

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

**3067 ORANGE AVE, LLC DBA
ANAHEIM CREST NURSING CENTER¹**

Employer

and

Case 21-RC-264740

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2015**

DECISION AND DIRECTION OF ELECTION

On August 14, 2020,² Service Employees International Union, Local 2015 (Petitioner) filed a petition seeking to represent certain employees of 3067 Orange Ave, LLC dba Anaheim Crest Nursing Center (Employer). After the Region issued a Notice of Hearing, the parties waived their right to a hearing before a Hearing Officer and entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) which I approved on August 28. The sole issue left unresolved by the Stipulation was whether the election should be held manually at the Employer's facility or by mail ballot, considering the COVID-19 pandemic.

The parties further stipulated that they would each file their respective statements of position on this issue, and that the party proposing a manual election would, in addition to providing its argument on whether a manual election could be safely held, also provide a detailed description of the proposed election arrangements, including the location, size and layout of the room, ingress and egress, and ventilation. The manual-election proponent would also explain how its arrangements would comply with the recommending protocols described in General Counsel Memorandum 20-10 *Suggested Manual Election Protocols* (GC 20-10), and also provide statistics as to the number of its employees who have tested positive, exhibited symptoms, or been quarantined because of the current COVID-19 pandemic.

The Employer has taken the position that a manual ballot election can be safely conducted at its facility in Anaheim, California, while the Petitioner argues that a mail-ballot election is appropriate given the special circumstances posed by the COVID-19 pandemic.

¹ To the extent necessary, the formal documents in this case are amended to reflect the correct name of the Employer.

² All dates are in 2020 unless indicated otherwise.

The Board has delegated its authority to me in this proceeding pursuant to Section 3(b) of the Act. Accordingly, I have carefully considered the stipulated record and the parties' position statements, relevant Board law, and the current circumstances surrounding the COVID-19 pandemic in Southern California. For the reasons described more fully below, I shall direct that a mail ballot election be conducted.

FACTUAL OVERVIEW

The Employer operates a skilled nursing home facility consisting of a single building in Anaheim, California (the facility) and employing a total of about 120 employees. The petitioned-for unit (Unit) is as follows:

INCLUDED: All full-time, regular part-time, and on-call CNAs, RNAs, Cooks, Dietary Aides, Janitors, Housekeeping employees, Laundry employees, and Activity employees employed by the Employer at its facility located at 3067 West Orange Avenue, Anaheim, California

EXCLUDED: All other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

There are presently about 69 employees in the Unit.

THE COVID-19 PANDEMIC IN CALIFORNIA AND ORANGE COUNTY

COVID-19 represents an ongoing public health emergency that has resulted in more than 200,000 deaths nationwide. It has had a particularly significant impact on California in general, and Southern California in particular. In light of these risks, the CDC, in addition to its general guidelines for reducing the spread of the virus, issued general guidelines for conducting elections encouraging officials to "consider offering alternatives to in-person voting if allowed," noting 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."³ The CDC further noted that although the virus can survive for a short period on some surfaces, "it is unlikely to be spread from domestic or international mail, products, or packaging," which can be sanitized as an extra precaution.⁴

On March 19, the California Department of Public Health (CDPH) issued Public Health Orders directing all Californians to stay home except to perform essential jobs or to shop for essential needs.⁵ Following initial attempts during the summer to lift restrictions with certain modifications, however, the number of cases began to increase. Consequently, on August 28, as part of its *Blueprint for a Safer Economy*, the CDPH's Public Health Officer issued California's *Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians*

³ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

⁵ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

Healthy and Safe (the Plan).⁶ The CDPH acknowledged that community spread of infection remained a significant concern across the state, particularly in congregate settings such as nursing homes, homeless shelters, jails and prisons, and further noted that higher levels of community spread had a disproportionate impact on essential workers including healthcare workers.⁷

The Plan specifically provides for a set of tiers corresponding to specific epidemiological profiles based on certain statistics including, *inter alia*, case rates per capita and percentage of positive tests. The four risk tiers – widespread, substantial, moderate, and minimal – allow counties to progress based on those statistics with appropriate time between each phase to evaluate changes. Currently, Orange County, where the Employer’s facility is located, is at the second-highest tier of “substantial risk,” which allows for some non-essential indoor business to open with certain restrictions.⁸

Criteria used by the State to evaluate risk level include the use of face coverings except when eating or drinking; maintaining physical distancing between members of different households; limiting the number of people per square foot; limiting duration of exposure; limiting comingling of people from different households and communities; limiting the amount of physical interaction between visitors/patrons; optimization of ventilation and air exchange; and limiting activities known to cause increased spread (i.e., singing, shouting, raising voices, etc.)⁹ These precautions comport with those issued by the National Centers for Disease Control (CDC) with regard to the wearing of face coverings and social distancing, as well as the acknowledgement of the risk of transmission by individuals who are pre-symptomatic or asymptomatic.¹⁰

At the substantial risk level where Orange County is currently ranked, restaurants, movie theatres, and places of worship may open at 25% of capacity or 100 people, whichever is fewer. Gyms and yoga studios may operate at 10% capacity, and museums at 25%. Indoor malls and swap meets may operate at 50% capacity. However, bars, concert venues, and theme parks must remain closed, and non-essential employees are asked to continue to work at home. Orange County schools are anticipated to reopen in late-September if the current trend continues. Under current CDPH guidelines issued September 8, universal face covering requirements for business are still mandated, although social distancing is only recommended. The elderly and others particularly susceptible to COVID-19 are asked to remain at home, and all others are advised to avoid crowded places and mass gatherings.¹¹

⁶ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>

⁷ Id.

⁸ <https://covid19.ca.gov/safer-economy/>

⁹ Id.

¹⁰ https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

¹¹ www.cdph.ca.gov Guidance for Face Coverings

According to the CDC, California currently ranks among the top four states with the highest number of infection along with Texas, Florida, and Illinois.¹² Currently, there are 781,694 cases of COVID-19 in California, with over 15,000 resulting deaths.¹³ Furthermore, according to the CDPH, 24,000 skilled nursing home residents in the state have tested positive for the virus as of the date of this decision, and there have been 4,375 deaths as a result. In addition, over 17,000 skilled nursing facility healthcare workers have been infected to date, with 139 deaths.¹⁴

Specifically, in Orange County where the Employer's facility is located, there are presently 52,382 COVID-19 cases and 1150 resulting deaths, with 1769 cases and 282 resident deaths attributed to skilled nursing homes.¹⁵

THE POSITIONS OF THE PARTIES

The Employer's Position

The Employer argues that a manual election should be held at the its facility, and that to hold a mail-ballot election among employees who all regularly report to a central location would needlessly disenfranchise voters. In support thereof, the Employer states that average voter participation in mail-ballot elections has historically been lower than that in manual on-site elections, which are likely to enhance voter participation. Moreover, in view of the current well-documented situation in the United States Postal Service, employees cannot be assured that their mail ballots will be received by the Region in a timely manner so that their votes may be counted.

Further, the Employer asserts that it will be able to maintain substantial effective safety protocols, included those described in GC Memo 20-10. In fact, according to the Employer, it presently operates in full accordance and even in excess of current federal CDC guidelines by taking the following precautions at the facility:

- Increased training of employees in relevant safety protocols;
- Enhanced cleaning of the facility, as well as providing additional cleaning supplies and sanitizers throughout the facility;
- Staggered break and lunch periods to maintain social distancing;
- Revised seating areas and limits on outside smoking areas to maintain social distancing;
- Mandatory face masks and adherence to handwashing protocols; and

¹² www.covid.CDC.gov

¹³ www.cdph.ca.gov. On May 11, the Orange County Register reported that half of the COVID-19 deaths in California as of that date were attributed to nursing homes or residential care facilities. No attribution was given for this statistic, however, so it cannot be independently confirmed. www.ocregister.com

¹⁴ https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx

¹⁵ www.covid-19.ohealthinfo.com

- Taking the temperatures of all persons entering the facility.¹⁶

In addition to the above, the Employer has retained a full-time Infection Prevention Nurse to monitor safety protocols and has obtained access to additional vendors to provide additional personal protective equipment (PPE) if needed.

The Employer admits, apparently notwithstanding the above precautions, that within the past 3 months, approximately 17 employees have either tested positive for COVID-19, exhibited symptoms, and/or were quarantined for reasons related to COVID-19, including direct contact with someone infected with the virus. According to the Employer, none of these employees were hospitalized and all have since fully recovered.

Regarding the proposed polling area, the Employer states that a manual election can be held in the resident dining room at the facility. This large, well-ventilated room, which has not been used by residents since the onset of the pandemic, measures about 27 by 30 feet, and contains several tables that can be moved around. There are four points of access: two are doorways at either end of one wall which access an area adjacent to management offices and will be sealed off for the duration of the polling period. Two additional doors on another wall open into the employee breakroom: these doors may be used by the voters to enter the polling area. Voters will exit the polling area through double doors on another wall that lead to an outside parking lot: these doors may also be left open for the duration of the polling period to provide additional ventilation.¹⁷ Photos of the proposed polling area provided by the Employer show a typical institutional dining room with a number of four-top tables and chairs throughout the room, as well as the proposed ingress and egress doors. No diagram of the proposed voting setup was provided.

The Employer further assures that it can and will comply with the recommended protocols in GC 20-10, specifically with regard to releasing voters in a manner that would accommodate social-distancing recommendations without unduly prolonging exposure of the Board agents and observers. Specifically, the Employer proposes that there be two voting sessions of unspecified duration scheduled around the break times of the three shifts which would allow about half the unit to vote at each session. As suggested by GC 20-10, each voter will approach the observers one at a time and then receive a ballot that the Board agent will place on a table, after which the voter will proceed to the voting booth. Between voting sessions, the polling areas will be cleaned.¹⁸ The Employer will also have only one observer during the election and one party representative during the pre-election conference and ballot count.

The Employer affirms that it will conform with the other recommendations contained in GC 20-10, including the requisite certifications; notifications; social distancing and appropriate floor markings; maintaining the required distance between the Board agent, the observers, the

¹⁶ The record does not reveal whether the Employer allows family members or other outside visitors in the facility.

¹⁷ The Employer also states that the dining room's air conditioning vents will be closed for the duration of the polling period.

¹⁸ The Employer can also arrange to engage the services of a special surface and air sanitation service to clean the polling area in preparation for the election.

ballot booth, and the ballot box; providing disposable pencils without erasers to each voter; providing glue sticks to seal challenged ballot envelopes; providing masks, hand sanitizer, gloves, and wipes for observers; erecting plexiglass barriers to separate the Board agent and observers from each other and from the voters; and posting signs in compliance with CDC guidelines that masks must be worn during all phases of the election, including the pre-election conference and the ballot count.

In addition to the foregoing, the Employer will permit an inspection of the polling area by video conference for all parties at least 24-hours before the election.

Based upon the foregoing, the Employer submits that a manual election should be held at its facility on October 9 with two polling sessions.¹⁹

The Petitioner's Position

The Petitioner disputes that a manual election at the Employer's facility can be safely held, arguing that, based on the statistics cited above, nursing homes have been "ground zero" for the pandemic. The CDPH has had to issue specific guidelines and create a state-wide task force for skilled nursing homes in an effort to slow the infection rate among residents and healthcare workers.²⁰ Thus, the Petitioner argues, based on public data as well as the Employer's own infection statistics showing that nearly 20% of its workers have been diagnosed with or affected by COVID-19, a manual election would unduly expose the residents, workers, Board agents, observers and party representatives, as well as the voters, to possible infection.²¹

The Petitioner further asserts that having a manual election at the facility will allow the Employer to improperly track and monitor which employees vote, since eligible voters will have to be released from their duties and those who are not on duty will have to travel to the facility for the express purpose of participating in the election and be pre-screened by the Employer. Moreover, the Petitioner argues, eligible voters who are absent from work due to COVID-19 infection or quarantined as a result of possible exposure to someone who is infected will not be able to vote, since there is no mechanism for absentee ballots in a manual election. Also, eligible voters who, because of the requirements of their patients, cannot be released from their duties during the polling times will be likewise disenfranchised.

¹⁹ In further support of its argument that an on-site election would be safe, the Employer asserts that on about August 14, several of its employees and 3-4 Petitioner representatives entered the facility to present the instant petition and stayed in the facility for 10-15 minutes. While they wore face coverings, according to the Employer, they did not observe social distancing or submit to the requisite temperature check protocol. Based upon this conduct, the Employer suggests that the Petitioner has effectively waived its objections to an on-site election. The Petitioner filed a responsive statement of position asserting that the Employer had materially misrepresented the facts and recited its version of what had ostensibly occurred. Because I find the Employer's argument to be irrelevant, and the Petitioner was not given leave to file a responsive statement, I do not credit either in my decision.

²⁰ https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/SNFsCOVID_19.aspx

²¹ Petitioner asserts, without evidence, that in addition to the dozen workers at the facility who have tested positive for COVID-19, there are at least that many who are either quarantined, on leave, or otherwise not permitted to work by the Employer because of COVID. As noted above, the Employer concedes that approximately 17 of the approximately 69 employees petitioned-for unit – or nearly 25% – have been affected by the virus.

For these reasons, the Petitioner is of the view that a mail-ballot election will be the safest and will ensure that eligible employees will be able to vote.

ANALYSIS

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. 11301.2.²² 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 unspecified extraordinary circumstances. *San Diego Gas*, *supra* at 1145.

The Board has recently, in cases involving COVID-19 considerations, expanded on the "extraordinary circumstances" referenced in *San Diego Gas*, *supra*, that would justify a mail-ballot election and held that the totality of the circumstances surrounding the COVID-19 including federal, state, and local government directives limiting travel and how business can be conducted, constituted a valid basis for directing a mail-ballot elections.²³

Furthermore, GC 20-10, in setting forth detailed suggested manual election protocols, reiterated that Regional Directors have the authority, delegated to them 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.

²² I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel and not the Board, and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

²³ See, e.g. *Atlas Pacific engineering Company*, Case 27-RC-258742 (May 8, 2020).

After careful examination of the record, the parties' position statements, and the current state of the COVID-19 virus in California and Orange County, and particularly in skilled nursing homes, I have determined that a mail-ballot election is the appropriate option.²⁴

In this regard, I note that COVID-19 is a contagious virus for which there is as yet no cure or vaccine. Its effects on the elderly and those with compromised immune systems and other pre-existing conditions is well documented by now. As noted above, federal, state, and local officials all agree that avoiding prolonged exposure to others is an effective way to prevent exposure and possible infection. With this in mind, I have directed several mail-ballot elections in view of the extraordinary circumstances presented by the COVID-19 pandemic, and I have done so out of consideration for the safety of the voters, the observers, the party representatives, and the Board agents. In the instant case, the Employer's employees have been deemed essential employees and, because of the nature of their work, no alternative exists for them to work remotely. However, the Board has an acceptable alternative to conducting an on-site manual election, and it is one that avoids the risk of person-to-person transmission.

Absent public health concerns described above, I likely would not direct a mail-ballot election in this case. As the Employer notes, its employees are not "scattered" in the manner that the Board has typically considered appropriate for a mail-ballot election. Moreover, I find that the Employer's proposals with regard to the conduct of the election are extensive and comprehensive and largely comport with the suggestions in GC 20-10.

Notwithstanding, I find that a mail-ballot election is preferable because of the high rate of COVID-19 infection in California and Orange County. Although Orange County, unlike Los Angeles County, is at a tier-2 substantial risk level, there are still many restrictions regarding how business may be conducted indoors with limits on the numbers of people who can be present. Of particular concern is the fact that the Employer's facility is a skilled nursing home which indicates, based on State statistics, that rates of infection and resulting death are higher than those of the general public. The State has recognized this by publishing separate statistics and maintaining a state-wide task force to deal with exposure issues particular to nursing facilities and healthcare workers.

Moreover, the Employer has admitted that as of the present date, nearly 25% of the employees in the petitioned-for unit have either contracted COVID-19, tested positive for the virus, or have been quarantined or otherwise affected. Obviously, it is impossible to predict what these numbers may be around or at the time of an on-site election, and affected employees would be unable to vote in a manual election, since there is no option for absentee balloting. Furthermore, although the Employer checks the temperatures of its employees when they arrive at work, there is no evidence that the Employer conducts regular testing for COVID-19 or engages in contact tracing to ascertain who may have been exposed to it. This increases the odds that employees who may have been exposed or perhaps even have symptoms are reporting to work. Also, given the number of employees who have already been impacted, there may well

²⁴ The Employer argues in its statement of position that a mail ballot election is impracticable given the current "issues" with the United States Postal Service that might delay ballots being received by the Region in time for the count. This is conjecture not based on any actual asserted problem with the Postal Service, and therefore I do not find it to be a basis for disfavoring a mail-ballot election in this case.

be employees who are pre-symptomatic or asymptomatic who can still pass the virus on to others.

A number of other issues also give me pause about conducting an on-site manual election, including the fact that the voting will be conducted indoors within the facility where so many infections have already occurred. Although the Employer asserts the room it proposes is large enough for appropriate distancing of the parties, a 27 by 30-foot room would be a cramped environment for two observers, a Board agent, and the voters as well as the separate tables, screens, voting booths, and ballot box. While the Employer proposes that two polling sessions of unspecified duration would allow approximately half the petitioned-for unit – about 35 employees – to vote at each session, it is unclear how long this would take. Assuming that the eligible voters cannot be released in a group given the nature of their duties as healthcare and auxiliary workers, each session could potentially take several hours, particularly given the precautions that must be taken for each voter.²⁵ This would potentially expose the Board agent and the observers to others for a prolonged period of time.

Given all the foregoing facts, I find that the best way to limit exposure for all parties involved is to conduct a mail-ballot election. I note that the Board has, until recently, generally deferred to the soundly exercised discretion of Regional Directors in cases where mail balloting has been ordered due to the extraordinary circumstances of the COVID-19 pandemic, while stating that it was open to addressing the “normal criteria for mail balloting in a future appropriate procedure”.²⁶ More recently, the Board has granted requests for review of a Regional Director’s decision ordering a mail ballot election as raising substantial issues warranting review. Those cases are readily distinguishable from the instant case, however, in that they involve either small units in remote areas or units in suburban locations, both in counties that have very low rates of infection of COVID-19.²⁷ In contrast, Orange County, where the Employer’s facility is located, is the third largest county in California and the sixth largest in the United States with a population of just over 3.1 million. While it is one of only two counties in Southern California rating a “substantial” rather than a “widespread” infection risk, there are still significant restrictions on public gatherings and other activities. Finally, the fact that the Employer is a skilled nursing facility means that its residents and consequently its employees are at greater risk of exposure and infection than the general populace – a fact demonstrated by the high rate of infection among the employees in the petitioned-for unit.

²⁵ The Petitioner asserts that while releasing eligible employees to vote, the Employer will be able to track who votes and when. Because this could occur at any manual election, notwithstanding the special circumstances of the pandemic, this in and of itself is not a viable argument in favor of a mail-ballot election.

²⁶ See, for example, *Daylight Transport, LLC*, 31-RC-262633, rev. denied Aug. 19, 2020; *SunSteel LLC*, 19, RC-261739, rev. denied Aug. 4, 2020; and *Johnson Controls, Inc.*, Case 16-RC-256972 (May 18, 2020), and *Roseland Hospital*, 13-RC-256995, (May 12, 2020), rev. denied May 26, 2020.

²⁷ See *Purdue Foods LLC*, 370 NLRB No. 20 (Sept. 15, 2020), and *ClarkWestern Dietrich Building*, 01-RC-264014 (Unpublished) (Sept. 16, 2020), respectively. The latter, in support of its request for review, argued that a mail ballot election was inappropriate because its worksite “is not a nursing home or other entity that houses hundreds of individuals who are at-risk due to age or underlying conditions.”

For these reasons discussed, I am directing the petitioned-for election be conducted by mail ballot as soon as practicable.²⁸

CONCLUSIONS

I have considered the 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. As noted above, I have the authority under Section 3(b) of the Act to decide this matter on behalf of the National Labor Relations Board and accordingly, based upon the entire record, I find:

1. The Employer is engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.²⁹
2. The parties stipulated, and I so find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act.
4. The parties stipulated, and I so find, that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time, regular part-time, and on-call CNAs, RNAs, Cooks, Dietary Aides, Janitors, Housekeeping employees, Laundry employees and Activities employees employed by the Employer at its facility located at 3067 West Orange Avenue, Anaheim, California.

EXCLUDED: All other employees, office clerical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

5. The parties stipulated, and I so find, that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract of other bar in existence to an election in this case.

²⁸ In the Stipulation, the parties requested that the election, be it a manual or mail ballot election and to the extent practicable, commence on, but not before September 30 and not later than October 2. For reasons not explained, the Employer in its statement of position requested an election on October 9 – a request to which the Petitioner took great umbrage in its response. However, since this was only a request and not a stipulated issue, I am not bound by these dates. Accordingly, I have ordered a mail ballot election to be conducted as soon as practicable.

²⁹ The parties stipulated, and I so find, that the Employer is a California corporation with a place of business in Anaheim, California, and is engaged in the business of operating a skilled nursing home. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$100,000 from the operation of its skilled nursing home and during that same period purchased and received goods at its Anaheim, California location valued in excess of \$5,000 directly from points outside the State of California.

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 **Service Employees International Union, Local 2015**.

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).

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 15, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

The parties stipulated that also eligible to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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(1) 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.

The parties stipulated that the voter list will be due within 2 business days of the issuance of a Decision and Direction of Election, and the Petitioner waived its right to possess the voter list for 10 days prior to the date of the election and waived its right to file objections over this issue. Thus, to be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, September 28, 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.

The request for review will be limited to the subjects of the method, date, time, and place of the election ordered.

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

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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 24th day of September, 2020.



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 North Spring Street, 10th Floor
Los Angeles, CA 90012