

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

CHENEGA INFINITY, LLC

Employer

and

Case 12-RC-263266

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 2088,
AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

On July 20, 2020, International Brotherhood of Electrical Workers, Local 2088, AFL-CIO (the Petitioner) filed a representation petition in the above case with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act (the Act), seeking to represent a unit of approximately nine full-time and regular part-time badging clerks employed by Chenega Infinity, LLC (the Employer) working on the Kennedy Space Center Protective Services Contract located at the Kennedy Space Center in Merritt Island, Florida.¹ The parties agree, and I find, that the unit, as fully described below, is appropriate for the purposes of collective-bargaining:

All full-time and regular part-time Badging Clerks employed by Chenega Infinity, LLC working on the Kennedy Space Center Protective Services Contract located at the Kennedy Space Center; excluding all other employees, office

¹ The parties stipulated, and I find, based on the following stipulated facts, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Employer is an Alaska limited liability company, with an office and place of business located at the Kennedy Space Center Badging Office, Building M6-0224, Kennedy Space Center, Florida 32899. The Employer is engaged in the operation of providing badging office services pursuant to a contract with the United States Government. During the past 12 months, a representative period of time, the Employer in the course and conduct of its business operations described above, provided services in excess of \$50,000 and purchased and received at its Kennedy Space Center, Florida facility goods valued in excess of \$50,000 directly from points located outside the State of Florida. The parties further stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

clerical employees, managers, guards and supervisors as defined by the National Labor Relations Act.

The parties also stipulated that there is no bar to an election in this proceeding.²

A hearing was held by video conference on August 10, 2020,³ before a hearing officer of the National Labor Relations Board (the Board). The sole issue presented in this matter, as discussed in more detail below, is how and when the election should be conducted. Both parties seek a manual election to be conducted in a conference room at the badging office on the grounds of the Kennedy Space Center complex. Despite the desires of the parties and even though a manual election would be preferable in this case in the absence of the COVID-19 pandemic, because of my concerns regarding the safety of holding a manual election in the circumstances of the pandemic, I declined to approve an election agreement providing for a manual election. At the hearing the parties were permitted to present their positions as to the mechanics of the election to be held. Additionally, the parties were permitted to file post-hearing briefs, and the Employer filed a brief, which I have carefully considered.

As fully discussed below, I have directed a mail ballot election because I find that it is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic.

I. FACTS

I take administrative notice of the continuing public health crisis in the United States created by the COVID-19 pandemic. On March 11, the COVID-19 outbreak was characterized

² The parties stipulated that there was a collective-bargaining agreement between the Employer and the International Brotherhood of Teamsters, Local Union 769 (Local 769) that was in effect by its terms from October 1, 2017 through September 28, 2020, covering the unit herein. Prior to the hearing Local 769 disclaimed interest in representing the unit employees and stated that it does not wish to participate in this matter.

³ All dates herein occurred in 2020.

as a pandemic by the World Health Organization. The Centers for Disease Control and Prevention (CDC), an agency of the United States Government states:⁴

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet).

According to the CDC, as of September 9, there have been over 6.3 million confirmed cases of COVID-19 in the United States, and over 189,000 deaths.⁵ The United States has experienced a roller coaster-like transmission rate, often experiencing a sharp uptick in confirmed cases after periods of lower transmission. From March 15 through April 12, the 7-day moving average of new confirmed cases spiked from 435 to nearly 32,000 per day.⁶ From April 12 through April 19, the 7-day moving average dropped to 27,396, before rising again to 30,178 on April 26. Thereafter, the United States experienced a sustained decrease of confirmed cases, reducing the 7-day moving average to 19,912 on May 30. However, between May 30 and July 24, the 7-day moving average rose sharply to its peak of 66,960 new COVID-19 cases per day. Daily new confirmed cases in the United States have fluctuated between 23,301 and 49,400 during the first nine days of September.⁷

The State of Florida has been particularly heavily affected by the pandemic. On September 4, Florida Governor Ron DeSantis issued Executive Order 20-213, extending the state of emergency he previously declared in response to the COVID-19 pandemic for an additional 60 days.⁸ Therein, he noted that Florida remains in Phase 2 of its recovery, but that the impact of

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

⁵ <https://www.cdc.gov/covid-data-tracker/#cases>

⁶ <https://www.cdc.gov/covid-data-tracker/#trends>

⁷ <https://www.cdc.gov/covid-data-tracker/#trends>

⁸ [#2020-213 Executive Order extends Executive Order 20-52-COVID-19](#).

COVID-19 poses a continuing threat to the health, safety and welfare of the State of Florida and its residents.

The State of Florida Department of Health reports a total of 654,731 confirmed COVID-19 cases statewide, of which 412,738 cases remain “under investigation,” and reports 12,115 deaths statewide as a result of COVID-19.⁹ According to the John Hopkins School of Medicine Coronavirus Resource Center (Johns Hopkins) and news reports, on July 12, Florida recorded 15,300 new Covid-19 cases, the highest number of new cases in one day in any state of the United States since Covid-19 reached pandemic proportions in the United States in mid-March 2020.¹⁰ While Florida has seen a reduction in the number of daily confirmed cases since its peak in July, confirmed cases continue to fluctuate and periodically spike. For example, on August 31, there were 1,693 new confirmed COVID-19 cases, and on the following day, September 1, that number rose sharply to 7,449.¹¹ The seven day and three day daily averages of new COVID-19 cases have dropped from the peak number of Florida’s daily new cases in July, but remain significantly greater than the number of daily new cases in Florida from mid-March through mid-June.¹² Johns Hopkins also reports that Florida’s daily COVID-19 testing positivity rate is 13.32 percent at present. A daily positivity testing rate over five percent is considered too high by the World Health Organization because it suggests there is actually a higher COVID-19 transmission rate than the rate being reported, since there are likely more people with coronavirus in the community who have not been tested yet.¹³

⁹ <https://floridahealthcovid19.gov/#latest-stats>. The CDC reports approximately 10,000 fewer total confirmed cases in Florida, which has the third most confirmed COVID-19 cases of any state in the United States, according to the CDC. See <https://covid.cdc.gov/covid-data-tracker/#cases>.

¹⁰ <https://coronavirus.jhu.edu/data/state-timeline/new-confirmed-cases/florida/0>
<https://www.nbcmiami.com/news/local/florida-shatters-daily-record-with-over-15000-new-covid-19-cases/2261128/>

¹¹ <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

¹² <https://coronavirus.jhu.edu/data/new-cases-50-states/florida>.

¹³ <https://coronavirus.jhu.edu/testing/testing-positivity>; <https://www.jhsph.edu/covid-19/articles/covid-19-testing-understanding-the-percent-positive.html>.

In Brevard County, which includes Merritt Island where the Employer's operation is located, there have been 7,787 confirmed COVID-19 cases and 245 deaths as a result of COVID-19, with 696 cases in the last 14 days, and 323 cases in the last seven days.¹⁴ The pandemic continues to spread throughout the local community. On August 31, it was reported that 100 people were asked to quarantine after the Brevard County Public Schools announced 42 confirmed cases of the coronavirus within the district.¹⁵ Further, an elementary school in the Brevard County School District was recently closed for an extended period due to positive COVID-19 cases within the school.¹⁶

I also take administrative notice of the information, guidance and recommendations regarding COVID-19 that have been issued by the CDC.¹⁷ The CDC recommendations for dealing with this public health threat include, among others, the avoidance of large gatherings, the use of cloth face coverings, and social distancing. The CDC further states that the virus can survive for a short period on some surfaces, and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes.¹⁸ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: "After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol."¹⁹

¹⁴ <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

¹⁵ <https://www.clickorlando.com/news/local/2020/08/31/135-people-asked-to-quarantine-in-brevard-county-schools-after-covid-19-exposure/>

¹⁶ <https://www.fox35orlando.com/news/3-central-florida-schools-closed-due-to-covid-19-cases;>
<https://www.facebook.com/BrevardPublicSchools/>

¹⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

¹⁸ <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself> .

¹⁹ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

II. POSITION OF THE PARTIES

Kennedy Space Center Complex (KSC), where a proposed manual election would be held, is operational and open to members of the public. The Petitioner and the Employer jointly seek a manual election to be held in a conference room within the badging office on the grounds of KSC. Counsel for the Employer made the following proposals and representations regarding manual election sought by the parties, to which the Petitioner did not object. The badging office is located near the main entrance to the complex, with a parking lot immediately outside. Upon entering the badging office through a set of double glass doors, visitors to the badging office proceed into a lobby, and approach a desk where two badging clerks are seated. Beyond the visitor's desk is a hallway with a door on the right-hand side that leads into a conference room where the parties propose to conduct a manual election.

Those entering the conference room must use the same door to exit, as there is only one door. The conference room is approximately 20 feet wide and 20 feet long. It contains a conference table that is approximately 12 feet long, which can comfortably seat 10 people. There are eight chairs positioned around the table. The parties propose to have the Board Agent seated in the middle of the table and the observers seated at the ends. The parties assert that the conference room is large enough to allow for the Board Agent, observers, and voters to maintain proper social distances from each other during the election. The voting booth and ballot box would also be stationed in the conference room.

Badging clerks at the facility, along with other staff, are required to wear masks. Plexiglass sneeze guards are positioned between the badging clerks seated at the desk and visitors who enter the facility. The parties assert that a sitting area in the lobby has chairs that are spaced far apart to allow for proper social distancing. Further, to the left of the visitor desk

are workstations where badging clerks are seated and working. The clerks' workstations are also spaced apart to allow for proper social distancing, and also have Plexiglass sneeze guards installed that separate the employees.

The Employer proposes that those attending the election use personal protective equipment and sanitation products during the election, such as latex gloves, hand sanitizer, and disinfectant. The Employer maintains that it will ensure that the conference room is sanitized prior to the election and no individuals will occupy the room for as many days prior to the election as requested by the Region. Further, the Employer proposes allowing only one voter in the conference room at a time, and propose a 60-minute election. The Employer argues that 60 minutes is enough time to allow each eligible voter to vote without employees congregating in the polling area. It proposes that voters use single-use writing utensils and tape to mark proper social distances. The Employer represents that it has already ordered additional plexiglass to separate the Board agent and observers during the election. Finally, the Employer represents that in a manual election it will comply with all safety guidelines announced in General Counsel's Memorandum, 20-10.

III. ANALYSIS

The determination of the method of election is within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual (Part Two), Representation Proceedings, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011). In

addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (2) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). A Regional Director's exercise of the broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned "unless a clear abuse of discretion is shown." *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4.

Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in "extraordinary circumstances." *San Diego Gas & Electric*, 325 NLRB at 1145.

On July 6, the General Counsel of the NLRB issued GC Memorandum 20-10, containing suggested guidance for manual election protocols during this pandemic. The General Counsel's "Suggested Manual Election Protocols" provide guidance on how to safely conduct a manual election only when and if a manual election is deemed appropriate. It is not a checklist whereby parties are automatically entitled to a manual election if they can meet these requirements. The General Counsel reaffirmed that Regional Directors have authority delegated by the Board to make initial decisions about when, how, and in what manner all elections are conducted. He

noted that the memorandum is not binding on Regional Directors because the Board, not the General Counsel, has authority over representation cases. According to the General Counsel, Regional Directors:

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

Among other measures, the memorandum proposes self-certification that individuals who will be in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or come into contact with someone who tested positive within the preceding 14 days, and are not awaiting test results. The memorandum also requires the parties to provide information about the number of individuals exhibiting COVID-19 symptoms.

However, the CDC's "current best estimate" is that 50 percent of COVID-19 transmission occurs while people are pre-symptomatic and 40 percent of people with COVID-19 are asymptomatic.²⁰ Asymptomatic persons will not likely have been tested for COVID-19 nor will they be identified as having the virus. Moreover, GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay the resolution of the question concerning representation. A mail ballot election avoids these concerns.

Although the daily numbers of new confirmed cases in Florida are currently below the peak level, the trends of the pandemic have been dynamic. Throughout the COVID-19 pandemic, case trends have continually fluctuated. Importantly, over the course of the past five months, a spike in cases has often followed a downtrend trend in new cases, highlighting the inherent difficulties in projecting future case trends. As a manual election in this case would not

²⁰ "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control.html>.

be scheduled for several weeks following the issuance of this decision, projecting whether the case trends will warrant a manual election at that time in view of the current situation in Brevard County and elsewhere in Florida is impracticable. Moreover, public gatherings for the recent Labor Day holiday may cause a spike in cases like the one that occurred after the July 4th holiday.

Recent events underscore the unpredictable nature of this pandemic, as there is currently new and well-documented confirmed cases of the virus in the area. On August 31, over 100 individuals were asked to quarantine in Brevard County due to possible exposure to the virus from the local school district. Around the same time, an elementary school in Brevard County was forced to stay closed for an extended period because of the number of confirmed COVID-19 cases stemming from local transmission. Although these may be relatively isolated incidents, that is not at all clear in view of Florida's high positivity testing rate suggesting that there are more cases. Even if isolated incidents, they demonstrate how quickly the pandemic can create a major health risk. There is, therefore, no guarantee that a manual election can be safely conducted in this case in the near future. The conduct of this election by mail ballot has the benefit of eliminating the uncertainty that manual elections could be delayed.

I recognize that both parties desire a manual election and have proposed an election plan that they hope will result in a safely-conducted election in a controlled environment. However, a manual election will require a Board agent to travel from Tampa, Florida to the Employer's facility, a trip of approximately 125 miles that typically takes at least two hours by car, and to make a return trip of the same length. Furthermore, a manual election in this case would necessarily bring together employees, party representatives, and a Board agent in a relatively small room of approximately 400 square feet. All participants will be required to access the

voting area through the main lobby of a building that is currently open to visitors from the general public. There is only one door into and out of the conference room. Thus, despite the Employer's depiction, it is entirely plausible that election participants will need to pass by each other in very close proximity and will be unable to maintain proper social distancing. This is the very type of setting that experts warn is well-suited for coronavirus transmission.

Manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board agent, all of whom must be present at the Employer's facility. All but the voters would need to gather in the polling place for approximately 30 minutes for the pre-election conference, including the check of the voter list, the parties' inspection of the voting area and observation of the assembly of the ballot box, and the instruction of observers. The Board agent and observers would continue to share the polling place for the duration of the proposed manual election, more than sufficient time to risk exposure to the virus. The observers would need to check in voters on the voter list, and the Board agent would provide a ballot to each voter.

There are potential additional elements of a manual election that make it unlikely that there would be compliance with recommended social distancing. For instance, if a voter is challenged the Board Agent, observers, and voter must be in close proximity to make the challenge, obtain information from the challenged voter to be entered by the Board agent on the challenged ballot envelope stub, pass the challenged ballot envelope and ballot from the Board agent to the voter, and make sure the voter encloses the ballot in the envelope and seals the envelope before dropping it in the ballot box. See, Casehandling Manual Section 11338.3. At the conclusion of the polling period, the Board agent would count the ballots, typically in the polling place, with the observers, party representatives, and possibly other employees who wish

to attend. The fact that a manual election would take place in a confined indoor space, and in view of the CDC's warning that COVID-19 can be spread by asymptomatic individuals, I find that the current risk of infection to all election participants that would result from a manual election at the Employer's facility is too great.

The Employer's remaining arguments favoring a manual election over a mail ballot election are unavailing. "From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail." See *London Farm Dairy*, 323 NLRB 1057 (1997) (internal citations omitted). Furthermore, the Board has previously rejected arguments that mail ballot elections lack the requisite oversight and that they are ripe for voter coercion and lower voter participation. See *San Diego Gas & Electric*, 325 NLRB at 1146; *London Farm Dairy*, 323 NLRB at 1058.

Although long-standing Board policy favors manual elections, I find that the most responsible measure to ensure a safe election in the extraordinary circumstances present in this case is to conduct a mail-ballot election and eliminate the serious risk of unnecessarily exposing employees, Board agents, party representatives, their families, and the public to COVID-19, and to thereby ensure that the employees in the unit herein will have the opportunity to vote safely and promptly.

IV. CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate purpose of the Act to assert jurisdiction in this case.
3. 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.

4. A question 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. As stipulated by the parties, no contract bar or other bar exists to conducting an election in this matter.

6. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Badging Clerks employed by Chenega Infinity, LLC working on the Kennedy Space Center Protective Services Contract located at the Kennedy Space Center; excluding all other employees, office clerical employees, managers, guards and supervisors as defined by the National Labor Relations Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election by mail among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 2088, AFL-CIO.

A. Election Details

Due to the above-described extraordinary circumstances of the Covid-19 pandemic, I further direct that the ballot count will take place remotely by videoconference on an electronic video platform to be determined by the undersigned Regional Director after consultation with the parties.

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 **9:30 a.m.** on **September 25, 2020**, ballots will be mailed to voters by the National Labor Relations Board, Region 12, from its office at **201 E. Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824**. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots 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 **October 2, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 12 Office at **(813) 228-2644 or (813) 228-2661** or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the **Region 12 office, 201 E. Kennedy Blvd., Suite 530, Tampa, Florida** on **October 16, 2020, at 10:00 a.m.** In order to be valid and counted, the returned ballots must be received in the **Region 12 office in Tampa** prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the Covid-19 pandemic, I further direct that the ballot count will take place remotely via the electronic videoconference platform Zoom for Government.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on August 31, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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; (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 **September 14, 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 Election²¹

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.

²¹ The parties agreed that no foreign languages are required on the Notice of Election or ballots.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business 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(c) 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. 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, and 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 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: September 10, 2020.



David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E Kennedy Blvd Ste 530
Tampa, FL 33602-5824