

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

**CLARKWESTERN DIETRICH BUILDING
SYSTEMS, LLC**

EMPLOYER

and

Case No. 01-RC-264014

**UNITED STEEL, PAPER AND
FORESTRY, RUBBER, MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
AFL-CIO-CLC**

PETITIONER

**REQUEST FOR BOARD REVIEW OF REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION**

Now comes the Respondent, ClarkWestern Dietrich Building Systems, LLC (“ClarkDietrich”), by its attorneys, pursuant to Section 102.67 of the National Labor Relation Board’s (“NLRB” or “Board”) Rules and Regulations, and respectfully submits this Request for Review of the Regional Director’s Decision and Direction of Election dated August 31, 2020 (Exhibit 1 or “Order”).

The Acting Regional Director’s Order mandates a mail ballot election covering voters who all work at a single location in Bristol, Connecticut, approximately 19 miles from the Hartford, CT Sub-Regional NLRB Office that will conduct the election. Mail ballots are currently scheduled to be sent to voters on September 16, 2020.

ClarkDietrich is concurrently filing an Emergency Motion to Stay the Election with supporting facts and legal arguments.

I. INTRODUCTION

The Board should grant ClarkDietrich's Request for Review because the Acting Regional Director of Region 1, Paul Murphy, abused his discretion in ordering a mail-ballot election.

The Acting Regional Director's Order ignores the extremely low, *current* rates of coronavirus in Connecticut (*less* than 1%). Instead, the Order relies on historic rates of infection dating back to March, 2020. These historic coronavirus rates have no application to an election conducted in September, 2020.

The Order also disregards the extensive health and safety measures in place, as well as the specific protections offered, for a manual ballot election at this facility. The Order's failure to base its decision on current realities acts to deny hardworking, essential employees the type of representation election long recognized as preferable where employees work at a single worksite.

The Order belittles the advantages of the manual ballot. Yet, the Board continues to acknowledge the superiority of manual ballot elections. *San Diego Gas*, 325 NLRB 1143, 1144 (1998).¹ Manual ballot elections alone enable an NLRB agent to personally preside over the voting, guaranteeing both the reality and perception of a secret ballot, guarding the polling area against partisan influence, and creating the "laboratory conditions" that give employers and unions alike confidence in the integrity of NLRB elections. *Id.*; *Thompson Roofing, Inc.* 291 NLRB 743, at fn. 1 (1988). Under most circumstances, certainly including this one, a manual ballot election also encourages the greatest voter participation. *See e.g., Shepard Convention Service v. NLRB*, 85 F3d 671, 673 (D.C. Cir. 1996).

Here, conditions for a manual ballot election eliminate any unreasonable health risk. Accordingly, the coronavirus presents no "extraordinary circumstances" justifying abandonment of the advantages of a manual ballot for the employees at this worksite. A Regional Director's

¹ "(T)he Board's long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually . . ." *San Diego Gas*, 325 NLRB at 1144.

discretion to order a mail ballot election is “not unfettered.” *San Diego Gas*, 325 NLRB 1143, 1144 (1998). That discretion was abused here. If the Acting Regional Director’s Order is not promptly reversed the Order will enforce a rule that no manual ballots can be conducted in NLRB elections until COVID-19 is entirely eradicated – regardless of how low the risk becomes or how long that may take.

II. PROCEDURAL BACKGROUND

On August 3, 2020, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC (“USW” or “Union”) filed an RC petition requesting a mail ballot at ClarkDietrich’s Bristol Connecticut facility. (Exhibit 2). ClarkDietrich filed its Statement of Position on August 14, 2020 and requested a manual election. (Exhibit 3).

On August 24, 2020, the Hearing Officer held the pre-election hearing to discuss two issues: (1) the appropriateness of the proposed unit; and (2) whether the election should be a manual or mail ballot. The Acting Regional Director did not allow ClarkDietrich to submit evidence on either issue despite ClarkDietrich’s request and willingness to provide witness testimony. The parties were permitted to submit Offers of Proof. ClarkDietrich’s exhibits are attached. (Exhibit 4). The USW did not submit any exhibits. At the conclusion of the pre-election hearing, the Hearing Officer, at the direction of the Acting Regional Director, denied ClarkDietrich’s request to file a brief on both issues.

On August 31, 2020, the Acting Regional Director issued his decision which ordered that the election be conducted entirely by United States mail.

III. KEY FACTS.

The undisputed record before the Acting Regional Director established the following:

- The Bristol facility meets all of the requirements outlined in General Counsel Memo 20-10.
- ClarkDietrich carefully cleans the facility on a daily basis.
- ClarkDietrich fogs the entire facility once a week with a virus disinfectant.
- ClarkDietrich will fog the election area prior to the election, and keep it free from occupancy until it is used for the election.
- The combination employee breakroom and training room available to conduct the election is large [40' x 24' and 30' x 24']. It can accommodate any needed degree of social distancing and provides separate entrances and exits to the voting area.
- ClarkDietrich will provide Plexiglass shields separating all participants in the election.
- ClarkDietrich utilizes an air purifier that will be in place in the election area prior to and during the pre-election conference and voting sessions.
- The Bristol facility has not experienced a single instance of any employee contracting the virus – inside or outside the facility – since April 24, 2020.
- Employee work schedules will permit all 115 eligible voters to have access to the polls during their normal work hours with only two voting sessions: one during mid-afternoon, and the other in the early evening. This number of voters can easily accommodate any limits on the number of persons gathered in the voting area at one time.
- The proximity of the worksite to the NLRB's Sub-Regional office in Hartford means a Board Agent conducting a manual election will have no need to spend a night away from home, or even stop for gas.

The Acting Regional Director denied ClarkDietrich's request to present witness testimony. Nevertheless, the union failed to contradict any of the facts contained in ClarkDietrich's Offer of Proof.

The Order cites early Connecticut business shutdown orders but ignores that Connecticut now invites non-essential businesses to resume operations, including amusement parks, bowling alleys, gyms, and salons. Connecticut plans to "allow all students – in all school districts statewide – the opportunity to have access to in-school, full-time instruction at the beginning of the 2020-21 academic year, . . ." ² Connecticut's Governor recently confirmed that the state's low infection rates continue to support the reopening of schools. ³

Low infection rates make the return of thousands of children to the daily classroom safe in Connecticut. Yet, the Order asserts that sending one NLRB agent into a highly protected environment for a few hours creates an unreasonable health risk. The employees subject to this election have been safely working together – following the same social distancing and facemask protocols that will apply during a manual election – without spread of the virus, and without a single example of coronavirus among the workforce for over four months. A manual ballot election will entail no increased health risk to voters.

In short, the Order relies upon past, rather than current, conditions to find grounds for a mail ballot election. It points to speculation rather than evidence to support its conclusion that a manual ballot election cannot be safely held at this manufacturing facility. The Decision and Direction of Election makes plain that the coronavirus is an excuse, not the reason, to order a mail

² <https://portal.ct.gov/Office-of-the-Governor/News/Press-Releases/2020/06-2020/Governor-Lamont-Announces-Plans-for-the-2020-21-School-Year-Amid-the-Ongoing-COVID19-Pandemic>

³ <https://www.ctpost.com/news/coronavirus/article/Lamont-COVID-19-trend-favors-in-person-schooling-15455429.php>

ballot at Bristol. Equally clear is the prejudice against *ever* authorizing a manual ballot election, *under any circumstances*, while the coronavirus is available to as an excuse for a mail ballot.

An unreasonable risk of contracting the coronavirus can create an “extraordinary circumstance” justifying a mail ballot election. *See, Atlas Pacific Engineering Company*, No. 27-RC-258742 (May 8, 2020). Nevertheless, conducting a manual ballot election at the ClarkDietrich manufacturing plant in Bristol, CT creates no such risk.

IV. APPLICATION OF LAW

A. Grounds for Review.

The Board will grant a request for any one of the following grounds:

- (1) That a substantial question of law or policy is raised because of the absence of or a departure from officially reported Board precedent;
- (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;
- (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; or
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 CFR 102.67. The Acting Regional Director’s error in ordering a mail ballot meets all four grounds for review. Thus, the Board should grant ClarkDietrich’s Request for Review.

B. Application of Grounds for Review.

1. The Regional Director’s Order departs from officially reported Board precedent.

“A Regional Director's discretion, however, is not unfettered and is to be exercised within certain guidelines.” *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998).

The NLRB Casehandling Manual for Representation Proceedings sets out the criteria for a Regional Director to order a mail ballot election. The Regional Director must “reasonably conclude that conducting the election by mail ballot or a combination of mail and manual ballots would enhance the opportunity of all to vote.” The NLRB Casehandling Manual, Part 2, Section 11301.2 (January, 2017) (emphasis added). Here, a mail ballot will not “enhance the opportunity of all to vote.” Just the opposite.

The Casehandling Manual’s criteria for a mail ballot is the product of the NLRB’s controversial decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998).⁴ *San Diego Gas* involved a unit of 20 dispatchers working from eight different locations spread across southwest California. *Id.* at 1143. The employer’s proposal for a manual ballot called for two different elections sites but required some voters to travel 60 miles one-way to a polling site, others 49 miles, others less. Overall, 17 of the 20 employee-voters had to travel to their polling place. *Id.* at 1143 - 1144.

With these facts in front of it, the Board identified three fact patterns that will authorize a Regional Director to exercise her/his discretion to order a mail ballot: (a) a geographically diverse voting unit; (b) voters “scattered” by widely varying work schedules; and, (c) a strike/lockout situation. *Id.* at 1145. “If any of the foregoing situations exist,” the *San Diego Gas* Board ruled, the Regional Director could exercise her/his discretion to order a mail ballot. *Id.*⁵ It is undisputed that no circumstances even akin to those identified in *San Diego Gas* exist at Bristol.

⁴ Members Hurtgen and Brame lodged a vigorous dissent in *San Diego Gas* charging that the three Members in the majority were undermining “the heart of our system of workplace democracy.” *San Diego Gas*, 325 NLRB at 1153 (language quoted); *See, supra* pp 1149 to 1153 for the full Dissenting Opinion.

⁵ The *San Diego Gas* decision offers Regional Directors a list of factors to consider when the facts warrant an exercise of their discretion to decide between a mail versus a manual ballot. These factors are (a) the desires of the parties, (b) the likelihood voters can read and understand their ballot, (c) availability of addresses, and (d) efficient use of Board resources. *San Diego Gas* makes clear, however, that these factors come into play only “(i) if any of the foregoing situations exist,” triggering the Regional Director’s discretion to consider a mail ballot. *San Diego Gas*, 325 NLRB at 1145.

The Acting Regional Director's Order rests on a single phrase in *San Diego Gas*, italicized below:

“We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, *in the absence of extraordinary circumstances*, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.” *Id* at 1145.

The coronavirus pandemic can create an “extraordinary circumstance” justifying a mail ballot election. Nevertheless, “coronavirus” is not a magic word creating an automatic default to a mail ballot. The virus must create *actual* “extraordinary circumstances” at the worksite rendering a manual ballot infeasible or inappropriate.

Otherwise, a Regional Director's order setting aside the Board's ordinary preference for a manual ballot represents a departure from officially reported Board precedent. The Acting Regional Director's Order, here, represents just such a departure. No “extraordinary circumstances” justify a mail ballot at ClarkDietrich's facilities in Bristol CT.

2. The Order is clearly and prejudicially erroneous on substantial facts.

(a) *The Regional Director's Decision Disregarding the Current COVID-19 Rates in Connecticut was Clearly Erroneous.* The Acting Regional Director's decision to order a mail ballot completely ignores the fact that Connecticut has some of the lowest COVID-19 rates in the country. The Acting Regional Director cites to Connecticut's total positive cases and deaths since cases began to surface in March. Under the Acting Regional Director's view of the pandemic, manual ballots can never occur in Connecticut because the total cases and deaths will continuously increase – even if only by a few cases. This is a nonsensical approach and hides rather than acknowledges the reality of current circumstances.

Unlike some states, Connecticut has dramatically lowered its COVID-19 rates since March. The August 31 update shows Connecticut's success in handling the virus. Over the course of three

days, there had been no deaths, hospitalization rates decreased by eight, and there had only been 384 new cases across the entire state of over 3.56 million people. <https://portal.ct.gov//media/Coronavirus/CTDPHCOVID19summary8312020.pdf> Importantly, the positivity rate in Connecticut has dropped to 0.66%. https://www.wfsb.com/news/the-latest-hospitalizations-increase-as-states-positivity-rate-jumps-to-1/article_54edec52-67ad-11ea-8482-877cb5d00dcd.html

The Order, however, disregards Connecticut's striking improvements since the spike in March and April when positive cases consistently exceeded 1,000 in a single day. <https://data.ct.gov/stories/s/COVID-19-data/wa3g-tfvc/> The Order provides no evidence that the Acting Regional Director even considered the *current* rate of coronavirus in Connecticut.

The Order also fails to recognize that Connecticut is re-opening. Connecticut is currently in Phase 2 of 3 in its re-opening plan. <https://portal.ct.gov/Coronavirus/Covid-19-Knowledge-Base/Latest-Guidance> The Latest Guidance page states that Phase 3 will be announced soon. (Id.). Businesses that have re-opened under the direction of government and public health officials include amusement parks, beaches, bowling alleys, gyms, fitness studios, nail salons, offices, retail, restaurants, tattoo parlors, and theaters just to name a few. (Id.). In addition, at the recommendation of Governor Lamont and public health officials, Connecticut's children already have or will be returning to in-person school in the near future. (Id.).

ClarkDietrich offered evidence of Connecticut's current, low infection rate for coronavirus, as well as the state's re-opening progress, in its Offer of Proof. The Union did not contest any of these facts. The Order does not and cannot accurately dispute the current low risk of infection in Connecticut. Businesses that were closed for months are now open again. Employees who had been working from home are returning to the office. Even the Region's office, and its Connecticut

Sub-Region office, which were once operating remotely, have resumed their usual course of business. All these steps can now be taken in Connecticut without any unreasonable risk of illness.

The Regional Director can no longer rubberstamp a request for a mail ballot in Connecticut based only on a reference to COVID-19. There must be some “extraordinary circumstance” why a manual ballot election cannot be safely held at a particular worksite. In the case of the ClarkDietrich facility in Bristol, Connecticut, no such “extraordinary circumstance” exists. There is no reason the NLRB cannot safely conduct a manual ballot at the Bristol plant. This error led the Acting Regional Director to depart from clear Board precedent, as described in Section 1, above.

(b) The Regional Director’s Decision Regarding ClarkDietrich’s Facility is Clearly Erroneous. The Order erroneously questions the safety at ClarkDietrich’s Bristol facility. ClarkDietrich’s facility is safe for a manual ballot election. ClarkDietrich meets all of the requirements set out in General Counsel Memo 20-10. In addition, ClarkDietrich has taken and will take additional safety measures. These include: (1) daily cleaning of the plant; (2) weekly fogging of the plant with a virus killing disinfectant; (3) fogging the plant on the night before the election; (4) placing an air purifier in the voting area. Such safety measures have proven to be successful as ClarkDietrich has not had a positive case since April 24.

Despite these safety measures, the Order still questions the safety of the facility. The Acting Regional Director relies on pure speculation and misconstrued authority. The Order cites to the CDC guidance that COVID-19 can be spread by asymptomatic individuals. (Acting Regional Director Decision, P. 6, FN 6). The Order asserts that a mail ballot is required because there is a hypothetical chance of an asymptomatic individual in the polling area.

The fact that the virus can be transmitted by asymptomatic individuals is hardly a new discovery. Reports that asymptomatic individuals can spread the virus have been in place for months. In fact, the CDC website includes a report that was originally published on May 4 that discusses transmission through asymptomatic individuals.

https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article The possibility of asymptomatic transmission is why so many other precautions are in place – face masks, social distancing, plexiglass shields, etc.

Surely the General Counsel and the NLRB COVID-19 Task Force Members were aware of this asymptomatic transmission when they issued suggested manual election protocols. The General Counsel issued Memo 20-10 months after these reports were first published. The Order’s argument completely ignores the protections against the spread of the virus created by the guidelines provided in GC Memo 20-10.

Further, the Order is based on speculation. The Order asserts that a mail ballot is proper because there is some uncertain chance that an asymptomatic individual might be in the polling area. But the Acting Regional Director ignores the hard evidence before him – the Bristol facility has not had a positive case since April 24. The Order speculates about some unknown possibility of an asymptomatic case when the undisputed evidence shows that the safety measures taken at the Bristol facility have been successful.

Even more misleading is the Order’s citation to Governor Lamont’s Executive Order No. 7000. This Executive Order is dated August 21, 2020. The Order states that Governor Lamont is concerned with the spread by asymptomatic individuals because the Executive Order states “public health experts have determined that it is possible to transmit COVID-19 even before a person shows symptoms and through aerosol transmission.” August 21, however, was not the first time

that Governor Lamont included this exact language in an Executive Order. Governor Lamont's Executive Orders dating back to May 11 include the same language. <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7LL.pdf> Since this language first appeared in an Executive Order, Governor Lamont has approved the beginning of Phase 1, the beginning of Phase 2, and even recommended that children return to in-person schooling.

The Order's reliance on asymptomatic transmission rests on the false premise that the chance of asymptomatic transmission leaves everyone powerless to protect against virus transmission. Worse, it compels a false conclusion that no manual ballot election may ever be held while the coronavirus exists in America since the coronavirus will always be capable of asymptomatic transmission. The experience of Connecticut, and specifically this Bristol worksite, confirms that employees and others at the plant can be protected from asymptomatic transmission. They have been. The Order's reasoning and conclusion cannot stand.

The Order questions ClarkDietrich's ability to limit the voting area to 25 people in accordance with Connecticut guidelines. (Acting Regional Director Decision, P. 7). Yet, ClarkDietrich explained in its Offer of Proof that the election can be held in the combined employee break and training rooms. This large area consists of connected rooms, measuring 40 feet by 24 feet and 30 feet by 24 feet. Such a large area can easily accommodate any required social distancing.

At the same time, the manageable number of employees in the voting unit (115) can easily be scheduled to limit persons in the polling area to 25 people at a time, or far less. ClarkDietrich's proposal to mark minimum distances between individuals with markings on the floor enforces far more stringent social distancing restrictions than limiting room occupancy to 25 persons.

The Order's reliance on the 25-person room occupancy limit only shows how unrealistic the objections to manual ballot voting have become. NLRB Agents supervising manual ballot elections rarely permit groups of voters as large as 25 people to occupy an NLRB polling area under any circumstance, regardless of any need for social distancing due to the coronavirus.

The Order's objections to the employer's proposal for conducting a manual ballot election are contrived. The Order posits that conducting the election in the large break and training area at the Bristol plant contradicts Connecticut's Safe Workplace Rules for Essential Employees. The Acting Regional Director is correct that Connecticut's rules provide that "where possible, close or restrict break rooms and cafeterias." However, the Order conveniently failed to recite the very next bullet point which permits these areas to be utilized if precautions are taken.

Specifically, the rule provides that "if an employer does maintain break or lunch rooms, utilize extra rotations to reduce the number of employees in the break room/cafeteria at one time to achieve social distancing norms. Provide soap and water, or within available supplies, hand sanitizer and/or disposable wipes in break or lunch rooms and clean them after every shift." <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/Safe-Workplace-Rules-for-Essential-Employers> ClarkDietrich's Plant Manager has already certified that all of these safety measures will be taken for the election. Thus, in contrast to the Order's assertion, the use of the break and training rooms for the election is permitted in Connecticut. These large rooms provide voters, the Board Agent, and Observers with a safe and controlled environment.

The Order reveals the Acting Regional Director will not permit a manual ballot under any circumstances. Here, the Acting Regional Director cites to his concerns about using the break room at the Bristol facility. In *Elm Hill Nursing Center, Inc.*, No. 01-RC-260957 (June 15, 2020), the employer proposed conducting the election outside to alleviate concerns with COVID-19. Yet, the

Acting Regional Director dismissed this idea on the grounds that “[a]n outdoor election is by definition vulnerable to the whims of the elements; there is no way to guarantee that the chosen election date will be free of severe winds and thunderstorms which could dissuade voters from participating and soak paper ballots and cardboard ballot box.”

Similarly, in *Curaleaf Massachusetts, Inc.*, No. 01-RC-259277 (May 7, 2020), the employer proposed conducting the election in a large office space 3.2 miles away from the dispensary that allowed for social distancing that could not be achieved at the dispensary. Again, the Acting Regional Director rejected this idea because employees would be “scattered” by traveling a short distance to vote. The Acting Regional Director has a moving target that is simply not attainable. If a manual ballot cannot be held outside, at a large offsite facility, or a large on-site area, then where can a manual ballot be held? His obvious preference is nowhere.

The Order’s determination that ClarkDietrich’s Bristol plant is not safe is clearly erroneous. This conclusion is based on pure conjecture, misleading sources, and a failure to ask questions. This error has prejudiced ClarkDietrich and its employees to have a manual ballot election in accordance with the Board’s longstanding preference.

3. The conduct of any Hearings and rulings made in connection with the proceeding have resulted in prejudicial error.

As previously mentioned, the Hearing Officer, on instructions from the Acting Regional Director, prohibited witnesses or submitting a post-hearing brief to explore details for social distancing or other concerns. The Hearing Office asked not a single question at the Hearing. The Order reveals why. The Acting Regional Director was not interested or concerned about the true facts and circumstances governing whether a manual ballot election could be safely held at the time and location proposed for this worksite.

Granted, NLRB procedures do not call for litigating the type of ballot to be used. The Acting Regional Director's determination on the appropriate type of election to hold, however, must be based upon current, relevant facts. The type of election is not merely up to the Region's preference, convenience or pure financial expediency. *See*, NLRB Casehandling Manual, Part 2, Section 11301.2 (January, 2017). Where, as here, a manual ballot is required by the *San Diego Gas* guidelines, and the only grounds for a mail ballot is a claim of "extraordinary circumstances," a failure to hear testimony and other evidence concerning whether such circumstances exist invites prejudicial error. This is exactly what occurred here.

The Order rests on disingenuous grounds. If this Order is not promptly reversed it will artfully eliminate any duty of this Region, and by extension all others, from *ever* conducting a manual ballot, anywhere and under any circumstances, as long as the coronavirus exists in the United States. Evidence that a manual ballot *can* be safely held will not even be heard.

4. That there are compelling reasons for reconsideration of an important Board rule or policy.

As discussed in Section 1, above, the Board need not reconsider any Board rule or policy to reverse this Order. On the contrary, the Order contravenes existing Board policy. Nevertheless, if prior approvals of mail ballot elections due to the coronavirus *could* be read to justify the Order in this case (which they cannot), the Board's position on manual versus mail ballot elections during this pandemic would need to be revisited and clarified.

During the pre-election hearing, the USW cited to *Atlas Pacific Engineering Company*, No. 27-RC-258742 (May 8, 2020). In *Atlas*, the Board upheld the Regional Director's decision to conduct a mail ballot because of concerns with the pandemic. The Board noted as the "extraordinary circumstances" justifying a mail ballot the "federal, state, and local government

directives that have limited nonessential travel, required the closure of nonessential business, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework.”

The Board has adopted this understanding of “extraordinary circumstances” on other occasions since the beginning of the pandemic. Such “extraordinary circumstances” are not, however, present here. Neither the NLRB’s Region 1’s office, nor the Hartford, CT Sub-Region 34 office, are under mandatory teleworking orders. No travel restrictions prevent a Board Agent from traveling the 19 miles from the Sub-Regions 34’s Hartford office to the ClarkDietrich plant in Bristol.

The Order cites the “federal, state, and local government[.]” directives as the reason for the mail ballot. As noted above, however, Connecticut’s state government is now re-opening even non-essential businesses of most times swiftly and without interruption. Almost all businesses are open outside of bars. Children are reporting to in-person schooling.

The ClarkDietrich worksite is not a nursing home or other entity that houses hundreds of individuals who are at-risk due to age or underlying conditions. This worksite is located in one of the best regions to avoid contracting the coronavirus in America. Circumstances at this worksite are also ideal for social distancing. And there is no recent history of coronavirus infection or transmission.

Conditions that the Board has recognized as justifying a mail ballot election elsewhere are completely absent here. If a manual election cannot take place under these circumstances, then General Counsel Memo 20-10 is meaningless and only mail ballots will be conducted until COVID-19 no longer exists in America.

V. CONCLUSION

For the foregoing reasons, the Board should grant ClarkDietrich's Request for Review because the Acting Regional Director abused his discretion in ordering a mail ballot election rather than a manual election.

Respectfully submitted,

FROST BROWN TODD LLC

/s/ Richard Cleary

Richard Cleary

rcleary@fbtlaw.com

John T. Lovett

jlovett@fbtlaw.com

Brice C. Smallwood

bsmallwood@fbtlaw.com

400 West Market Street, 32nd Floor

Louisville, KY 40202

(502) 589-5400

Fax: (502) 581-1087

Counsel for Employer, ClarkDietrich

0121667.0585104 4818-2847-6362v1