

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1**

COCA-COLA BEVERAGES NORTHEAST, INC.

Employer

And

Case 01-RC-263214

**CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, LOCAL UNION NO.
633, A/W INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

Petitioner

DECISION AND DIRECTION OF ELECTION¹

Coca-Cola Beverages Northeast, Inc. (the Employer) is engaged in the bottling and distribution of Coca-Cola and other non-alcoholic beverages. Chauffeurs, Warehousemen and Helpers of America, Local Union No. 633, a/w International Brotherhood of Teamsters, (the Petitioner) seeks to represent a bargaining unit of 29 full time and regular part time warehouse workers (loader 1 and loader 2), but excluding all other employees, point of sale, cooler service technicians, leads, dispatchers, office clerical employees, guards, and supervisors, as defined in the Act.

The Employer takes the position that the smallest appropriate unit would also include approximately 40 leads, inventory specialists, drivers, and cooler service technicians. No party asserts that the individuals tilted “lead” are statutory supervisors.

The other issue in contention is whether to conduct a manual or mail ballot election. The Petitioner contends that a mail ballot election would be most appropriate during the present pandemic, while the Employer proposes a manual election.

I find that the drivers and cooler service technicians do not share a sufficient community of interest with the loaders to require their inclusion in the unit. I further find that the inventory specialists and leads do share a sufficient community of interest with the petitioned-for

¹ The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer. Parties were given the opportunity to file post-hearing briefs, and both parties did so.

employees to require their inclusion in the unit. Finally, I have directed a mail ballot election because this is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic.

Background

The Employer bottles and distributes non-alcoholic beverages. The only facility at issue here is its Londonderry, New Hampshire, Sales Service Center (the Employer's Londonderry facility).

Shayne Durant, the sole witness at the hearing, is the Senior Director of Sales Center Operations for the Employer's Patriot Division. He oversees the Londonderry Sales Service Center as well as four service centers located in Massachusetts. The other service centers are organized; the bargaining units at these locations generally include both drivers and warehouse employees. Durant reports to Vice President of Sales Operations Steve Perrelli, as do three other Senior Directors who oversee other sales centers located throughout New England and New York State.

The Employer also operates multiple bottling facilities, one of which is adjacent to the Londonderry Sales Service Center. Some products distributed from the warehouse arrive through a common door that separates the production facility from the sales center. The sales center also receives inbound loads from the Employer's Hartford production facility and from third parties such as the Coca-Cola Company.

The Londonderry Sales Service Center services much of New Hampshire and parts of Massachusetts. It also warehouses and picks orders for the Employer's other facilities.

The general manager of the Londonderry Sales Service Center, Dan Tewksbury, reports to Durant. Among those reporting to Tewksbury are Jeff Cooney, the cooler service manager; Butch Paris, the warehouse manager; and the distribution supervisor.

Paris, the warehouse manager, is responsible for ensuring that all of the orders placed from the sales departments are picked efficiently and accurately. The assistant warehouse manager is Tom Crotto, who directly supervises the warehouse floor and workflow. Crotto or Paris hold daily "huddle meeting" for the Warehouse Department. The meeting is attended by inventory specialists, loader 2s, loader 1s, and leads.

In addition to the Warehouse Department, the Employer has a Sales and Distribution Department. This department includes the drivers. The drivers report to the distribution supervisor but also to sales managers for matters relating to communications with customers. If a driver must be disciplined, that discipline is discussed by the delivery supervisor, the sales managers, and the general manager.

The Londonderry facility measures approximately 125,000 square feet, of which 100,000 square feet are dedicated to warehouse operations and cooler service operations. The remaining

25,000 square feet is dedicated to office space, conference rooms, and common areas. The northeast corner of the warehouse houses the cooler service area.

The warehouse is on a single level, but product is stacked. Thus, employees operate forklifts to retrieve some of the warehoused products. Inventory stored in the warehouse includes the beverages sold to customers, cooler equipment and cups and lids.

Roughly 100 employees work out of the facility; of these, about 60 report to the facility on a regular basis. The facility's two entrances are 20 feet apart. There is one parking lot, one breakroom/cafeteria, and one timeclock which is used by all employees.

Most employees, including all loader 1s, loader 2s, leads, drivers, cooler service technicians, and inventory specialists wear a uniform comprised of a red shirt and grey shorts or pants.

All employees are subject to the same personnel policies. All employees receive the same sick days, vacation days, holidays, and retirement benefits. All employees are subject to an annual compensation review with a wage increase taking effect each April 1. As general manager, Tewksbury makes the final decision as to the amount of everyone's raise.

The employees physically working in the facility take a half-hour lunch and two 15-minute breaks at the same time. Employees whose jobs take them into the field schedule their own breaks.

The Petitioned-For Unit

The petitioned-for unit includes loader 1s and loader 2s. The Employer currently employs 14 loader 1s and 15 loader 2s. All loaders work on Monday, Wednesday, Thursday, and Friday as well as every other Tuesday and every other Saturday. The three shifts start at 3:30 a.m., 8:30 a.m., and 8:30 p.m.

Loaders are responsible for receiving and storing product, picking and staging orders, "pushing pallets" onto the wrap machine, wrapping orders and putting them onto trucks for delivery. Loader 1 is the entry-level classification in the warehouse. A loader 1 utilizes a rider jack to perform assigned work. A loader 2 may also use a rider jack but is qualified to use a forklift. When loader 1s gain experience and become qualified to use forklifts, they are promoted to loader 2 positions as those positions become available.

Approximately once per month, a loader or another warehouse employee may make a delivery in a pickup truck if the usual drivers are not able to accommodate a customer's needs.

Loader 1s receive between \$17 and \$20.50 per hour, while loader 2s receive between \$26 and \$28 per hour.

Additional Employees

- Inventory Specialists

The two inventory specialists currently employed by the Employer are responsible for tracking the quantities of products—including pallets, shelves, cups, and lids— in the facility. Inventory specialists also spend roughly 40 percent of their time building orders. Like loader 2s, inventory specialists utilize forklifts and the wrap machine to build orders. They also use a Tygard claw layer-picker. The layer-picker's claw allows it to grab multiple layers of product; it is not used by less experienced employees. Like loaders, inventory specialists remain in the warehouse all day and are supervised by the warehouse managers.

Inventory specialists earn between \$28 and \$30 per hour. The position is considered a promotion from loader 2.

- Leads

The Employer presently employs five leads at its Londonderry facility. Two of the leads are responsible for planning and dispatch. They produce pick slips for order building, coordinate loads onto trucks, and ensure sufficient truck space. The remaining leads coordinate inventory, offload one-way trailers, and move replenishment product to facilitate the order building process.

The leads spend between 20 and 30 percent of their time building orders. They use the same equipment to perform the same work as the loader 1s and loader 2s.

The leads work the same days of the week as the loaders but work varying shifts. Like inventory specialists, leads receive between \$28 and \$30 per hour. The lead positions are also considered promotions from loader 2.

- Cooler Service Technicians

Six cooler service technicians presently work out of the Employer's Londonderry facility. One cooler service technician works all day at the facility. The remaining five report to the building each day but spend the majority of their work days performing service work as needed in the field. The cooler service technicians report to the cooler service manager, Jeff Cooney.

Cooler service technicians install and repair equipment such as carton coolers and soda fountains. At a customer's request, this equipment is pulled from inventory, cleaned, and prepared. The onsite cooler service technician ensures that the equipment functions properly. He may perform electrical, mechanical, or cosmetic work.

Customers may also request repair of equipment that has already been installed at a restaurant, supermarket, or other point of sale. Service requests from customers are placed on a centralized dispatch board for the Londonderry Sales Center. Cooney assigns each service request to one of the five cooler service technicians who generally work outside the warehouse.

The cooler service technicians receive their assignments from Cooney through a handheld device.

Cooler service technicians work Monday through Friday and are on-call Saturday and Sunday. Their workday begins at 6:30 a.m. They receive between \$28 and \$30 per hour.

- Bulk Drivers and “Other” Drivers

The Employer employs 15 drivers, all of whom have CDL-A licenses to allow them to operate their assigned trucks. Some drivers are categorized as bulk drivers who deliver to large supermarkets, including Market Basket, Stop & Shop, Shaw’s, and Target. The remaining drivers deliver to convenience retail stores and on-premise accounts.

Drivers do not load their own trucks, although they do review orders and work with dispatch planners to ensure that loads are arranged in the sequence in which they will be delivered. Once or twice per week, drivers rearrange their loads to accommodate changes in schedule.

Drivers punch in at the facility at the start of their shifts and spend 30 to 45 minutes preparing for the day’s run. Bulk drivers return to the facility several times per day to reload, while other drivers generally return to the facility only at the end of their shifts. When they arrive at a customer’s location, drivers safely park their vehicles, check in with the customer, and offload the delivery. As needed, the drivers accept returns and payment. After the drivers have completed their runs, loader 2s unload anything that is left on the trucks, such as returns or empty pallets.

Bulk drivers begin their shifts at 4:00 a.m. and other drivers begin work at 6:30 a.m. A driver’s hourly pay ranges from \$26 to \$35 per hour based on role and time in service.

- Interchange

Loader 1s and loader 2s can apply for other roles within the organization. However, although a loader 2 may in theory submit a request to become a driver or a cooler service technician, there is no record evidence that this has ever happened in practice, and presumably they would need the skills and experience necessary to fill those jobs. Likewise, there is no evidence that a driver or a cooler service technician has ever become a loader. Similarly, there is no evidence of temporary interchange between the loaders and cooler service technicians and drivers, other than the rare instance in which loaders use a pick-up truck, for which they do not need a CDL to operate, to make an emergency delivery.

Method of Election

The Petitioner argues that a mail ballot election is most appropriate under the present circumstances because fluctuations in the prevalence of COVID-19 may affect the Region’s ability to hold a manual election as scheduled, resulting in uncertainty and delays.

The Employer argues that a manual election is most appropriate because a manual election encourages greater voter participation and because the United States Postal Service may not be able to deliver ballots in a timely manner. The Employer has expressed a willingness to observe any social distancing and sanitary requirements set forth by the Board, and states that its upstairs conference room can be set up to provide a safe election for all concerned. The Employer has not otherwise proposed a specific plan to remain in compliance with the protocols set forth in GC Memorandum 20-10, such as how it will certify how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; how many have been directed by a medical professional to proceed as if they have tested positive for COVID-19; how many are awaiting results of a COVID-19 test; how many are exhibiting symptoms of COVID-19; or how many have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19.

ANALYSIS

Inclusion of Job Classifications

In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the Board reinstated the traditional community-of-interest test as articulated in, e.g., *United Operations*, 338 NLRB 123, 123 (2002). Under that test, the Board is required in each case to determine

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

The Board held in *PCC Structurals* that, in weighing both the shared and the distinct interests of petitioned-for and excluded employees, the Board must determine whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. Having made that determination— applying the above factors— the appropriate-unit analysis is at an end. At no point does the burden shift to the employer, as it did under *Specialty Healthcare*, 357 NLRB 934 (2011) to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit.

In *Boeing Company*, 368 NLRB No. 67 (2019), the Board elaborated that *PCC Structurals* requires “a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test.” Firstly, the proposed unit must share an internal community of interest. Next, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Finally, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

Here, neither party disputes that the petitioned-for unit of loader 1s and loader 2s shares an internal community of interest.

- Units Within the Industry

The Employer points to the fact that employees at several of its other locations are part of bargaining units which include both warehouse employees and drivers. Such bargaining units are not uncommon, however, is it not uncommon for warehouse employees and drivers to be represented separately and the Board routinely found separate units of drivers and warehousemen appropriate before *Specialty*.

For example, in *Overnite Transportation Co.*, 331 NLRB 662 (2000), the Board rejected a contention that the smallest appropriate unit must include both truck drivers and warehouse employees. In *Overnite Transportation Co.*, a union petitioned for a unit of dockworkers and jockeys, which the Board found to be a warehouse-type unit. The Board concluded that inclusion of city drivers and road drivers was not required. In excluding the drivers, the Board observed that the drivers perform a separate function and possess special skills and qualifications. It noted that dock work did not require specialized skills or training, that only a small minority of the dockworkers and jockeys possessed the CDLs necessary to perform driving duties, and that the amount of driving they performed was *de minimus*. Finally, the drivers worked away from the facility most of the day and did not have any overlapping duties with the dockworkers and jockeys. In this regard, although the Regional Director had found that city drivers regularly join dockworkers to load the city trucks, the drivers' trailers were generally loaded and ready to go when they arrived for work. See also *Nuturn Corporation*, 235 NLRB 1139, 1140 fn. 4 (1978) (truck drivers excluded from warehouse unit); *Cal-Maine Farms, Inc.*, 249 NLRB 944 (1980) (dockworkers who load and unload trucks not appropriately included in same unit with truck drivers).

- Odwalla

Citing *Odwalla, Inc.*, 357 NLRB 1608 (2011), the Employer contends in its post-hearing brief that, by excluding any of the classifications at issue here, the Petitioner seeks to represent a fractured unit and has narrowly selected arbitrary subsets of classifications for inclusion.

I find *Odwalla* to be distinguishable. In *Odwalla*, the Board found that the recommended unit of route sales representatives, relief drivers, warehouse associates, and cooler techs, excluding merchandisers, was a fractured unit. In so finding, the Board noted that the unit sought by the petitioner did not track any lines drawn by the employer, such as department or function, or lines of supervision, and that it was not drawn in accordance with methods of compensation. Thus, in *Odwalla*, the recommended unit included employees from two different departments as well as employees from a third, entirely different part of the employer's business. Here, in contrast, the petitioned-for unit is drawn along lines created by the Employer, in that it includes

only employees within the warehouse group. Unlike the excluded merchandisers in *Odwalla*, who performed a function very similar to those of the included employees in that case, here, the Employer's drivers perform a function that is very different from that of the included warehouse employees. Unlike the circumstances in *Odwalla*, the excluded employees in this case are separately supervised from and paid more than the included employees.

- Universal Community of Interest

All involved employees have certain interests in common. They wear the same uniform and punch the same timeclock. They are subject to the same personnel policies and receive the same time off. Tewksbury makes the final decision as to the amount each employee's annual raise on April 1, regardless of that employee's classification. While the petitioned-for employees fall on the lower end of the Employer's pay scale, there is overlap between the wages paid to the petitioned-for employees and the other employees.

- Inventory Specialists and Leads

Like the petitioned-for employees, inventory specialists and leads spend all day in the warehouse. Inventory specialists spend 40 percent of their time performing the same work performed by loader 1s and loader 2s; leads spend 20 to 30 percent of their time performing the same work performed by loader 1s and loader 2s. For the most part, they use the same equipment used by the loaders. The balance of the inventory specialists' time is spent tracking inventory of the very items that they and the loaders are preparing for shipment. Meanwhile, the leads coordinate and stage the assembled loads, as well as produce pick slips so that all involved can build orders.

The inventory specialists and leads attend the same daily meetings as loader 1s and loader 2s, take the same breaks as loader 1s and loader 2s, are organized in the same department as loader 1s and loader 2s, and fall under the jurisdiction of the same managers as loader 1s and loader 2s. They could hardly fail to interact with the loaders all day, every day.

I find that inventory specialists and leads share an overwhelming community of interest with the loaders and, therefore, conclude that they must be included in the unit.

- Cooler Service Technicians

Unlike leads, cooler service technicians do not perform the same work as the loaders. Rather, cooler service technicians have a unique skill set which allows them to install and repair specialized equipment. None of the cooler service technicians work in the same part of the warehouse as the loaders; the majority of the cooler service technicians do not work in the warehouse at all after checking in each morning. The cooler service technicians report to their own manager, set their own break times, and work only on-call hours on the weekends. There is no employee interchange between warehouse employees and cooler service technicians.

I find that the distinct interests of the warehouse employees and the cooler service technicians outweigh their shared interests, which are limited to the interests typically shared by all employees working for a given employer. Therefore, I conclude that the cooler service technicians' inclusion in the unit is not mandated and shall exclude them.

- Bulk Drivers and "Other" Drivers

Drivers, like cooler service technicians, have unique qualifications and skill sets. Most significantly, drivers must have CDL-A licenses, whereas warehouse employees have no such certifications. Drivers spend most of their workdays away from the warehouse driving, parking, interacting with customers, offloading deliveries, and collecting payment. Warehouse employees rarely, if ever, perform any of these tasks. The drivers work only one shift, beginning early in the morning, in comparison to the staggered shifts worked by the warehouse employees. Significantly, drivers are part of the Employer's Sales and Distribution Department, while warehouse employees are part of the Warehouse Department. The Sales and Distribution Department is headed by the distribution supervisor rather than by the warehouse managers. There is no interchange between drivers and warehouse employees.

I find that the distinct interests of the warehouse employees and the drivers outweigh their shared interests. Therefore, I conclude that the drivers' inclusion in the unit is not mandated and shall exclude them

Method of Election

The Board has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Electric.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145.

As the Employer states, the Board's longstanding policy is that elections should generally be conducted manually. *NLRB 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.

During the present COVID-19 pandemic, the Board has consistently taken the position that the pandemic constitutes extraordinary circumstances of the kind contemplated by *San Diego Gas*. For example, on August 19, 2020, in *Daylight Transport LLC*, 31-RC-262633 (August 19, 2020) the Board, in denying the employer's request for review of a decision directing a mail-ballot election, advised:

The Board will continue considering 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...

Under ordinary circumstances, I would almost certainly order a manual election. However, as the Petitioner notes, the current pandemic does not present ordinary circumstances. Given the rapid fluctuations to both recommended and mandatory virus countermeasures, a manual ballot election would be fraught with uncertainty and subject to unpredictable changes. For example, should the Board agent directed to conduct a manual election unexpectedly develop symptoms consistent with COVID-19 on the morning of the election, the election would be postponed at the last minute. If a group of the Employer's employees were exposed to COVID-19 several days before the election, they would be forced to forfeit their right to vote in order to quarantine themselves to protect their colleagues and neighbors. If the State of New Hampshire suffers a major increase in the COVID-19 infection rate and the local government is forced to limit the size of non-essential gatherings, a manual election might run contrary to state law and party representatives based in neighboring Massachusetts might be prevented from crossing state lines without undergoing a two-week quarantine. A mail-ballot election provides the certainty of process and procedure to conduct an election within a prompt period and in an effective manner.

While the Board has expressed a general preference for manual balloting, it has never hesitated to ballot by mail when the circumstances warrant it. Indeed, the Board's preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees' representational desires. For example, the majority opinion in *London's Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997) holds that balloting by mail is not in fact less effective and does not lend itself to subterfuge, coercion, invasion of privacy or other abuse. As the Board observed then, "Indeed, in the 62-year history of the Act, there has been only one reported instance of such abuse, see *Human Development Assn.*, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act (RLA), under which the use of mail ballots in representation elections has been the rule and not the exception." Also note that no manual election has been conducted by the National Mediation Board (NMB) under the RLA since 1987. Simply put, the Board has a long and proud tradition of conducting manual- and mail-ballot elections alike. It simply prefers manual elections when, unlike here, they are feasible, safe, and practical to conduct.

While the Employer has theorized that the United States Postal Service may not be able to deliver mail ballots in a timely manner, it has provided no evidence of actual mail delays in New Hampshire. The Region has consistently extended the time allowed for the return of mail ballots during the pandemic to alleviate such concerns and will do so here. The Board noted in *Daylight Transport LLC* that while concerns about potential disenfranchisement of voters could be relevant to whether a mail-ballot election is appropriate, such concerns do not automatically require a manual election. Any party is, of course, free to present evidence of any actual disenfranchisement of voters in post-election objections.

I am, therefore, directing a mail-ballot election. A mail-ballot election has no apparent drawbacks and allows for a degree of certainty that a manual election does not currently permit. Importantly, a mail-ballot election also has the potential to protect the voters, the parties, the observers, and the Board agents from unnecessary exposure to COVID-19.

Conclusion

The National Labor Relations Board will conduct a secret ballot election among the employees in the following unit:

All full-time and regular part-time warehouse employees, including loader 1s, loader 2s, leads, and inventory specialists employed by the Employer at its Londonderry, New Hampshire sales center, but excluding all office clerical employees, drivers, cooler service technicians, managers, guards and supervisors as defined in the Act.

Employees will vote whether or not they wish to be represented for purposes of collective bargaining by CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION NO. 633, A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00p.m. on **September 11, 2020**, by the National Labor Relations Board, Region 1, Subregion 34 in Hartford, CT. 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.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 1 office by close of business on Friday, October 2, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by September 18, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 1 Office at (617) 565-6700 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, Skype, WebEx, etc.) to be determined by the Regional Director, at 11:00 am on Wednesday, October 7, 2020. Each party will be allowed to have an observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, 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 using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of 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.

C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, August 26, 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.

Pursuant to Section 102.5 of the Board's Rules and Regulations, the list must be filed electronically by submitting (E-Filing) it through the Agency's website (www.nlr.gov), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to **www.nlr.gov**, click on **E-File Documents**, enter the **NLRB case number**, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party.

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, and distribute the Notice by 12:01 a.m. Tuesday, September 8, 2020**, and copies must remain posted until the end of the election. 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.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file

a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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

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

Dated: August 24, 2020



PAUL J. MURPHY
ACTING REGIONAL DIRECTOR