

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

ANTIOCH TIRE D/B/A/ TREDROC TIRE SERVICES, LLC,

Employer,

and

Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

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**THE EMPLOYER'S REQUEST FOR REVIEW**

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In accordance with Rules and Regulations of the NLRB, §102.69(c)(2) and §102.67(c), (29 C.F.R. Part 102.69(c)(2) and 102.67(c) Antioch Tire, d/b/a Tredroc Tire Services, the Employer in the above-captioned matter, respectfully submits its Request for Review of the decision by Region 13 certifying the election results in the above-captioned matter. The Region's decision to order a mail ballot election is attached as **Exhibit 1**. The Employer's Objections to the Election and its Offer of Proof are attached as **Exhibit 2**. The Region's decision not to conduct a hearing, overruling the objections, and certifying the results of the election is attached as **Exhibit 3**. In support of this Request for Review, the Employer states as follows:

1. On August 12, Region 13 ordered that the election in the above matter would be conducted by mail ballot, with ballots mailed to eligible voters on Wednesday, August 14. See **Exhibit 1**.<sup>1</sup>

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<sup>1</sup> The Board denied the Employer's Request for Review of the Region 13's decision to order a mail ballot election on August 19, 2020.

2. As of August 14, there were twelve (12) eligible voters in the proposed bargaining unit. **See Exhibit 2.**

3. The return deadline for the ballots to the Region was September 14, with the ballots then counted by Zoom video conference on September 16. Rather than returning the ballots locally to the Chicago regional office, the ballots were to be mailed to Minneapolis. **See Exhibit 3.**

4. The Board's decision in *Guardsmark, LLC*, 363 NLRB No. 103 (2016) added an additional twenty-four (24) hour prohibition on mandatory employer meetings for mail ballot elections, holding that employers were barred from conducting mandatory meetings with employees twenty-four (24) hours prior to the ballots being mailed to employees.

- a. The Board's majority opinion rationalized this decision as making the twenty-four hour ban consistent with the twenty-four hour ban on mandatory massed employee meetings for manual/in-person elections under *Peerless Plywood*, 107 NLRB 427 (1953). The practical effect was to create an even longer ban on otherwise lawful employer free speech in connection with mail ballot elections. In this case, for example, the Employer was prohibited from conducting mandatory meetings with its employees concerning the Union's representation petition for the period Tuesday, August 13, through September 14 – a period of over one month.
- b. In contrast, the Petitioner was able to, and likely did, continue conducting meetings with employees during this same period to attempt to persuade employees to vote in favor of union representation.
- c. During the COVID-19 pandemic, application of this arbitrary rule has infringed on numerous employers' free speech rights under Section 8(c).

5. There are compelling reasons for the Board to re-visit the Board policies relating to the ban on mandatory employer meetings (so-called “captive audience” meetings) in connection with mail ballot elections as held in *Guardsmark, LLC*, 363 NLRB No. 103 (2016):

- a. Given the gap in time between the mailing of ballots by the NLRB’s regions, and employees choosing to return their completed ballots, the rule is overly broad, paternalistic and infringes on employer rights under Section 8(c) and the First Amendment.
- b. In addition, the rule gives unions an unfair advantage as unions remain free to conduct meetings, including in-home visits, up until the return date for ballots. This is wholly inconsistent with the stated rationale under *Guardsmark and Peerless Plywood*.
- c. The rationale for *Peerless Plywood* is that given that most manual/in person elections are conducted at the employee’s work location, “last-minute speeches...have an unwholesome and unsettling effect and tend to interfere with that sober and thoughtful choice which a free election is designed to reflect 107 NLRB at 429.”
- d. Insulating the entire period when mail ballots may be pending, as well as the twenty-four hour period prior to ballots being mailed imposes significant time restrictions on employers in contrast to manual elections, which seems particularly unnecessary given that in a mail ballot election, employees have the right to contemplate and make their ultimate decision on union representation at home and away from the employer’s place of business. A shorter ban on mandatory employer conducted meetings tied to the deadline for

*receipt by the Region of completed ballots would achieve the Board's goal of ensuring employee free choice without unduly limiting otherwise lawful employer free speech.*

- e. For example, as noted, the Employer here was prohibited from conducting meetings with employees for over one month (August 13-September 14) which substantially impacted the Employer's ability to communicate with its employees under Section 8(c) while the Union remained free to conduct meetings and at-home visits with employees. This month long ban is hardly consistent with the underlying rationale of *Peerless Plywood*, which determined that massed campaign speeches *immediately before ballots are cast* give an unfair advantage to the party that "obtains the last most telling word." *Guardsmark LLC*, citing *Peerless Plywood*, 107 NLRB at 429.
- f. In light of the high number of mail-in ballots being ordered by the Regions during the COVID-19 pandemic, application of this rule has interfered with both the Employer's (as well as numerous other employers subject to mail ballot elections) right to lawfully communicate with groups of their employees under Section 8(c).

6. In addition, the tabulation of ballots resulted in 6 "yes" votes in favor of representation by Local Lodge 701, and 5 "no" votes against representation by Local Lodge 701.

**See Exhibit 3.**

7. Given the 11 ballots counted by the Region, one eligible employee's ballot was either not received or counted by the Region. The Employer's Director of Operations had personal

familiarity with the employee population, and personal knowledge of the identity of the employee whose ballot was either not received or counted. **See Exhibit 3.**

8. That employee later confirmed to the Employer's Director of Operations that he had in fact completed and mailed in a ballot in accordance with the instructions provided with the ballot. Rather than returning the ballots locally to Chicago however, for inexplicable reasons, the ballots were to be mailed to the Minneapolis regional office. **See Exhibit 3.** Ultimately, this employee's ballot was either not received or counted by the Region. **See Exhibit 3.**

9. It is the Employer's understanding that the employee voted against union representation. Assuming the Region received and processed this ballot, it would have resulted in a 6-6 vote in connection with the election in this matter, with Local Lodge 701 having not received a majority of the ballots cast. **See Exhibit 3.**

10. There are well-documented articles summarizing the numerous problems with the United States Postal Service, particularly in the Chicago metro area.<sup>2</sup>

11. Based on the foregoing, it is clear the ballots counted on September 16 do not accurately reflect the sentiments of the employees concerning union representation and a re-run election is required.

12. The Region rejected the Employer's objections, finding the objections did not raise issues warranting a hearing, and concluding that it could not keep the balloting period open "indefinitely" (which was not requested by the Employer). **See Exhibit 3.**

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<sup>2</sup> <https://chicago.cbslocal.com/2020/08/19/postal-service-problems-impact-chicago-area-processing-centers-mail-is-going-to-be-delayed/>

<https://abc7chicago.com/mail-missing-usps-chicago-in/6356583/>

<https://patch.com/illinois/chicago/postal-service-shrugs-chicago-mail-delivery-complaints>

<https://www.cnn.com/2020/08/20/business/postal-service-small-business/index.html>

WHEREFORE, based on the foregoing, the Employer requests that its Request for Review be granted, and that the NLRB order a new election in this matter and overrule *Guardsmark, LLC*, 363 NLRB No. 103 (2016). The Employer's brief in support of this Request for Review is attached.

Dated: October 14, 2020



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

ANTIOCH TIRE D/B/A/ TREDROC TIRE SERVICES, LLC,

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Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

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**THE EMPLOYER’S BRIEF IN SUPPORT OF ITS REQUEST FOR REVIEW**

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Antioch Tire, d/b/a/ Tredroc Tire Services, LLC, the Employer in the above-captioned matter, respectfully submits this Brief in Support of its Request for Review.

**I. The Board’s Decision in *Guardsmark, LLC*, 363 NLRB No. 103 (2016) Should Be Reconsidered as it Infringes on Employer Free Speech Under Section 8(c) and The First Amendment.**

The Board’s decision in *Peerless Plywood*, 107 NLRB 427 (1953) addressed the Board’s concern that “last minute speeches by either employers or unions delivered to massed assemblies of employees on company time have an unwholesome and unsettling effect and tend to interfere with that sober and thoughtful choice which a free election is designed to reflect. 107 NLRB at 429. *Oregon Washington Telephone*, 123 NLRB 339 (1959) then extended this doctrine to mail ballot elections, finding that the ban on mass meetings on employer time began at the time the ballots were mailed to employees.

In *Guardsmark, LLC*, 363 NLRB No. 103 (2016), the Board overruled *Oregon Washington Telephone, Co.*, 123 NLRB 339 (1959) and created a “bright line” rule that added an additional twenty-four (24) hour prohibition on mandatory employee meetings, holding that employers were

barred from conducting mandatory meetings with employees twenty-four (24) hours prior to the ballots being mailed to employees. The Board's stated rationale for overruling 50 years of precedent was to create a "bright line" rule for mail ballot elections that was consistent with the twenty-four hour ban on mandatory employee meetings prior to a manual/in-person election under *Peerless Plywood*, 107 NLRB 427 (1953).

There are compelling reasons for the Board to re-visit the Board policies relating to the ban on mandatory employer meetings (so-called "captive audience" meetings) in connection with mail-in ballot elections as held in *Guardsmark, LLC*, 363 NLRB No. 103 (2016). While the underlying goals of *Peerless Plywood* and *Guardsmark* are important (balancing employer freedom of speech with protection of employee free choice), the practical effect of *Guardsmark* in this case (as well as other mail ballot elections) was to create an even longer ban on otherwise lawful employer free speech in connection with mail ballot elections. In this case, for example, the Employer was prohibited from conducting mandatory meetings with its employees concerning the Union's representation petition for the period Tuesday, August 13 through September 14 – a period of over one month. In contrast, the Petitioner was able to, and likely did, continue conducting meetings with employees during this same period to attempt to persuade employees to vote in favor of union representation.

During the COVID-19 pandemic, application of this arbitrary rule has infringed on numerous employers' free speech rights under Section 8(c). Given the gap in time between the mailing of ballots by the NLRB's regions, and employees choosing to return their completed ballots, the rule is overly broad, paternalistic and infringes on employer rights under Section 8(c) and the First Amendment.<sup>3</sup> In addition, the rule gives unions an unfair advantage as unions remain

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<sup>3</sup> See 29 U.S.C. § 158(c) ("The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of

free to conduct meetings, including in-home visits, up until the return date for ballots. This is wholly inconsistent with the stated rationale in *Guardsmark* and the underlying decision in *Peerless Plywood*. The rationale for *Peerless Plywood* is that because most manual/in person elections are conducted at the employee’s work location, “last-minute speeches...have an unwholesome and unsettling effect and tend to interfere with that sober and thoughtful choice which a free election is designed to reflect 107 NLRB at 429. In particular, the Board was concerned about the “mass psychology” created by so-called captive audience meetings in the hours before a union election was conducted. *Id* at 429. The *Peerless Plywood* rule thus balances the employer’s right to communicate with employees via massed meetings and employee free choice, but the need for this balancing is due, in part, to the fact that most manual elections are conducted at the employer’s premises. Thus, the rule was seen as necessary to create an insulated period for “sober and thoughtful choice” consistent with a free election to be conducted on the employer’s premises.

In contrast, for mail ballot elections, insulating the entire period when mail ballots may be pending, as opposed to a shorter period tied to the deadline for the return of the ballots, makes little sense and imposes restrictions on employers not present during a manual election. This is particularly true given that in a mail ballot election, employees have the right to contemplate and then make their decision on union representation at home and away from the employer’s place of business. The end result in this case was a month long ban on otherwise lawful employer group meetings. This month long ban was hardly consistent with the underlying rationale of *Peerless*

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the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefit.”); U.S. Const., Amend. 1 (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech...”). It is well-established that the NLRB must attempt to avoid conflicts with the First Amendment. *United Brotherhood of Carpenters and Joiners of American, Local Union No. 1506*, 355 NLRB 797 (2010) (finding display of stationary banner implicated core First Amendment considerations, and finding such conduct lawful to avoid conflict with First Amendment).

*Plywood*, that massed campaign speeches *immediately before* ballots are cast in a manual election give an unfair advantage to the party that “obtains the last most telling word.” *Guardsmark LLC*, citing *Peerless Plywood*, 107 NLRB at 429. Indeed, application of *Guardsmark* in this case provided a substantial advantage to the union, which as noted, was permitted to conduct home visits and group meetings up until the final day of balloting (September 14).

In light of the high number of mail-in ballots being ordered by the Regions during the COVID-19 pandemic, application of this rule has interfered with this Employer’s rights to lawfully communicate with their employees under Section 8(c), as well as numerous other employers who have been subject to a mail ballot election. Accordingly, the Employer requests that the Board reconsider *Guardsmark, LLC*, overrule the same, and hold that a more limited period for banning mandatory group meetings during a mail ballot election is appropriate (such as seven days before the deadline for ballots being returned). This more limited time period would still provide ample opportunity for employees to contemplate their decision away from the workplace, and with “sober and thoughtful choice”. *Peerless Plywood*, 107 NLRB at 429.

## **II. The Balloting as Conducted by Region 13 Does Not Reflect Employee Free Choice.**

The Employer also objected to the Region’s conduct of the balloting in this matter. As noted in its objections, on August 12, Region 13 ordered that the election in the above matter would be conducted by mail ballot, with ballots mailed to eligible voters on Wednesday, August 14. As of August 14, there were twelve (12) eligible voters in the proposed bargaining unit. The return deadline for the ballots to the Region was September 14, with the ballots then counted by Zoom video conference on September 16. However, rather than returning the ballots to Region 13, the employee ballots were to be mailed to Minneapolis, with the ballot count conducted by the Minneapolis regional office. The Regional Director’s stated rationale was because there were concerns about timely delivery of mail in the Chicago area. **See Exhibit 3.** In fact, there are well-

documented issues with the United States Postal Service, particularly in the Chicago metro area.<sup>4</sup> However, given these well-documented issues, the Regional Director's insistence on a mail ballot election, as well as a decision to have ballots mailed in Chicago, but returned to a different state, was puzzling to say the least.

In any event, the ballot count was conducted via a Zoom video conference and was attended by the Employer's Director of Operations. A total of 11 ballots were received in Minneapolis, with the tabulation of ballots resulted in 6 "yes" votes in favor of representation by Local Lodge 701, and 5 "no" votes against representation by Local Lodge 701. Given the 11 ballots counted by the Region, one eligible employee's ballot was either not received or counted by the Region. The Employer's Director of Operations had personal knowledge of the identity of the employee whose ballot was either not received or counted. That employee later voluntarily confirmed to the Employer that he had in fact completed and mailed in a ballot in accordance with the instructions provided with the ballot. It is the Employer's understanding that the employee voted against union representation. **See Exhibit 2.**

Assuming the Region received and processed this ballot, it would have resulted in a 6-6 vote in connection with the election in this matter, with Local Lodge 701 having not received a majority of the ballots cast. Thus, based on the foregoing, it is clear the ballots counted on September 16 do not accurately reflect the sentiments of the employees concerning union representation and a re-run election is required.

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<sup>4</sup> <https://chicago.cbslocal.com/2020/08/19/postal-service-problems-impact-chicago-area-processing-centers-mail-is-going-to-be-delayed/>

<https://abc7chicago.com/mail-missing-usps-chicago-in/6356583/>

<https://patch.com/illinois/chicago/postal-service-shrugs-chicago-mail-delivery-complaints>

<https://www.cnn.com/2020/08/20/business/postal-service-small-business/index.html>

The Regional Director's decision rejects this objection, citing *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850 (5th Cir. 1978), *cert. denied* 439 U.S. 893 (1978), for the general premise that "It cannot be said that an election by mail is per se invalid whenever a potentially decisive number of votes . . . is lost through the vagaries of mail delivery." *Id.* at 855. The Employer is not claiming that an election by mail is per se invalid. However, the Region was presented with evidence that the Union does not, in fact, represent a majority of the employees, and that one employee who completed his ballot, did not get it counted. While the Region is not responsible for the delivery of the mail, and ensuring receipt of completed ballots, it is responsible for ensuring that the vote was fairly conducted, and that a majority of employees do in fact, wish for union representation. It did not do so in this case. Accordingly, the Employer respectfully requests that the Board grant this request for review, and order a re-run election. *National Silver Co.*, 71 NLRB 594 (1946) (Reynolds, concurring) (concurring in overruling the Employer's Objections to the Conduct of the Election, noting "I do so, however, because of a conviction that the results which we are thereby approving convincingly represent an accurate expression of the collective bargaining desires of the majority of the employees involved"); *Shower Brothers Co.*, 13 NLRB 829 (1939) (ordering representation election on the grounds that "substantial doubt exists as to the desires of the majority of the employees in the appropriate unit with respect to representation.").

### **CONCLUSION**

Based on the foregoing facts, authorities and arguments, the Employer respectfully requests that this Request for Review be granted, that the Board reverse the Regional Director's Certification of the Election results, and order a new election and reverse the Board's previous decision in *Guardsmark, LLC*, 363 NLRB No. 103 (2016) which held that employers are barred from holding mandatory group meetings of employees twenty-four hours before ballots are mailed

during a mail ballot election, and revisit what time period, if any, is necessary during a mail ballot election for any such ban of mandatory group meetings of employees.

Dated: October 14, 2020



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**EXHIBIT 1 –**  
**The Region’s Decision and**  
**Direction of Election**

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

**ANTIOCH TIRE, INC., d/b/a TREDROC TIRE  
SERVICE**

**Employer**

**and**

**Case 13-RC-263043**

**LOCAL LODGE 701, INTERNATIONAL  
ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (Act), a hearing was held 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.<sup>1</sup>

**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:

**Included:** All full-time and regular part-time road service truck tire employees and shop tire technicians, including inside technicians, outside technicians, OTR technicians and route drivers, employed at 2450 Lunt Avenue, Elk Grove Village, Illinois 60007.

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

There are approximately 13 eligible voters in the unit.

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<sup>1</sup> 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.
- 3) The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
- 4) The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.
- 5) 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.

## II. CONCLUSION

Based on the foregoing and the entire record herein,<sup>2</sup> I find that it is appropriate to conduct an election in the unit set forth above.

## III. 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 Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL-CIO.

### A. Election Details

I direct that the election be conducted by mail ballot. Since pursuant to the Board's Rules and Regulations, Section 102.66(g)(1), 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 **Wednesday, August 19, 2020**, from the National Labor Relations Board, Region 13, 219 S. Dearborn Street, Suite 808, Chicago, IL 60604. 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 August 26, 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).

Ballots will be due on **Monday, September 14, 2020**. All ballots will be commingled and counted on **Wednesday, September 16, 2020** at 10:00 a.m. via videoconference. In order to be valid and counted, the returned ballots must be received in 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 weekly payroll period ending **August 9, 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

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<sup>2</sup> 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.

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(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 **August 14, 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](http://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](http://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 accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the 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.

#### **RIGHT TO REQUEST REVIEW**

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>3</sup> A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Although neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties

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<sup>3</sup> On October 21, 2019, the General Counsel issued GC Memorandum 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

Antioch Tire, Inc., d/b/a TredRoc Tire Service  
Case 13-RC-263043

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 at Chicago, Illinois this 12th day of August 2020.

*/s/ Paul Hitterman*

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Paul Hitterman, Acting Regional Director  
National Labor Relations Board, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027

**EXHIBIT 2 –**  
**The Employer’s Objections to**  
**the Election and Its**  
**Offer of Proof**

**UNITED STATES OF AMERICA  
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Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

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**THE EMPLOYER’S OBJECTIONS TO ELECTION**

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In accordance with Rules §102.66(c) and § 102.69(a)(8), Antioch Tire, d/b/a Tredroc Tire Services, the Employer in the above-captioned matter, respectfully submits its objections to the election conducted by Region 13 in the above-captioned election. In support of its objections, the Employer states as follows:

1. On August 12, Region 13 ordered that the election in the above matter would be conducted by mail ballot, with ballots mailed to eligible voters on Wednesday, August 14.
2. As of August 14, there were twelve (12) eligible voters in the proposed bargaining unit.
3. The return deadline for the ballots to the Region was September 14, with the ballots then counted by Zoom video conference on September 16.
4. The Zoom video conference was attended by Gil Applegate, the Employer’s Director of Operations. The tabulation of ballots resulted in 6 “yes” votes in favor of representation by Local Lodge 701, and 5 “no” votes against representation by Local Lodge 701.

5. Given the 11 ballots counted by the Region, one eligible employee's ballot was either not received or counted by the Region. Given his personal familiarity with the employee population, Mr. Applegate had personal knowledge of the identity of the employee whose ballot was either not received or counted.

6. That employee later confirmed to Mr. Applegate that he had in fact completed and mailed in a ballot to Region 13 in accordance with the instructions provided with the ballot. However, that ballot was either not received or counted by the Region.

7. It is the Employer's understanding that the employee voted against union representation. Assuming the Region received and processed this ballot, it would have resulted in a 6-6 vote in connection with the election in this matter, with Local Lodge 701 having not received a majority of the ballots cast.

8. There are well-documented articles summarizing the numerous problems with the United States Postal Service, particularly in the Chicago metro area.<sup>1</sup>

9. Based on the foregoing, it is clear the ballots counted on September 16 do not accurately reflect the sentiments of the employees concerning union representation and a re-run election is required.

10. The Employer's Offer of Proof is being filed separately in accordance with the Rules and Regulations of the NLRB § 102.66(c) and § 102.69(a)(8) and is not being served on Local Lodge 701 in accordance with the Rules and Regulations of the NLRB.

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<sup>1</sup> <https://chicago.cbslocal.com/2020/08/19/postal-service-problems-impact-chicago-area-processing-centers-mail-is-going-to-be-delayed/>

<https://abc7chicago.com/mail-missing-usps-chicago-in/6356583/>

<https://patch.com/illinois/chicago/postal-service-shrugs-chicago-mail-delivery-complaints>

<https://www.cnn.com/2020/08/20/business/postal-service-small-business/index.html>

WHEREFORE, based on the foregoing, the Employer requests that its objections be investigated by the Region, and upon confirmation of the same, order a re-run election in the above-captioned matter.

Dated: September 23, 2020



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Mark L. Keenan

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of September, 2020, the foregoing was e-filed with the Regional Director via the NLRB Portal, and a copy of the foregoing was served upon the following via electronic mail:

William J. LePinske  
Grand Lodge Representative  
International Association of Machinists and Aerospace Workers, AFL-CIO  
District 10  
1901 S. Meyers Road, Suite 210  
Oakbrook Terrace, Illinois 60181  
wlepinske@iamaw.org

William H. Haller  
Associate General Counsel  
International Association of Machinists and Aerospace Workers, AFL-CIO  
9000 Machinists Place, Room 202  
Upper Marlboro, Maryland 20772  
whaller@iamaw.org



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Mark L. Keenan

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

ANTIOCH TIRE D/B/A/ TREDROC TIRE SERVICES, LLC,

Employer,

and

Case No. 13-RC-263043

LOCAL LODGE 701, INTERNATIONAL ASSOCIATION  
OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO,

Petitioner.

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**THE EMPLOYER'S OFFER OF PROOF**

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**Employer Witness Gil Applegate, if called to testify, would testify to the following:**

- Mr. Applegate serves as the Employer's Director of Operations and has personal familiarity with the employees eligible to vote in the above-captioned representation proceeding. Mr. Applegate attended the Zoom video conference conducted by the NLRB for the ballot counting as the Employer's representative. Mr. Applegate was aware that one ballot was missing from the eligible employees given that only 11 ballots were counted by the Region, and that there were 12 eligible voters. Mr. Applegate was also aware that the employee whose ballot was missing was Andrew Lund.
- After the ballot counting, Mr. Lund asked Mr. Applegate about the outcome of the voting, and Mr. Applegate informed Mr. Lund that the Union had won by a 6-5 vote, and that the Region had either not received or processed and counted a ballot from Mr. Lund.
- Mr. Lund voluntarily disclosed to Mr. Applegate that he had in fact completed and mailed in a ballot which was apparently not received, processed or counted by the Region.
- Mr. Applegate requested that Mr. Lund complete a short statement confirming that he had completed and timely mailed a ballot to Region 13. A true and correct copy of Mr. Lund's statement is attached as Exhibit 1.
- Mr. Lund also voluntarily disclosed to Mr. Applegate that he had voted against representation by the Petitioner (Local Lodge 701). Had the Region received and processed this ballot, it would have resulted in a 6-6 vote in connection with the election in this matter, with Local Lodge 701 having not obtained a majority of the ballots cast.

- There are well-documented articles summarizing the numerous problems with the United States Postal Service, particularly in the Chicago metro area.
- Based on the foregoing, it is clear the ballots counted on September 16 do not accurately reflect the sentiments of the employees concerning union representation and a re-run election is required.

**Employer Witness Andrew Lund, if called to testify, would testify to the following:**

- Mr. Lund would testify that he received, completed and timely returned the NLRB ballot for the above-matter, and that he voted against union representation.

Dated: September 23, 2020



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Mark L. Keenan

# **Exhibit 1**

9/22/2020

TO WHOM IT MAY CONCERN:

I, ANDREW LUND, AM WRITING THIS LETTER TO STATE AN EXTREME GRIEVANCE I AM HAVING WITH HOW THE UNION VOTE HAPPENED. I RECEIVED MY BALLOT IN THE MAIL AROUND THE WEEK OF AUG 17<sup>TH</sup>. I COMPLETED MY VOTE/BALLOT AND MAILED IT OUT AROUND THE 26<sup>TH</sup> OR 27<sup>TH</sup> OF AUG, WHEN THE DRO. GFL INFORMED ME MY BALLOT DIDN'T EXIST, I WAS IN COMPLETE SHOCK, I DON'T UNDERSTAND HOW THIS WOULD OF HAPPENED. AND WOULD LIKE TO KNOW WHERE MY BALLOT IS AND WHY IT WAS NOT COUNTED.

A. Lund  
ANDREW LUND

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of September, 2020, the foregoing was e-filed with the Regional Director via the NLRB Portal.

A handwritten signature in black ink, appearing to read 'MLK', is written above a horizontal line.

Mark L. Keenan

**EXHIBIT 3 –**  
**The Region’s Decision on**  
**Objections and Certification**  
**of Representative**

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

**ANTIOCH TIRE, INC., d/b/a, TREDROC TIRE  
SERVICE LINES, INC.**

**Employer**

**and**

**Case 13-RC-263043**

**LOCAL LODGE 701, INTERNATIONAL  
ASSOCIATION OF MACHINISTS &  
AEROSPACE WORKERS, AFL-CIO**

**Petitioner**

**DECISION ON OBJECTIONS  
AND CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Decision and Direction of Election, a mail-ballot election was conducted in this matter. The ballots were mailed to voters on Wednesday, August 19, 2020. Ballots were due on Monday, September 14, 2020.

The ballot count took place on Wednesday, September 16, 2020, with the parties participating by videoconference call. The tally of ballots showed that of the approximately 12 eligible voters, 6 cast ballots for Petitioner and 5 voters cast a ballot against representation. Therefore, the Petitioner received a majority of the votes counted.

The Employer timely filed one objection to the conduct of the election. I have considered the Employer's objection and offer of proof. As discussed below, the Employer's objection does not raise any facts or arguments requiring that the election be set aside. Accordingly, I am overruling the objection and issuing a Certification of Representative.

**I. The Objection**

The Employer's objection is based on the lack of receipt of one of the twelve eligible voters ballots. It states that the outcome could have changed had that ballot been received and counted.

Eleven of the twelve eligible voters in this election cast ballots that were received by the Regional office and counted. For reasons not known, the remaining eligible voter's ballot was not received by the Regional office prior to the count despite claims that the voter did mail in his ballot pursuant to the instructions. The Employer does not raise any objections to the processing of the election by the Agency or to the conduct of any party either before, during, or after the conducting of the election. Consequently, the only issue before me is whether the results of the election should

be overturned based solely on the fact that the ballot of one of the twelve voters was not received by the Region before the count<sup>1</sup>.

This election was conducted by U.S. Mail and ballots were returned to the Agency's Region 18 Minneapolis Office where the count was conducted via Zoom on September 16<sup>th</sup>. Region 13 conducted several mail ballot elections this summer where ballots were returned to Region 18 Minneapolis due to concerns about timely delivery of mail in the Chicago area. In the instant case, there were 28 days between mailing out of ballots and the count, and the participation rate was 92%.

The Board accepts all mail ballots received before the scheduled ballot count even if they arrive after the due date. However, in balancing employee choice and finality of election results, ballots received after the count are not counted. Absent that limitation, election results could well be delayed for significant periods of time as mail ballots trickle into the Regional Office. *Classic Valet*, 363 NLRB No. 23 (2015). Further, the fact that the number of ballots in this situation are determinative is not a reason to set aside the election. In *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850 (5th Cir. 1978), cert. denied 439 U.S. 893 (1978), the 5<sup>th</sup> Circuit enforced the Board's Order<sup>2</sup> stating, "It cannot be said that an election by mail is *per se* invalid whenever a potentially decisive number of votes . . . is lost through the vagaries of mail delivery." (*Id.* at 855).

Even assuming the employee in the instant case did mail in his ballot well in advance of the count, it remains that the ballot was not received, and we must adhere to the Board's policy of reaching finality of results. While the Employer cites to issues with the delivery of mail by the United States Postal Service in the Chicago area, the objection does not take issue with the receipt of the ballot by the voter in the Chicago area but rather the lack of receipt of the marked ballot by the Regional Office in Minneapolis. While eleven of the twelve ballots were received, the reason for the lack of receipt of the remaining ballot is not known.

## **II. Conclusion**

Based on the above, I overrule the objection, and I shall certify the Petitioner as the representative of the appropriate bargaining unit described below.

### **Certification of Representative**

**IT IS HEREBY CERTIFIED** that the majority of the valid ballots have been cast for Local Lodge 701, International Association of Machinists & Aerospace Workers, AFL-CIO, and that it is the exclusive representative of all the employees in the following bargaining unit:

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<sup>1</sup> As of the date of this decision the disputed ballot has not been received.

<sup>2</sup> 227 NLRB 1347 (1977)

**Included:** All full-time and regular part-time road service truck tire employees and shop tire technicians, including inside technicians, outside technicians, OTR technicians and route drivers, employed at 2450 Lunt Avenue, Elk Grove Village, Illinois 60007.

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

### **Request for Review**

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision which may be combined with a request for review of the regional director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **October 14, 2020**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

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](http://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.

Dated this 30<sup>th</sup> day of September 2020

*/s/ Peter Sung Ohr*

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Peter Sung Ohr, Regional Director  
National Labor Relations Board, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of October, 2020, the foregoing Request for Review and Brief in Support were e-filed with the Office of Executive Secretary/Board, and a copy of the foregoing were served upon the following parties via electronic mail:

William J. LePinske  
Grand Lodge Representative  
International Association of Machinists and Aerospace Workers, AFL-CIO  
District 10  
1901 S. Meyers Road, Suite 210  
Oakbrook Terrace, Illinois 60181  
wlepinske@iamaw.org

William H. Haller  
Associate General Counsel  
International Association of Machinists and Aerospace Workers, AFL-CIO  
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Peter Sung Ohr  
Regional Director  
National Labor Relations Board, Region 13  
Dirksen Federal Building  
219 South Dearborn Street, Suite 808  
Chicago, Illinois 60604-2027  
peter.ohr@nlrb.gov



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Mark L. Keenan (Georgia Bar No. 406830)