

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 15**

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**BLUES CITY BREWERY, LLC**

**Employer**

**and**

**Case 15-RC-265044**

**BAKERY, CONFECTIONERY, TOBACCO  
WORKERS AND GRAIN MILLERS  
INTERNATIONAL, AFL-CIO, CLC  
LOCAL 149**

**Petitioner**

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**DECISION AND DIRECTION OF ELECTION**

By its August 24, 2020 petition filed under Section 9(c) of the National Labor Relations Act (the Act), as amended, Bakery, Confectionery, Tobacco Workers and Grain Millers International, AFL-CIO, CLC Local 149 (Petitioner) seeks to represent all full-time and regular part-time production and maintenance employees employed by Blues City Brewery, LLC<sup>1</sup> (Employer) at its 5151 Raines Road, Memphis, Tennessee facility. The parties have stipulated, and I find, that the agreed upon unit described above is appropriate for purposes of collective bargaining.

A hearing was held by Zoom on September 14, 2020<sup>2</sup> before a hearing officer of the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned, and I hereby make the following findings.

**I. ISSUE TO BE DECIDED**

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<sup>1</sup> The correct legal names for the Petitioner and Employer as used herein, and captioned above, appears as stipulated by the parties at hearing.

<sup>2</sup> Hereinafter all dates occurred in 2020, unless otherwise noted.

The only issue presented in this matter, as discussed in more detail below, is how and when the election should be conducted. Election voting method is not a litigable issue at a pre-election hearing, but in light of the challenges caused by the COVID-19 pandemic, I allowed the parties to present their positions as to the mechanics of this election by oral argument at the hearing. I have carefully considered the record evidence, as well as the positions and arguments presented by the parties on this single issue. For the reasons discussed below, I find that a prompt mail ballot election should be conducted in light of the continuing extraordinary circumstances presented by the COVID-19 pandemic.

## II. FACTS

At the outset, I take administrative notice of the current public health crisis in the United States created by the COVID-19 pandemic. The COVID-19 virus is infecting people and spreading easily from person to person. While the current infection numbers are down from the peak—with 66,000 cases *per day* being reported from July 18 through July 26—the 7-day moving average is presently spiking.<sup>3</sup> On September 12, the 7-day moving average in the United States was 34,371 case per day, however, as of October 13, that number has risen sharply to 51,392 cases per day. *Id.* I also take administrative notice of the information, guidance and recommendations of the Centers for Disease Control and Prevention (CDC), an agency of the United States government.<sup>4</sup> The CDC states:

[t]he virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet). COVID-19

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<sup>3</sup> <https://www.cdc.gov/covid-data-tracker/#trends> (last visited on October 13, 2020)

<sup>4</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

seems to be spreading easily and sustainably in the community (“community spread”) in many affected geographic areas.<sup>5</sup>

Additionally, “COVID-19 can be spread by people who do not have symptoms and do not know that they are infected.” *Id.* Importantly, the CDC has instructed that cloth face coverings are not a substitute for proper social distancing.<sup>6</sup> The CDC further states that it is unlikely that the coronavirus will be spread from domestic or international mail, products or packaging.<sup>7</sup> To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: “[a]fter 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.”<sup>8</sup>

As of October 14, the pandemic has resulted in at least 220,538 confirmed COVID cases, along with 2,828 confirmed deaths, in the State of Tennessee where a manual election in this case would be held.<sup>9</sup> On March 12, Tennessee Governor Bill Lee declared a coronavirus-related public health emergency in the State, and shortly thereafter issued a series of orders that restricted public gatherings, restricted the movement of individuals throughout the state, closed non-essential businesses, as well as a Stay at Home order, all with the intent to protect Tennesseans and to mitigate the spread of COVID-19 by decreasing the opportunities for transmission of the virus and in an effort to decrease the risk of community spread. On April 28, Governor Lee issued an Order allowing for the phased re-opening of much of Tennessee. Since that time, Tennessee has been largely re-opened, except for certain restrictions on restaurants and bars throughout the State.

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<sup>5</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics>

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#How-to-Protect-Yourself>

<sup>8</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>.

<sup>9</sup> <https://experience.arcgis.com/experience/885e479b688b4750837ba1d291b85aed> (last visited on October 14, 2020)

Since the State of Tennessee began its phased reopening of the economy, though, like many states it has seen a noticeable spike in the number of confirmed cases. Those cases continue to rise. As of October 13, the 7-day moving average for cases in Tennessee is 1,922, the highest average since August 3.<sup>10</sup> Indeed, within the last 10 days, the 7-day moving average has risen dramatically from 1,173 to 1,922. *Id.* Tennessee currently ranks sixth in the United States with 13,454 new cases of COVID in the last seven days.<sup>11</sup> Currently, the State's positivity rate is 8.73 percent. *Id.*

Moreover, Shelby County—where the Employer's facility is located—has been the hardest hit county in the State of Tennessee. As of October 13, there have been 33,167 positive cases within the County (15.2 percent of all cases statewide), with 540 of those cases resulting in death (19.3 percent of all deaths statewide).<sup>12</sup> On October 12, Shelby County reported 334 new cases, the highest single-day number of cases since August 7. *Id.* Based on the most recent data, Shelby County Health Department chief epidemiologist Dr. David Sweat has stated that the county is in the midst of a “fall wave of COVID-19.”<sup>13</sup> Locally, the City of Memphis still cites to CDC recommendations to cancel or postpone gatherings of more than 50 individuals.<sup>14</sup>

There are approximately 523 eligible voters in the petitioned-for unit. Further, the record is clear that the petitioned-for unit employees work in a facility that has incurred transmission of the virus. As of the hearing date, 46 employees have tested positive for COVID-19 at some point throughout this pandemic; 1 employee was being quarantined due to possible contact with a positive case; and two employees were awaiting test results. Accordingly, a manual election

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<sup>10</sup> [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases) (last visited October 14, 2020)

<sup>11</sup> [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesinlast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesinlast7days) (last visited October 14, 2020)

<sup>12</sup> <https://www.tn.gov/health/cedep/ncov/data/county-data-snapshot.html> (last visited October 14, 2020)

<sup>13</sup> <https://www.commercialappeal.com/story/news/local/the-901/2020/10/14/shelby-county-seeing-second-fall-wave-covid-19-901/3649269001/>

<sup>14</sup> <https://covid19.memphistn.gov/>

would involve bringing nearly 525 eligible voters, party representatives, and multiple Board Agents together to participate in an election being conducted in a facility with known positive cases.

### **III. POSITIONS OF THE PARTIES**

#### **A. The Employer's Position**

The Employer argues for a manual election to be directed in this case. To begin with, the Employer proposes a manual election to be conducted in an approximately 5,600 square foot ballroom within the facility. In order to comply with various social distancing and safety guidelines, the Employer proposes that employees will utilize a long hallway to approach the ballroom and will use a separate entrance and exit to access, and depart from, the polling location. Moreover, the Employer proposes: that all participants will wear face masks; hand sanitizer and Plexiglas barriers will be available and used throughout the duration of the election; social distancing marks will be placed on all floors to remind voters to adhere to social distancing guidelines; and single-use writing utensils will be provided, as will all other necessary personal protective equipment. To accommodate necessary sanitizing protocols, the Employer suggests that the manual election be conducted over three days with a total of 42 hours (14 hours per day) for voting.

Based on the above, the Employer argues that it can, and will, comply with all of the guidelines suggested in General Counsel Memorandum 20-10. The Employer argues that an election can be held safely at its facility. Finally, the Employer asserts that manual elections are the Board's preferred method for voting.

#### **B. The Union's Position**

The Union submits that this matter should be conducted via mail-ballot. Citing to various virus-related transmission data, the Union argues that it is not safe to conduct a manual election at this time. Moreover, the Union argues that community spread continues to occur in Shelby County. Finally, the Union argues that because asymptomatic cases account for a large portion of virus transmission, there is a heightened risk of transmission if a manual election is directed.

#### **IV. ANALYSIS AND FINDINGS**

##### **A. Board Law and Guidance**

Section 11301.2 of the Board's Casehandling Manual (Representation) 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 Section 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. This Section 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 the 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.

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.

The Board has already applied the guidelines in *San Diego Gas & Electric* to the extraordinary circumstances created by the COVID-19 pandemic in numerous unpublished Orders, including on May 8 in *Atlas Pacific Engineering Company*, Case 27-RC-258742. There, the Regional Director in Region 27 directed a mail-ballot election notwithstanding the employer’s argument that a manual election could be safely conducted among engineering employees at its facility. The Board stated that in determining whether the COVID-19 pandemic constituted an extraordinary circumstance, the Regional Director properly considered the detailed plan for conducting a manual election in a safe manner proposed by the Employer. The Board then denied the employer’s request for review of the Regional Director’s Decision and Direction of Election, stating:

[i]n finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework . . . . Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.<sup>15</sup>

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<sup>15</sup> *Atlas Pacific Engineering Company*, 27-RC-258742, at fn. 1 (May 8, 2020).

Furthermore, and as referenced above, the General Counsel recently issued guidance as it pertains to manual elections being conducted during this pandemic. In his memorandum, the General Counsel provides suggested manual election protocols for conducting manual elections in this current environment. Importantly, the General Counsel reaffirmed, on multiple occasions in his four-page memorandum, that Regional Directors have authority delegated by the Board to make initial decisions about when, how, and in what manner all elections are conducted.

According to the General Counsel, Regional Directors:

have made, and will continue to make, these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locally.

**B. A Mail-Ballot Election is Warranted**

The circumstances surrounding the COVID-19 virus are nothing but extraordinary. Given the extraordinary circumstances caused by the continuous spreading of COVID-19 that still exist in the United States and particularly Shelby County and the State of Tennessee as well as the Employer's facility, I find it appropriate to exercise my discretion to direct a mail ballot election in this case. Not only do I derive such discretion from extant case law, the Board and General Counsel have specifically emphasized Regional Director's discretion in directing elections during these unprecedented times.

In so finding, I have considered the Employer's proffered plan to safely run a manual election at its facility, and while I acknowledge and appreciate the careful consideration paid to this issue by the Employer, I find that its election arrangements are inadequate under these extraordinary circumstances. Of significant importance in this case is the location where the petitioned-for unit employees work, namely a facility with 46 confirmed COVID-19 cases and

where multiple employees recently were either forced to quarantine or were awaiting test results as of the hearing date. To be clear, conducting a manual election in this case at the Employer's facility would require me to knowingly direct nearly 525 eligible voters, party representatives, and Board Agents to enter—and stay for over 40 hours throughout the course of three days—a facility that has experienced virus transmission. Doing so would also subject petitioned-for employees to further risk of exposure beyond what they experience on a daily basis during their working hours, as there is no record evidence that the entire petitioned-for unit participants in group gatherings at this time. I am not willing to do so, given the clear alternative available in a mail-ballot election.

Even though the Employer intends to take precautions to attempt to ensure safety, a manual election would place employees, observers, and Board Agents in very close proximity to each other for a substantial period of time. As discussed above, to account for social distancing and the proper sanitizing of common-touch surfaces, the Employer has proposed a three-day, 42-hour election. Pre-COVID-19, an election of this size and nature, although large, would not need such a lengthy voting period. Accordingly, while the Employer argues that it is able to meet the guidelines announced by the General Counsel in Memorandum 20-10, it fails the very first protocol—i.e. polling times procedures for releasing voters must be sufficient to accommodate social distancing/cleaning requirements, without endangering participants by unnecessarily elongating exposure among Board Agents and observers. While this election is certainly large, I find that the proposed election length to accommodate social distancing and proper sanitizing practices will unnecessarily elongate exposure among Board Agents and observers.

Furthermore, manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board Agent(s), all of whom must be present at

the Employer's facility. All but the voters would need to gather for the pre-election conferences, including the check of the voter list and the parties' inspection of the voting areas. The Board Agent(s) and observers would then share a voting area for the duration of the proposed manual election, an exposure sufficient to risk exposure to the virus. The observers would need to check in voters on the voter list, and the Board Agent(s) would provide a ballot to each voter.

While it is contemplated that all participants will wear masks and face coverings, there are circumstances recognized by the Governor of Tennessee where face coverings cannot be worn, for instance for individuals with medical issues, and thus it is entirely possible that at some point in this election, certain participants will be gathered within 6 feet of each other without facial coverings. Furthermore, should voters fail to heed the 6-foot markers or proper social distancing guidelines, there is a distinct risk of many voters—larger than the 50-person threshold suggested by the CDC and the City of Memphis—congregating in an indoor, confined space. In either circumstance, the risk of exposure to all participants is significant.

I appreciate that employees have continued to safely work throughout this pandemic, however, we cannot equate normal, everyday work-day contacts between employees that the Employer has complete control of, with a manual election that requires the processing of nearly 525 employees in a single, indoor room. Moreover, challenged ballot procedures necessarily require the Board Agent(s), observers, and challenged voters to share a confined and close-proximity space to deal with each challenged ballot. Further, at the conclusion of the election, the Board Agent(s) will conduct the vote count in the same voting space, with the observers, party representatives, and other employees who wish to attend.

Additionally, there is no way to prevent employees who may be asymptomatic carriers of the virus from entering the facility and interacting with other voters, observers, and the Board

Agents conducting the election. Further, there is no evidence that the Employer conducts temperature screenings, or any details regarding the Employer's protocols for dealing with potentially COVID-19-positive employees. It is now well-established, although the exact percentage is uncertain, that a significant percentage of individuals infected with COVID-19 will remain asymptomatic and display no symptoms.<sup>16</sup> 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, infected individuals could participate in the election, unknowingly exposing co-workers, party representatives, observers, and the Board Agents, who, along with the observers, will be in the voting area for a sustained and lengthy period of time. A mail ballot election eliminates this risk.<sup>17</sup> I am simply unwilling to risk the health of the voters, the party representatives, the Board Agents, and the broader community-at-large.

The environment created by this pandemic is nothing if not unique and unpredictable, and the resultant risks of proceeding to a manual election in these extraordinary times can be alleviated with a mail ballot election. Voting by mail ballot in this case eliminates any concern that employees, party representatives, or the Board Agents assigned to conduct the election would be placed at risk of contracting this virus due to the high number of person-to-person contacts that will take place during a manual election. It also alleviates any undue stress of entering a facility with known positive COVID-19 cases. Indeed, a mail ballot election will allow all petitioned-for employees the opportunity to vote safely.

The Board recognized in *San Diego Gas & Electric*, supra, that extraordinary circumstances may be cause for a Regional Director to direct voting by mail ballot in situations

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<sup>16</sup> "COVID-19 Pandemic Planning Scenarios" (updated July 10, 2020). U.S. Centers for Disease Control and Prevention. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>

<sup>17</sup> A mail ballot election also removes the risk that an employee, immediately prior to the election, may be forced to self-quarantine due to exposure to a positive case, thereby preventing that employee from voting during the election.

other than the three outlined by the Board in that decision. What makes the current pandemic truly an “extraordinary circumstance” is the day-to-day uncertainty and rapidly evolving environment in which we find ourselves. As businesses have reopened and people around the State of Tennessee have reentered a less-restricted public life, community spread of COVID-19 has increased. This up-tick in community spread as led to state-wide mask-mandates, continuation of mandatory 14-day quarantines for positive COVID cases, prohibition on all non-work related gatherings of any size that cannot maintain a consistent six-foot distance between persons, and the continued restrictions on business that have reopened. Moreover, the data is clearly that at this time, virus transmission is rapidly on the rise. As discussed above, this election necessitates the gathering of individuals at a time, and in a location, where it is recommended that gatherings be restricted to 50 people or fewer due to the high-risk-of-transmission assessment of the CDC and the City of Memphis. It would also necessitate the gathering in a facility with confirmed cases of COVID-19; an unnecessary risk given the clear alternative.

Based on the risk factors discussed above, and the continued uncertainty that this pandemic creates, I have determined that voting by mail significantly decreases the risk of COVID-19 transmission among election participants as compared to an in-person manual election. While long-standing Board policy favors manual elections, mail ballot elections continue to be an often-utilized voting method and continue to have their place in circumstances where manual elections are prohibitively challenging, including the extraordinary circumstances caused by this global pandemic.

## V. ADDITIONAL FINDINGS

Based upon the entire record in this matter, including the stipulations of the parties, I also conclude and find as follows:

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

The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act based on the following stipulated commerce facts:

The Employer is a limited liability company incorporated in the State of Tennessee with an office and place of business in Memphis, Tennessee where it is engaged in the production and sale of beer. Within the past twelve (12) months, a representative period, the Employer purchased and received goods and materials at its Memphis, Tennessee facility valued in excess of \$50,000 directly from points located outside the State of Tennessee. Based on this, the Employer is engaged in commerce that affects commerce within the meaning of Section 2(6) of the Act.

The Union is a labor organization within the meaning of Section 2(5) of the Act.

There is no collective-bargaining agreement covering any of the petitioned-for employees, and there is no contract or other bar in existence which would preclude processing this petition to an election.

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.

The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** all full-time and regular part-time production and maintenance employees employed by the Employer at its Memphis, Tennessee facility located at 5151 Raines Road, Memphis, Tennessee;

**Excluded:** all quality assurance (QA) technicians, office clerical employees, guards, and supervisors as defined by the Act.

## **VI. CONCLUSION**

The risks of COVID-19 are somewhat unknown and, while these employees are required to appear at work because no other alternative exists for them, there is an alternative to a manual election – a mail-ballot election. A mail-ballot election would limit and/or avoid all in-person contact between the Board Agents, observers, and voters, and avoid those same individuals congregating in a facility where known COVID-19 transmission exists. Therefore, in an effort to ensure the safety of everyone during the ongoing pandemic, I believe a mail-ballot election is warranted.

## **VII. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the groups found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Bakery, Confectionery, Tobacco Workers and Grain Millers International, AFL-CIO, CLC Local 149. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### Eligibility to Vote

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, 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.

#### List of Eligible voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 US 759 (1969). Accordingly, it is hereby directed that within 2 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before October 22, 2020. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever

proper objections are filed. The list may be submitted by facsimile transmission to 504-589-4069. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

#### **VIII. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](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.

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 20, 2020

/s/ M. Kathleen McKinney by par  
**M. KATHLEEN McKINNEY**  
**REGIONAL DIRECTOR**  
**NATIONAL LABOR RELATIONS BOARD**  
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