

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 6**

FIRST TRANSIT, INC.

Employer

and

Case 06-RC-268130

AMALGAMATED TRANSIT UNION LOCAL 1743

Petitioner

DECISION AND DIRECTION OF ELECTION

Amalgamated Transit Union Local 1743 (the “Petitioner”) filed the petition in this matter under Section 9(c) of the National Labor Relations Act, as amended (the “Act”), seeking to represent a unit of approximately fifteen commercial driver’s license (“CDL”) fixed route drivers employed by First Transit, Inc. (the “Employer”) at its Houston, Pennsylvania facility. The Employer maintains that the unit sought by the Petitioner is inappropriate and argues that the only appropriate unit must also include approximately thirty-eight non-CDL paratransit and sedan drivers employed out of the same location.¹

A hearing officer of the National Labor Relations Board (the “Board”) held a videoconference hearing in this matter on November 17, 2020 and November 19, 2020. Both parties presented witness testimony, documentary evidence and waived the right to file briefs in favor of making closing arguments on the record.

Having considered the record and relevant Board law, I find that the Employer has not met its burden of establishing that the petitioned-for unit is inappropriate and that the smallest appropriate unit must include paratransit and sedan drivers. I am, therefore, directing an election in the petitioned-for unit.

To give context for my discussion of this matter, I first provide an overview of the Employer’s operation. I then review the relevant Board law and apply that Board law to the facts of this case. Lastly, I state my conclusions and findings.

I. STATEMENT OF FACTS

A. Background

The Employer provides services pursuant to two contracts with the Washington County Transportation Authority (Transportation Authority), also known as Freedom Transit. One contract covers fixed route operations, including a bus run between Pittsburgh and Washington County. The other contract covers paratransit operations for disabled and elderly persons. The

¹ In addition, the parties have stipulated that Kenneth Seybert will vote subject to challenge as his eligibility has not been resolved.

Employer has provided paratransit services out of its Houston, Pennsylvania location for approximately fifteen years; it has provided fixed route services for approximately six years. The fixed route services were previously performed for the Transportation Authority by a different contractor. Timothy Mullen, the Employer's district manager, testified that the Transportation Authority has expressed a desire to combine the two contracts in keeping with common policy throughout Pennsylvania.

District Manager Mullen oversees the Employer's Houston facility as well as two other facilities. Virginia Zeszutek is the general manager of the Houston facility. There are three other managers at the Houston facility: an assistant manager, a safety manager, and a maintenance manager. The management team is responsible for hiring, firing, and disciplining all employees.

The Employer's facility is located on Pike Street in Houston, Pennsylvania.² All employees enter the building through the same door, which is near the dispatch, management, and safety offices. All employees use the same breakrooms, restrooms, and timeclock. As drivers spend most of their workday in their vehicles and have minimal time to inspect their vehicles before beginning their shifts, there is usually little interaction between drivers at these locations.

Pursuant to the Employer's contract with the Transportation Authority, all fixed route vehicles must be parked inside. Sedans are also parked inside because the Employer happens to have appropriate space; other paratransit vehicles are parked outside. The maintenance department and wash bay on the Employer's premises service all of the Employer's vehicles. Paratransit drivers generally park their personal vehicles in their paratransit vehicles' spots; sedan drivers and fixed route drivers generally park their personal vehicles in the main parking lot.

Drivers who need to add fuel to their vehicles do so at one of two designated gas stations. The first gas station is about a block away from the Employer's premises and is primarily used by those drivers with smaller vehicles, although the gas station does offer diesel fuel so that fixed route drivers may utilize it as well. The second gas station is five miles away from the Employer's premises and is better equipped to fuel larger buses.

The Employer presently employs five dispatchers. Dispatchers supervise drivers while drivers are on the road. Drivers report traffic issues, accidents, or other problems to their dispatchers. General Manager Zeszutek testified that all dispatchers, with the exception of the most recent hire, have been trained to handle dispatch for both fixed route and paratransit services. Driver Kenneth Seybert testified that he has seen dispatchers handle both dispatches simultaneously. However, driver Darrell Provance testified that, in general, a dispatcher operates as either a fixed route dispatcher or a paratransit dispatcher.

When two dispatchers are on duty, they communicate with one another through an open window in the middle of their divided office. Although the dispatchers have access to both systems, the paratransit radio system and the fixed route radio system are separate. All drivers carry tablets which can be used to inform them of schedule changes and route changes.

² The Employer's Houston facility is the only facility at issue here.

All newly hired drivers are subject to the same background checks, drug tests, and physicals. All new drivers begin training together in a classroom. Classroom training is followed by hands-on training. Hands-on training covers various topics such as how to conduct a pre-trip inspection and how to secure a wheelchair. Next, the new employees do eight to ten hours of behind-the-wheel training. Finally, the new employees “cadet,” that is, drive with a senior driver who can make certain that they are performing all duties effectively. Cadeting is specific to fixed route driving or paratransit driving. Each year, all drivers must complete CPR training. All drivers also attend periodic safety meetings together, although topics covered may apply to one group of drivers more than the other.

All drivers receive the same medical insurance and other benefits. They accrue vacation in the same way and use the same forms to request time off. If drivers enter the City of Pittsburgh, they accrue an hour of sick leave for every 35 hours worked; this applies equally to all drivers. Each year, fixed route drivers do not work on July 4, Labor Day, and Memorial Day because the Transportation Authority has chosen not to run buses on those days. Paratransit service is available, however, and accordingly paratransit drivers report to work on those days.

The Employer’s personnel policies, which are found in the employee handbook, apply equally to all drivers with the exception of policies relating to fraud and fare boxes, which are applicable only to fixed route drivers. Policies relating to safety, smoking, profanity, dress, and personal conduct, among others, are applied to all drivers.

Annually, the Employer presents Driver of the Year awards to two drivers: one fixed route driver and one paratransit driver. All drivers receive the same safety bonus day off if they are not involved in a preventable collision for six months.

B. The Petitioned-For Unit (Fixed Route Drivers)

The petitioned-for unit includes approximately fifteen fixed route drivers.

A fixed route is a timed route which requires a driver to pick up passengers at designated locations, including bus stops. Among the Employer’s fixed routes is the “Metro Run,” which runs between Washington and Pittsburgh. Additionally, the Employer’s fixed routes include Local A, Local B, and two county lines. These routes rarely change, although they are altered several times per year for holidays, parades, and other events. The Employers uses various vehicles to service its fixed routes, including 40-foot Gillig buses and Freightliners. A driver must have a commercial driver’s license (CDL) in order to operate these vehicles. The Employer does not hire fixed route drivers unless they have a year of experience driving with a CDL. Pursuant to Department of Transportation regulations, a CDL driver must have a physical examination each year and renew his or her license every four years.

The first fixed route driver arrives at the Employer’s premises at 4:30 a.m.; the last fixed route driver leaves at 8:30 p.m. Fixed route drivers sometimes work split shifts, that is, they drive for four hours, have two hours off, and then drive for four more hours. During the present pandemic, most split shifts have become shared shifts in which one driver works in the morning

and another driver works in the afternoon. Some routes have scheduled paid and unpaid breaks. Fixed route drivers wear black polo shirts under green safety vests.

The Employer endeavors to post a weekly schedule advising fixed route drivers of their assigned routes. The schedule is not always posted a full week in advance, and circumstances occasionally necessitate last minute changes. The schedule is posted to a bulletin board beside the dispatchers' office.

In accordance with Federal Highway Administration guidelines, fixed route drivers must inspect their vehicles before beginning their routes. During this pre-trip inspection, drivers check, for example, their vehicles' mirrors, lights, tires, lug nuts, air brakes, and chimes.³ The drivers then fill out and submit a Driver Vehicle Inspection Form.

The Employer's buses are equipped with wheelchair lifts and ramps. When a customer needs to use this equipment, the driver exits the bus to operate the lift. The driver then asks the customer whether he would like his seat restrained. If the answer is yes, the driver secures the wheelchair. Fixed route driver Shelly Jackson testified to performing this duty approximately once per week. While fixed route drivers are not required to help elderly and disabled passengers to their doors, they do so on occasion.

The Employer's buses are also equipped with fare boxes. Fixed route drivers do not collect money unless their fare boxes are broken, which are quickly repaired. Fixed route driver Wilbur White estimated that he has collected money four times in the last six months.

Some passengers are permitted to board buses at no cost or at a reduced cost. Passengers with medical passes can board for free, as can children under the age of eleven and senior citizens over the age of sixty-five. Disabled customers have half-fare cards. If fixed route drivers suspect that passengers are attempting to commit fraud, they must report the suspected fraud immediately.

While driving, fixed route drivers may stop at a transit center. The Transportation Authority's main offices are located there, along with a police substation, restrooms, and information on bus schedules. Members of the public wait inside the transit center to avoid inclement weather.

Fixed route drivers maintain constant radio contact with one another and their dispatcher. The drivers and the dispatcher primarily use the radio to advise each other of traffic problems or to suggest alternate routes. The drivers also use the radio for non-work discussions. When non-work discussions become too prevalent, the dispatcher tells them to use the radio only for work-related discussion.

After completing a route, fixed route drivers perform a post-trip check which is essentially identical to the pre-trip check. If at any time a driver notices that a vehicle requires maintenance, he or she leaves a form in the mechanics' mailbox.

³ "Chimes" refers to a cord pulled by passengers who wish to exit the bus at the next stop.

The starting wage for fixed route drivers is \$16 per hour. However, fixed route drivers are paid \$13.75 for holidays which is the same starting wage rate paid to paratransit drivers.

C. Additional Employees (Paratransit and Sedan Drivers)

The Employer currently employs approximately thirty-eight paratransit and sedan drivers.⁴ Paratransit drivers, who are not required to have a CDL, are responsible for providing “door-to-door” service for elderly and disabled customers who have registered with the Transportation Authority. Because these customers are registered, paratransit drivers do not need to look for potential fraud as fixed route drivers do. Paratransit drivers meet customers at their homes and drive them to a designated location, such as a shop or a hospital. They also drive the customers home. The drivers are required to leave their vehicles to help the passengers enter and exit their homes. The drivers also collect payment from their customers and keep money in envelopes or zippered pouches. However, some customers prepay electronically and drivers must be aware of how a customer has paid and be able to reconcile accounts at the end of their shifts.

Paratransit services are available from 4:30 a.m. to 8:00 p.m. Any given driver’s schedule will vary from day to day based upon the trips requested by customers, although start times are fairly consistent. Paratransit drivers know in advance which days they are working but not the precise hours. They receive their scheduled routes one day in advance. They use their tablets to check their routes rather than checking a physical posting as fixed route drivers do. Dispatchers sometimes change paratransit and sedan drivers’ routes during the day if customers cancel or reschedule. Customer cancellations are common during inclement weather.

Some paratransit drivers work part-time in four-hour shifts. Others work six to six-and-a-half-hour shifts. Occasionally a paratransit driver works an eight-hour day. Paratransit drivers do not work split shifts. Unpaid breaks are built into their shifts.

Like fixed route drivers, paratransit and sedan drivers perform pre-trip inspections and post-trip inspections of their vehicles, filling out Driver Vehicle Inspection Forms and notifying mechanics when they determine that a vehicle needs maintenance.

Unlike fixed route drivers, paratransit drivers do not maintain constant radio contact over an open channel with one another and the dispatcher. Instead, drivers contact the dispatcher directly for help if, for example, they cannot find a customer.

While paratransit and sedan drivers are not expressly forbidden from stopping at transit centers, they are unlikely to do so unless they happen to be escorting a customer to the transit center.

⁴ Except where otherwise noted, the term “paratransit driver” includes those employees who drive sedans. The Employer’s sedans are not equipped with lifts and are not used to transport customers who use wheelchairs. Otherwise, sedan drivers and paratransit drivers perform the same work.

Paratransit drivers wear blue polo shirts, in contrast to the fixed route drivers' black shirts. All drivers wear the same green safety vests over their shirts. The starting wage for paratransit drivers is \$13.75 per hour; the starting wage for sedan drivers is \$11.75 per hour.

D. Interchange

Kenneth Seybert, who is responsible for training the Employer's new drivers, testified that he is aware of four or five employees who entered training intending to utilize their CDLs to drive fixed routes but chose to drive paratransit vehicles instead. However, the reverse is not possible. Newly hired fixed route drivers are required to have a year of CDL driving experience and the Employer is barred by its contract with the Transportation Authority from offering CDL training.

Additionally, fixed route drivers who wish to work overtime are permitted to request extra hours working as a paratransit driver. Multiple witnesses testified that a fixed route driver may choose to become a paratransit driver and remain with the Employer in that capacity.

Some paratransit vehicles have been equipped with signage so that they can be used on fixed routes if needed. On a few occasions during the present pandemic, paratransit bus vans have followed fixed route buses on their routes, but on those occasions the paratransit vehicles were driven by managers.

Between November 2019 and November 2020, none of the paratransit drivers drove a fixed route, although several paratransit drivers possess CDLs and are qualified to drive fixed routes. Fixed route drivers Dana Harris and Darrell Provance performed some paratransit work in that time period. Harris's fixed route work included 1,161.15 hours with 88.88 hours of overtime; he also worked 528.82 hours of paratransit with 19.92 hours of overtime. Provance performed roughly 68 hours of paratransit work before deciding to focus exclusively on fixed route work. Three other drivers who have separated from the Employer during the past year performed both paratransit work and fixed route work.

Interchange is never compulsory. No fixed route driver is ever obligated to perform paratransit work. Dana Harris, who is responsible for the vast majority of paratransit work performed by a fixed route driver, does so on a strictly voluntary basis because he chooses to work overtime. The Employer's witnesses testified that the Employer is able to fully staff its paratransit operation with no help from its fixed route drivers.

II. ANALYSIS

A. Board Law

In *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), the Board reinstated the traditional community-of-interest test as articulated in, e.g., *United Operations*, 338 NLRB 123, 123 (2002). Under that test, the Board is required in each case to determine

Whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; including inquiring into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

The Board held in *PCC Structurals* that, in weighing both the shared and the distinct interests of petitioned-for and excluded employees, the Board must determine whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members. Having made that determination— applying the above factors— the appropriate-unit analysis is at an end. At no point does the burden shift to the employer, as it did under *Specialty Healthcare*, to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit.

In *Boeing Company*, 368 NLRB No. 67 (2019), the Board elaborated that *PCC Structurals* requires “a three-step process for determining an appropriate bargaining unit under our traditional community-of-interest test.” First, the proposed unit must share an internal community of interest. Next, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Finally, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

B. Internal Community of Interest

Here, neither party disputes that the petitioned-for unit of fixed-route drivers shares an internal community of interest.

C. Shared and Distinct Interests

The two groups of drivers have many interests in common.

All drivers share common supervision. The dispatchers, with the exception of a dispatcher who has not completed training, handle dispatching for both fixed route and paratransit services. At times, only one dispatcher is on duty; at other times, dispatchers work side-by-side and communicate through a window. While drivers may tend to work most shifts with a specific dispatcher, they are not assigned to a particular dispatcher for purposes of supervision. Additionally, the managers responsible for hiring, firing, and discipline are the same for all employees.

Most terms and conditions of employment apply equally to all drivers. They receive the same medical insurance and benefits. They are subject to the same policies and employee handbook and are expected to maintain the same standards of personal conduct. They receive the same safety bonus day off if they are not involved in an avoidable collisions for six months.

Many of the drivers' most basic job functions are the same, in that all are responsible for safely transporting their customers from one location to another as assigned, as well as inspecting their vehicles before and after each shift.

Finally, there is some interchange between the groups. Within the past year, five drivers (two of whom remain employed by the Employer) have performed both fixed route work and paratransit work. It is not uncommon for a CDL driver hired to perform fixed route work to decide to work paratransit instead. All witnesses were in agreement that a CDL driver could transfer from fixed route to paratransit if he or she wished. However, I find significant that any incidents of a fixed route driver performing paratransit work was voluntary and not mandated by the Employer.

The two groups of drivers also have many distinct interests.

The two groups of drivers share minimal day-to-day interaction. While they use the same breakroom and timeclock, all drivers spend the vast majority of their working hours in their individual vehicles rather than at the Employer's premises. The fixed route drivers are nonetheless in constant communication due to their open radio channel. The fixed route drivers do not communicate with the paratransit drivers in this way.

Additionally, the drivers are organized into separate departments. They share supervision and management, but the two groups of drivers work pursuant to separate contracts with the Transportation Authority. In the past, the Transportation Authority has awarded paratransit work and fixed route work to separate contractors.

Because each group of drivers performs work pursuant to either the paratransit contract or the fixed route contract, there is no functional integration between the two groups. The paratransit routes and the fixed routes are necessarily separate due to their separate contracts and their history of being performed by separate contractors. The groups work independently and are not part of an integrated chain of transport. On certain holidays, paratransit work is performed while fixed route work is not. The absence of fixed route work does not in any way prevent paratransit drivers from providing transportation services to customers. Likewise, if paratransit ceased to operate, fixed route bus service could continue without interruption.

There is minimal interchange between the two groups. A few drivers drive paratransit routes as well as fixed routes. However, paratransit work performed by fixed route drivers is strictly voluntary and the vast majority of actual interchange is attributable to one driver who actively seeks significant overtime.

While the Employer offers virtually the same in-house training to all drivers, some information applies only to the paratransit drivers and some applies only to the fixed route drivers. Fixed route drivers are required to possess and maintain CDLs. They use the skills required to obtain CDLs each day when they maneuver large buses through streets, parking lots, and gas stations. While paratransit drivers do not have CDLs, their work is much more physically active as they leave their vehicles to escort clients "from door to door."

As was discussed above, the employees have many of the same terms and conditions of employment. There is, however, one important exception. Fixed route drivers enjoy considerably higher wages than paratransit drivers and sedan drivers.

In conclusion, while all drivers have some job functions in common, there are also many distinctions between the work of a fixed route driver and a paratransit driver. A fixed route driver must maneuver a large bus on a set schedule while looking out for customer fraud. A paratransit driver must find specific customers and help them reach the door of their specific location. Paratransit work includes more lifting, carrying, and unexpected schedule changes.

D. Units Within the Industry

Neither party cites any case, and I can find none, in which the Board held definitively that all fixed route drivers should or should not share a unit with paratransit drivers.

The Petitioner cites several Board decisions regarding potentially analogous situations. First, the Petitioner cites *Decatur Transfer and Storage*, 105 NLRB 633 (1953). In *Decatur Transfer*, the employer operated a taxi division, a bus division, and a rental car division out of a single location. The Board found that a unit which included taxi drivers, but not bus drivers, was appropriate.

Next, the Petitioner notes that the Board has also traditionally treated the separate “road” and “city” classifications of drivers as functionally distinct. In *Georgia Highway Express*, 150 NLRB 1649 (1960), for example, the Board held that local drivers and over-the-road drivers constitute separate appropriate units “where they are shown to be clearly defined, homogeneous, and functionally distinct groups with separate interests which can effectively be represented separately for bargaining purposes.”

The Employer cites no Board decisions, but points to several Regional election decisions, including *American Paper Bag* (04-RC-263126), in which a Regional Director determined that the smallest appropriate unit must include six operators who worked at the same facility as petitioned-for packer and forklift operators because the packers and forklift operators did not share a community of interest meaningfully distinct from the interests of the operators so as to permit a separate unit. The same analysis is not applicable here, where the Petitioner has petitioned for only one classification of employees, who by definition share a complete community of interest unlikely to be equivalent to the community of interest they share with other classifications of employees. The Employer further notes that differing wages and holidays in *American Paper Bag* did not, by themselves, prevent the inclusion of all employees in the same unit. In this case, as in that one, differing wages and holidays are not determinative. Rather, my decision rests heavily on the lack of functional integration between the Employer’s paratransit and fixed route work, performed pursuant to separate contracts. There is no such separation in *American Paper Bag*.

Next, the Employer cites *First Student* (14-RC-156864), in which a Regional Director determined that special education drivers and monitors did not have a community of interest separate and apart from the larger complement of all drivers and monitors. In that case, all drivers performed the same work of transporting students to and from school along fixed routes. The sizes of the buses differed, but all drivers were required to have CDLs. As in *American Paper Bag*, the petitioned-for unit included multiple classifications of employees rather than a single classification of employees.

Finally, the Employer cites *Hulmes Transportation Services, LTD* (01-RC-022444), in which a petitioner sought to represent paratransit van and shuttle bus drivers employed at three of an employer's facilities, and the employer maintained that the only appropriate unit consists of all drivers, driver/monitors and monitors employed by the employer at all of its facilities. The Regional Director found that an employer-wide unit was presumptively appropriate where all drivers performed the same work.

E. Conclusion

Having carefully considered the record evidence and applied the applicable Board law to these circumstances, I find that the Employer has not met its burden of establishing that the petitioned-for unit is inappropriate and that the smallest appropriate unit must include paratransit and sedan drivers. Although the fixed route drivers and the other drivers share a community of interest to some extent, the fixed route drivers share a sufficiently distinct community of interest to warrant a single-classification bargaining unit. Accordingly, I will direct an election in the petitioned-for unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. 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 Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.⁵
3. 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.

⁵ The parties stipulate that the Employer, a Delaware corporation with its headquarters in Cincinnati, Ohio, is engaged in the business of providing public transportation by fixed routes and paratransit accommodations. During the past twelve months, a representative period, the Employer derived gross revenues in excess of \$250,000, and purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Pennsylvania for use at its Houston, Pennsylvania, facility.

4. There is no contractual bar, or any other bar, to conducting an election in this matter.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a 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 Fixed Route/CDL drivers employed by the Employer at its Houston, Pennsylvania facility.

Excluded: Mechanics, office clericals, paratransit drivers, sedan drivers, professional employees, guards, managers and supervisors as defined in the Act.

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 Amalgamated Transit Union Local 1743.

Kenneth Seybert will vote subject to challenge as his eligibility has not been resolved.

A. Election Details

The election will be conducted by United States mail⁶. The specific arrangements for the mail ballot election will be contained in the Notice of Election which will issue after the issuance of this Decision and Direction of Election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **December 12, 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 if they appear in person at the polls.

⁶ The parties stipulated that the election should be conducted by mail ballot rather than by manual ballot.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **December 18, 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.

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. 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 the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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: December 16, 2020

/s/ Nancy Wilson

Nancy Wilson
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