

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

SAVAGE SERVICES  
(Employer),  
and

Teamsters Local Union 848  
(Union),

Case No.: 21-RD-264617

and

Nelson Medina  
(Petitioner)

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**PETITIONER'S PETITION FOR REVIEW AND  
REQUEST FOR EXPEDITED CONSIDERATION  
OF THIS REQUEST**

Petitioner, pursuant to Section 102.67 of the National Labor Relation Boards Rules and Regulations, submits this Expedited Petition for Review of the Decision and Direction of Election of Regional Director ("RD") of Region 21, dated September 18, 2020, to order a mail election in the above-captioned case. The RD's decision is both a departure from Board precedent (favoring manual over mail elections) and there are compelling reasons for reconsideration of Board policy on elections under COVID-19, 102.67 (d) (1) & (4). Pursuant to Section 102.67 (j) (1), Petitioner requests extraordinary relief in the form of expedited consideration of this Petition and a stay of the election until the Board rules on this Petition for Review.

**INTRODUCTION**

The Board should reverse and vacate the RD's order because it is contrary to the Board's long-standing policy in favor of secret manual elections. This is also an appropriate case for the Board to reconsider its policy with respect to elections under COVID-19. This is especially true

in this case here where the RD abused his discretion by issuing a Decision and Direction of Election for a mail ballot based upon criteria that would make it virtually impossible to ever have a secret manual election while Covid-19 persists. The RD's rationalized his decision due to the potential risks involved with COVID-19 in conducting a manual election. However, those risks are not present in this case. Furthermore, Petitioner respectfully requests the Board stay the mail election scheduled for October 2, until a decision is made on Petitioner's Petition for Review.

## **FACTUAL BACKGROUND**

### **1. Procedural History**

Petitioner filed a petition for a decertification election on August 13, 2020. In lieu of a hearing, the parties agreed to a stipulated election agreement with parties submitting briefs on the issue of whether the Region should conduct a secret manual or mail election. The stipulation reserved the right of the parties to file a request for review.

### **2. The Employers' safeguard proposals concerning COVID-19.**

The employer proposed extra-ordinary steps to insure safe secret manual voting, and in fact, as described below, the voting procedures offered would make secret manual voting safer for employees than almost any other activity that they engage in whether going to a grocery store or working on a daily basis at Savage Services.

The RD in his decision and order summarized the employer's safety protocols currently in place and proposed for the election. They are the following:

- 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 access 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 sent 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 video conference.

In addition to the provisions detailed above the Employer also commits to follow the other provisions address in 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.

(Regional Directors Decision and Direction of Election, pp. 5-7).

### **3. The Union’s policy concerning COVID-19 and the election.**

In contrast to the Employer’s safety precautions, the Union has held several in person votes on contract ratification during the COVID pandemic (Attachment). Nevertheless, the Union argues that a Board conducted manual election on decertification would be unsafe.

### **4. Petitioner’s Concerns about a mail ballot election.**

Petitioner considers the employer’s proposal to be the safest method of conducting an election. He is concerned, however, about the safety of a mail election due to possible contamination caused by those preparing, mailing, and delivering the ballot. Furthermore, Petitioner distrusts mail elections, believes that a mail election is unreliable (see current controversy of reliability of

the mails in Presidential election). Finally, Petitioner opposes a mail election since it is eliminates the guarantee of secrecy that a secret manual election insures.

## ARGUMENT

Review is appropriate because this election presents compelling reasons for the Board to address its current policy on manual elections during COVID-19 era and because the RD abused his discretion by creating a test that would virtually abandon a case by case decision on voting procedures and would require mail elections in nearly every case.

The RD acknowledges that the Board's long standing policy is that elections should, as a rule, be conducted by a secret manual vote (Decision, p. 8). However, the RD's Decision contradicts that long standing policy for reasons related to COVID-19 that, as discussed below, make no sense in this election.

The RD in his Decision and Direction of Election discuss at length, the dangers of COVID-19 and its impact upon Los Angeles County in particular. Petitioner does not dispute that fact. The RD also acknowledges that the Board's long-standing policy is that elections should as a rule be conducted manually. The RD states that the decision of whether COVID-19 should require mail instead of manual elections should be decided on a case by case basis. However, as a practical matter that is not what the RD is doing. The RD states that he has ordered mail elections in instead of mail elections in response of COVID-19. This does not appear to be a case by case determination but rather a blanket policy. As discussed below, under the RD's actions, that policy appears to be an un rebuttable policy.

In his Decision and Direction of Election, goes thru the elaborate safety precautions proposed by the Employer. He then writes that the employer's safety precautions would create

longer voting periods and therefore it would, in his words, be a “Catch-22” by making observers and the Board Agent spend hours at the Employer’s facility. According to the RD, the lengthy period of time would place the Board Agent and the observers at a greater risk of infection. Petitioner suggests that the concern about a lengthy period of possible exposure is a red herring. The employer’s proposal (see above) is limited to two widely separated sessions of only three hours each! Petitioner respectfully suggests that two three hour sessions with the employer’s proposed safety precautions including the Agent and observers behind Plexiglas with a nurse present, temperature monitoring, social distancing, etc. do not create any genuine risk to those individuals.

It is not the employer’s safety precautions that have created a “Catch-22”, it is the Regional Director that has created a “Catch-22.” The RD’s decision makes ANY manual election impossible because his formula posits that if an employer does not take safety precautions it is unsafe to have a manual election, but if the employer proposes extensive safety precautions it is unsafe due to the time spent at the facility. There is therefore no case by case decision that is required but just a blanket policy clothed under the guise that it is decided case by case. Even with the extensive and unprecedented steps taken by an employer, under the RD’s theory a secret manual election could never be held.

Petitioner respectfully suggests that that concerns about the safety of the Board Agent and the observers are baseless. The safety policies that the employer has already implement has resulted in zero COVID-19 infections at the facility. The Employer has, as discussed above, proposed additional steps such as a registered nurse, temperature checks, and to “provide separate desks, surrounded by Plexiglas and at least 6 feet apart, for each observer and the Board Agent.” Moreover, if the RD is concerned about the amount of time spent at the facility for

individual Board Agents, the Region can simply use separate agents for each voting period. In addition, Petitioner's observer is happy to spend the extra-time at the voting site. The Union, if it were to claim concerns over time spent at the facility, it would be baseless in light of the fact that the Union held meetings for contract ratification votes in which it is very unlikely that anything approaching the Employer's safety precautions were implemented (and if they were the Union's officer's running the election would have already been faced with and accepted consequences of the Regional Director's Catch-22 scenario).

Petitioner suggest that all affected employees would be much safer with a secret manual as opposed to a mail election since person preparing and mailing of the ballots may be an asymptomatic COVID-19 carrier thus potentially infecting the ballots as well may be the postal employees delivering the ballots. Petitioner raised safety considerations of a mail election and the RD indicated that Petitioner's concerns were hypothetical. However, the RD's solution to those safety concerns is itself hypothetical. The RD indicated recipients should wash their hands and use sanitizer. Of course there is no way to monitor or enforce such a solution as opposed to the very real safety precautions that the employer has offered in its proposal for a manual election.

To summarize, any concerns for safety are covered by the employer's extra-ordinary safety precautions it has proposed. Petitioner respectfully suggests that the agent and the observers are safer behind their Plexiglas are safer than if they went to the grocery store and stopped to fill up their gas tanks.

### **CONCLUSION**

This petition should be granted and the election stayed. The RD has abused his discretion by not considering this case on a case by case basis but instead has instituted a "Catch 22" which

makes it virtually impossible for a decision ever to be made that permits a manual election while COVID-19 persists. Furthermore, the Petition for Review should be granted because it provides the Board the opportunity to make it clear that in appropriate circumstances such as exist here, the Board still favors manual rather than mail elections. The Board should grant this Petition for Review and vacate the RD's decision and direction of election in this case.

Respectfully submitted,



John Scully  
c/o National Right to Work  
Legal Foundation, Inc.  
8001 Braddock Road, Suite 600  
Springfield, VA 22160  
Telephone: (703) 321-8510  
Fax: (703) 321-9319  
[jcs@nrtw.org](mailto:jcs@nrtw.org)  
Counsel for Petitioner

# ATTACHMENT



Teamsters Local Union No. 848

Chartered in 1937

ERIC TATE

SECRETARY-TREASURER

# MEETING NOTICE

Employees of Savage Services

Important contract update meeting  
will be held on:

Saturday, June 13, 2020

at

2:00 p.m. & 5:30 p.m.

(Meetings will begin promptly at scheduled times)

at

TEAMSTERS LOCAL 848 HALL

3888 Cherry Avenue

Long Beach, CA 90807

**Please make every effort to attend!**

*Our Members Are Our Strength . . . Our Children Are Our Future . . . Our Retirees Are Our Foundation*



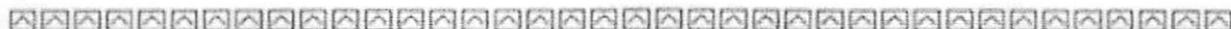
# Teamsters Local Union No. 848

*Chartered in 1937*

**ERIC TATE**  
SECRETARY-TREASURER

August 7, 2020

## **CONTRACT RATIFICATION MEETING NOTICE**



**TO: All Bargaining Unit Employees of  
Savage Services**

A SPECIAL CALLED MEETING IS SCHEDULED AS FOLLOWS:

**Date:** Sunday, August 16, 2020

**TIME:** 3:00 p.m. & 5:00 p.m. SHARP

**PLACE:** Teamster Local 848  
3888 Cherry Avenue  
Long Beach, CA 90807

**ALL Members of Teamsters Local 848 are urged to attend to cast their vote.**

**Please make every effort to attend this meeting.**

Fraternally,

Eric Tate  
Secretary-Treasurer  
Teamsters Local No. 848

*Our Members Are Our Strength . . . Our Children Are Our Future . . . Our Retirees Are Our Foundation*

3888 CHERRY AVENUE LONG BEACH, CALIFORNIA 90807 PHONE (562) 595-1891 FAX (562) 595-1896

Affiliated with the International Brotherhood of Teamsters



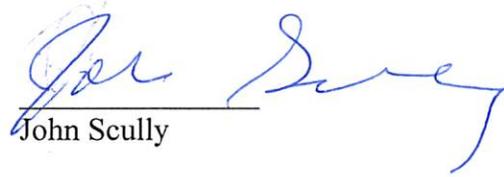
Case No. 21-RD-264617

Certificate of Service

I served the Petitioner's Petition for Review in Case No. 21-RD-264417 on September 22, 2020 by e-filing to Region 21 and by email to the following

Ellen Bronchetti, Attorney at Law  
McDermott Will & Emery LLP  
[Ebronchetti@mwe.com](mailto:Ebronchetti@mwe.com)

Hector De Haro  
Bush Gottlieb, a Law Corporation  
[hdeharo@bushgottlieb.com](mailto:hdeharo@bushgottlieb.com)

  
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John Scully