

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

RIP CITY MANAGEMENT LLC¹

Employer

and

Case 19-RC-270150

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES, MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND
CANADA, LOCAL 28**

Petitioner

DECISION AND DIRECTION OF ELECTION

Rip City Management LLC (Employer) operates certain event venues in Portland, Oregon – the Moda Center (formerly known as the Rose Garden) and Veterans Memorial Coliseum (VMC, formally known as the Memorial Coliseum). International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 28 (Petitioner) filed a Petition on December 11, 2020 seeking, by an *Armour-Globe* self-determination election, to add certain employees of the Employer who work at competitive sporting events at these venues to the existing bargaining unit of stagehand work for all other events at these and associated venues.

Petitioner maintains that the petitioned-for group constitutes a distinct, identifiable segment of the Employer’s workforce and shares a community of interest with the stagehands in the existing unit. The Employer argues that inasmuch as the employees in the group sought by Petitioner are already represented by Petitioner and subject to the terms and conditions of the collective-bargaining agreement (CBA) for the existing unit, the Petitioner is merely seeking to expand the scope of work as defined by that CBA and not to add unrepresented employees to the existing unit. Therefore, the Employer argues, a self-determination election is not appropriate.

A hearing was held before a Hearing Officer of the National Labor Relations Board on January 5, 2021, limited to the issues of whether there is a question concerning representation, and, if so, whether an *Armour-Globe* election is appropriate regarding the petitioned-for employees.

¹ I grant the parties’ motion to amend the petition and other formal documents to correctly reflect the names of the parties as set forth herein.

After careful consideration of the stipulations and post-hearing briefs of the parties and the record as a whole, and for the reasons set forth below, I find that the petition raises a question concerning representation and I am accordingly ordering a self-determination election among employees of the Employer who perform stagehand work at competitive sporting events as described below. There are approximately 65 employees in the group sought by Petitioner, and the parties have agreed that a mail-ballot election be held.

BACKGROUND

The parties jointly stipulated to the following background facts regarding this petition. The Employer operates and manages the 12,000-seat VMC, 20,000-seat Moda Center, 6,500-seat Theater of the Clouds, 40,000 square foot Exhibit Hall, and outdoor Rose Quarter Commons located at Portland, Oregon's Rose Quarter. The VMC opened in or about 1960 or 1961, and Moda Center opened in 1995. Events held in the VMC and Moda Center include, but are not limited to, concerts, performances, and sporting events (including but not limited to Portland Trail Blazers NBA basketball, Portland Winterhawks Hockey,² NCAA and OSAA competitions, and Professional Bull Riders rodeos).

The Employer has operated and managed the Rose Quarter since June 2013. AEG Management Oregon managed the facilities from about 2007 until June 2013. Global Spectrum and Oregon Arena Corporation ("OAC") managed the Rose Quarter for periods of time prior thereto.

The City of Portland, through the Exposition Recreation Commission (ERC), managed the Memorial Coliseum from its opening through 1989, when the City of Portland and Metro entered into a consolidation agreement for transfer to the Metropolitan Exposition Recreation Commission (MERC) of all the Portland ERC facilities and employees. The City of Portland continued to manage the Memorial Coliseum until OAC took it over in or about 1993.

Petitioner has had a collective bargaining relationship with the operator/manager of the venues at the Rose Quarter for over 50 years, including with (in order of operating succession), the City of Portland, Metro/MERC, Global Spectrum, AEG, and the Employer.

When the Employer took over management of the Rose Quarter, it assumed the 2011-2014 CBA between Petitioner and AEG. The parties then bargained the 2014-2017 CBA and are currently in negotiations for the successor to the most recent CBA, which expired on January 15, 2021.

² Portland does not have a National Hockey League (NHL) team, and the Portland Winterhawks are a junior ice hockey team playing in the Western Hockey League as part of the Canadian Hockey League (CHL).

Article I, Section 1.1 of the CBA establishes that, “The Employer recognizes the Union as the exclusive bargaining representative of its employees performing work as defined in Article II. Jurisdiction and currently working within the wage classification set forth in this Agreement, but excludes all other employees and supervisors.”

Article II, Section 2.1 of the CBA provides that Petitioner “has jurisdiction over the class of work that includes, but is not limited to,” stagehand work, defined as follows:

[A]ll stages, portable or permanent when used for any type of production in the arena bowl (Veterans Memorial Coliseum or Moda Center) proper, consisting of construction, placing and hanging of scenery and curtains, rigging of theaters, operating and maintaining all paraphernalia of theaters, and repairing stage scenery, curtains, properties, public address systems, lighting systems, etc. . . . It is understood that supervisors, as defined in the National Labor Relations Act, may perform incidental work falling hereunder without being covered by this Agreement. The Employer may continue to subcontract work of the type and nature historically subcontracted to outside vendors, including but not limited to those who supply lighting, sound, audio-visual or other equipment which may fall within the scope of this Agreement. The Employer may assign work to electricians falling within the scope of their license.

As a result of the COVID-19 pandemic, no sporting events were held in the Rose Quarter from March 11, 2020, until the Portland Trail Blazers resumed games in the Moda Center beginning December 11, 2020.

Petitioner dispatches workers to the Rose Quarter venues from its Hiring Hall. As of March 2020, the Employer’s “Stagehand DA Active Roster” included 433 hiring hall referents. These are hiring hall referents who have been dispatched to the Rose Quarter, have completed new employee paperwork, who remain on the Petitioner’s hiring hall list, and have not been terminated by the Employer. The parties periodically update that list. Of those 433 employees, approximately 65 of them have worked at sporting events, which are competition contests where there is no predetermined winner, in the twelve months prior to March 11, 2020.³

Article II, Section 2.2 of the CBA expressly excludes from Petitioner’s exclusive jurisdiction the following (emphasis added):

[A]ll events not utilizing the arena bowl; events utilizing equipment owned or rented directly by the facility; rigging and setting of circus equipment; ***sporting events which are competition contests where there is no predetermined winner***; RCM and Trailblazers full time and regular part time staff and their temporary replacements; vendors/rental

³ The parties do not appear to dispute that these approximately 65 employees comprise the group that Petitioner wants to include in the existing unit through a self-determination election.

companies' regularly scheduled full time and part time staff; and volunteer personnel involved with free admission events.⁴

Notwithstanding Article II, Section 2.2 of the CBA, the CBA further provides in Section 2.2.1 that "if the Employer requests workers from the Union to perform work falling under Article II, Section 2.2, and the Union dispatches workers for the call, such workers will be covered by the terms and conditions of this Agreement for such call."⁵

During the parties' recent negotiations for a successor CBA, Petitioner has proposed modifying Article II, Section 2.2 of the CBA by removing the phrase "sporting events which are competition contests where there is no predetermined winner." To date, the Employer has not responded or made any other bargaining proposals.

In sum, it is undisputed that Petitioner already represents employees dispatched from its Hiring Hall who perform work within the scope of the CBA. This work includes stagehand work for events with the exception of competitive sporting events which are excluded from the Petitioner's jurisdiction. The Employer may, but is not required to, utilize Petitioner's Hiring Hall for stagehands to work at competitive sporting events: although that work is not covered by the CBA, the parties have agreed that the terms of the CBA would apply to those employees. The Petitioner now seeks, through a self-determination election, to include the work performed at competitive sporting events that is currently excluded from the current CBA inasmuch as bargaining unit employees typically perform the work anyway.

The record confirms that in many cases, the same stagehands dispatched from the Hiring Hall have worked both non-sporting events within the scope of the CBA and sporting events excluded from that scope. A crew for most events consists of four department heads – the head electrician, a head rigger, a crew chief, and an assistant crew chief.⁶ The NBA and hockey games also require a stagehand to manage specific sounds and scoring, and the NBA games require an experienced sound engineer to operate the soundboard. The Employer has utilized the same sound engineer since at least 1995 until games ceased in March 2020 as a result of the Coronavirus pandemic. A handful of experienced stagehands have worked both non-sporting and sporting events for the Employer for decades.

The dispatch procedures for non-sporting and sporting events are similar: the Employer would advise the Petitioner's business representatives and the dispatch hall of the schedule of upcoming events and what kind of crew was needed for a particular event. Stagehands are then

⁴ This language was apparently added to the CBA with AEG in 2007, although some limitation of competitive sports work occurred during the management by Global Spectrum in 2005.

⁵ Section 2.2.1 was added so that employees could make contributions into the Taft-Hartley Trust Funds and receive benefits thereunder. The Petitioner conceded that it understood that the work performed by certain employees, particularly the work performed by stagehands at sporting events who had been referred through the Hiring Hall, had to be covered by a CBA in order to be able to participate in the Trust Funds, and there is no dispute that those referred out of the Hiring Hall were covered by the terms of the collective-bargaining agreement.

⁶ The parties agreed that those employees referred to as "heads" and "chiefs" are not supervisors within the meaning of the Act.

contacted by the Petitioner's Hiring Hall according to seniority or occasionally by name to work certain events. Petitioner's Hiring Hall advises the Employer of who will be working each event and their positions, and they sign in when they arrive to work. The Employer may also request additional stagehands to assist with unloading trucks and setting up the event beforehand, and afterwards removing and loading up the equipment: these employees may be different than those who actually work the event.

With regard to competitive sporting events, the dispatch procedure is slightly different because the Employer generally uses the same experienced crew members throughout the entire season. Thus, the Employer sends a schedule of competitive sporting events to the Petitioner before the beginning of the season and requests certain stagehands by name who will then work every game on a rotating basis. If those who are requested by name are not available for a particular event, Petitioner can dispatch someone else suitable with the agreement of the Employer. It is estimated that there are 50 professional basketball games in a season (no estimate was given for the hockey games).

Thus, although employees represented by Petitioner and referred through the Hiring Hall have historically performed stagehand work for the Employer, the work performed at competitive sporting events has been excluded from the Petitioner's jurisdiction. Petitioner does not dispute that employees in the group that it seeks to add to the existing unit – the approximately 65 stagehands dispatched to work competitive sporting events for the Employer during the twelve months prior to March 11, 2020 – are already in the existing unit when they perform work at other non-sporting events. Petitioner filed the instant petition to add stagehand work on competitive sporting events to the existing unit.⁷

There appears to be no dispute regarding the facts that led to the filing of the instant Petition. As noted above, competitive sporting events were scheduled to resume in December 2020. After initially advising Petitioner on November 30, 2020, that no stagehands from the Hiring Hall would be needed in the absence of fans at the games due to COVID-19 restrictions, the Employer later clarified that the lighting board would continue to be operated by the same stagehand who had performed the work in previous years and who was subsequently dispatched from the Hiring Hall. However, the other stagehand duties would be performed by the Employer's production managers and/or subcontractors rather than by those sent by Petitioner's Hiring Hall.

In response, on about December 9, 2020, Petitioner urged the Employer to continue using employees from the Hiring Hall at competitive sporting events and asked the Employer to voluntarily recognize Petitioner as the collective-bargaining representative of employees working at sporting events as part of the existing unit. Specifically, Petitioner stated that it intended to file a representation petition with the NLRB to more clearly add the employees doing the sporting event work into the existing bargaining unit. Petitioner conceded that those same employees are

⁷ As noted above, stagehands referred to the Employer through Petitioner's Hiring Hall to work on competitive sporting events are covered by the provisions of the CBA, including benefits provided through the Trust Funds. It is not disputed that employees not dispatched from the Hiring Hall to work these events are not covered by the CBA.

already in the unit when they do the same work, in the same place, but at non-sporting events and asked the Employer to voluntarily recognize Petitioner as the representative for those same employees when performing work for sporting events. The Employer declined to do so, and reiterated its position that Petitioner had no claim to jurisdiction over any work related to sporting events.

THE EMPLOYER'S POSITION

The Employer asserts that Petitioner improperly seeks an *Armour-Globe* self-determination election to add stagehand work for sporting events to the scope of covered work for bargaining unit members pursuant to the parties' existing CBA.

Specifically, the Employer argues that Petitioner's request for a self-determination election should be denied because Petitioner does not seek to change the scope of the bargaining unit by adding unrepresented employees to an existing bargaining unit, which is required for an *Armour-Globe* election.⁸ The Petitioner states in its Petition that the "[e]mployees [at issue] are already in [the] existing unit," demonstrating there is nothing for the employees in the existing bargaining unit to vote for in an election as they are already represented by Petitioner. Therefore, the Employer argues, an *Armour-Globe* election is not appropriate because the Petitioner has failed to raise a question concerning representation sufficient to warrant an election.

Moreover, according to the Employer, the issue presented by the Petitioner is one concerning the work that current bargaining unit members already frequently perform on a non-exclusive basis and does not seek to add unrepresented employees to the unit. Rather, Petitioner seeks to simply alter the Employer's discretion as to the assignment of such work, which cannot be changed through a representation election but only through the exclusive purview of bargaining. Consequently, the Employer argues, even if Petitioner were to prevail in the self-determination election that it seeks, the parties would still have to resolve the contractual issue that allows the Employer to seek stagehands for competitive sporting events from outside Petitioner's Hiring Hall. This demonstrates that Petitioner is seeking to achieve through a self-determination election what it has been unable to obtain at the bargaining table. Therefore, the Employer argues, the Petition should be denied as a matter of law.

THE PETITIONER'S POSITION

Petitioner disputes the Employer's position that an *Amour-Globe* self-determination petition to add stagehand work on competitive sporting events to the scope of work covered by the parties' CBA is improper. Despite its position to the contrary for many years, and its refusal to grant Petitioner's recent request for voluntary recognition, the Employer now claims there is no question concerning representation regarding the employees who perform the sporting event work

⁸ Citing NLRB Case Handling Manual § 11091.2 (noting that where one union is involved, an *Armour-Globe* election may be appropriate only where a "partially organized plant seeks to add a group of unrepresented employees to its existing unit").

because the employees who perform that work are already in the bargaining unit. Thus, the Board should reject the Employer's position and direct an election.

According to Petitioner, the test for determining whether an *Armour-Globe* election is appropriate is whether the employees performing the unrepresented work share a community of interest with the existing unit employees, and whether they constitute an identifiable, distinct segment of the workforce. The Employer does not dispute that both of these factors exist: there can be no doubt that the stagehands who do things like run the lights and sound for competitive sporting events such as NBA games share a community of interest with the stagehands who run the lights and sound in the same venue, but at different times, at non-sporting events, and that those employees are often the same. Those who perform work for sporting events are also a distinct group. The 65 employees identified on the Employer's list as working on sporting events are a fraction of the approximately 400 bargaining unit employees who perform stagehand work for other events.

Petitioner further asserts that an *Armour-Globe* election is appropriate when a union seeks to add to an existing unit work that has been expressly excluded by the collective-bargaining agreement's definition of the scope of the unit, which is the situation in the instant case.⁹ Specifically, the parties' CBA excludes the class of work – stagehand work on competitive sporting events – from the scope of the recognition clause.

These provisions have long been interpreted to mean that the competitive sporting event work is not bargaining unit work, but the Employer will pay the wages, benefits and otherwise apply the terms and conditions of the CBA to employees it obtains through the Petitioner's Hiring Hall for such work on a call-by-call basis. The Employer has consistently refused to bargain with Petitioner over expressly including sporting event work within its jurisdiction because they have maintained that would expand the scope of the recognition clause, which is a permissive subject of bargaining. According to Petitioner, the employees who have performed that work for decades, however, wish to be represented by Petitioner for the purposes of bargaining ongoing terms and conditions of employment relating to their work on sporting events, including but not limited to job security. The Employer's position denies the employees who perform sporting event work the right to self-determine whether to be represented for collective bargaining purposes in their performance of that work.

Further, Petitioner argues although the Employer has long maintained that the exclusion of competitive sporting events from the CBA's recognition and jurisdiction memorializes an "understanding" that Petitioner would not seek to represent stagehands performing such work, an *Armour-Globe* election is still appropriate to determine whether the excluded work should be included with the work in the recognition clause because the Board has held that the exclusion of certain employees from an existing unit does not serve as a bar to future representation.¹⁰ This is

⁹ Citing *UMass Memorial Medical Center*, 349 NLRB 369, 369-370 (2007); *Women and Infants' Hospital of Rhode Island*, 333 NLRB 479, 479 (2001).

¹⁰ Citing *UMass Memorial Medical Center*, *supra*.

so even though the Employer applies the CBA terms to them when they perform sporting event work, and those same employees also perform stagehand work for other events that are clearly included within the parties' recognition clause. Thus, Petitioner argues, an *Armour-Globe* election is the proper means for determining whether the excluded work should be included within the scope of the work covered by the recognition clause, and therefore a self-determination election should be directed.

ANALYSIS UNDER ARMOUR-GLOBE

Board elections typically address the issue of whether employees wish to be represented by a labor organization. However, the Board will, under certain circumstances, conduct an election that also resolves a unit placement issue, referred to as a self-determination election. Specifically, an *Armour-Globe* self-determination election may be directed where a petitioner seeks to add a group of unrepresented employees to an existing unit.¹¹ An *Armour-Globe* election determines not only whether the employees wish to be represented, but also whether they wish to be included in the existing unit. *Warner Lambert, Co.*, 298 NLRB 993 (1990).

When a petitioner seeks an *Armour-Globe* election, the first consideration is whether the voting group sought is an identifiable, distinct segment of the workforce. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011), citing *Warner Lambert, supra*, at 995. Whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit – the analysis if a petitioner was seeking to represent the employees in a standalone unit. *St. Vincent* at 855. Rather, the identifiable and distinct analysis is merely to determine whether the voting group sought would unduly fragment the workforce. *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972).

If the voting group sought is an identifiable and distinct segment of the workforce, the question then is whether the employees in that voting group share a community of interest with the existing unit. As stated by the Board, when a petitioner seeks an *Armour-Globe* election “the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees, and whether they constitute an identifiable, distinct segment.” *St. Vincent* at 855.

There is no dispute that the voting group of stagehands who work on competitive sporting events shares a strong community of interest with the stagehand employees in the existing unit who work other non-sporting events. In this regard, they share the same skills, training, job functions, terms and conditions of employment, interchange, and common supervision. *PCC Structural*, 365 NLRB No. 160, slip op. at 6 (2017). Moreover, the strong evidence supporting the existence of these community of interest factors outweighs the relative lack of functional integration between the two groups, which is primarily a result of working separate types of events at different times. There is, however, significant job overlap in that many of the same stagehands – particularly the most experienced – work at both sporting and non-sporting events. *Id.*

¹¹ See *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) and *Armour & Co.*, 40 NLRB 1333 (1942).

I find, based on the record and the briefs of the parties, that the stagehands who work at competitive sporting events at the Employer's venues described above constitute an identifiable and distinct segment of the Employer's workforce. Moreover, I also find that they share a significant community of interest with the stagehands in the existing unit who work at non-sporting events. As such, I conclude that an *Armour-Globe* election is appropriate for those in this group to decide if they wish to be represented by Petitioner and to be part of the existing unit.

The Employer argues that Petitioner is attempting to expand the scope of its jurisdiction, particularly inasmuch as the Petition itself asserts that it is seeking to add stagehand *work* on sporting events to the existing unit of stagehand work for all other events, and that the group sought is already "in the bargaining unit." Thus, the Employer argues, Petitioner is actually seeking to determine how the Employer can assign work. This assertion is not supported by the facts, however, since the Employer is not obligated under the terms of the parties' CBA to utilize Petitioner's Hiring Hall for stagehands to work at competitive sporting events, and thus still retains the discretion to use subcontractors or other outside workers for this work.

Nor does the circumstance that these same individuals are represented by Petitioner and part of the existing unit when they perform non-sporting event work change the fact that when they perform sporting event work, they are an identifiable voting group with a strong community of interest with the existing unit. While the parties have agreed to extend the provisions of the CBA to these stagehands when they work at sporting events, these employees are not technically part of the existing unit. Therefore, they are entitled to decide whether they wish to be represented by Petitioner as part of the existing unit. Thus, notwithstanding the language of the Petition, I find that it is appropriate for Petitioner to seek to add a voting group of stagehands who work at competitive sporting events to the existing unit.

Further, the fact that this group of employees has been contractually excluded from the existing unit by long-standing agreement of the parties does not change my conclusion. As noted above, *UMass Memorial Medical Center, supra* at 368-373, and other cases cited by Petitioner for the proposition that the contractual exclusion of a group of employees does not operate as a bar to future representation regardless of an understanding to the contrary, is consistent with my finding that an *Armour-Globe* election is the proper mechanism to determine if the employees at issue herein wish to be included in a unit from which they have historically been excluded.

Accordingly, based upon the evidence in the record and for the foregoing reasons, I have concluded the voting group sought by Petitioner is appropriate for a self-determination election. There are approximately 65 individuals in that group, and I shall direct a mail-ballot election pursuant to the parties' agreement.

CONCLUSION

I have determined that the voting group described below is appropriate, and I shall direct a mail-ballot self-determination election among those employees. Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I so find, that 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.¹²
3. The parties stipulated, and I so find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. 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.
5. The following employees of the Employer constitute a voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All stagehands employed by the Employer who perform work at competitive sporting events at the Veterans Memorial Coliseum and Moda Center in Portland, Oregon; excluding all other employees, and guards and supervisors as defined by the Act.

There are approximately 65 employees in the above voting group.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 28**. If a majority of valid ballots are cast for **International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada, Local 28**, they will be taken to have indicated the employees' desire to be included in the existing unit currently represented by

¹² The parties stipulated, and I find, that the Employer, Rip City Management LLC, an Oregon company with an office and place of business in Portland, Oregon, is engaged in the business of producing live entertainment events. During the previous twelve months, a representative period, the Employer had gross revenues in excess of \$500,000, and purchased and received goods valued in excess of \$50,000 directly from points outside the State of Oregon.

Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

A. Election Details

Based on the agreement of the parties, the election will be held by mail. The ballots will be mailed to employees in the appropriate voting group by a designated official from the National Labor Relations Board, Subregion 36, 1220 SW 3rd Avenue, Suite 605, Portland, OR 97204, on **Tuesday, March 2, 2021 at 4:30 p.m.** Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, March 16, 2021, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 office at 503-326-3085 or our national toll-free line at 1-866-762-NLRB (1-866-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 36 office by **4:30 p.m. on Tuesday, March 30, 2021.** In order to be valid and counted, the returned ballots must be received in the Subregion 36 office prior to the counting of the ballots. All ballots will be commingled and counted by an agent of Subregion 36 of the National Labor Relations Board on **Thursday, April 1, 2021 at 2:00 p.m.** with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count.¹³

B. Voting Eligibility

Based on the eligibility formula agreed upon by the parties and in order to avoid possible disenfranchisement of potential voters, eligible to vote are those in the voting group who worked at least one competitive sporting event during the period March 12, 2019 through the payroll period ending immediately prior to the date of this Decision, 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.

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)

¹³ If, at a later date, it is determined that a ballot count can be safely held in the Subregion 36 office, the Region will inform the parties with sufficient notice so that they may attend.

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. The Petitioner did not waive the ten days that it is entitled to have the voter list. To be timely filed and served, the list must be received by the Regional Director and the parties by **Wednesday, February 17, 2021**. 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 accompanying 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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

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 the 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 elections on the ground that it did not file a request for review prior to the elections.

A request for review may 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. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

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 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 Seattle, Washington on the 12th day of February, 2021.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
915 2nd Ave., Ste. 2948
Seattle WA 98174