

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

FRESNO TRUCK CENTER¹

Employer

and

Case 32-RC-264805

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT LODGE 190,
LOCAL LODGE 653**

Petitioner

DECISION AND DIRECTION OF ELECTION

A petition was filed on August 18, 2020² by International Association of Machinists and Aerospace Workers, District Lodge 190, Local Lodge 653 (Petitioner) seeking to represent certain employees of Fresno Truck Center (Employer) for the purposes of collective bargaining. After issuance of a Notice of Hearing, a hearing was held before a Hearing Officer of the National Labor Relations Board (Board) on September 9. The only issue preventing proceeding to an election is whether there should be a manual election held on site at the Employer's facility (the facility) or a mail-ballot election should be conducted in light of the current COVID-19 pandemic. The parties were not invited to file post-hearing briefs on this issue, inasmuch as the issue of how the election may be conducted is not a litigable one.

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 record and the parties' positions, as well as the current local circumstances surrounding the COVID-19 pandemic. For the reasons described more fully below, I shall direct that an *Armour Globe* mail ballot election be conducted.

BACKGROUND

The Employer is engaged in the sale of new and used truck, as well as retail and wholesale parts and service at its facility in Fresno, California. The facility consists of a

¹ The parties stipulated at the hearing, and I so order, that to the extent the petition and other formal documents may not correctly reflect the correct names of the parties, they are hereby amended to correctly reflect the names as set forth herein.

² All dates hereinafter are in 2020 unless indicated otherwise.

showroom and a separate retail parts counter within the same building: there are four entrances into the parts area of which two are regularly used by parts customers and employees.

The employees work in three shifts between 6:00 a.m. and 1:00 a.m. on weekdays, and also unspecified times on the weekend when the facility is only open until 6:00 p.m. as opposed to 12:30 a.m. during the week.

The Employer and the Petitioner stipulated, and I so find, that they are parties to a collective-bargaining agreement in effect from August 1, 2019 through July 31, 2023, which covers Journeymen Truck Mechanics, Lubrication Servicemen, New and Used Truck Preppers, Installers, and Full and Regular part-time Service Advisors. There are currently approximately 55 employees in the existing unit.

The parties stipulated, and I so find, that the following employees in the petitioned-for unit constitute a distinct, identifiable segment of the Employer's employees, share a community of interest with, and are an appropriate, eligible voting group for an *Armour-Globe* election to be included in the existing bargaining unit of employees of the Employer described above:

Included: All full-time and regular part-time parts department Admin Workers (Salaried Clerical-parts), Laborers and Helpers (Salaried Other Shipping-parts, Salaried Other Delivery-parts, Salaried Front Counter-Parts, Salaried Other-General Services), and Sales Workers (Salaried Front Counter-parts, Salaried Other Back Counter-parts, Compensation & Commissions-parts) employed by the Employer at its facility located at 2727 E. Central Ave., Fresno, CA.

Excluded: Managers, employees represented by a labor organization, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

There are presently 34 employees in the petitioned-for unit.³

The Petitioner does not state a preference on the record for the method of the election, so long as the election takes place on some date certain. The Employer argues in favor of a manual election to be held at its facility.

THE STATE OF THE COVID-19 PANDEMIC IN CALIFORNIA AND FRESNO COUNTY

COVID-19 represents an ongoing national public health emergency that has resulted in nearly 7 million cases and more than 200,000 deaths nationwide. The federal Centers for Disease Control (CDC) issued general guidelines for reducing the spread of the virus, including,

³ The Employer stated that of the approximately 150 employees in the entire facility, about ten are over the age of 50 and maybe 5 are under the age of 25. It is not known what the demographic of the petitioned-for unit is, however.

inter alia, guidelines for conducting elections that encourage 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.”⁴ 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.⁵

The impact of COVID-19 has been particularly acute on California, which currently has the highest number of cases in the United States at 790,640.⁶ On March 19, the State Public Health Officer and Director of the California Department of Public Health (CDPH) issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population. On June 18, CDPH issued further guidance that broadly required the use of face coverings for both members of the public and workers in all public and workplace settings where there is a high risk of exposure.⁷

Despite these measures, however, the number of cases in the State began to increase after businesses began to partially reopen. As a result, the CDPH was forced to recognize that community spread of the virus in California remained a significant concern, especially in congregate settings. Consequently, on August 28, as part of its *Blueprint for a Safer Economy*, the CDPH initiated a new plan for reducing COVID-19 in the state with revised criteria for loosening and/or tightening restrictions on activities.

Under this plan, entitled the *Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe* (the Plan), every county in California is assigned to a tier based on its test positivity and adjusted case rate.⁸ At a minimum, counties must remain in a given tier for at least 3 weeks before moving forward, and data is reviewed weekly. The four color-coded tiers based on the foregoing criteria are described (in descending order) as Purple (Widespread), Red (Substantial), Orange (Moderate), and Yellow (Minimal).

The County of Fresno, where the Employer’s facility is located, is in the southern part of California’s central valley and is currently the 10th most populous of the State’s 58 counties with a population of nearly a million.

The County of Fresno’s current status under the Plan is at the most restrictive tier of Purple or “Widespread,” meaning that many non-essential indoor business operations are still

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

⁶ See COVID data tracker at www.covid.cdc.gov September 25, 2020

⁷ https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf

⁸ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>

closed.⁹ Currently, there are approximately 28,000 COVID-19 cases in Fresno County, with 382 resulting deaths. On September 2, the County of Fresno Department of Public Health ordered all public schools to remain closed for in-person instruction until further notice, advising that schools may be reopened with the appropriate preventative measure two weeks after the County is removed from the Purple tier of the Statewide blueprint described above.¹⁰ Bars remain closed, and restaurants may provide outdoor service only. Public shopping centers must limit indoor capacity to 25%, and close common areas and food courts, and grocery stores must limit capacity to 50%.¹¹ In addition, under current CDPH guidelines issued on September 8, universal face covering requirements for businesses 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.¹²

More specifically, under the State’s industry guidelines for counties at the “Widespread” tier, auto repair shops may offer limited services with modifications, inasmuch as they do not generally require close contact with customers. Under the state’s *COVID-19 Industry Guide to Limited Services*, additional specific considerations are required for auto repair shops, including: the elimination of shared equipment or tools; allowing customers to drop off vehicles after hours using a “drop box” to limit personal contact with employees; requiring customers to wear face coverings when interacting with workers; cleaning touchable surfaces regularly, including tools, handles and latches, and controls; disinfecting keys, key fobs, and vehicles before and after servicing; communicating with customers remotely via text or e-mail to minimize contact; closing waiting rooms and lounges or reconfiguring them to allow for social distancing; and removing amenities such as magazines, books, coffee, water, and the like to reduce touch points and customer interaction.¹³

The Employer’s Position on the Method of the Election

As noted above, the Employer urges that an in-person manual election be held at its facility and has proposed that two sessions be held to accommodate two shifts or one late-afternoon session that would bridge the morning and night crew. Since some employees work Saturdays and Sundays and not during the work, the exact day of the week would have to be determined after review of shift schedules.

⁹ <https://www.cdph.ca.gov>; <https://www.co.fresno.ca.us/departments/public-health/covid-19> - COVID-19. The Employer is not located in the City of Fresno, which maintains its own website at www.Fresno.gov/coronavirus that refers back to the CDPH plan described above.

¹⁰ <https://www.co.fresno.ca.us/home>. Currently, district superintendents, private school principals or heads, or directors of charter schools may apply for waivers from local health officers to open elementary schools if certain criteria are met. *Id.*, FCDPHSchoolWaiverLetter.pdf

¹¹ www.covid19.ca.gov – *Industry Guidance to reduce risk* (September 24, 2020) ; www.cdph.ca.gov – *COVID-19 Industry Guidance: Limited Services* (July 29, 2020) at page 14.

¹² www.cdph.ca.gov – Guidance for Face Coverings

¹³ *Id.*

Because the Employer provides an essential service, it has continued operating since the initial state shutdown in March, and, due to the nature of the Employer's business, its employees are not able to work from home and must report to work at the facility and maintain regular hours for the public.

As a result, according to the Employer, it has taken extraordinary measures to ensure that its employees remain safe, including the use of disinfecting machines and daily cleaning of public areas. Also, employees have been required and continue to be required for wear face coverings and gloves at work, except if working in a private office.¹⁴ The Employer asserts that employees generally worked six feet apart, but that some areas had to be reconfigured to accommodate social distancing between employees.¹⁵ Customers and other members of the public are permitted in only certain areas of the facility – specifically the front lobby for truck sales and the service counter – but are barred from non-public areas, and must wear face coverings, maintain social distancing, and sanitize their hands. In some areas, the customers are separated from employees by plexiglass panels. The Employer confirmed that approximately fifty customers a day can visit the parts department where the employees in the petitioned-for unit work, and that about 30-40 percent of these come into direct contact with the public daily.

The Employer stated that it did not regularly take the temperature of its employees when they arrive to work, although there are devices available to it if this were to be an issue. Anyone who evidences signs of illness are asked to self-quarantine and be tested for COVID-19: if they test negative they are allowed to return to work unless they have been in proximity to someone who has been infected, in which case they must self-isolate for ten days, retest negative, and then be able to return to work.

The Employer asserts that none of the employees in the petitioned-for unit have contracted the COVID-19 virus, and none have lost work time due to the virus. Some unspecified number of parts department employees have self-isolated as a result of possible exposure to the virus, but none have tested positive. However, approximately three employees in the service department and another one in the front sales offices have tested positive for the virus since March.

The Employer has proposed the election be held in an upstairs training room which can be disinfected before the election.¹⁶ Although the size of the room is not known, the Employer assures that there is ample room to provide proper social distancing between voters, observers, and the Board agent. As many as three restrooms would be available to the Board agent,

¹⁴ The Employer stated that it will provide an employee with a mask if necessary, but that most provided their own either fabric or pleated paper masks. The Employer does provide gloves to employees where needed. Employees in the service department regularly wear gloves due to the nature of their work, and those in the parts department do as well.

¹⁵ The record does not specify if this applies to employees in the petitioned-for unit in the parts department.

¹⁶ The Employer stated that this room had been deep cleaned in accordance with CDC guidelines twice since March, the last time about 60 days ago. Public areas are cleaned daily using the same disinfecting machine the Employer uses to clean trucks.

depending on gender.¹⁷ There is only one entrance to this room. There are also an unspecified number of windows in this air-conditioned room, but it is not known whether they open or not.

The Employer did not provide a schematic or any photos of the room with a proposed layout showing how it would be arranged for a manual election, nor did it describe how the employees would be released to vote and how they would enter and exit the room.¹⁸ Nor did the Employer, as the proponent of a manual election, explain how its proposed arrangements would comply with the recommended protocols described in *General Counsel Memorandum 20-10 Suggested Manual Election Protocols* (July 6, 2020) (GC 20-10).

The Employer stated that it opposes a mail-ballot election because it could result in tampering and would delay the results of the election.

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. 11301.2.¹⁹ 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

¹⁷ Apparently, there are gender-specific restrooms on the first floor, and a locker room area in the service department that accommodates only men.

¹⁸ This issue is potentially problematic, since the Employer described only one door to this room.

¹⁹ 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).

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.²⁰

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.

After careful examination of the record, the parties’ respective positions, and the current state of the COVID-19 virus in California and Fresno County, I have determined that a mail-ballot election is the appropriate option.

As a threshold matter, I note that COVID-19 is a contagious disease for which there is as yet no cure or vaccine. I further note that the State of California has placed severe restrictions on Fresno County, which remains at the highest tier of infection rate. As of the writing of this decision, 2.8% of the county’s population has been infected by the virus. While I acknowledge that absent these public health considerations, I likely would not direct a mail-ballot election in this case, I am persuaded by the fact that the Employer’s employees have been deemed essential workers and, because of the nature of their work, they do not have the alternative to work from home to ensure limited exposure to COVID-19 for themselves and their families. However, the Board has an acceptable alternative to conducting an on-site manual election, and it is one that avoids the unnecessary risk of person-to-person transmission.

I am further persuaded that a mail-ballot election is the preferable option based on the lack of assurances from the Employer that is it willing and able to conform to the suggested protocols described in GC 20-10. Even if the Employer could provide such assurances *nunc pro tunc*, its proposals regarding conducting an on-site manual election are so lacking in sufficient detail that it is not possible to assess whether they would afford any meaningful level of protection for the employees, the observers, the parties’ representatives, and the Board agents. In this regard, there is no description of the size of the meeting room where the Employer proposes to have the election, nor any description of the flow of voters through the process, particularly since there appears to be only one point of ingress and egress. The Employer has proposed having either two voting sessions or one long session, but has not described how eligible employees will be released to vote, and whether there is adequate space for them to line up inside or outside the immediate polling area while maintaining social distancing. Also, the Employer

²⁰ See, e.g. *Atlas Pacific engineering Company*, Case 27-RC-258742 (May 8, 2020).

does not commit to providing the requisite eraser-less pens for the voters, the tape to seal the challenged ballot envelopes, or the myriad of other supplies recommended in GC 20-10. Moreover, the Employer has not provided evidence on whether it follows the guidelines of the CDPH for the operation of car repair facilities, which provisions may be particularly relevant in view of the fact that the employees in the petitioned-for unit in the parts department interface with the general public for most of the workday.²¹

Finally, although no employees in the parts department where the petitioned-for employees work have tested positive for COVID-19, some unspecified number have self-isolated after having been exposed to the virus. Even though they ultimately tested negative, there may be pre-symptomatic or asymptomatic employees in the department who, although they themselves show no symptoms, can still infect others. Also, four employees out of the approximately 150 employees in the facility have tested positive for COVID-19 since March: this is 2.6% of the workforce, which mirrors the percentage of infections in the county that resulted in a “Widespread” ranking. I also consider the fact that other employees may be infected or isolated as a result of exposure to someone who may be infected around the time of a manual election and thus not be able to come to the workplace to vote. Inasmuch as there is no provision for absentee voting in a manual election, they would be completely disenfranchised. A mail-ballot election would ameliorate this potential issue and ensure that all who were eligible would be able to cast a ballot.

Given all the foregoing facts, I find that the best way to limit potential 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”.²² 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, in counties that have very low rates of infection of COVID-19, and in workplaces with minimal or no infected employees.²³

In contrast to those cases, Fresno County, where the Employer’s facility is located, is the tenth largest county in California and the sixth largest in the United States with a population of

²¹ This factor is particularly relevant in view of the CDC’s acknowledgment that as many as half of diagnosed cases are transmitted by those who are pre-symptomatic or asymptomatic and the fact that the employees may have been unknowingly exposed to such carriers and become infected. See, for example, https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

²² 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.

²³ See *Purdue Foods LLC*, 370 NLRB No. 20 (Sept. 15, 2020), and *ClarkWestern Dietrich Building*, 01-RC-264014 (Unpublished) (Sept. 16, 2020), respectively.

just over 3.1 million. The State's Department of Public Health has put the infection rate there at "Widespread," and imposed constraints on conducting business while this rating is in effect. Furthermore, four of the Employer's employees are known to have contracted the virus, a percentage consistent with that throughout the county. The Board, in *Sea World of Florida, LLC*, Case 12-RC-257917 (Sept. 22, 2020) (unpublished) reiterated that it will continue considering whether manual elections should be considered based on the circumstances then prevailing in the Region charged with conducting that election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.

For the reasons discussed above, and after careful review of the circumstances prevailing in the Region and in the county where the Employer is located, as well as the Employer's failure to acknowledge that it would adhere to the suggested protocols set forth in GC 20-10, I am directing the petitioned-for *Armour-Globe* election be conducted by mail ballot as soon as practicable.

CONCLUSIONS

I have considered the evidence and the arguments of the parties, and I conclude that it is appropriate to hold an *Armour-Globe* 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 parties stipulated, and I so find that 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 herein.²⁴
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. Pursuant to Section 9(b) of the Act, the following group of employees petitioned for here constitute a distinct, identifiable segment of the Employer's employees, share a community of interest with, and are an appropriate, eligible voting group for an *Armour-Globe* election to be included in, the existing bargaining unit of employees of the Employer. The employees eligible to vote in this election are:

²⁴ The parties stipulated, and I so find, that the Employer is a California corporation with a place of business in Fresno, California, and is engaged in new and used truck sales, parts sales, and service. During the past 12 months, the Employer purchased and received goods or services valued in excess of \$50,000 directly from suppliers outside the State of California.

Included: All full-time and regular part-time parts department Admin Workers (Salaried Clerical-parts), Laborers and Helpers (Salaried Other Shipping-parts, Salaried Other Delivery-parts, Salaried Front Counter-Parts, Salaried Other-General Services), and Sales Workers (Salaried Front Counter-parts, Salaried Other Back Counter-parts, Compensation & Commissions-parts) employed by the Employer at its facility located at 2727 E. Central Ave., Fresno, CA.

Excluded: Managers, employees represented by a labor organization, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

4. If a majority of valid ballots are cast for the **International Association of Machinists and Aerospace Workers, District Lodge 190, Local Lodge 653**, they will be taken to have indicated the employees' desire to be included in the existing bargaining unit currently represented by the **International Association of Machinists and Aerospace Workers, District Lodge 190, Local Lodge 653**. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

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 **International Association of Machinists and Aerospace Workers, District Lodge 190, Local Lodge 653**.

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 **5:00 p.m. on Thursday, October 8, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 32. 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 **Thursday, October 15, 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 32 office at (510) 637-3300, or Nicholas L. Tsiliacos 510.671.3046, and request a ballot. The ballots will be commingled and counted by the Region 32 office at 10:00 a.m. on **October 30, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 32 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 18, 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 Petitioner waived its right to possess the voter list for 10 days prior to the date of the election and therefore tacitly 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 **October 5, 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. 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 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 1, 2020.



Valerie Hardy-Mahoney
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Region 32
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