



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738

Agency Website: www.nlr.gov
Telephone: (415)356-5130
Fax: (415)356-5156

Agent's Direct Dial: (415) 356-5159

August 18, 2020

Debbie Ferronoto
Santa Rosa Stainless Steel
1400 Airport Blvd.
Santa Rosa, CA 95403
Email: debbie@srss.com

Devin Booth
5218 Gayle Drive
Santa Rosa, CA 95403
Email: devinbooth@rocketmail.com

Brian Fealy
Automotive Machinists Local Lodge No. 1173
1900 Bates Avenue Suite H
Concord, CA 94520-1239
Email: bfealy1173@sbcglobal.net

Re: Santa Rosa Stainless Steel Fabricators Inc.
Case 20-UD-264159

Dear Gentelpersons:

On August 5, 2020, I advised the parties that a petition had been filed seeking to rescind the authority of International Association of Machinists & Aerospace Workers, Local Lodge 1173 (Union) to require employees of Santa Rosa Stainless Steel (Employer) to make certain lawful payments to the Union in order to keep their jobs. I further notified the parties that an administrative investigation would be conducted into the matter and that, if appropriate, I would attempt to schedule an election either by agreement of the parties or by directing an election based on the administrative investigation (See section 9(e)(1) of the National Labor Relations Act, as amended, and Section 102.85 of the Board's Rules and Regulations). A Board agent subsequently investigated the instant matter and explored election arrangements with the parties. Although the Union has been unresponsive, the evidence adduced established that it is now appropriate to conduct a secret mail-ballot election among the Employer's employees to determine whether or not they wish to withdraw the Union's authority to require, under its

agreement with their Employer, that employees make certain lawful payments to the Union in order to retain their jobs. Both the Employer and Petitioner prefer a mail-ballot election due to public-health concerns resulting from the COVID-19 pandemic. The Union did not indicate which method of balloting it prefers, if any.

Based on the investigation, the parties' stated preferences, and after careful consideration, I have determined for the reasons that follow that conducting the election by means of a mail ballot is the safest option and will better facilitate maximum participation by eligible voters. The Board has delegated its discretion in determining election arrangements to Regional Directors. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director renders should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* 120 NLRB 1343, 1346 (1958). The Board's longstanding policy is that elections should generally be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, supra at 1145. The impact of COVID-19 on daily life throughout California has been profound and continues to present us with "extraordinary circumstances," as contemplated by the Board.

I note that the Board has denied review of several regional director decisions directing elections by mail during the COVID-19 pandemic. Citing the various local, state and federal directives and guidance, and the extraordinary circumstances overall presented by the widespread pandemic, the Board has found that regional directors have not abused his or her discretion by ordering mail-ballot elections in the particular circumstances then present. See e.g., *Brinks Global Services*, 29-RC-260969 (unpublished Order July 14, 2020) *TDS Metrocom LLC*, 18-RC-260318 (unpublished Order June 23, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (unpublished Order June 12, 2020); *Roseland Community Hospital*, 13-RC-256995 (unpublished Order May 26, 2020). The COVID-19 pandemic, which has increased in severity since the above Orders issued, continues to present extraordinary and dangerous circumstances under which a mail-ballot election is warranted. Indeed, California is currently listed as one of the "hot spots" or "epicenters" of the surging increase in contraction of cases and death rates. In sum, the circumstances present in the above-cited cases are currently present here; to wit, climbing contraction and death rates, and State and local social-distancing, shelter-in-place, and mask directives.

The Board's tried and true mail-ballot process all but eliminates the inherent safety risks and equally ensures that employees can conveniently and freely exercise their right to vote. In this regard, I note that if an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms, has an elevated temperature, or must be quarantined due to COVID-19 exposure, they will be deprived of their vote in a manual election, as there is no absentee ballot or remote voting options under the Board's manual election rules. A mail-ballot

election avoids this significant pitfall and ensures that all have an opportunity to vote regardless of their exposure to COVID-19 or health status. Furthermore, there is no known date at which the guidance and circumstances I have described above will change. As a result, a mail-ballot election in this matter will allow for holding of the election “at the earliest date practicable” consistent with the Board’s Rules and Regulations Section 102.67(b).

Accordingly, 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 20, on **September 1, 2020**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 20 office by close of business on **September 22, 2020**. The mail ballots will be counted via ZOOM Government at 10:00 a.m. on **September 25, 2020**. 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 20 office by no later than 5:00 p.m. on **September 8, 2020** in order to arrange for another mail ballot kit to be sent to that employee.

Voting Eligibility: Eligible to vote are those in the unit who were employed during the payroll period ending **August 15, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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

List of Eligible Voters: As required by Section 102.67(1) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, August 20**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not 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.

We further request that one copy of the voter list be furnished in the form of mailing labels, if possible, for use by the Regional Office in mailing the voting kit to employees. While you are not required to comply with this request, your cooperation in doing so will assist in promptly sending mail ballots to each employee's correct address and maximize employee participation in the election. See NLRB Casehandling Manual, Part 2 Representation Proceedings Section 11312.1(h). The mailing labels should be created using the Avery 5160 address labels template in Word and sent to the Region in an electronic version for printing. The numbering of this list should be continuous for all employees in the voting unit, including challenged voters. The label should include the voter's unique number as set forth in the Voter List, their name, and their address. Each number is a unique identifier to the corresponding voter and for this reason, numbers should not be repeated.

See example:

1	Jane Doe	2	John Doe
	123 Test St		10 Main St
	San Francisco, CA 91234		Oakland, CA 98765

Notice of Election: The secret ballot election will be conducted as described in the forthcoming Notice of Election. The ballots and Notice of Election will be in English and Spanish. Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of

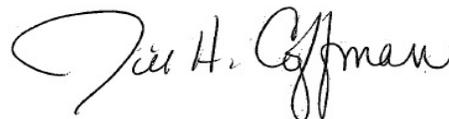
August 18, 2020

the forthcoming Notice of Election 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.)

Election Observers: Each party may have one observer for the mail ballot count. **Please complete the enclosed Observer Designation form and return it to this office as soon as possible.**

Agent to Contact: If you have any questions, please contact Janay Parnell at (415) 356-5159 or janay.parnell@nlrb.gov. Your cooperation will be appreciated.

Very truly yours,



Jill Coffman
Regional Director, Region 20

Enclosures: 1. Observer Designation Form

cc: Jan Gabrielson Tansil Esq.
SPAULDING, MCCULLOUGH &
TANSIL, LLP
90 S E St Ste 200
Santa Rosa, CA 95404-6500
Email: tansil@smlaw.com

Caren Sencer Esq.
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway Suite 200
Alameda, CA 94501
Email: csencer@unioncounsel.net

DESIGNATION OF OBSERVER(S)

Re: Interstate Hotels d/b/a Petaluma Sheraton
Case 20-UD-169680

_____ hereby designates the individual listed below to act as its observer during the election in the above case.

Observer's Name	Observer's Job Title
1.	

I certify that each of the above-named individuals is an employee of the Employer and is not a supervisor within the meaning of Section 2(11) of the Act.

(Name of Party)

By: _____
(Signature)

(Representative Name: Print or Type)

(Representative Title)

(Date)

Note: Board law prohibits any statutory supervisor from serving as an election observer. Section 2(11) of the National Labor Relations Act states: "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."