

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

WESTSIDE PLUMBING LLC

Employer

and

Case 28-RC-263057

**UNITED ASSOCIATION OF PLUMBERS AND
PIPEFITTERS LOCAL 412**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The petition in this matter was filed by United Association of Plumbers and Pipefitters Local 412 (Petitioner) on July 15, 2020,¹ under Section 9(c) of the National Labor Relations Act, as amended (the Act), seeking an election to represent a unit of journeymen plumbers, apprentice plumbers, and plumber helper/laborers employed by Westside Plumbing LLC (the Employer) at its facility at 423 Calle Industrial in Bernalillo, New Mexico (the Employer's facility). There are approximately 41 employees in the unit sought.

On July 15, Region 28 (the Region) of the National Labor Relations Board (the Board) served the petition on the parties and issued a Notice of Representation Hearing in this matter. On July 31, the parties executed a Stipulation in Lieu of Hearing (Stipulation), agreeing that there is no dispute about any issues other than the manner of the election, specifically, whether the election should be conducted by manual election or by mail ballot election and the date(s) of the election. The parties agreed that their Stipulation, its exhibits, and each party's position statement regarding the manner of the election constitutes the entire record for this matter (stipulated record) and that I will make a determination solely on the basis of the parties' stipulated record.

Further, the parties agreed in their Stipulation that they retain the right to file a request for review limited to the method, date, time, and place of election ordered with the Board. Additionally, the parties agreed in their Stipulation that if I order a mail ballot election, and if I set a due date for returning ballots different than the date of the ballot count, the parties understand that no ballot that the Region receives after the due date I established will be counted. The parties further waived their right to file objections based upon any untimely received ballots.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the parties' Stipulation, the stipulated record in this proceeding, relevant Board law, and the extraordinary circumstances of the COVID-19 pandemic, for the reasons described

¹ All dates hereafter are in 2020 unless otherwise indicated.

more fully below, I shall direct a mail ballot election commencing on the earliest practicable date.

II. FACTUAL OVERVIEW

A. The COVID-19 Pandemic

The impact of the COVID-19 pandemic on daily life has been profound. As of August 21, 5,506,929 people in the United States contracted confirmed cases of COVID-19 and 172,416 people have died from it.² The Centers for Disease Control and Prevention (CDC) has determined that the best way to prevent the illness is to avoid being exposed to the virus.³ Many of the measures recommended by CDC to prevent the spread of the virus are well-known at this point: maintain a six-foot distance between individuals, work or engage in schooling from home, avoid social gatherings, avoid discretionary travel, and practice good hygiene.⁴ With respect to travel, the CDC advises that travel increases the chances of contracting and spreading COVID-19, and recommends that before traveling, individuals should learn if COVID-19 is spreading in their local area or in any of the places they are going.⁵

A recent report published by the CDC, *COVID-19 Pandemic Planning Scenarios* (CDC Planning Report),⁶ contains a best estimate that 40% of individuals infected with COVID-19 are asymptomatic, meaning that they never exhibit symptoms during the course of their COVID-19 infection, yet they are just as infectious as symptomatic individuals. This CDC Planning Report further estimates that the mean time from exposure to symptom onset of COVID-19 is approximately six days.

The CDC has also recently issued COVID-19 guidance for businesses, *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19), May 2020*, (Interim Guidance)⁷ containing recommendations to establish policies and practices for social distancing to reduce the transmission of COVID-19, including: increasing physical space between employees at the worksite by modifying the workspace; using signs, tape marks, or other visual cues such as decals or colored tape on the floor, placed six feet apart, to indicate where to stand when physical barriers are not possible; implementing flexible meeting and travel options (e.g., postpone non-essential meetings or events in accordance with state and local regulations and guidance); closing or limiting access to common areas where employees are likely to congregate and interact; and delivering services remotely (e.g., phone, video, or web).

Further, although not directly addressing Board elections, I note that the CDC has specifically issued guidance on elections, *Considerations for Election Polling Locations and*

² See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

³ See *How to Protect Yourself and Others* at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴ *Id.*

⁵ See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#Domestic-Travel>.

⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

Voters (CDC Election Guidance),⁸ stating that officials should offer alternatives to in-person voting if allowed. Specifically, this CDC Election Guidance provides as follows:

Maintaining Healthy Operations

- **Where available in your jurisdiction, offer alternative voting methods that minimize direct contact and reduce crowd size at polling locations**
 - Consider offering alternatives to in-person voting if allowed in the jurisdiction.

Many state and local governments have also issued restrictions tailored to the situation in specific communities. On March 11, New Mexico Governor Michelle Lujan Grisham declared a statewide Public Health Emergency because of the community spread of COVID-19. Governor Grisham renewed the declaration of a Public Health Emergency through August 28. On July 30, the Secretary of the New Mexico Department of Health issued a Public Health Order to amend the State of New Mexico's restrictions on mass gatherings and business operations, which were implemented in response to the spread of COVID-19 within the state. The New Mexico Department of Health ordered that "**all New Mexicans should be staying in their homes for all but the most essential activities and services**".⁹ (emphasis in original). The State of New Mexico also prohibited all "mass gatherings" where five or more unrelated individuals would be in a single room or connected space. Where certain businesses were deemed "non-essential," those business were required to operate at no more than 25% of the maximum capacity. Certain "essential businesses" were permitted to open on the condition that they must comply with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers" and any identified occupancy restrictions.¹⁰ Moreover, on August 6, Governor Grisham issued Executive Order 2020-056 directing all persons who travel into New Mexico from out of state to self-quarantine for at least 14 days during the duration of the public health emergency.¹¹

For this petition, holding a manual election would require the meeting of a Board agent and party representatives from potentially three different states at the Employer's facility located in Bernalillo, New Mexico. The Regional Office processing this petition is located in Phoenix, Arizona and Petitioner's counsel is located in Philadelphia, Pennsylvania. The Employer's counsel of record has an office in Albuquerque, New Mexico. Bernalillo, located in Sandoval County, New Mexico, where the Employer's facility is located, is situated approximately 20 miles north of Albuquerque, New Mexico.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

⁹ <https://cv.nmhealth.org/public-health-orders-and-executive-orders/>

¹⁰ Requiring, among other protocols, avoiding unnecessary travel, providing for meetings to take place remotely, closing common areas where personnel are likely to congregate, and requiring face coverings in public spaces. See <https://cv.nmhealth.org/covid-safe-practices/>

¹¹ <https://cv.nmhealth.org/public-health-orders-and-executive-orders/>

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in New Mexico and throughout the United States. As of August 21, the following chart illustrates the confirmed cases and deaths from COVID-19 in the relevant counties in the State of New Mexico, Arizona, and Pennsylvania:

	Confirmed Cases COVID-19	Deaths from COVID-19
Sandoval County, New Mexico ¹²	1,176	33
Bernalillo County, New Mexico ¹³	5,474	146
Maricopa County, Arizona ¹⁴	131,166	2,743
Philadelphia County, Pennsylvania ¹⁵	28,044	1,758

B. The Employer's Ongoing Operations

The Employer, which is engaged in the business of providing residential and commercial plumbing services, is an essential business that has remained operational during the COVID-19 pandemic. As a result, its employees continue to report for work and perform their regular duties, albeit with at least some changes in regular operations to incorporate social distancing and sanitizing to the extent possible at the Employer's facility.

III. POSITIONS OF THE PARTIES

A. Petitioner's Position - Manual Election or Mail Ballot Election as Soon as Practicable

Petitioner requests a mail ballot election with mail ballots to be mailed out to eligible voters as soon as practicable and returned to the Region within a reasonable time thereafter for the mail ballot count. However, Petitioner is unwilling to waive any of the 10-day time period it is entitled to have the voter list before the election. If a manual election can be safely conducted at the Employer's facility in light of the COVID-19 restrictions on the date of the election, Petitioner requests a manual election as soon as practicable. To the extent a manual, in-person election would delay the date of the election in any way, Petitioner contends it is inappropriate in this case and a mail-ballot election should be conducted. Finally, Petitioner requests that Spanish-language ballots be made available to eligible voters.

¹² See <https://cvprovider.nmhealth.org/public-dashboard.html>.

¹³ *Id.*

¹⁴ See <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php>.

¹⁵ <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

B. Employer's Position - Manual Election at the Employer's Facility

The Employer argues that voting should be conducted entirely by manual election, based on concerns that eligible voters who may have questionable immigration status would be coerced into refraining from voting if they received a communication from a federal government agency. The Employer contends that although all employees meet document identification requirements for federal Form I-9, the Employer does not verify the authenticity of the documents and thus eligible voters may fear deportation from Immigration and Customs Enforcement, and by extension, other federal government agencies. In support of this position, the Employer states that New Mexico's southern border is open for crossing from Mexico and the New Mexico legislature allows for persons to obtain professional licensure, such as plumber's licenses, regardless of citizenship or immigration status. Based on these circumstances, the Employer postulates that some eligible voters may disregard an envelope from the United States Government or refrain from returning a mail ballot for fear of consequences.

The Employer proposes a manual election be conducted in the "shop" at the Employer's facility from 7:00 a.m. to 8:30 a.m. on Thursday, August 20. The Employer acknowledges that Spanish language ballots will be necessary regardless of the election method. The Employer proposes a voting area in the "shop" without specifying the size of the room or the number of entry/exit points (voting area). The Employer asserts that voters would be directed, through floor markings, to approach the Board agent only one at a time, and after voting to leave the voting area in a different direction from the next voter waiting to vote (i.e. a one way voting path). The Employer also proposes to provide a plastic screen between the Board agent and voters, but does not specify how the screen will be arranged to provide ballots or challenge envelopes to eligible voters while maintaining social distancing. Additionally, the Employer maintains that all surfaces, such as tables and voting booths, would be sanitized after each voter votes, but does not explain how it would accomplish this sanitation procedure. The Employer offers to provide unspecified types of hand sanitizer to the Board agent and suggested requiring that all participants wear unspecified types of masks and gloves, as necessary. According to the Employer, it has already provided appropriate personal protective equipment for employees, including gloves, masks, and hand sanitizer, and requires six-foot minimum social distancing. The Employer believes that these protocols would remain in effect during the election. Finally, the Employer asserts that the ballot box would be sanitized prior to opening but does not explain the method or procedure for sanitization.

IV. ANALYSIS

Under Section 9 of the Act, the Board is charged with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. I am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due

consideration to safety considerations in the context of a pandemic.¹⁶ Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.¹⁷

Although the Board prefers conducting manual elections over conducting mail ballot elections, the Board has made it clear that mail ballot elections need not be reserved only for the most extraordinary circumstances, reasoning that “neither our precedent nor common sense supports such a stringent approach to the use of mail ballots.” *Sutter Bay West Hospitals*, 357 NLRB 197, 198 (2011). Indeed, the Board has always acknowledged that circumstance may necessitate adaptations on the Board’s part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that “circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions.” 120 NLRB at 1346, citing *Shipowners’ Association of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, “[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted.” *Id.*

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

I acknowledge that absent public health concerns, I would not order a mail ballot election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. As noted above, current Federal, State, and County public health guidance strongly recommends discouraging gatherings and non-essential travel, and a mail

¹⁶ In its April 17, 2020 press release, the Board stated that Regional Directors have discretion with respect to when, where and if an election can be conducted in accordance with existing Board precedent and the Board specifically noted that Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state, and local laws and guidance. See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

¹⁷ See, *Atlas Pacific Engineering Company*, 27-RC-258742 (Order Denying Request for Review, May 8, 2020); *Touchpoint Support Services, LLC*, 07-RC-258867 (Order Denying Request for Review, May 18, 2020); *Johnson Controls, Inc.*, 16-RC-256972 (Order Denying Request for Review, May 18, 2020); *Roseland Community Hospital*, 13-RC-256995 (Order Denying Request for Review, May 26, 2020); *Seminole Electric Cooperative, Inc.*, 12-RC-256815 (Order Denying Request for Review, May 28, 2020); *2101 LLC d/b/a Intercontinental Truck Body*, 19-RC-258144 (Order Denying Request for Review, May 28, 2020); *Twinbrook Health & Rehabilitation Center*, 06-RC-257382 (Order Denying Request for Review, June 5, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (Order Denying Request for Review, June 12, 2020); *TDS Metrocom, LLC*, 18-RC-260318 (Order Denying Request for Review, June 23, 2020); *Roseland Community Hospital*, 13-RC-259788 (Order Denying Request for Review, June 25, 2020).

ballot election minimizes such risk. A manual election at the Employer's facility in Bernalillo would require a Board agent and party representatives to potentially travel from Arizona, Philadelphia, and the surrounding area to attend the manual election. Moreover, out of state parties would be required to quarantine for a minimum of 14 days upon arrival in the state, which would further delay the election. Travel to the Employer's facility would require the parties to pass through both Bernalillo County and Sandoval County, where there have been a combined 6,650 confirmed cases of COVID-19 and 179 residents have died from COVID-19. The Employer's employees remain working at the Employer's facility because they provide essential residential and commercial plumbing services, and because of the nature of the work, no alternative exists to perform their work remotely. However, the Board does have an alternative to conducting a manual election.

I find that the COVID-19 pandemic presents an extraordinary circumstance that makes conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the unit employees' union representation preferences at this time. 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.

Although the Employer has offered certain accommodations in an effort to allow for some degree of social distancing and protection during the election, manual election procedures inherently require substantial interaction. Voters, observers, and party representatives would all need to appear at the Employer's facility to participate in the election. Party representatives, the observers, and the Board agent would have to gather for approximately 15 to 30 minutes for the pre-election conference, including the check of the voter list and the parties' inspection of the voting area. The Board agent and observers would need to share a voting area of unspecified sizes at the Employer's facility for the duration of the proposed manual election spanning between one and a half to two hours. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. The Board agent must provide a ballot to each voter, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent and observers might need to use a restroom at the Employer's facility, typically before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, typically held in the same voting area, with the observers, party representatives, and other employees who wish to attend.

In these circumstances, the substantial interaction inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and other protective measures proposed by the Employer. Although the Employer directs that employees abide by certain protective measures while at work, it cannot police employees' adherence to those measures in the polling areas and the Board agent cannot also police employees' adherence to those measures at the locations outside the polling areas. Despite the Employer's precautions to minimize the transmission and spread of COVID-19 at the Employer's facility, any election participant could be an asymptomatic carrier of the virus.

Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line that would not normally be necessary if the employee were performing work duties, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election. 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. Additionally, conducting manual elections under the current circumstances could disenfranchise voters, as employees may be wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation.

Moreover, I find the Employer's contentions that eligible voters would be unlikely to respond to a letter sent from a federal government agency is merely speculative. The Employer has provided no factual basis to conclude that eligible voters would associate the Board's election procedures with Immigration and Customs Enforcement proceedings or that voters would believe their citizenship or immigration status would be at issue in a Board election. Even assuming, *arguendo*, that a voter believed their citizenship or immigration status was an issue, there is no reasonable basis to believe that a voter would be any less likely to respond to a letter from the Board, as opposed to appearing in person before a Board agent.

Additionally, since both parties have asserted that some or all eligible voters will require Spanish language ballots, the Region will make sufficient arrangements to provide Spanish and English election Notices and mail ballots for this election.

Since the Employer prefers a manual election and the Petitioner does not oppose a manual election if it safely occurs at the earliest practicable date, in accordance with all applicable COVID-19 related restrictions, I do not take my determination to conduct a mail ballot election lightly. I do not find that a manual election is impossible, or that a mail ballot election is the only option. However, I have determined that, under the current circumstances, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. In fact, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages alternatives to in-person voting if allowed during this extraordinary COVID-19 pandemic.

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

V. CONCLUSION

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

1. The parties stipulated and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁸
2. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time journeymen plumbers, apprentice plumbers, and plumber helpers/laborers employed by the Employer at its facility in Bernalillo, New Mexico.

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

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 41 employees.

VI. 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

¹⁸ The Employer, a New Mexico limited liability company with an office and place of business in Bernalillo, New Mexico, is engaged in the business of providing residential and commercial plumbing services. During the 12-month period ending July 15, 2020, a representative period, the Employer purchased and received at its Bernalillo, New Mexico facility goods valued in excess of \$50,000 directly from points outside the State of New Mexico.

be represented for purposes of collective bargaining by **United Association of Plumbers and Pipefitters Local 412**.

A. Election Details

I have determined that a mail ballot election will be held for the reasons I have explained above.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. At **2:00 p.m. on September 9, 2020**, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **September 16, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 28 Office at (602) 640-2160 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28 office by close of business (4:45 p.m.) on **September 23, 2020**. All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received at the Regional Office by **September 23, 2020**. Pursuant to the parties' Stipulation, no ballots received after the due date will be counted. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **August 21, 2020**, 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 who are present in the United States may vote.

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 28, 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 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.

VII. 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.

Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations, and must be accompanied by a certificate of service.

Filing a request for review electronically may be accomplished 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. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

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

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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 Phoenix, Arizona this 26th day of August 2020.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director