

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

IKEA Distribution Services, Inc. Employer, and United Maintenance Technicians of Tejon Petitioner.	Case No. 31-RC-266527
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IKEA DISTRIBUTION SERVICES, INC'S
MOTION FOR STAY OF ELECTION

Pursuant to Rule 102.67(j)(ii) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or the “Board”), IKEA Distribution Services, Inc. (the “Employer” or “IKEA”) hereby moves for a stay of the election currently scheduled for November 17, 2020 pending resolution of the Request for Review filed on November 12, 2020.

Respectfully submitted,

BAKER HOSTETLER LLP

Dated: November 12, 2020

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**IKEA DISTRIBUTION SERVICES, INC.’S MEMORANDUM IN SUPPORT OF
MOTION TO STAY ELECTION**

I. BACKGROUND

The United Maintenance Technicians of Tejon (“Petitioner” or “Union”) seeks to represent two classifications of employees at IKEA Distribution Services, Inc.’s (“IKEA”) Lebec, California Distribution Center (the “DC”). The DC employs over 400 hourly employees in the following eight classifications: Auditor, Cleaner, Internal Hauler, Maintenance Technician, Power Equipment Technician, Recovery Co-worker, Stock Controller, and Warehouse Co-worker. Petitioner seeks to represent 13 Maintenance Technicians and one Power Equipment Technician. IKEA timely filed its Statement of Position on October 5, 2020 contesting the appropriateness of the petitioned-for unit because it failed to include employees in the other hourly positions at the DC. IKEA inadvertently served its Statement of Position on Petitioner one hour and forty-one minutes late.

On October 14-16, 2020, a pre-election hearing was held. At the pre-election hearing, the Regional Director precluded IKEA from litigating the appropriateness of the petitioned-for unit under Section 102.66(d) of the Board’s Rules and Regulations because of IKEA’s late-served

statement of position. The Regional Director nevertheless decided to receive evidence on the appropriateness of the petitioned-for unit, but IKEA was prohibited from examining or cross-examining witnesses or otherwise fully participating in the hearing.

From October 14-16, the Region sought evidence concerning the appropriateness of the petitioned-for unit. At the outset of the hearing, the Region stated on the record that it was the Petitioner's burden to prove that the petitioned-for unit was sufficiently distinct from excluded employees to warrant separate bargaining, and every witnesses called by the Petitioner or the Board provided testimony relevant to that issue.

On November 5, 2020, the Regional Director for Region 31 of the National Labor Relations Board ("NLRB") issued a Decision and Direction of Election ("DDE")¹ finding the petitioned-for unit appropriate and ordering an election by mail ballot beginning on November 17, 2020. In finding the petitioned-for unit appropriate, the Regional Director did not apply the Board's three-step test set forth in *The Boeing Co.*, 368 NLRB No. 67 (2019). Instead, relying on the three-line, unpublished decision in *Macy's West Stores, Inc.*, 32-RC-246415, n.1 (unpublished May 27, 2020), the Regional Director concluded that only steps one and three of the *Boeing* test must be applied because, due solely to the application of the preclusion rule, IKEA had not claimed that the smallest appropriate unit must include employees excluded from the petitioned-for unit. As a result, the Regional Director applied only steps one and three of *Boeing* and found that the petitioned-for employees constituted an appropriate unit for bargaining. In the application of *Boeing* step one, however, the Regional Director acknowledged her reliance on a record with insufficient evidence concerning the Power Equipment Technician. Additionally, the Regional

¹ The DDE is attached hereto as "Exhibit 1."

Director failed to consider evidence of IKEA's bargaining history when assessing step three of the *Boeing* test. (DDE pp. 18-19).

On November 12, 2020, IKEA filed a Request for Review of the DDE on the basis that: 1) the Regional Director's departure from officially reported Board precedent raised substantial questions of law; 2) the Regional Director's rulings in conjunction with the pre-election hearing resulted in prejudicial error; 3) the Regional Director's factual findings were clearly erroneous and resulted in prejudicial error; and 4) there are compelling reasons for the reconsideration of the application of the preclusion rule under Section 102.66(d) of the Board's Rules and Regulations.

A stay of the November 17 election is necessary under the particular circumstances of this case for three reasons. First, a stay will give the Board time to consider and rule on the appropriate standard to be applied for determining the appropriateness of a petitioned for unit where the preclusion rule has been applied. Second, a stay will ensure any election held is in a unit with an internal community of interest. Third, a stay will ensure that the Section 7 rights of more than 400 employees excluded from the voting unit based solely on the application of the preclusion rule are preserved.²

II. LEGAL ANALYSIS

1. *A Stay Will Enable the Board to Rule on the Appropriate Unit Determination Standard in Cases Where Section 102.66(d)'s Preclusion Rule Is Applied*

The Board has never indicated that the three-step framework in *Boeing* does not apply in its entirety where Section 102.66(d)'s preclusion rule is applied to prevent a party from contesting the petitioned-for unit. Nevertheless, the Regional Director created a new test for unit determination in such cases by applying the Board's unpublished holding in *Macy's West* and

² The propriety of staying the election in the instant case is further supported by the reasons justifying IKEA's Request for Review of the Regional Director's Decision and Direction of Election.

applying only *Boeing* steps one and three to the exclusion of any consideration of the distinctness of the petitioned-for unit as compared to excluded employees.

The Board's unpublished decision in *Macy's West* is not binding authority. *See Associated Charter Bus Co.*, 261 NLRB 448, 450 n.7 (1982). Thus, the Regional Director should not have relied on it to the exclusion of the full *Boeing* test. Nor is *Macy's West* factually analogous—it only indicates that *Boeing* step two need not be applied where, as in that case, there are no excluded employees to consider. That is certainly not true of the instant case. The Regional Director's simply mis-applied *Macy's West* in reliance on the preclusion rule-created legal fiction that IKEA had not claimed employees must be added to the petitioned-for unit to make it appropriate for bargaining.

Indeed, the Regional Director's reliance on the legal fiction created by the preclusion rule to justify the application of *Macy's West* elevates Section 102.66(d) to statutory status. Section 9(b) requires that the Board determine the appropriate unit in "each case," and the Board has instructed that application of *Boeing's* second step gives effect to that statutory requirement. Section 9(c)(5) provides that the extent of organizing shall not be determinative, and the Board has instructed that where employees are excluded from a petitioned-for unit, consideration of those employees' interests prevents the extent of organizing from being controlling. *See PCC Structural*s, 365 NLRB No. 160 at *8, *10 (2017). Refusing to consider whether the petitioned-for unit is sufficiently distinct from excluded employees based on the application of the preclusion rule, however, makes the extent of organizing controlling and indicates that the interests addressed by that rule (preventing unnecessary delay and gamesmanship in pre-election litigation)³ are more potent than the Act's protections of excluded employees' rights under Section 7.

³ *See* 79 FR 74425 (Dec. 15, 2014).

Staying the November 17 election will enable the Board to consider these important issues and determine the appropriate unit determination standard to be applied in cases where employees are excluded from petitioned-for units but the preclusion rule is applied to prevent a party from contesting the appropriateness of the unit. An election should not be run where a Regional Director has applied a novel legal standard incompatible with the very language of the Act to find the petitioned-for unit appropriate.

2. *A Stay Will Ensure that an Election Is Not Held in a Unit Lacking an Internal Community of Interest*

The November 17 election should be stayed to ensure an election is not run in a unit where there is no clear internal community of interest. Though the Regional Director found that the Maintenance Technicians and Power Equipment Technicians share an internal community of interest under step one of *Boeing*, she did so without the necessary evidentiary support. (DDE p. 18). Throughout the Decision and Direction of Election the Regional Director emphasized that lack of evidence in the record concerning the Power Equipment Technicians. The Regional Director specifically highlighted that:

- “The record is not clear as to whether the power equipment technician is at the top of this [pay] structure with the maintenance technicians.” (DDE p. 6);
- “The record is not clear as to whether the power equipment technician uses the lockers in the maintenance shop or stores any Employer-issued tools there.” (DDE p. 9);
- “There is no evidence regarding whether the power equipment technician has Employer-issued keys.” (DDE p. 9);
- “[T]here is minimal testimonial evidence about the specific job duties of the power equipment technician, but the record reveals that the power equipment technician turns wrenches on the power equipment and works on forklifts, reaches, and the general power equipment.” (DDE p. 9);
- “The record is unclear as to what precisely “turning a wrench” means.” (DDE p. 9, n. 28);
- “The record is not clear as to how the power equipment technician receives work orders.” (DDE p. 10);
- “The record does not reveal whether the power equipment technician carries a radio or walks through the buildings at all.” (DDE p. 10);

- “The record also does not reveal whether the power equipment technician is required to wear the same uniform as the maintenance technicians and/or whether the uniform is laundered by the uniform company.” (DDE p. 10);
- “It is unclear whether the power equipment technician qualifies for an alternate work schedule.” (DDE p. 10);
- “There is no evidence about whether the power equipment technician physically performs any work outside the maintenance shop.” (DDE p. 14);
- “The record does not reveal precisely whether the maintenance technician and power equipment technician use similar equipment.” (DDE p. 15);
- “Nor does [the record] reveal how the power equipment technician receives work orders.” (DDE p. 15);
- “[I]t is not clear how much work-related contact there is between [maintenance technicians and power equipment technicians]. For example, we do not know how often they may work beside each other, whether they ever work on the same piece of equipment, whether the power equipment technician will go out on the floor with the maintenance technician, or whether the power equipment technician also access the areas restricted by Employer-issued keys.” (DDE p. 16);
- “[T]here is no evidence of temporary work assignments between maintenance technicians and the power equipment technician.” (DDE p. 16);
- “[T]he record evidence is not clear as to whether [maintenance technicians and power equipment technicians] receive similar wage rates or are within the same wage ranges” (DDE p. 17);
- “The record is not clear as to whether the power equipment technician wears the same fire-retardant long sleeve shirt and pants as the maintenance technician.” (DDE p. 17);
- “[I]t is not clear whether [the requirement of high visibility on the floor] includes the power equipment technician, nor is it clear whether the power equipment technician ever works on the floor such that he would need a uniform to be highly visible.” (DDE p. 17);
- “[T]here is no evidence regarding Newman’s [the direct supervisor of first shift maintenance technicians and the power equipment technician] authority to hire, fire, or to discipline his direct reports (or to effectively recommend those actions)” (DDE p. 17);

By the Regional Director’s own admission, there simply is no evidence about what one of the two classifications in the petitioned-for unit actually does. There is no evidence concerning how much the Power Equipment Technician is paid, how he gets his work, what he wears to work, whether he works throughout the facility, how often he interacts with the Maintenance Technicians, what equipment the Power Equipment Technician uses to perform his duties, what equipment IKEA has issued to the Power Equipment Technician, the schedule worked by the Power Equipment Technician, or whether there is any temporary interchange between Maintenance Technicians and Power Equipment Technicians. (DDE pp. 6, 9, 10, 14, 15, 16, 17).

The Regional Director's admissions show that *very little* is actually known about the Power Equipment Technician. An election should not be held when the record evidence does not demonstrate a clear internal community of interest exists in the bargaining unit. Doing so risks establishing a bargaining unit in which the included employees do not have enough interests in common to effectively bargain. That is a result that must be avoided. A stay should be granted in this case to avoid that result.⁴

3. *A Stay Will Protect the Rights of More than 400 Employees Excluded from the Petitioned-for Unit*

The Board has unambiguously instructed that the NLRA requires the interests of employees excluded from petitioned-for units to be considered in assessing the appropriateness of the petitioned-for unit to protect the Section 7 rights of excluded employees. *See PCC Structural*s, 365 NLRB No. 160 at *8, *10 (2017). Running an election in the present case on November 17 in the petitioned-for unit will alienate the rights of more than 400 excluded employees. This is not the typical case where the interests of these employees were considered by a regional director and found to be sufficiently different from those of the petitioned-for employees to justify the petitioned-for employees to proceed to election. Here, the interests of the more than 400 excluded employees were *ignored* because of the Regional Director's reliance on *Macy's West* and resulting failure to perform the *Boeing* step 2 analysis. As a result, the election should be stayed to preserve the Section 7 rights of the excluded employees. Issuing a stay to protect the rights of excluded employees is particularly appropriate under the unique facts of this case where the Regional Director specifically acknowledged that consideration of the excluded employees' rights may have led her to a different conclusion. (DDE 18). If the Regional Director is not willing to protect the

⁴ This basis for staying the election is further detailed in IKEA's Request for Review of the Regional Director's Decision and Direction of Election.

rights of the excluded employees, the Board should do so by staying the election pending its review of the DDE.

III. CONCLUSION

For all the foregoing reasons, IKEA respectfully requests that the Board grant this motion and stay the election scheduled for November 17, 2020.

Respectfully submitted,

BAKER HOSTETLER LLP

Dated: November 12, 2020

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*Attorneys for IKEA Distribution Services,
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CERTIFICATE OF SERVICE

A copy of the foregoing **IKEA DISTRIBUTION SERVICES, INC'S MOTION FOR STAY OF ELECTION AND MEMORANDUM IN SUPPORT** was filed with the Regional Director for Region 31 and served by email on Petitioner on this 12th day of November 2020 at mike_wedeking@yahoo.com and on the Assistant Regional Director for Region 31 of the National Labor Relations Board at Nathan.Seidman@nlrb.gov.

/s/ Jeremy Hart _____

*Attorney for IKEA Distribution Services,
Inc.*

Exhibit 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

IKEA DISTRIBUTION SERVICES, INC.

Employer

Case 31-RC-266527

and

**UNITED MAINTENANCE
TECHNICIANS OF TEJON**

Petitioner

DECISION AND DIRECTION OF ELECTION

On September 23, 2020,¹ United Maintenance Technicians of Tejon (Petitioner or Union) filed a representation petition (the Petition) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent certain employees of Ikea Distribution Services, Inc. (Employer). The petitioned-for unit was modified at the hearing to include all full-time and regular part-time maintenance technicians and power equipment technicians employed by the Employer at its facility in Lebec, California.² There are approximately 15 employees in the petitioned-for unit.

On September 23, Region 31 of the National Labor Relations Board (the Region) served a copy of the Petition on the Employer and notified the Employer of its obligation to file a Statement of Position, serve that Statement of Position on all parties, and to do so in a timely manner by noon Pacific time on Monday, October 5. On the same date, the Region issued a Notice of Representation Hearing setting a videoconference hearing for Wednesday, October 14. The Employer filed its Statement of Position with the Region on October 5, raising the substantive issue of the appropriateness of the petitioned-for unit.³ The Employer, however, failed to timely serve its Statement of Position on the Petitioner.

A videoconference hearing on the Petition was held on October 14, 15, and 16 before a Hearing Officer of the National Labor Relations Board (the Board). At the hearing, the Employer did not dispute that it failed to serve its Statement of Position on the Petitioner in a timely

¹ All dates hereinafter refer to 2020 unless otherwise noted.

² At the hearing, the parties agreed to remove the Preventative Maintenance Technicians classification from the petitioned-for unit because that classification is no longer being used at the facility at issue.

³ In its Statement of Position, the Employer asserted that the appropriate unit is as follows: All full-time and regular part-time employees employed at the Employer's Tejon Distribution Center in Lebec, California in the following classifications: Auditor, Cleaner, Internal Hauler, Maintenance Technician, Preventative Maintenance Technician, Power Equipment Technician, Recovery Co-worker, Stock Controller, and Warehouse Co-worker and excluding all other employees including, but not limited to, temporary, office clerical, administrative, confidential and professional employees, guards, and supervisors as defined by the Act.

manner.⁴ Thus, pursuant to Section 102.63(b)(1) and 102.66(d) of the Board's Rules, I directed the Hearing Officer to preclude the Employer from litigating issues contained in its Statement of Position because it failed to timely serve a copy of it on the Petitioner. At the beginning of the hearing, the Employer made a verbal motion to reconsider my decision on the preclusion issue. The motion was denied.

Section 102.63(b)(1) of the Board's Rules states an employer named in an RC petition "shall" file a Statement of Position with the Regional Director and serve a copy of that Statement of Position on the other parties named in the petition. Section 102.66(d) of the Board's Rules, "Preclusion," states, in relevant part:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response...

The Board addressed preclusion and the operation of Section 102.66(d) in *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1, fn.1 (2017). In that case, the Board concluded that the Regional Director was correct to preclude the employer from litigating the appropriateness of the petitioned-for unit based on the employer's failure to timely serve its statement of position on the petitioner. *Id.*

The Employer argues that precluding it from presenting evidence regarding the appropriateness of the petitioned-for unit denies it due process, is an unduly harsh penalty that is arbitrary and capricious, and prevents the Region from fulfilling its obligations under Section 9(b) of the Act. While a procedural rule will at times prevent a substantive issue from being addressed, that is not an unintended consequence of a preclusion rule but the intent. Sections 102.63(b)(1) and 102.66(d) of the Board's Rules are clear in their operation, and nothing in the Employer's verbal motion to reconsider articulated at the hearing provides a valid basis for ignoring the preclusion dictated by the Board's Rules. Thus, I hereby affirm my ruling and find that the Employer was properly precluded from litigating the unit issue raised in its Statement of Position.

Section 102.66(d) of the Board's Rules, however, does not preclude the Regional Director from addressing an issue.⁵ See *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016); *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13, slip op. at 1, fn. 1 (2017). This is clear from the plain language of Section 102.66(d), which places no limitation on any person other than the defaulting party. It is also clear from the context of the provision within the structure of the Act and the Rules, including Section 102.66(b), which authorizes the Regional Director to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the Regional Director determines that record evidence is necessary, even if the parties have not taken adverse positions on the issue. *Brunswick*, 364 NLRB slip op at 4.

⁴ I also note that the Employer did not file a motion for an extension of time to file and serve its Statement of Position nor did it provide an explanation for failing to serve its Statement of Position in a timely manner.

⁵ The Employer recognized as much in its verbal motion to reconsider.

The Board recently clarified the standard to apply when determining the appropriateness of a petitioned-for unit in situations like here, where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit.⁶ In *Macys West Stores, Inc.*, 32-RC-246415, fn. 1 (unpublished May 27, 2020), the Board stated:⁷

[W]here no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is unnecessary to apply the three-step analysis set forth in *The Boeing Company*, 368 NLRB No. 67 (2019), which applies “when a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit.” *Id.*, slip op. at 2. It is true that steps one and three of *Boeing*--the requirement that any appropriate unit have an internal community of interest, and that consideration must be given to the Board’s decisions on appropriate units in the particular industry involved-- reference broad principles that are generally applicable to unit determinations. Step two, however--which considers “whether the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit,” *ibid.* (internal quotations omitted)--only applies if a party contends that additional employees must be included in the unit to render it appropriate, a situation that is not present in this case.

Accordingly, since the Employer here was precluded from asserting that additional employees must be included in the petitioned-for unit to render it appropriate, consistent with the Board’s decision in *Macys West Store*, in the following section I will apply steps one and three of *Boeing* in determining the appropriateness of the petitioned-for unit.

In addition to the appropriateness of the petitioned-for unit, the other matter to be decided in this case is whether an election should be held manually at the Employer’s Lebec, California facility or by mail ballot, considering the continuing COVID-19 pandemic.⁸ The Employer argues that any election should be by manual ballot at its Lebec facility and that it can safely hold an open-air election at the facility in compliance with all local, state, and federal guidelines and consistent with the protocols described in General Counsel Memorandum 20-10. The Employer further states that it will provide all materials required by General Counsel Memorandum 20-10. The Petitioner supports either a mail or manual ballot election.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and relevant Board law, I find that the petitioned-for unit, as modified at the hearing to include only maintenance technicians and power equipment technicians, share a community of interest sufficient to establish that it is an

⁶ At the hearing, I directed the Hearing Officer to permit the Employer to submit a post-hearing brief on the limited issues of the appropriate legal standard to apply in determining the appropriateness of the unit at issue and its position on the method of election. On October 23, the Employer filed a post-hearing brief and argued that the appropriate standard to apply in this matter is the traditional community of interest test set forth in *PCC Structural*, 365 NLRB No. 160 (2017). While the Employer cites to *The Boeing Co.*, 368 NLRB No. 67 (2019) and the three-step process articulated therein, it does not cite to *Macys West Stores, Inc.*, *supra*.

⁷ The Board’s decision is available on the Board’s public website at <https://www.nlr.gov/case/32-RC-246415>.

⁸ Throughout this decision, the terms “COVID-19,” “coronavirus,” and “virus” are used interchangeably.

appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Furthermore, based on the entire record, relevant Board law, and the extraordinary circumstances of a pandemic, I shall direct a mail-ballot election commencing on the earliest practicable date.

I. THE EMPLOYER'S OPERATIONS

The Employer provides warehousing and logistic services at its facility in Lebec, California (the Facility). The Facility includes a distribution center that consists of one large warehouse that houses six buildings under one roof, which are numbered 1 through 6.⁹ Employer product arrives at the distribution center, is sorted into different areas within the distribution center, and is shipped to other distribution centers, retail stores, and/or individual customers.

The distribution center includes Operations and Facilities.¹⁰ Employees within Operations and Facilities work toward the shared goal of making sure that the Employer's product reaches its destination. Within Operations, there is Customer Distribution (referred to as CD or CDC) and Store Distribution (referred to as SD). The CDC is based in Building 6 and handles situations where an individual customer places an order for product.¹¹ More specifically, when an individual customer places an order for a particular product, the CDC employees get the product from within the distribution center and prepare it to be shipped via FedEx to the individual's home. The SD is based in Buildings 1 through 5 and handles situations where a retail store places an order for product or when another distribution center needs product. Most hourly/non-exempt¹² employees work within Operations, including the auditor, internal haulers, recovery co-workers, stock controllers, and general warehouse co-workers.¹³

Facilities is charged with making sure the distribution center is operational and safe for all employees to complete their jobs in a safe manner. Within Facilities, there are the maintenance technicians, power equipment technicians, cleaners, and a sustainability developer.¹⁴ There is a maintenance shop located between Buildings 1 and 4, which is the hub for maintenance, which includes the maintenance technicians and the power equipment technicians.¹⁵ Ultimately, maintenance employees are there to make sure that the Employer's process for ensuring that its products reach their destination is not stopped for some reason and, if it is stopped, the maintenance team is there to make sure it is mitigated and lessened as much as possible so that the process can continue.

⁹ The record is unclear as to whether the distribution center is the only building at the Facility. Nevertheless, the distribution center and buildings 1-6 are the only buildings at issue in this matter.

¹⁰ The record is unclear as to whether the Safety Department falls within Operations and/or Facilities or is its own separate department. I note, however, that it is regularly referred to as the Safety Department.

¹¹ An individual can place an order by phone or online.

¹² Throughout the record it appears that the terms hourly and non-exempt are used interchangeably and, therefore, I will use these terms interchangeably throughout this decision.

¹³ There are 367 general warehouse co-workers, 10 stock controllers, 10 recovery co-workers, 9 internal haulers, and 1 auditor.

¹⁴ There are 14 maintenance technicians, 1 power equipment technician, 7 cleaners, and 1 sustainability developer.

¹⁵ The witnesses regularly referenced the maintenance hub or the maintenance shop, which refer to the same location between Buildings 1 and 4.

Jermaine Gordon is the current Site Manager at the Facility. He oversees SD Warehouse Manager Ken Brown, the SD Operational Support Manager (vacant position), the HR Manager (vacant position), Safety & Security Manager Victor Avila, Business Navigator Diane Young, Facilities Manager Aaron Lucas, CD Warehouse Manager Stephanie Rivas, and CD Operational Support Manager Jose Estrada. Facilities Manager Aaron Lucas oversees all of Facilities, including Maintenance Team Leads William Villanueva, Robert Jones, and Mitchell Newman, and Cleaners/Waste Sorters¹⁶ Team Lead Robert Spivey. He also oversees the sustainability developer. Lucas's office is located in Building 1, but the Maintenance Team leads have offices/desks in the maintenance shop between Buildings 1 and 4.

Hourly employees enter through the same entrance of the Facility. Hourly employees share the same common break room area for lunch.¹⁷ Hourly employees wear an Employer badge, which includes the employee's name, hire date, and employee number and is used to clock in and out. The badges do not indicate an employee's particular department or job title. Employees have access to an employee locker room, where they can get dressed before or after their shift. The employee locker room is used by various classifications of employees, including some maintenance technicians.

Full-time hourly employees are designated into different hours levels, which represents how many hours they are normally scheduled to work each week. The different levels include the following: (i) HL2, which represents 20-34 hours per week; (ii) HL3, which represents 34-40 hours per week; and (iii) HL4, which represents 38-40 hours per week. At the Facility, nearly all full-time hourly employees are within HL2 or HL3 and all maintenance are full-time HL3s.¹⁸

There are three shifts available to full-time hourly employees, including the first shift, second shift, and third shift. However, the start and end times for the second and third shifts differ between departments. For example, for maintenance technicians, the shift schedule is as follows: first shift is approximately 5:00 a.m. to 1:30 p.m., second shift is approximately 1:00 p.m. to 9:30 p.m., and third shift is approximately 9:00 p.m. to 5:30 a.m. Whereas for SD employees, the shift schedule is approximately as follows: first shift 5:00 a.m. to 1:30 p.m., second shift is 3:00 p.m. to 11:30 p.m., and third shift is 8:30 p.m. to 5:00 a.m.

The Employer pays a \$0.50 shift differential for hourly employees working the second shift and a \$1.00 shift differential for hourly employees working the third shift. The shift differential is applicable to cleaners, internal haulers, recovery co-workers, stock controllers, general warehouse co-workers, maintenance technicians, and power equipment technicians.

The Employer offers some hourly employees an alternate work schedule, which means that they work four 10-hour days. The record is not clear as to which classifications can take advantage of the alternate work schedule or how many hourly employees do. However, some testimonial evidence suggests that maintenance technicians do not qualify for an alternate work

¹⁶ Waste Sorters are often referred to as Cleaners.

¹⁷ Employees are also allowed to leave the Facility for lunch.

¹⁸ The record is not clear as to whether this reference to "maintenance" includes both the power equipment technician and the maintenance technicians.

schedule.¹⁹ Whether someone works an alternate work schedule or not will impact whether that employee is eligible for overtime. More specifically, if an employee does not work an alternate work schedule, then they are generally eligible for overtime.

The record does not reflect the precise wage rates or wage ranges for the Employer's hourly employees. However, the Employer's Interim Unit People and Culture Manager testified that the cleaner is the lowest pay grade position, and then progressing up in pay are the recovery and warehouse co-workers, then the stock controller and internal hauler, and then finally the maintenance technicians. The record is not clear as to whether the power equipment technician is at the top of this structure with the maintenance technicians.

All hourly employees are subject to the same work rules and policies, including the Employer's Code of Conduct.²⁰ In addition, all hourly employees, excluding part time workers, are eligible for the same Employer benefits, including, but not limited to, medical, dental, vision, and retirement. All hourly employees participate in the Employer's onboarding experience on their first day of employment. All hourly employees also participate in the Employer's online digital trainings, including the following: active shooter; bomb threats general information; data privacy fundamental; data privacy test; data privacy training; data privacy training for California store co-workers; earthquake safety; emergency notification Code 1000; fire and accident prevention; fire and safety training retail; handling and sharing information; harassment awareness for IKEA co-workers and specialists; how to report an emergency; how to use a fire extinguisher; insect, snake and animal safety; ladder safety; lifting safety; lockout tagout general information; medical emergency and accident reporting; pedestrian safety in the warehouse; product safety and compliance alarm; responding to a fire; safety and social distancing; safety and social distancing module 1; safety and social distancing module 2; safety knives; severe weather safety; supply chain security; and workplace hazard communication.

A. Maintenance Technicians

There are approximately fourteen maintenance technicians that work at the Facility. Four maintenance technicians work the 1st shift, three work the 2nd shift, and seven work the 3rd shift. After maintenance technicians clock in for work, they report to the maintenance shop between Buildings 1 and 4. Maintenance technicians have lockers in the maintenance shop, which is where they store their Employer-issued tools (including, but not limited to, screwdrivers, wrenches, sockets, pliers).²¹ The maintenance shop includes cabinets that hold replacement parts for various pieces of equipment and it has computers for the maintenance technicians to use. Maintenance technicians have around 15 Employer-issued keys, which are

¹⁹ There is no record evidence clearly establishing whether or not maintenance technicians qualify for an alternate work schedule.

²⁰ The Employer's work rules and policies include the attendance policy, the behavior standards policy, the co-worker discount and credit purchase policy, the general safety policy, the harassment, discrimination and retaliation prevention policy, the holiday incentive pay policy, the information security policy, the mobile device policy, the pay practices policy, the problem resolution policy, and the rest breaks and meal periods policy.

²¹ This is not a personal locker room like the shared locker room described previously. If a maintenance technician wants to change clothes or shoes before or after a shift, they would do that in the shared locker room, not the maintenance locker room.

used to access restricted areas like solar panels, electrical panels, and the hazardous materials storage building, among others.²²

The job posting for the maintenance technician position states that its function is DC Operations²³ and that its core responsibilities include the following: (i) performing maintenance, troubleshooting, and repair on all equipment; (ii) performing inspection and adjustments as prescribed by the manufacturer; (iii) performing other duties as assigned; and (iv) contributing to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

In addition to the general job functions and duties set forth in the job posting, there was substantial testimony regarding the specific job duties that maintenance technicians perform. More specifically, on each shift, maintenance technicians work a rotation that includes either working on the floor, working preventative maintenance, working on projects, and working in the ASRS.²⁴ When working on the floor rotation, the maintenance technician handles issues relating to the conveyor system. The maintenance technician will drive around on the floor and if he receives a warning that something has broken down on the conveyor, he will go and address that breakdown.²⁵

When working preventative maintenance, the maintenance technician receives a list of jobs related to preventative maintenance and will spend the shift going through the list and completing those tasks. Preventative maintenance can include jobs like working plumbing in bathrooms, fixing something on the outside fence line, working on the solar panels on the roof, etc. When working projects, the maintenance technician will receive work orders or requests through the CAFM system (which is described in more detail below) and will respond to immediate requests for maintenance work. It is not clear the extent of the differences between working the projects rotation and the preventative maintenance rotation.

When working on the ASRS system rotation, the maintenance technician will monitor the system for faults and breakdowns, watching for anything that may slow the production of the system. The maintenance technician will also perform preventative maintenance on all components of the ASRS system.

In order to complete these job duties, maintenance technicians have a wide range of skills, including knowing how to work plumbing, how to fix light fixtures, how to work electrical systems, how to weld, how to work with schematics, how to work hydraulic systems, how to perform carpentry work (such as erecting a podium or building something), and how to turn wrenches. The maintenance technician job posting specifically requires experience with hand tools and their proper use; proven electrical, mechanical, and/or plumbing skills; ability to

²² There is testimonial evidence that certain areas of the Facility are restricted to maintenance employees because they require these keys.

²³ The record does not explicitly state what DC Operations stands for; however, it appears to stand for Distribution Center Operations.

²⁴ The ASRS, which stands for Automated Storage and Retrieval System, is located in the middle of Building 6 and it is a system designed to bring product out of the racking area without having human interaction. Essentially, it is a high-tech way of sorting product. It is large, approximately 50 feet wide, 100 feet in length, and 30 feet high.

²⁵ The record is not clear regarding what the maintenance technician drives.

troubleshoot electrical problems by reading and following a schematic; welding and fabrication skills; advanced computer skills working in a variety of software; the ability to lift 50 to 75 lbs.; an educational degree (high school diploma, general education degree, college diploma, etc.); an Ikea forklift driver certification; and a minimum of 2 years prior industrial maintenance experience is required.

Maintenance technicians also maintain licenses for various types of equipment, including the following: Scissor Lift, Crane, Counterbalance, Order Picker, Electronic Pallet Jacks, Reach Inc. Kooi Forks, Boom Lift, and Clamp Truck. Each maintenance technician has a license for at least one of these pieces of equipment. Maintenance technicians also perform maintenance work on or with a variety of equipment, including, but not limited to, the following: (i) walkies, which are designed to pick up pallets; (ii) reaches, which are designed to pick product off racks; (iii) counterbalances (a.k.a. forklifts), which are designed to offload trailers; (iv) C trains at dock doors to move product around; (v) conveyors; (vi) batteries; (vii) wrapping paper used to shrink wrap product; and (viii) fire extinguishers.

Maintenance Team Lead Mitchell Newman supervises the four maintenance technicians and the power equipment technician that work the first shift, which is from about 5:00 a.m. to 1:30 p.m. Newman is responsible for making sure that the employees he supervises have their jobs for the shift and he also leads a pre-shift meeting.²⁶ Team leads are not designated to a specific area in the Facility; rather, they are typically either in the maintenance shop (on the computers) or on the floor.

Maintenance technicians get their work assignments in a variety of ways. Maintenance technicians can receive a work order through the CAFM system, which is an application program for the maintenance employees. The CAFM work-order system is the preferred way for maintenance technicians to receive work orders because it will track the work orders and log them. In other words, management, including team leads, can track which work orders have been completed and which are outstanding through the CAFM system. Essentially, anybody who needs something done by maintenance will put in a service request and then the team leader or management will take the service request and make it into a work order, which is then distributed to the maintenance technician – typically through CAFM. A CAFM work order could be for something as small as a repair needed on a water fountain or as big as a repair needed on a conveyor belt, the ASRS system, or racking.

While maintenance technicians typically receive their work assignments from their direct supervisor/team lead, they can and do receive assignments from other team leads as well. For example, maintenance technicians can also get a work assignment by receiving a call on the radio. Team leaders from within maintenance and outside maintenance can place a call on the radio and ask for a maintenance technician to come address an issue. All maintenance technicians have a radio.²⁷ Maintenance technicians can also get a work assignment by being

²⁶ The record does not include evidence about who attends these meetings, how often they are held, or where they are held.

²⁷ Other leads and employees communicate with the maintenance employees through these radios. The level of access to the radios differs depending on job classification. For example, cleaners have radios and internal haulers have a radio in their trucks. General warehouse co-workers, however, do not have radios but there is a radio in

flagged down by another employee or any team lead. For example, if a general warehouse co-worker has an issue with their forklift and sees a maintenance technician walking by, that general warehouse co-worker can flag down the maintenance technician to see if they can fix the issue right there, on-the-spot.

Maintenance technicians are required to wear a long sleeve fire retardant shirt, pants, and steel-toed boots. They are not allowed to wear shorts. A uniform company launders their uniforms and brings them to the Facility. When the maintenance technicians work in the ASRS in Building 6, they are required to wear hard hats. Maintenance technicians will also sometimes wear safety gloves and eye protection when working on certain equipment.

B. Power Equipment Technicians

There is currently one power equipment technician that works at the Facility. He works on the first shift. The power equipment technician clocks in for work and then reports to the maintenance shop. The record is not clear as to whether the power equipment technician uses the lockers in the maintenance shop or stores any Employer-issued tools there. There is no evidence regarding whether the power equipment technician has Employer-issued keys.

The job posting for power equipment technician describes the position function as DC Operations and states that its core responsibilities include the following: (i) diagnosing and repairing all material handling equipment; (ii) performing inspection and adjustments as prescribed by the manufacturer; (iii) performing other duties as assigned; and (iv) contributing to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

In order to complete the job duties of power equipment technician, the job posting requires knowledge of how to use forklifts and other power equipment; basic MS Computer skills; exhibit a mechanical aptitude; experience with hand tools and their proper use; proven electrical, mechanical, and/or plumbing skills; welding and fabrication skills; advanced computer skills working in a variety of software; ability to obtain an IKEA forklift driver certification; the ability to lift 50 to 75 lbs; an educational degree (high school diploma, general education degree, college diploma, etc.); a valid driver's license; a Ikea forklift driver certification; a minimum of 3-5 years of experience working on electrical forklifts required; and prior material handling equipment training preferred. In addition, the evidence indicates that the power equipment technician maintains licenses for the following types of equipment: Electronic Pallet Jack, Counterbalance, Scissor Lift, and Reach inc. Kooi Forks.

The power equipment technician reports to Team Lead Newman. Although there is minimal testimonial evidence about the specific job duties of the power equipment technician, the record reveals that the power equipment technician turns wrenches on the power equipment²⁸ and works on forklifts, reaches, and the general power equipment. It appears that the power

Building 1 and there are radios in Buildings 2 and 5, where general warehouse co-workers run the silos (silos are special forklifts). There are also radios in the cranes, which the general warehouse co-workers operate.

²⁸ The record is unclear as to what precisely "turning a wrench" means.

equipment technician has a work area within the maintenance shop and performs most of his work there.

The record is not clear as to how the power equipment technician receives work orders. The record does not reveal whether the power equipment technician carries a radio or walks through the buildings at all. The record also does not reveal whether the power equipment technician is required to wear the same uniform as the maintenance technicians and/or whether the uniform is laundered by the uniform company. It is unclear whether the power equipment technician qualifies for an alternate work schedule.

There is some evidence of transfers between the classifications of maintenance technicians and power equipment technician. Specifically, the documentary evidence indicates that one employee was a maintenance technician from September 2010 through May 2012, was a power equipment technician from May 2012 through August 2020, and then returned to the maintenance technician classification in August 2020. Another employee was a power equipment technician from June 2008 through August 2020, at which time he became a maintenance technician. However, there is no evidence of temporary assignment of duties and/or temporary interchange between the classifications.

C. Other Employees

There are approximately 404 other hourly employees employed by the Employer at the Facility. There are approximately 367 General Warehouse Co-Workers, approximately 10 Stock Controllers, approximately 10 Recovery Co-Workers, approximately 9 Internal Haulers, approximately 7 Cleaners, and 1 Auditor.²⁹

²⁹ The job posting for General Warehouse Co-workers states that its function is DC Operations and that they report to the Warehouse Team Leader. It further states that the core responsibilities include the following: (i) assume major responsibility for shipping, receiving, block/storage; (ii) unload and properly handle all inbound/outbound merchandise; (iii) secure merchandise properly to allow for safe movement through the distribution center; (iv) verify articles received against corresponding paperwork, note any discrepancies to ensure 100% inventory accuracy; (v) remove and properly document all damages found or caused on inbound/outbound merchandise; (vi) properly store/stage all pallets in assigned locations; (vii) rotate to all location functions as assigned; (viii) maintain and clean and safe work area in all locations within the distribution center; (ix) attend work and contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers; and (x) perform other duties as assigned.

The job posting for Stock Controller states that its function is Inventory and that they report to the Inventory Control Team Leader. It further states that the core responsibilities include the following: (i) support overall IKEA inventory routines; (ii) proactive cooperation and contribution with colleagues inside and outside the department with the aim to minimize all inventory adjustments/deviations; (iii) process daily ship zero report including counting of address; (iv) process daily stock control paperwork and requests; (v) cycle count annually and correct/report deviations; (vi) audit picked pallets based on agreed requirements; (vii) ensure that goals and KPIs are met and results delivered; (viii) perform other duties as assigned; and (ix) contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

The job posting for Recovery Co-worker states that its function is DC Operations and that they report to the Quality Team Leader. It further states that the core responsibilities include the following: (i) proactive cooperation and contribution with colleagues inside and outside the departments with the aim to minimize all internal damages or other costs related to IKEA products; (ii) perform investigations with 48 hours of receipt of request based on the information received; (iii) complete all repairs in accordance with work orders and protocol; (iv) ensure smooth flow of product through the Recovery/Repair area; (v) check all damages, ensure all articles which are considered to be

In addition to the different duties and skills described in the job postings for the petitioned-for classifications and the other hourly employees, the record also revealed other differences. The other hourly employees have different team leads and different managers. The maintenance technicians' uniforms are different from the uniforms of the other hourly employees. The evidence also reflects that the system for working overtime is different between the maintenance technicians and the other hourly employees.³⁰

There is substantial testimonial evidence regarding the daily interactions between the maintenance technicians and these other hourly employees.³¹ The evidence reflects that the other hourly employees use various pieces of equipment to perform their job duties. Some of the other employees, including the general warehouse co-workers, use a system called a d-log in performing their job duties. The evidence essentially indicates that the maintenance technicians and the power equipment technician perform maintenance work on much of the equipment that the other hourly employees use to complete their job duties.

There is also evidence showing that there are some employees who started out as general warehouse co-workers and then worked their way to become maintenance technicians. However, there is no evidence of other classifications performing the work of a maintenance technician or

saleable are packaged as close to the original packaging as possible, operate re-pack table to create new packaging when necessary; (vi) create and monitor tracking reports measuring results and productivity; (vii) always consider the sustainability impact when deciding when and how to recover product; (viii) perform other duties as assigned; and (ix) contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

The job posting for Internal Hauler states that its function is DC Operations and that they report to the Flow Team Leader. It further states that the core responsibilities include the following: (i) operate yard truck in a safe manner at all times; (ii) coordinate with Flow and Operations to position all trailers and containers for loading and receiving; (iii) maintain a clean and safe work area; (iv) adhere to Internal hauler rules and processes, use creative problem solving skills and analytical skills in reaching decisions and direction; (v) ensure that goals and KPIs are met and results delivered; (vi) contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers; and (vii) perform other duties as assigned.

The job posting for Cleaner states that its function is DC Operations and that they report to the Facilities Team Leader or Manager. It further states that the core responsibilities include the following: (i) operate and maintain sweeper/scrubber machines; (ii) recycling responsibilities, emptying banana boats through the DC, able to empty and trouble shoot bailers; (iii) outside cleaning of docks, parking lots and light landscaping and painting work; (iv) maintain a clean and safe work area in all locations within the distribution center; (v) respond to requests for assistance from maintenance and warehouse staff; (vi) performs other duties as assigned; and (vii) contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

The job posting for Auditor states that its function is DC Operations and that they report to the Inventory Control Team Leader/Manager. It further states that the core responsibilities include the following: (i) collaborate with the Stock Control department to support overall IKEA inventory routines; (ii) audit departmental spreadsheets for discrepancies; (iii) keep track of damages and discrepancy statistics in Excel; (iv) perform general warehouse duties as needed; (v) perform other duties as assigned; and (vi) contribute to an environment where the IKEA culture is a strong and living reality that embraces the diversity of co-workers and customers.

³⁰ Generally, the maintenance technicians do not need pre-approval for overtime and the warehouse co-workers get overtime through a system where a sheet is posted at the SD hub and then the co-workers can sign up if they are interested in working overtime.

³¹ Given that this testimony is not relevant to the issue at hand – which is whether the petitioned-for employees have an internal community of interest to establish that it is *an* appropriate unit – it is not detailed in this decision.

a power equipment technician; nor is there any evidence of temporary assignments between the two petitioned-for classifications and the other classifications.

II. APPROPRIATENESS OF THE PETITIONED-FOR UNIT

A. Relevant Board Law

In accordance with Section 9(b) of the Act, “[t]he Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof[.]” 29 U.S.C. § 159 (b). When making a determination as to whether a petitioned-for unit is “appropriate” under Section 9(b) of the Act, “the Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 134 (1944)).

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time, it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). The Act does not require a petitioner to seek representation of employees in the most appropriate unit, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996) (emphasis added).

The appropriateness of the petitioned-for unit is not challenged here in light of the untimely service of the Employer’s Statement of Position and the resulting preclusion. However, I am nevertheless required to determine whether the unit sought is an appropriate unit under Section 9(b) of the Act. In determining the appropriateness of a petitioned-for unit where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies steps one and three of *Boeing* -- the requirement that any appropriate unit have an internal community of interest and that consideration must be given to the Board’s decisions on appropriate units in the particular industry involved. *Macys West Stores, Inc.*, 32-RC-246415, fn. 1 (unpublished May 27, 2020).

When deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 6 (2017) (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). All relevant factors must be weighed in determining community of

interest, including the Board's established guidelines for appropriate unit configurations in specific industries. *PCC Structural*s, 365 NLRB No. 160, slip op. at 11.

B. Application of Board Law to the Instant Case

Based on the record evidence, I find that the evidence is sufficient to establish that the employees in the petitioned-for unit, including maintenance technicians and power equipment technicians, share an internal community of interest to make the unit an appropriate within the meaning of the Act. I further find that the facility, industry, or employer precedent does not alter this conclusion.

i. Employer's Organization

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. In certain circumstances, the Board will approve a unit despite the fact other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1291 (2000).

Here, it is undisputed that the maintenance technicians and the power equipment technician are grouped within Facilities. In addition, these two classifications make up the maintenance group within Facilities. Other classifications are included within Facilities, including the cleaners and the sustainability developer, but they are not considered part of maintenance.³² Thus, the fact that the petitioned-for unit does not include all classifications within Facilities does not mandate that the unit is inappropriate, specially in cases like this one where there is another grouping – the maintenance department – within the larger Facilities.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

ii. Skills and Training

This factor examines whether the petitioned-for employees can be distinguished from one another based on qualifications, skills, or trainings. Evidence that employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same Employer training programs, or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *The Phoenician*, 308 NLRB 826 (1992).

Here, the maintenance technicians and power equipment technicians must meet similar requirements to obtain employment and they have similar licensure requirements. The job postings indicate that maintenance technicians and power equipment technicians are required to have the following same skills or experience: (i) experience with hand tools and their proper use; (ii) proven electrical, mechanical, and/or plumbing skills; (iii) welding and fabrication skills; (iv)

³² While cleaners sometimes go to the maintenance shop, they are not based out of that shop. The record is not clear where the sustainability developer is based when working.

advanced computer skills working in a variety of software; (v) an IKEA forklift driver certification or the ability to obtain one; (vi) ability to lift 50 to 75 lbs; and (vii) an educational degree. Differences include that a maintenance technician must have (i) the ability to troubleshoot electrical problems by reading and following a schematic; and (ii) a minimum of 2 years prior industrial maintenance experience, whereas a power equipment technician must have (i) knowledge of how to use forklifts and other power equipment; (ii) basic MS Computer skills; and (iii) a required minimum of 3-5 years working on electrical forklifts and preferred prior material handling equipment training. The similarity of requirements is greater than the differences between them.

With respect to licenses, the documentary evidence shows that the maintenance technicians maintain licenses for various types of equipment, including the following: Scissor Lift, Crane, Counterbalance, Order Picker, Electronic Pallet Jacks, Reach Inc. Kooi Forks, Boom Lift, and Clamp Truck. It also shows that the power equipment technician maintains licenses for the following types of equipment: Electronic Pallet Jack, Counterbalance, Scissor Lift, and Reach Inc. Kooi Forks. Therefore, the two classifications possess many of the same licenses for various types of equipment. I note, however, that there is insufficient evidence to determine the extent to which maintenance technicians and power equipment technicians use similar equipment in performing their job functions.

The evidence also indicates that maintenance technicians and power equipment technician participate in the same online digital trainings, which apply to all employees.

Overall, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

iii. Job Functions and Work

This factor examines whether the petitioned-for employees can be distinguished from one another on the basis of job duties or functions or the work they perform. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994).

Here, the job postings indicate that maintenance technicians and power equipment technicians have similar job duties or functions. Specifically, the postings indicate that both classifications are responsible for diagnosing or troubleshooting and repairing equipment and performing inspections and adjustments as prescribed by the manufacturer.. There is no evidence about whether the power equipment technician physically performs any work outside the maintenance shop. Thus, while the record evidence fails to show a high degree of overlap in job functions or performing one another's work, the job postings support a finding of similarity of functions. In other words, both classifications are responsible for repairing and maintaining equipment and therefore perform the same basic function.

The record does not reveal precisely whether the maintenance technician and power equipment technician use similar equipment. Nor does it reveal how the power equipment technician receives work orders.

Overall, though, despite the lacking evidence on details of the power equipment technician's daily tasks, the fact that both classifications perform the same basic function makes this factor weigh slightly in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

iv. Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters and perform similar functions is relevant when examining whether functional integration exists. *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024-1025 (2004); *Transerv Systems, Inc.*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

Here, the maintenance technicians and the power equipment technician, as a group, fulfill the role of making sure that the Employer's equipment and facilities function so that the Employer's products reach their destination. Ultimately, all the hourly employees work toward the shared goal of making sure that the Employer's products reach their destination, but if the process for making sure that the products reach their destination is stopped for some reason, the maintenance team is there to make sure the disruption is mitigated and lessened as much as possible so that the process can continue. The maintenance technicians and power equipment technician provide maintenance services on various pieces of equipment that are used throughout this process, including conveyors, forklifts, and the ASRS, among others. Thus, although the two classifications may provide different specific maintenance acts during their job duties, they ultimately serve the same purpose.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

v. Contact Among Employees

Also relevant is the amount of work-related contact among the petitioned-for employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit sought by a union have with one another. See, e.g., *Casino Aztar*, 349 NLRB at 605-606; *Associated Milk Producers, Inc.*, 251 NLRB 1407, 1408 (1970).

Here, the limited testimonial evidence establishes that the power equipment technician essentially works inside the maintenance shop for the duration of his shift. The maintenance shop

is where the maintenance technicians are based when they are not working in another location throughout the buildings. However, the testimony about the maintenance technicians' various rotations, which includes working on the floor, working preventative maintenance, working on projects, and working in the ASRS does not make clear how much of this work is done in the maintenance shop. Therefore, it is not clear how much work-related contact there is between them. For example, we do not know how often they may work beside each other, whether they ever work on the same piece of equipment, whether the power equipment technician will go out on the floor with the maintenance technician, or whether the power equipment technician also accesses the areas restricted by Employer-issued keys.

Accordingly, this factor does not weigh in favor of finding that the maintenance technicians and power equipment technician share a community of interest, but it does not necessarily cut against it.

vi. Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)).

Here, there is no evidence of temporary work assignments between maintenance technicians and the power equipment technician. However, there is evidence that one employee was a maintenance technician from September 2010 through May 2012, then was a power equipment technician from May 2012 through August 2020, and then returned to the maintenance technician classification in August 2020. There is also evidence that another employee was a power equipment technician from June 2008 through August 2020, at which time he became a maintenance technician.

Thus, while this factor does not strongly support finding that the maintenance technicians and power equipment technician share a community of interest, it does not necessarily cut against such a finding.

vii. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (e.g., hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the fact employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342

NLRB 215 (2004); *Overnite Transportation Co.*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corp.*, 221 NLRB 1145 (1996).

Here, the maintenance technicians and the power equipment technician are hourly employees. Although the record evidence is not clear as to whether they receive similar wage rates or are within the same wage ranges, it is undisputed that they have the same fringe benefits, are subject to the same Employer work rules and policies, and are subject to the same Employer code of conduct.

The record is not clear as to whether the power equipment technician wears the same fire-retardant long sleeve shirt and pants as the maintenance technician. The testimony indicates that maintenance technicians are issued a uniform so that they can be highly visible when they are on the floor, but it is not clear whether this includes the power equipment technician, nor is it clear whether the power equipment technician ever works on the floor such that he would need a uniform to be highly visible. However, the record indicates that they both wear the same badges and steel-toed boots.

Overall, there are more similarities in terms and conditions than differences and, therefore, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

viii. Supervision

In examining whether the employees in dispute are commonly supervised, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB at 402; *NCR Corp.*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, 338 NLRB at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607, fn. 11. Rather, more important is the degree of interchange, contact, and functional integration. *Id.* at 607.

Here, the maintenance technicians and the power equipment technician share the same direct supervisor - Maintenance Team Lead Mitchell Newman. Although there is no evidence regarding Newman's authority to hire, to fire, or to discipline his direct reports (or effectively recommend those actions), or regarding whether Newman evaluates or rates his direct reports, Newman testified that he is responsible for monitoring his reports' workload and making sure that everyone has their work on a daily basis. In other words, it appears that he directs and/or

assigns work to his direct reports. The testimony further indicates that Newman's direct reports receive most of their work from their team lead, as opposed to from other team leads or coworkers.

Thus, this factor weighs in favor of finding that the maintenance technicians and power equipment technician share a community of interest.

ix. Summary of Community of Interest Factors Analysis

Based on the foregoing, considering all the community of interest factors, the evidence supports finding that the maintenance technicians and power equipment technician share an internal community of interest, therefore satisfying step one of *Boeing*. In reaching this conclusion, I rely on the grouping of the maintenance technician and power equipment technician under maintenance within Facilities, the common skills and training required to obtain employment in the two classifications, as well as the similar licensure requirements. I also rely on the fact that the two classifications perform the same basic function and to the extent that there is some overlap in certain job functions, this too supports finding a community of interest. The petitioned-for employees also have common terms and conditions of employment and share supervision. Furthermore, the functional integration between the two classifications also supports finding that they share a community of interest. I acknowledge, though, that interchange was effectively neutral and that there is insufficient specific evidence of contact among the employees other than the fact that they work out of the maintenance shop. This lack of evidence, even if it indicated differences between the two classifications, would not be enough to outweigh all the other factors detailed above that support finding an internal community of interest.

I also must recognize that had the Employer timely served the Statement of Position on the Petitioner and, therefore properly asserted that additional employees must be included in the petitioned-for unit to render it appropriate, step two of *Boeing* would have applied and a different conclusion may have been reached. However, that is not the situation and/or question before me.

Thus, considering all the factors as a whole, I find that the evidence establishes that the petitioned-for unit of maintenance technicians and power equipment technicians share an internal community of interest.

x. Facility, Industry, or Employer Precedent

Having satisfied step one of *Boeing*, step three of *Boeing* considers facility, industry, or employer precedent. Here, there does not appear to be any special facility or industry guidelines that apply to this case that would change my determination on the appropriateness of the petitioned-for unit. With respect industry guidelines, in *Boeing* the Board cited situations involving public utilities, defense contractors, and retail establishments as examples of industries that may have industry-specific guidelines. 368 NLRB No. 67, slip op. at 1 (2019). None of those situations are present in the instant matter. In addition, *Boeing* generally involved the production and maintenance industry and the Board determined that no industry-specific guidelines were applicable to the case. *Id.*

Moreover, the fact that the Petitioner seeks a less-than-plantwide unit in this industry does not require that it meet a higher burden. In *Boeing*, the Board specifically stated that no case “establishes that a less-than-plantwide manufacturing unit is presumptively inappropriate, or that a petitioner seeking such a unit bears any heightened burden of proving that it is appropriate.” 368 NLRB No. 67, slip op. at 6. Rather, “the Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.” *Id.*, citing *Montgomery Ward & Co.*, 150 NLRB 598, 601 (1964) (citing cases) (petitioned-for unit of automotive service center service department employees was appropriate, even though the employer contended that only a storewide-unit was appropriate). Accordingly, the necessary industry and facility considerations do not change my determination that the petitioned-for unit is *an* appropriate unit.

With respect to the consideration of employer precedent, it is true that the record does not contain evidence regarding the Employer’s precedent because the Hearing Officer did not call one of the Employer’s offered witnesses. Specifically, the Employer offered a witness that would have been able to testify to the makeup of bargaining units at the Employer’s facilities across the country.³³ However, even if the Hearing Officer had called the witness and the witness had testified as outlined in the offer of proof, that would not change the outcome of my determination that the petitioned-for unit is an appropriate unit. Based on the offer of proof, the testimony would have shown that at some of the Employer’s other distribution centers, there is one IAM bargaining unit that covers the maintenance and production employees. Here, however, IAM is not seeking to represent only the maintenance technicians and the power equipment technician. Rather, an entirely different union is seeking to represent maintenance employees and, therefore, the Employer precedent does not establish that a smaller unit within the larger unit would be inappropriate.

Thus, considering steps one and three of *Boeing*, I find that the evidence establishes that the petitioned-for unit of maintenance technicians and power equipment technicians share a community of interest sufficient to establish that it is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

III. METHOD OF ELECTION

A. The COVID-19 Pandemic in the United States

On March 13, President Donald J. Trump issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.”³⁴ The impact of the COVID-19 pandemic on daily life has been profound. The Centers for Disease Control and

³³ The Employer submitted an offer of proof that Associate General Counsel for Labor Relations Carlisle Michael Bostic would testify concerning the makeup of bargaining units at the Employer’s facilities across the country, including in Westampton, New Jersey; Perryville, Maryland; Tacoma, Washington; Savannah, Georgia; and Joliet, Illinois. Specifically, Mr. Bostic would testify that at these facilities, there is one IAM bargaining unit that includes maintenance coworkers along with all other production employees at the distribution centers.

³⁴ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed November 2, 2020).

Prevention (CDC),³⁵ an agency of the United States government, has determined “[t]he best way to prevent illness is to avoid being exposed to the virus,” as there is currently no approved vaccine or antiviral treatment, and recommends that people avoid close contact with other individuals who do not live in the same household.³⁶ According to the CDC, “[t]he virus that causes COVID-19 is spreading very easily and sustainably between people” and “the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread.” *How It Spreads*.³⁷ Many of the measures recommended by the Federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people. *How to Protect Yourself & Others*.³⁸

The CDC has also published reports regarding pre-symptomatic and asymptomatic transmission of COVID-19, including the *Emerging Infectious Disease Journal* (Online Report) for July, “Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Pre-symptomatic or Asymptomatic.”³⁹ The Online Report emphasizes, “transmission in the absence of symptoms reinforces the value of measures that prevent the spread of [COVID-19] by infected persons who may not exhibit illness despite being infectious.” Despite these unprecedented efforts to limit transmission, as of November 5, over 9.4 million people in the United States have been infected with COVID-19 and 233,129 people have died.⁴⁰

Although it has not directly addressed Board elections, the CDC has issued guidance on elections in general. Its *Considerations for Election Polling Locations and Voters* states officials should “consider offering alternatives to in-person voting if allowed” and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”⁴¹ These voting alternatives

³⁵ I take administrative notice of the information, guidance, and recommendations of the CDC regarding COVID-19. See “Coronavirus (COVID-19)” and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (last accessed November 2, 2020).

³⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last accessed November 2, 2020); “Predicting the Decay of SARS-CoV-2 in Airborne Particles.” <https://www.dhs.gov/publication/st-predicting-decay-sars-cov-2-airborne-particles-factsheet> (last accessed November 2, 2020).

³⁷ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed November 2, 2020).

³⁸ *Ibid.*

³⁹ See https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article (last accessed November 2, 2020). See also, “The implications of silent transmission for the control of COVID-19 outbreaks.” *Proceedings of the National Academy of Sciences of the United States of America (PNAS)*. <https://www.pnas.org/content/early/2020/07/02/2008373117> (“even if all symptomatic cases are isolated, a vast outbreak may nonetheless unfold ... we found that the pre-symptomatic stage and asymptomatic infections account for 48% and 3.4% of transmission, respectively”). This article was subsequently updated on July 28, 2020 to observe that, based on current data, that “silent transmission during pre-symptomatic and asymptomatic stages are responsible for more than 50%” of infections (last accessed November 2, 2020).

⁴⁰ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (“Elections with only in-person voting on a single day are higher risk for COVID-19 spread ...”) (last accessed November 2, 2020). See also Governor of the State of California Executive Order N-64-20. <https://www.gov.ca.gov/2020/05/08/governor-newsom-issues-executive-order-to-protect-public-health-by-mailing-every-registered-voter-a-ballot-ahead-of-the-november-general-election/> (“WHEREAS to preserve public health in the face of the threat of COVID-19, and to

recommended by the CDC include mail ballots. The CDC further states the virus can survive for a short period on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes," but "it is unlikely to be spread from domestic or international mail, products or packaging." *Am I at risk for COVID-19 from mail, packages, or products?*⁴² To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: "After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol." *Running Errands.*⁴³

B. The COVID-19 Pandemic in California and Kern County

The Employer's Lebec, California facility is located in Kern County. Many state and municipal governments have issued restrictions responsive to the COVID-19 pandemic tailored to the particular circumstances present in specific communities. On March 4, the Governor of the State of California (Governor) declared a "State of Emergency to Help State Prepare for Broader Spread of COVID-19."⁴⁴ On March 19, the Governor issued Executive Order N-33-20 ordering all individuals living in the State of California (California) to stay home, except as to maintain continuity of operations for the Federal Critical Infrastructure Sectors.

On May 4, the Governor issued a press release⁴⁵ announcing that based on California's progress in meeting metrics tied to indicators, California could begin to move into Stage 2 of modifying Executive Order N-33-20 on May 8, with guidelines released on May 7. In doing so, the Governor noted that the situation is "still dangerous and poses a significant public health risk." The Governor further announced that while California would be moving from Stage 1 to Stage 2, its "counties can choose to continue more restrictive measures in place based on their local conditions, and the state expects some counties to keep their more robust stay at home orders in place beyond May 8, 2020." *Ibid.* Despite these measures, however, reported cases of COVID-19 have continued to climb in California to its current level of 944,576 cases and 17,815 deaths as of November 5.⁴⁶

The California Department of Public Health (CDPH) monitors data related to COVID-19 for each of California's 58 counties, including Kern County. If a county did not remain below established thresholds for a seven-day average for positive cases per day, elevated disease transmission, increasing hospitalization, and limited hospital capacity, it was placed on the County Monitoring List, which was then used to reinstitute health measures such as closing business sectors and restricting gatherings and travel.

ensure that the November election is accessible, secure, and safe, all Californians must be empowered to vote by mail, from the safety of their own homes ...") (last accessed November 2, 2020).

⁴² See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last accessed November 2, 2020).

⁴³ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (updated August 3, 2020; last accessed November 2, 2020).

⁴⁴ See <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (last accessed November 2, 2020).

⁴⁵ See <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/> (last accessed November 2, 2020).

⁴⁶ <https://www.Covid19.CA.Gov>.

On July 2, the Governor ordered 19 counties (Health Officer Orders), including Kern County, that had been on the County Monitoring List for three consecutive days to “close all bars, pubs, brewpubs, and breweries, whether operating indoors or outdoors” and cease indoor services for restaurants, wineries and tasting rooms, family entertainment centers and movie theaters, zoos, museums, and cardrooms.⁴⁷ The Health Officer Orders also noted, “[p]ublic health studies have shown that the risk of transmission is exacerbated in indoor spaces, particularly when lacking appropriate ventilation.”

On July 13, after 29 counties, including Kern County, had remained on the County Monitoring List for at least three consecutive days, the Governor expanded the restrictions from the previous Health Officer Orders to the rest of the state and reinstated additional closures for Kern County and others on the County Monitoring List to include the indoor operations of gyms and fitness centers, places of worship, indoor protests, offices for Non-Critical Infrastructure Sectors, personal care services (including nail salons, massage parlors, and tattoo parlors), hair salons and barbershops, and malls.⁴⁸ On August 28, California unveiled its Blueprint for a Safer Economy, a new framework replacing the County Monitoring List for reopening its economy in light of COVID-19. As of November 5, Kern County remained in the top tier of counties most impacted by COVID-19, where the virus is “substantial” and “[s]ome non-essential indoor business operations are closed.”⁴⁹ Notably, Kern County was previously listed as “moderate,” which means that its current designation as “substantial” indicates that conditions in the county are getting worse.

Although communities nationwide have taken steps to prevent or slow the spread of COVID-19, the virus has continued to have a devastating impact in California and throughout the United States. As of November 5, according to data released by the Kern County Department of Public Health, there have been 34,973 confirmed cases of COVID-19 in Kern County and 428 people have died from COVID-19.⁵⁰ In fact, as of November 5, Kern County had the sixth highest total number of positive cases among the 58 counties in California.⁵¹

C. The Employer’s Response to COVID-19 and Proposed Safety Precautions for a Manual Election

As an essential business, the Employer remains operational during the COVID-19 pandemic, and its employees continue to report to work at the Facility and perform their regular duties.⁵² The record does not include information about whether the Employer has implemented safety protocols and social distancing practices in line with state and local health orders as it has continued to operate during the COVID-19 pandemic, such as (a) mandating face coverings or

⁴⁷ See <https://kernpublichealth.com/wp-content/uploads/2020/07/Order-Closing-Indoor-Services-and-Sectors-Kern.pdf> (last accessed November 2, 2020)

⁴⁸ See <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf> (last accessed November 2, 2020).

⁴⁹ “Blueprint for a Safer Economy.” <https://covid19.ca.gov/safer-economy/> (last accessed November 5, 2020).

⁵⁰ See https://kernpublichealth.com/covid-19_dashboard/ (last accessed November 5, 2020).

⁵¹ See https://public.tableau.com/views/COVID-19CasesDashboard_15931020425010/Cases?:embed=y&:showVizHome=no (last accessed November 5, 2020).

⁵² While this was not made explicitly clear on the record, it became evident based on the testimony of various witnesses.

masks for all employees and visitors when within 6 feet from another individual,⁵³ (b) employees' hands must be washed before and after every shift, break, smoke break, restroom visit, or in the event an employee is visibly soiled with an unknown substance; (c) all work areas are to be sanitized before the end of every shift (to include tools used by employees throughout their shifts); (d) employees are required to monitor hygiene and health at all times; (e) thermometers are on hand and used every day to monitor employee temperatures at the beginning of every shift; and (f) health status forms have been completed by all employees and must be immediately updated when an employee's health status changes. The record also does not include information about whether personal protective equipment (PPE) is provided by the Employer or the employees.

As of the end of the hearing, the Employer reported that since August 1, thirteen of its employees at the Facility had tested positive for COVID-19. It did not have information regarding the number of employees who have exhibited symptoms of COVID-19 or were subject to a quarantine for any reason related to COVID-19.

The Employer argues that any election should be by manual ballot at its Lebec, California facility and that it can safely hold an open-air election at the facility in compliance with all local, state, and federal guidelines and consistent with the protocols described in General Counsel Memorandum 20-10. The Employer states that it will provide all materials required by General Counsel Memorandum 20-10, including, but not limited to, disposable pencils without erasers for each voter to mark their ballot; glue sticks or tape to seal challenge ballot envelopes; separate tables placed at least 6 feet apart for the Board Agent, ballot booth, and ballot box; plexiglass barriers of sufficient size to protect the observers and the Board Agent and to separate the observers and Board Agent from voters and one another as well as others they may come in contact with during the pre-election conference and/or ballot count; and masks, sanitizer, and gloves for the observers. Further, the Employer states that all voters, observers, party representatives and other participants will be required to wear CDC-conforming masks in all areas related to the election, and signs will be placed immediately adjacent to the Notice of Election to notify all involved parties of this requirement.

In the event the Regional Director were to direct an election, the Employer proposed an election on Wednesday, December 16, from 4:30 a.m. to 6:00 a.m. and 2:30 p.m. to 4:00 p.m. It also asserted at the hearing that Spanish language ballots would be needed.

D. The Petitioner's Position

The Petitioner supports either a mail or manual ballot election. If a manual election were directed, the Petitioner proposed polling times from 9:00 a.m. to 11:00 a.m.; 5:00 p.m. to 8:00 p.m.; and 11 p.m. to 2:00 a.m. The Petitioner also agreed that Spanish language ballots would be needed.

⁵³ There is evidence that the Employer has required employees to complete trainings on social distancing.

E. Agency Directives and Legal Authority

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees' union representation preference and to certify the results of such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community are facing public health and economic crises. Regional Directors have an obligation to appropriately exercise their discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.

Although the Board prefers to conduct manual elections over conducting mail ballot elections, the Board has acknowledged that circumstances may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Assn. of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted." *Id.*; see also *NLRB Casehandling Manual (Part Two) Representation Procedures* Sec. 11301.2 (Casehandling Manual).⁵⁴ Thus, "[o]nly where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him [or her] to conduct representative elections will the Board nullify an election and prescribe other election standards." *National Van Lines*, 120 NLRB at 1346.

The Board has determined that there are some instances in which a mail ballot election is appropriate because "of circumstances that would tend to make it difficult for eligible employees to vote in a manual election." *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). The Board has clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say that there may be other relevant factors to consider and that "extraordinary circumstances" may warrant a departure from the specific guidelines articulated in that case. *Id.*

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, a Regional Director may exercise discretion to order a mail ballot election where conducting an election manually is not feasible and, under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. In addressing the COVID-19 pandemic, the Board has recognized the

⁵⁴ I note the provisions of the *Casehandling Manual* are not binding procedural rules; the *Casehandling Manual* is issued by the General Counsel, not the Board, and is intended to provide guidance to regional personnel in the handling of representation cases. *Patient Care*, 360 NLRB 637, 638 (2014) (citing *Solvent Services*, 313 NLRB 645, 646 (1994)); *Superior Industries*, 289 NLRB 834, 837 fn. 13 (1988); *Aaron Medical Transportation, Inc.*, Case 22-RC-070888 (unpublished 2013) (citing *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn.4 (2007)); *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn.5 (1995). See also *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 fn. 5 (1979).

discretion afforded to Regional Directors in election matters. In this regard, when the Board issued an announcement titled “COVID-19 Operational Status”⁵⁵ on April 17 regarding the COVID-19 pandemic, it stated in pertinent part:

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance. Regional Directors, in their discretion, may schedule hearings through teleconference or videoconference, although the latter may involve delays due to limited availability.

On July 6, General Counsel Peter Robb issued a memorandum titled “Suggested Manual Election Protocols.” (GC 20-10). In that memorandum, the General Counsel acknowledges that the protocols suggested therein are not binding on Regional Directors because the Board, not the General Counsel, has authority over matters of representation, and he reiterates that Regional Directors have the authority, delegated by the Board, to make “initial decisions about when, how, and in what manner all elections are conducted.” The General Counsel further notes Regional Directors have, and will:

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 locality.

Among other suggestions in GC 20-10, the General Counsel proposes self-certification that individuals in proximity to the polling place, including observers and party representatives, have not tested positive for COVID-19, come into contact with someone who tested positive within the preceding 14 days, are not awaiting test results, and are not exhibiting COVID-19 symptoms.⁵⁶ GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, which would delay resolution of the question concerning representation.

In several recent Orders, the Board has continued to find the ongoing COVID-19 pandemic to be “extraordinary circumstances” as contemplated by *San Diego Gas*.⁵⁷ With

⁵⁵ See <https://www.nlr.gov/news-outreach/news-story/covid-19-operational-status-update>.

⁵⁶ I note the self-certifications in GC 20-10 specify only three symptoms of COVID-19: a fever, cough, or shortness of breath. However, the CDC and State of California all list 11 symptoms: fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea. The CDC also explains that the list is not all inclusive. See CDC’s “Symptoms of Coronavirus,” <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>; and California’s “Symptoms and risks,” <https://covid19.ca.gov/symptoms-and-risks/> (last accessed November 2, 2020).

⁵⁷ See, e.g., *Brink’s Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020) (denying review of Regional Director’s decision to order a mail ballot election); *Sunsteel, LLC*, 19-RC-261739 (unpublished August 4,

respect to GC 20-10, the Board did not formally adopt its guidance, noting only the following: “The Board will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10.” *Brink’s Global Services USA, Inc.*, 29-RC-260969, fn. 2 (unpublished July 14, 2020).⁵⁸

I note that the Board has denied review of Regional Directors’ decisions to conduct mail ballot elections due to local COVID-19 circumstances although employers have offered to follow the same or similar protocols as those identified in GC 20-10. See, for example, *Johnson Controls, Inc.*, 16-RC-256972 (Order dated May 18, 2020) (denying review where employer had zero COVID-19 cases, daily screened all individuals accessing the facility for symptoms, mandated face coverings and social distancing, and offered an outdoor election with plexiglass barriers, sanitizer, single-use writing utensils, floor markings for social distancing, masks, and gloves).⁵⁹ Similarly, in *Daylight Transport, LLC*, 31-RC-262633 (unpublished August 19, 2020), the Board denied the employer’s request for review and upheld my decision to order a mail ballot election even though the Employer proposed many of the same safety protocols and also proposed an outdoor polling place.⁶⁰

F. Analysis

The circumstances surrounding the COVID-19 virus are extraordinary. Whether a mail ballot election is appropriate requires considering in each case both the public health concerns presented by the COVID-19 pandemic and the Board’s stated preference for manual elections. I recognize that the Board has traditionally preferred manual elections. However, I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety concerns in the context of a pandemic. Thus, it is my obligation to conduct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances.

I acknowledge that absent the public health concerns arising from the pandemic, I would order a manual election in this case. However, for the reasons articulated earlier, this election will not be held under normal circumstances. I recognize some degree of reopening has begun, in the United States generally and in California specifically. I also recognize that in Kern County, not only does COVID-19 remain present in the local community, but it continues to be classified as “substantial.” As noted above, current Federal, State, and Kern County public health guidance continues to strongly recommend discouraging gatherings to reduce the risk of exposure to and spread of COVID-19, and a mail ballot election minimizes such risk.

2020) (same); *PACE Southeast Michigan*, 07-RC-257046 (unpublished August 7, 2020) (same); *Tredroc Tire Services*, 13-RC-263043 (unpublished August 19, 2020) (same); *Daylight Transport, LLC*, 31-RC-262633 (unpublished August 19, 2020) (same).

⁵⁸ The Order is available on the Board’s public website at <https://www.nlr.gov/case/29-RC-260969>.

⁵⁹ The Regional Director’s Decision and Direction of Election, dated May 7, 2020, and the Board’s May 18, 2020 Order are available on the Board’s public website at <https://www.nlr.gov/case/16-RC-256972>.

⁶⁰ My Decision and Direction of Election and the Board’s Order are available on the Board’s public website at <https://www.nlr.gov/case/31-RC-262633>.

Thus, based on the facts outlined above and for the reasons detailed below, I find that it is appropriate to direct a mail ballot election in this case because: the current pandemic conditions constitute extraordinary circumstances that merit deviation from a manual election; a mail ballot election is the safest method of conducting an election under the circumstances; and, in comparison to a manual election, a mail ballot election avoids disenfranchising voters due to the pandemic.

i. The Risks Associated With the COVID-19 Pandemic Constitute Extraordinary Circumstances

Although questions regarding the transmission of SARS-CoV-2 and the nature of COVID-19 abound, the basics of the pandemic from a public health perspective are at this point quite familiar: it is a contagious virus, for which there is currently no approved vaccine or antiviral treatment, that often causes a serious, and at times fatal, illness. I find the COVID-19 pandemic presents extraordinary circumstances that make conducting a mail ballot election the most responsible and appropriate method for conducting a secret ballot election to determine the employees' union representation preferences in light of the current COVID-19 situation in Kern County. The safety of the voters, the observers, the party representatives, and the Board agent conducting the election must be considered in determining the appropriate method for conducting the election. The Employer's employees remain working at the Employer's facility because they perform essential services, and because of the nature of the work, no alternative exists to perform their work remotely. However, the Board does have an acceptable alternative to conducting a manual election.

Manual election procedures inherently require substantial interaction, and that interaction generates risk. I appreciate the Employer's efforts to mitigate this risk by making certain accommodations in an effort to allow for a degree of social distancing and protection during the election consistent with GC 20-10. I recognize that these accommodations and the GC 20-10 manual election protocols might reduce the risk of transmission, but given the current high incidence of COVID-19 in Kern County, the protocols do not alleviate my concerns about conducting a manual election under the current situation at this locality. Moreover, since August 1, thirteen employees at this facility have tested positive for COVID-19 and the Employer did not provide the statistics as to the number of its employees who have exhibited symptoms or been quarantined because of the current COVID-19 pandemic. Even without this additional information, the fact that thirteen employees have tested positive since August 1 represents a greater risk associated with holding a manual election at the Employer's facility.

With respect to the inevitable interactions and risk of exposure necessitated by a manual election, voters, observers, and party representatives, as well as the Board agent, would all need to travel to and appear at the Lebec facility to participate in the election. In addition, the Board agent would likely have to stay overnight near the facility in order to conduct an election that accommodates petitioned-for employees on three different Employer shifts. Party representatives, the observers, and the Board agent usually would gather for approximately 15 to 30 minutes for the pre-election conference, including inspection of the voting area, though I recognize that GC 20-10 suggests that this may could take place by video. Even though the Employer has proposed utilizing an open-air tent separate from the facility, the Board agent and

observers would need to share the same tent area for a period of at least three to six hours during the polling periods, plus the vote count. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent, although GC 20-10 does suggest the use of multiple voter lists. The Board agent must provide a ballot to each voter, which per GC 20-10 could be done by placing a single ballot on a table, which each voter must then mark in a voting booth and then place into one shared ballot box. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. Given the span of the election, the Board agent and observers might need to use a restroom at the facility, typically before and after the closing of the polls. The Board agent must also count the ballots cast by all voters at the end of the election, which is typically done in the same voting area, with the observers, party representatives, and other employees who wish to attend. The vote count, thus, would extend the time that the observers and the Board agent would spend together beyond simply the voting period windows. In addition to the Board agent and observers being exposed to each other for an extended period of time, they also would be exposed, albeit briefly, to many people during the course of conducting the election. Furthermore, the Employer proposed two separate voting periods, the first starting at 4:30 a.m. and the last ending at 4:00 p.m., which raise additional concerns because such an election would require the Board agent coming from the Regional Office in West Los Angeles to spend the entire day in a public place in Kern County, and at least one night, further increasing the Board agent's potential exposure to COVID-19.⁶¹

As noted above, the Employer has incorporated many of the accommodations used to combat the spread of COVID-19 in its plan for a manual election, such as social distancing, the use of plexiglass shields, and face coverings. However, in my view, in light of the current circumstances in Kern County, the substantial interaction and exposure inherent in conducting a manual election presents a significant risk for all election participants despite the social distancing and protective measures proposed by the Employer or suggested by GC 20-10. Further, it is reasonable to conclude that conducting a manual election would only increase the possibility of greater interaction among the Employer's employees. This increased interaction may be minimal, such as an employee standing in a line who might not normally in the course of his work interact with others, or may be major, such as an employee infected with COVID-19, perhaps even unknowingly, reporting to work to vote in the election and potentially unwittingly expose others to the virus.

Furthermore, the fact that a large percentage of virus transmission is through pre-symptomatic or asymptomatic carriers exacerbates the risk for all election participants. According to the CDC, the "current best estimate" is that 50% of COVID-19 transmission occurs

⁶¹ I also note that the Mayor of the City of Los Angeles issued an order on August 7, 2020 requiring residents of the City of Los Angeles to remain at home, with some exceptions (August 7, 2020 Order); see "[Public Order Under City of Los Angeles Emergency Authority](#)" (last accessed November 2, 2020). Although a Board agent traveling from the City of Los Angeles to Lebec to conduct the election would not necessarily violate the August 7, 2020 Order, I do note that a Board agent traveling from Los Angeles for the election (including – as noted above – having to spend a large part of the day in some public place in Kern County) would be counter to the August 7, 2020 Order's directive that "Angelenos must minimize contact with others as much as possible," insofar as it is possible here to eliminate such contact by conducting a mail ballot election.

while people are pre-symptomatic and 40% of people with COVID-19 are asymptomatic⁶² and would neither be identified nor have sought testing. Setting aside the observers and Board agent, who must remain in the polling area at all times during the voting period, the potential for exposure to COVID-19 from a pre-symptomatic or asymptomatic carrier voter would not be limited to the few minutes that voter would be in the polling area, as a study published by the CDC concluded that the COVID-19 virus can survive for several hours in the air and maintain its infectivity.⁶³ Thus, if a pre-symptomatic or asymptomatic carrier voter entered the polling area and released – through a cough, a sneeze, or simply from speaking – the COVID-19 virus into the air through droplets of saliva, the observers and the Board agent would potentially be exposed to the virus for the remainder of the election and the vote count, and any subsequent voter would likewise be potentially exposed. Here, while voters may proceed in and out of the open-air tent in an orderly manner, the number of people to whom the observers and the Board agent will be exposed to over an extended period of time still presents significant risk. Further, a manual election would require a Board agent to travel approximately 80 miles at a time when travel is discouraged.

Again, given the fact that thirteen employees at this facility have tested positive since August 1, and absent the information regarding the number of employees who have exhibited symptoms or been directed to quarantine, I must assess the risks involved at the Employer’s facility in particular. Simply stated, the inherent risk in conducting a manual election during the current pandemic has been exacerbated by the Employer’s employees already having been exposed to or infected with the COVID-19 virus.

After considering all the current circumstances described above, I find holding a manual election at the Lebec facility would entail significant risk to all involved. Accordingly, I find this risk constitutes extraordinary circumstances that make a mail ballot election appropriate.

ii. A Mail Ballot Election is the Safer Alternative

A mail ballot election does not present greater risks due to the need to touch the mail. As cited previously, CDC guidance states that the virus is unlikely to be spread from products or packaging that are delivered by mail. Further, the CDC’s guidance on mitigating this risk, that an individual wash their hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol after collecting mail, is far easier to implement than the risk mitigation involved with the Employer’s manual election proposal. Thus, I find that a mail ballot election is the safest method of conducting an election under the circumstances.

⁶² “Pandemic Planning Scenarios” (updated July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html> (last accessed November 2, 2020). See also “Temporal dynamics in viral shedding and transmissibility of COVID-19” (April 15, 2020). *Nature*. <https://www.nature.com/articles/s41591-020-0869-5> (“We estimated that 44% ... of secondary cases were infected during the index cases’ presymptomatic stage ...”)

⁶³ “Persistence of Severe Acute Respiratory Syndrome Coronavirus 2 in Aerosol Suspensions.” *Emerging Infectious Diseases Journal*, Volume 26, No. 9 – September 2020. https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article (last accessed November 2, 2020). See also, “Predicting the Decay of SARS-CoV-2 in Airborne Particles.” <https://www.dhs.gov/publication/st-predicting-decay-sars-cov-2-airborne-particles-factsheet> (last accessed November 2, 2020).

iii. Disenfranchisement is a Greater Risk in a Manual Election

As I stated previously, absent the current pandemic, I likely would order a manual election in this case. As the Board recognized in *San Diego Gas*:

[B]ecause mail ballot elections have, by design, largely been limited to situations where factors were present which were likely to inhibit voter participation if the election were conducted manually, there is no reason to believe that participation in those particular elections would necessarily have been higher had they been manual elections.

Id. at 1146. Furthermore, the timeframe of the mail ballot election I am ordering will provide plenty of time for mail to be delivered, even if slightly delayed, and in my view any potential delay in the mail does not justify the risk of catching a potentially deadly virus posed by a manual election.

I also note that conducting manual elections under the current circumstances poses a risk of disenfranchising voters. The Board's manual election procedures do not contain an absentee or remote voting option; if a manual election is ordered, an employee must appear in person at the polls to vote. Obviously, any employee currently infected or infected between now and the date of a manual election and who remained infected on the date of the election would be unable to vote. Moreover, any voter exposed to the virus or awaiting test results and subject to the recommended 10-day quarantine period would likewise be unable to vote in the election. In light of the current conditions in Kern County, the potential for voter disenfranchisement is real. Furthermore, during the current public health crisis, employees may be disenfranchised because they are wary of participating in an election process involving the degree of interaction required to conduct a manual election and may therefore refrain from participation. A mail ballot election would avoid the potential disenfranchisement of employees who are unable to vote because they contracted COVID-19, recently were exposed to it, or simply had a fever on the day of the election.

iv. A Mail Ballot Election is Appropriate Under the Current Extraordinary Circumstances

While I do not find a manual election to be impossible, I have determined that, under the current circumstances in Kern County, conducting a mail ballot election is the most responsible and appropriate method of holding an election without undue delay. Admittedly, the suggested manual election protocols outlined in GC 20-10, along with the Employer's proposed procedures for a manual election, would reduce the risk of contracting COVID-19 if exposed to it during the election. However, even assuming these protocols could adequately be enforced without disenfranchising voters or postponing or canceling the election, there is no evidence in the record or publicly available, and backed by scientific studies, to establish that following these protocols would reduce the risk to an acceptable level under current circumstances at the location where the election would take place. To the extent that the protocols would reduce the risk, I find that the remaining risk of exposure to and of contracting COVID-19 given the current conditions in the State of California and in Kern County specifically still establishes the kind of "extraordinary

circumstances” that make directing a mail ballot election appropriate. Moreover, directing a mail ballot election is consistent with current CDC guidance on elections, which acknowledges the inherent risk of in-person elections and, thus, encourages alternative methods of voting if allowed during this extraordinary COVID-19 pandemic.

In sum, in accordance with the Board’s duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees’ union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants, to avoid the potential for disenfranchisement of employees, and to ensure compliance with this Agency’s obligations and responsibilities, I am directing a mail ballot election. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁶⁴
3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or other bar, to this proceeding.
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.
6. I find that the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

⁶⁴ The Employer, IKEA Distribution Services, Inc., a Delaware corporation with a place of business located in Lebec, California, is engaged in the business of providing warehousing and logistic services. Within the last 12 months, a representative period, the Employer provided services valued in excess of \$50,000 in States other than the State of California.

Included: All full-time and regular part-time maintenance technicians and power equipment technicians employed by the Employer at its Lebec, California facility.

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

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 15 employees.

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 **UNITED MAINTENANCE TECHNICIANS OF TEJON**.

A. Election Details

For the reasons I have explained above, the election will be conducted by mail.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **5:00 p.m. on Tuesday, November 17, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 31. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Tuesday, November 24, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by calling the Region 31 Office at (310) 235-7352.

The returned ballots must be received by the Region 31 office by **5:00 p.m. on Tuesday, December 8, 2020**. All ballots will be commingled and counted by the Region 31 office at **2:00 p.m. on Thursday, December 10, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, October 24, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this Decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Monday, November 9, 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.** The Petitioner has waived its right to possess the voter list for 10 days prior to the date of the election and waives its right to file objections over this issue.

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.

The list must be filed electronically with the Region and served electronically on the other parties named in this Decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object

to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

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 in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. English and Spanish-language versions of the Notice of Election will be sent by the Region separately. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

RIGHT TO REQUEST REVIEW

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

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. 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 at Los Angeles, California this 5th day of November 2020.



Mori Rubin, Regional Director
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