

RECORD NOS. 20-1152; 20-1179

ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED
In the
United States Court of Appeals
For the District of Columbia Circuit



NATIONAL HOT ROD ASSOCIATION,

Petitioner,

– v. –

NATIONAL LABOR RELATIONS BOARD,

Respondent.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND CANADA,
AFL-CIO, CLC,

Intervenor for Respondent.

PETITION FOR REVIEW FROM THE NATIONAL LABOR RELATIONS
BOARD IN CASE NOS. NLRB-29CA254128 AND NLRB-22RC18662

BRIEF OF INTERVENOR FOR RESPONDENT

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**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NATIONAL HOT ROD ASSOCIATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS, ARTISTS
AND ALLIED CRAFTS OF THE UNITED
STATES, ITS TERRITORIES AND CANADA,
AFL-CIO, CLC

Intervenor for
Respondent.

No. 20-1152; 20-1179

**CERTIFICATE OF PARTIES AND AMICI, RULINGS UNDER
REVIEW, AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1)(A) of the United States Court of Appeals for the District of Columbia Circuit, the Intervenor International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of The United States, Its

Territories and Canada, AFL-CIO, CLC certifies the following:

I. Parties and Amici

All parties and intervenors appearing before the National Labor Relations Board (“NLRB”) and in this Court are listed in the Brief filed by Respondent NLRB on October 28, 2020. There are no amici in this matter.

II. Rulings Under Review

References to the rulings at issue appear in the Brief filed by Respondent NLRB on October 28, 2020.

III. Related Cases

The case on review was not previously before this Court or any other court.

The NLRB filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit (NLRB v. National Hot Rod Association, Case No. 20-72209) with respect to the NLRB’s decision in National Hot Rod Association, 369 NLRB No. 110 (June 23, 2020). That case, which involves substantially the same parties and similar issues as this case, has been stayed pending resolution of this case.

Dated: November 4, 2020
New York, New York

/s/ Denis P. Duffey Jr.

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Intervenor International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of The United States, Its Territories and Canada, AFL-CIO, CLC (“IATSE”) makes the following disclosures:

Non-governmental party to this action: IATSE

Parent corporation(s): None

Publically-held corporation that owns 10% or more of party’s stock:

None

Party’s general nature and purpose: The IATSE is a labor organization within the meaning of Section 301 of the Labor-Management Relations Act (29 U.S.C. § 185) and is an unincorporated association. The IATSE has been certified by the National Labor Relations Board as the representative of certain employees of the Petitioner.

Party’s members who have issued shares or debt securities to the public: None

Dated: November 4, 2020
New York, New York

/s/ Denis P. Duffey Jr.

Denis P. Duffey Jr.

Counsel for Intervenor IATSE

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
GLOSSARY	1
STATEMENT OF JURISDICTION.....	2
STATEMENT OF THE ISSUES.....	2
RELEVANT STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	4
ARGUMENT	4
I. Standard of Review and Applicable Principles.....	4
II. The Board Acted Well Within Its Discretion in Conducting the Election Here and Upholding the Election Results	5
A. The Board Did Not Prevent Timely Receipt of Ballots From Todd Veney or Patrick Ward	8
B. The Board Did Not Deprive Robert Logan or Paul Kent of Their Chance to Vote	10
C. NHRA Failed To Carry Its Burden of Establishing Any Other Material Election Irregularity Attributable to the NLRB.....	12
III. The Board Properly Refused to Count Ballots Received After the Ballot Tally	16

IV. NHRA’s Remaining Contentions Lack Merit 18

CONCLUSION 21

CERTIFICATE OF COMPLIANCE 22

CERTIFICATE OF FILING AND SERVICE..... 23

TABLE OF AUTHORITIES

<u>Case</u>	<u>Page</u>
<i>Antelope Valley Bus Co., Inc. v. NLRB</i> , 275 F.3d 1089 (D.C. Cir. 2002)	4, 5, 7, 10, 12, 18, 19
<i>Barceloneta Shoe Corp.</i> , 171 NLRB 1333 (1968) <i>enforced mem.</i> , 1970 U.S. App. LEXIS 10682 (1st Cir. 1970)	17
<i>Davis & Newcomer Elevator Co.</i> , 315 NLRB 715 (1994).....	15, 19
<i>Durham Sch. Servs., LP v. NLRB</i> , 821 F.3d 52 (D.C. Cir. 2016)	4
<i>Family Serv. Agency S.F. v. NLRB</i> , 163 F.3d 1369 (D.C. Cir. 1999).....	5
<i>Garda World Security Corp.</i> , 356 NLRB 594 (2011).....	18
<i>Garda CL Atlantic, Inc. v. NLRB</i> , Nos. 17-1200, 17-1214, 2018 U.S. App. LEXIS 13939, (D.C. Cir. May 22, 2018).....	18
<i>J. Ray McDermott & Co. v. NLRB</i> , 571 F.2d 850 (5th Cir. 1978) cert. denied 439 U.S. 893, 99 S. Ct. 250 (1978)	8, 12
<i>Kirsch Drapery Hardware</i> , 299 NLRB 363 (1990).....	15
<i>Kwik Care Ltd. v. NLRB</i> , 82 F.3d 1122 (D.C. Cir. 1996)	5

<i>Lemco Constr., Inc.</i> , 283 NLRB 459 (1987).....	12, 16
<i>NCR Corp. v. NLRB</i> , 840 F.3d 838 (D.C. Cir. 2016)	7, 15, 16, 17
<i>NLRB v. A.J. Tower</i> , 329 U.S. 324, 67 S. Ct. 324 (1946).....	4
<i>NLRB v. Downtown BID Servs. Corp.</i> , 682 F.3d 109 (2012)	4
<i>Oneida County Community Action Agency, Inc.</i> , 317 NLRB 852 (1995).....	19
<i>Queen City Paving</i> , 243 NLRB 71 (1979).....	17n
<i>Sitka Sound Seafoods, Inc. v. NLRB</i> , 206 F.3d 1175 (D.C. Cir. 2000)	15
<i>T&L Leasing</i> , 318 NLRB 324 (1995).....	17
<i>Visiting Nurses Ass’n of Metro. Atlanta</i> , 314 NLRB 404 (1994).....	9, 20n
<i>Versail Mfg.</i> , 212 NLRB 592 (1974).....	20n
<i>Waste Mgmt. of Nw. Louisiana, Inc.</i> , 326 NLRB 1389 (1998).....	20n
<i>Watkins Constr. Co.</i> , 332 NLRB 828 (2000).....	7n, 16
<i>Wolverine Dispatch</i> , 321 NLRB 796 (1996).....	18

Statutes

29 U.S.C. § 160(e) 4

GLOSSARY

“NHRA” or “Employer”	National Hot Rod Association
“JA”	Joint Appendix
“Manual”	NLRB Casehandling Manual
“IATSE” or “Union”	International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC
“NLRA or “Act”	National Labor Relations Act
“NLRB” or “Board”	National Labor Relations Board
“Pet. Br.”	Brief of Petitioner National Hot Rod Association
“Election Agreement”	Stipulated Election Agreement
“Election Notice”	NLRB Notice of Election, Instructions to Employees Voting by U.S. Mail

STATEMENT OF JURISDICTION

Intervenor International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC, (“Union” or “IATSE”) hereby adopts the Statement of Jurisdiction set forth by the Respondent / Cross-Petitioner, National Labor Relations Board (“NLRB” or “Board”) in its brief before the Court in Case Nos. 20-1152 and 20-1179.

STATEMENT OF THE ISSUES

Intervenor IATSE hereby adopts the Statement of the Issues set forth by the Respondent / Cross-Petitioner NLRB in its brief before the Court in Case Nos. 20-1152 and 20-1179.

RELEVANT STATUTORY PROVISIONS

All applicable statutes, etc. are contained in the Addendum to the Brief for Respondent NLRB.

STATEMENT OF THE CASE

Intervenor IATSE hereby adopts the Statement of the Case set forth by the Respondent / Cross-Petitioner NLRB in its brief before the Court in Case Nos. 20-1152 and 20-1179.

SUMMARY OF ARGUMENT

Petitioner National Hot Rod Association (“NHRA”) and the Union expressly agreed to a mail ballot election conducted under the NLRB’s supervision. Congress gave the NLRB broad discretion in conducting representation elections under the National Labor Relations Act (“NLRA”). Under long-standing Board precedent, a party has a heavy burden of proving an election should be set aside. The Board here found that NHRA put forth insufficient evidence that Board-caused irregularities damaged the election’s reliability. Rather, the Board’s agents conducted the election under the parties’ Stipulated Election Agreement (the “Election Agreement”) and standard NLRB practices, ensuring that employees had reasonable opportunities to vote. The Board acted within its discretion in upholding the election results and certifying the Union.

NHRA claims nonetheless that the Board should have opened and counted ballots that arrived after the tally. This would conflict with the parties’ voluntary Election Agreement. It would also depart from existing Board precedent and this Court’s holdings. Accordingly, the Board properly certified the Union and the Employer has violated the

Act by refusing to bargain with the Union. The Board is now entitled to enforcement of the Board's order.

ARGUMENT

I. Standard of Review and Applicable Principles.

The Board has broad discretion over its election procedures. *NLRB v. A.J. Tower*, 329 U.S. 324, 330, 67 S. Ct. 324, 328 (1946); accord *Antelope Valley Bus Co., Inc. v. NLRB*, 275 F.3d 1089, 1095 (D.C. Cir. 2002). “If the Board’s decision to certify a union is consistent with its precedent and supported by substantial evidence in the record,” this Court will not disturb it. *NLRB v. Downtown BID Servs. Corp.*, 682 F.3d 109, 112 (D.C. Cir. 2012) (citing 29 U.S.C. § 160(e)). This Court “is without authority to impose upon the NLRB the kind of election procedures that it may deem most appropriate.” *Antelope Valley*, 275 F.3d at 1095. So long as the Board adhered to fair procedures and reached a rational conclusion based on the record, this Court will uphold the Board’s decision. *Durham Sch. Servs., LP v. NLRB*, 821 F.3d 52, 58 (D.C. Cir. 2016) (citing cases).

A party seeking to set aside an election, like NHRA here, “carries a heavy burden.” *Antelope Valley*, 275 F.3d at 1095 (quoting *Kwik Care Ltd. v. NLRB*, 82 F.3d 1122, 1126 (D.C. Cir. 1996)). To meet its burden, the objecting party must present more than conclusory allegations of misconduct or speculative claims of irregularity. Specific evidence is required and this “fact-intensive determination [is] especially suited for Board review.” *Family Serv. Agency S.F. v. NLRB*, 163 F.3d 1369, 1377 (D.C. Cir. 1999) (citation omitted).

The Board here correctly found that NHRA failed to present evidence of misconduct or irregularity that compromised the integrity of the election and required its rerun. The Board did not abuse its broad discretion and the Court should defer to the Board’s decision certifying the Union.

II. The Board Acted Well Within Its Discretion in Conducting the Election Here and Upholding the Election Results.

The Board took reasonable steps to ensure that individuals had an opportunity to vote. NHRA failed to identify any irregularity or misconduct attributable to the Board that undermined the election’s validity.

The parties entered a stipulated election agreement governing the election mechanics. The Election Agreement specified that ballots would “be mailed to employees . . . from the office of [NLRB] Region 22, on Tuesday, November 15, 2016.” (JA 15.) The mailing date also appeared in an official Board notice of election distributed to employees. (JA 18.) The Election Agreement further provided that voters “must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by 5:00 p.m. on Wednesday, November 30, 2016.” (JA 15.) The Election Agreement provided that an eligible voter who does not receive a mail ballot should “contact the Region 22 office by no later than 5:00 p.m. on Tuesday, November 22, 2016.” (JA 15.) The Election Notice repeated that instruction. Voters who “did not receive a ballot in the mail by Tuesday, November 22, 2016” were to “communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (973) 645-2100 or our national toll-free line at 1-866-667-NLRB.” (JA 18.)

Following its longstanding practice, the Board counted every ballot in its custody as of the December 2 tally.¹ The Board's regional office also distributed duplicate ballots to every voter who requested one before that date. (JA 114-19.) The NLRB mailed over 100 initial and duplicate ballots. (JA 118-19; 126-35.) None were returned to the NLRB's office as undeliverable. Seven people (including two who did not appear on the NHRA-supplied voter list) who requested duplicate ballots successfully returned them in time for the December 2 tally. (JA 112; 118-19; 126-35.)

While the Union ultimately prevailed in the election by one vote, voter participation was high. Ballots returned by the December 2 tally represented a participation rate over 72%. *See NCR Corp. v. NLRB*, 840 F.3d 838, 843 (D.C. Cir. 2016) (citing *Antelope Valley*, 275 F.3d at 1095-96) (noting high participation when upholding Board's election procedures).

¹ The NLRB will count mail ballots arriving after the due date so long as they are received before the scheduled tally. *Watkins Constr. Co.*, 332 NLRB 828, 828 (2000).

A. The Board Did Not Prevent Timely Receipt of Ballots From Todd Veney or Patrick Ward.

NHRA did not meet its burden of proving that the Board was responsible for any problems surrounding Todd Veney's ballot. While Veney returned his ballot via expected two-day delivery on November 28, 2016, it did not reach the regional office until December 5. (JA 108; 122-23.) NHRA offered no evidence that the delay was attributable to the Board. Before this Court NHRA again offers no argument whatsoever that the Board's handling of Veney's ballot was irregular or defective. Veney was not prevented from voting by the NLRB.

Veney's ballot simply did not reach the regional office on time. It was *expected* for December 1, 2016 delivery; but *expected* does not mean *guaranteed* as NHRA suggests. (JA 108; Pet. Br. 30 n.13.) Under Board precedent, Veney's experience provides no basis for setting aside the election. *J. Ray McDermott & Co. v. NLRB*, 571 F.2d 850, 855 (5th Cir. 1978), cert. denied 439 U.S. 893, 99 S. Ct. 250 (1978) ("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.")

The Election Notice informed employees that they were responsible for diligently returning their ballots. During the election

period, Veney left home “for Thanksgiving” on an unspecified date. (JA 37:1-2.) When he returned his ballot “was there.” (JA 37:2-3.) It arrived when Veney was not home to complete it. (JA 222.) Veney never contacted the Board at any point (before or after leaving for Thanksgiving) to request a duplicate ballot. The Board found these facts notable. (JA 222.) As the Board stated, employees have some responsibility for “overcoming obstacles and casting a ballot.” (*Id.*) See *Visiting Nurses Ass’n of Metro. Atlanta*, 314 NLRB 404, 404-05 (1994). Veney’s holiday travel was an obstacle of his own making.

Similarly, no Board conduct prevented Patrick Ward from casting a timely ballot. As it did with Veney, the Board took reasonable steps to give Ward an adequate opportunity to vote. The regional office sent Ward an initial ballot on November 15, 2016. (JA 15; 135.) The Board then responded to Ward twice during the election by mailing duplicate ballots on November 23 and November 29, 2016, respectively. (JA 118-19.) Ward returned a ballot on December 1, 2016 but it did not reach the regional office until after the tally. (JA 115; 118; 120-21.)

Ward did not testify before the Board and consequently NHRA offered no evidence whatsoever to suggest that Ward’s failure to timely

return his ballot until December 1 was attributable to any party or to the Board. The NHRA thus fell short of meeting its heavy burden.

Having granted Ward sufficient opportunities to vote (by sending him a total of three ballots), the Board's procedures were sufficient. *See Antelope Valley*, 275 F.3d at 1094-95.

Veney and Ward did not encounter any election irregularities attributable to the NLRB. The Board did not deprive them of their right to cast a timely ballot. It granted each of them the same opportunity as every other voter. As discussed below at Point III, the Board adhered to the Election Agreement and longstanding precedents by refusing to count their late ballots.

B. The Board Did Not Deprive Robert Logan or Paul Kent of Their Chance to Vote.

NHRA also failed to carry its heavy burden of proof as to its contentions about Robert Logan and Paul Kent's voting experiences. NHRA's allegations about Logan and Kent did not establish any irregularity resulting from Board misconduct that could provide a basis to set the election aside.

NHRA alleges that the Board did not respond to Robert Logan and Paul Kent's ballot requests promptly enough. But Logan and Kent failed to timely request duplicate ballots in the first place. The record evidence indicates that neither Logan nor Kent contacted the Board before the November 22 ballot request deadline set forth in the Election Notices. (JA 222.) Had Logan and Kent contacted the Board earlier, the Board would have dispatched their replacement ballots earlier. The Board sent ballots before the November 22 request date to voters who then successfully returned them (and sent more duplicates that were successfully returned after that date). (JA 118-19; 126-35.)

As discussed above, and as the Board found, employees bear some responsibility for overcoming obstacles and casting a ballot. (JA 222.) When their voice messages to the NLRB's regional office were apparently not returned, neither Logan nor Kent took advantage of the Board's alternate way of contacting the Board—by calling its national toll-free number. (JA 222.)

Since Kent left home after requesting the duplicate and did not return until December 4, his inability to complete and return it in time for the December 2 tally cannot be considered to be attributable to the

Board. (JA 222.) As to Logan, both his original and replacement ballots arrived at his home after the tally. The original ballot did not arrive until December 5, 2016 and the replacement ballot on December 7, 2016. (JA 48:11-15.) The Board was not responsible for these mail delays. As discussed above, the Board will not set aside elections purely on the basis of postal delays. *See J. Ray McDermott & Co.*, 571 F.2d at 855.

In sum, the fact that Logan and Kent did not submit ballots that were received prior to the tally cannot be attributed to Board-generated irregularities. The evidence shows that the Board followed the Election Agreement and its own standard procedures. Further, even if these voters had requested or received ballots earlier, it does not mean they would have voted (let alone changed the election results). Employees had the right to refrain from voting. *See Antelope Valley* 275 F.3d at 1094 n.8 (quoting *Lemco Constr., Inc.*, 283 NLRB 459, 460 (1987)).

C. NHRA Failed To Carry Its Burden of Establishing Any Other Material Election Irregularity Attributable to the NLRB.

NHRA's arguments partly hinge on the Board's monitoring of a telephone number at its regional office. NHRA did not carry its heavy

burden with its claims that the Board did not monitor a regional office phone. The Board correctly decided that no irregularity surrounding the NLRB's telephone practices required setting the election results aside.

First, NHRA's claim that the regional phone number was unmonitored was not proven, let alone "admitted," as NHRA suggests. (*See* Pet. Br. 22.) Although NHRA alleges that Robert Logan encountered an unchecked phone line, its claim rests on Logan's hearsay testimony characterizing a discussion with NLRB agent Flores. (JA 87:3-17.) This evidence was not verified by any other witness. The evidence does not establish that any other individual encountered an unmonitored phone line. The facts show the opposite. One individual confirmed that he called the NLRB's regional number and successfully requested a ballot. (JA 222.) And the Board routinely sent ballots upon request beginning as early as November 21. (JA 112; 118-19.)

Second, even assuming the regional number was unmonitored, the Board's national toll-free number offered voters an alternate, dependable way to contact the Board. NHRA does not (and cannot) claim that the Board's toll-free number was unmonitored. The Board

thus rationally concluded, based on all the evidence, that employees' failure to vote was not attributable to the Board's supervision of a phone line at the regional office. (JA 222.)

NHRA also argues the following factors signify the Board's election irregularities: (i) the Board did not respond to voters' voice messages; and (ii) the Board did not designate a specific contact person at the regional office for voters to contact. (Pet. Br. 32, 34-36). The Board acted in its discretion by finding these claims did not satisfy NHRA's burden.

No election impropriety stemmed from the Board's responses to voice messages. There is no evidence that the Board failed to send duplicate ballots to any voter (whether the voter's voice messages were returned or not). Rather, the Board sent duplicates to all employees who requested them. (JA 114.) The Board had no obligation to return voters' phone calls (as opposed to merely sending replacement ballots, which it did.) (JA 118-19.) NHRA agreed to an Election Agreement that did not include such a requirement. (JA 15-17.)

NHRA also contends that the Board's Casehandling Manual required it to designate a contact person at the Board's regional office.

(Pet. Br. at 32.) NHRA alleges the Manual compelled it to name such a person, but as NHRA acknowledges, the Manual is not binding authority (*id.* at 30). It merely provides informal guidance to agency staff. *See, e.g., Sitka Sound Seafoods, Inc. v. NLRB*, 206 F.3d 1175, 1182 (D.C. Cir. 2000). The fact that the Board might not strictly adhere to Manual guidelines did not require a rerun election. *See Kirsch Drapery Hardware*, 299 NLRB 363, 364 (1990) (declining to set election aside “on the basis of . . . deviations from the guidelines contained in the Manual”). And precedent cited by NHRA does not hold that the Manual established any binding duty on the Board here. *See Davis & Newcomer Elevator Co.*, 315 NLRB 715, 715 (1994) (Manual obligated Board to send replacement ballot to voter when Board learned, before the tally, that he completed a defective ballot).

In sum, the Board’s handling of telephone inquiries provided no basis to set aside, as the Board correctly determined. The Board’s procedures—which the parties expressly agreed upon—were carried out appropriately. Indeed, election participation was significant here. *See NCR Corp.*, 840 F.3d at 843. The Board offered voters a reasonable opportunity to cast a ballot, thereby providing “a meaningful

opportunity to express their sentiments concerning representation.”

Lemco, 283 NLRB at 460.

III. The Board Properly Refused to Count Ballots Received After the Ballot Tally.

NHRA’s request to count ballots received after the tally is inconsistent with existing NLRB practices and precedents. Neither applicable Board cases nor the parties’ Election Agreement allows late-received ballots to be opened and counted.

As described above, under its longstanding rule, the Board counts ballots received after the due date but before the scheduled tally.

Watkins Constr., 332 NLRB at 828. The parties voluntarily agreed here that ballots were scheduled to be counted on Friday, December 2, 2016.

(JA 15.) The Board counted the ballots it had received by that date. (JA 216.) The analysis ends here. The Board has “consistently refused to count ballots that arrived after the count.” *NCR Corp.*, 840 F.3d at 842.

There is no compelling reason why the Board should have diverged from

this existing precedent.² The Board acted within its discretion by rejecting NHRA's request to count later-received ballots.

Honoring NHRA's request to open ballots received after December 2 would violate the parties' binding Election Agreement setting forth the procedures to be used in conducting the election. The Board's "election agreements are 'contracts,' binding on the parties that executed them." *T&L Leasing*, 318 NLRB 324, 325 (1995) (quoting *Barceloneta Shoe Corp.*, 171 NLRB 1333, 1343 (1968), *enforced mem.*, 1970 U.S. App. LEXIS 10682 (1st Cir. 1970)).

Disregarding the Election Agreement would undermine the Board's interest in promptly completing representation proceedings. *See NCR Corp.*, 840 F.3d at 843. The Board's practice of counting late-received ballots so long as they arrive before the tally balances "the competing interests in affording employees the broadest participation in election proceedings while still protecting against" time-consuming

² The Board's decision in *Queen City Paving*, 243 NLRB 71, 73 (1979) does not support NHRA's position. The *Queen City* Board opened a ballot that it received after the "closing date" for ballots. *Id.* (emphasis added). It is not clear that the Board opened a ballot received after the *tally*.

delay in post-election proceedings. *Id.* Those considerations formed a basis for the Board's decision here. (JA 221-22.) NHRA offers no legitimate reasons for the Board to depart from its balanced approach. In sum, the NLRB committed no error when it denied NHRA's requests to count additional late-received ballots months after polling ended.

IV. NHRA's Remaining Contentions Lack Merit.

Contrary to NHRA's claims, the Board's "potential disenfranchisement" cases do not advance NHRA's position. They are inapplicable here. (Pet. Br. 23-24.) In *Garda World Security Corp.*, 356 NLRB 594 (2011), and *Wolverine Dispatch*, 321 NLRB 796 (1996), the Board overturned in-person elections. In those cases, unscheduled poll closures turned potential voters away. This Court has previously found that cases like *Wolverine Dispatch* are limited to circumstances where employees were affirmatively "deprived of an opportunity to vote." *Antelope Valley*, 275 F.3d at 1091-92, 1092 n.6; *see also*, *Garda CL Atlantic, Inc. v. NLRB*, Nos. 17-1200, 17-1214, 2018 U.S. App. LEXIS 13939, at *7 (D.C. Cir. May 22, 2018) (the Board [has] "typically employed this 'potential disenfranchisement' standard [] only where an

irregularity essentially bars employees' physical access to the polling place" (internal citation omitted)).

Neither *Wolverine Dispatch* nor *Garda* applies here, because no Board action similarly prevented NHRA employees from voting. They are thus "readily distinguishable" from the instant case. *Id.* at 1092. In other words, the Court need not decide whether cases involving poll closures should extend here, because NHRA failed to meet its burden of proving that any election irregularity occurred.

Similarly, the Board had no obligation to distinguish *Davis & Newcomer* and *Oneida County Community Action Agency, Inc.*, 317 NLRB 852 (1995), here. (*See* Pet. Br. 42.) The Board need not do so "expressly if the grounds for distinction are readily apparent." *Antelope Valley*, 275 F.3d at 1092 (citation omitted).

NHRA also claims the Board applied incorrect legal standards when it held that NHRA "presented insufficient evidence to support its claims of Board agent misconduct in the handling" of the election. (JA 204 n.5.) The Board here relied on several cases for its conclusion that the employees bear some responsibility for "overcoming obstacles and

casting a ballot.” (JA 222.)³ Those precedents correlate to the votes at issue in this case. In each case, employees were not prevented from voting by party conduct or an election irregularity. Here too, as the Board held, voters’ difficulties were not attributable to the Board. (JA 222-23.) It had no further duty to explain in redundant detail how its decision here aligns with applicable precedent.

NHRA claims that the Board—by using the word “misconduct”—applied a standard only employed when examining whether Board agent behavior affected election results. (Pet. Br. 46.) According to NHRA the Board incorrectly applied a so-called “misconduct” standard here. (Pet. Br. 47.) NHRA’s argument is speculative and incorrect. When the Board examines procedural irregularities allegedly attributed to the Board, it necessarily examines Board agent conduct. Remarkably, NHRA acknowledged this when it repeatedly argued to the Board that its election procedures here were marred by ‘misconduct.’ But NHRA did not meet its burden of proving the Board could be faulted. The Board was thus right to conclude that NHRA

³ *Waste Mgmt. of Nw. Louisiana, Inc.*, 326 NLRB 1389 (1998); *Visiting Nurses Ass’n of Metro. Atlanta, Inc.*, 314 NLRB 404 (1994); and *Versail Mfg.*, 212 NLRB 592 (1974).

“presented insufficient evidence to support its claims of Board agent misconduct.” (JA 204.) The Court should defer to the Board’s decision.

CONCLUSION

For the foregoing reasons, Intervenor IATSE respectfully requests that the Court enter a judgment denying the petition for review and enforcing the NLRB’s Order in full.

Dated: November 4, 2020
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 32(e)(2)(B) because it contains 3,569 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word, in Century Schoolbook, Font Size 14.

Dated: November 4, 2020
New York, New York

/s/ Denis P. Duffey Jr.
Denis P. Duffey Jr.

Counsel for Intervenor IATSE

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 4, 2020, I caused this Brief of Intervenor to be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of such filing to all parties.

Dated: November 4, 2020
New York, New York

/s/ Denis P. Duffey Jr.
Denis P. Duffey Jr.

Counsel for Intervenor IATSE