

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

TAYLOR FARMS CALIFORNIA, INC.¹

Employer

and

Case 28-RC-272061

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL UNION 890**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

On February 1, 2021,² International Brotherhood of Teamsters Local 890 (the Petitioner) filed a representation petition pursuant to Section 9(c) of the National Labor Relations Act, as amended (the Act), seeking to represent a unit of all rotators and loaders employed by Taylor Farms California, Inc. (the Employer), located in Yuma, Arizona (the Employer's Yuma facility). At hearing, the parties stipulated that the Unit includes only full-time and regular part-time rotators. There are approximately 24 employees in the Unit.

A hearing was held before a hearing officer of the National Labor Relations Board (the Board) via videoconference on February 23. The only issue to be decided is the method of conducting the election, i.e. by manual election or mail ballot election. The Employer filed a post-hearing brief, which I have carefully considered.

The Employer requests a manual election at its Yuma, Arizona facility and argues that an election can be held safely utilizing the protocols it has proposed for the conduct of the election at its facility. In addition, the Employer agrees to follow the procedures outlined in General Counsel Memorandum 20-10, *Suggested Manual Election Protocols* (GC Memo 20-10). The Petitioner requested a mail ballot election in the petition, but in its responsive statement of position and at hearing agreed with the Employer that a manual election is appropriate. Both parties maintain that an in-person manual election can be safely conducted at the Employer's facility in Yuma, Arizona.

¹ The correct legal names of the parties, as captioned above, appear in this Decision as stipulated at hearing.

² All dates herein are for the year 2021 unless otherwise indicated.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. I have carefully reviewed and considered the record evidence received at hearing,³ and the arguments of the parties at hearing and in the Employer's post-hearing brief. Based on this evidence and argument, my analysis of the facts under Board law, and the extraordinary circumstances of the COVID-19 pandemic, I am directing an election by mail ballot in the unit I have found appropriate as described below to commence on the earliest practicable date. This Decision and Direction of Election concludes with my Order and the procedures for requesting review of this decision.

II. FACTUAL OVERVIEW

The Employer, which is engaged in the business of packing and distributing agricultural goods, specifically, washing, cutting, and packing fresh vegetables,⁴ is an essential business that has remained operational during the COVID-19 pandemic. As a result, its 1,100 employees have continued to report for work and perform their regular duties during the pandemic.

The Employer's operations are subject to U.S. Food and Drug Administration regulations for safe food handling, and its employees are required to wear personal protective equipment (PPE), which is provided by the Employer. This PPE includes disposable earplugs, sanitized latex gloves, beard nets, and hair nets and non-disposable smocks, eye protection, and hardhats. Employees receive a clean smock each time they enter the facility. Employees are required to wear special footwear over their shoes or boots. They walk through boot sanitizer as they travel through the facility. Employees wash their hands frequently, including after eating, using the restroom, or touching anything "unsanitary."

During the pandemic, the Employer has adopted additional protocols and procedures for its Yuma facility. These additional measures include the requirement that employees report illnesses and stay home if they are ill. The Employer provides "COVID pay" to encourage employees who are ill to report their illness. In addition, employees are required to notify the Employer if they have had any contact with individuals who tested positive for COVID-19. Employees and visitors are orally interviewed for COVID-19 symptoms and "visually screened" by a security guard as they enter the facility for work. The security guard also takes their temperature, which must be below 100.4 Fahrenheit degrees for admission to the Yuma facility. Employees who do not satisfy these entrance requirements are sent home and asked to call Human Resources. A mask is required on the premises. The Employer supplies disposable surgical masks to employees and encourages them to change their masks when they get soiled or wet.

Employees are required to maintain a six-foot distance when practicable. The Yuma facility's floors are marked at six-foot intervals in areas where employees may line up. Where a six-foot distance is not practicable, the Employer has installed plexiglass barriers between employee workstations. The Employer has removed some chairs and put up plexiglass barriers in

³ The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

⁴ No party contends that the rotator employees at issue in the petition are agricultural workers who are excluded from coverage by Section 2(3) of the Act.

the breakroom, where employees are allowed to remove their masks to eat. Meal periods are staggered so that there are fewer people in the breakroom at one time. High-touch areas, such as the time clock, are sanitized every two hours. Hand sanitizer is available in multiple locations indoors and outdoors at the Yuma facility; employees are expected to use it at every opportunity. After a deep clean, the Employer follows an “SCC⁵ misting program” wherein the production areas, offices, restrooms, and breakrooms at the Yuma facility are misted with sanitizer every night. The Employer communicates these protocols and procedures to its employees through YouTube videos, sent in text messages, and through handouts, monitors in the plant, and signage. The record does not disclose in what language(s) those communications occur.

As of the date of hearing, February 23, there were three employees out from work with COVID-19 symptoms and waiting for test results. Two employees were out from work on quarantine because of exposure to COVID-19, but were asymptomatic. None of the employees who were out from work on the date of hearing were rotators. The Yuma facility did not have any currently tested-positive cases on February 23. As of that date, the Employer had not received confirmation that any employees have contracted COVID-19 at work, but employees had reported contracting the disease in the community and in their homes.

The Employer also maintains a facility in Salinas, California. While the Yuma facility operates from November to April, about April 15 the Employer moves some of its equipment and about 55 traveler employees to Salinas. Thus, the Employer’s operation follows the crop. The Employer begins to wind down its Yuma operations several weeks before April 15 and schedules its employees for fewer shifts during that wind down process. The last day of work is no later than April 14.

The rotators at issue in the petition do not move between Yuma and Salinas. Human Resources Director Marissa Gutierrez testified that these employees live in the general area of Yuma and are laid off at the end of the season.⁶ Yet, Gutierrez also testified that some of the Employer’s employees live in Mexico, but have addresses in the United States and that some of the Employer’s employees have telephone numbers with an area code connected to Mexico and calls to their telephone numbers have a dial tone which is also associated with Mexico. This dial tone is different from the dial tone heard in the United States. In addition, Gutierrez testified that the Employer may have two employees share a P.O. box mailing address. About half of the rotators use a P.O. box to receive mail and about half of the rotators have P.O. box mailing addresses in San Luis, Arizona, which is on the border with Mexico. The record does not disclose how many employees live in Mexico or whether they are in the rotator job classification. Likewise, the record is unclear as to whether the employees who share P.O. box mailing addresses are rotators and, if so, does not definitely disclose how many there are. According to Gutierrez, the Employer has experienced employees failing to return mailed information timely or return it at all. The record does not disclose how many times this has occurred or that these

⁵ The record did not disclose the meaning of the initialism “SCC.”

⁶ No party contends that the rotators will not be recalled for the start of the Yuma facility season in November or that they are ineligible to vote as seasonal employees. *See Maine Apple Growers, Inc.*, 254 NLRB 501 (1981) (seasonal employees with a reasonable expectation of future employment with the employer will be included in the unit).

employees were rotators. These employees have informed Gutierrez that the reason for these lapses is that they did not receive the information or check their P.O. box until after deadline. Therefore, the Employer finds it most effective to hand-deliver any handouts to employees at work.

Human Resources Director Gutierrez agreed with the Employer's counsel that rotators' work schedules do not vary significantly, but the record does not disclose what the rotators' working hours are or what days they work. At the time of the hearing, there was no strike, lockout, or picketing at the Employer's Yuma facility. Gutierrez agreed with the Employer's counsel that the rotators may have questions about the Board's voting process and that it would be helpful to have a Board agent answer their questions. Gutierrez testified that "a lot" of the rotators would have a hard time with reading and comprehending written voting instructions. All of the rotators are either primarily Spanish-speaking or bilingual, presumably in English and Spanish.

The Petitioner currently represents a bargaining unit of loaders employed at the Employer's Yuma facility. The Employer has allowed contract ratification votes for this bargaining unit at the Yuma facility. These votes have taken place in a 12' by 12' outdoor tent set up near the facility's main office. Gutierrez affirmed that the Employer would be able to comply with all of the requirements of GC Memo 20-10 if I ordered a manual election, as well as additional safety precautions, such as providing plexiglass barriers between the Board agent and election observers; providing hand sanitizer, disinfecting wipes, and PPE; and that the Employer would enforce its Yuma facility's mask-wearing requirement outdoors during the pre-election conference and ballot count.

III. THE POSITIONS OF THE PARTIES

The Employer's position is that a safe manual election can be held at its facility and a manual election is "the most appropriate" in this case. The Employer cites to the controlling case law here: *Aspirus Keweenaw*, 370 NLRB No. 45 (2020). Yet, in the Employer's view, the lesson of that case is that the Board "continues to prefer manual elections" and that "the Board has not required Regional Directors to mandate mail ballot elections in all cases..." Rather, the Employer quotes *Aspirus*, 370 NLRB No. 45, slip op. at 1, to argue that Regional Directors should consider directing a mail ballot election when one or more of six situations that *suggest* the propriety of mail ballots due to the COVID-19 pandemic are present. Here, the Employer claims each *Aspirus* factor supports ordering a manual election in this case.

Specifically, the Employer: (1) observes that Region 28 is not operating under mandatory telework status, which is accurate; (2) asserts that the 14-day trend in number of new confirmed cases of COVID-19 and the testing positivity rate in the Arizona and Yuma County were declining as of February 23; (3) notes that the proposed location for a manual election does not violate any mandatory state or local health orders relating to maximum gathering size; (4) provides assurances that it will comply with the safety protocols outlined in GC Memo 20-10; (5) states that there is not currently a COVID-19 outbreak at the Employer's Yuma facility—and there has never been one; and (6) argues that there are no "other similarly compelling considerations" supporting a mail ballot election in this case.

The Employer maintains that the rotators would be disenfranchised if I were to order a mail ballot election because the Employer's Yuma operations are seasonal and those operations could end even before April 14. The Employer also argues that the U.S. mail is not an effective method to communicate with the rotators because these employees do not respond to mailed communications, do not monitor their P.O. boxes, share their P.O. boxes with other persons, and the Employer "has good reason to believe" that some of them reside in Mexico and commute to the Yuma facility to work.

Finally, the Employer observes that Board policy favors maximum voter participation, citing to the dissent in *San Diego Gas & Electric*, 325 NLRB 1143, 1151 (1998), in support of this proposition, as well as to unrelated cases from both before and after the advent of the COVID-19 pandemic, to demonstrate supposedly lower voter participation in mail ballot elections.

As stated above, although it originally petitioned for a mail ballot election, the Union now agrees with the Employer's position that a manual election is appropriate in this case.

IV. ANALYSIS

The Board's decision in *San Diego Gas*, 325 NLRB at 1145, recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail ballot election would normally be appropriate. In *San Diego Gas*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.* Consistent with the recognition of the discretion afforded to Regional Directors in extraordinary circumstances in *San Diego Gas*, on November 9, 2020, the Board issued its decision in *Aspirus*, 370 NLRB No. 45, in which, after affirming the Board's longstanding policy favoring manual elections, it provided guidance regarding five specific situations that normally suggest that a mail ballot election is appropriate because of the extraordinary circumstances presented by the COVID-19 pandemic, or "other similarly compelling circumstances." *Id.*, slip op. at 4-7. A Regional Director who exercises his or her discretion to direct a mail ballot election when one or more of these situations exists will not have abused his or her discretion. *Id.*, slip op. at 8.

The second specific situation identified in *Aspirus* includes two separate factors, either of which normally warrants a mail ballot election. This situation occurs when "[e]ither 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.” *Id.*, slip op. at 5-6. The 14-day testing positivity rate in Yuma County suggests that a mail ballot election is appropriate in this case.⁷

In Yuma County, Arizona, where the Employer’s facility is located, while the 14-day trend in the number of new confirmed cases of COVID-19 is generally declining according to both the Arizona Department of Health Services⁸ and the Centers for Disease Control and Prevention,⁹ the COVID-19 testing positivity rate, based on the number of positive and total tests in the county during each of the two most recent 7-day periods for which the Arizona Department of Health Services¹⁰ provides county positivity rate, is at 6 percent for the week of February 28 and 5 percent for the week of March 7.¹¹ These two weeks average out to 5.5 percent, which is more than the rate percent at which the Board finds a mail ballot election appropriate. See *Aspirus*, 370 NLRB No. 45, slip op. at 5. Further, the *New York Times* coronavirus tracker calculates the 14-day test positivity average for Yuma County at 6 percent.¹²

Thus, as described in *Aspirus*, 370 NLRB No. 45, slip op. at 5, here the 14-day county testing positivity rate is at or above 5 percent, a mail ballot is appropriate; and in these circumstances, the Board has found that the Regional Director has the discretion to direct a mail ballot election. Notwithstanding the Employer’s plan to conduct a safe manual election, and the Petitioner’s agreement that such would be possible in this case, for the health and safety of all involved, I direct a mail ballot election because of the extraordinary circumstances of COVID-19 pandemic in Yuma County at this time.

Although the application of *Aspirus* to this case provides a sufficient basis for my decision here, I will address the two issues raised by the Employer that it argues support its

⁷ The Employer’s reliance on statewide data for Arizona is misplaced. The *Aspirus* Board specifically stated that “broad trends like statewide statistics may be of questionable use in assessing the safety of conducting a manual election at a specific facility, at least when more localized data is available.” 370 NLRB No. 45, slip op. at 5. Here, localized data for Yuma County is available and is therefore most appropriate for informing my decision as to the mode of the election in this case.

⁸ See <https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php>, select “Confirmed COVID-19 Cases by Day,” and then select Yuma County and hover over the bars showing the number of cases on for each date on the graph at the bottom of the page (last accessed March 16, 2021).

⁹ See <https://covid.cdc.gov/covid-data-tracker/index.html#county-view>, select Arizona, select Yuma County, and scroll down to “Cases” (last accessed March 16, 2021).

¹⁰ See <https://azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/covid-19/dashboards/index.php>, select “Laboratory Testing,” and then select Yuma County and scroll down to the graph “Total % Positive COVID-19 Diagnostic Tests” and over the bars showing the percentage of positive cases for the week (last accessed March 16, 2021).

¹¹ The Centers for Disease Control and Prevention reports the current **7-day** Yuma County positivity rate at 4.97 percent. See <https://covid.cdc.gov/covid-data-tracker/index.html#county-view>, select Arizona, select Yuma County, and scroll down to “Percent Positivity” (last accessed March 16, 2021).

¹² See, <https://www.nytimes.com/interactive/2021/us/yuma-arizona-covid-cases.html> and scroll down to “Test positivity” (last accessed March 16, 2021).

request for a manual election: (1) the seasonal nature of the Yuma facility's operations and (2) the asserted difficulties with employees in receiving, understanding, and responding to mailed communications. First, with regard to seasonal operations and the alleged disenfranchisement of employees if a manual election is not held, the Board has permitted the use of mail-ballot elections during the off-season for seasonal employees.¹³ Even though it would have been possible to delay an election and hold it manually later in the year, when seasonal employees were present at work, the Board has found mail-ballot elections proper based on the circumstances of the cases. The same conclusion is warranted here under the circumstances of this case.

Second, Employer argues that the U.S. mail is not an effective method to communicate with the rotators because these employees do not respond to mailed communications, are not able to comprehend and follow written instructions, do not monitor their P.O. boxes, share their P.O. boxes with other persons, and that the Employer "has good reason to believe" that some of them reside in Mexico and commute to the Yuma facility to work. As a preliminary matter, I note that the record does not establish that any of these concerns apply to the rotator employees specifically. The testimony on these points was general and conclusionary. The Employer failed to elicit specific instances of rotator employees who failed to respond to mailed communications and/or monitor their P.O. boxes, the specific names of rotators who share P.O. boxes, who apparently lives in Mexico.¹⁴

Moreover, with regard to the Employer's concern with the secrecy of the ballot being compromised by shared P.O boxes, I fail to grasp how this is different than receiving mail at a family home or at a home mailbox shared by roommates. The Board has rejected the argument that holding an election by mail ballot likely would undermine its secrecy. *Fessler and Bowman, Inc.*, 341 NLRB 932, 933 (2004) (citing *London's Farm Dairy*, 323 NLRB 1057 (1997)).

Finally, while the Employer maintains that "a lot" of its employees would not be able to comprehend and follow written instructions sent by mail, Human Resources Director Gutierrez testified that the Employer does communicate with its employees in writing through signage and handouts, in addition to using texted YouTube videos and video monitors in the Yuma facility.

¹³ See, e.g. *Sitka Sound Seafoods*, 325 NLRB 685 (1998) and *Pennsylvania Interscholastic Athletic Association*, Case 06-RC-152861, 2016 WL 1086681 (Mar. 21, 2016) (unpublished Board order granting review on other grounds) (citing *Sitka Sound Seafoods*).

¹⁴ I note that no party is making an extraterritoriality argument here with regard to those unidentified employees believed to reside in Mexico, but who unquestionably work in the United States at the Employer's Yuma, Arizona facility. Compare e.g., *Range Systems Engineering Support*, 326 NLRB 1047, 1048 (1998) (dismissing the petition as it raised no substantial issues warranting review where, in pertinent part, the regional director found that the Board does not have jurisdiction over the employer's military weapons testing operations in the Bahamas); *Computer Sciences Raytheon*, 318 NLRB 966, 968 (1995) (affirming the regional director's dismissal of the petition where he found that the Board is without statutory jurisdiction over the employer's employees working on the islands of Antigua and Ascension); *GTE Automatic Electric, Inc.*, 226 NLRB 1222, 1223 (1976) (affirming the hearing officer's decision to clarify the unit and exclude employees who work on projects in Iran or other foreign countries outside the United States); *RCA OMS, Inc.*, 202 NLRB 228, 228 (1973) (affirming the hearing officer's decision to dismiss the petition where the employer's employees work in Greenland, a possession of Denmark and governed as a county of that country).

In any event, whether a Board election is held by mail or manually, ballot instructions are in writing. And, although the *Aspirus*, slip op. at 2, Board majority noted the value in having a Board agent present for a manual election, there is an insufficient showing here that rotator employees ability to comprehend and follow voting procedures will be specifically impaired for want of a Board agent who would be present for a manual election. In short, I find that the Employer's arguments that a mail ballot would disenfranchise employees in this case or is otherwise inappropriate here to be unavailing.

Thus, for the reasons detailed above, I will direct a mail ballot election in the Unit above,¹⁵ which includes approximately 24 employees. It appears from the record that the Notice of Election and mail ballots need to be translated into Spanish. Accordingly, the Region will make arrangements to provide Spanish and English election Notices and mail ballots for this election.

V. CONCLUSION

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

1. The parties stipulated, and I find that the Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁶
2. The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. The parties stipulated, and I find that there is no history of collective bargaining between these parties in the proposed bargaining unit identified above and there is no contract or other bar in existence to an election in this case.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The parties stipulated, and I find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹⁵ In making this decision, I do not rely on the extent of voter turnout in unrelated mail ballot elections conducted before or during the COVID-19 pandemic, which are not relevant to the petition at issue.

¹⁶ The Employer, Taylor Farms California, Inc., a Delaware Corporation with an office conducting business in Yuma, Arizona, is engaged in the business of the packing and distribution of agricultural goods. During the 12-month period ending February 1, 2021, the Employer purchased and received at its Yuma, Arizona facility goods valued in excess of \$50,000 directly from points outside of the State of Arizona.

INCLUDED: All full-time and regular part-time rotators employed by the Employer at its facility in Yuma, Arizona.

EXCLUDED: All other employees, office clerical employees, dispatchers, managers, and guards and supervisors as defined by the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters Local Union 890.

A. Election Details

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

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. At **2:00 p.m. on March 25, 2021**, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **April 1, 2021**, should communicate immediately with the National Labor Relations Board by either calling the National Labor Relations Board Region 28 Office at (602) 640-2160 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28 office by close of business (4:45 p.m.) on **April 8, 2021**.

All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board at a location to be determined by the Regional Director at **10:00 a.m. on April 15, 2021**.¹⁷ 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.

¹⁷ If, on the date of the count, the Region 28 office is closed, or the staff of the Region 28 office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending March 13, 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 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(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 **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.

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 nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

VII. RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated at Phoenix, Arizona this 17th day of March 2021.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director