

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

FLEX-N-GATE CHICAGO, LLC

Employer

and

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA - UAW**

Petitioner

Case 13-RC-265966

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (Act), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.¹

I. DECISION

No issues were raised concerning a question concerning representation.

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:²

Included: All full-time and regular part-time hourly production and maintenance employees, employed by the Employer at its facility located at 2924 East 126th Street, Chicago, Illinois.

¹ Upon the entire record in this proceeding, the undersigned finds:

- 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.
- 3) The Petitioner is a labor organization within the meaning of Section 2(5) the Act.
- 4) The Petitioner claims to represent certain employees of the Employer in the unit described in the petition it filed herein, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- 5) There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend that there is any contract bar to this proceeding.
- 6) 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.

² The parties stipulated that employees in the Team Lead position shall vote under challenge. See Sec. 102.64(a) of the Board's Rules and Regulations.

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

Others Permitted to Vote: At this time, no decision has been made regarding whether employees classified as Team Lead are included in, or excluded from, the bargaining unit. For the reasons set forth above, I have determined that individuals in these classifications may vote in the election, but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

There are approximately 434 eligible voters in the unit, plus about 25 Team Leads.

II. CONCLUSION

Based on the foregoing and the entire record herein,³ I find that it is appropriate to conduct an election in the unit set forth above.

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 Union, United Automobile, Aerospace and Agricultural Implement Workers of America - UAW.

1. Election Details

I direct the election be conducted by mail ballot. Since, pursuant to Section 102.66(g)(1) of the Board's Rules and Regulations, the type of election is not a litigable issue, my rationale for directing a mail ballot election is set forth in a separate letter.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 p.m. on **Tuesday, October 27, 2020**, from the National Labor Relations Board, Region 13, 219 South Dearborn Street, Suite 808, Chicago, Illinois. 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 by mail and do not receive a ballot in the mail by November 3, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

³ The Employer filed a brief setting forth its arguments as to why a manual election should be conducted in this matter. However, as noted, under the Board's Rules and Regulations, the type of election is not a litigable issue.

Ballots will be due on **Friday, November 20, 2020**. All ballots will be commingled and counted on **Tuesday, November 24, 2020** at 10:00 a.m. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

2. 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.

3. 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 October 15, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not 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.

4. 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

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

III. 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.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), 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.

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. 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 13, 2020

/s/Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board, Region 13
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