UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

LINCARE INC.

Employer

and **Case 27-RC-266038**

TEAMSTERS LOCAL UNION NO. 455

Petitioner

DECISION AND DIRECTION OF ELECTION

On September 14, 2020,[1] Teamsters Local Union No. 455 (Petitioner) filed the instant representation petition under Section 9(c) of the National Labor Relations Act, as amended (Act), seeking to represent a unit of employees employed by Lincare Inc. (Employer) at its Fort Collins, Colorado facility (Employer's facility).[2] There are approximately 12 employees in the unit sought. A videoconference hearing was held on October 2 before a hearing officer of the National Labor Relations Board (Board). The only matter at issue is whether the election should be conducted by manual or mail ballot method. Pursuant to Board policy, election arrangements, including the voting method, are not litigable matters at a pre-election hearing, but the positions of the parties were solicited for consideration prior to the direction of an election. Petitioner maintains a mail ballot election is the appropriate choice under the circumstances present, while the Employer argues that a manual election can be conducted safely in a break room at its Fort Collins facility.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Having considered the entire record in this proceeding, relevant Board law, and the arguments of the parties I find the combination of the current pandemic and the circumstances surrounding the Employer's facility creates an extraordinary circumstance making a mail-ballot election appropriate in this case.

BACKGROUND

The State of Colorado, the United States, and the world are still in the midst of a global pandemic. Though many aspects of COVID-19 are not fully understood, the critical public health interventions for reducing the spread of the virus are well-established. The Centers for Disease Control and Prevention (CDC) emphasizes that "[t]he best way to prevent illness is to avoid being exposed to the virus," as there is currently no approved vaccine or antiviral treatment, and "[m]inimizing person-to-person transmission of SARS-CoV-2 is critical to reducing the impact of COVID-19." *How to Protect Yourself & Others.*[3] As a practical matter this has resulted in many Federal, state, and local government guidelines focusing on the same set of practices to

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[1] All dates are 2020 unless otherwise specified.
[2] The names of the parties are hereby amended consistent with Board Ex. 2.
[3] https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html

avoid respiratory person-to person transmission: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people. The CDC has also highlighted the risk posed by presymptomatic and asymptomatic transmission, stating "transmission in the absence of symptoms reinforces the value of measures that prevent the spread of [COVID-19] by infected persons who may not exhibit illness despite being infectious." *Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic.*[4] The CDC has stated that its "current best estimate" is that 50 percent of COVID-19 transmission occurs prior to the onset of symptoms, and that 40 percent of those infected with COVID-19 are asymptomatic. However, the CDC also recognizes that these estimates remains uncertain.[5] Despite efforts to limit transmission, as of October 16, over 8,250,000 people in the United States have been infected with COVID-19 and over 223,000 people have died.[6]

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 officials should "consider offering alternatives to in-person voting if allowed" and 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."[7] The CDC acknowledges the virus can survive for a short period on some surfaces, and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes, but adds due to the nature of the virus "it is unlikely to be spread from domestic or international mail, products or packaging." *Am I at risk for COVID-19 from mail, packages, or products*?[8] 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." *Running Essential Errands*.[9]

Nationally there has been a sharp increase in COVID-19 cases, with 414,106 new cases in the past seven days. Colorado is currently experiencing an uptick in cases or possibly even a "third wave" of infections. The Colorado COVID-19 data shows 84,582 cases, including 8,333 hospitalized.[10] This includes an increase of cases reported each day, an increase in new hospital admissions and an increase in the state positivity rate, among several other undesirable increases. Fort Collins is located approximately 65 miles north of Denver, Colorado, where the Regional Office is located. Fort Collins is the most populous city located in Larimer County, and Larimer county is the 6th most populous county in Colorado.[11] The Larimer County COVD-19

[4] https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article
[5] See https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html (last visited October 7, 2020).
[6] https://www.worldometers.info/coronavirus/country/us/
[7] https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html
[8] https://www.cdc.gov/coronavirus/2019-ncov/faq.html
[9] https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html
[10] https://covid19.colorado.gov/data
[11] https://demography.dola.colorado.gov/population/population-totals-counties/

Dashboard[12] provides up to date information on the number of cases and assigns a risk scores (low, medium, high) for each day. The risk score on October 21 is listed as "High" due to the increase in the number of cases in the previous 24 hours and the number of days in the past 14 days in which there were more than 15 new cases reported each day. The latest 14-day test positivity rate in Larimer County is 3.8, and the positivity rate varies for each county. The State's case tracking by county shows that Larimer County is currently 8th in the total number of COVID-19 cases.[13] Larimer county, located on the Front Range (east side) of the Rocky Mountains, is adjacent to Weld and Boulder counties, which are 6th and 7th in number of COVID-19 cases in Colorado.

THE EMPLOYER'S OPERATIONS

The Employer is a Critical Business within the meaning of Colorado's applicable Executive and Public Health Orders and remains so under the most recent Colorado Public Health Order. The Employer delivers home medical equipment services, such as oxygen and oxygen related equipment, to customers' homes, hospitals, and nursing homes. The Employer's facility is an office building with an entrance leading to a large open area. The Employer's four or five customer service representatives work at desks in one large room in this area. There is an office area for two sales representatives. There is a hallway to the breakroom and the breakroom is 20 by 30 feet. The breakroom has one door for ingress and egress. There is also a large warehouse area where the equipment and oxygen tanks are maintained.

The Employer's remaining employees, the service technicians and the senior service technicians,[14] are drivers who deliver the oxygen and other home medical equipment to patients' homes and other locations. The Employer's Exhibit A, Interim Health Guidance for Lincare Personnel, details the procedures the Employer utilizes to maintain workplace safety and the instructions for delivery and patient set-up and equipment pickups. The majority of the deliveries are made to patients and their caregivers in Larimer County, but there are some deliveries that are made to customers in the surrounding counties. Before the pandemic, the drivers normally brought the equipment into patients' homes and installed the equipment, but much of the work currently involves dropping off equipment and the oxygen on the doorsteps of the residents. There are limited situations when the service technicians will go into the patients' homes, following the procedures detailed in Employer's Exhibit A. The record does not disclose how frequent these in-home visits occur. The service technicians also make limited deliveries to nursing homes and hospitals, still following the same protocols and the deliveries are only drop-off at the nurses' station or front desk.

[12] https://www.larimer.org/health/communicable-disease/coronavirus-covid-19/larimer-county-positive-covid-19-numbers
[13] https://covid19.colorado.gov/data. See "Cases and deaths by county."
[14] Unless otherwise specified, I shall use "service technicians" to refer to both the service technicians and the senior service technicians.

POSITIONS OF THE PARTIES

Petitioner disputes the Employer's assertion that the service technicians do not have contact with customers because, in addition to deliveries, they are also responsible for repairs. If a machine stops working, technicians are required to go into the home to repair or replace the equipment. Petitioner contends that the service technicians are at a higher risk than other essential workers because they deliver and set up oxygen to patients, some of whom have tested positive for COVID-19, and some of whom could be asymptomatic and not aware that they are infected. Petitioner further contends that the service technicians meet with patients and their caregivers in hospital rooms, nursing homes, and in residences, and that these meetings can last anywhere from 35 minutes to three hours. In summary, Petitioner contends that given these extraordinary circumstances of the current state of the pandemic locally and given what the Employer's employees are exposed to in the course of the day, a mail ballot election is appropriate and warranted.

The Employer asserts that a manual election is preferable under long-standing established Board law and policy. In that regard, the Employer asserts that its voters are not scattered. The Employer contends that a manual election is both feasible and safe because the Employer has already implemented numerous protocols to ensure the health and safety of everyone, including the wearing of masks, temperature checks of employees twice each day, and frequent disinfection. The Employer also agrees to comply with all the suggestions set forth in GC Memo 20-10, Suggested Manual Election Protocols.[15] It further contends that the COVID-19 outbreak is controlled in Colorado and that infection rates in Fort Collins is lower than in many counties. The Employer has proposed single election date and a time of 7:30 a.m. to 10:30 a.m. to allow the eligible voters to vote in its breakroom, which is large enough to safely allow the Board agent, observers, and voters to be present. The Employer contends that some kind of release schedule could be fashioned to maintain social distancing. Alternatively, the Employer proposes that an election could be conducted at a nearby hotel.[16]

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[15] The Employer confirmed that a Board agent, two observers, and one voter, can all occupy the break room with a minimum of six feet between them and that it will place markings on the floor to remind and enforce social distancing. The Employer has agreed to remove any furniture in order to comply with the General Counsel's memo. The Employer committed to provide disposable pencils with no erasers to each voter, to provide glue sticks or tape to seal challenge ballot envelopes, to provide masks and gloves and hand sanitizers and wipes for everyone. The Employer further committed to erect plexiglass barriers of sufficient size to protect and separate the Board agent and the observers from voters and each other during the pre-election conference during the polling period and for the ballot count, although the Employer doesn't yet know where it will obtain the plexiglass. The Employer is prepared to certify between 48 and 24 hours before the election that the polling area was consistently cleaned in conformity with the established CDC hygienic and safety standards. The Employer is also prepared to certify between 48 and 24 hours before the election how many individuals have been in the facility in the 14 days preceding the election who have either tested positive for COVID-19, who have been directed by a medical professional to proceed as if they have tested positive for COVID-19, who are awaiting the results of a COVID-19 test, who have exhibited symptoms of COVID-19, or who have had direct contact with anyone who has tested positive for COVID-19. The Employer agreed to give a video tour of the location 24 hours before the election and to keep the voting location unoccupied for the 24 hours preceding the election.

[16] The Employer identified Homewood Suites, a hotel that is .03 miles from the Employer's facility, which has a 975 square foot conference room.

BOARD'S STANDARD

Section 11301.2 of the NLRB Casehandling Manual (Part Two) Representation Proceedings (Manual) provides, in part:

> The Board's longstanding policy is that representation elections should, as a general rule, be conducted manually. The Board has also recognized, however, that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done. In these instances, the regional director may reasonably conclude that conducting the election by mail ballot or a combination of mail and manual ballots would enhance the opportunity for all to vote.

The Manual sets forth several types of conditions favoring mail-ballot elections, including situations where eligible voters are "scattered," either geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. Finally, Section 11301.2 of the Manual states that "[u]nder extraordinary circumstances, other relevant factors may also be considered by the regional director," citing *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, the Manual indicates that a regional director may use discretion to order a mail-ballot election where conducting an election manually is not feasible and that, under extraordinary circumstances, the regional director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. *Ibid.*

In *San Diego Gas and Electric*, 325 NLRB 1143 (1998), the Board reviewed the circumstances under which it may be appropriate to direct a mail-ballot election. The Board's longstanding policy, as a general rule, is that representation elections should 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 elections shall be conducted. 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.

On April 17, the Board issued an announcement regarding the COVID-19 pandemic titled, "COVID-19 Operational Status," which states in pertinent part:

> 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. Regional Directors, in their discretion, may schedule hearings through

teleconference or videoconference, although the latter may involve delays due to limited availability.

On July 6, General Counsel Peter B. 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 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.

DISCUSSION AND DETERMINATION

The parties agree that employees do self-health screening each day, following the guidelines of Employer's Exhibit A, including taking their own temperatures, and that they report the results to a manager. The parties further agree that the Employer enforces its guidelines through a log in the facility, in which the employees affirm they have completed the screening and record their temperatures. While working, employees self-regulate their mask wearing and physical distancing. The Employer asserts, and Petitioner does not dispute, that there have been no health or safety issues and that no employees have tested positive.

As noted above, there is some disagreement between the parties regarding the extent to which and the degree to which the bargaining unit employees interact with the patients. However, the very nature of the Employer's business, providing home health equipment to patients who need it, gives me cause for caution. The service technicians likely interact, at least to some degree, with patients and their caregivers. The nature of the Employer's critical service to at-risk customers increases concern over its employees being exposed to additional risk that is not absolutely necessary.

With regards to the physical layout of the building, the Employer does not have any information about ventilation in the break room. The Employer confirmed that a Board Agent, two observers, and one voter, can all occupy the break room with a minimum of six feet between them and that it will place markings on the floor to remind and enforce social distancing. In order to vote, employees must enter the building and go through the customer service area and use the hallway that is used by all employees. The Employer envisions voters entering the breakroom through the one door and moving in a circular motion around the room: first going to the observers, then to the Board Agent for the ballot, then to the voting booth and ballot box, and then exiting through the same door.

I have carefully considered the suggestions in GC 20-10 and the Employer's assurances of the numerous actions that it will take to conduct a safe manual election. However, no actions can negate the inherent risk factors of congregating during the COVID-19 pandemic. A mail ballot election avoids the uncertainties created by COVID-19. Because the virus is believed to spread through presymptomatic and asymptomatic individuals and, although testing has become

more widespread, it has not reached a point where sending a Board agent to conduct the election would be risk-free from the exposure of everyone at the facility. 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 long and sustained period of time.

The General Counsel proposes self-certification for individuals in proximity to the polling place as well as identification of individuals exhibiting COVID-19 symptoms, and the Employer has agreed to these requirements, but I note again that the CDC's "current best estimate" is that 50% of COVID-19 transmission occurs while people are presymptomatic and 40% of people with COVID-19 are asymptomatic[17] and these individuals would neither be identified nor have sought testing. Moreover, 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.

The manual election proposed by the Employer in this case would require some proximity for the duration of a 3-hour polling session between Board agents, election observers, and voters. Before voting, voters are required to give their names to party observers, who usually check the name off the same voter list. Even if single-use disposable pens or pencils are used, a Board agent would give a fresh ballot to each eligible voter and voting would take place in a semi-enclosed booth before the marked ballot is placed in a sealed box. Each ballot would then be individually handled by the Board agent conducting the election and available for inspection by the party representatives. These procedures carry the risk of exposure for employees at the facility, party representatives, Board personnel, their families, and the community.

It therefore follows that conducting an election manually will expose participants to some risk of contracting the disease, including the Board agent and the non-employee representatives who might be present for any pre-election conference and on-site ballot count. The observers would be sitting with a Board agent in an enclosed room in the middle of the building, with only one door, for a prolonged amount of time, and will be visited by approximately twelve bargaining unit members. While the Employer has alternatively proposed that a hotel conference room be utilized, the increased size of the space – assuming it could be secured - is offset by the inability to ensure that a hotel has abided by certain protocols, including cleaning and placement of plexiglass dividers. Finally, inasmuch as it appears that some unit employees are driving to patients' homes throughout the day, it is unclear how a release schedule can be fashioned to ensure that voters would arrive with sufficient spacing. The Employer's proposed safeguards for a manual election are commendable, but COVID-19 is currently to be found everywhere, including in Larimer County and in Fort Collins. Given the possibility of asymptomatic spread, the risk of spreading the disease to employees performing an essential function, and to non-employee participants, is too great under these circumstances.

[17] "COVID-19 Pandemic Planning Scenarios" (updated September 10, 2020). https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html.

The Employer contends that the COVID-19 outbreak is well-controlled in both Colorado and Fort Collins and points out that the positivity rate Larimer County is lower that nearly all other major counties in Colorado. Reasonable people may disagree as to what constitutes a "well-controlled" outbreak during a pandemic, and that Larimer County's lower positivity rate compared to some other counties does not negate the risks or dangers present in Larimer County. As noted above, as of October 19, the Larimer County COVID dashboard, rates its Risk Score as "High." Furthermore, the Employer's website states and the record reflects that its Fort Collins location services other counties including Boulder, Morgan, and Weld counties.[18] Following the hearing in this matter, the data shows that the 7-day positivity rate in Colorado has trended upward, and is currently at 6.24%, now well above the positivity threshold of 5% utilized by public health experts to track infections. For the past seven days ending October 20, Colorado had 7,497 new COVID-19 cases, and is listed on the CDC website as 19th out of all states and U.S. territories for the number of new infections. While the Larimer County's positivity rate is currently below the state average, the trend is not encouraging in Larimer county, with the 14-day infection rate steadily increasing. In sum, I do not find that Larimer County is among those counties with a low risk of COVID infection.

Moreover, a mail ballot election will ensure that every employee can vote. Absent a mail ballot election, an employee who 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, will be deprived of their vote, as there is no absentee ballot or remote voting options under the Board's manual election rules. A mail ballot election avoids this pitfall and ensures that all have an opportunity to vote, regardless of their exposure to COVID-19 or health status.

I 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. In this regard, voting in Colorado for state and national elections has been conducted by mail ballot for many years, so voters are accustomed to voting by mail. Any mail ballot election includes and ensures procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. Importantly, 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. A mail ballot election meets the procedural safeguards necessary to ensure the fair and free choice of bargaining representatives by employees.

Ultimately, as GC Memo 20-10 recognizes, the decision to conduct the election by mail ballot is within my discretion. 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, and that the proposed manual election does not provide for sufficient safeguards under current conditions. For the above reasons, I find that a mail ballot election will eliminate the risk of unnecessarily exposing employees, Board agents, party representatives to COVID-19, and it will ensure that all of the bargaining unit employees have the opportunity to vote promptly and safely.

[18] https://www.lincare.com/Location-Map/moduleId/2040/controller/Location/action/LocationList?searchState=CO

CONCLUSION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[19]

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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 service representatives, senior service representatives, customer service representatives and senior customer service representatives employed by the Employer at its facilities located in Fort Collins, Colorado.
>
> Excluded: All other employees, sales representatives, office clerical employees, professional employees, guards and supervisors as defined in the Act, as amended.

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 Teamsters Local Union No. 455.

A. Election Details

[19] The Employer, Lincare Inc., is a Delaware corporation with a facility and principle place of business in Clearwater, Florida, as well as branch locations in multiple locations including Fort Collins, Colorado. The Employer is engaged in the business of distributing and servicing oxygen and related durable medical equipment. Within the past 12 months, a representative time period, the Employer, in conducting its medical equipment delivery operations, has provided goods and services valued in excess of $50,000 directly to customers outside the State of Colorado.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Friday, November 6, 2020, ballots will be mailed to voters from the National Labor Relations Board, Region 27, 1961 Stout Street, Suite 13-103, Denver, Colorado 80294. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, November 13, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 27 Office at (303) 844-3551 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Region 27 office on Friday, December 4, 2020, at 3:00 p.m. In order to be valid and counted, the returned ballots must be received at the Regional Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 11, 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.

C. Voter List

As required by Section 102.67(l) 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 **October 23, 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.nlrb.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.nlrb.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 to be issued following 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 must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.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 the circumstances concerning not having access to the Agency's E-Filing system 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.

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.

Issued at Denver, Colorado on this 21st day of October 2020

/s/ Paula Sawyer

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