

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

**SHIPPERS GROUP THREE, INC. D/B/A
SHIPPERS WAREHOUSE OF GEORGIA¹**

Employer

And

Case 10–RC–265324

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 528**

Petitioner

DECISION AND DIRECTION OF ELECTION²

Before me in this representation case are the questions whether the petitioned-for unit is an appropriate unit and whether the Region will conduct the election by mail or manual balloting.

The Employer, Shippers Group Three, Inc. d/b/a Shippers Warehouse of Georgia, provides third-party logistics, providing warehouse and delivery services for its commercial customers. Petitioner, International Brotherhood of Teamsters Local 528, seeks to represent the following bargaining unit comprised of approximately 73 employees:

Included: All full-time and regular part-time warehouse employees, including warehouse lumpers, material handlers, shipping and receiving clerks, taskers, operation team leads, warehouse MHE drivers, yard hostlers/yard jockeys, case pickers, inventory control employees, sanitation employees, and yard driver associates, employed by the Employer at its warehouse located at 300 Interstate W Pkwy, Lithia Springs, GA 30122.

Excluded: All other employees, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

¹ The Employer's name appears as corrected at the hearing.

² The Petitioner filed this petition under Section 9(c) of the Act. A hearing officer of the National Labor Relations Board conducted a hearing on the issues presented in the petition and all parties were provided an opportunity to present evidence at that hearing. I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I make the following preliminary findings: the hearing officer's rulings are free from prejudicial error and are affirmed, the Employer is an employer engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction, the Petitioner is a labor organization within the meaning of the Act, and a question affecting commerce exists concerning the representation of certain employees of the Employer. The parties were given the opportunity to file post-hearing briefs, and both parties did so.

The Employer contends that approximately 55 individuals employed through a temporary staffing agency must also be included in the unit in order to constitute the smallest appropriate unit. The Employer also proposes that the Region conduct the election manually while the Petitioner proposes a mail-ballot election due to the global Coronavirus pandemic.

I find that the employees employed through the temporary staffing agency share such an overwhelming community of interest with the permanent employees that they must be included in the bargaining unit. I shall also direct a mail-ballot election because this is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic.

Background

The Employer provides logistics services for third-party commercial customers. The Employer stores its customers' products at its warehouses and ships those products on behalf of its customers. While the Employer has several warehouses, the only warehouse at issue here is its Lithia Springs, Georgia, warehouse.³ The Lithia Springs Warehouse currently serves four customers. Each customer's work comprises its own "department."

A general manager, Robert Courtney, oversees the Lithia Springs Warehouse. Operations Managers and Shift Supervisors report to Courtney. Each Operations Manager is responsible for one customer. Courtney himself reports to the Employer's Vice President of Operations, Curtis Dean.

The Petitioned-For Unit

While the parties stipulated to the 11 job descriptions identified in the unit, intending to incorporate all warehouse employees, the Employer divides the warehouse employees into seven categories: warehouse lumpers, material handlers, shipping and receiving clerks, taskers, operations team leads, MHE drivers, and yard hostlers.⁴

- Warehouse lumpers are responsible for unloading trailers that are received at the Lithia Springs Warehouse.
- Material handlers receive, ship, order, and pick product within the warehouse.

³ The parties also refer to the Lithia Springs warehouse as the Austell warehouse.

⁴ It is not clear whether the other four descriptions in the unit — case pickers, inventory control employees, sanitation employees, and yard driver associates — are job duties incorporated into the Employer's seven categories (material handlers, for example, pick) or whether they are additional job classifications. There is no testimony about those employees or their duties and there is no dispute over their placement or inclusion into the unit.

- Shipping and receiving clerks verify and keep the records of incoming and outgoing product or shipments.
- Taskers are responsible for compiling personnel assignment schedules and scheduling workers around the current day's work.⁵
- Operations team leads report directly to supervisors and upper management. They ensure the day-to-day productivity of their assigned department.⁶
- Material handling equipment drivers (generally called MHE drivers) load and unload product around the warehouse. They may utilize forklifts, reach trucks, or electric pallet jacks.
- Yard hostlers (also called yard jockeys or yard drivers) are responsible for relocating, docking, and transporting trailers from one door to another at the warehouse.

Temporary Employees

The Employer hires most of its employees through a temporary staffing agency rather than directly. Diane Villafana, the Employer's Vice President of Human Resources and Safety Compliance, testified that the Employer obtained virtually all of its permanent warehouse employees at the Employer's Lithia Springs Warehouse through a temporary staffing agency. Villafana estimated that the Employer hires approximately 90 percent of employees referred by the staffing agency after they complete 90 days as temporary employees. Employer's Vice President of Operations, Curtis Dean, estimated that the Employer hires 75 percent of those employees. If the Employer chooses not to hire a temporary employee that initial 90-day period, the relationship between the Employer and that individual is severed. No individuals remain as temporary employees working at the Employer's warehouse for more than 90 days.

The Employer has utilized various staffing agencies in the past and acknowledges that it may switch to a different staffing agency in the future. It currently works with only Flex Staffing/Flex Personnel. Flex Staffing hires temporary employees and requires them to complete an employment application and new hire packet. Flex Staffing also conducts background screenings and drug tests upon hiring new employees. When the Employer requires additional staffing, it contacts Flex Staffing and requests that it refer individuals for an interview with the Employer's general or operations manager. The Employer then advises Flex Staffing as to whether the employee's skill set is acceptable and the Employer-selected individual thereafter commences employment at the warehouse.

⁵ No party contends that this work is supervisory in nature.

⁶ No party contends that team leads are statutory supervisors.

Flex Staffing employees work alongside the Employer’s permanent employees in all of the petitioned-for job titles. Temporary and permanent employees perform the same job duties, are expected to have the same skills, receive direction from the same supervisors and managers, use the same equipment, work in the same areas, take the same breaks, work the same number of hours per week, receive the same training, are subject the same dress policies, are evaluated according to the same criteria, and are assigned to the same shifts. Their day-to-day working conditions are essentially indistinguishable. Although Flex Staffing pays the temporary employees, the Employer sets their wages. Temporary employees receive a lower hourly wage than permanent employees. The Employer’s witnesses described this as an incentive for temporary employees to meet productivity and safety standards so as to be converted to permanent status after 90 days.

During the 90 days spent as temporary employees, Flex Staffing is the formal employer of the warehouse workers, not the Employer. When it pays the employees, Flex Staffing withholds their payroll taxes, and provides workers’ compensation insurance coverage. Temporary employees do not receive the health insurance, paid time off, or 401(k) benefits enjoyed by the Employer’s permanent employees. The Employer’s handbook applies only to permanent employees, while temporary employees are governed by Flex Staffing’s own personnel policies. While the Employer can choose not to hire a Flex Staffing employee on a permanent basis, it has no say in whether Flex Staffing fires that employee. If the Employer is unhappy with an employee, Flex Staffing may place that employee elsewhere or choose to discharge the employee. The Employer’s supervisors also do not discipline Flex Staffing’s employees.

Method of Election and the Status of the Coronavirus Pandemic in Georgia

The Petitioner argues that a mail ballot election is most appropriate under the present circumstances because a mail ballot election is the most effective way to ensure the safety of all participants during the Coronavirus pandemic.

The Employer argues that a manual election is most appropriate because the Board generally prefers manual elections where, as here, all employees report to work at the same location and have consistent, overlapping work schedules. Specifically, the Employer proposes that a manual election should be held on a Thursday between 6:00 a.m. and 8:00 a.m. and between 5:00 p.m. and 7:00 p.m. The Employer proposes its breakroom as a location and has offered assurances that the room is spacious enough to allow for social distancing and can be cleaned in accordance with CDC guidelines. Finally, the Employer notes that individuals who are unable to vote at the site due to health concerns or positive Coronavirus tests, or ill with COVID-19, would comprise a small minority of voters. The Employer proposes that these employees could be enfranchised via a mixed manual-mail ballot or could be permitted to complete ballots outside the polling area during the course of a manual election.

The Employer has taken precautions to mitigate the spread of COVID-19 within its warehouse. It has issued guidelines to employees and managers and requires that all employees wear masks. It has also increased sanitation at its warehouse and taken steps to encourage social distancing, such as taping six-foot parameters around highly trafficked areas. The Employer has implemented a COVID-19 tracking system so that it is aware of potential exposure within its warehouse and has not been forced to cease operations at any time during the pandemic. Since March 2020, the Employer’s tracking system has identified approximately 12 employees at its Lithia Springs Warehouse that it sent home or had to stay at home due to self-identifying as outlined by the CDC. The Employer’s policy requires that these employees quarantine for a minimum of 14 day and they must provide a doctor's note to return to work. The majority of these employees have since returned to work.

The Employer says that it is willing and able to comply with all requirements outlined in the General Counsel’s Memorandum 20–10, which sets forth protocol for conducting safe manual election during the pandemic.

The Lithia Springs Warehouse is located 18 miles west of Atlanta in Douglas County, Georgia. The Georgia Department of Public Health has confirmed nearly 7,000 COVID-19 deaths in Georgia; 71 of these deaths took place in Douglas County. The statewide positivity rate (7-day moving average) for PCR testing has decreased from 8.9 percent on August 31 to 8.1 percent on September 7 to 6.4 percent on October 1. While the decline in the positivity rate is encouraging, Georgia’s current rate remains above the 5 percent rate recommended by the World Health Organization for a first phase general reopening.⁷ Accordingly, Georgia Governor Brian P. Kemp has signed multiple Executive Orders declaring and extending a Public Health State of Emergency, most recently on September 30.⁸ Governor Kemp has also ordered Georgia residents and visitors at higher risk for severe illness to continue to shelter in place until at least October 15. Failure to comply with this order is a misdemeanor offense.⁹

ANALYSIS

Inclusion of Temporary Employees

As a threshold matter, the Petitioner argues that the temporary employees cannot be included in the bargaining unit because the Employer does not employ the temporary employees. The Petitioner argues that Flex Staffing alone employs the temporary employees and that the Employer’s control over those employees’ terms and conditions of employment is insufficient to establish joint employer status. This argument is not persuasive.

⁷ See <https://coronavirus.jhu.edu/testing/testing-positivity> (last visited October 1, 2020).

⁸ See <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders> (last visited October 1, 2020).

⁹ See <https://georgia.gov/covid-19-coronavirus-georgia/covid-19-state-services-georgia/covid-19-stay-home-if-youre-higher> (last visited October 1, 2020).

It is well-established that the Board will find a joint employer relationship where two entities exert significant control over the same employees, and where it can be shown that these two entities share or co-determine those matters governing the essential terms and conditions of employment, such as hiring, firing, discipline, supervision and direction. *Southern California Gas Co.*, 302 NLRB 456 (1991). The basis of such a finding is that one employer, while contracting in good faith with an otherwise independent company, has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer. *Walter B. Cooke Inc.*, 262 NLRB 626 (1982). Thus, the “joint employer” concept recognizes that the business entities involved are separate but that they share or co-determine those matters governing the essential terms and conditions of employment.

In *M.B. Sturgis*, 331 NLRB 1298 (2000), the Board held that, generally speaking, employees supplied by temporary staffing agencies are jointly employed by both the supplier employer (the staffing agency) and the user employer (where the employee is placed for work). The *Sturgis* Board held that temporary employees jointly employed by the user and supplier employers may be included in bargaining units with employees of the user employer so long as these groups of employees share a community of interest.

The Petitioner argues that the Employer does not exercise sufficient control over the temporary employees because the Employer apparently does not control the benefits offered to the temporary employees, the Employer does not control whether Flex Staffing hires or fires the temporary employees, and the Employer does not discipline the temporary employees. However, the Employer does enjoy complete control over the wages paid to the temporary employees, the shifts and hours worked they work, and the work assigned to the temporary employees. Flex Staffing has no supervisory presence at the Employer’s warehouse. The arrangement is typical of joint employer relationships where temporary staffing agencies supply user employers with additions to their workforces. Accordingly, I find that the temporary employees cannot be excluded from the bargaining unit on the basis of their relationship with the Employer. The Employer exercises meaningful control over the temporary employees’ day-to-day conditions of employment by determining what tasks they will perform, and when and how much they will be paid in exchange for performing that work.

Next, the Petitioner argues that even if the Employer and Flex Staffing were joint employers of the disputed employees, the temporary employees do not share such a strong community of interest with the permanent employees as to require their inclusion in the bargaining unit. In general, a proposed unit need only be *an* appropriate unit, not the most appropriate unit. *PCC Structurals*, 365 NLRB No. 160 (2017). Where an employer argues that temporary employees must be included in a bargaining unit with permanent employees, the test is whether the community of interest is so strong that it requires or mandates their inclusion in the unit. *Engineered Storage Products Co.*, 334 NLRB 1063 (2001).

In *Engineered Storage Products*, the Board held that the employees the supplier provided did not share a strong enough community of interest with the employees employed solely by the

user to require their inclusion in a unit of the user’s employees. The Board noted that although the temporary employees and the employer’s permanent employees worked side-by-side performing the same work, under common working conditions, and under the same supervision, the staffing agency hired and fired the temporary employees it supplied and set their wages and benefits. 334 NLRB at 1063.

As the Employer notes, the Board reached the opposite conclusion in *Outokumpu Copper Franklin*, 334 NLRB 263 (2001). In that case, the Board found that a petitioned-for unit of solely employed user employees was not appropriate because the employees the supplier employer provided shared an overwhelming community of interest and therefore belonged in the unit. The Board held that the temporary employees in *Outokumpu* were akin to probationary employees who were expected to transition into regular, full-time employees after a certain period of time and found that the dissimilar terms and conditions of employment that supported excluding temporary employees from the unit (including lower wage rates, ineligibility for employee benefits, and a different attendance policy) were “substantially outweighed” by the many common terms and conditions of employment shared by the regular and temporary employees. 334 NLRB at 263–264.

I find that the community of interest between the temporary employees and the permanent employees in this case dictates that the temporary employees be included in the unit. The Employer in the instant case sets the employees’ wage rates, unlike the employer in *Engineered Storage Products*. In *Engineered Storage Products*, the employer had not converted any temporary employees to permanent employee status for over two years, whereas here, the majority of temporary employees are converted to permanent status after 90 days and most permanent employees themselves began as temporary employees. That the temporary employees can reasonably expect conversion to permanent status after a fairly short period of time strengthens the community of interest established where the employees use the same skills to perform the same duties in the same locations for the same number of hours per week while being overseen by the same supervisors. This facts in this case more closely resemble those in *Outokumpu Copper Franklin* than those in *Engineered Storage Products*, and that the principles in the former case support my decision.

Accordingly, I find that the temporary employees must be included in the bargaining unit.

Method of Election

The Employer asserts that it is willing to comply with all requirements of the General Counsel’s Memorandum 20–10 and argues that the election should be held manually. It contends that the Coronavirus, while extraordinary as a medical and cultural event, does not constitute the extraordinary circumstances the Board contemplated in *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998).

The Board in *San Diego Gas* reviewed the circumstances under which it may be appropriate to direct a mail ballot election. The Board concluded that representation elections

should generally be conducted manually. Recognizing, however, that there are some extraordinary circumstances that would make it difficult for eligible employees to vote in a manual election, the Board vested Regional Directors with broad discretion to determine the method by which it will conduct representation elections. 325 NLRB at 1144. Under the guidelines set forth in *San Diego Gas*, a mail ballot election may be appropriate where eligible voters are “scattered” because of their job duties in terms of geography or varied work schedules, so that all employees cannot be present at a common location at common times to vote manually. When these situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of the parties and the efficient use of Board resources. *Id.* at 1145.

Because of the nature of the COVID-19 crisis in Georgia, the employees at issue here are “scattered” in an unusual way. At any given time, an unknown number of employees are likely to be unable to enter the Employer’s warehouse due to illness, quarantine, or an underlying medical condition. A manual election would make it not just difficult but impossible for certain employees to vote. The Employer argues that a mixed manual-mail election would alleviate this possibility, or that, alternatively, the Board agent running the election could bring a ballot to the Coronavirus-positive employee’s car. I do not find these suggestions to be practicable.

Regarding a mixed manual-mail election, Section 11335.2 of the *NLRB Casehandling Manual, Representation Proceedings* directs that a mixed manual-mail election “should be limited to situations where the group of employees which will vote manually and the group which will vote by mail are clearly distinguishable by classifications or work locations and can be easily identified by the parties.... The election agreement should specify which portion of the unit will vote by mail and which portion through a manual election.” Under the present circumstances, employees who require mail ballots cannot be distinguished by their classifications or work locations; they can only be distinguished by whether they are symptomatic or have tested positive on the day of the election. Such status cannot be documented in advance.

The proposal that employees temporarily barred from the premises due to infection with the Coronavirus vote from their cars is likewise problematic. Individuals who test positive for the Coronavirus are encouraged to isolate themselves so as to prevent the spread of the disease; they cannot do so while driving to the Employer’s location to interact with the Board agent conducting the election and the observers monitoring the ballot box. Likewise, individuals at high risk of COVID-19 complications have been ordered to shelter in place, in part because it is not always possible to know who might be spreading the disease at any given time.

The Centers for Disease Control and Prevention has stated that its “current best estimate” is that 50 percent of Coronavirus transmission occurs prior to the onset of symptoms, and that 40 percent of those infected with Coronavirus are asymptomatic. However, the CDC also recognizes that these estimates remain uncertain.¹⁰ In a state like Georgia, which continues to

¹⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last visited October 1, 2020).

experience high levels of Coronavirus infection and active COVID-19 cases, the CDC’s data on transmission of this illness without symptoms is troubling.

I find on the facts of this case that conducting an election manually will expose non-employee participants to the risk of contracting the virus, including the Board agent and non-employee representatives who would be present for any pre-election conference and on-site ballot count. While the Employer’s proposed safeguards for a manual election are commendable, the Coronavirus and its disease, COVID-19, has been found both inside and outside the Employer’s warehouse. Coming into the warehouse to vote could also expose employees to the disease who have not been working in the warehouse because of their underlying health conditions. Given the possibility of asymptomatic spread, the risk of spreading the disease to employees during the election and to non-employee participants is too great at this time.

The Employer notes, correctly, that the Board generally prefers manual elections. However, the Board has never hesitated to order a mail-ballot election when the circumstances so warrant. Indeed, the Board’s preference for manual elections is not to be interpreted as a suggestion that mail balloting is somehow inferior or a less reliable or effective means of determining employees’ representational desires. As the Board noted in *London’s Farm Dairy, Inc.*, 323 NLRB 1057, 1058 (1997):

[W]hile we agree with our dissenting colleague that the Agency has a proud long tradition of conducting elections by manual balloting and that most elections have been and are conducted manually, it has an equally long history of conducting elections by mail. From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail. See, for example, *Lykes Bros. S.S. Co.*, 2 NLRB 102, 108, 111 (1936); *United Press Assns.*, 3 NLRB 344, 352 (1937); *Pacific Greyhound Lines*, 4 NLRB 520, 539 (1937); *Pacific Lumber Inspection Bureau*, 7 NLRB 529, 534 (1938); *Salt River Valley Water Users Assn.*, 32 NLRB 460, 472 (1941); *Continental Bus Systems*, 104 NLRB 599, 601(1953); and *National Van Lines*, 120 NLRB 1343 (1958).

323 NLRB at 1058.

The majority in *London’s Farm Dairy* concluded that mail-ballot elections are not less effective and do not lend itself to subterfuge, coercion, invasion of privacy or other abuse. As the Board observed then, “Indeed, in the 62-year history of the Act, there has been only one reported instance of such abuse, see *Human Development Assn.*, 314 NLRB 821 (1994), and there is a similar record in the 71-year history of the Railway Labor Act ..., under which the use of mail ballots in representation elections has been the rule and not the exception.” Also note that no manual election has been conducted by the National Mediation Board under the Railway Labor Act since 1987. Simply put, the Board has a long and proud tradition of conducting manual- and mail-ballot elections alike. It simply prefers manual elections when, unlike here, they are feasible, safe, and practical to conduct.

I conclude that, under these circumstances, a mail ballot election is appropriate. A mail ballot election will enfranchise employees whose schedules may unexpectedly be upended by the Coronavirus pandemic and employees who do not come into the Employer's warehouse for health reasons. In addition, a mail ballot election will protect the health and safety of voters, Agency personnel, the parties' representatives, and the public during the current health crisis.

CONCLUSION

The National Labor Relations Board will conduct a secret mail ballot election among the employees in the following unit:

Included: All full-time and regular part-time warehouse employees, including warehouse lumpers, material handlers, shipping and receiving clerks, taskers, operation team leads, warehouse MHE drivers, yard hostlers/yard jockeys, case pickers, inventory control employees, sanitation employees, yard driver associates, and temporary employees in any of these classifications, employed by the Employer at its warehouse located at 300 Interstate W Pkwy, Lithia Springs, GA 30122.

Excluded: All other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 528.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **Monday, October 19, 2020** at 2:00 p.m. ballots will be mailed to voters by National Labor Relations Board, Region 10. 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.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 10 office by close of business on Monday, November 16, 2020.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by November 2, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at 404-331-2896 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

A Board agent from the Region will count the ballots at **10:00 a.m. (Eastern Time) on Tuesday, November 17, 2020.** Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Skype, WebEx, Zoom, etc.) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

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.

To be timely filed and served, the list must be *received* by the Regional director and the parties by **Tuesday, October 6, 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.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on Wednesday, October 14, 2020. If the Employer does not receive copies of the notice by October 9, 2020, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English, please notify the Board agent immediately if that is necessary for this election. Also, if special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board agent as soon as possible.

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

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 14 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. 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. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: October 2, 2020

SCOTT C. THOMPSON
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 10
233 Peachtree St NE
Harris Tower Ste 1000
Atlanta, GA 30303