference for a mail ballot election, as well as their articulated basis for the change in preference (which were also identified during the hearing). (Tr. 16-17).

ARGUMENT

I. The Board’s Longstanding Preference Is to Hold Manual Elections So as to Maximize Voter Participation, and to Allow a Board Agent to Oversee the Election.

In *San Diego Gas & Electric*, 325 NLRB 1143 (1998) the Board stated:

“Because of the value of having a Board agent present at the election, the Board’s longstanding policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.”

Id. at 1144. The Board went on to provide yet another reason why it is important for elections to take place manually where possible—to maximize voter participation. *See Id.* at 1146 (“The Board’s experience with representation elections has shown that the voter participation rate is generally higher in elections conducted manually than in mail ballot elections”). This preference for manual elections is also reflected in the NLRB CASEHANDLING MANUAL, PART II § 11301.2 (“The Board’s longstanding policy is that representation elections should, as a general rule, be conducted manually”).

Because of the Board’s strong preference for manual elections, there are only extremely limited circumstances in which a mail ballot election is ordered over a manual election. The Board in *San Diego Gas & Electric* explained why this is so: “[B]ecause mail ballot elections have, by design, 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.” *Id.* at 1146. The NLRB CASEHANDLING MANUAL, PART II § 11301.2 lists the circumstances where that reasoning applies: “(a) where eligible voters are ‘scattered’ because of their job duties over a wide geographic area; (b) 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 (c) where there is a strike, a lockout or picketing in progress.”

Notably, none of these circumstances justifying a mail ballot election are applicable to this case, and the Petitioner does not even attempt to argue that these circumstances exist. Rather, the Petitioner makes the curious argument that “laboratory conditions” would somehow be affected if the election were to take place at the voters’ place of employment, since the Employer might be able to see who does and does not vote. (Tr. at 17). Such a concern would invalidate the vast majority of elections that take place since a manual election almost always takes place at the job site.⁴ The Board has conducted manual elections on site for decades without interference with “laboratory conditions,” and there is absolutely no reason to believe such interference would happen here. This argument is therefore a nonstarter and should not stand in the way of a manual election, lest the manual election become a thing of the past.

II. As Illinois Is Not Under a “Shelter in Place” Order Nor Experiencing Significant Community Spread of COVID-19, a Manual Election is Appropriate and Safe.

The Employer’s election plan meets or exceeds all requirements of the recommendation set forth in GC 20_10, and there is no basis for ordering a mail ballot election given that: (1) Illinois is not under a “shelter in place” order; (2) community spread of COVID-19 in the metro area is significantly below the “high risk” guidelines set forth by the CDC; and (3) the Employer’s election plan is consistent with the Board’s long-standing preference for ensuring voter participation via a manual election while ensuring employee and participant safety.

The Employer accepts that in some instances, the COVID-19 pandemic supports the Regional Director exercising his discretion and ordering a mail ballot election. However, this is

⁴ The Petitioner’s other argument regarding concerns about the COVID-19 virus are dealt with in the next section.

not one of those instances, and the employees participating in the pending petition have the absolute right to vote in person given the safety protocols in the Employer's election plan.

All but two of the parties who would be involved in a manual election are—and have been—regularly reporting to the facility where the election would take place for their jobs. All employees are socially distancing where possible, and when it is not possible, they are required to wear masks. Thus, as to all 13 eligible voters and Tredroc's observer, showing up for the election presents virtually no additional risk. (Tr. at 14-15). Moreover, there has not been a single confirmed case of COVID-19 at the facility. There would thus be very little risk to the Petitioner's observer and the Board agent being present on-site for, at most, a two-hour period to conduct the election in the manner that the Board has long preferred. Additionally, as concerns the Board agent, travel should not be a real concern in this case. Tredroc's facility where the election would take place is located in Elk Grove Village, Illinois, just outside of Chicago and within easy driving distance.

Not only is there little additional risk to conducting a manual election in this instance, Tredroc has created, and is committed to following, a detailed plan—which complies fully with General Counsel Memorandum 20_10—to ensure a safe election environment. Tredroc created this plan and submitted it to the Region before the Petitioner's about-face on the manual election/mail-ballot issue. In addition to the written plan, Tredroc submitted a diagram, photographs of the election area setup, and a video walkthrough of the area showing exactly how it proposes the election to proceed. These exhibits show, among other things, separate tables for each observer, the Board agent, and the voting booth, all spaced at least 6-feet apart; Plexiglas shields in front of each observer and the Board agent; a marked path on the floor from the entrance past the Board agent, to the voting booth, and finally to a separate exit. Moreover, the written plan

details describe, among other things, Tredroc’s arrangements for tracking every person who enters the building where the election would take place and ensuring they have not been exposed to the COVID-19 virus for 14 days prior to the election, requiring everyone to wear CDC-approved masks and gloves, and sanitizing the voting area after each voter.

Under these conditions, it is difficult to credit the Petitioner’s claimed concerns about conducting a mail ballot election in this case due to the COVID-19 virus. Counsel for the Petitioner mentioned that mail ballot elections have been done in several other recent cases, and that “there is no reason not to move to a mail ballot election here.” (Tr. at 17). The Petitioner is indeed correct that in some recent cases, Regional Directors have ordered mail ballot elections. However, many of those cases were relatively early on in the COVID-19 pandemic, when states were under “shelter in place” orders, much less was known about the virus, and state governors were issuing new orders with new restrictions seemingly on a daily basis. *See, e.g., Baker Commodities, Inc.*, Case No. 28-RC-259125 (Apr. 29, 2020); *Millennium Tower Residences*, Case No. 02-RC-258153 (Apr. 29, 2020); *Victory Wine Group, LLC*, Case No. 16-RC-257874 (Apr. 23, 2020); *Flynn Architectural Finishes, Inc.*, Case No. 05-RC-258064 (Apr. 22, 2020); *Atlas Pacific Engineering Co.*, Case No. 27-RC-258742 (Apr. 20, 2020); *Citizen 360 Condominium*, Case No. 02-RC-257691 (Apr. 17, 2020); *Phoenix New Times, LLC*, Case No. 28-RC-254936 (Apr. 15, 2020); and *Hyatt Place O’Hare Airport*, Case No. 13-RC-258090 (Apr. 28, 2020).

The circumstances have obviously changed. The State of Illinois is no longer under a “shelter in place” order, and has not been for quite some time. In fact, since June 26, the state has been in Phase 4 out of 5 of its “Restore Illinois” plan. This means, for instance, that gatherings of up to 50 people are allowed, restaurants and bars are re-opened, and travel has resumed.⁵ In other

⁵ <https://coronavirus.illinois.gov/s/restore-illinois-phase-4>

words, Illinois is now on a much more stable footing than what it was months ago when many of the decisions ordering mail ballot elections cited above were decided. In addition, and contrary to what counsel for the Petitioner claims, suburban Cook County, where Tredroc's facility is located, is not experiencing some ominous increase in cases of the virus. As of August 9, suburban Cook County reported a 5.9% 7-day average COVID-19 test positivity rate, with increases on only 5 out of the last 10 days.⁶ Thus, suburban Cook County remains well below the state's 8% target positivity rate and the target of less than 7 out of 10 days of increases.

Finally, despite their stated concerns about the virus, the Petitioner will almost assuredly conduct home visits to the eligible voters to do some campaigning—even if a mail ballot election is ordered. If the Petitioner's concerns about having its representative on-site for a manual election are genuine, they should commit to refraining from conducting home visits, which could spread the virus as well. Notably, they did not do so on the record.

CONCLUSION

Quite simply, if the Region is unwilling to order a manual ballot election in this case, it is difficult to imagine a scenario in which the Region would permit a manual election in the foreseeable future. Although the Board's GC 20_10 confirms the Regional Director has the discretion to order a mail ballot election in GC 20_10, that memo also notes that the Board has the ultimate authority to make such decisions, and clearly notes that the guidelines in GC 20_10 were prepared collaboratively with the Regions to determine how best to conduct manual elections safely and efficiently. Those guidelines are met in this case, and the voting population is certainly small enough to ensure voter and participant safety.

⁶<https://www.chicagotribune.com/coronavirus/ct-viz-covid-19-illinois-cases-metrics-20200807-rqesiwwvjvbpshsrb73xsxmca-htmlstory.html>

Merely articulating a vague and unspecified concern about “COVID-19” or the “pandemic” cannot become a basis for bypassing the Board’s strong preference for a manual election if the manual election can be conducted safely. As explained above, the Board’s preference for manual elections and the specific exceptions to that preference are designed to maximize voter participation. Ordering a mail ballot election in circumstances where one of the exceptions does not apply runs the real risk of needlessly lessening voter participation.

In contrast, a manual election does not expose the employees or other participants to additional risk. There would be only two additional parties at the work location who are not there on a daily basis – one of whom (the IAM representative) who would only be present for the pre-election conference and ballot counting, and the NLRB representative. Tredroc has set out a detailed plan to make sure the election environment is more than adequately spaced, sanitized, and safe all-around. Therefore, a manual election is appropriate.

Alternatively, because the Petitioner requested a manual election and, to date, has not amended the petition to request otherwise, if the Region believes only a mail ballot election is appropriate, the petition should be dismissed.

Dated: August 11, 2020

Respectfully submitted,



Mark L. Keenan
BARNES & THORNBURG LLP
3475 Piedmont Ave. NE, Ste. 700
Atlanta, Georgia 30305-3327
Telephone: (404) 264-4044
Facsimile: (404) 264-4033
mark.keenan@btlaw.com

Attorneys for Employer

Exhibit 5

Keenan, Mark

From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 3:07 PM
To: Burros, Michael G.
Cc: Keenan, Mark
Subject: [EXTERNAL]Re: Unit description

Mike,

I'm always good going that route too.

Bill LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers
Midwest Territory
[1901 S. Meyers Rd Suite 210](#)
[Oakbrook Terrace, IL 60181](#)
Office: [815-280-6400 Ext. 6224](#)
Cell: [815-214-4587](#)
Fax: [815-280-6345](#)

“The man who is above labor, and who despises the laborer, shows the want of common sense – seemingly forgetting that every article he has is the product of labor. Even the very air he breathes, and the blood that courses through his veins is the result of the labors of the god of nature.”

~Tom Talbot, Founder IAM – February 1889

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P Please consider the environment before printing this email

On Jul 27, 2020, at 1:36 PM, Burros, Michael G. <Michael.Burros@nlrb.gov> wrote:

This email is from a sender not in the IAM's email system. Do not click any links or open attachments unless you are expecting this information. If unsure, contact the sender to confirm.

We have no issue with a Norris-Thermador list if you want to go that route.

From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 10:05 AM
To: Keenan, Mark <Mark.Keenan@btlaw.com>
Cc: Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: RE: Unit description

Mark,

I am happy to hear we are all on the same page with ensuring all the employees get a chance to vote. I don't think this will hold up a stip. Again, our concern is a road call, which could be lengthy depending on the location and complexity of the repair. That being said, maybe a 90 min window to vote would work. Under this circumstance however, we will advise bargaining unit members that they have the legal right to vote during the election time, even if this means leaving a road call that may be incomplete in order to travel back to the shop to vote and return to the road call once they have voted. I can't imagine a customer would be thrilled with this but as you had said, during that time they should all be together for lunch.

Sincerely,

Bill LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers
Midwest Territory
1901 S. Meyers Rd Suite 210
Oakbrook Terrace, IL 60181
Office: 815-280-6400 Ext. 6224
Cell: 815-214-4587
Fax: 815-280-6345

“The man who is above labor, and who despises the laborer, shows the want of common sense – seemingly forgetting that every article he has is the product of labor. Even the very air he breathes, and the blood that courses through his veins is the result of the labors of the god of nature.”

~Tom Talbot, Founder IAM – February 1889

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P Please consider the environment before printing this email

From: Keenan, Mark [<mailto:Mark.Keenan@btlaw.com>]
Sent: Monday, July 27, 2020 9:38 AM
To: LePinske William <wlepinske@iamaw.org>
Subject: RE: Unit description

This email is from a sender not in the IAM's email system. Do not click any links or open attachments unless you are expecting this information. If unsure, contact the sender to confirm.

Hey Bill – thanks for the note – hope you and yours are healthy/safe.

After initially consulting with the client – it was my recommendation to use the lunchtime hour we proposed. We share your interest in ensuring that everyone gets a chance to vote – and the client has assured me that all of the employees get back to the facility during that lunch hour. The two hour time slots seemed a little long for a 13 person unit, and we also had concerns related to COVID so we wanted to limit the ## of times that the NLRB agent and union reps had to be onsite with the employees.

If you're concerned about possibility of emergency call – I suppose we could simply lengthen the voting period – maybe to 90 minutes? 11:30-1:00 pm? I'm told most of these guys eat together so I would think window would be large enough.

<image001.gif>

Mark Keenan

Direct (404) 264-4044

<image002.gif>

<image001.gif>

From: LePinske William <wlepinske@iamaw.org>

Sent: Monday, July 27, 2020 10:31 AM

To: Keenan, Mark <Mark.Keenan@btlaw.com>; Burros, Michael G. <Michael.Burros@nlrb.gov>

Subject: [EXTERNAL]RE: Unit description

Mark,

Outstanding, looks like we have an agreement on the unit description.

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Sincerely,

Bill LePinske

Grand Lodge Representative

International Association of Machinists and Aerospace Workers

Midwest Territory
1901 S. Meyers Rd Suite 210
Oakbrook Terrace, IL 60181
Office: 815-280-6400 Ext. 6224
Cell: 815-214-4587
Fax: 815-280-6345

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From: Keenan, Mark [<mailto:Mark.Keenan@btlaw.com>]
Sent: Monday, July 27, 2020 8:54 AM
To: LePinske William <wlepinske@iamaw.org>; Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: RE: Unit description

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HI Bill – Mike had asked for clarification on the designation OTR which – as you note – is “off the road” technician – so I believe we’re in agreement on that employee..

<image001.gif>
Mark Keenan
Direct (404) 264-4044

<image002.gif>
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From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 9:48 AM
To: Burros, Michael G. <Michael.Burros@nlrb.gov>; Keenan, Mark <Mark.Keenan@btlaw.com>
Subject: [EXTERNAL]RE: Unit description

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From: Burros, Michael G. [<mailto:Michael.Burros@nlrb.gov>]
Sent: Monday, July 27, 2020 7:50 AM
To: Keenan, Mark <Mark.Keenan@btlaw.com>; LePinske William <wlepinske@iamaw.org>
Subject: RE: Unit description

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Please let me know if this will work for the unit description.

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Many Thanks,

Michael Burros

From: Keenan, Mark <Mark.Keenan@btlaw.com>
Sent: Friday, July 24, 2020 12:52 PM
To: Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: RE: Unit description

Hi Michael – a little later this afternoon – we’ll forward you our detailed proposal for the manual election – giving the Region two possible options – both of which we believe provide more than enough space for safely voting a manual election. That proposal will come from Anthony Glenn.

With respect to unit description – recognizing that the Region doesn’t want acronyms – but in light of some of the job classifications currently being used – I’ve tweaked the 2015 description as follows:

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Let me know yours and the Unions thoughts. We remain willing to do the election Norris-Thermador list (which would be an agreed upon list of actual eligible voters).

<image001.gif>

Mark Keenan

Direct (404) 264-4044

<image002.gif>

<image001.gif>

From: Burros, Michael G. <Michael.Burros@nlrb.gov>
Sent: Thursday, July 23, 2020 11:11 AM
To: Keenan, Mark <Mark.Keenan@btlaw.com>
Subject: [EXTERNAL]Unit description

Thanks for taking the time to talk with me today. Below is the bargaining unit language from 2015 RD petition

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

All road service truck tire employees and shop tire technicians employed at 2450 Lunt Avenue, Elk Grove Village, Illinois 60007; but excluding all other employees, managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

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Exhibit 6

Keenan, Mark

From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, August 3, 2020 3:18 PM
To: Keenan, Mark
Subject: [EXTERNAL]RE: Unit description

Mark,

As per our discussion, I followed up with the organizer who is working with the group. After further discussion, we are still convinced that a mail ballot would be appropriate at this time given the COVID situation and concerns with maintaining laboratory conditions with such tight NLRB COVID restrictions in place. Further, there are concerns with the unpredictable nature of future state and local restrictions on social gatherings and meetings; we wouldn't want to agree to a manual ballot only to have the State or a local government put in place a restriction that would interfere with the election agreement.

I am not sure if you have ever had to file a motion to revoke a stip before, but I can assure you it isn't a pleasant situation.

Sincerely,

Bill LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers
Midwest Territory
1901 S. Meyers Rd Suite 210
Oakbrook Terrace, IL 60181
Office: 815-280-6400 Ext. 6224
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From: Keenan, Mark [mailto:Mark.Keenan@btlaw.com]
Sent: Monday, August 3, 2020 12:47 PM
To: LePinske William <wlepinske@iamaw.org>
Subject: RE: Unit description

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Hey Bill - you have a moment for a quick call?

Mark Keenan

Direct (404) 264-4044



From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 3:07 PM
To: Burros, Michael G. <Michael.Burros@nlrb.gov>
Cc: Keenan, Mark <Mark.Keenan@btlaw.com>
Subject: [EXTERNAL]Re: Unit description

Mike,

I'm always good going that route too.

Bill LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers
Midwest Territory
[1901 S. Meyers Rd Suite 210](#)
[Oakbrook Terrace, IL 60181](#)
Office: [815-280-6400](tel:815-280-6400) Ext. 6224
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On Jul 27, 2020, at 1:36 PM, Burros, Michael G. <Michael.Burros@nlrb.gov> wrote:

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We have no issue with a Norris-Thermador list if you want to go that route.

From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 10:05 AM
To: Keenan, Mark <Mark.Keenan@btlaw.com>
Cc: Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: RE: Unit description

Mark,

I am happy to hear we are all on the same page with ensuring all the employees get a chance to vote. I don't think this will hold up a stip. Again, our concern is a road call, which could be lengthy depending on the location and complexity of the repair. That being said, maybe a 90 min window to vote would work. Under this circumstance however, we will advise bargaining unit members that they have the legal right to vote during the election time, even if this means leaving a road call that may be incomplete in order to travel back to the shop to vote and return to the road call once they have voted. I can't imagine a customer would be thrilled with this but as you had said, during that time they should all be together for lunch.

Sincerely,

Bill LePinske
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From: Keenan, Mark [<mailto:Mark.Keenan@btlaw.com>]
Sent: Monday, July 27, 2020 9:38 AM
To: LePinske William <wlepinske@iamaw.org>
Subject: RE: Unit description

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Hey Bill – thanks for the note – hope you and yours are healthy/safe.

After initially consulting with the client – it was my recommendation to use the lunchtime hour we proposed. We share your interest in ensuring that everyone gets a chance to vote – and the client has assured me that all of the employees get back to the facility during that lunch hour. The two hour time slots seemed a little long for a 13 person unit, and we also had concerns related to COVID so we wanted to limit the ## of times that the NLRB agent and union reps had to be onsite with the employees.

If you're concerned about possibility of emergency call – I suppose we could simply lengthen the voting period – maybe to 90 minutes? 11:30-1:00 pm? I'm told most of these guys eat together so I would think window would be large enough.

<image001.gif>

Mark Keenan

Direct (404) 264-4044

<image002.gif>

<image001.gif>

From: LePinske William <wlepinske@iamaw.org>
Sent: Monday, July 27, 2020 10:31 AM
To: Keenan, Mark <Mark.Keenan@btlaw.com>; Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: [EXTERNAL]RE: Unit description

Mark,

Outstanding, looks like we have an agreement on the unit description.

I would like to know where your client is on the two different election times we had requested on the petition. The reason we had originally asked for two different election times on the same day was

actually out of respect for the employer's operations. Understanding that the nature of their business is responding to emergency breakdowns, we wanted to ensure that everyone was able to vote without having to ask the employer to turn down requests for service and potentially losing business. With two election times, if someone happens to be on a road call in the morning, they could vote in the afternoon. Alternatively, we could do one election time but would request language that the employer agrees that no eligible voters will be assigned to road calls or out of the shop for any other reason during the election time. Thoughts?

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Sent: Monday, July 27, 2020 7:50 AM

To: Keenan, Mark <Mark.Keenan@btlaw.com>; LePinske William <wlepinske@iamaw.org>

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Many Thanks,

Michael Burros

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Sent: Friday, July 24, 2020 12:52 PM
To: Burros, Michael G. <Michael.Burros@nlrb.gov>
Subject: RE: Unit description

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of August, 2020, the foregoing was e-filed with the Regional Director, and a copy of the foregoing was served upon the following parties via electronic mail:

William J. LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers, AFL-CIO
District 10
1901 S. Meyers Road, Suite 210
Oakbrook Terrace, Illinois 60181
wlepinske@iamaw.org

William H. Haller
Associate General Counsel
International Association of Machinists and Aerospace Workers, AFL-CIO
9000 Machinists Place, Room 202
Upper Marlboro, Maryland 20772
whaller@iamaw.org



Mark L. Keenan

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2020, the foregoing was e-filed with the Office of Executive Secretary/Board, and a copy of the foregoing was served upon the following parties via electronic mail:

William J. LePinske
Grand Lodge Representative
International Association of Machinists and Aerospace Workers, AFL-CIO
District 10
1901 S. Meyers Road, Suite 210
Oakbrook Terrace, Illinois 60181
wlepinske@iamaw.org

William H. Haller
Associate General Counsel
International Association of Machinists and Aerospace Workers, AFL-CIO
9000 Machinists Place, Room 202
Upper Marlboro, Maryland 20772
whaller@iamaw.org

Paul Hitterman, Acting Regional Director
National Labor Relations Board – Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, Illinois 60604-2027
paul.hitterman@nrlb.gov

Michael G. Burros, NLRB Board Agent
michael.burros@nrlb.gov



Mark L. Keenan