

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

**REMINGTON LONG ISLAND EMPLOYERS,
LLC**

Employer

and

Case 29-RC-089045

**LOCAL 947, THE INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS, IRON
SHIP BUILDERS, BLACKSMITHS, FORGERS
AND HELPERS (IBBIS), AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

The Employer, Remington Long Island Employers, LLC¹, provides hotel management services, including operating the Hyatt Regency Long Island hotel in Hauppauge, New York. On September 11, 2012, Local 947, The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBBIS), AFL-CIO² (the Petitioner) filed a representation petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). The Petitioner sought to represent a unit of all full-time and regular part-time non-supervisory employees, excluding office clerical employees. Based upon evidence presented at a pre-election hearing and on stipulations by the parties, on January 3, 2013, the Acting Regional Director directed an election in the following unit:

All full-time and regular part-time³ housekeeping employees, restaurant employees, kitchen employees, banquet employees, front desk employees and engineering employees employed by [the Employer] at its Hyatt Regency hotel located at 1717 Motor Parkway, Hauppauge, New York, but excluding all office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

On January 18, 2013, the Region postponed the election scheduled for February 1 and the petition was held in abeyance pending further processing of two unfair labor practice charges.⁴ The Region informed the parties that upon disposition of those charges, if appropriate, it would resume processing the petition. The unfair labor practice charges were ultimately resolved through a Compliance Agreement in 2019. Upon the conclusion of those proceedings, the Region contacted the parties to arrange further processing of the petition. Shortly thereafter, on October 9, 2019, the Employer filed a motion to dismiss the petition or, alternatively, for the Region to withdraw the January 3, 2013 Decision and Direction of Election and reopen the record for a rehearing.

¹ As discussed herein, Remington Long Island Employers, LLC, is the successor to Remington Lodging & Hospitality, LLC d/b/a Hyatt Regency Long Island, the original employer in this and related proceedings.

²At the time of the filing of the petition, Local 947 was affiliated with United Service Workers Union, International Union of Journeymen and Allied Trades.

³Only those part-time employees who averaged 20 or more hours per week for a period of thirteen weeks prior to the date of the decision were eligible to vote.

⁴ Cases 29-CA-093850 and 29-CA-095876 both alleged violations of subsections 8(a)(1) and (3) of the Act.

By order dated April 28, 2020, I denied Employer's motion to dismiss the petition and directed the parties to show cause, in writing, as to whether the remaining portions of the motion, specifically, withdrawal of the Decision and Direction of Election and rehearing and reopening of the record, should be granted or denied. The parties were instructed to provide their positions, supported by documentary evidence and applicable legal authority, on the following issues:

- 1) whether there is a successor employer to the employers identified in the petition and in the subsequent unfair labor practice charges, including Remington Lodging & Hospitality d/b/a Hyatt Regency Long Island;
- 2) if there is a successor employer, whether that successor inherits the question concerning representation raised by the petition in the instant case;
- 3) why an election should not be held among the employees in the unit found appropriate in the January 3, 2013 Decision and Direction of Election; and
- 4) what evidence is sought to be adduced at the requested rehearing and what result it would require if adduced and credited.

On May 9, the Employer submitted a position statement further objecting to an election on the outstanding petition. Since the Employer did not agree to an election and the question concerning representation remains outstanding, I ordered a hearing to determine whether Employer's Motion for Withdrawal of the Decision and Direction of Election and Motion for Rehearing and Reopening of the Record should be granted or denied.

On August 4, 2020, Hearing Officer Brent Childerhose conducted the hearing in this matter by videoconference, during which the parties appeared, participated and were afforded the opportunity to be heard, to examine and cross-examine witnesses and to present evidence. The Employer submitted a post-hearing brief that has been duly considered. The Employer asserts that an election should not be conducted because the showing of interest is no longer sufficient due to the passage of time and employee turnover. It further alleges that, if conducted, the election should be by manual ballot. Petitioner contends that the showing of interest is sufficient and that an election should be conducted by mail ballot due to the COVID-19 pandemic.⁵

Based on the record and consistent with relevant case law, I find that an election should be conducted by mail ballot. Accordingly, I am directing an election in the unit described below. The remaining portions of Employer's Motion, for withdrawal of the 2013 DDE and for rehearing and reopening of the underlying record, are denied.

Successorship and Unit Issues

The Employer admits that it is a successor to Remington Lodging & Hospitality, LLC d/b/a Hyatt Regency Long Island and thus inherits the question concerning representation raised by the petition, which addresses the first two issues set forth above. In response to the third issue, the Employer maintains that an election should not be conducted pursuant to the 2013 Decision and Direction of Election for reasons discussed below. Aside from those contentions

⁵ Throughout this decision, the terms "COVID-19," "COVID," "Coronavirus" and "pandemic" are used interchangeably.

regarding why an election should not take place, the Employer presented no evidence regarding the fourth matter described above, specifically, what additional evidence is sought to be adduced at the requested rehearing and what result it would require if adduced and credited.

The Employer does not dispute that the unit description set forth in the 2013 DDE represents a “wall to wall” unit and that it is an appropriate unit. The Petitioner agrees that the unit description remains accurate and appropriate. While the Employer’s written filings discuss the “probability” that circumstances regarding the appropriateness of the bargaining unit may have changed, including the organizational structure, job descriptions and job functions, they presented no such evidence at the hearing or on brief.

The Employer asserts that they reserve the right to litigate whether certain job titles not specifically set forth in the unit description, including assistant general manager, housekeeping room inspector, front desk supervisor and sous chef, should be excluded from the unit because those employees are supervisors. Prior to the 2013 Decision and Direction of Election, the parties entered into a stipulation regarding unit inclusions and exclusions. That stipulation, dated January 2, 2013, is a part of the record herein, appended to Board Exhibit 1(a), the 2013 Decision. It states, in part, that all housekeeping supervisors [three named individuals], front desk supervisors [two named individuals], restaurant supervisors [three names individuals], and “kitchen” [one named chef] are Section 2(11) supervisors within the meaning of the Act and are to be excluded from the unit. The Employer now contends that, since it has withdrawn its stipulation regarding unit inclusions and exclusions, “the facts that were at issue related to that stipulation would need to be revisited, in light of current hotel-operating realities, and either stipulated anew or litigated.”

I note that the unit description specifically excludes supervisors as defined in the Act so there is no need to “stipulate” or “litigate” any such speculative matters prior to an election. If the Employer contends that certain employees are supervisors, it would presumably not include their names on the voter list. Conversely, if it contends that certain employees are not supervisors, it would include them. In either instance, if the Petitioner disagrees, those employees could vote subject to challenge. Since I am denying the Employer’s motion to either withdraw the 2013 Decision and Direction of Election or to reopen the record, the unit description set forth in that Decision will stand and there is no need to further delay an election on the basis of the unit description.

Showing of Interest and Employee Turnover

A comparison of employee rosters from December 31, 2012 and from October 7, 2019 shows that, of approximately 103 bargaining unit employees, only 13 who were employed in 2012 were still employed in bargaining unit positions in 2019. The Employer asserts that, due to the high rate of employee turnover since the petition was filed, the Union should be required to submit a new showing of interest before the Region continues to process the petition.

In *Big Y Foods, Inc.*, the Board rejected a contention that the showing of interest was stale when the delay in processing the petition to an election was attributable to the employer’s unfair labor practices. 238 NLRB 855, 855 fn. 4 (1978). Similarly, the Board rejected a

suggestion that a new showing was required because of a lapse of time and turnover among employees between the first and directed second election. *Sheraton Hotel Waterbury*, 316 NLRB 238 (1995), citing *Chester Valley, Inc.*, 266 NLRB 480 (1983); *Provincial House, Inc.*, 236 NLRB 926 (1978). In *River City Elevator Co., Inc.*, the Board found no merit to the employer's argument that a second election was inappropriate due to the lapse of time and/or turnover of employees since the petition was filed, noting that it has consistently held that these factors do not require a new showing of interest or dismissal of the petition. 339 NLRB 616, 617 (2003). "The results of the election will reveal the desires of the present employees as to representation by the Union." *Sheraton Hotel* at 238.

In addressing a related issue, the Board has held that a showing of interest is not subject to attack on the ground that the cards on which it is based have been revoked or withdrawn. *General Dynamics Corp.*, 175 NLRB 1035 (1969). "Such an attack has no bearing on the validity of the original showing but merely raises the question as to whether particular employees have changed their minds about union representation. That question can best be resolved on the basis of an election by secret ballot." *Id.* at 1035. See also *Allied Chemical Corp.*, 165 NLRB 235, 235 fn. 2 (1967); *Vent Control, Inc.*, 126 NLRB 1134 (1960).

It is well settled that the showing of interest is an administrative matter and is not litigable by the parties. *O. D. Jennings & Co.*, 68 NLRB 516 (1946); *Allied Chemical Corp.*, 165 NLRB 235, 235 fn. 2 (1967); *General Dynamics Corp.*, 175 NLRB 1035 (1969); *Gaylord Bag Co.*, 313 NLRB 306 (1993); *River City Elevator Co., Inc.*, 339 NLRB 616 (2003). Here, the showing of interest was administratively determined to be adequate at the time it was submitted. Based on the foregoing, I find that the showing of interest remains adequate and that an election is appropriate.

Method of Election

The Union contends that a mail ballot election is appropriate in this case, while the Employer asserts that an election, if any, should be conducted manually.

At the outset, I take administrative notice of the current public health crisis created by the COVID-19 pandemic. As of August 25, there have been over 5.7 million confirmed cases of COVID-19 in the United States, and 177,198 deaths.⁶ I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States Government.⁷ 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.⁸

⁶ See *Coronavirus in the U.S.: Latest Map and Case Counts*, NEW YORK TIMES, updated August 25, 2020.

<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>.

Although the CDC has not directly addressed Board elections, it has issued guidance on elections in general. Its “Considerations for Election Polling Locations and Voters” states that officials should consider alternative voting methods where permitted, and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19...”⁹

Board Law and Guidance Regarding Elections

Whether an election is to be conducted by mail, manually, or some other method is an administrative matter to be determined by the Regional Director. *National Van Lines*, 120 NLRB 1343 (1958). Traditionally, most Board elections are conducted by manual voting and there is a presumption in favor of conducting elections in this manner. See Section 11301.2, *NLRB Casehandling Manual, Part Two, Representation Proceedings*. However, when certain factors are present, this presumption may be overcome. In *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Board recognized that mail ballot elections are appropriate under specific, well-settled guidelines, such as where employees are scattered or where there is a strike, lockout, or picketing in place. The Board further found that a Regional Director may consider additional relevant factors when contemplating whether to conduct a mail ballot election and that “extraordinary circumstances” could permit a Regional Director to do so. See *San Diego Gas & Electric*, 325 NLRB at 1145. The Board has recognized that the COVID-19 pandemic presents such an extraordinary circumstance. See, e.g., *Atlas Pacific Engineering Co.*, 27-RC-258742 (Order dated May 8, 2020).

On March 19, in response to the pandemic, the Board temporarily suspended all Board-conducted elections through April 3, 2020. The Board took this action to ensure the safety of Agency employees and members of the public involved in elections. At the time, several of the NLRB’s regional offices had been closed and other locations were operating with limited staffing such that the Board did not believe it was possible to effectively conduct elections. On April 1, the NLRB announced that it would not extend the suspension of elections past April 3 and would “permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors.” The Agency has indeed resumed conducting elections, but the vast majority of these elections have been conducted by mail ballot.

On July 6, General Counsel Peter Robb issued a memorandum titled “Suggested Manual Election Protocols.” (GC 20-10). In that memorandum, the General Counsel acknowledged that the protocols suggested therein are not binding on Regional Directors because the Board, not the General Counsel, has authority over matters of representation, and he reiterated that Regional Directors have the authority, delegated by the Board, to make “initial decisions about when, how, and in what manner all elections are conducted.” The General Counsel further notes Regional Directors have, and will:

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

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

the election, the staff required to operate the election, and the status of pandemic outbreak in the election locality.

Among other suggestions in GC 20-10, the General Counsel proposes self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, come into contact with someone who tested positive within the preceding 14 days, are not awaiting test results, and are not exhibiting COVID-19 symptoms. However, the CDC's "current best estimate" is that 50% of COVID-19 transmission occurs while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic¹⁰ and thus would neither be identified nor have sought testing.

In addition to the self-certification recommendations, GC 20-10 contains ten specific protocols to be addressed in any Stipulated Election Agreement or Decision and Direction of Election in which a manual election is to be conducted:

A. Spacious polling area, sufficient to accommodate six-foot distancing, which should be marked on the floor with tape to insure separation for observers, Board Agent, and voters.

B. Separate entrance and exit for voters, with markings to depict safe traffic flow throughout polling area.

C. Separate tables spaced six feet apart so Board Agent, observers, ballot booth and ballot box are at least six feet apart.

D. The Employer will provide markings on the floor to remind/enforce social distancing.

E. The Employer will provide sufficient disposable pencils without erasers for each voter to mark their ballot.

F. The Employer will provide glue sticks or tape to seal challenged ballot envelopes.

G. The Employer will provide plexiglass barriers of sufficient size to protect the observers and Board Agent to separate observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for observers.

H. The Agency will provide to the Board Agent(s) running the election a face shield, mask, disposable clothes covering if requested, hand sanitizer, gloves and disinfecting wipes.

I. An inspection of the polling area will be conducted by video conference at least 24 hours prior to the election so that the Board Agent and parties can view the polling area.

J. In accordance with CDC guidance, all voters, observers, party representatives, and other participants should wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area or while observing the count. Signs will be posted in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives and other participants of this requirement.

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

GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation.

The Board has denied review of Regional Directors' decisions to conduct mail-ballot elections due to local COVID-19 circumstances even though employers have offered to follow the same or similar protocols as those identified in GC 20-10. See, for example, *Johnson Controls, Inc.*, Case 16-RC-256972 (Order dated May 18, 2020) (denying review where employer had zero COVID-19 cases, daily screened all individuals accessing the facility for symptoms, mandated face coverings and social distancing, and offered an outdoor election with plexiglass barriers, sanitizer, single-use writing utensils, floor markings for social distancing, masks, and gloves). In an Order denying a request for review in *Brink's Global Services USA, Inc.*, Case 29-RC-260969, the Board addressed a mail-ballot determination in the context of the COVID-19 pandemic and with consideration of GC 20-10. The Board noted that it "will continue to consider 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." (Order dated July 14, 2020, fn. 2).

The Board has continued to deny review in a number of very recent cases. In *Pace Southeast Michigan*, Cases 07-RC-257046 and -257047, the Board noted that it agreed with the Regional Director that, under normal circumstances, the cases "would almost certainly not be elections where a mail ballot would be considered." (Order dated August 7, 2020, fn. 2). The Board, citing its order in *Atlas Pacific Engineering Co.*, 27-RC-258742, again recognized that the COVID-19 pandemic presents extraordinary circumstances under which an election that might otherwise be appropriate for manual ballot should be conducted by mail. The Board will continue to consider the prevailing circumstances in the region and the applicability of the protocols suggested in GC 20-10 in determining whether a mail or manual ballot is appropriate. (Id.) Most recently, the Board issued almost identical orders denying review in *Daylight Transportation, LLC*, Case 31-262622 and *Antioch Tire, Inc.*, 13-RC-263043 (Orders dated August 19, 2020).

Proposed Election Arrangements

The Employer stated at the hearing that procedures could be established to allow for social distancing and that those involved in the election could wear masks. It pointed out that there would be only about 100 employees voting and that the hotel has plenty of large rooms that could allow for appropriate distances between the voting booths, observer tables and other necessary equipment. There is no record evidence about whether the hotel is currently operating at full capacity and, therefore, whether most or all employees are currently reporting to work or if many of them are temporarily laid off or on leaves of absence due to the pandemic. The Employer offered no specifics about polling location(s), the polling hours that might be needed to accommodate employees who work different shifts, and its willingness to address the protocols set forth in GC 20-10.

Analysis

The conduct of a manual election invariably requires participants to come within fewer than six feet of one another, while social distancing guidelines provided by Federal, State and Local authorities recommend that individuals remain at least six feet apart. Under the Board's manual election procedures, Board agents conducting the election and election observers are required to spend the duration of the polling session and ballot count process together in close proximity. Board agents and observers will likely have to interact with voters and/or party representatives who may have questions or who may wish to raise issues about the conduct of the election. These procedures necessarily carry the risk of exposure for employees, party representatives, Board personnel, their families, and the community.

The suggested protocols for a safely conducted manual election include: polling times sufficient to accommodate social distancing without unnecessarily elongating exposure among Board Agents and observers; the employer's certification in writing that polling area is consistently cleaned in conformity with CDC standards; a spacious polling area, sufficient to accommodate six-foot distancing; separate entrances and exits for voters; separate tables spaced six feet apart; sufficient disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenged ballot envelopes; plexiglass barriers of sufficient size to protect the observers and Board Agent; and provision of masks, hand sanitizer, gloves and disinfecting wipes.

While the Employer advocates for a manual election, it did not provide any specific information about the size and location of the proposed polling area, the length and number of polling sessions that would be needed, its willingness to provide masks, gloves, hand sanitizer and other protective equipment and supplies, or the cleaning protocols in place at the facility. It is therefore impossible to determine whether proper protective measures could be maintained during the voting or during the pre-election conference.

Since no information was provided about how many unit employees are currently reporting to work, there is no way to assess whether all employees would even be able to attend a manual election. There is also the possibility that employees who have been exposed to COVID could not vote in person and could therefore be disenfranchised. A mail ballot avoids these significant pitfalls and ensures that all have an opportunity to vote regardless of their location or health status. I find that the Employer simply has not demonstrated that a manual ballot election could be safely and efficiently conducted.

The safety of the voters, the observers, the party representatives, the Board agents conducting the election, and the public must be considered in determining the appropriate method for conducting the election. Mail balloting provides no additional risk and is consistent with current guidance of limiting in-person contact and travel. Even in the midst of this pandemic, the Region has already successfully conducted a number of mail ballot elections. Based on the above and the record as a whole, I find that the COVID-19 pandemic presents an extraordinary circumstance that makes the conduct of a mail ballot election the most responsible and appropriate election method in this case.

CONCLUSIONS AND FINDINGS

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
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 affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The 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 housekeeping employees, restaurant employees, kitchen employees, banquet employees, front desk employees and engineering employees employed by the Employer at its Hyatt Regency hotel located at 1717 Motor Parkway, Hauppauge, New York, but excluding all office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 947, The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBBIS), AFL-CIO.

As noted above, the petition in this case was filed on September 11, 2012. On December 15, 2014, the Board adopted a “final rule,” 79 Fed. Reg. 74308, that modified certain procedures applicable to the processing of representation cases. These changes went into effect on April 14, 2015. Representation cases filed before April 14, 2015, continue to be processed using the rules in effect before April 14, 2015. Since this case was filed in 2012, the Rules and Regulations in effect at the time of filing, rather than the new Rules, will apply.

A. Election Details

The election will be held by mail ballot. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 29, on October 16, 2020. Voters must return their mail ballots so that

they will be received in the National Labor Relations Board, Region 29 office by close of business on November 6, 2020. The mail ballots will be counted by video conference, on a date and at a time and in a manner to be determined by the Regional Director after consultation with the parties.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Board Agent, Brent Childerhose via telephone at 718-765-6187 or via e-mail at brent.childerhose@nlrb.gov by no later than 5:00 p.m. on October 26, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before 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.

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. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within **7** days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, Suite 5100, Brooklyn, New York 11201-3838, on or before September 22, 2020. No

extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. 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. The burden of establishing the timely filing and receipt of the list will continue to be on the sending party.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Notice of Posting Obligations

Pursuant to the former provisions of Section 103.20 of the Board's Rules and Regulations¹¹, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) full working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Former Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the Board. This request must be received by the Board by 5 p.m., EST on **September 29, 2020**. A request for review must be E-Filed through the Agency's website and 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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.

¹¹ As noted previously, certain provisions of the current version of the Board's Rules and Regulations do not apply to this case because it was filed prior to the amendments that became effective on April 14, 2015. Posting requirements are now contained in Section 102.67(k) of the Rules.

Dated: September 15, 2020



KATHY DREW-KING
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838