UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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In The Matter of:

Case No.: 29-RC-256449

COGENT WASTE SOLUTIONS LLC,

Employer,

and

WASTE MATERIAL, RECYCLING AND GENERAL INDUSTRIAL LABORERS, LOCAL 108,

Petitioner,

and

LEAGUE OF INTERNATIONAL FEDERATED EMPLOYEES, LOCAL 890,

Intervenor,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 813,

Intervenor.

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COGENT WASTE SOLUTIONS LLC'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION AND REQUEST TO STAY THE ELECTION

I. PRELIMINARY STATEMENT

Pursuant to Section 102.67 of the Board's Rules and Regulations, Cogent Waste Solutions LLC ("Cogent" and/or "Employer") respectfully submits this Request for Review of the Regional Director's Decision and Direction of Election dated August 14, 2020 (The

"Decision)[1] on the grounds that (1) the Decision raises a substantial question of law or policy because of a departure from Board precedent; and (2) the Regional Director's ruling has resulted in a prejudicial error.

Specifically, Cogent submits that the Regional Director's finding as to "Voting Eligibility" ignores Board precedent (and caselaw from the United States Courts of Appeals for the Second Circuit), which provides that employees who are no longer employed and who have found replacement jobs are not eligible to vote in an election. *See NLRB v. Connecticut Foundry Co.*, 688 F.2d 871, 877-78 (2d Cir. 1982); *Marlon Rockwell Corp. v. NLRB*, 116 F.2d 586 (2d Cir. 1941).

Additionally, the Board's failure to hold a hearing and solicit positions from the parties as to the issue of Voter Eligibility resulted in a prejudicial error – namely, that ineligible voters, including those who have already obtained alternative employment (including with Cogent's competitors), will be permitted to vote despite having no reasonable expectation of employment with Cogent. Put simply, it will create a situation in which non-employees (and more concerning, employees of competitors) will be able to interfere with the election and with Cogent's business. Such a phenomenon not only goes against Board precedent as set forth above, but it goes against the principle at the heart of Board policy, *i.e.,* permitting employees to choose ***their own*** bargaining agent.

Cogent's employees have expressed concern to management about having non-employees determine their bargaining agent and, in turn, their terms and conditions of employment. This fact alone warrants review of the Decision.

[1] A true and correct copy of the Decision is annexed hereto as Exhibit A.

In light of the foregoing, Cogent respectfully submits that there are compelling reasons warranting review of the Decision. Accordingly, Cogent's respectfully requests that the Board grant its request for review of the Decision and:

1. Modify the Decision to provide that those eligible for vote are those currently employed by Cogent as of the date of the Decision; or alternatively,
2. Direct the Regional Director to hold a hearing on voting eligibility during which the parties may submit their respective positions and present evidence on the record.

Additionally, because compelling and extraordinary circumstances exist here, Cogent respectfully requests that the Board stay the election pending review and determination of the request for review in order to prevent a waste of resources and to protect the integrity of the election.

II. RELEVANT FACTS & PROCEDURAL HISTORY

The above-referenced petition (the "Petition") was filed by Waste Material, Recycling and General Industrial Laborers, Local 108 ("Local 108" or "Petitioner") on February 18, 2020 seeking to represent a unit of full-time and part-time drivers employed by GPB Waste NY LLC d/b/a Five Star Carting ("GPB"). The employees were represented by League of International Federated Employees, Local 890 ("LIFE 890"). International Brotherhood of Teamsters, Local 813 ("Local 813") intervened into the proceedings upon the filing of the Petition.

On March 2, 2020, Local 108, Local 813, LIFE 890 and GPB executed a Stipulation Election Agreement scheduling an election for March 27, 2020. On March 19, 2020, the Board suspended all representation elections due to the COVID-19 pandemic.

On July 17, 2020, the Regional Director revoked the Stipulation Election Agreement and directed the parties to the Stipulation Election Agreement to appear for a hearing on July 27,

2020 on the sole issue of the manner in which the election would be held – *i.e.,* manual/in-person v. mail-in balloting.

In advance of the July 27, 2020 hearing, counsel for Cogent informed Kareema Alston, the Board Agent, and counsel for Local 813, Local 108 and LIFE 890 that Cogent had acquired the assets of GPB (including the employees) and, that, although Cogent is not a successor-in-interest to GPB, it was willing to "step into the shoes" of GPB for the purposes of the Petition.[2] During that same communication, counsel for Cogent informed the parties that, due to the economic downturn resulting from the COVID-19 pandemic, it was forced to lay off fifty (50%) percent of its workforce. As such, Cogent requested that the election be held in abeyance for twelve (12) months, with the ***hope*** that Cogent would be back to full-strength and able to recall the laid-off workers.

During the pre-hearing call held on July 24, 2020, the Board Agent informed the parties that the Regional Director denied Cogent's request to hold the election in abeyance. The Board Agent further informed the parties that the Regional Director has determined that eligible voters will include all employees employed as of February 22, 2020, as provided in the Stipulation Election Agreement. Neither the Board Agent or the Regional Director solicited positions on the issue of voter eligibility.

A hearing was ultimately held on July 30, 2020 on the sole issue of mail-in v. in-person balloting during which the parties placed their positions on the record.

On August 14, 2020, the Regional Director issued the Decision directing that an election be held via mail-in ballots during the period of August 28, 2020 through September 18, 2020.

[2] The Decision erroneously refers to Cogent as "formerly GPB Waste NY LLC d/b/a Five Star Carting, Inc." This representation by the Board is entirely false. Cogent explicitly informed the Board that it was not a successor-in-interest to GPB and no evidence was cited by the Board in the Decision to support this baseless contention.

With respect to Voting Eligibility, the Decision provides:

> **B. Voting Eligibility**
>
> Eligible to vote are those in the unit who were employed during the payroll period ending **February 22, 2020,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.
>
> Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.
>
> Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (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.

See Ex. A, p. 9.

As previously noted, as a result of the COVID-19 pandemic, Cogent, a waste management company, was forced to lay off fifty (50%) percent of its workforce on or about March 20, 2020 in the wake of the Executive Order mandating the closure of virtually all of Cogent's customers. To date, almost five (5) months later, Cogent has not recovered and has be unable to recall the laid-off employees. Upon information and belief, many of these laid-off employees have since obtained work with different employers, including Cogent's competitors. At least one laid-off employee declined to be recalled by Cogent, instead opting to either rely on unemployment or obtain new employment. With respect those who remain laid-off and have been unable to find new employment, there is no reasonable expectation of employment by Cogent in the near future.

III. ARGUMENT

a. Standard Of Review

Section 102.67(d) of the Board's Rules and Regulations provides that the Board will grant a request for review where compelling reasons exist therefor. Section 102.67(d) further provides that, "a request for review may be granted on the following grounds:

> (1) That a substantial question of law or policy is raised because of:
>
> > (i) The absence of; or
> > (ii) A departure from, officially reported Board precedent.
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> (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
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> (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
>
> (4) That there are compelling reasons for reconsideration of an important Board rule or policy.
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> 29 C.F.R. 102.67(d)

b. Compelling Reasons Exist Warranting A Review By The Board Of The Decision

Cogent respectfully submits that the Board should grant its request for a review of the Decision on the grounds that (1) the Decision raises a substantial question of law or policy because of a departure from Board precedent; and (2) the Regional Director's ruling has resulted in a prejudicial error.

i. THE DECISION RAISES SUBSTANTIAL QUESTIONS OF LAW AND POLICY BECAUSE IT BLATANTLY AND EGREGIOUSLY DISREGARDS CONTROLLING AUTHORITY

The Decision provides that eligible voters "are those in the unit who were employed during the payroll period ending February 22, 2020, including employees who did not work

during that period because they were ill, on vacation, or temporarily laid off." Ex. A, p. 9. The Decision further provides, in relevant part:

> 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.
>
> *Id.*

It is well settled that a laid-off employee is eligible to vote only if "there exists a reasonable expectancy of employment in the near future." *Higgins Inc.,* 111 NLRB No. 134 (1995); *Harris Products Co.,* 100 NLRB No. 155 (1952); *General Motors Corp.*, 92 NLRB 1752 (1951); *Igleheart Brothers Division General Foods Corp.*, 96 NLRB 1005 (1951); *Vulcan Tin Can Co.*, 97 NLRB 180 (1951).

Here, there is simply no reasonable expectancy of employment in the near future due to the COVID-19 pandemic and the economic downturn resulting from it. Although Cogent, through its counsel, expressed hope in recalling the laid-off workers, that uncertain expression was coupled with a request for the election to be held in abeyance ***for twelve (12) months***, evidencing the fact that Cogent does not anticipate recalling these laid-off workers in the near future. Accordingly, based upon clear Board precedent, these laid-off employees are not eligible to vote.

Additionally, the Decision ignores entirely the laid-off workers who have obtained new employment. These employees are not eligible to vote under relevant caselaw. *See NLRB v. Connecticut Foundry Co.*, 688 F.2d 871, 877-78 (2d Cir. 1982); *Marlon Rockwell Corp. v. NLRB*, 116 F.2d 586 (2d Cir. 1941).

In light of the foregoing, the Decision should be reviewed and modified to provide that the eligible voters are those currently employed by Cogent as of the date of the Decision.

ii. THE REGIONAL DIRECTOR'S RULING ON THE ISSUE OF VOTER ELIGIBILITY HAS RESULTED IN AN ERROR THAT IS PREJUDICIAL TO COGENT AND ITS CURRENT EMPLOYEES

The Regional Director decision to unilaterally determine the issue of voter eligibility without input from the parties has resulted in a prejudicial error warranting review and modification of the Decision.

As discussed, not only is the Regional Director's decision with respect to voter eligibility contrary to Board and Second Circuit precedent, but it will almost certainly result in undue prejudice to Cogent and the current employees. In this regard, the Regional Director's decision will create a situation in which non-employees (and more concerning, employees of competitors) will be able to interfere with the election and, ultimately, with Cogent's business. Such a phenomenon is in direct conflict with long-standing Board policy of ensuring that employees choose ***their own*** bargaining agent. Indeed, Cogent employees have already expressed concern to management about the prospect of laid-off workers voting in the election and, in turn, determining their terms and conditions of employment.

At the very least, the Regional Director should have ordered a hearing on this issue, which would allow the parties to submit evidence as to the employment status of the laid-off workers and the prospect, or lack thereof, of their being rehired by Cogent. The decision not to do so warrants review by the Board.

c. The Board Should Stay The Election Until It Renders A Determination On The Employer's Request For Review

In light of the foregoing errors committed by the Regional Director, it is imperative that the Board stay the further processing of the Petition and the holding of the election pending review and determination of Cogent's request for review.

A stay would not only prevent a waste of resources for all parties involved, including the Board, but it will, most importantly, protect the integrity of the election. Accordingly, for the foregoing reasons, Cogent respectfully requests that the election be stayed. *Piscataway Assocs.*, 220 NLRB 730 (1975); see also *Angelica Healthcare Servs. Group.,* 315 NLRB 1320 (1995).

IV. CONCLUSION

Based upon the foregoing, Cogent respectfully submits that there are compelling reasons warranting review of the Decision. Accordingly, Cogent respectfully requests that the Board stay the election, grant its request for review of the Decision and (i) modify the Decision to provide that those eligible for vote are those currently employed by Cogent as of the date of the Decision; or alternatively, (ii) direct the Regional Director to hold a hearing on voting eligibility during which the parties may submit their respective positions and present evidence on the record.

Dated: New York, New York
August 18, 2020

Respectfully submitted,

DEALY SILBERSTEIN &
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By: /s/

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EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

COGENT WASTE SOLUTIONS LLC

Employer

and **Case 29-RC-256449**

WASTE MATERIAL, RECYCLING, AND GENERAL INDUSTRIAL LABORERS, LOCAL 108

Petitioner

and

LEAGUE OF INTERNATIONAL FEDERATED EMPLOYEES, LOCAL 890

Intervenor

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 813

Intervenor

DECISION AND DIRECTION OF ELECTION

The Employer, Cogent Waste Solutions LLC,[1] provides waste management services in Brooklyn, New York; Staten Island, New York and Lyndhurst, New Jersey. On February 18, 2020,[2] Waste Material, Recycling, and General Industrial Laborers, Local 108 (the Petitioner) filed a representation petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). Petitioner seeks to represent a unit of approximately 65 full-time and regular part-time drivers employed at 860 Humboldt Street, Brooklyn, New York; 4220 Arthur Kill Road, Staten Island, New York and 800 Page Avenue, Lyndhurst, New Jersey. Those employees are presently represented by League of International Federated Employees, Local 890 (Intervenor LIFE). International Brotherhood of Teamsters, Local 813 (Intervenor IBT) also claims an interest in these proceedings. Case 29-RC-256443 is also pending in the Region. That case involves the same parties but concerns a different unit of approximately 45 full-time and regular part-time helpers, welders and mechanics at the same three facilities.

The sole issue in this case is whether, in light of the continuing COVID-19 pandemic,[3] the Region should conduct an election by manual or mail ballot. On July 30, Hearing Officer

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[1] Formerly GPB Waste NY LLC d/b/a Five Star Carting, Inc.
[2] All dates contained herein are 2020 unless otherwise specified.
[3] Throughout this decision, the terms “COVID-19,” “COVID,” “Coronavirus” and “pandemic” are used interchangeably.

Kareema Alston conducted the hearing in this matter by videoconference, during which the parties were invited to present their positions and supporting evidence regarding the sole issue of whether the election should be conducted manually or by mail. None of the parties called any witnesses to testify but instead stated their positions on the record.

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

Procedural History and Positions of the Parties

On March 2, the parties executed a Stipulated Election Agreement scheduling an election at the Employer's Lyndhurst, New Jersey and Brooklyn, New York facilities for March 26 and 27. By order dated March 18, I cancelled the scheduled election due to the COVID-19 pandemic. The following day, March 19, the Board suspended all representation elections. When the Board resumed conducting elections, the Region solicited the parties' positions on whether the election should be conducted by mail or manual ballot. After considering the parties' positions, the current circumstances of the pandemic and the uncertainly regarding whether a manual election could be safely conducted, by order dated July 17, I revoked my approval of the Stipulated Election Agreement and ordered a hearing.

The hearing in this case was conducted immediately after the hearing in Case 29-RC-256443. All parties confirmed that their positions in this case were identical to those in the other case. The Employer and both Intervenors assert that a manual ballot election is appropriate. The Employer is willing to eliminate the Lyndhurst, New Jersey polling location and have all employees vote at the Brooklyn location. During the hearing in Case 29-RC-256443, Counsel stated that there are now only four employees working at the Lyndhurst facility. It was not clear from the record whether those employees were members of the same or different bargaining units. The Employer provided no information about how many unit employees work at the Staten Island facility.

Intervenor LIFE maintains that a manual ballot is appropriate because unit employees are essential workers and have been reporting to work throughout the pandemic. Intervenor IBT agrees with the Employer and Intervenor LIFE that the election should be conducted manually and that the procedures outlined by the Employer are sufficient to protect the health and safety of the Board agent and the employees. If, however, the election is conducted by mail, IBT would prefer that such an election proceed as quickly as possible consistent with the Board's normal time frames for the return of ballots rather than allowing for an extended deadline for ballots to be returned.

The Petitioner contends that a mail ballot election is the safest course of action. They stated that a "substantial" number of employees are currently on layoff but have a reasonable expectation of returning to work. A mail ballot would obviate the need for both the New Jersey

employees and those employees on layoff to travel to the Brooklyn facility. It would also reduce the possibility that voters who are turned away from the polls due to potential COVID exposure would be disenfranchised.

The COVID-19 Pandemic

At the outset, I take administrative notice of the current public health crisis created by the COVID-19 pandemic. As of August 10, there have been over five million confirmed cases of COVID-19 in the United States, and 162,481 deaths.[4] I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States Government.[5] The CDC recommendations for dealing with this public health threat include, among others, the avoidance of large gatherings, the use of cloth face coverings, and social distancing. The CDC further states that the virus can survive for a short period on some surfaces, and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes.[6]

Although the CDC has not directly addressed Board elections, it has issued guidance on elections in general. Its "Considerations for Election Polling Locations and Voters" states that officials should consider alternative voting methods where permitted, 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…."[7]

Board Law and Guidance Regarding Elections

Whether an election is to be conducted by mail, manually, or some other method is an administrative matter to be determined by the Regional Director. *National Van Lines*, 120 NLRB 1343 (1958). Traditionally, most Board elections are conducted by manual voting and there is a presumption in favor of conducting elections in this manner. *See* Section 11301.2, *NLRB Casehandling Manual, Part Two, Representation Proceedings.* However, when certain factors are present, this presumption may be overcome. In *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Board recognized that mail ballot elections are appropriate under specific, well-settled guidelines, such as where employees are scattered or where there is a strike, lockout, or picketing in place. The Board further found that a Regional Director may consider additional relevant factors when contemplating whether to conduct a mail ballot election and that "extraordinary circumstances" could permit a Regional Director to do so. *See San Diego Gas & Electric*, 325 NLRB at 1145. The Board has recognized that the COVID-19 pandemic presents such an extraordinary circumstance. *See, e.g., Atlas Pacific Engineering Co.*, 27-RC-258742 (Order dated May 8, 2020).

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[4] See *Coronavirus in the U.S.: Latest Map and Case Counts*, NEW YORK TIMES, updated July 21, 2020. https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html
5 See https://www.cdc.gov/coronavirus/2019-ncov/faq.html.
6 See https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself .
[7] See https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html.

On March 19, in response to the pandemic, the Board temporarily suspended all Board-conducted elections through April 3, 2020. The Board took this action to ensure the safety of Agency employees and members of the public involved in elections. At the time, several of the NLRB's regional offices had been closed and other locations were operating with limited staffing such that the Board did not believe it was possible to effectively conduct elections. On April 1, 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." The Agency has indeed resumed conducting elections, but the vast majority of these elections have been conducted by mail ballot.

On July 6, General Counsel Peter Robb issued a memorandum titled "Suggested Manual Election Protocols." (GC 20-10). In that memorandum, the General Counsel acknowledged that the protocols suggested therein are not binding on Regional Directors because the Board, not the General Counsel, has authority over matters of representation, and he reiterated that Regional Directors have the authority, delegated by the Board, to make "initial decisions about when, how, and in what manner all elections are conducted." The General Counsel further notes Regional Directors have, and will:

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

Among other suggestions in GC 20-10, the General Counsel proposes self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, come into contact with someone who tested positive within the preceding 14 days, are not awaiting test results, and are not exhibiting COVID-19 symptoms. However, the CDC's "current best estimate" is that 50% of COVID-19 transmission occurs while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic[8] and thus would neither be identified nor have sought testing.

In addition to the self-certification recommendations, GC 20-10 contains ten specific protocols to be addressed in any Stipulated Election Agreement or Decision and Direction of Election in which a manual election is to be conducted:

> A. Spacious polling area, sufficient to accommodate six-foot distancing, which should be marked on the floor with tape to insure separation for observers, Board Agent, and voters.
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> B. Separate entrance and exit for voters, with markings to depict safe traffic flow throughout polling area.

[8] "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html

C. Separate tables spaced six feet apart so Board Agent, observers, ballot booth and ballot box are at least six feet apart.

D. The Employer will provide markings on the floor to remind/enforce social distancing.

E. The Employer will provide sufficient disposable pencils without erasers for each voter to mark their ballot.

F. The Employer will provide glue sticks or tape to seal challenged ballot envelopes.

G. The Employer will provide plexiglass barriers of sufficient size to protect the observers and Board Agent to separate observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for observers.

H. The Agency will provide to the Board Agent(s) running the election a face shield, mask, disposable clothes covering if requested, hand sanitizer, gloves and disinfecting wipes.

I. An inspection of the polling area will be conducted by video conference at least 24 hours prior to the election so that the Board Agent and parties can view the polling area.

J. In accordance with CDC guidance, all voters, observers, party representatives, and other participants should wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area or while observing the count. Signs will be posted in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives and other participants of this requirement.

GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation.

The Board has denied review of Regional Directors' decisions to conduct mail-ballot elections due to local COVID-19 circumstances even though employers have offered to follow the same or similar protocols as those identified in GC 20-10. See, for example, *Johnson Controls, Inc.*, Case 16-RC-256972 (Order dated May 18, 2020) (denying review where employer had zero COVID-19 cases, daily screened all individuals accessing the facility for symptoms, mandated face coverings and social distancing, and offered an outdoor election with plexiglass barriers, sanitizer, single-use writing utensils, floor markings for social distancing, masks, and gloves). In an Order denying a request for review in *Brink's Global Services USA, Inc.*, Case 29-RC-260969, the Board addressed a mail-ballot determination in the context of the COVID-19 pandemic and with consideration of GC 20-10. The Board noted that it "will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10." (Order dated July 14, 2020, fn. 2).

Most recently, the Board denied review in *Pace Southeast Michigan*, Cases 07-RC-257046 and -257047, noting that it agreed with the Regional Director that, under normal circumstances, the cases "would almost certainly not be elections where a mail ballot would be considered." (Order dated August 7, 2020, fn. 2). The Board, citing its order in *Atlas Pacific Engineering Co.*, 27-RC-258742, again recognized that the COVID-19 pandemic presents extraordinary circumstances under which an election that might otherwise be appropriate for manual ballot should be conducted by mail. The Board will continue to consider the prevailing circumstances in the region and the applicability of the protocols suggested in GC 20-10 in determining whether a mail or manual ballot is appropriate. (Id.)

Proposed Election Arrangements

The election in this case was originally scheduled to run from 8:30 p.m. to 9:30 p.m. on March 26 at the Lyndhurst, New Jersey location and from 2 a.m. to 11 a.m. at the Employer's Brooklyn location the following day. Polling was to run concurrently with that in Case 29-RC-256443, which, as noted above, involves a different bargaining unit of approximately 45 employees. The Employer proposes to eliminate the Lyndhurst polling location but apparently intends that all other arrangements remain the same for a manual election.

Temperature checks are required to enter the Employer's facility and masks, gloves and hand sanitizer are provided. Shifts are currently staggered so that no more than four employees are in the facility at any given time. On the day of the election, the Employer proposes that employees be asked the following questions:

1. Whether the individual or anyone in his or her household has tested positive for COVID within the past 14 days,
2. Whether that individual or anyone in his or her household has interacted with someone who tested positive for COVID within the last 14 days,
3. Whether that individual or anyone in his or her household has traveled out of the state within the past 14 days, excluding Connecticut and New Jersey, and
4. Whether that individual or anyone in his or her household is currently experiencing any symptoms including a sore throat, cough or fever.

Any employee who answered affirmatively to any of these questions would not be allowed into the facility to vote.

Regarding employees who are turned away, the Employer proposes "stretching" the polling over a two-week period, having the Board agent return to the facility two weeks after the scheduled election date to allow employees who were unable to vote on the day of the election due to COVID exposure to cast their ballots. Intervenor LIFE suggests that they be treated as challenged voters: ballots would be opened and counted at the conclusion of the polls and, if the number of voters turned away could be determinative, arrangements could be made to "bring them in another time to vote." Petitioner asserts that it is unnecessarily complicated to have the election continue two weeks later. They maintain that there is no way to ascertain that voters

turned away on election day would necessarily be cleared to return two weeks later and they could therefore be disenfranchised.

Analysis

The conduct of a manual election invariably requires participants to come within fewer than six feet of one another, while social distancing guidelines provided by Federal, State and Local authorities recommend that individuals remain at least six feet apart. Under the Board's manual election procedures, Board agents conducting the election and election observers are required to spend the duration of the polling session and ballot count process together in close proximity within a confined space. Board agents and observers will likely have to interact with voters and/or party representatives who may have questions or who may wish to raise issues about the conduct of the election. These procedures necessarily carry the risk of exposure for employees, party representatives, Board personnel, their families, and the community.

The suggested protocols for a safely conducted manual election include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer's certification in writing that the polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenge ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agent; and provision of masks, hand sanitizer, gloves and disinfecting wipes.

If conducted manually, the polling for this case and for Case 29-RC-256443 would run simultaneously over the course of almost ten hours. These cases involve four parties and, presumably, each of those parties would have representatives and observers present in addition to more than 100 employees who comprise both units. The Employer is willing to provide masks, gloves and hand sanitizer, conduct temperature checks and ask employees about potential COVID exposure. The lengthy polling time would certainly allow for a minimum number of voters to be present at any given time but would unnecessarily prolong exposure among the Board agent and observers.

None of the parties advocating for a manual election provided any information about the size and location of the proposed polling area or the cleaning protocols in place at the facility. It is therefore impossible to determine whether proper social distancing could be maintained during the voting or during the pre-election conference. Neither of the proposals to somehow resume polling at a later date for those turned away on the day of the election is practical and could potentially cause a manual election to take nearly as long as a mail ballot election. The proposals do not adequately address the concern that voters who are not working, who work at another facility or who were exposed to COVID could be disenfranchised. A mail ballot, on the other hand, avoids these significant pitfalls and ensures that all have an opportunity to vote regardless

of their location or health status. I find that the Employer and the Intervenors simply have not demonstrated that a manual ballot election could be safely and efficiently conducted.

The safety of the voters, the observers, the party representatives, the Board agents conducting the election, and the public must be considered in determining the appropriate method for conducting the election. Mail balloting provides no additional risk and is consistent with current guidance of limiting in-person contact and travel. Even in the midst of this pandemic, the Region has already successfully conducted a number of mail ballot elections. Based on the above and the record as a whole, I find that the COVID-19 pandemic presents an extraordinary circumstance that makes the conduct of a mail ballot election the most responsible and appropriate election method in this case.

CONCLUSIONS AND FINDINGS

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner and the Intervenors are labor organizations within the meaning of Section 2(5) of the Act and claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties have stipulated that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time drivers, excluding all clerical and professional employees, welders, helpers, mechanics, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Waste Material, Recycling, and General Industrial Laborers, Local 108; League of International Federated Employees, Local 890; International Brotherhood of Teamsters, Local 813 or no union.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 29, on **August 28, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 29 office by close of business on **September 18, 2020**. The mail ballots will be counted by video conference on a date and at a time and manner to be determined by the Regional Director after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Kareema Alston via telephone at (718) 765-6180 or via e-mail at Kareema.Alston@nlrb.gov by no later than 5:00 p.m. on **September 7, 2020** in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 22, 2020,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **August 18, 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.nlrb.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.nlrb.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 nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: August 14, 2020

KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot are shown on Panel 3 and 5 of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on Panels 2 through 5 and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

ELECTION DETAILS: The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate voting unit by the office of the National Labor Relations Board, Region 29, on **Friday, August 28, 2020**. Voters must return their mail ballots so that they will be received by the National Labor Relations Board, Region 29, by close of business on **Friday, September 18, 2020**. 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**.

Any employee who believes that he/she is eligible to vote but did not receive a ballot or who otherwise requires a duplicate mail ballot kit should communicate immediately with the National Labor Relations Board by either calling the Region 29 Office at 718-330-7713, the Board Agent assigned to the case at 718-765-6180, or our national toll-free line at 1-844-762-NLRB (1-844-762-6572), no later than **Monday, September 7, 2020**.

Due to the extraordinary circumstances of COVID-19 and the directions of state and local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, the ballot count will take place on a date and in a manner to be determined by the Regional Director.

All ballots will be commingled and counted on a date and time to be determined by the Regional Director. In order to be valid and counted, the returned ballots must be received by the Region 29 Office prior to the counting of the ballots.

The Region will provide notice to the parties of the scheduled date for the ballot count at least 24 hours prior to the count. The count will take place virtually on a platform such as Skype, WebEx, etc., to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time drivers employed by the Employer at 860 Humboldt Street, Brooklyn, New York, 4220 Arthur Kill Road, Staten Island, New York and 800 Page Avenue, Lyndhurst, New Jersey during the payroll period ending February 22, 2020.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All clerical and professional employees, welders, helpers, mechanics, guards and supervisors as defined by the Act.

UNITED STATES OF AMERICA
ESTADOS UNIDOS DE AMERICA
National Labor Relations Board
Junta Nacional De Relaciones Del Trabajo

29-RC-256449

OFFICIAL SECRET BALLOT
PAPELETA SECRETA OFICIAL
For certain employees of
Para Ciertos Empleados De

COGEN WASTE SOLUTIONS LLC

Do you wish to be represented for collective-bargaining purposes by **WASTE MATERIAL RECYCLING AND GENERAL INDUSTRIAL LABORERS, LOCAL 108, LEAGUE OF INTERNATIONAL FEDERATED EMPLOYEES, LOCAL 890, or INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 813** or neither?

¿Desea usted ser representado para los fines de negociar colectivamente por **WASTE MATERIAL RECYCLING AND GENERAL INDUSTRIAL LABORERS, LOCAL 108, LEAGUE OF INTERNATIONAL FEDERATED EMPLOYEES, LOCAL 890, o INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 813**, o ninguno?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCION

WASTE MATERIAL RECYCLING AND GENERAL INDUSTRIAL LABORERS, LOCAL 108	LEAGUE OF INTERNATIONAL FEDERATED EMPLOYEES, LOCAL 890	INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 813	Neither Ninguno
☐	☐	☐	☐

DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY. If you make markings inside, or anywhere around, more than one square, you may request a new ballot by referring to the enclosed instructions. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.

NO FIRME O ESCRIBA SU NOMBRE O INCLUYA OTRAS MARCAS QUE REVELARÍAN SU IDENTIDAD. MARQUE UNA "X" EN EL CUADRADO DE SU ELECCIÓN SOLAMENTE. Si hace marcas dentro, o en cualquier lugar alrededor, en más de un cuadrado, puede solicitar una nueva papeleta consultando las instrucciones adjuntas. Si envía una papeleta con marcas en el interior, o en cualquier lugar alrededor, en más de un cuadrado, su papeleta no será contada.

Vea las Instrucciones incluidas.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que se pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.

Sample

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

FORM NLRB-4175
(5-20)

United States of America
National Labor Relations Board

Instructions to Eligible Employees Voting By United States Mail

INSTRUCTIONS

1. MARK YOUR BALLOT IN SECRET BY PLACING AN X IN THE APPROPRIATE BOX. DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY.
2. IF YOU SUBMIT A BALLOT WITH MARKINGS INSIDE, OR ANYWHERE AROUND, MORE THAN ONE SQUARE, YOUR BALLOT WILL NOT BE COUNTED. YOU MAY REQUEST A NEW BALLOT BY CALLING THE REGIONAL OFFICE AT THE NUMBER BELOW.
3. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
4. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
5. PUT THE BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
6. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED. TO BE COUNTED, THE YELLOW RETURN ENVELOPE MUST BE SIGNED.
7. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
8. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY. For further information, call the Regional Office at:
   718-330-7713 or the Board Agent assigned to the case at 718-765-6180

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICE

BY **September 18, 2020**

RIGHTS OF EMPLOYEES

Under the National Labor Relations Act, employees have the right:

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of their own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for non representational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both employers and unions to know what is expected of them when it holds an election.

If agents of either unions or employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. Where appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.

NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist a union**
- **Choose representatives to bargain with your employer on your behalf**
- **Act together with other employees for your benefit and protection**
- **Choose not to engage in any of these protected activities**
- **In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).**

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- **Threatening loss of jobs or benefits by an Employer or a Union**
- **Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises**
- **An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity**
- **Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched**
- **Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals**
- **Threatening physical force or violence to employees by a Union or an Employer to influence their votes**

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (718)330-7713, or the Board Agent assigned to the case at 718-765-6180 or visit the NLRB website www.nlrb.gov for assistance.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

CERTIFICATE OF SERVICE

I, Amanda E. Maguire, Esq., hereby certify that on this date I caused a copy of the foregoing Request for Review of the Regional Director's Order and Request to Stay the Election to be filed with the Regional Director via the Board's e-filing system and served *via* electronic mail on the following:

Tamir W. Rosenblum, Esq.
Mason Tenders District Council of Greater New York and Long Island
520 8th Ave., Suite 650
New York, NY 10018
trosenblum@masontenders.org
Counsel for Petitioner Waste Material, Recycling and General Industrial Laborers, Local 108

Larry M. Cole, Esq.
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Counsel for Intervenor League of International Federated Employees, Local 890

Rick Bialczak, Esq.
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Long Island City, NY 11101
rickbial@gmail.com
Counsel for Intervenor International Brotherhood of Teamsters, Local 813

Dated: August 18, 2020

/s/
Amanda E. Maguire