

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

**WASHINGTON HEALTH SYSTEM GREENE**

**Employer-RM Petitioner**

**and**

**SONDRA LEMLEY**

**RD Petitioner**

**and**

**S.E.I.U. HEALTHCARE PENNSYLVANIA, CTW,  
CLC**

**Union**

**Cases 06-RD-268268  
06-RM-266565  
06-RM-268281**

**DECISION AND DIRECTION OF ELECTION**

Sondra Lemley (“RD Petitioner” or “Lemley”) filed the petition in Case 06-RD-268268 with the National Labor Relations Board (the “Board”) under Section 9(c) of the National Labor Relations Act, as amended (the “Act”), seeking to decertify S.E.I.U. Healthcare Pennsylvania, CTW, CLC (Union) as the exclusive collective-bargaining representative of the full-time and regular part-time service and maintenance employees (the “service and maintenance unit”) employed by Washington Health System Greene (“RM Petitioner” or “Employer”) at its Waynesburg, Pennsylvania (“PA”) facility. On the same date that Lemley filed her petition, the Employer filed the petition in Case 06-RM-268281 with the Board under Section 9(c) of the Act asserting a reasonable, good faith uncertainty as to the Union’s continuing majority support of the service and maintenance unit. The Union maintains that both petitions must be dismissed pursuant to the contract bar doctrine because, in its view, a successor collective bargaining agreement (the “tentative agreement”) was agreed to by the Employer and the Union and subsequently ratified prior to the filing of both petitions.

Additionally, if I direct an election in this matter, the parties dispute whether the election should be conducted manually or by mail. The Employer and the RD Petitioner contend that a manual election should be directed, while the Union maintains that a mail ballot, in light of the continuing pandemic, is appropriate. Although election details, including the type of election to be held, are nonlitigable matters left to the discretion of the Regional Director, the parties were permitted to present their positions as to the mechanics of this election.

A hearing officer of the National Labor Relations Board (the “Board”) held a videoconference hearing in this matter on November 19, 2020.<sup>1</sup> All parties were afforded the opportunity to present witness testimony and documentary evidence, cross-examine witnesses, and state their respective positions on the record. Additionally, all parties submitted post-hearing

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<sup>1</sup> Hereinafter all dates occurred in 2020, unless otherwise noted.

briefs. Having considered the record evidence, the parties' arguments, and the relevant Board law, I find that the tentative agreement does not bar the processing of the petitions in Cases 06-RD-268268 and 06-RM-268281.

To give context for my discussion of this matter, I first provide brief background information concerning the bargaining relationship between the Employer and the Union as well as the procedural history of the involved petitions. I then discuss the Employer's operation and the facts relevant to the instant dispute. Next, I review extent Board law applying to contract bar disputes and the mechanics of elections during the pandemic. Finally, I apply Board law to the facts of this case and state my conclusions and findings.

## **I. BACKGROUND AND PROCEDURAL HISTORY**

On July 1, 2015, the Employer acquired the Waynesburg, PA hospital involved herein from Essen Healthcare (the "predecessor") through an asset purchase agreement. At that time, the Union represented the service and maintenance unit as well as a unit of registered nurses (the "nurse unit") employed at the hospital.<sup>2</sup> The service and maintenance unit and the nurse unit were covered by individual and separate collective-bargaining agreements negotiated between the Union and the predecessor. As part of the acquisition, the Employer voluntarily recognized the Union as the collective bargaining representative of the two units and assumed the prior collective bargaining agreements that were in place at that time.

In 2017, the Employer and the Union executed a new collective-bargaining agreement (the "2017 agreement") that was effective from October 1, 2017 through September 30. As part of the negotiations for the 2017 agreement, the Employer and the Union agreed to reduce the terms and conditions of employment for the nurse unit and the service and maintenance unit into one collective-bargaining agreement. Thus, the 2017 agreement details the terms and conditions of employment for both the nurse unit and the service and maintenance unit. However, Section 1.2 of the 2017 agreement states, in relevant part, that the nurse unit and the service and maintenance unit are:

*two distinct and separate bargaining units, both of which have been included in one collective bargaining agreement solely for purposes of administrative convenience. Notwithstanding the aforesaid, the parties agree that the two (2) bargaining units in question shall at all times remain separate and distinct as originally certified by the National Labor Relations Board for all purposes.*  
(emphasis in the original)

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<sup>2</sup> The nurse unit is the subject of nearly identical petitions filed by Lemley in Case 06-RD-268263 and by the Employer in Cases 06-RM-266594 and 06-RM-268275 that are before me and which present the same contract bar issue as the one involved herein. A separate Decision and Direction of Election will issue for the petitions related to the nurse unit.

On September 23, prior to the expiration of the 2017 agreement, the Employer filed the petition in Case 06-RM-266565.<sup>3</sup> Following the expiration of the 2017 agreement, on October 29, Lemley filed her petition in Case 06-RD-268268, and on that same day, the Employer filed its petition in Case 06-RM-268281.

Finally, on November 3, I issued an Order Consolidating Cases 06-RD-268268 and 06-RM-268281 as the petitions are closely related and both involve the same issue of whether employees employed in the service and maintenance unit desired continued representation by the Union. Thereafter, for the same reasons, I issued an Order Further Consolidating Cases on November 18 whereby I consolidated Case 06-RM-266565 with Cases 06-RD-268268 and 06-RM-268281.

## **II. STATEMENT OF FACTS**

### **A. 2020 successor collective bargaining agreement negotiations.**

The Employer and the Union began negotiations for a successor agreement on August 14, and culminated negotiations on August 19, following three non-consecutive days of bargaining. The parties agree that in submitting proposals during successor contract negotiations, only those provisions from the 2017 agreement that were proposed to be changed were included in the proposals, and ultimately in a draft tentative agreement. In other words, the tentative agreement, if reached, would only include those provisions from the 2017 agreement that were being changed; if a particular article or section in the 2017 agreement was not included in the tentative agreement, that provision or section from the 2017 agreement would carry over to any finalized agreement unchanged. Thus, the tentative agreement only included provisions from the 2017 agreement that were being modified.

On August 20 and 21, the Employer and the Union executed a tentative agreement (the “tentative agreement”), respectively. Article 39 of the tentative agreement states that it would “remain in full force and effect and be binding on the parties for the period beginning on the date

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<sup>3</sup> The Union challenges this petition on the grounds that the petition was filed prior to the expiration of the 2017 agreement and within the insulated period, i.e. the petition was not timely filed within the open window. Additionally, the Union argues that the petition was procedurally defective because the Employer failed to properly serve the appropriate forms on the parties to this proceeding when the petition was filed and served. Specifically, the Employer served the 2015 version of Form 4812 and not the 2020 version of that form. I find merit to both of the Union’s objections and I hereby administratively dismiss the petition in Case 06-RM-266565. Alternatively, the petition in Case 06-RM-266565, and the accompanying challenges, are mooted by the Employer’s second “RM” petition which, as will be discussed, was validly filed in accordance with the Board’s Rules and Regulations, and which I find was not barred by the parties’ tentative agreement.

and the time of ratification (except as otherwise specifically agreed upon in writing) and ending at 11:59 p.m. on September 30, 2023.” The language in Article 1.2 from the 2017 agreement—that the nurse unit and the service and maintenance unit remained separate and distinct for all purposes—was unchanged and thus included in the agreement.

On August 24, the Union held a ratification vote for the tentative agreement; employees in both the nurse unit and the service and maintenance unit participated in the vote. The tentative agreement does not contain a specific ratification procedure, and the parties did not have any specific written or oral agreement regarding how the ratification vote would be conducted, aside from the mandate in Article 1.2 that the units remain separate and distinct for all purposes. At 5:05 p.m. on August 24, the Union’s Chief Negotiator Linda Graham sent a text message to the Employer’s Chief Negotiator, Barbara McCullough, that said “[r]atified.” Ms. McCullough responded by stating “awesome news!!!; thanks for letting me know”.

The following day, on August 25, Ms. McCullough text messaged Ms. Graham, among others, and asked for the ratification vote percentage. Ms. Graham responded to the text message, and informed Ms. McCullough that 46 employees showed up for the ratification vote, with 8 employees voting no. The record is clear that the Union conducted one ratification vote and pooled the votes of employees in both the nurse and service and maintenance units into one ratification vote.

On September 16, prior to the expiration of the 2017 agreement, but subsequent to the ratification vote, the Employer received a petition signed by members of both bargaining units requesting that it not execute a successor collective-bargaining agreement with the Union because the Union did not represent a majority of the employees. The petition stated that the undersigned employees understood that the petition may be used to obtain an election supervised by the Board, or to support the withdrawal of recognition of the Union.

The following day, Phillip Binotto, attorney for the Employer, notified the Union by written letter that the Employer, in light of the petition it had received on September 16, would delay the execution of the successor collective-bargaining agreement until a decision on the Union’s majority status is resolved by the Board and that it would withdraw recognition on October 1. On October 7, the Union, in writing, demanded that the Employer recognize the Union and sign the successor collective-bargaining agreement. Thereafter, on October 15, Mr. Binotto notified Ms. Graham via email that the Employer had withdrawn recognition of the Union effective October 1, pending ultimate resolution of the matter before the Board. Additionally, Mr. Binotto informed Ms. Graham that the Employer had learned that the nurse unit was never given an independent opportunity to ratify the tentative agreement—due to the pooled-nature of the ratification vote—and thus the tentative agreement reached by the parties was not properly ratified by the bargaining units, a condition precedent to the parties’ agreement.

## **B. Covid-19 in Greene County, Pennsylvania.**

The Employer's hospital in Waynesburg is located in Greene County, Pennsylvania. As of December 13, Greene County has reported 1071 confirmed Covid-19 cases, with 7 of those cases resulting in death.<sup>4</sup> The 14-day rate of confirmed cases continues to increase in Greene County, from 10 daily cases reported 14 days ago, to 41 confirmed cases reported on December 13.<sup>5</sup> Additionally, most recent data shows that the positivity rate in Greene County is currently 12.22 percent, with the positivity rate remaining consistently above 5 percent since early November.<sup>6</sup>

## **III. BOARD LAW**

The Board's well-settled contract bar doctrine attempts to balance often competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

When, as a condition precedent, a written agreement between an employer and union is made subject to ratification by a union's membership, then the agreement is not a contract bar unless it is ratified before a representation petition is filed. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-1163 (1958); *American Broadcasting Co.*, 114 NLRB 7, 7-8 (1956); *Westinghouse Electric Corporation, Small Motor Division*, 111 NLRB 497, 498-500 (1955); cf. *Aramark Sports & Entertainment Services*, 327 NLRB 47 (1998). Parol evidence on this issue is not relevant. *Gate City Optical Co.*, 175 NLRB 1059, 1061 (1969). In such circumstances, a report to the employer that the contract has been ratified is normally sufficient to bar a petition. *Swift & Co.*, 213 NLRB 49 (1974).

However, where a pooled ratification vote "impermissibly impose[s] extraneous non-bargaining unit considerations into the collective-bargaining process", the pooled voting procedure may run afoul of the Act. *Paperworkers Local 620 (International Paper Co.)*, 309 NLRB 44 (1992). In *Paperworkers Local 620*, the Board found a pooled ratification vote procedure violated Sections 8(b)(3) and 8(d) of the Act "because its structure and operation permit wholly separate bargaining units, each voting on its own separate contract, to effectively veto another bargaining unit's contract on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit's contract." *Paperworkers Local 620*, 309 NLRB at 45.

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<sup>4</sup> <https://bao.arcgis.com/covid-19/jhu/county/42059.html> (last visited December 13).

<sup>5</sup> *Id.*

<sup>6</sup> <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited December 13).

Moreover, as it pertains to the ongoing pandemic, recently the Board implemented guidelines to be used in evaluating the propriety of a mail ballot election during this pandemic. On November 9, the Board issued its Decision on Review in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), wherein it “set forth more specific and defined parameters under which Regional Directors should exercise their discretion in determining election type against the back-drop of Covid-19.” *Aspirus Keweenaw*, 370 NLRB No. 45 slip op. at 4. Moving forward, the Board has identified the following six situations which suggest the propriety of using mail ballots to conduct elections:

(1) [t]he Agency office tasked with conducting the election is operating under ‘mandatory telework’ status...(2) [e]ither the 14-day trend in the numbers 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) [t]he 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) [t]he employer fails or refuses to commit to abide by the GC Memo 20-10 protocols...(5) [t]here is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status...(6) [o]ther similarly compelling considerations.

*Aspirus Keweenaw*, 370 NLRB No. 45 slip op. at 4-8. “County-level positivity rate data should be obtained from official state or local government sources.” *Id.* at 6, fn. 25. If “some or all of the work force comes from areas outside the county, it may be appropriate to consider data from those other areas.” *Id.* at 6.

#### **IV. APPLICATION OF BOARD LAW TO THE FACTS**

I find that the Union has failed to meet its burden in establishing that the tentative agreement is a bar to further processing the petitions in Cases 06-RD-268268 and 06-RM-268281. Specifically, and as detailed below, I find that the pooled ratification vote in this case nullified the condition precedent to a finalized agreement—ratification of the tentative agreement—and without proper ratification, the tentative agreement cannot serve as a bar.

Furthermore, due to the continuing increase in Covid-19 cases and the significantly high testing positivity rate in Greene County, I find that a prompt mail ballot election is warranted.

##### **A. The tentative agreement does not operate as a bar because of the improper ratification procedure.**

As extent Board law requires, I am only permitted to examine the terms of the tentative agreement “as they appear within the four corners of the instrument itself” in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977).

In order for a collective-bargaining agreement with a ratification requirement to operate as a bar to the processing of a petition, the Board has said that the agreement must be ratified prior to a petition being filed. The tentative agreement is clear that it would not take effect until it was ratified. Indeed, there is no contention by the Union, or any other party, that ratification of the tentative agreement was not a condition precedent to a finalized agreement. Thus, in order for the tentative agreement to operate as a bar, it must have been properly ratified. I find that it was not.

In *Paperworkers Local 620*, supra, the Board found a pooled voting procedure unlawful because it allowed separate bargaining units, voting on their own separate contract, to effectively veto the will of another bargaining unit. In that case, the unlawful pooled voting rendered the will of several bargaining units—that voted to ratify their individual contracts—meaningless because the entire pool, consisting of 35 local unions, did not collectively vote to ratify the agreement. *Paperworkers Local 620*, 309 NLRB at 55. Thus, even though several units voted to ratify their individual agreements, those agreements were not implemented and did not take effect because the entire pool did not vote for ratification. *Id.* Consequently, the Board found the voting procedure ran afoul of the Act because it permitted separate voting units to veto another bargaining unit’s contract “on the basis of extraneous considerations having no direct bearing on the substantive terms of the other unit’s contract.” *Id.* at 45. The pooled ratification vote in this case suffers from the same defect.

First, Article 1.2 of the 2017 agreement, which was rolled into the tentative agreement unchanged, makes clear that that the nurse unit and the service and maintenance unit remained separate and distinct “for all purposes.” Thus, even though the units share certain terms and conditions of employment and are both combined for administrative ease into the same collective-bargaining agreement, the parties agreed that they were to remain separate and distinct for all purposes. The record does not contain any evidence that the parties exempted the ratification requirement from the “for all purposes” mandate in Article 1.2. Accordingly, I find that the tentative agreement dictates that each bargaining unit ratify the tentative agreement, as it applies to their individual unit, separately.

The concern that a pooled ratification system may nullify the will of one unit based on non-bargaining unit considerations is illustrated here. As of the hearing date, there are approximately 67 employees in the service and maintenance unit, while there are approximately 13 employees in the nurse unit. Under the pooled ratification voting system, even if every employee in the nurse unit voted against ratification of the tentative agreement as it applies to their separate and distinct bargaining unit, their vote could effectively be vetoed by enough “yes” votes in the service and maintenance unit. In view of the service and maintenance unit being five times the size of the nurse unit, the chance that such an occurrence may occur is entirely plausible. Consequently, due to the sizes of the respective units, the pooled voting procedure here allows for the will of the nurse unit—whether it voted to ratify the tentative agreement or not—to be entirely dependent on the will of the service and maintenance unit. In other words, non-bargaining unit considerations—the will of the service and maintenance unit—are being imposed on the nurse unit, something proscribed by the Board in *Paperworkers Local 620*, and Article 1.2 of the tentative agreement.

I find that the cases cited by the Union are inapposite. To begin with, the Union first cites to several cases in arguing that the ratification process is an internal union matter impervious to employer challenges absent an agreement about the specific procedures to be followed.<sup>7</sup> Each of those cases, however, involved one bargaining unit and the ratification procedure as it applied to that sole unit. It did not involve multiple bargaining units and a pooled ratification voting system that had the potential to negate the will of one unit based on non-bargaining unit considerations, i.e. the vote of an entirely separate bargaining unit. Thus, while those cases may stand for the proposition cited by the Union, they have no applicability to the instant matter.

Next, the Union contends that the pooled voting process was proper, legitimate and in good faith. In support, the Union relies on *Lynchburg Foundry*, 192 NLRB 773 (1971), enf'd 80 LRRM 2415 (4th Cir 1972). In that case, the Board affirmed the Administrative Law Judge's determination that a pooled ratification vote among two bargaining units did not run afoul of the Act. In making his determination, the Administrative Law Judge relied on, *inter alia*, that the two units had "overlapping work functions and similar skills", that "they [were] engaged in the manufacture of the same products", and that "the pooled vote was agreed to by the designated representatives of each of the two units concerned." *Lynchburg Foundry*, 192 NLRB at 777-779.

Unlike in *Lynchburg Foundry*, there is no record evidence that the units are engaged in the same work nor have similar skills. Indeed, the job classifications included in the 2017 agreement, as well as the tentative agreement, highlight the differences in work functions between the two units. Most importantly, however, there is no evidence in this case that there was any agreement to pool the ratification votes of both units. On the contrary, Article 1.2 of the 2017 agreement, that was rolled into the tentative agreement unchanged, makes clear that the units are separate and distinct for all purposes. Accordingly, the specific facts relied upon by the Administrative Law Judge in *Lynchburg Foundry* are simply not present here.

The Union additionally cites *Verizon Information Services*, Regional Director's Decision and Order, Case 4-RD-2079 (August 23, 2006), a case where a Regional Director found that a pooled ratification vote among three bargaining unit—that resulted in the ratification of a contract—did not remove the contract as a bar, even though one of three involved bargaining units voted against ratification. First, that Regional Director's Decision does not control my determination in these cases. In any event, the cases are distinguishable. In making his determination, the Regional Director relied on the fact that the ratified agreement did not specify whether the votes in the three units would be tallied separately or pooled. He also found that the ratified agreement did not specifically mandate ratification by the employees.

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<sup>7</sup> *Beatrice/Hunt-Wesson*, 302 NLRB 224 (1991); *Childers Products Co.*, 276 NLRB 709 (1985), enf'd. 791 F.2d 915 (3d Cir. 1986); *M&M Oldsmobile*, 156 NLRB 903 (1966), enf'd. 377 F.2d 712 (2d Cir. 1967).

In contrast to the facts in *Verizon Information Services*, while the 2017 agreement and the tentative agreement do not specify a ratification procedure, Article 1.2 makes clear that the two units are separate and distinct for all purposes, which I find to include the ratification requirement. Moreover, while in *Verizon Information Services* the ratified contract did not specifically mandate ratification, the tentative agreement here expressly requires ratification before it can take effect. Indeed, no party involved in this proceeding contends that the tentative agreement does not require ratification prior to taking effect. For these reasons, *Verizon Information Services* does not apply to this proceeding.

For the foregoing reasons, I find that the pooled ratification vote did not meet the requirements of the tentative agreement, specifically that the two units be treated as separate and distinct for all purposes. Because the Union did not keep the units separate and distinct when it conducted the ratification vote, I find that the ratification requirement was not met, and thus the tentative agreement did not take effect prior to the instant petitions being filed. Accordingly, I find that the tentative agreement does not bar the processing of these petitions, and as such, I will direct an election, the details of which are below and in the Notice of Election that will issue after the issuance of this Decision and Direction of Election.<sup>8</sup>

#### **B. The ongoing pandemic in Greene County, PA requires a mail ballot election.**

One metric cited by the Board that suggests the propriety of using mail ballots to conduct an election during this pandemic is an increase in the 14-day trend in the number of new confirmed cases. Such a situation exists in Green County—the location where a manual election in this matter would be conducted—where the number of confirmed cases has increased during the previous 14 days. A second metric cited by the Board that suggests the propriety of using mail ballots to conduct an election during this pandemic is a 14-day testing positivity rate above 5 percent in the county where the manual election would be held. As noted above, the positivity rate in Greene County has been higher than 5 percent since approximately the first week of November. Accordingly, based on the most recent data, I find that a mail ballot election is warranted in this case given the conditions of the ongoing pandemic in Greene County.

### **V. FINDINGS AND CONCLUSIONS**

Having carefully considered the record evidence and applying the applicable Board law to these circumstances, I find that the Union has failed to meet its burden in establishing that the tentative agreement is a bar to further processing of these petitions. Additionally, I find that a mail

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<sup>8</sup> The Union also argues that the discontent with the ratification procedure is outside the scope of this proceeding and is procedurally the basis of an unfair labor practice charge. To be clear, in this Decision, I do not pass on the legality of the pooled ratification vote and whether it violated the Act. Instead, my finding is limited to the voting system's failure to comply with the tentative agreement's mandate to keep the units separate and distinct.

ballot election is required in this case given the continuing increase in cases and the high positivity rate in Greene County, Pennsylvania.

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.<sup>9</sup>
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
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 service and maintenance employees, limited to those positions in Appendix A of the Agreement and working at Washington Health System Greene medical facility located in Waynesburg, Pennsylvania.

***Excluded:*** All other employees, temporary employees, medical technologist, confidential employees, professional employees, guards and supervisors as defined under the Act

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<sup>9</sup> The parties stipulated that the Employer, a Pennsylvania non-profit organization, is a health care institution within the meaning of Section 2(14) of the Act and is engaged in the operation of a community hospital. The parties further stipulated that the Employer, during the past twelve-month period, derived gross revenues in excess of \$250,000 from the operation of its business. Lastly, during that same period, the Employer purchased and received goods and materials valued in excess of \$5,000 directly from points located outside of the Commonwealth of Pennsylvania.

## **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 S.E.I.U. Healthcare Pennsylvania, CTW, CLC.

### **A. Election Details**

The election will be conducted by United States mail. 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 6, 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.

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 17, 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.**

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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 that will issue and that accompany 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.

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### **RIGHT TO REQUEST REVIEW**

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: December 15, 2020

/s/ Nancy Wilson

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Nancy Wilson  
Regional Director  
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