AMAZON'S STATEMENT RESPONDING TO UNION’S REQUEST FOR REVIEW

Pursuant to Section 102.67(f) of the Board’s Rules and Regulations, Amazon.com Services LLC (“Amazon”) files this Statement in Opposition to Retail, Wholesale and Department Store Union’s (“Petitioner” or “Union”) Request for Review of the Regional Director’s January 11, 2022 Order Scheduling Mail Ballot Election (“January 11 Order”) in the above-captioned matter.¹

I. INTRODUCTION

The Union’s Request for Review is based entirely on shameless misrepresentations of fact and should be denied. In her January 11, 2022 Order, the Regional Director provided clear guidance regarding the U.S. Postal Service (“USPS”) mailbox onsite: “[t]he United States Postal Service has moved or will move the mailbox to a neutral location on the Employer’s property away from the entrance to the facility.” Creating distractions in advance of the February 4 election, the Union has falsely alleged that the mailbox “has been moved by Amazon to the left side of the

¹ Amazon’s Statement in Response is submitted for the purposes of responding to Petitioner’s present Request for Review only. Amazon specifically reserves and does not waive any of its rights to appeal the Regional Director’s November 29, 2021 Decision and Direction of Second Election, or any other order or decision, consistent with Board Rules.
facility entrance,” and has submitted a map with the location of the mailbox falsely marked to appear near the front of the building.

Amazon did not move the mailbox – the USPS did. Amazon had nothing to do with the request to remove the mailbox or the selection of its new location. The Region knows this. The USPS knows this. And the Union knows this.

The mailbox is not located where the Union asserts it is via its filing and map. (Notably, these allegations are not supported by sworn affidavits.) The mailbox has been relocated to the far rear portion of the BHM1 property, more than 100 yards away from and adjacent to the back corner of the building. The mailbox is not remotely visible from the front entrance or any entrance associates use. The Region knows all of this. The USPS knows all of this. The Union knows all of this, and anyone who visits the BHM1 site can clearly see this.

If the Union’s allegations were remotely true, the Request for Review would still be without merit, but it should be denied on the basis of these bold misrepresentations alone. Nevertheless, Amazon does not care at this point what happens to the mailbox. Amazon’s only request is that the Board not allow this frivolous issue raised by the Union to interfere with the conduct of, or otherwise delay, the second election.

II. PROCEDURAL BACKGROUND

After losing the election in this matter by more than 1,000 votes, the Petitioner filed objections in April 2021. Some of the Petitioner’s objections were sustained and the Region issued a Decision and Direction of Second Election (the “Second DDE”) on November 29, 2021. On November 30, 2021, the Regional Director issued an Order (the “November 30 Order”) asking the parties to provide positions and evidence on whether the re-run election should be conducted

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2 The majority of the Petitioner’s objections were dismissed or withdrawn.
manually or by mail ballot. The November 30 Order specifically directed the parties to include “proposals for the neutralization of the cluster box unit, or mailbox, installed at the Employer’s facility in February 2021” and advised the parties to provide “all proposals and evidence that they believe would assist the Region in determining the safest and most appropriate method of conducting a prompt second election[.]”

In response to the November 30 Order, the Petitioner filed a response and the extent of its argument about the mailbox was:

The Petitioner further requests that the Regional Director instruct the Employer to remove the cluster box located in the employee parking lot and that it is not allowed to install a mail box or other drop box on its premises for purposes of collecting mail ballots.

Petitioner presented no evidence and made no arguments about the mailbox resembling those now presented in its Request for Review.

Amazon simply “requested the Region provide clear guidance regarding [the Region’s] expectations for the mailbox.” January 11 Order at 4. In her Order, the Regional Director did so: “The United States Postal Service has moved or will move the mailbox to a neutral location on the Employer’s property away from the entrance to the facility.” Id. Consistent with this directive, on or about January 11, the USPS moved the mailbox to a location near the rear corner of the property, far removed from the front entrance to the facility, and more than 100 yards away from the back corner of the building. The USPS moved the mailbox, not Amazon. Amazon did not influence the decision on where to put the mailbox in any way.

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3 See Beverly Banks, Union Says Amazon Mailbox Must Go in Rerun Ala. Election, LAW360 (January 26, 2022), available at https://www.law360.com/employment-authority/articles/1458911/union-says-amazon-mailbox-must-go-in-rerun-ala-election (quoting USPS spokesman that USPS moved the mailbox at Board’s request).
III. **PETITIONER’S REQUEST FOR REVIEW IS PROCEDUALLY DEFICIENT AND WITHOUT MERIT**

   a. Petitioner Fails to Identify Any Grounds For Review Under Rule 102.67(d)

   Rule 102.67(d) of the Board’s Rules and Regulations provides limited circumstances that the Board will grant review of a Regional Director’s decision in representation cases. The Petitioner fails to specify which, if any, part of the rule would enable the Board to grant the Petitioner’s request. Accordingly, the Petitioner cannot satisfy the requirements of Rule 102.67(d), and the Request should be denied.

   b. The Mailbox Will Not Interfere with a Fair Election

   Petitioner blatantly misrepresents the current location of the mailbox at BHM1. Exhibit 2 of the Petitioner’s Request for Review is wrong. The mailbox cannot be seen from the main entrance, or most of the front parking lot, at all. It is not close to any of the primary or secondary entrances or exits to the BHM1 fulfillment center or parking lot. Few, if any, Amazon employees “pass by it” ever. RFR at 4. It is more than 100 yards away from any part of the BHM1 building in a rear portion of the parking lot that is rarely occupied by vehicles. The new location clearly meets the Regional Director’s desire to move the mailbox “to a neutral location on the Employer’s property away from the entrance to the facility.” January 11 Order at 4.

   The present location of the mailbox does not interfere with election conditions or create any impression of surveillance. Amazon will not watch anyone’s use of the mailbox for any

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4 Because the Petitioner’s Request for Review specifically requests review of a portion of the January 11 Order and does not request any review of the Second DDE, the portion of Rule 102.67(c) governing the impounding of ballots following a request for review of a decision and direction of election should not apply.
purpose, to the extent any occurs.\textsuperscript{5} Based on its current location, any incidental observation is highly unlikely.

Amazon is complying with the directions in the January 11 Order regarding treatment of the mailbox and thereby not giving “the impression that it ha[s] the power to supersede the Board’s authority.”\textsuperscript{6} It had no role in the decision to move the mailbox or where it was moved to. That decision was left to the Region’s and USPS’ discretion.

IV. \textbf{AMAZON WILL COMPLY WITH ANY ORDER FROM THE BOARD OR REGIONAL DIRECTOR REGARDING THE MAILBOX}

Amazon wants employees to be able to freely exercise their Section 7 rights in deciding whether to select Petitioner as their bargaining representative. To reduce the risk of objections from Petitioner after the re-run election, Amazon sought clear guidance from the Region as to what should be done with the mailbox. The Regional Director provided that guidance and arranged for the relocation of the mailbox. Amazon has complied with, and will continue to comply with, her January 11 Order. There is no signage or any other possible paraphernalia anywhere remotely near the mailbox. There is no tent or canopy or any object, on, at, around, or in view of the mailbox. While Amazon disagrees that the mailbox had any improper influence on the first election, the Regional Director’s January 11 Order adequately addresses the mailbox such that it will not interfere with the second election.

\textsuperscript{5} The Regional Director did not find any evidence that actual surveillance occurred during the first election. \textit{See} Second DDE at 10.

\textsuperscript{6} The Petitioner essentially concedes that the mailbox will not unfairly interfere with the election because it does not seek a stay in its Request for Review. If the Petitioner believed the mailbox interfered with free exercise of employees’ Section 7 rights or made a fair election impossible, it would demand a stay of the election while the Board considers its request. Petitioner also fails to even attempt to explain what is allegedly coercive about a nondescript mailbox with no messaging located on a remote portion of Amazon’s parking lot or, critically, how the mailbox could possibly interfere with employees freely exercising their Section 7 rights.
Nevertheless, at this point Amazon does not care what happens to the mailbox. Through this response, Amazon only seeks that the Board not allow the Union’s frivolous filing to interfere with the conduct of, or otherwise delay, the second election. Amazon will either continue to comply with the January 11 Order, as it has already been doing, or comply with any intervening order from the Board about the disposition of the mailbox.

V. CONCLUSION

For all of the foregoing reasons, Amazon respectfully asks the Board to deny the Petitioner’s Request for Review, and adopt the portions of the Regional Director’s January 11 Order that the Petitioner now challenges. In the alternative, Amazon respectfully requests clear guidance from the Board regarding the disposition of the mailbox soon, before the start of the election period on February 4, so as to bring this matter to a close fairly and quickly.
Dated: February 1, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of February, 2022, I filed the foregoing document electronically using the NLRB e-filing system and have served a copy of the same by electronic mail to:

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