

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

JDRC MANAGED SERVICES, LLC¹

Employer

And

LOCAL 881 UNITED FOOD AND COMMERCIAL
WORKERS²

Petitioner

Case 25-RC-265109

DECISION AND DIRECTION OF ELECTION

This case is before me pursuant to a stipulated record entered between the parties on September 15, 2020.³ The parties waived their right to a pre-election hearing and stipulated that the sole issue is whether the election should be conducted in person or by mail ballot, which is a non-litigable matter.⁴ The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Although election arrangements, including the voting method, are not litigable matters at a pre-election hearing, the positions of the parties were solicited for consideration. The parties agree that a manual election is appropriate, and it is possible to conduct a manual election safely notwithstanding the COVID-19⁵ pandemic circumstances at this time. After carefully considering the arguments made by the parties on this issue, I find that a mail ballot election is appropriate under the extraordinary circumstances currently presented by the COVID-19 pandemic.

CONCLUSIONS

Based upon the entire record⁶ in this matter, I conclude as follows:

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

¹ The Employer's name appears as amended by the stipulated record.

² Petitioner's name appears as amended by the stipulated record.

³ All dates are in 2020, unless otherwise noted.

⁴ See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

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

⁶ Per the stipulated record, the Employer submitted a written statement; Petitioner did not submit any written statement.

⁷ The Employer, an Illinois limited liability company with an office and place of business located in Lincoln, Illinois, is engaged in the business providing staffing services. The parties stipulated that during the past calendar year, a representative period, the Employer purchased and received at its Lincoln, Illinois facility goods valued in

2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time processing agents, processing team leads, facility coordinators, facility maintenance technicians, manufacturing technicians, manufacturing agents, and manufacturing leads employed by the Employer at its Lincoln, Illinois facility.

Excluded: All gardeners, lead gardeners, facility project engineers, HR business partners, professional employees, office clerical employees, managers, guards and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS. For the reasons described below, I have determined that a mail ballot election will be conducted in this matter.

1. Employer Operations

The Employer is a wholly-owned indirect subsidiary of Cresco Labs, LLC (Cresco). Cresco is engaged in the production, processing and retail sale of cannabis products for medical use and recreational consumption. The Employer supplies employees to Cresco at the Employer's Lincoln, Illinois facility. The Employer employs approximately 49 employees in the proposed bargaining unit.

2. The Parties' Positions

excess of \$50,000 directly from suppliers located outside the State of Illinois. During the same representative period, the Employer derived gross revenues in excess of \$500,000 from all sales and performance of services.

The parties agree that a manual election is appropriate. In asserting that a manual election would be safe under the circumstances and pose minimal risks to all individuals present, the parties propose that multiple safeguards could be implemented for a manual election to reduce the risk of COVID-19. These safeguards are listed at paragraph 14 of the parties' proposed Stipulated Election Agreement⁸ which is part of the stipulated record. These proposed safeguards are largely in accordance with the suggestions included in the July 6 General Counsel Memorandum 20-10 entitled "Suggested Manual Election Protocols" (GC 20-10) and include:

- deep cleaning/sanitization and sterilization of election site in accordance with CDC standards before the voting period,⁹ followed by inspection by Board Agent and parties via video conference;
- provision of a sided tent that the Employer will erect in the employee parking lot at the Lincoln facility capable of providing social distancing and separate entrance and exit ways;
- one-way floor markings for social distancing;
- limitation on number of attendees at pre-election conference and ballot count;
- limitation of large gatherings at election site by posting a suggested schedule of employee voting times and/or releasing voters gradually to vote;
- limitation on number of voting participants in the polling area to one at a time with contactless interactions between voters and Board Agents and observers;
- separate shielded and socially distanced tables for Board Agent, observers, voting booth and ballot box;
- single-use disposable writing instruments and glue sticks for voting procedures;
- hand sanitizer and wipes provided throughout election area;
- mandatory mask-wearing with masks, face shields and gloves available on-site;
- certification by the Employer 24 to 48 hours preceding election certifying that polling area is clean and the COVID status of individuals at the facility, including those who are COVID-positive or have had contact with a COVID-positive individual; awaiting COVID results; or exhibiting COVID symptoms;
- certification of COVID status at time of election by all party representatives, observers, and anyone seeking to participate in any election proceedings;
- 14-day post-election notification by parties of COVID status of any election participants.

The Employer further argues that manual elections are normally favored by the Board and provide the best opportunity for employees to exercise their right to vote. The Employer points out that none of its employees have tested positive for COVID-19, which it attributes to the safety measures it has implemented at its facility. This includes social distancing, daily employee temperature checks, screening employees for COVID-19 symptoms, mandated use of masks and other personal protective equipment (PPE), implementation of strict sanitization and disinfection procedures, and imposition of preventative quarantines for exposed employees. In

⁸ I rejected the parties' proposed Stipulated Election Agreement based on their desire for a manual election.

⁹ In the event of a manual election, the parties agreed to a one-day election on September 30 from 2:30 p.m. to 4:00 p.m.

its written statement, the Employer also argues that the United States mail is not reliable, particularly during the current pandemic, which could result in the disenfranchisement of mail ballot voters.

3. Board Law, Agency Directives and Legal Authority

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, including the ability to direct a mail ballot election where appropriate. *Ceva Logistics US*, 367 NLRB 628, 628 (2011) (cases cited therein); *San Diego Gas & Electric*, 325 NLRB at 1144 (citing *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *Halliburton Services*, 265 NLRB 1154, 1154; *National Van Lines*, 120 NLRB 1343, 1346 (1958)). “It is well established that a Regional Director has broad discretion in determining the method by which an election is held, and whatever determination a Regional Director makes should not be overturned unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998) (citing *San Diego Gas* 325 NLRB at 1144 fn. 1; *National Van Lines* 120 NLRB at 1346).

The Board’s longstanding policy is that elections should, as a general rule, be conducted manually; 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. NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11301.2.¹⁰ 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.” In exercising discretion in such situations, a Regional Director should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and what constitutes the efficient use of Board resources. *San Diego Gas*, 325 NLRB at 1145. Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, Board law indicates Regional Directors may use discretion to order a mail ballot election under the guidelines in *San Diego Gas*, including extraordinary circumstances, and Regional Directors should tailor the method of conducting an election to “enhance the opportunities of all to vote.” *Ibid.*

The Board recognized the ongoing COVID-19 pandemic to constitute “extraordinary circumstances” and reaffirmed Regional Directors’ discretion regarding election mechanics in its April 17 “COVID-19 Operational Status Update.”¹¹ In pertinent part:

¹⁰ I note the provisions of the Casehandling Manual are not Board directives or procedural rules. The Casehandling Manual is issued by the General Counsel, who does not have authority over matters of representation, and is only intended to provide nonbinding guidance to regional personnel in the handling of representation cases. See Representation-Case Procedures, 84 Fed. Reg. 39930, 39937 fn. 43 (2019) (“the General Counsel’s nonbinding Casehandling Manual”); *Patient Care*, 360 NLRB 637, 638 (2014) (citing *Solvent Services*, 313 NLRB 645, 646 (1994); *Superior Industries*, 289 NLRB 834, 837 fn. 13 (1988)); *San Diego Gas*, 325 NLRB at 1145 fn. 5 (and cases cited therein). See also *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 fn. 5 (1979).

¹¹ <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

The Board has continued to affirm the ongoing COVID-19 pandemic to be extraordinary circumstances as contemplated by *San Diego Gas*, above,¹² and its recent Orders¹³ explain:

The Board will continue considering whether manual elections should be directed based on the circumstances then prevailing in the Region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.¹⁴

As the Board's Orders instruct, I analyze the instant petition using the prevailing circumstances in the region.¹⁵

4. A Mail Ballot Election Is Appropriate

¹² See, for example, *Atlas Pacific Engineering Co.*, 27-RC-258742 (unpublished May 8, 2020) (relying on "the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework" to deny review of Regional Director's decision to order a mail ballot election).

¹³ See *Sea World of Florida, LLC*, 12-RC-257917 (unpublished September 22, 2020) (denying review of Regional Director's decision to order a mail ballot election); *Rising Ground*, 02-RC-264192 (unpublished September 8, 2020) (same); *TredRoc Tire Services*, 13-RC-263043 (unpublished August 19, 2020) (same); *Daylight Transport, LLC*, 31-RC-262633 (unpublished August 19, 2020) (same); *PACE Southeast Michigan*, 07-RC-257047 and 07-RC-257046 (unpublished August 7, 2020) (same); *Sunsteel, LLC*, 19-RC-261739 (unpublished August 4, 2020) (same); *Brink's Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020) (same).

¹⁴ On July 6, General Counsel Peter Robb issued GC 20-10 setting forth suggested election protocols while specifically noting that it is not binding on Regional Directors because the Board not the General Counsel has authority over matters of representation. Among other things, the General Counsel proposes, as agreed to by the parties, self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, or come into contact with someone who tested positive within the preceding 14 days, and are not awaiting test results, along with identifying the number of individuals exhibiting COVID-19 symptoms.

¹⁵ The Board has granted review and issued a stay of directed mail ballot elections in four cases; however, it has not cited factors outside of *San Diego Gas*, established a different standard for analyzing petitions filed during the COVID-19 pandemic, or issued a ruling in those cases that impacts my conclusions and findings herein. See *Airgas USA, LLC*, 16-RC-262896 (unpublished September 24, 2020); *ClarkWestern Dietrich Building Systems, LLC*, 01-RC-264014 (unpublished September 16, 2020); *Draper Valley Farms*, 370 NLRB No. 20 (September 9, 2020); *Aspirus Keweenaw*, 370 NLRB No. 13 (August 25, 2020).

COVID-19 has created a public health crisis, responsible for upwards of 204,000 deaths in this country.¹⁶ Currently, the number of new COVID-19 cases continues to climb, with a total number of confirmed cases reaching over 7 million and surging in several areas of the country.¹⁷ Unfortunately, Illinois is no exception. The United States as well as Illinois are currently in declared states of emergency due to COVID-19.¹⁸ In assessing local conditions, I must consider the current state of the pandemic in Illinois, particularly the Lincoln area where employees work. As of April 17, the date of the Board's Operational Status Update, the average daily number of confirmed positive cases in Illinois (based on a rolling seven-day average) was 1384. It is now 1985.¹⁹ As of June 26, the State has been subject to a Community Revitalization Order which, under Governor Pritzker's Executive Order 2020-43, incorporates Phase 4 Restore Illinois guidance.²⁰ This guidance provides for a gathering limit of 50 with many businesses operating at 50% capacity unless other occupancy limits are established by the Illinois Department of Commerce and Economic Opportunity (IDCEO). In Phase 4, while restaurants and bars can resume on-premises consumption with restrictions, they are encouraged to prioritize delivery, takeout, and outdoor dining. All indoor dining must be compliant with IDCEO guidance. Gyms and movie theatres have reopened, and film production has resumed, but with restrictions. In-person education has also resumed with limitations including required social distancing and provision of PPE to students and staff.²¹ Although the Employer argues in its written statement with supporting statistics that COVID-19 numbers remain low specifically in Lincoln, Illinois and the surrounding area, Logan County, where the election is to take place, has not been spared from COVID-19. Logan County recently experienced three COVID-19 outbreaks recently during August to September.²² Thus, the Employer's statement that "[a]s of September 22, 2020, Lincoln, Illinois has not faced a widespread COVID-19 outbreak," is not entirely accurate. It is not possible for me to know if these numbers represent an increase in the number of infections, a reflection of more widespread testing or better reporting. However, it is sufficient to establish that there is no seen improvement in COVID conditions and that there continues to be spread of COVID, factors which lead me to conclude there is too much risk to holding a manual election at this time or in the near future.

The United States Center for Disease Control and Prevention (CDC) explains that COVID-19 is primarily spread from person to person and that a person may become infected when an "infected person coughs, sneezes or talks" or by "touching a surface or object that has the virus on

¹⁶ <https://www.cdc.gov/covid-data-tracker/#cases> (accessed September 28).

¹⁷ *Id.*

¹⁸ <https://www.dph.illinois.gov/covid19/governor-pritzkers-executive-orders-and-rules> (accessed September 28 – gubernatorial disaster proclamation signed by Illinois Governor J. B. Pritzker on September 18).

¹⁹ Illinois Coronavirus Map and Case Count, *New York Times*. Retrieved from <https://www.nytimes.com/interactive/2020/us/illinois-coronavirus-cases.html> (accessed September 28).

²⁰ Restore Illinois is a five-phased plan designed to reopen the state, guided by health metrics and with distinct business, education, and recreation activities characterizing each phase. See, <https://coronavirus.illinois.gov/s/restore-illinois-introduction> (accessed September 28).

²¹ <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-43.aspx> (signed June 26) (accessed September 28). See also, <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-40.aspx> (regarding limited reopening of schools, signed June 4) (accessed September 28)

²² <https://www.journal-advocate.com/2020/09/08/new-outbreaks-contribute-to-rising-covid-19-cases-in-logan-county/> (updated September 15) (accessed September 28).

it, and then by touching your mouth, nose or eyes.”²³ The CDC also warns: **“It is important to realize that you can be infected and spread the virus but feel well and have no symptoms”** (emphasis in original).²⁴ Guidance issued by the CDC recommends limiting in-person visits to stores as well as in-person contact for deliveries whenever possible.²⁵ This guidance is echoed by the state’s mandatory mask requirement that “everyone over the age of 2 who can medically tolerate a face covering over their nose and mouth must wear one in a public place when unable to maintain a safe distance (6 feet) from others.”²⁶ 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.”²⁷ Although it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its “Considerations for Election Polling Locations and Voters” states that officials should consider alternative voting methods where permitted, “that minimize direct contact and reduce crowd size at polling locations....”²⁸ This election would also involve significant travel to the facility by a Board Agent and party representatives. The CDC continues to maintain that “[t]ravel increases your chances of getting and spreading COVID-19....”²⁹ At this time, sending a Board agent and party representatives to conduct the election would risk the exposure of everyone at the facility. Voters, along with other employees who may come into contact with each other, Board agents, and party representatives, would risk being exposed to the virus and spreading it to participants, the community, and their families. Therefore, the number of people placed at risk for exposure is much greater than just the number of employees eligible to vote. Furthermore, a mail ballot election avoids the uncertainties created by COVID-19. For example, it is now well-established, although the exact percentage is uncertain, that certain individuals infected with COVID-19 will remain asymptomatic and display no symptoms. It may take several days for a person who has been infected to start displaying symptoms, even though they are contagious prior to display of symptoms. As a result, despite the proposed screening measures, infected individuals could participate in the election, unknowingly exposing co-workers, party representatives, observers, and the Board Agent, who, along with the observers, will be in the voting area for a very long and sustained period of time. A mail ballot election eliminates this risk.

Manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board agent, all of whom must be present at the

²³ “Frequently Asked Questions” (updated September 18, 2020). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (accessed September 28).

²⁴ “Overview of Testing for SARS-CoV-2 (COVID-19)” (updated September 18, 2020). CDC. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html> (accessed September 28).

²⁵ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (accessed September 28).

²⁶ See, [https://www.dph.illinois.gov/covid19/community-guidance/mask-use#:~:text=Everyone%20over%20the%20age%20of,\(6%20feet\)%20from%20others](https://www.dph.illinois.gov/covid19/community-guidance/mask-use#:~:text=Everyone%20over%20the%20age%20of,(6%20feet)%20from%20others) (accessed September 28).

²⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (accessed September 28).

²⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (accessed September 28).

²⁹ U.S. Center for Disease Control and Prevention, Coronavirus in the United States- Considerations for Travelers available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (accessed July 23).

Employer's facility. The Board Agent, observers and party representatives participate in a pre-election conference in which they must inspect the voting area and check the voter list. The Board Agent and observers must be present in the same space for the duration of the election period. Given the availability of a mail ballot election, ordering a manual election under the current circumstances would be in direct contradiction to the federal, state and local guidance, all of which advise avoiding in-person contact if possible, which a manual election necessitates. Mail balloting provides no additional risk to Board Agents, parties, voters, or the public and is consistent with current guidance of limiting in-person contact and travel. Although an in-person count may be infeasible, arrangements can be made for a virtual remote count that provides all the safeguards of a traditional count.

Acknowledging the inherent risks and effect of mail delivery procedures on the outcome of a mail ballot election, as noted by the Employer, there is no indication that the United States Postal Service is unable to deliver mail. Further, I note that any mail ballot election, held at any time under any circumstances, includes procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate.³⁰ Additionally, the return date for mail ballots could be extended to accommodate voters who may not be regularly residing at their residence or may be quarantining their mail. Even in the midst of this pandemic, the Region has already successfully conducted a number of mail ballot elections. Moreover, if an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms, has an elevated temperature, or must be quarantined due to COVID-19 exposure, they will be deprived of their vote in a manual election, as there is no absentee ballot or remote voting options under the Board's manual election rules. A mail ballot election avoids this significant pitfall and ensures all have an opportunity to vote regardless of their exposure to COVID-19 or health status. Furthermore, there is no known date at which the guidance and circumstances I have described above will change. As a result, a mail ballot election in this matter will allow for holding the election "at the earliest date practicable" consistent with the Board's Rules and Regulations Section 102.67(b) to insure the fair and free choice of bargaining representatives by employees.

In the parties' stipulated record and the Employer's written statement, the parties propose various safety measures to mitigate COVID-19, largely in accordance with the suggestions made in GC 20-10. I have carefully considered the Employer's suggestions and the suggestions in GC 20-10. I note that GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation. A mail-ballot election avoids these concerns. Ultimately, as GC Memo 20-10 recognizes, the decision to conduct the election by mail ballot is within my discretion. In this case, as I have already described, we have not reached a safe enough juncture in the pandemic. I have determined that the most appropriate course of action at this time is to follow accepted guidance to limit in-person contact and travel within the state.

³⁰ I further note that neither party has argued that the petitioned-for employees would be unable to understand the mail balloting procedure and there is no contention that the addresses of the eligible employees are not known or up to date.

For the above reasons, I find that the appropriate and most responsible measure to ensure a safe election is a mail ballot election. A mail ballot election will eliminate the risk of unnecessarily exposing employees, Board agents, party representatives, and their families to COVID-19, and it will ensure that the Unit employees have the opportunity to vote promptly.

ELECTION DETAILS

I have determined that the election will be conducted through mail ballot. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 25, on October 13, at 11:00 a.m. ET. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 25 office by close of business on November 10, 2020. The mail ballots will be commingled and counted via electronic means at 11:00 a.m. CT on November 17, 2020.

To help avoid the untimely return of a ballot, any person who has not received a ballot by October 22, 2020, or otherwise requires a duplicate mail ballot kit, should contact the Region 25 office in order to arrange for another mail ballot kit to be sent to that employee.

VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the bi-weekly payroll period ending September 27, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; 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.

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 cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **October 2, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

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

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

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 accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

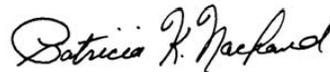
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but 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.³¹ 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.

Although 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, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: September 30, 2020



PATRICIA K. NACHAND
REGIONAL DIRECTOR
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³¹ On October 21, 2019, the General Counsel issued GC Memorandum 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

