

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**AZTECH PLASTERING, LLC<sup>1</sup>**

**Employer**

**and**

**Case 28-RC-267393**

**OPERATIVE PLASTERERS AND CEMENT  
MASONS LOCAL 797**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

**I. SUMMARY**

The petition in this matter was filed by the Operative Plasterers and Cement Masons Local 797 (Petitioner) on October 7, 2020,<sup>2</sup> under Section 9(c) of the National Labor Relations Act (the Act), seeking an election to represent certain employees of Aztech Plastering, LLC (Employer) working in Las Vegas, Nevada for purposes of collective bargaining. There are approximately 20 employees in the petitioned-for unit of plasterers.

After I issued a Notice of Hearing, the parties entered into a Stipulation in Lieu of Hearing (Stipulation), wherein they agreed that the sole issue precluding their ability to reach a stipulated election was the method and place of the election.<sup>3</sup>

The Stipulation further provided that the parties would each file a position statement on whether the election should be held manually or by mail ballot, and would specifically describe a proposal for how a manual election could be conducted to ensure the safety and health of all participants during the current COVID-19 pandemic, including whether there would be Personal

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<sup>1</sup> The parties stipulated that the formal documents in this matter be amended to the extent that they do not reflect the correct names of the parties as set forth herein.

<sup>2</sup> All dates hereinafter are in 2020 unless specified otherwise.

<sup>3</sup> The parties agreed in the Stipulation that they retain the right to file a Request for Review with the Board limited to the election method, date, time, and place ordered. In the event that I order a mail-ballot election and I set a due date for returning the ballots that differs from the date of the ballot count, the parties agreed that no ballot received by the Region after the date I established would be counted, and that both parties waived their right to file objections based upon any untimely ballots. The parties also agreed in the Stipulation that if I determine that conducting a manual election is appropriate, that it be conducted on November 19, 2020, from 6:30 a.m. until 9:30 a.m., preceded by a pre-election conference at 6:00 a.m. Inasmuch as I am ordering a mail-ballot election for the reasons set forth below, this agreement is rendered moot.

Protection Equipment (PPE) including masks, gloves, hand sanitizer, and other items made available, as well as other unspecified services, for all participants.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Accordingly, based upon the parties' Stipulation and their Statements of Position, relevant Board law, the extraordinary circumstances of the COVID-19 pandemic, and for the reasons set forth more fully below, I shall direct a mail-ballot election to commence on the earliest practicable date.

## II. FACTUAL OVERVIEW

### A. The COVID-19 Pandemic in Nevada and Clark County

The impact of COVID-19 on daily life has been profound and well documented. Currently, the Centers for Disease Control and Prevention (CDC) reports there are just over 11 million cases nationwide and nearly 250,000 resulting deaths as of November 18.<sup>4</sup> In the early months of the pandemic, the CDC determined that the best way to prevent contracting COVID-19 was to avoid being exposed to the virus, and recommended preventative measures that are well-known at this point, including: maintaining a six-foot distance between individuals (known as "social distancing"); working from home if possible; remote schooling; avoiding social gatherings and discretionary travel; and observing good hygiene.<sup>5</sup> With regard to travel, the CDC advised that travel increased the chance of exposure to the virus, and recommended that those considering travel should learn if COVID-19 is spreading in their local area and at their destination.<sup>6</sup>

Also, while not directly addressing Board elections, I note that the CDC specifically issued guidance on conducting elections, including offering alternatives to in-person voting if permitted in order to minimize direct contact and reduce crowd size at polling locations.<sup>7</sup>

The State of Nevada has also been acutely affected by the COVID-19 pandemic: as of November 23, it has reported 136,227 cases and 2,023 resulting deaths.<sup>8</sup> On March 15, Nevada Governor Steve Sisolak (Governor) issued several Declarations of Emergency Directives as a result of the rapidly-spreading pandemic, ordering non-essential business including casinos, schools, salons, restaurants, brothels, nightclubs, pubs, museums, and tattoo parlors to close effective March 20. Those businesses deemed to be essential – such as healthcare, grocery

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<sup>4</sup> <https://cdc.gov/covid-data-tracker/#cases> (Last referenced November 18, 2020)

<sup>5</sup> See *How to Protect Yourself and Others* at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>6</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#Domestic-Travel>.

<sup>7</sup> See <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> *Considerations for Election Polling Locations and Voters*

<sup>8</sup> <https://cdc.gov/covid-data-tracker/#cases> (last referenced November 24). I note that the Coronavirus webpage for the State of Nevada, created by the Nevada Department of Health & Human Services (DHHS) in conjunction with the Nevada Governor's Office, reports 125,459 cases – a statistically insignificant difference – but the same number of deaths as the CDC's website. See [www.nvhealthresponse.nv.gov](http://www.nvhealthresponse.nv.gov) (Last referenced November 19, 2020).

stores, construction, utilities, take-out restaurants, cannabis delivery, hardware stores, auto supply and repair, laundromats, and transportation services – were allowed to continue operations while observing certain mitigation measures (including face coverings, social distancing, sanitation of work surfaces, etc.) to reduce the risk of community spread.<sup>9</sup>

Subsequently, on April 30, as the number of COVID-19 cases appeared to be more under control in the state, the Governor issued a plan entitled *Nevada United: Roadmap to Recovery* (Roadmap) that outlined a phased approach to reopening business and industry. In May, the State transitioned through Phases One and Two as cases continued in a downward trajectory State-wide.

Despite issuing a Directive in June requiring the use of face coverings in all business and public spaces, infections in the State began to increase in throughout the summer, and on July 2 Nevada experienced one of the highest Coronavirus transmission rates in the country, with resulting increased hospitalizations. Consequently, the Governor issued another Declaration of Emergency Directive on July 10, reiterating the World Health Organization’s (WHO) findings that the virus spread through direct and indirect contact with infected persons and surfaces, and that some persons infected with COVID-19 may exhibit no symptoms but remain highly infectious, and authorizing local and county governments to impose stricter restrictions than those provided for under the Roadmap. Many businesses were demoted back to Phase One, and bars, pubs, taverns, breweries, and wineries in any county with an elevated disease transmission were ordered closed.<sup>10</sup>

Most recently, on November 23, due to record-setting COVID-19 cases and increasing COVID-19-related hospitalizations and in light of reports that a major source of new infections are gatherings, bars, and restaurants, especially those where people remove their masks and interact with others who are not part of their household, the Governor issued an order requiring, among other things, that:

- restaurants, bars, gaming operations, gyms, fitness facilities and other businesses and activities be limited to 25 percent capacity;
- retail stores, including grocery stores, remain at 50 percent capacity, with social distancing and additional monitoring requirements;
- public gatherings be limited to no more than 50 people or 25 percent capacity, whichever is less;
- no large events be approved;

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<sup>9</sup> <https://nvhealthresponse.nv.gov/news-resources/governor-directives-and-declarations> : Gov. Sisolak Guidance: Directive 003 – Essential Businesses (March 27, 2020; updated April 16, 2020)

<sup>10</sup> *Id.* Declaration of Emergency 027 (July 10, 2020)

- private gatherings be limited to no more than 10 people from no more than two separate households, and
- the State’s face covering requirement be extended to private gatherings; and
- people must wear face coverings at all times, whether indoors or outdoors, when around individuals from outside their households.

Notwithstanding the foregoing precautions, COVID-19 cases in Nevada have continued to increase exponentially. As of November 23, the 14-day rolling average of confirmed COVID-19 cases daily was 1,583, compared to 1,225 on November 9, and the COVID-19 test positivity rate over the past 14 days was 16.7%, compared to 13.7% on November 9.<sup>11</sup>

Clark County, where the Employer’s facility is located, is the most populated county in Nevada with a current population of 2.3 million. In the past 14 days, the rate of COVID-19 cases per 100,000 population in Clark County has increased from 701 on November 9 to 865 on November 16 to 1,134 on November 23.<sup>12</sup> The COVID-19 test positivity rate over the past 14 days in Clark County has also increased from 11.2% on November 9 to 13.2% on November 16 to 14.7% on November 23.<sup>13</sup>

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

#### **A. The Petitioner’s Position: A Manual Ballot Should be Held but Not at the Employer’s Facility**

The Petitioner apparently did not file a brief as agreed in the Stipulation. However, in its initial Responsive Statement of Position, it indicated that it wanted a manual election to be held at either the Elysian Apartments at the Palms job site or at the Union hall. The Petitioner did not indicate why it believed that the election could not or should not be held at the Employer’s facility.

#### **B. The Employer’s Position: A Manual Election can be Safely Held at the Employer’s Facility**

The Employer operates as a subcontractor in the construction industry and is engaged in residential and commercial plastering and EIFS application in Clark County, Nevada.<sup>14</sup>

The Employer filed its Statement of Position regarding the method of the election as agreed in the Stipulation and proposed that a manual election be held in the garage attached to the Employer’s office beginning at 6:30 a.m.

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<sup>11</sup> <https://nvhealthresponse.nv.gov/#covid-data-tracker> (last referenced November 24, 2020).

<sup>12</sup> <https://nvhealthresponse.nv.gov/#covid-data-tracker> (last referenced November 24, 2020).

<sup>13</sup> <https://nvhealthresponse.nv.gov/#covid-data-tracker> (last referenced November 24, 2020).

<sup>14</sup> The record refers to but does not define EIFS, which is an acronym for Exterior Insulation and Finish System – a generalized class of building cladding, according to Wikipedia.

In support of its argument that a manual election can be safely held at its facility, the Employer states that companies like itself involved in the construction industry were deemed essential businesses at the outset of the COVID-19 pandemic in March, and were allowed to remain operating so long as they observed social distancing, maintained proper sanitation, and conducted daily surveys of the employees' health. By observing these practices, the Employer has been able to remain open and continually operating since March, and its employees have worked at myriad jobsites.

The Employer stated that its main office is located in a fairly remote area near Red Rock Canyon<sup>15</sup> and includes an attached garage with an overhead garage door. The garage is well ventilated and large enough to enforce social distancing during an election, and employees could enter through one set of doors and exit by another after voting.<sup>16</sup> Moreover, the Employer confirmed that it has purchased and will provide disposable pencils, tape for making social-distancing markers on the floor, masks, gloves, wipes, and plexiglass barriers to protect those engaged in the election. Given the size of the petitioned-for unit and the proposed hours, one observer per party should suffice. Also, in accordance with GC 20-10, the Employer will provide for the polling place to be inspected via video conference prior to the election. Based thereon, the Employer argues, a manual election can safely be held on-site at the Employer's facility.

The Employer reiterates that Board precedent favors manual election except where certain limited "extraordinary circumstances" exist, none of which are present in the instant case.<sup>17</sup> The Employer acknowledges that the Board has recently recognized that the current COVID-19 pandemic might constitute such a circumstance so as to justify the ordering of a mail-ballot election and has consequently issued suggested protocols to ensure a safe manual election.<sup>18</sup> However, the Employer argues, the circumstances extant in the instant case are not "extraordinary" since its employees have been able to work safely during the pandemic and the Employer will commit to adhering to the recommended protocols of GC 20-10 for conducting a manual election.

The Employer asserts that the Union's proposed locations for a manual election at one of the Employer's job sites or at the Union Hall are inconvenient for the employees and ultimately unworkable. In this regard, the Employer cites the *NLRB Casehandling Manual, Part II* (Manual), Section 11302.2 for the proposition that "the best place to hold an election from the standpoint of accessibility to voters, is somewhere on the Employer's premises," and that, in the absence of good cause to the contrary, the election should be held there. Examples of good cause for holding the election off-site would be when there are striking employees there or where egregious or pervasive unfair labor practices exist – neither of which applies in the instant case.

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<sup>15</sup> Red Rock Canyon is located about 25 miles west of the Las Vegas Strip and is a national conservation area consisting of over 195,000 acres in the Mojave Desert. [www.redrockcanyonlv.org/visitor-information/](http://www.redrockcanyonlv.org/visitor-information/)

<sup>16</sup> In its Statement of Position, the Employer did not provide the dimensions of the garage, nor any schematic or photo showing the layout and the location of the doors.

<sup>17</sup> See, e.g., *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), discussed in detail *infra*.

<sup>18</sup> Referring to General Counsel Memorandum 20-10 (GC 20-10) (Issued July 6, 2020).

Moreover, the Employer argues, even if the Petitioner could show good cause for holding the election off-site, the suggested sites do not fit the Manual's requirement that an off-site election be held as close as practicable to the employer's facility in a public building, hotel, or other facility other than a union's headquarters. Neither of the Petitioner's proposed sites meet these criteria, and therefore a manual election should be held at the Employer's facility.

Further militating against a mail-ballot election, according to the Employer, is the fact that the Company does not regularly update or verify the accuracy of its records with regard to its employees' addresses.

Finally, the Employer notes that both parties favor an in-person manual election (although they disagree on the location of such an election), and that such a preference should be given deference by the Regional Director. *San Diego Gas & Elec.*, supra at 1145.

#### IV. ANALYSIS

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2.<sup>19</sup> However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes some specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, supra at 1145.

After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April, with many Regional Directors directing mail ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. In July, to further assist Regional Directors in determining how a manual election might be conducted safely during the pandemic, the General Counsel issued Memorandum 20-10 "*Suggested Manual Election Protocols*," (July 6, 2020), setting forth detailed suggested manual election protocols to be observed by the Employer and others for conducting a manual election on-site.

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<sup>19</sup> I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board (General Counsel) and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

Most recently, in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board reaffirmed its long-standing policy favoring manual elections and set forth a detailed framework for how Regional Directors should exercise their discretion when considering the type of election during the extraordinary circumstances presented by the COVID-19 pandemic.<sup>20</sup> Specifically, the Board found that, in addition to the established circumstances where a mail ballot election can be conducted, one of more of the following situations will normally justify the propriety of a mail-ballot election due to the COVID-19 pandemic:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The Employer fails or refuses to commit to abide by GC Memo 20-10, *Suggested Manual Election Protocols*;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

The Board ordered this new guidance would be applied retroactively to all pending cases.

After careful examination of the record, the parties’ respective positions, and the current state of the COVID-19 pandemic in Nevada and specifically in Clark County where the Employer’s facility is located, I have concluded that a mail ballot election is the appropriate option. In reaching this conclusion, I have considered each of the situations described in *Aspirus Keweenaw*, *supra*, and applied them to the facts of this case. In so doing, I find that the circumstances described in situations 1 and 4 are not present in the instant case. In this regard, the Region is not currently operating under “mandatory telework” status, and the Employer has committed to abide by the suggested protocols in GC 20-10. Also, there are no “similarly compelling circumstances” to be considered. However, there is sufficient evidence to support my finding that factors 2, 3, and 5 warrant conducting the election by mail ballot.

With regard to factor 2, the rate of COVID-19 cases per 100,000 population in Clark County has increased over the past 14 days (from 701 on November 9 to 865 on November 16 to 1,134 on November 23), and the positivity rate as of November 23 was 14.7%. Thus, the

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<sup>20</sup> See also General Counsel Memorandum 21-01 *Guidance on Propriety of Mail Ballot Elections, pursuant to Aspirus Keweenaw*, 370 NLRB No. 45 (2020) (issued November 10, 2020).

number of cases in the county is increasing, and the positivity rate is nearly triple the maximum threshold set by the Board for conducting a manual election.

In addition to the above circumstances that alone would justify ordering a mail-ballot election pursuant to *Aspirus Keweenaw, supra*, the Employer has not submitted evidence establishing that factor 3 favors the conduct of a manual election. In this regard, the Employer provided no schematics, photos, or even dimensions for the garage adjacent to its facility that it has proposed for the election site. Nor has it proffered any plan for where employees might line up or even when and how they might be released to vote, particularly inasmuch as the employees do not actually perform their work at the facility. The Governor has recently directed that public gatherings be limited to no more than 50 people or 25 percent capacity, whichever is less, and that private gatherings be limited to no more than 10 people from two different households. Since the capacity and layout of the garage are unknown, the conduct of a manual election may well violate state orders on gathering size.

And finally, *Aspirus Keweenaw* provides that a mail-ballot election may be ordered where there is a current COVID-19 outbreak at the facility, or the Employer refuses to disclose and certify its current status. In this regard, I note that the Stipulation provides that the parties will submit position statements describing how a manual election could be conducted in a manner to ensure the safety and health of all participants during the current COVID-19 pandemic. However, the Employer provided no information regarding whether any of its employees in Las Vegas have been diagnosed with or tested positive for the virus, or whether any of them have self-quarantined or otherwise been unable to work due to exposure to someone with COVID-19. The Employer does not indicate any testing protocol for its employees when they report to the facility or to the various jobsites, nor is there any evidence that it requires its employees to self-report their infection or exposure.<sup>21</sup> The absence of this information, in my view, which is crucial to ascertaining whether a safe manual election can be held, further supports the appropriateness of a mail-ballot election.

Thus, for the reasons set forth above, and 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 to be held as soon as practicable. To ensure the safety of all participants, avoid the potential for disenfranchisement of employees, and to ensure compliance with the Agency's obligations and responsibilities, and well as careful consideration of the record and the instructions contained in GC 21-01, I am directing a mail-ballot election.

## V. CONCLUSION

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

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<sup>21</sup> Obviously, any employee who was infected or quarantined at the time of an election would be unable to vote in a manual election, and would therefore be completely disenfranchised, since there is no mechanism for absentee ballots in a manual election.

1. The parties stipulated, and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>22</sup>

2. 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.

3. The parties stipulated, and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.

4. 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.

5. The parties stipulated, and I find 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:

**INCLUDED:** All full-time and regular part-time employees of the Employer employed in Las Vegas, Nevada, who apply plaster and EIFS.

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

Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

Others permitted to vote: The parties have agreed that employees Carolina Gomez Chaires, Tyler Richard, Randy Peck, Stephen Thompson, Jonathan Rangel and Noel Rivera (collectively, challenged individuals) are permitted to vote in the election but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the challenged individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of these challenged individuals will be resolved, if necessary, following the election.

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<sup>22</sup> The parties stipulate, and I so find, that the Employer, Aztech Plastering, LLC, is a Nevada limited liability company with an office and place of business in Las Vegas, Nevada, is engaged in the building and construction industry, and is engaged in residential and commercial plastering and EIFS. During the 12-month period ending October 7, 2020, a representative period, the Employer, in the course and conduct of its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its Nevada facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Nevada.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above, which includes approximately 20 employees.

## **VI. 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 **Operative Plasterers and Cement Masons Local 797**.

### **A. Election Details**

I have determined that a mail ballot election will be held for the reasons I have explained above.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. At **2:00 p.m. on December 15, 2020**, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. 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 **December 22, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 28 Office at (602) 640-2160 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28 office by close of business (4:45 p.m.) on **December 29, 2020**. All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received at the Regional Office by close of business (4:45 p.m.) on **December 29, 2020**. Pursuant to the parties' Stipulation, no ballots received after the due date will be counted. 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 **October 25, 2020**, employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit(s) who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who

were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.

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 who are present in the United States may vote.

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 **December 1, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the 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.

### **VII. 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 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 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](http://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.** A request for review filed by means other than E-Filing 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 copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations, and must be accompanied by a certificate of service.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

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 Phoenix, Arizona this 25<sup>th</sup> day of November 2020.

***/s/ Barbara B. Baynes*** \_\_\_\_\_  
Barbara B. Baynes  
Acting Regional Director