UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION FOUR  

STUDENT TRANSPORTATION OF AMERICA, INC.¹  
Employer  
and  
TEAMSTERS LOCAL 773  
Petitioner  

DECISION AND DIRECTION OF ELECTION  

I. INTRODUCTION  

Student Transportation of America, Inc. (the Employer) provides student transportation services nationwide, including from the facility at issue here, located in Macungie, Pennsylvania (Macungie facility). Teamsters Local 773 (the Petitioner)² filed the instant petition with Region Four of the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to add two dispatchers and one routing coordinator (herein called router) employed by the Employer at its Macungie facility to an existing bargaining unit (the Unit) at the same facility³ through an Armour-Globe⁴ self‐determination election. With the addition of these three employees, the Unit would be employer‐wide.⁵ In the alternative, the Petitioner indicated it will proceed to an election in a separate bargaining unit of the petitioned-for dispatchers and router.

There are four issues in this case. First, the Employer argues that the petitioned-for dispatchers are supervisors with the meaning of Section 2(11) of the Act and/or managerial employees that should be excluded from the Unit. Second, the Employer argues that the existing

¹ The Employer’s name appears as stipulated by the parties.  
² The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.  
³ The parties stipulated, and I find, that the Petitioner currently represents the following appropriate unit of the Employer’s employees:  
   Included: All full-time and regular part-time bus drivers, bus aides, sub drivers, mechanics, and washers employed by the Employer at its 3096 Route 100, Macungie, PA facility.  
   Excluded: All other employees, office clerical employees, dispatchers, maintenance managers, and guards and supervisors as defined in the Act.  
⁴ Armour & Co., 40 NLRB 1333 (1942); Globe Machine and Stamping Co., 3 NLRB 294 (1937).  
⁵ The Employer has an open position for a payroll clerk, but the record does not reflect whether this is a new or existing job classification.
collective-bargaining agreement between the Petitioner and the Employer serves as a bar to an election and that by its terms, the Union waived its right to seek representation of the petitioned-for employees. In contrast, the Petitioner contends that it never agreed to explicitly exclude dispatchers and the router from the Unit. Third, the Employer asserts that an Armour-Globe election is inappropriate in this case because the dispatchers and router do not share a community of interest with employees in the Unit. The Petitioner counters that the petitioned-for employees share the same supervision and similar terms and conditions of employment as Unit employees, and that both groups have daily contact with each other and are functionally integrated. The fourth issue is whether, in light of the continuing COVID-19 pandemic, the Region should conduct the election by manual or mail ballot. The Employer argues that a manual election is appropriate and that it is possible to conduct a manual election safely. The Petitioner maintains that the election should be conducted by mail ballot due to the current state of the COVID-19 pandemic in Lehigh County, Pennsylvania, where the Employer’s facility is located.

On November 12 and November 15, 2021, a hearing officer of the National Labor Relations Board (“Board”) held a hearing in this matter, and the parties submitted post-hearing briefs which I have considered. The parties were advised that the determination over the method of election would not be litigated. Nonetheless, the parties were permitted to present evidence regarding the appropriateness and feasibility of conducting a manual election during the pandemic.

As explained below, based on the record and relevant legal precedent, I find that the Employer has failed to carry its burden of establishing that the dispatchers are statutory supervisors or managerial employees that should be excluded from the Unit. In addition, I find that the Employer has failed to establish that the Petitioner waived its right to represent the petitioned-for employees by virtue of either the collective-bargaining agreement or the Unit certification. Moreover, I find that the petitioned-for employees constitute a distinct, identifiable voting group that shares a community of interest with the Unit sufficient to warrant an Armour-Globe self-determination election. I thus find that the Employer has failed to establish that the employer-wide bargaining unit is inappropriate. Finally, I have determined that the election should be conducted by mail ballot. Accordingly, I am directing an Armour-Globe self-determination election among the petitioned-for employees to determine if they wish to join the Unit. To provide a context for my discussion of these issues, I will first provide an overview of the Employer’s operations. I will then present the relevant facts and reasoning to support my conclusions.

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6 Throughout this decision, the terms “COVID-19,” “COVID,” pandemic, and virus are used interchangeably.
7 Unless otherwise stated, all dates are in 2021.
8 The determination over the method of election is within the discretion of the Regional Director, and therefore it was not a subject of litigation at hearing. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11128 and Section 11301.2 (Case handling Manual).
II. OVERVIEW OF THE EMPLOYER’S OPERATIONS AND COLLECTIVE BARGAINING HISTORY

The Employer provides bus transportation for public school students for the regular school day, field trips, and athletic trips pursuant to a contract with the East Penn School District (East Penn). In addition, the Employer provides transportation services to private schools. The petitioned-for employees and the employees in the Unit work at the Macungie facility, which contains a dispatch office spanning two floors, wash bays, a garage, and a driver’s room, as well as offices for managers and supervisors.

On February 3, 2009, the Petitioner was certified as the exclusive collective-bargaining representative of the Unit, which was then employed by First Student, Inc., the Employer’s predecessor. In about August or September 2014, the Employer took over the East Penn contract, and the Employer voluntarily recognized the Petitioner. The Petitioner and the Employer stipulated that they are parties to a collective-bargaining agreement (CBA) effective from August 1, 2019 to July 31, 2024.

Andrew Krahulik, the terminal manager of the Macungie facility, oversees its entire operations. The drivers, bus aides, dispatchers, and router all report directly to Krahulik, while the mechanics report to a shop manager who reports to Krahulik. The Employer is currently seeking to fill an assistant manager position, which was occupied until mid-October. Beyond those listed, there are no other classifications of employees working at the Macungie facility.

Pursuant to Article 33 of the CBA, employees not covered by the CBA are permitted to perform bargaining unit work when there is a shortage of Unit employees. Although the dispatchers and router have always performed driver work on occasion since the Employer took over the East Penn contract, they have done so with greater frequency since about August 2020 because the COVID-19 pandemic has increased the Employer’s driver shortage. Also due to the pandemic, Krahulik performs driver work about two to three times per week, and he similarly performs dispatcher and router work as necessary.

III. FACTS RELEVANT TO THE ARMOURE-GLOBE DOCTRINE

A. Skills and Functions

Drivers

The Employer employs approximately 123 drivers, including five substitute drivers (sub drivers) who cover routes for regular drivers unable to work. In addition to sub drivers, there are

10 The certification of representative in Case 4-RC-21517 uses different terminology than the CBA to describe the job classifications in the unit description:

Included: All full-time and regular part-time bus drivers, bus aides, sub drivers, mechanics, and washers employed by the Employer at its 3130 Route 100, Macungie, PA facility.
Excluded: All other employees, office clerical employees, dispatchers, maintenance manager, and guards and supervisors as defined in the Act.
casual substitute drivers who can perform work only at certain times of day. Drivers are responsible for transporting children from their homes to school, and from school to their homes (home-to-school runs). Pursuant to Article 11 of the CBA, several times per year, drivers in the existing unit bid on regular home-to-school runs based on their seniority, as well as any runs that become available during the school year. Drivers must have a CDL license and a Pennsylvania school bus card. Drivers receive their initial instruction from trainers, who are former drivers that successfully bid on the trainer position. Trainers are certified by the state to conduct driver training.

On school days, regular drivers arrive at the Macungie facility between around 6:00 a.m. and 9:00 a.m., depending on their route. After checking in with the dispatcher at the dispatch office window, they perform a pre-check of their school bus and then do their home-to-school runs. Following a break, at approximately 1:45 p.m. the drivers report back to the facility, check in with the dispatcher, and complete the home-to-school runs from about 4:00 to 4:30 p.m. In addition to home-to-school runs, drivers also perform “extra revenue” work, which includes athletic and field trips for which the Employer generally receives little to no advance warning from East Penn. The Employer maintains sign-up sheets, including an “extra revenue work list” for this work, which includes trips that become available from 24 hours to a week ahead of time. Such trips are assigned on a rotating basis in reverse order of seniority. Drivers also bid on and perform “extra non-revenue work” which includes training drivers, washing and fueling buses, double-checking buses for sleeping students, and sanitizing buses due to the COVID-19 pandemic.11 Pursuant to the CBA, these jobs are awarded based on seniority.

Bus Aides12

The Employer employs approximately 18 bus aides, who are responsible for taking care of special needs students so that the drivers can focus on driving the school bus. Bus aides bid on home-to-school runs as well as extra revenue and non-revenue work. Bus aides do not drive school buses and therefore do not need a CDL license to perform their work.

Dispatchers

The Employer employs two dispatchers, Christina Hemphill and Renee Eisenhard. Dispatchers work in either the dispatch office or a separate office put into use for social distancing purposes due to the pandemic. Hemphill reports to work at 5:15 a.m., while Eisenhard reports to work at 8:30 a.m. Dispatchers “check in” drivers and bus aides at the dispatch window in the dispatcher’s office, and they give those employees copies of the bus routes, keys to the school buses, paychecks, and mail. Dispatchers may communicate with East Penn or parents regarding issues such as the status of a late bus.

In addition to dispatching, dispatchers also drive school buses which comprises about 25 to 50 percent of their work. As such, dispatchers must have CDL licenses. Dispatcher Hemphill testified that since about September 2021, she has been driving five days per week. Hemphill

11 There are five available slots for fuelers, another five for double-checkers, and two for sanitizers. The Employer maintains one bus washer during the regular school year and two bus washers in the summer. Although washers are listed as a separate classification in the existing unit, pursuant to the CBA, washers are in fact drivers who bid upon this extra work.
12 Bus aides are also called monitors, bus attendants, or bus aide attendants.
completes her work as a dispatcher at about 1:50 p.m., and then transports students until about 4:00 p.m. Similarly, Eisenhard transports students in the afternoons. Prior to the driver shortage, Terminal Manager Krahulik estimates the dispatchers would drive about once or twice per week, or approximately 10 percent of the time. Dispatchers may occasionally perform bus aide work, but the record does not show the frequency of this interchange.

**Router**

The Employer employs one router named Jose Morales, who has held this position since about April 2018. Morales works in an office and was trained on the job to use a computer program called “Versatrans” to perform his work. As described in the router job description, the router “develops and implements routing plans” for the school buses. As part of his job, Morales revises routes when a student has moved in or out of the school district, and to accommodate homeless and disabled students. Terminal Manager Krahulik performs router work if Morales is unavailable.

Morales works seven days a week and is scheduled to work from 6:00 a.m. to 10:00 a.m. and from 12:00 p.m. to 4:00 p.m. As set forth in the job description, the router is also responsible for transporting students and must therefore have a CDL license as well as a high school diploma. Since about August 2021, Morales has been driving home-to-school runs five days per week, finishing his workday at about 4:00 to 4:30 p.m. Morales testified that prior to August 2021, he performed home-to-school runs approximately three to four days per week, whereas Krahulik testified that Morales drove about once or twice per week in that time period, or about 10 percent of his time. Morales receives route assignments from the dispatchers, who try to assign him routes that will not interfere with his router work.

**Mechanics**

The Employer employs three mechanics who work in the garage at the Macungie facility. The mechanics are responsible for maintaining and repairing school buses and equipment, such as harnesses that students may require. Mechanics are further classified as Mechanics Tier 1, 2 and 3, with Tier 3 mechanics having the highest level of skill and experience. Depending on their level of experience, mechanics must have ASC or ASE certifications. According to the CBA, Tier 2 and 3 mechanics must also have CDL licenses.

**B. Interchange and Contact**

There is evidence of both temporary and permanent interchange between the two groups of employees. Jose Morales, now a router, was hired in September 2014 and worked as a driver, trainer, and substitute driver before the Employer transferred him to the router position in about April 2018. Likewise, the Employer hired Hemphill as a driver in about September 2014 but transferred him to the dispatcher position a year later. There is also a significant amount of temporary interchange. As described above, dispatchers and the router perform a significant amount of driver work on a weekly basis. Similarly, one of the mechanics performs dispatch work on a regular basis in the afternoons when the dispatchers are transporting students, although the weekly frequency of this interchange is not described in the record.

There is also regular contact among the petitioned-for employees and the Unit employees because they work at the same facility. Dispatchers have contact with drivers every day when drivers check in at work. In addition, Router Morales speaks to 20 to 25 drivers per day about
routes or students and he greets drivers he encounters when he himself is driving a route. Morales also speaks to bus aides about routes or students, although the frequency of this contact is unknown. About twice weekly, Morales speaks to mechanics about bus size or equipment. Morales usually eats lunch at his desk or outside, but he occasionally has lunch with drivers in the driver’s room, whereas dispatchers usually have lunch at their desk or in another room in the facility.

C. Functional Integration

The petitioned-for employees and the Unit employees work at the same facility, and both groups work to accomplish the Employer’s mission of transporting students safely. Drivers and bus aides are responsible for transporting students on the buses, dispatchers are responsible for providing drivers and bus aides with keys to the buses and copies of routes, and the router plans the buses’ routes. Moreover, the petitioned-for employees themselves drive buses as one of their work duties, and mechanics perform dispatch work on a regular basis in the afternoons. Finally, the mechanics maintain and repair the school buses used by drivers, bus aides, dispatchers, and the router.

D. Terms and Conditions of Employment

With respect to wages, pursuant to the CBA, drivers are paid from $20.16 to $23.07 per hour. Drivers who perform work as fuelers or washers are paid $15.91 per hour for that additional work. Bus aides are paid from $16.97 to $19.36 per hour, and mechanics are paid $23.34 to $29.71 per hour. The dispatchers are paid $20.09 and $22.15, respectively, and the router is paid $20.09 per hour. The hours of work of the petitioned-for employees and unit employees differ based on the nature of their work: the dispatchers, router, and mechanics are considered full-time employees, whereas the regular workday of a driver and bus aide is five hours per day as provided in the CBA.

As full-time employees, the dispatchers, router, and mechanics receive paid vacation days, which vary in number depending on the employee’s length of employment, and one paid time-off day per month. All unit employees receive paid holidays, the number of which vary per job classification; the record does not show if the petitioned-for employees receive paid holidays. Full-time employees are eligible to receive the same health, dental, vision, and life insurance. Drivers and bus aides are also eligible to receive these insurance benefits if they meet the eligibility requirements by working a minimum number of hours. Unit employees participate in the Teamsters National 401(k) plan, but there is no evidence that the Employer provides the petitioned-for employees a 401(k) plan. With respect to the Employer’s policies, Article 14 of the CBA states that all unit employees must comply with the Employer’s rules as set forth in the employee handbook. However, the record does not show whether the handbook applies to the petitioned-for employees.

The petitioned-for employees and the Unit employees have access to the same breakroom, which currently appears not to be in use due to the COVID-19 pandemic. With respect to uniforms, drivers wear some type of vest to perform their work. The petitioned-for employees do not wear a uniform to work, but it is not clear if they have to wear a vest when they perform driver work. It appears that any employee driving a bus must wear closed-toe shoes. Prior to the pandemic, both groups of employees used the same time clock; since the pandemic, they all fill out “exception forms” to record their time. Terminal Manager Krahulik handles payroll for all of the employees.
in the Macungie facility. The petitioned-for employees have designated parking spots in front of the Employer’s facility, which the Unit employees do not.

IV. FACTS RELEVANT TO THE SUPERVISORY AND MANAGERIAL STATUS OF THE DISPATCHERS

A. Authority to Assign Work

Route assignments

Terminal Manager Krahulik testified that the dispatchers are responsible for assigning work. As set forth above, drivers bid on home-to-school routes and extra work that they perform. According to Krahulik, about 20 percent of East Penn work is assigned on a last-minute basis, including home-to-school runs and extra revenue work. However, last-minute athletic and field trips are assigned to drivers who sign the Employer’s “extra revenue work list,” based on rotational seniority. If a regular driver or substitute driver cannot perform work, the dispatcher will attempt to reassign it by contacting drivers from the extra-revenue work list who do not have a scheduling conflict based on their own work, and who are familiar with the route. If a driver from the list is not available, the dispatcher will contact drivers not on the list who routinely agree to accept extra work.

Although the dispatchers do not need approval from the terminal manager to assign work in this manner, the dispatchers cannot order a driver to perform the work, they can only seek volunteers. While these jobs generally cause drivers to work overtime, there is no evidence that the dispatchers monitor a driver’s overtime hours before assigning this work. If a dispatcher cannot find a driver who will accept the assignment, the dispatchers distribute this additional work to themselves, the router, or the terminal manager, based on their availability, consistent with the emergency fill-in provision in the CBA allowing bargaining unit work to be assigned outside the unit.

Route deviations

About once or twice per month, drivers must deviate from their route plan due to certain emergency situations, such as a flooded roadway. Krahulik testified that, in such cases, drivers contact the dispatcher to figure out a re-route and that the dispatchers must approve significant route deviations. In contrast, Dispatcher Hemphill testified that drivers make independent decisions regarding re-routes and may or may not provide a courtesy call to the dispatcher if they deviate from their route. If a driver gives her a courtesy call to report a re-route, Hemphill tells the driver, “Okay, as long as you can do it safely”, but she testified that she does not evaluate the safety of the route deviation.

B. Discipline and Discharge

Krahulik testified that about once a month, dispatchers report violations of company policy, such as employees who are absent from work, and provide him with their opinions regarding discipline. He further testified that dispatchers can question drivers about issues such as complaints from parents. The Employer offered no specific examples when dispatchers have made such reports of policy violations, provided their opinions regarding discipline, or questioned drivers about parents’ complaints. Moreover, Krahulik bears responsibility for conducting disciplinary investigations and deciding whether to issue discipline to an employee. Krahulik testified that, at
his request, a dispatcher may retrieve GPS data or audiotape or videotape footage taken inside buses for investigations, but there is no evidence that dispatchers participate in those disciplinary investigations. While Krahulik testified that a dispatcher has served as a witness during a discharge meeting with an employee, Dispatcher Hemphill denied ever witnessing a discharge meeting.

C. Time-off Requests

Drivers and bus aides generally must submit time-off request forms two weeks in advance of taking personal or sick days. Dispatcher Hemphill is responsible for approving or denying such requests based on the Employer’s detailed policies. Dispatcher Eisenhard performs this work only when Hemphill is not available. The CBA provides that drivers and bus aides receive three unpaid “grace days” per year, which they may take for any purpose except during blackout periods of April to May and August to September. If an employee does not exceed the three-day maximum, does not have any preventable accidents during the year, and attends monthly safety meetings, they receive a safety and attendance bonus.

During non-blackout periods, the Employer also has a policy of allowing only three drivers to be off work per day. Days off are granted on a first come, first served basis. Krahulik has the sole authority to approve additional drivers’ day-off requests in excess of the three-driver limit. During blackout periods, drivers and bus aides can take grace days off for only dental, medical, or court appointments. If a driver asks for vacation days during a blackout period with significant advance notice, Hemphill will grant the request after confirming that no other driver has requested that time period. Hemphill devised this method of approving advance vacation requests on her own.

Terminal Manager Krahulik has sole authority to grant time off outside the boundaries of the Employer’s leave policies. Although Krahulik testified that at times, Hemphill has violated company policy by approving a fourth grace-day request for reasons such as childcare, he did not provide any specific examples of her having done it. The Employer provided copies of 32 time-off requests approved or denied by Hemphill from June 2018 to September 2021. A review of these requests shows that the vast majority of the time, Dispatcher Hemphill followed the Employer’s policies to either approve or deny the request in question. There are seven approved requests involving cases during blackout periods where the stated reason for the request was not a medical, dental, or court appointment. The record does not show why Hemphill approved such requests, which facially appear to contravene the Employer’s policy.

Although Hemphill denied three of the time-off requests entered into the record, those denials are consistent with the Employer’s leave policies. One of these requests, made by Driver Dominic Hassan, sought a day off during a blackout period because his wife had an appointment in California. Hemphill testified that she denied the request because it was not for a medical or court appointment, but Krahulik reversed her decision and approved the request after obtaining further clarification from the driver that there was a medical reason for the request. Krahulik, on the other hand, did not recall reversing Hemphill’s decision to deny the time-off request and asserts that Hemphill made this decision independently. Driver and Union shop steward Manuela Kucharczyk, who has been employed by the Employer since about September 2014, testified that

13 The Employer contends that Kucharczyk is not a credible witness because she provided inconsistent and hearsay testimony. Credibility is not assessed in pre-election hearings, which are merely fact-finding in nature. Marian Manor for the Aged and Infirm, Inc., 333 NLRB 1084
she meets with the terminal manager or assistant manager regarding any disputes regarding time off. For example, in about September 2021, she spoke to Krahulik about a time-off request denied by Hemphill which was submitted by Driver Elizabeth Sanabria. Krahulik reversed Hemphill’s decision and granted the request after Sanabria re-wrote the request with a more detailed explanation.

D. Fit-for-Duty Assessments

The dispatchers take a “reasonable suspicion training” course and are certified to identify drivers or bus aides who may be impaired by drugs or alcohol and unable to perform their work. Krahulik testified that dispatchers are responsible for verifying that a driver is “fit for duty” and not impaired before they decide to hand them the keys to a school bus. In the only example on the record of an employee who was sent home due to such an impairment, provided by Kucharczyk, it was former Assistant Manager Danielle Treat, not a dispatcher, who sent the driver home after the driver failed a random breathalyzer test.

With respect to COVID-19, Krahulik testified that Hemphill makes independent decisions to send an employee home if they exhibit COVID-19 symptoms, and she does not always notify him when an employee is COVID-positive or exhibiting COVID symptoms. In contrast, Hemphill testified that only the terminal manager can decide whether to send an employee home due to COVID, or for any other reason. According to Hemphill, sometime in November 2021, Krahulik decided to send an unvaccinated driver home after the driver reported to Hemphill at check-in that his daughter, who lives with the driver, was COVID-positive. Krahulik, on the other hand, testified that Hemphill independently made the decision to send that driver home, without consulting him. Kucharczyk, who had walked up to the dispatch window after the incident, testified that Hemphill told her she had just called Krahulik because a driver’s daughter tested positive for COVID. Kucharczyk also testified that in about August 2021, Driver Brian Grimmes complained to her, as his shop steward, that Assistant Manager Treat refused to let him work because of a COVID exposure.

E. Dispatchers’ Suggestions regarding the Employer’s Policies and Procedures

Since the summer of 2020, Terminal Manager Krahulik has held staff meetings every other week with the dispatchers and router to discuss work issues. Krahulik testified that at these meetings, he includes the dispatchers and router in the Employer’s decision-making process regarding the Employer’s policies and procedures. For example, after a child was left on a bus in the summer of 2020, Krahulik met with the dispatchers and router to come up with a plan to tighten protocols for checking buses. Krahulik implemented a suggestion from the dispatchers and the router about pairing certain buses so the buses could return to the facility sooner for “double-checking” purposes. In addition, Krahulik testified that during the COVID-19 pandemic, he asked the dispatchers and router for input regarding the flow of traffic before implementing the Employer’s procedures. Krahulik also testified that, during the school year, he works with the dispatchers and router as a team to figure out routes that should be paired together for efficiency. For example, he will ask for the dispatchers’ input on the best fit for homeless students on a particular route. Krahulik also testified that about once a month, he asks the dispatchers whether

Moreover, “administrative agencies do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifies.” Alvin J. Bart and Co., Inc., 236 NLRB 242 (1978), enfd. denied on other grounds, 598 F.2d 1267 (2nd Cir. 1979).
the Employer can accept a particular trip. The Employer also provides transportation to a summer camp, and each summer, Krahulik makes the initial arrangements with the camp director for these transportation services. Thereafter, for the past three summers, Dispatcher Eisenhard has coordinated with the camp director regarding the camp’s daily needs, such as the number of buses required by the camp.

F. Secondary Indicia of Supervisory Status

The drivers’ job description states that drivers report to “a manager, supervisor, dispatcher, or trainer.” Krahulik testified that Dispatcher Hemphill is the highest-ranking individual at the facility from 5:15 a.m. until about 7:00 a.m., when Krahulik arrives at the facility, and Dispatcher Eisenhard is the highest-ranking individual at the facility from about 5:00 p.m. to 5:30 or 6:00 p.m., after he leaves the facility. At times, Hemphill may also be the most senior employee at the facility if Krahulik is performing driver work. Hemphill may communicate with East Penn or parents regarding, for example, the location of a bus. However, Krahulik and the dispatchers communicate by phone when he is not at the facility, and Hemphill testified that she speaks to Krahulik at 5:30 a.m. each morning.

V. DISPATCHERS ARE NOT STATUTORY SUPERVISORS OR MANAGERIAL EMPLOYEES

A. Board Law regarding Supervisory Status

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The three requirements to establish supervisory status are that the putative supervisor possesses one or more of the above supervisory functions; the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority; and the putative supervisor holds that authority in the interest of the Employer. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712-713 (2001) (citing NLRB v Health Care & Retirement Corp. of America, 511 U.S. 571, 573–74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. Kentucky River, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the
powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children’s Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693 (citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994)) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986), finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, supra, at 693. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, supra, at 687.

Lastly, the party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, 532 U.S. at 711; *Oakwood Healthcare*, supra, at 687. The lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047-1048 (2003). In addition, purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019), aff’d. 973 F.3d 451 (5th Cir. 2020).

**B. Dispatchers are not Supervisors within the meaning of Section 2(11) of the Act**

At the outset, there is no evidence that dispatchers have the authority to hire, transfer, suspend, lay off, recall, promote, or reward other employees, or adjust their grievances, or effectively to recommend such action. The remaining primary indicia of supervisory status in dispute will be addressed below.

1. **Assignment of Work**

   The Employer has failed to establish that the dispatchers assign work using independent judgment within the meaning of the Act. In *Oakwood Healthcare*, supra, at 689-690, the term “assign” is described as the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Assignment will support a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by
circumstances or company policy. *Oakwood Healthcare*, supra, at 693. Independent judgment requires that the decision “rise above the merely routine or clerical.” *Id.*

The record shows that pursuant to the CBA, drivers and bus aides bid on routes and other work, such as fueling buses, based on their seniority. If drivers have not signed the rotational lists for last-minute trips and activities, the dispatchers can solicit volunteers to accept those assignments but cannot require a driver to accept the work. The dispatchers generally solicit volunteers among the drivers who do not have a conflict, are familiar with the route, and are known to accept such assignments. If the dispatchers cannot find a driver who will accept the assignment in question, the work will be performed by employees who are not in the existing unit, namely, the router, dispatchers, or terminal manager. Similarly, with respect to the router, the Employer did not establish that the dispatchers use independent judgment to assign routers to perform driver work. Rather, it appears that the dispatchers assign the router to that work when he is not performing router functions, and, in any event, there is no evidence that a dispatcher can require the router to accept a particular route or trip.

Soliciting employees to volunteer to work, absent any authority to compel them to work, does not confer supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006); *UPS Ground Freight Inc.*, 365 NLRB No. 113, slip op. at 1-2 (2017). Moreover, soliciting volunteers based on their availability or knowledge of a route does not require the use of independent judgment. *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010) and *Five Star Transportation, Inc.*, 349 NLRB 42, 64 (2007), enf’d. 522 F. 3d 46 (1st Cir. 2008). Accordingly, I find that the Employer has failed to establish that the dispatcher’s assignment of work involves the exercise of independent judgment within the meaning of the Act.

2. Fit-for-Duty Assessments

With respect to “fit-for-duty” assessments, the Employer has also failed to establish that the dispatchers have refused to allow a driver or bus aide to work because they deemed the employee unfit for duty. Although the dispatchers received reasonable suspicion training, there is no evidence that they have ever performed such assessments or have refused to allow a driver or bus aide to perform their work. With respect to COVID-19, there is contradictory and inconclusive evidence regarding the Employer’s assertion that Dispatcher Hemphill sent a driver home without first contacting Terminal Manager Krahulik. Moreover, the Board has held that sending intoxicated employees home is so “egregious and obvious” that independent judgment is not required. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995) (authority to order intoxicated employees to leave does not establish supervisory status). It is similarly obvious that an unvaccinated employee who reports a COVID exposure should be prohibited from transporting students, and therefore such a decision does not require the use of independent judgment.

3. Responsible Direction of Work

Contrary to the Employer’s assertion, there is no evidence that dispatchers responsibly direct employees within the meaning of the Act. In *Oakwood Healthcare*, the Board explained “responsible direction” as follows: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” “Responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks as opposed to overall duties. *Id.* at 690-692. However, an individual will be found to have the
authority to responsibly direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Id.*; see also *Community Education Centers, Inc.*, 360 NLRB 85 (2014).

Drivers and bus aides perform their work independently. While Krahulik testified that a dispatcher must approve significant route deviations necessitated by unexpected situations, Hemphill testified that drivers determine re-routes on their own, and at most merely provide a courtesy call to the dispatchers regarding route deviations. The Employer provided no specific examples of dispatchers approving drivers’ route deviations; instead, there is only conclusory and contradictory evidence in the record regarding this issue. Moreover, there is no evidence that dispatchers are held accountable for work performed by drivers or bus aides. Accordingly, I find that the Employer has failed to establish that dispatchers responsibly direct employees.

4. Discipline and Discharge

Although the Employer argues that dispatchers regularly provide their opinions regarding discipline and question drivers about issues such as complaints by parents, there is no specific evidence that the dispatchers have recommended discipline of other employees or that the Employer has followed such recommendations. Rather, Krahulik provided only conclusory evidence regarding this contention. Similarly, there is no specific evidence that the dispatchers have reported drivers for violating the Employer’s policies. Even if there were, the Board has held that merely reporting misconduct is not sufficient to establish supervisory status under the Act. *Veolia Transportation Services*, 363 NLRB No. 98, slip op. at 7 (2016); *Willamette Industries, Inc.*, 336 NLRB 743, 744 (2001); *Lakeview Health Center*, 308 NLRB 75, 78-79 (1992). Although dispatchers may retrieve GPS data or audio and visual tapes for disciplinary investigations conducted by Krahulik, dispatchers do not participate in the investigative process. Moreover, while there is contradictory evidence regarding whether a dispatcher once served as a witness during a discharge meeting, mere participation in such a meeting is insufficient to establish supervisory status. Accordingly, the Employer has not established the dispatchers discipline or effectively recommend discipline of employees within the meaning of Section 2(11) of the Act.

5. Time-off Requests

Contrary to the Employer’s assertion that the dispatchers have “full autonomy” to approve or deny time off, the record shows that Dispatcher Hemphill generally approves or denies such requests based on the Employer’s detailed policies, without the use of independent judgment. More specifically, if a driver or bus aide requesting a grace day has reached the three-day maximum allowed during a non-blackout period, or more than three drivers are already scheduled off, Hemphill must deny the request. As to blackout periods, the Employer’s policy dictates those time-off requests can be approved only for medical, dental or court appointments. With respect to vacation requests during blackout periods, Hemphill grants such requests if another driver has not requested vacation for the same time period, which is in keeping with the Employer’s first come, first served policy for granting leave requests.
A review of the time-off requests submitted by the Employer shows that in the vast majority of cases, Hemphill followed the procedures established by the Employer for approving such requests. Although there are seven approved requests that do not appear to conform to the Employer’s policies, there is no evidence regarding the circumstances of those situations. As to those, it is possible that Hemphill granted those requests in error, or that she consulted with the terminal manager prior to approving them. In this regard, although Krahulik claimed that Hemphill occasionally approves a fourth grace day in violation of the Employer’s policy, the Employer provided no specific evidence to establish that she has in fact done so, and the documents do not bear out the assertion.

With respect to the time-off requests that Hemphill denied, all of the denials were in accordance with the Employer’s policies. As to the specific example of Driver Hassan’s request, the record evidence shows that Hemphill denied the request because it did not comport with the Employer’s policy, and there is only contradictory and inconclusive evidence regarding whether the eventual reversal of that decision was made by Hemphill or Krahulik. Accordingly, the evidence shows that the dispatchers’ role in approving or denying time-off requests is routine or clerical, and the Employer has failed to establish that the decisions require the use of independent judgment. *Los Angeles Water & Power Employees’ Ass’n*, 340 NLRB 1232, 1234 (2003); *Western Union Telegraph Co.*, 242 NLRB 825, 826 (1979).

Finally, there is no evidence, as the Employer contends, that Hemphill independently prioritizes absences relating to health during blackout periods. Moreover, the Board has held that granting time off to an employee under these circumstances is a secondary, not primary, indicium of supervisory status. *Sam’s Club, Inc.*, 349 NLRB 1007, 1014 (2007) (permitting an employee who felt unwell to leave work insufficient to establish supervisory status).

### 6. Secondary Indicia of Supervisory Status

Secondary indicia of supervisory authority may lend support to a conclusion regarding supervisory status, but cannot alone establish supervisory status. *McClatchy Newspapers, Inc.*, 307 NLRB 773 (1992). The Employer contends that Dispatcher Hemphill is the only “supervisor or manager” who works at the facility before Krahulik arrives, and that Dispatcher Eisenhard is similarly “in charge” when Krahulik leaves the facility in the afternoons. However, there is no evidence that the dispatchers exercise any supervisory independent judgment when Krahulik is not at the facility. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). Moreover, the terminal manager is available at all times by telephone, and Hemphill speaks to him at 5:30 a.m. each morning. Even if the dispatchers occasionally engaged in supervisory functions during these windows of time, they would not constitute a sufficiently substantial portion of their work time as to confer supervisory status. *Oakwood Healthcare*, 348 NLRB at 694.

Although the terminal manager solicits the dispatchers’ and router’s opinions regarding some of the Employer’s policies and procedures, such as the pairing of routes, those are day-to-day issues about which the dispatchers and the router have first-hand experience, and the consultation does not render the employees supervisors. And while the Employer may consider these meetings to be “managerial,” attendance of management meetings, without more, does not render an employee a supervisor. *Dean & Deluca*, supra, at 1048. Moreover, there is no evidence, as the Employer contends, that the dispatcher communicates with East Penn regarding the Employer’s policies and procedures in the terminal manager’s absence. Rather, dispatchers may communicate with East Penn regarding the location of a late bus, which a dispatcher can easily
determine based on GPS data. In addition, although the driver’s job description states that drivers report to a “manager, supervisor, dispatcher, or trainer,” it is actual authority, not job descriptions, that determines supervisory status. *Western Union Telegraph Co.*, 242 NLRB 825, 826 (1979). Notably, drivers who successfully bid on the trainer position are part of the existing unit, and there is no contention that trainers are supervisors under the Act.

In sum, the record establishes that dispatchers do not meet the criteria required to establish supervisory status under Section 2(11) of the Act. Accordingly, I find that the Employer has not established that the dispatchers are supervisors within the meaning of Section 2(11) of the Act, and I find that dispatchers should be included in the unit.

**C. Dispatchers are not Managerial Employees**

The Board defines managerial employees as “those who formulate and effectuate high-level employer policies or ‘who have discretion in the performance of their jobs independent of their employer’s established policy.’” *The Republican Co.*, 361 NLRB 93 (2014) (quoting *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)); see generally *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). “Although the Board has no firm criteria for determining managerial status, an employee will not ordinarily be excluded as managerial unless he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy”. *The Republican Co.*, supra, at 93. The burden of proof lies with the party asserting managerial status. *Id*.

There is no evidence that the dispatchers assume the managerial duties of the terminal manager when he is not at the facility. Merely communicating with East Penn or parents regarding a late bus is insufficient to establish that an employee should be excluded from the unit. The Employer has also failed to establish that the dispatchers are responsible for formulating or effectuating the Employer’s high-level policies. Rather, the dispatchers provide input regarding day-to-day work issues about which they have first-hand knowledge, and there is no evidence that the Employer automatically implements the dispatchers’ suggestions. Cf. *The Republican Co.*, supra, at 96 (editor who independently formulated a newspaper’s editorial policies was a managerial employee). As explained above, Dispatcher Hemphill’s role in approving or denying time off is routine and clerical in nature, dictated by the Employer’s leave policies, and does not establish that she is a managerial employee.

Moreover, contrary to the Employer’s assertion, there is no evidence that Dispatcher Eisenhard’s coordination of summer camp transportation is any more than a clerical function. In this regard, Terminal Manager Krahulik initially meets with the camp director to set up the arrangements, and Eisenhard performs the clerical function of coordinating details such as the number of buses required by the camp. Finally, although Krahulik may ask dispatchers if the Employer can provide transportation for a particular trip, there is no evidence regarding the criteria, aside from available drivers, that the dispatchers use to provide this recommendation to Krahulik, or if their recommendations are always followed without Krahulik’s independent assessment. Accordingly, the Employer has failed to establish that the dispatchers are managerial employees who should be excluded from the unit.

**VI. ARMOUR-GLOBE DOCTRINE**

**A. Board Law regarding the Armour-Globe Doctrine**
The standard for evaluating whether it is appropriate to add new employees to an existing bargaining unit through a self-determination election is the Board’s Armour-Globe doctrine. Under Armour-Globe, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. Armour & Co., 40 NLRB 1333 (1942); Globe Machine and Stamping Co., 3 NLRB 294 (1937). An incumbent union may petition to add unrepresented employees to its existing unit through an Armour-Globe election if the employees sought to be included share a community of interest with unit employees and “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” Warner-Lambert Co., 298 NLRB 993, 995 (1990) (citing Capital Cities Broadcasting Corp., 194 NLRB 1063 (1972)). Whether a voting group is an “identifiable, distinct segment” is not the same question as whether the voting group constitutes an appropriate unit. St. Vincent Charity Medical Center, 357 NLRB 854, 855 (2011) (citing Warner-Lambert, supra, at 995). Rather, the voting group must not be arbitrary or random. St. Vincent Charity Medical Center, supra, at 855.

The Board’s traditional community-of-interest factors include whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. PCC Structurals, Inc., 365 NLRB No. 160, slip op. at 1 (2017).

While it is usually the petitioner’s burden to show that a petitioned-for unit shares a community of interest with the existing unit, ibid., the Board has long recognized that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” Airco, Inc., 273 NLRB 348, 349 (1984) (quoting Kalamazoo Paper Box Corp., 136 NLRB 134, 136 (1962)); see also Section 9(b) of the Act (“…the unit appropriate for purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof”) (emphasis supplied). The party claiming that an employer-wide unit is inappropriate bears the burden of rebutting the presumptive appropriateness of the unit by demonstrating “the interests of a given classification are so disparate from those of the other employees that they cannot be represented in the same unit.” Airco, Inc., supra; see also Greenhorne & O’Mara, Inc., 326 NLRB 514, 516 (1998).

B. An Armour-Globe Election is Appropriate

1. Dispatchers and Router employees constitute an Identifiable, Distinct Segment

In examining whether a voting group constitutes an identifiable, distinct segment, the Board ordinarily considers factors similar to those in a community-of-interest analysis, including whether they have separate supervision, geographic separation of work areas, lack of integration with other employees in the performance of ordinary job duties, skills or functions distinct from other employees, and whether the group includes all employees in an administrative division. See generally Birdsall, Inc., 268 NLRB 186, 190 fn. 12 (1983) (citing A. Harris & Co., 116 NLRB 1628, 1632 (1956)).
Here, where the Petitioner is seeking to represent all of the employees who are currently employed at the Employer’s facility, the petitioned-for employees are, by definition, an identifiable and distinct segment, as they are the remaining unrepresented employees at the Macungie facility. Accordingly, I find that the petitioned-for employees satisfy this element for a self-determination election.

2. Community of interest between the Petitioned-for employees and the Existing Unit

A. Similarity in Skills and Functions

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another’s work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company*, Inc., 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, supra.

Although the petitioned-for employees have distinct duties that are applicable to their respective job classifications, transporting students is also a significant part of their job, which is the same work performed by drivers. The petitioned-for employees, like the drivers and some of the mechanics, have CDL licenses. Contrary to the Employer’s assertion, minor differences in training, such as fit-for-duty training received by dispatchers and on-the-job Versatrans training received by the router, are outweighed by the similarities among the two groups. Accordingly, the similarly of skills and functions factor supports a finding that a community of interest exists between the petitioned-for employees and the existing unit.

B. Organization of the Employer’s Facility

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. *See Check Printers, Inc.* 205 NLRB 33 (1973). In the instant case, the Petitioner is seeking to represent all of the employees who work at the Employer’s facility. Aside from the garage, which appears to be a somewhat separate department, the Employer’s operations are not separated by strict departmental lines. All of the employees are ultimately supervised by the terminal manager. Accordingly, the departmental organization factor also supports finding a community of interest between the petitioned-for employees and the existing unit.
C. Terms and Conditions of Employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example, hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment. However, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange and/or work in a physically separate area. Bradley Steel, Inc., 342 NLRB 215 (2004); Overnite Transportation Company, 322 NLRB 347 (1996).

Although the Employer contends that the petitioned-for employees are “office staff” who have different terms and conditions of employment, the record shows that these differences are outweighed by the similarities. In its brief, the Employer contends that the dispatchers and router perform part of their work in offices, while drivers perform work in the driver’s room and garage. However, there is no evidence on the record regarding what work drivers perform in the driver’s room and garage. With respect to equipment, both the petitioned-for employees and the drivers drive school buses. Bus aides perform their work on the same buses, and mechanics maintain and repair the buses. There is no evidence, as the Employer contends, that drivers are required to wear a specific uniform apart from a vest. Likewise, there is no evidence that bus aides or mechanics wear uniforms. While the petitioned-for employees have their own parking spots, this is outweighed by other similarities.

With respect to wages, the petitioned-for employees and those in the existing unit are paid on an hourly basis. One of the dispatchers and the router are paid $20.09 per hour, and the other dispatcher is paid $22.15 per hour. Although this is below the hourly wage rates paid to mechanics, which is between $23.34 and $29.71 per hour, it is well within the drivers’ range of $16.97 to $23.07 per hour. As to hours of work, the petitioned-for employees and the existing unit have different start times due to the nature of the work that they perform. Notably, the work schedules among the petitioned-for employees also differ. While the regular workday of a driver and bus aide is five hours as provided in the CBA, the mechanics, like the petitioned-for employees, are considered full-time employees by the Employer. As such, the dispatchers, router, and mechanics all receive the same benefits of paid vacation, paid time-off, and health and life insurance. Although drivers and bus aides do not receive paid vacation days or paid time-off, they can participate in the Employer’s health insurance and life insurance plans if they work a certain number of hours. Drivers, bus aides, and mechanics do receive some benefits under CBA that the petitioned-for employees do not, such as eligibility to participate in a Teamsters National 401k plan. However, in an Armour-Globe context, such differences between the petitioned-for employees and the existing unit are not particularly helpful to the community-of-interest analysis. Accordingly, taken as a whole, the terms and conditions of employment factor supports that there is a community of interest between the petitioned-for employees and the existing unit.

D. Common Supervision

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, the most important factor is the identity of employees’ supervisors who have the authority to hire, fire, or discipline employees, or effectively recommend
those actions, or to supervise the day-to-day work of employees, including rating performance, direct and assigning work, scheduling work, and providing guidance on a day-to-day basis. \textit{Executive Resources Associates, Inc.}, 301 NLRB 400 (1991); \textit{NCR Corp.}, 236 NLRB 215 (1978). Here, common supervision weighs in favor of finding a community of interest. The petitioned-for employees and Unit employees are commonly supervised by the terminal manager. Moreover, prior to mid-October, the petitioned-for employees and Unit employees were commonly supervised by the assistant terminal manager. Accordingly, the common supervision factor weighs heavily in support of the instant petition.

\textbf{E. Interchange and Contact among Employees}

Interchange refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” \textit{Hilton Hotel Corp.}, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. \textit{Executive Resource Associates}, supra, at 401 (citing \textit{Spring City Knitting Co. v. NLRB}, 647 F.2d 1011, 1015 (9th Cir. 1981)). The existence of permanent transfers among employees is also a relevant factor but not as important as evidence of temporary interchange. \textit{Walt Disney World Co.}, 367 NLRB No. 80, slip op. at 7, fn. 5 (2019).

In this case, the record reveals evidence of both permanent and temporary employee interchange between the petitioned-for employees and the Unit. With respect to permanent interchange, in 2015, the Employer transferred Dispatcher Hemphill from her position as a driver to her current position as a dispatcher, and in April 2018, the Employer transferred Router Morales from a driver position to his current position as a router. In addition, there is significant temporary interchange between the petitioned-for employees and the drivers in the existing unit. The record shows that the dispatchers and router spend up to five days per week driving buses, and a mechanic regularly performs dispatch work in the afternoons.

Also a relevant factor is the amount of work-related contact among employees, including whether they work beside one another. \textit{Casino Aztar}, 349 NLRB 603, 605-606 (2007). Here, there is regular and frequent work-related contact between the petitioned-for employees and the Unit employees. The dispatchers are the “front-line” contact for drivers and bus aides, because these employees must check in with the dispatcher when they report to work. Similarly, dispatchers have contact with mechanics when they take certain drivers to the garage. The router interacts with drivers about 20 to 25 times per day regarding routes and students, and greets drivers when he encounters them while he himself is driving a bus. He also answers questions from bus aides, and about twice weekly he speaks to mechanics about buses or equipment. Accordingly, the interchange and contact factors overwhelmingly support a finding that the petitioned-for employees and the Unit employees share a community of interest.

\textbf{F. Degree of Functional Integration}

Functional integration refers to when employees’ work constitutes integral elements of an employer’s production process or business. Thus, for example, functional integration exists when
employees in a unit sought by a union work on different phases of the same product or as a group provides a common service. Another example of functional integration is when the employer’s workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. Transerv Systems, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

The record reveals that the petitioned-for employees and the Unit employees are functionally integrated; all of them are integral to the Employer’s provision of bus services. The router prepares the route plans that drivers and bus aides need to transport the students. The dispatchers provide the drivers and bus aides with these plans and keys to the buses. Drivers operate the buses, and bus aides work alongside them to take care of students on the bus. And the mechanics repair and maintain the buses and equipment necessary to transport the students. Additionally, the evidence shows that the petitioned-for employees have frequent contact with the Unit employees and there is significant interchange between the two groups. Accordingly, the petitioned-for employees and the Unit employees share a high degree of functional integration, and this factor supports a finding of a shared community of interest.

Based on the record evidence and weighing the factors above, I find that the petitioned-for employees is a distinct and identifiable segment that constitutes an appropriate voting group, and that the two groups of employees’ similar skills and functions, common supervision, functional integration, and interchange and contact fully support the Petitioner’s position that they share a community of interest. Finally, based on the foregoing, the Employer has failed to establish that the interests of the petitioned-for employees are so disparate from the existing unit that they cannot be represented in the same unit. Accordingly, the Employer has failed to rebut the presumption that the employer-wide unit sought by the Petitioner is inappropriate.

VII. WAIVER AND CONTRACT BAR ISSUE

A. Board Law regarding Contract Bar and Waiver

Under the Briggs Indiana doctrine, “a union which agrees by contract not to represent certain categories of employees during the term of a collective-bargaining agreement may not during that period seek their representation.” Briggs Indiana Corp., 63 NLRB 1270 (1945); see Cessna Aircraft Co., 123 NLRB 855 (1959). The Board has specified that this rule is applied “only where the contract itself contains an express promise on the part of the union to refrain from accepting them into membership; such a promise will not be implied from a mere unit exclusion, nor will the rule be applied on the basis of an alleged understanding of the parties during contract negotiations.” Id. at 857; see also Springfield Terrace, LTD, 355 NLRB 937 (2010); Budd Co., 154 NLRB 421, 423 (1965); Women & Infants’ Hosp. of Rhode Island, 333 NLRB 479 (2001) (finding that contract language specifically excluding the petitioned-for respiratory therapists did not constitute an express promise not to represent employees, and ordering the requested self-determination election).
The agreement to refrain from representation does not have to be embodied in a collective-bargaining agreement, so long as it is an express promise. *Lexington House*, 328 NLRB 894,896 (1999). In defining “express,” the Board states that a union’s promise not to seek representation of the employees must be “clear, knowing, and unmistakable, whether... by contractual provision or by conduct.” *Northern Pacific Sealcoating, Inc.*, 309 NLRB 759 (1992). A union’s waiver of the right to seek to represent employees will “not be implied from a mere unit exclusion, nor will the rule be applied on the basis of an alleged understanding of the parties during contract negotiations.” *Cessna*, supra, at 859 (emphasis added). These rules establish a strict standard for finding that a union waived its right to represent employees. *Springfield Terrace*, supra, at 937.

In *UMass Memorial Medical Center*, 349 NLRB 369 (2007), the Board held that the Regional Director properly directed a self-determination election among the petitioned-for employees, even though the parties’ collective-bargaining agreement excluded the employees from the unit. The Board found that the petitioner, despite its agreement to exclude those employees, did not waive its right to seek representation of them. In that case, the Board also rejected the employer’s argument that the contract bar doctrine precluded the self-determination election. Under the Board’s contract bar doctrine, “the Board will not entertain a representation petition seeking a new determination of the employees’ bargaining representative during the middle period of a valid outstanding collective-bargaining agreement of reasonable duration.” *UMass*, supra, fn. 7 (citing *Hexton Furniture Co.*, 111 NLRB 342, 344 (1955)). Citing *Federal Mogul Corp.*, 209 NLRB 343 (1974), the Board in *UMass* noted that employee free choice is balanced by the employer’s obligation to bargain regarding the contractual terms to be applied to a new group of employees added to the existing unit.

**B. The Petition is not Barred by the Waiver or Contract Bar Doctrine**

Contrary to the Employer’s contention, the waiver and contract bar doctrines are inapplicable to the instant petition. With respect to the router, neither the unit description nor the CBA excludes that job classification, and as to the dispatchers, although the certification specifically excludes dispatchers, a unit exclusion from a certification or a collective bargaining agreement is insufficient to establish an express promise by the Petitioner not to represent the petitioned-for employees. Accordingly, the waiver and contract bar doctrines do not bar the instant petition.

**VIII. METHOD OF ELECTION**

**A. Proposed Manual Election Arrangements**

The Employer proposes that a manual election be held in the driver’s room located on the first floor at the Employer’s facility, which is a large area that can hold approximately 100 people, with a separate entrance and exit. The Employer also proposes that the date of the election occur on a Tuesday, Wednesday, or Thursday, from 10:00 a.m. to 11:00 a.m.

**B. Position of the Parties**

The Employer contends that a manual election can be conducted safely at its facility and that it will abide by all COVID safety protocols set forth in *GC Memorandum 20-10*. Moreover,
the Employer argues that the Board has a longstanding policy favoring manual elections. In addition, the Employer observes that the petitioned-for employees are currently working at the Employer’s facility and asserts that there are no legitimate safety concerns due to COVID-19. Because there are no current COVID-positive employees working at the Employer’s facility, and since the number of voters is small, the Employer argues that the Regional Director can exercise discretion to conduct a manual election even if the number of COVID cases or the COVID positivity rates are beyond the threshold set forth in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020). The Employer also notes that federal employees are encouraged or mandated to be vaccinated.

Contrary to the Employer, the Petitioner contends that the election should be conducted by mail ballot for the safety of the employees and Board agent. The Petitioner argues that COVID cases are rising in Pennsylvania. As of the date of the hearing, the Petitioner noted that in Lehigh County, the 14-day trend of COVID cases rose from 53 to 106 cases, and the positivity rate was 13.7 percent which would not meet the guidelines set forth in *Aspirus* to safely conduct a manual election.

**C. Board Law and Guidance**

The Board has held that the mechanics of an election, such as the date, time, and place, are left to the discretion of the Regional Director. *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998); NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228 and Section 11301.2 (the determination over the method of election is not an issue subject to litigation).

It is well established, however, that the Board has a strong preference for conducting manual elections. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11301.2; *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Yet, it also has a history of conducting elections by mail when necessary. As the Board noted in *London’s Farm Dairy, Inc.*, 323 NLRB 1057 (1997), “[f]rom the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.” The Board identified a few situations in which a Regional Director may reasonably determine to hold an election by mail: where voters are scattered geographically or in the sense that their work schedules vary significantly; in instances of a strike, lockout or picketing; or in other unspecified extraordinary circumstances. *San Diego Gas*, supra, at 1145. The pandemic and related risks associated with in-person gatherings has constituted an extraordinary situation prompting an increased use of mail-ballot elections.

In response to the evolving realities of the pandemic, on July 6, 2020, the Office of the General Counsel issued *Memorandum GC 20-10*, “Suggested Manual Election Protocols.” This memorandum contains ten specific protocols to be addressed in any Stipulated Election Agreement or Decision and Direction of Election in which a manual election is to be conducted:

A. Spacious polling area, sufficient to accommodate six-foot distancing, which should be marked on the floor with tape to insure separation for observers, Board Agent, and voters.
B. Separate entrance and exit for voters, with markings to depict safe traffic flow throughout polling area.

C. Separate tables spaced six feet apart so Board Agent, observers, ballot booth and ballot box are at least six feet apart.

D. The Employer will provide markings on the floor to remind/enforce social distancing.

E. The Employer will provide sufficient disposable pencils without erasers for each voter to mark their ballot.

F. The Employer will provide glue sticks or tape to seal challenged ballot envelopes.

G. The Employer will provide plexiglass barriers of sufficient size to protect the observers and Board Agent to separate observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for observers.

H. The Agency will provide to the Board Agent(s) running the election a face shield, mask, disposable clothes covering if requested, hand sanitizer, gloves and disinfecting wipes.

I. An inspection of the polling area will be conducted by video conference at least 24 hours prior to the election so that the Board Agent and parties can view the polling area.

J. In accordance with CDC guidance, all voters, observers, party representatives, and other participants should wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area or while observing the count. Signs will be posted in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives and other participants of this requirement.

This memorandum also requires an employer’s written certification that the polling area is consistently cleaned in conformity with CDC standards as well as a certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19. Also required are written certifications from each party representative and observer participating in the pre-election conference, election and ballot count that within the preceding 14 days, they have not tested positive for COVID-19, are not awaiting the results of a test and have not had direct contact with anyone who has tested positive, is awaiting the results of a test or has been directed by a medical professional to proceed as if they have tested positive. GC Memorandum 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election, thereby delaying the resolution of the question concerning representation.
Thereafter, the Board, in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), outlined situations to consider when assessing the risk associated with the pandemic and the propriety of a mail-ballot election. In so doing, the Board reaffirmed its longstanding policy favoring manual elections, but identified six situations, the existence of any of which would suggest the Regional Director should direct a mail-ballot election. Those 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 the General Counsel’s protocols for Manual Elections established in GC Memo 20-10;

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and/or

6. Other similarly compelling circumstances.

The Board indicated that a Regional Director who exercises 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.

For *Aspirus* Situation 2, the Board instructed Regional Directors to “generally focus their consideration on recent statistics that reflect the severity of the outbreak in the specific locality where the election will be conducted” and held that “a mail-ballot election will normally be appropriate if either (a) the 14-day trend in the number of new confirmed Covid-19 cases in the county where the facility is located is increasing, or (b) the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.” *Id.*, slip op. at 5. With respect to the latter, the Board noted that many locales do not report the 14-day testing positivity rate. Often, a 7-day average is more readily available from local or county health departments, and the Board has found such metrics to be sufficient. See *Sysco Central California, Inc.*, 32-RC-272441, fn. 1 (September 28, 2021) (unpublished); *Stericycle, Inc.*, 04-RC-260851 (February 22, 2021) (unpublished) (denying review of mail-ballot election where 7-day testing positivity rate was 8.01% in county where employer’s facility was located). It is also appropriate to consider data from other areas if part of the workforce comes from locations outside the county where the facility is located. *Aspirus*, slip op. at 8.

Regarding Situation 5, the Board has clarified that Regional Directors “should determine whether the Covid-19 cases at the facility would reasonably be expected to affect the conduct of a manual election. Relevant considerations in this regard include whether (1) the number or physical
location of such Covid-19 cases, or the likelihood that those cases will result in unit employees being exposed to Covid-19, indicates that a manual election would pose a threat to health or safety; or (2) current Covid-19 cases among unit employees would result in their disenfranchisement by a manual election.” *Rush University Medical Center*, 370 NLRB No. 115, slip op. at 2 (2021).

**D. A Mail Ballot Election is Appropriate**

With respect to Situations 1, 3 and 4, the Regional office responsible for conducting this election is not in a mandatory telework status, the Employer’s proposed election sites do not appear to violate any mandatory state or local health orders related to maximum gathering size, and the Employer has committed to abide by the protocols set forth in *GC Memorandum 20-10* and appears able to comply. With respect to the Situation 5, there is no current COVID-19 outbreak at the facility, and the employer is not refusing to disclose and certify its current status.

Turning to Situation 2, as of December 23, the number of new COVID cases in Lehigh County over the last 14 days has ranged from 236 to 487, and most recently was 278. The 14-day average shows an increase of 3 percent, and on December 23, the CDC reported that the 7-day positivity rate is 17.4 percent and the community transmission rate of COVID-19 is high. I do not rely upon the Employer’s argument that the Board agent conducting a manual election may be vaccinated because it is not a factor articulated by the Board. However, I note that it appears that the Employer does not require all of its employees to be vaccinated, nor is there evidence that the Employer monitors whether employees are vaccinated.

Since the positivity rate in Lehigh County is well above 5 percent and the 14-day trend in new COVID cases is increasing, consistent with *Aspirus Keweenaw*, I direct a mail-ballot election, the details of which are below.

**IX. CONCLUSIONS**

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, I find:

1. The rulings made by the Hearing Officer at the hearing are free from prejudicial error and are hereby affirmed.

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16 See CDC COVID Data Tracker. The CDC states that the data used to calculate the 7-day positivity rate was through Friday, December 22, 2021. [https://covid.cdc.gov/covid-data-tracker/#county-view](https://covid.cdc.gov/covid-data-tracker/#county-view)
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.\footnote{The parties stipulated to the following commerce facts: Student Transportation of America, Inc., a Delaware corporation, is engaged in the transportation of students from facilities throughout North America, including its facility located at 3096 Route 100, Macungie, PA, from which it provides transportation services to the East Penn School District. During the past 12-month period, the Employer derived gross revenues valued in excess of $250,000, and purchased and received at its Macungie, PA facility goods valued in excess of $5,000 directly from points outside of the Commonwealth of Pennsylvania.}

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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 following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All routing coordinators and dispatchers employed by the Employer at its 3096 Route 100, Macungie, PA facility.

   Excluded: All other employees, managers, guards, and supervisors as defined in the Act.

X. 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 Teamsters Local 773, the Petitioner. If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above voting group will be deemed to have indicated their desire to be included in the existing unit of employees currently represented by the Petitioner, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit on Thursday, December 30, 2021. Voters must return their mail ballots so that they will be received by close of business on Thursday, January 20, 2022. The mail ballots will be counted on Monday, January 24, 2022 at a time and location to be determined, either in person or otherwise, after consultation with the parties.
If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region Four office no later than 5:00 pm on Thursday, January 6, 2022 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending December 18, 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 Acting 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 Monday, December 27, 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

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18 The Petitioner agreed to waive the entire 10-day period that it is permitted to receive the voting list prior to the opening of the polling period.
be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.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.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election that will issue and that accompany this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

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

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

Dated: December 23, 2021

Thomas A. Goonan, Regional Director
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