

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

SAVAGE SERVICES CORPORATION

Employer

and

Case 21-RD-264617

NELSON EDWIN MEDINA

Petitioner

and

**WHOLESALE DELIVERY DRIVERS,
GENERAL TRUCK DRIVERS,
CHAUFFEURS, SALES,
INDUSTRIAL AND ALLIED
WORKERS, TEAMSTERS LOCAL
848, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Union

DECISION AND DIRECTION OF ELECTION

On August 13, 2020, Petitioner Nelson Edwin Medina (Petitioner), an individual, filed the instant petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to decertify Wholesale Delivery Drivers, General Truck Drivers, Chauffeurs, Sales, Industrial and Allied Workers, Teamsters Local 848, International Brotherhood of Teamsters (Union) as the exclusive collective-bargaining representative of a unit of all full-time and regular part-time petroleum coke truck drivers, sweeper drivers, hazmat drivers, on-call drivers, and mechanics (herein called the Unit) employed by Savage Services Corporation (Employer) at multiple facilities located in Wilmington, California.¹

The parties entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) on September 3, which I approved the same day. The only issue left unresolved by the Stipulation is whether the election will be held manually at the Employer's facility or by mail ballot, considering the COVID-19 pandemic. The parties agreed, as part of the Stipulation, that they would each file a written statement outlining

¹ All dates 2020 unless otherwise indicated.

the party's position on the appropriateness of a manual or mail-ballot election. Additionally, if any party proposed a manual election, they also committed to providing: their position on whether and when a manual election can be safely held; a description of the proposed location of the election, including the size and layout of the room, the location of entrances and exits, and a description of the room's ventilation; a proposal for how a manual election could be conducted consistent with protocols described in *General Counsel Memorandum 20-10* (described more fully below); and the number of employees who have, within the last 3 months, tested positive for COVID-19, exhibited symptoms of COVID-19, and/or were subject to quarantine for any reason related to COVID-19, including but not limited to being in direct contact with someone who tested positive or exhibited symptoms of the virus.

Based on the record evidence and the relevant Board law, I find the petitioned-for Unit is an appropriate bargaining unit. Having found the petitioned-for Unit appropriate, I have directed an election accordingly. Because of the ongoing COVID-19 pandemic, I have ordered this election to be conducted by mail for the reasons stated below.

I. The Employer's Operations

The drivers in the Unit primarily transport and dispose of petroleum byproducts from locations in and around Los Angeles County, including the Port of Long Beach. The mechanics in the Unit maintain the vehicles used by the drivers. Both drivers and mechanics report to the facility where they are based and clock in at the start of their shifts. Drivers take one of the Employer's vehicles and visit various customer sites, while mechanics remain at the Employer's facility to perform their work. The employees in the Unit report to Operations Managers, who in turn report to the General Manager, who reports to the Employer's Vice President and Unit Leader.

The Employer operates three facilities in Wilmington, California: an administrative building, the Denni yard, and the Goodrich yard. The first facility, the administrative building, is located at 1635 East Denni Street, and consists of a two-floor administrative building, about 7,000 square feet in size, with approximately seven offices, a large training room, a conference room, a break room, a driver training room, and an open floor for administrative personnel.

The second facility, the Denni yard, located at 1634 East Denni Street, is across the street from the administrative building. The Denni yard covers about three acres and consists of a truck parking lot and three buildings. Building 1 includes a driver break room, a small driver locker room, and bathrooms. Building 2 includes the main driver locker room, a supervisor office, and a female locker room, and Building 3 is the maintenance building, which includes a maintenance office, restrooms, a breakroom, and a two-bay mechanic shop. Most drivers, and all the mechanics, report to the Denni yard.

The third facility, the Goodrich yard, is located at 1261 Goodrich Avenue, approximately half a mile from the administrative building and the Denni yard. The Goodrich yard consists of a truck yard, one two-story building, a driver locker room, and

a mechanics bay. Approximately 12 drivers in the unit clock-in and clock-out from the Goodrich yard.

II. The COVID-19 Pandemic in California and Los Angeles

COVID-19 represents an ongoing public health emergency, and one that has had a significant impact on California in general, and southern California in particular. The ebb and flow of the pandemic is well known at this point. In March, as COVID-19 spread in the United States and the danger it represented became apparent, a restrictive stay-at-home order was put in place in California.² As the initial surge of cases began to fall, and the economic impact of the stay-at-home orders increased, the restrictions were relaxed.³ Unfortunately, this resulted in a resurgence of cases, the re-opening plan was paused, and in some cases restrictions were re-imposed.⁴

As of September 10, COVID-19 infection remains “widespread” in Los Angeles County, the most restrictive category under California’s re-opening plan.⁵ To date, Los Angeles County has recorded almost a quarter of a million COVID-19 cases among its residents, and approximately 6,000 deaths caused by COVID-19.⁶ This is by far the most cases in the state and represents a third of the total cases in California.⁷ Although Los Angeles County is a county with a high population, even adjusted for population Los Angeles County remains in the top 10 counties for infection rates, with 2,483 cases per 100,000 residents.⁸

The Reopening Safer at Work and in the Community for Control of COVID-19 Order, issued by the Health Officer for the County of Los Angeles Department of Public Health, continues to encourage residents to remain in their residences as much as practicable, to limit close contact with others outside their household in both indoor and outdoor spaces, telework as much as possible, and to prohibit gatherings of people who are not part of a single household unless that gathering fits within one of the exceptions to the order.⁹ These local requirements are consistent with Federal and state guidelines that encourage precautions such as avoiding social gatherings and travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face

² <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

³ <https://covid19.ca.gov/safer-economy/>

⁴ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>

⁵ <https://covid19.ca.gov/safer-economy/>

⁶ <https://covid.cdc.gov/covid-data-tracker/#county-map>

⁷ *Id.*

⁸ *Id.*

⁹ http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf

coverings when around other people.¹⁰ This is particularly true in regard to COVID-19 because of the risk of presymptomatic or asymptomatic transmission.¹¹

In light of these risks, Centers for Disease Control and Prevention (CDC) guidelines on elections generally encourage officials to “consider offering alternatives to in-person voting if allowed” 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.”¹² 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,” but “it is unlikely to be spread from domestic or international mail, products or packaging.”¹³ 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.”¹⁴

III. Position of the Parties

The Employer and Petitioner submitted written statements in favor of a manual election. The Union maintains a mail-ballot election is the preferred method of election during the COVID-19 pandemic.

The Employer and Petitioner maintain that a manual election should be conducted in the instant case, as in-person manual elections are strongly preferred under the Act and mail ballots are disfavored. They argue that mail ballots are appropriate where circumstances are such that they enhance the ability of voters to participate, both cite to *San Diego Gas and Electric*, 325 NLRB 1143 (1998) and the circumstances described therein, and maintain that this is not one of those cases. Petitioner argues when mail ballots are used as an alternative to a manual election under more typical circumstances the Board’s own data shows mail-ballot elections result in decreased voter participation.

Petitioner also states that he favors manual voting because he does not trust mail voting. Petitioner argues the integrity of the ballots cannot be as well supervised in a mail-ballot election, as no one knows the voter who actually voted in a mail-ballot election. Petitioner also argues that a controversy exists over whether the United States mail “can be trusted to handle mail in ballots during the Presidential election,” and that

¹⁰ How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

¹¹ Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic, https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

¹² Considerations for Election Polling Locations and Voters, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

¹³ Am I at risk for COVID-19 from mail, packages, or products? <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

¹⁴ Running Essential Errands, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

this controversy may lead some employees to question the “trustfulness” of the use of the mail in a Board election. Finally, Petitioner asserts that members of minority groups are more likely to be distrustful of mail ballot voting than most voters, and thus a mail ballot election runs the risk of suppressing minority voting. Petitioner submitted several media reports describing research that may support this argument as part of its written statement.

Regarding COVID-19 specifically, Petitioner argues that that should not be a factor in this case as the employees are already working at the Employer’s facility and a manual election imposes no greater risk. Petitioner argues it is a mail-ballot election that presents the greater risk as it introduces the possibility of an asymptomatic individual handling the ballots before being sent to voters’ homes.

The Employer’s submission primarily focuses on the arrangements it would put in place for a manual election. It proposes the following mechanics:

- Two, 3-hour, polling sessions. The first from 3:00 a.m. to 6:00 a.m. and the second from 3:00 p.m. to 6:00 p.m.
- A polling place in the driver training room, an approximately 400 square foot room located on the second floor of the administrative building. This room has access to restrooms on the same floor, which will be available for the observers and Board agent exclusively.
- During the election the entrance and exit door to the room will stay open, as the exit opens to outside the building.
- The driver training room is properly ventilated with high efficiency air conditioning, but the Employer is also willing to install a high efficiency HEPA air filter system in the polling room to further ensure proper air ventilation. The Employer is also willing to further consult with an HVAC specialist prior to the election to ensure that its air filtration systems have been properly reviewed and updated to comply with the most recent guidance from the CDC and related sources.
- The Employer commits to cleaning the polling area during the polling times, as well as both before and after.
- A marked-off walkway outside the polling place in a parking lot with markings to ensure social distancing.
- The Employer will provide gloves, masks, and hand sanitizer to anyone who accesses the pre-election conference, election or ballot count and will set up a table outside of the entrance to the administrative building and at the entrance to the driver training room with these materials.
- The Employer will place signage at “sanitation stations” which will advise employees that they are required to sanitize their hands and wear masks and gloves in the polling location. Anyone entering the driver training room will be required to wear a mask.

- Upon entering the administration building, a non-employee and neutral Registered Nurse trained in Covid-19 protocols will be stationed at the entrance to the facility. That nurse will remind each voter to sanitize their hands, check mask compliance and will take each team member's temperature. Any team member with a temperature of 100.4 or over will step aside and have his or her identity and photograph noted by the Nurse. The eligible voter will be asked to step aside and not enter the building. At the close of each polling session, the Registered Nurse will notify the Board agent of the name of the eligible voter who was not able to enter the polling area and will send the picture of the voter to the Board agent and the observer. Assuming the team member is eligible, the Employer proposes mailing a ballot to the eligible voter per mail-ballot procedures. At the ballot count, these excluded voters would be deemed to have voted subject to a Board challenge.
- Voters who complete the temperature check process will proceed to the voting location. Outside the entrance of the driver training room, the Employer will set up a camera that is "live streamed" into the polling location which also has sound. A television will be in the polling room, which will be able to view the camera in real time. Instructions will be posted to eligible voters when they arrive in front of the camera where they will be asked to state their name. Observers in the polling room will then confirm that the person is who they say they are and will check them off on the voter list. Assuming that there is no challenge, the Board agent will then place the ballot on the ballot table prior to an employee entering the room and then will instruct the employee when to enter the room. Each voter will be given his or her own pen prior to entering the polling location. A team member will walk into the voting room, pick up his ballot from the table in the middle of the room, proceed to the ballot box, vote and then exit through a separate exit. If the ballot is challenged, the Board agent will put a "challenge" envelope on the table next to the ballot box prior to the voter entering the room and will instruct the person to put the ballot in the envelope and not in the ballot box.
- Separate desks, surrounded by plexiglass and spaced at least 6 feet apart, for each observer and the Board agent conducting the election.
- In order to minimize the time inside the Employer proposes holding the pre-election conference and ballot count in the parking lot outside of the administration building or in the truck yard across the street. If approved, this would allow for socially distanced observation by a larger group. Alternatively, the Employer proposes arranging for observation by videoconference.

In addition to the provisions detailed above the Employer also commits to follow the other provisions addressed in *General Counsel Memorandum 20-10*.

Moreover, the Employer notes it has regular COVID-19 protocols, unrelated to the election, that will increase the safety of the election. At the beginning of each shift, every team member is required to have his or her temperature taken before entering the Employer's facilities. The Employer also requires that employees wear masks on its and customer property. Further, the Employer has implemented a "one driver per truck per shift rule", requiring that drivers sanitize their trucks after every use and requires that team members complete a health questionnaire prior to the start of each shift where a team member is required to attest to his or her health prior to coming to work. The Employer has also implemented policies that encourage team members to stay home if they are sick (such as expanded PTO), and has expanded resources for employees to get medical help, has trained team members to engage in responsible off-the-clock behavior to avoid becoming infected, and has trained its workforce on how to avoid COVID-19 infection. The Employer also partners with its customers to ensure that the Employer is immediately notified of any potential COVID-19 outbreak at its customer sites so that the Employer can ensure its workplace remains safe.

The Employer notes that because of its efforts and the efforts of its employees, its employees have consistently and safely reported to work throughout the pandemic. No employees at the facilities involved have received a positive COVID-19 diagnosis, and no employees within the last three months have tested positive for COVID-19, exhibited symptoms of COVID-19, or were subject to quarantine for any reason related to COVID-19, including but not limited to being in direct contact with someone who tested positive or exhibited symptoms of the virus.

The Union argues the combination of a large Unit and on-site voting unnecessarily places all participants at risk of COVID-19 transmission. The large size of the Unit not only increases the number of individuals coming and going from the polling site, but also extends the amount of time the observers and the Board agent conducting the election are present at the polling place. Although the Union does not appear to dispute the Employer's contention that employees have been free of COVID-19 during the pandemic, the Union does note that the employees' regular daily routines – punching-in, leaving to perform their route, and returning to punch out – do not involve the congregating that would be necessary for an in-person election.

In contrast to Petitioner, the Union argues that a mail-ballot election would increase the opportunity for employees to vote. While Petitioner focuses on the distrust employees may have for a mail ballot, the Union argues that employees may be discouraged from voting because they do not want to stand in line or be in a confined space because of concerns related to COVID-19. Further, the Union notes that a manual election, with the absence of an absentee mechanism, prevents a quarantined or sick individual from voting. Conversely, an individual that is quarantining because of exposure, or ill, may report to the workplace in order to have an opportunity to vote. In this scenario a voter is not disenfranchised, but the risk of COVID-19 transmission during the election is radically increased.

IV. Analysis

A. Board Standard

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, *supra* at 1145.

On May 8, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail-ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated "extraordinary circumstances" beyond the considerations described above, and that circumstances in place at the time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office charged with conducting the election on mandatory telework – constituted a valid basis for directing a mail-ballot election in that case after considering the conditions surrounding a manual election.

On July 6, the General Counsel issued a memorandum titled "Suggested Manual Election Protocols." *Memorandum GC 20-10*. In that memo the General Counsel 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 noted 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 locality.

The memorandum then addressed suggested election mechanics, certifications and notifications required to verify a safe election can occur, and the need to include election arrangements in an election agreement. The memo concludes with additional notes regarding the assignment and travel of Board agents.

B. A Mail-Ballot Election is Appropriate

The question of whether the Region can safely conduct a manual election must be considered in every instance during the ongoing COVID-19 pandemic. COVID-19 is a contagious virus, for which there is currently no approved vaccine or antiviral treatment, that often causes a serious, and at times fatal, illness. I find the COVID-19 pandemic, currently widespread in Los Angeles County, presents extraordinary circumstances. During the last 6 months I have directed several mail-ballot elections because of these extraordinary circumstances, and I have done so because I have considered the safety of the voters, the observers, the party representatives, and the Board agent conducting the election in determining the appropriate method for conducting the election. Here, the Employer's employees remain working at the Employer's facility because they perform essential services, and because of the nature of their work, no alternative exists to perform their work remotely. However, the Board does have an acceptable alternative to conducting a manual election and it is one that avoids the risk of person-to-person transmission.

Before turning to why I find a mail ballot to be the best choice in this case, I note that the employees at issue here work at two facilities separated by a half mile, and even with variations in schedules I do not find the employees are "scattered" in the manner the Board typically considers appropriate for a mail election. In considering a mail-ballot election in this case I do so because of the COVID-19 pandemic. Absent public-health concerns I would not direct a mail-ballot election in this case. I would also note that in this case the Employer's proposals related to the mechanics of the election are extensive and comprehensive. I do not find these precautions are defective or lacking in their scope.

However, the Unit at issue is large, consisting of over 100 employees, and COVID-19 in Los Angeles is widespread. Los Angeles County has recorded almost a *quarter million cases* of a deadly respiratory disease in the last 6 months; a disease that, it is generally accepted by the scientific community, can be spread by asymptomatic or pre-symptomatic individuals by person-to-person contact. Manual election procedures inherently require substantial interaction, and that interaction therefore generates risk of infection. The Employer has proposed extensive safeguards, but with a large number of voters these safeguards present a catch-22, the voting process proposed by the Employer would reduce risk, but it would also result in an election taking place at a slow pace, resulting in the need for the Board agent and observers to spend hours at the Employer's facility. If a manual election was the only option for conducting the election this would be an unavoidable risk, but a manual election is not the only option. While a manual election is the Board's preferred method of election under normal circumstances, and a mail ballot only used under extraordinary circumstances, extraordinary circumstances are precisely what the United States,

California, and Los Angeles are currently facing. Given the size of the Unit, the widespread nature of the current pandemic in Los Angeles County, and the risks of infection, I find a mail-ballot election is appropriate here.

Regarding the arguments of the Employer and Petitioner, I agree with several of the points made, but I do not agree with some of the conclusions drawn from those points. I agree that the Board prefers manual elections, but that preference is incorporated in the holding of *San Diego Gas and Electric*. I have considered the holding of *San Diego Gas and Electric* in finding extraordinary circumstances are present in this case. Regarding Petitioner's conjecture regarding the "trustfulness" of the United States Postal Service and mail ballots, I find this is entirely speculative, and the Board has never found that a fault in the operation of the Postal Service is reason for conducting manual elections. To the extent Petitioner is not asserting an actual problem exists with the Postal Service, but instead that the problem is one of voter perception, a perception of untrustworthiness that may be stronger among minority groups, I find this is also entirely speculative and I do not find it is a basis for disfavoring mail-ballot elections.¹⁵

For these reasons discussed, I am directing the petitioned-for election be conducted by mail ballot as soon as practicable.

CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in the petitioned-for Unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The Hearing Officer's rulings made 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.¹⁶

¹⁵ Similarly, in reaching my decision I do not rely on the Union's speculation that voter turnout would be suppressed in a manual election because voters will avoid a group gathering that potentially exposes them to COVID-19 transmission. These assertions regarding whether voters will choose to participate in the election are based on unknowable assumptions. What can be assessed is what method provides a greater opportunity to vote, and I find that question also supports directing a mail-ballot election. The mail ballot mechanism avoids entirely the issue of quarantined or ill individuals being unable to vote, as well as the issue of the wellness check station turning away voters.

¹⁶ During the hearing the parties stipulated to the following commerce facts:

The Employer, a Utah corporation, with facilities located in Wilmington, California, the only facilities involved in this matter, is engaged in the business of transporting waste products from the refining process. During the past 12 months, a representative period, the Employer purchased and received goods at its Wilmington, California facility valued in excess of \$50,000 directly from points outside the State of California. Accordingly, the

3. The Union 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 an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time petroleum coke truck drivers, sweeper drivers, hazmat drivers, on-call drivers, and mechanics employed by the Employer at its facilities currently located at 1635 East Denni Street and 1261 Goodrich Avenue in Wilmington, California.

Excluded: All other employees, hourly supervisors, office clerical employees, professional employees, managerial 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 **WHOLESALE DELIVERY DRIVERS, GENERAL TRUCK DRIVERS, CHAUFFEURS, SALES, INDUSTRIAL AND ALLIED WORKERS, TEAMSTERS LOCAL 848, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **2:30 p.m. on Friday, October 2, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, October 9, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 21 office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

The ballots will be commingled and counted by the Region 21 office at **10:00 a.m. on Tuesday, October 27, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 21 office prior to the counting of the ballots.

The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those employees in the unit who were employed during the **payroll period ending September 11, 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 by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, September 22, 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.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. English and Spanish-language versions of the Notice of Election will be sent by the Region separately. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

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 elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. Unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden, a request for review must be E-Filed through the Agency's website. A request for review 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 why the filing party does not have access to the means for filing electronically 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 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 at Los Angeles, California, this 18th day of September, 2020.



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