

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

**VALENCIA H. IMPORTS INC. D/B/A
AUTONATION HONDA VALENCIA**

Employer

and

Case 31-RD-272647

DIREK CARTWRIGHT

Petitioner

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
LOCAL LODGE NO. 1484, DISTRICT LODGE 190**

Union

DECISION AND DIRECTION OF ELECTION

On February 11, 2021,¹ Direk Cartwright (Petitioner) filed a representation petition (the Petition) under Section 9(c) of the National Labor Relations Act (the Act) seeking to decertify International Association of Machinists and Aerospace Workers Local Lodge No. 1484, District Lodge 190 (Union) as the exclusive collective bargaining representative of a bargaining unit of service technicians (Unit) employed by Valencia H. Imports Inc. d/b/a AutoNation Honda Valencia (Employer) out of its facility located in Valencia, California, in Los Angeles County. There are approximately 15 employees in the Unit.

The only issue in dispute is whether the election should be held manually at the Employer's facility or by mail ballot, in light of the continuing COVID-19 pandemic.² A Hearing Officer of the National Labor Relations Board conducted a videoconference hearing on March 5 to allow the parties to provide their positions on the method of the election. The Employer and the Union both seek a manual election. Petitioner seeks a mail-ballot election or, alternately, the method of election that allows for an election as soon as possible. The Employer has proposed a manual election site at its facility and argues that an election can be held safely utilizing the protocols it has proposed.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, relevant Board law, and the extraordinary

¹ All dates hereafter refer to 2021 unless otherwise noted.

² Throughout this Decision, the terms "COVID-19," "coronavirus," and "virus" are used interchangeably.

circumstances of the COVID-19 pandemic, for the reasons described more fully below, I shall direct a mail-ballot election commencing on the earliest practicable date.

I. FACTUAL OVERVIEW AND POSITION OF THE PARTIES

A. The COVID-19 Pandemic in the United States

The United States has reached the one-year anniversary of the COVID-19 pandemic and daily life remains profoundly changed in the face of this unprecedented challenge. Throughout the pandemic, public health authorities have issued guidelines and directions designed to slow transmission of this deadly respiratory infection. The Centers for Disease Control and Prevention (CDC), an agency of the United States government, recommends precautions that have become well-known at this point: avoid social gatherings, avoid discretionary travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use face coverings when around other people. *How to Protect Yourself & Others*.³ Specifically, the CDC recommends that people avoid close contact with other individuals who do not live in the same household, as “COVID-19 spreads very easily from person to person” and “[p]eople who are physically near (within 6 feet) a person with COVID-19 or have direct contact with that person are at greatest risk of infection.” *How COVID-19 Spreads*.⁴

The CDC has also published numerous reports regarding pre-symptomatic and asymptomatic transmission of COVID-19, including in the *Emerging Infectious Disease Journal* (Online Report) for July 2020, “Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Pre-symptomatic or Asymptomatic.”⁵ The Online Report emphasizes, “transmission in the absence of symptoms reinforces the value of measures that prevent the spread of [COVID-19] by infected persons who may not exhibit illness despite being infectious.”⁶

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

³ I take administrative notice of the information, guidance, and recommendations of the CDC regarding COVID-19. See “Coronavirus (COVID-19)” and pages linked therein. <https://www.cdc.gov/coronavirus/2019-ncov/> (last accessed March 15, 2021).

⁴ See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed March 15, 2021).

⁵ See https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article (last accessed March 15, 2021). See also, “The implications of silent transmission for the control of COVID-19 outbreaks.” *Proceedings of the National Academy of Sciences of the United States of America (PNAS)*. <https://www.pnas.org/content/117/30/17513> (“even if all symptomatic cases are isolated, a vast outbreak may nonetheless unfold ... we found that the pre-symptomatic stage and asymptomatic infections account for 48% and 3.4% of transmission, respectively”). This article was subsequently updated on July 28, 2020 to observe that, based on current data, silent transmission during pre-symptomatic and asymptomatic stages are responsible for more than 50%” of infections (last accessed March 15, 2021).

⁶ *Ibid.*

with others can help reduce the spread of COVID-19.”⁷ The CDC further states the virus can survive for a short period on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one’s mouth, nose, or eyes, but “it is unlikely to be spread from domestic or international mail, products or packaging.” *Am I at risk for COVID-19 from mail, packages, or products?*⁸ To avoid the unlikely possibility of contracting COVID-19 through the mail, the CDC simply advises: “After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.” *Running Errands.*⁹

Despite unprecedented efforts to limit transmission, in the last year almost 30 million people in the United States have been infected with COVID-19 and over 500,000 people have died. Since the beginning of the year, the United States has expanded a nationwide vaccination effort, and as of March 15 approximately 38 million individuals, or about 11.5 percent of the United States population, has been fully vaccinated.¹⁰

Unfortunately, with the hopeful news regarding vaccination, the nation has also faced new challenges. Recently new variant strains of COVID-19 have emerged, including the B.1.1.7, B.1.351, and P.1. strains.¹¹ The CDC has stated that these variants “have mutations in the virus genome that alter the characteristics and cause the virus to act differently in ways that are significant to public health (e.g., causes more severe disease, spreads more easily between humans, requires different treatments, changes the effectiveness of current vaccines).”¹² Initial research suggests, as stated by the CDC, “[t]hese variants seem to spread more easily and quickly than other variants, which may lead to more cases of COVID-19.”¹³ The CDC further cautions that we do not yet know how widely these new variants have spread, how the disease caused by these new variants differs from the disease caused by other variants that are currently circulating, and how these variants may affect existing therapies, vaccines, and tests.¹⁴ As of March 15, California is one of only a few states that has confirmed cases of at least three of the variant strains, and one of only four states to have confirmed over 300 cases of the B.1.1.7 variant strain.¹⁵

⁷ <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html> (“Elections with only in-person voting on a single day are higher risk for COVID-19 spread ...”) (last accessed March 15, 2021). See also Governor of the State of California Executive Order N-64-20. <https://www.gov.ca.gov/2020/05/08/governor-newsom-issues-executive-order-to-protect-public-health-by-mailing-every-registered-voter-a-ballot-ahead-of-the-november-general-election/> (“WHEREAS to preserve public health in the face of the threat of COVID-19, and to ensure that the November election is accessible, secure, and safe, all Californians must be empowered to vote by mail, from the safety of their own homes ...”) (last accessed March 15, 2021).

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last accessed March 15, 2021).

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html> (last accessed March 15, 2021).

¹⁰ <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last accessed March 15, 2021).

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (last accessed March 15, 2021).

¹² *Ibid.*

¹³ <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last accessed March 15, 2021).

¹⁴ *Ibid.*

¹⁵ *Ibid.*; <http://publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2941>; <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (last accessed March 15, 2021).

B. The COVID-19 Pandemic in California and Los Angeles County

The Employer's Valencia, California facility is in Los Angeles County. Among all the counties in the United States, Los Angeles County has had the most confirmed COVID-19 cases, over 1.2 million.¹⁶ Of these, approximately 6,000 cases have occurred in Valencia specifically.¹⁷ COVID-19 remains prevalent in Los Angeles County, and the county is now in the second highest risk tier, "substantial," under California's "Blueprint for a Safer Economy" reopening plan.¹⁸ When a county is designated as experiencing "substantial" COVID-19 transmission, some non-essential indoor business operations are closed.¹⁹ Auto repair shops are currently allowed to be "open with modifications" in Los Angeles County.²⁰

The California Department of Public Health currently has a two-tier vaccine allocation system in place.²¹ The first tier includes healthcare workers and residents of long-term care facilities, and the second includes Californians over the age of 65, emergency service employees, and employees in the food, agriculture, education, and childcare sectors. In addition, effective March 15, healthcare providers are permitted to use clinical judgment to vaccinate individuals aged 16-64 who are deemed at the very highest risk for morbidity and mortality due to certain severe health conditions.²² As of early March, approximately 2.6 million individuals in Los Angeles County have been vaccinated.²³

At present, Los Angeles County reports a 7-day testing positivity rate of 2 percent.²⁴ The State of California reports a 14-day testing positivity rate in Los Angeles County of 1.7 percent.²⁵ Both report a decreasing trend in the daily number of cases. Significantly, though, Los Angeles County has identified the presence of variant strains of COVID-19 in the county. Specifically, as of March 10, the Los Angeles County Department of Public Health has confirmed the presence of at least three COVID-19 variants in the county, including 47 cases of the B.1.1.7 variant.²⁶ Importantly, at least one study has found that infections with the B.1.1.7 variant have a "64% increased risk of death" compared to infections with previously circulating variants.²⁷

¹⁶ <https://coronavirus.jhu.edu/us-map> (last accessed March 15, 2021).

¹⁷ <http://publichealth.lacounty.gov/media/coronavirus/locations.htm> (last accessed March 15, 2021).

¹⁸ <https://public.tableau.com/shared/> (last accessed March 16, 2021); see also <http://publichealth.lacounty.gov/media/coronavirus/data/index.htm> (last accessed March 16, 2021).

¹⁹ <https://covid19.ca.gov/state-dashboard/> (last accessed March 15, 2021).

²⁰ <https://covid19.ca.gov/safer-economy/> (last accessed March 15, 2021).

²¹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/VaccineAllocationGuidelines.aspx> (last accessed March 17, 2021).

²² *Ibid.*

²³ <https://covid19.ca.gov/vaccines/#California-vaccines-dashboard> (last accessed March 15, 2021).

²⁴ <http://publichealth.lacounty.gov/media/coronavirus/data/index.htm> (last accessed March 15, 2021).

²⁵ <https://covid19.ca.gov/state-dashboard/> (last accessed March 15, 2021).

²⁶ <http://publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=3013> (last accessed March 16, 2021).

²⁷ "Risk of mortality in patients infected with SARS-CoV-2 variant of concern 202012/1: matched cohort study." *The BMJ*. <https://www.bmj.com/content/372/bmj.n579> (published March 10, 2021; last accessed March 16, 2021).

C. Parties' Positions on a Manual Election and Suggested Safety Protocols

The Employer seeks a manual election at its facility. The Employer proposes utilizing a 20-foot by 20-foot conference room, in the vicinity of the area where service technicians are employed, for the polling place. The Employer maintains that this room is a large enough to allow the tables, ballot box, and other equipment utilized during an election to be spaced several feet apart. Additionally, the room has two doors, and voters would be able to enter and exit the room from dedicated doorways without passing each other. The Employer additionally offers to provide plexiglass shields for the table utilized by the Board agent. The Employer also offers to forego utilizing an observer to avoid unnecessary crowding in the polling place and proposes conducting the pre-election conference and ballot count by videoconference for the same reason.

The Employer proposes a polling period of an hour to an hour-and-a-half, as it estimates this will be sufficient to allow 15 employees to self-release and vote while maintaining safe distancing. Regarding the date and time of a manual election, the Employer defers to the Region to determine an appropriate time and date, although it notes Friday is the best day to conduct a manual election as all employees are present at the facility.

The Employer commits to having the third-party cleaning service, the same service it utilizes to clean and sanitize the facility, perform a deep clean of the conference room prior to the election. At hearing, the Employer also made a commitment to abide by the safety protocols identified in General Counsel Memorandum 20-10, discussed further below.

Questioned at hearing regarding the possibility of a manual election held outdoors, the Employer indicated it was a possibility. Because the Employer is an auto dealership, it has significant space dedicated to parking lots, and it would be possible to erect a tent in one of these lots. However, the Employer noted it proposed the conference room in part to locate the polling place away from areas where customers and the general public traverse; a polling place located in one of the parking lots would not have this benefit.

The employer maintains it has not had an employee test positive for COVID-19 "in the shop," presumably the area of the facility where the service technicians work, since August of 2020, though one employee elsewhere at the Employer's facility did test positive in January. It did not provide any information regarding others who access its facility. The Employer's facility in Valencia is approximately 3 miles from Santa Clarita, California, and Valencia is part of the larger Santa Clarita metropolitan area. According to the Employer, all its employees live in the greater Santa Clarita area, in Los Angeles County, except for one employee who commutes from neighboring Kern County, California.

The Union takes the position that a manual election, as proposed by the Employer, is acceptable. Regarding timing, the Union asserts the election should take place 13 days after this Decision issues, the minimal amount of time given the notice posting and voter list requirements addressed in a later section. The Union agrees that an hour or an hour-and-a-half mid-day, such as 10:00 a.m. to 11:30 a.m., is an appropriate time for the election.

At hearing, Petitioner alternately stated a preference for a mail-ballot election or simply the method that allowed an election as quickly as possible. Petitioner agrees that the conference room proposed by the Employer is an appropriate polling place and does not object to any of the other details of a manual election addressed above.

II. AGENCY DIRECTIVES AND LEGAL AUTHORITY

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

Although the Board prefers to conduct manual elections over conducting mail-ballot elections, the Board has acknowledged that circumstances may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Assn. of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). The Board noted that, "[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted." *Id.*; see also *NLRB Casehandling Manual (Part Two) Representation Procedures* Sec. 11301.2 (Casehandling Manual).²⁸ Thus, "[o]nly where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him [or her] to conduct representative elections will the Board nullify an election and prescribe other election standards." *National Van Lines*, 120 NLRB at 1346.

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

²⁸ I note the provisions of the *Casehandling Manual* are not binding procedural rules; the *Casehandling Manual* is issued by the General Counsel, not the Board, and is intended to provide guidance to regional personnel in the handling of representation cases. *Patient Care*, 360 NLRB 637, 638 (2014) (citing *Solvent Services*, 313 NLRB 645, 646 (1994)); *Superior Industries*, 289 NLRB 834, 837 fn. 13 (1988); *Aaron Medical Transportation, Inc.*, Case 22-RC-070888 (unpublished 2013) (citing *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn.4 (2007)); *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn.5 (1995). See also *Sunnyvale Medical Clinic*, 241 NLRB 1156, 1157 fn. 5 (1979).

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, a Regional Director may exercise discretion to order a mail ballot election where conducting an election manually is not feasible and, under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. In light of the COVID-19 pandemic, to assist Regional Directors in determining when a manual election could be conducted safely, the General Counsel issued General Counsel Memorandum 20-10 (GC 20-10) on July 6, 2020, setting forth detailed suggested manual election protocols. One of the certifications outlined in GC 20-10 is that the Employer must certify in writing 24-48 hours before an election how many individuals have been present in the facility within the preceding 14 days, who: (1) have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days; (2) are awaiting results of a COVID-19 test; (3) are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath; or (4) have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested). GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election.

Ultimately, after several months of considering requests for review of decisions directing mail-ballot elections during the current pandemic, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), providing guidelines for when a mail ballot election would be appropriate during the COVID-19 pandemic. After affirming the Board's longstanding policy favoring manual elections, the Board set forth six situations related to the pandemic that Regional Directors should consider and stated that where one or more of the situations is present, it would "suggest the propriety of using mail ballots under the extraordinary circumstances presented by this pandemic." *Id.*, slip op. at 4. Those situations are as follows:

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

Id., slip op. at 4-7. The Regional Director has discretion to conduct an election by mail ballot "under the peculiar conditions of each case." *Id.*, slip op. at 3 (citing *National Van Lines*, 120 NLRB at 1346). The Regional Director's determination to conduct an election manually or by mail is subject to an abuse of discretion standard. *Aspirus*, 370 NLRB No. 45, slip op. at 3 (citing *San Diego Gas & Electric*, 325 NLRB at 1144 n. 4). Finally, in *Aspirus*, the Board noted that a

Regional Director who directs a mail-ballot election under one or more of the foregoing six situations will not have abused her or his discretion. *Aspirus*, 370 NLRB No. 45, slip op. at 8.

III. ANALYSIS

I recognize that the Board has traditionally preferred manual elections. However, I also am mindful of my obligation to appropriately exercise my discretion concerning the timing and manner of the election with due consideration to safety concerns in the context of a pandemic. Thus, it is my obligation to direct an election in this matter at the earliest practicable time and in the most responsible and appropriate manner possible under the circumstances. I acknowledge that absent the public health concerns arising from the pandemic, I would order a manual election in this case. However, this election will not be held under normal circumstances. Based on the foregoing facts and Board law, I find that it is appropriate to direct a mail-ballot election in this case.

Turning to the specifics of this case, I find several of the factors listed by the Board in *Aspirus* do not support directing a mail-ballot election. First, the Region tasked with conducting the election is not operating under mandatory telework status. Second, the trend of confirmed cases in Los Angeles County is not increasing, and the 14-day positivity rate in the county is not above 5 percent. Third, mandatory state or local health orders relating to maximum gathering size are not at issue.

However, I have determined that a mail-ballot election is appropriate in this case based on the three remaining factors in *Aspirus*. Specifically, I find that the likelihood the Employer would be unable to fully comply with GC 20-10, the Employer's failure to provide the appropriate certification establishing there is no current COVID-19 outbreak at the facility, and the existence of other compelling circumstances make directing a mail-ballot election appropriate here.²⁹

Regarding compliance with GC 20-10, the fourth factor in *Aspirus*, I recognize that the Employer has not refused to comply; indeed, at hearing, it affirmatively stated it would comply with the General Counsel's guidelines. However, as noted above, one of the certifications required in GC 20-10 is a written certification 24-48 hours before an election as to how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19 within the prior 14 days (or have been directed to proceed as if they have tested positive although not being tested); are awaiting results of a COVID-19 test; are exhibiting symptoms of COVID-19; or have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results or has been directed to proceed as if they have tested positive). Here, because the facility is open to the public and customers come and go at will, the Employer almost certainly will be unable to certify how many individuals who have contracted COVID-19 or otherwise meet the above criteria have accessed the facility in the 14 days preceding the election, as required by GC 20-10.

²⁹ I agree with the Employer that the benefit of an election held outside, greater ventilation, is outweighed by the risk, a publicly accessible area. For this reason, I do not find holding an election in the Employer's parking lot cures any of the problems with a manual election addressed herein.

Although the Employer provided information regarding the last time any of its *own* employees who work at the facility have tested positive for COVID-19, GC 20-10 requires that the Employer certify within 24-48 hours of the election how many *individuals* have been present *within the facility* who have tested positive for COVID-19 or displayed symptoms or meet the other specified criteria within the prior 14 days. At hearing, the Employer provided an open-ended commitment to abide by GC 20-10, but it provided no information regarding how it could certify customers and other non-employees at the facility met the required criteria. In these circumstances, I find it unlikely that the Employer can fully comply with the requirements of GC 20-10.

More significantly, though, I also find that the fifth factor in *Aspirus* supports directing a mail-ballot election. The Board in *Aspirus* acknowledges that “[a] current Covid-19 outbreak at the facility where the manual election would occur poses potential health and safety issues for everyone who participates in the election.” *Aspirus*, 370 NLRB No. 45, slip op. at 7. The Board noted that GC 20-10 requires a certification 24-48 hours before a manual elections about how many individuals present in the facility within the preceding 14 days have tested positive or meet the other criteria, but also noted that the current presence of COVID-19 at the employer’s facility is also “directly relevant to whether a manual election should be directed in the first place.” *Id.* Therefore, the Board stated,

... for the duration of the pandemic, we require that in all cases where a party requests a manual election, the employer shall certify, by affidavit, as part of its submission regarding election arrangements, how many individuals present in the facility within the preceding 14 days have tested positive for Covid-19 (or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days). The Employer must also supplement its initial submission and certify any changes to the facility’s Covid-19 status after a manual election is directed, up to the day of the election itself.

Id. Here, the Employer provided no such affidavit certification in support of its request for a manual election. Rather, as detailed above, the Employer at the hearing merely provided information of how many of its *own* employees who have been in the facility in the past 14 days have tested positive for COVID-19. Setting aside that the Employer failed to provide the required certification by affidavit, although the record reflects that the Employer was aware of *Aspirus*, the information the Employer provided was substantively lacking in two respects, either of which alone would make the information deficient under *Aspirus*. First, the Employer failed to certify or provide information with respect to employees awaiting test results, exhibiting characteristic symptoms, or having had contact with anyone who has tested positive in the previous 14 days. Second, as noted above, the Employer also provided no information regarding customers or other non-employees who were present at the facility within the 14 days preceding the hearing. Like the certification requirement in GC 20-10, the Board’s certification requirement articulated in *Aspirus* is not limited just to employees but to “individuals present in the facility.” Thus, consistent with the Board’s guidance in *Aspirus* that “the employer’s failure ... to provide the required certifications will ordinarily indicate the propriety of a mail-ballot election,” I find that the Employer’s failure to provide the required certifications here, both as to its own

employees as well as customers and others who have entered the facility, supports directing a mail-ballot election. *Id.*

I additionally find the sixth factor – whether other compelling circumstances exist – also supports directing a mail-ballot election. Specifically, I find recent changes in the COVID-19 pandemic, specifically the emerging variants that may pose a greater risk of transmission and serious complications, present such a compelling circumstance. While it is impossible to know how great a threat these variants pose currently, that is precisely the point. At this time, the CDC indicates that it is working to learn more about these variants and is studying them to assess how to control their spread, what dangers they pose, and just how prevalent the variants are within impacted communities. What is known is that several of the variants are confirmed to be present in California. In fact, as noted above, the Los Angeles County Department of Public Health has confirmed the presence of at least three COVID-19 variants in the county, including the B.1.1.7 variant. The presence of these variants in the community is very concerning, so much so that it prompted President Joe Biden recently to note, “Cases and hospitalizations could go back up with new – as new variants emerge. And it’s no time to relax.”³⁰ I share these concerns, and I find the presence of the B.1.1.7 variant particularly worrying, given the recent study noted above finding that infections with this variant have a 64% increased risk of death compared to infections with previously circulating variants. Because the discovery of the variants, and the increased threat/risk related to them, followed the Board’s November 2020 decision in *Aspirus*, and as such was not considered by the Board in that decision, I find the variants constitute a compelling circumstance that is sufficient to support conducting a mail-ballot election.

Finally, I note that as more people get vaccinated, the risks associated with manual elections will diminish. However, while vaccination efforts continue, there is no contention here that the employees in question are eligible to be vaccinated under the current guidelines. Similarly, almost all the staff in the Regional office responsible for conducting the election are not eligible for vaccination under the current Los Angeles County guidelines. As President Biden recently noted about overcoming the pandemic, “But to get there, we can’t let our guard down. This fight is far ... from over.”³¹

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

³⁰ “Remarks by President Biden at a FEMA COVID-19 Vaccination Facility.”

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/26/remarks-by-president-biden-at-a-fema-covid-19-vaccination-facility/> (speech given February 26, 2021; last accessed March 16, 2021).

³¹ “Remarks by President Biden on the Anniversary of the COVID-19 Shutdown.”

<https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/11/remarks-by-president-biden-on-the-anniversary-of-the-covid-19-shutdown/> (speech given March 11, 2021; last accessed March 16, 2021).

IV. CONCLUSIONS AND FINDINGS

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³²
3. The parties stipulated and I find that 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. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or other bar, to this proceeding.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The parties stipulated and I find that the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Service Technicians employed by the Employer at 23551 Magic Mountain Parkway, Valencia, CA 91355.

Excluded: All other employees, office clerical employees, guards and supervisors as defined by the Act, as amended.

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

³² The Employer, Valencia H. Imports Inc. d/b/a AutoNation Honda Valencia, is a Delaware corporation with an office and place of business in Valencia, California, where it engaged in the business of selling motor vehicles and providing vehicle maintenance and repair services to customers. During the past 12 months, a representative period, the Employer's gross revenues exceeded \$500,000. During the same period, the Employer purchased and received at its Valencia facility, goods valued in excess of \$50,000 directly from enterprises located outside the State of California.

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 **INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE NO. 1484, DISTRICT LODGE 190.**

A. Election Details

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

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **5:00 p.m. on Wednesday, March 31, 2021.** Ballots will be mailed to voters by the National Labor Relations Board, Region 31. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Wednesday, April 7, 2021,** as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by calling the Region 31 Office at (310) 235-7352.

The returned ballots must be received by the Region 31 office by **5:00 p.m. on Wednesday, April 21, 2021.** All ballots will be commingled and counted by the Region 31 office at **10:00 a.m. on Friday, April 23, 2021.** In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending **Monday, March 15, 2021,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. Voter List

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

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, March 19, 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.

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the

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

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

RIGHT TO REQUEST REVIEW

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

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlr.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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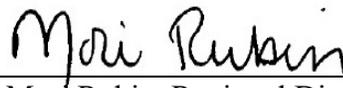
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Valencia H. Imports Inc. d/b/a
AutoNation Honda Valencia
Case 31-RD-272647

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

Dated at Los Angeles, California this 17th day of March 2021.



Mori Rubin, Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753