EVERETT HOLDINGS LLC d/b/a
BUDLANDIA

Employer

and

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 555

Petitioner

DECISION AND DIRECTION OF ELECTION

Everett Holdings LLC d/b/a Budlandia (Employer) operates retail cannabis dispensaries in Portland, Oregon. On January 27, 2022, United Food and Commercial Workers Local 555 (Petitioner) filed a representation petition seeking to represent approximately five employees employed at the Employer’s store located at 7536 NE Martin Luther King Jr. Boulevard in Portland (MLK Store). Pursuant to the Rules and Regulations of the Board, a Notice of Representation Hearing issued on January 28, setting a hearing for February 17.

On February 9, the Employer filed a Statement of Position asserting the National Labor Relations Board (Board) lacked jurisdiction over the Employer. A hearing officer of the Board held a videoconference hearing in this matter on February 17 with both parties appearing. The appropriateness of the petitioned-for unit was not in dispute at this hearing, the only substantive issue was whether the Employer falls under the jurisdiction of the Board. Both parties filed briefs after the conclusion of the hearing. The parties also disagree regarding the method of election and were allowed to provide their position regarding the method of election in their brief.

The Employer does not dispute that it is engaged in the retail sale of goods, but disputes that it meets the Board’s discretionary retail standard and is engaged in interstate commerce at a level sufficient to establish statutory jurisdiction. In the event an election is directed the Employer seeks a manual election. Petitioner contends both jurisdictional requirements are met and seeks a mail ballot election.

As explained below, based on the record, briefs, and relevant Board law, I find the record establishes it is appropriate for the Board to assert jurisdiction over the Employer. Accordingly, I am directing a mail-ballot election in the petitioned-for unit consisting of approximately five employees employed at the Employer’s MLK Store.

1 All dates 2022 unless otherwise indicated.
I. JURISDICTION

A. Record Evidence

1. The Employer’s Organization

The Employer, Everett Holdings LLC, operates three cannabis retail stores under the Budlandia name: locations at 16440 SE Division Street (Division Store), 8135 SE Woodward Street (Woodward Store), and the MLK Store at issue here. All three locations are in the city of Portland in Multnomah County, Oregon. The Employer began operations in 2016 with the Division Store and subsequently expanded, with the MLK Store opening in October of 2021. The Employer employs five employees in the shift lead or budtender classifications at the MLK Store, as well as a manager.

One of the Employer’s owners, who use the title partner, testified at the hearing. According to this partner, the Employer is organized as a partnership with 5 members, with some partners having specific operational roles within the company. For example, the partner that testified at hearing indicated he is responsible for accounting and licensing. The partner described how Everett Holdings, LLC is a holding company that operates multiple stores under the Budlandia name. Although one employer, the partner described how each location has its own accounts, with each maintaining a separate profit and loss statement and balance sheet, as well as individual tax numbers with the state and the city. The partner did not dispute that although separate accounts are maintained for each location, certain obligations, such as tax payments, are combined and paid by the Employer as a single entity. It is also not disputed that the capital to open the MLK store was provided by Everett Holdings LLC.

Documents in the record reflect this organizational structure. Corporate registration documents and annual reports filed with the Oregon Secretary of State identify the Employer as “Everett Holdings LLC,” and listing the partners as owners. These documents also identify the address of the Employer as the same as the Division Store. Cannabis is a regulated industry, and the record contains individual “Marijuana Retailer License” documents issued by the Oregon Liquor & Cannabis Commission to “Everett Holdings LLC,” noting the “Budlandia” trade name, for the Division and MLK stores. The record also contains a Marijuana Regulatory License, issued by the City of Portland, to “Everett Holdings LLC d/b/a Budlandia,” for the Division, Woodward, and MLK Stores.

2. Gross Revenues

Petitioner previously filed a petition to represent a bargaining unit of employees employed at the Division Store. In that case, 19-RC-288906, the Employer, also identified as “Everett Holdings LLC d/b/a Budlandia,” entered into a stipulated election agreement. In that agreement the Employer stipulated as follows:

The Employer, Everett Holdings LLC d/b/a Budlandia, a State of Oregon corporation with places of business in Portland, Oregon, is engaged in the
retail business of selling cannabis and cannabis related products. During the past twelve months, a representative period, the Employer derived gross revenues valued in excess of $500,000 and, during the same period, purchased and received goods or services valued in excess of $2,000 from other enterprises located within the State of Oregon, who had received these goods directly from points outside the State of Oregon.

When questioned regarding the stipulation at hearing, the partner disavowed the previous stipulation. The Employer’s counsel, who signed the stipulation, stated at the instant hearing that – although the above language is not limited to the Division Store – the intent or understanding of the above was that it was limited to the Division Store.

In addition to distancing itself from its prior stipulation, the Employer also introduced evidence regarding the sales of the MLK store. The Employer submitted a “sales report,” a document generated by the Employer for accounting purposes, purporting to show that between opening in October of 2021 and December 31, 2021, the MLK store had gross revenues of $85,245.90. The Employer also placed in the record a profit and loss statement labeled “December 2021” that identified gross revenues of $33,258.94. The partner that testified at hearing – responsible for accounting – estimated that between the store opening in October 2021 and the date of the hearing, February 17, gross revenues were approximately $150,000. Questioned regarding the gross revenues of the Employer’s three locations combined over the last twelve months the partner estimated approximately two million dollars in total gross revenues.

The Employer also disputes that it is engaged in interstate commerce above a de minimis level. The partner at hearing testified that all the cannabis sold by the Employer is produced in Oregon. Questioned where the cannabis accessories sold at its stores are made the partner testified, he did not know. The record contains additional evidence regarding the Employer’s operations and its involvement in interstate commerce. The record contains evidence of the Employer purchasing numerous services as part of operating its business, including insurance, security, website design, and tax and payroll services. It was estimated insurance and security each cost thousands of dollars per month, and one-time services such as the Employer’s website design cost approximately $1,000.

The record contains also contains evidence of the Employer purchasing numerous goods from multi-state retailers, including entities like Wal-Mart and Ikea. Examples in the record include approximately $25,000 in cabinets, shelving, and display cases to furnish the MLK store and hundreds of dollars per month in bags and bottles to package the cannabis it sells. The record also contains evidence of one-time purchases of significant value, including computers, printers, and cash registers. The Employer also spends hundreds of dollars per month on utility services, including electricity and gas from Portland General Electric and Northwest Natural Gas, internet service from Comcast, and cell phone service from Cricket. The record does not contain specific details regarding real estate ownership, but the Employer also spends thousands of dollars per month on rent.
Employer maintains a single bank account at a Portland credit union. Because of limitations on the ability of the cannabis industry to access financial services the Employer performs some transactions in cash, such as paying Oregon state taxes. The Employer also pays employees in cash at times.

B. Board Law

The National Labor Relations Board’s jurisdiction under the National Labor Relations Act extends to enterprises whose operations affect interstate commerce. Section 2(6) of the Act defines “commerce” and Section 2(7) defines “affecting commerce.” The Board’s jurisdiction has been construed to extend to all such conduct as might constitutionally be regulated under the commerce clause, subject only to the rule of de minimis. NLRB v. Fainblatt, 306 U.S. 601, 606–607 (1939); NLRB v. Reliance Fuel Oil Corp., 371 U.S. 224, 226 (1963) (noting that with regard to the Act’s definition of commerce, the Supreme Court “has consistently declared that in passing the National Labor Relations Act, Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause.”)

Commerce clause jurisdiction is broad, but in an exercise of administrative discretion the Board has applied discretionary jurisdictional standards, such that it only extends its jurisdiction over those entities that have a substantial effect on commerce. See, e.g. Harry Tancredi, 137 NLRB 743, 745 (1962). To determine whether a substantial effect exists, the Board has traditionally applied a non-retail standard, measured by the inflow and outflow of goods and services and applied where an employer sells goods or services to commercial enterprises or governmental bodies, or a retail standard, measured in gross annual volume of business and applied where an employer sells goods or services directly to a purchaser to satisfy his own personal wants or those of his family or friends. See Roland Electrical Co. & Walling, 326 U.S. 657, 674 (1946); Bussey-Williams Tire Co., 122 NLRB 1146, 1147 (1959); Bob’s Ambulance Service, 178 NLRB 1 (1969).

The Board’s retail standard requires an employer have a gross annual volume of business of at least $500,000. Carolina Supplies & Cement Co., 122 NLRB 88 (1959). Because gross volume does not in and of itself indicate movement across state lines, the retail standard also requires a showing of statutory jurisdiction: interstate commerce above a de minimis level. See, e.g., Longshoremen ILWU (Catalina Island Sightseeing Lines), 124 NLRB 813, 815 (1959).

C. Determination

The record readily establishes two points: the Employer in the instant case is the same Employer that stipulated to the Board’s jurisdiction in case 19-RC-288906, and that the Employer here is the named entity, a limited liability company that operates three retail cannabis locations in Portland, Oregon. The “employer” for the purpose of analyzing jurisdiction is not one of the individual locations operated by the Employer.

The instant case does not raise a single employer, joint employer, or alter ego issue; the Employer readily admits that it is a single entity. The Employer’s argument is not that the MLK Store is a separate company, but instead that the MLK Store should be the sole portion of the company examined in making a jurisdictional determination. In short, the Employer is contesting
the way the Board has traditionally assessed jurisdiction, examining the gross volume of business or inflow or outflow of an employer. Instead, the Employer here argues the only way to properly measure jurisdiction is an assessment that is coextensive with the bargaining unit sought. In this instance by location. Petitioner seeks to represent a unit of employees employed at a single retail establishment, the MLK Store, and accordingly the Employer contends the relevant inquiry should be the gross volume of business at that store and that store alone. The Employer then presents evidence that the MLK Store had a gross volume below $500,000 in 2021.

The Employer is arguing for a profound change in Board law. Whatever the merits of the Employer’s contention it would require disregarding decades of well-established precedent, and I am obligated to follow the Board’s directives. I also note that in making this aggressive argument the Employer does not cite to any precedent, either supporting its view or even clarifying what case law it specifically seeks to overturn. On brief, the Employer makes statements such as “a single entity can be a separate employer for multiple businesses,” and “[t]he fact that Budlandia-MLK received startup capital from the owners of Everett Holdings LLC is not relevant to the inquiry,” without any citation. I can only take these as arguments that the law should be changed, as they have no apparent basis in the Board’s current caselaw. To the extent they are arguments to change the law they are arguments properly made to the Board.

Turning to the specific question of whether the Employer meets the Board’s jurisdictional standards, the record supports finding the Employer meets both the discretionary and statutory requirements. It is not disputed the Employer operates a retail business. Regarding the discretionary standard, the Employer’s own witness testified the gross volume of business over the last twelve months was approximately two million dollars, more than sufficient to meet the Board’s retail standard. Further, the Employer’s own profit and loss statements show the MLK Store had gross volume of business in December of $33,258.94. The record indicates the Division Store does more business than the MLK Store, but even if it is assumed for the sake of argument all three stores did this lower level of business over 12 months, this would equal over a million dollars in gross volume of business. The calculation is essentially the same if the Employer’s $150,000 estimate of gross volume of business over four months is used. Both, using the Employer’s own estimates and documents, clearly demonstrate the Employer meets the retail standard.

Regarding statutory jurisdiction the record contains sufficient information to find the Employer conducts at least several thousands of dollars in interstate commerce. Again, the Employer’s own witness acknowledged the Employer spends tens of thousands of dollars on products that are self-evidently part of interstate commerce; there can be no serious contention that a computer purchased at a nationwide retailer or internet service provided by a regional provider exist outside interstate commerce. The Employer suggests that it is Petitioner’s burden to demonstrate these expenditures down to the dollar amount, but again this is an assertion made without citation. I find that the admissions of ownership are more than sufficient to establish these facts, even if that witness is unable to provide a specific dollar amount for every transaction.

The Employer attempts to dismiss these purchases as ancillary to its primary business, as stated on brief “Budlandia-MLK, owned by Everett Holdings LLC, is not in the business of purchasing cash registers, buying and selling furniture, or trading in energy commodities.” However, the Board does not require that statutory jurisdiction be established by the Employer’s
primary product, and to the extent the Employer is making this argument it provides no support. I recognize that the Employer is a cannabis retailer, and that the current regulatory scheme requires the Employer to obtain its product in-state. However, statutory jurisdiction is merely a question of whether the Employer is engaged in interstate commerce above a *de minimis* level, the Board does not make the distinction the Employer suggests.

II. METHOD OF ELECTION

A. The COVID-19 Pandemic

The COVID-19 pandemic has had a profound impact on daily life in the United States in the last two years. Despite unprecedented efforts to limit transmission, to date almost 80 million people in the United States have been infected with COVID-19 and almost 1 million people have died.\(^2\)

The Centers for Disease Control and Prevention (CDC) has determined “[l]imiting close face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).”\(^3\) Many of the measures recommended by the Federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid crowds, practice good hygiene, maintain at least a 6-foot distance between individuals, and use masks when around other people.\(^4\)

Because of the risk of infection associated with gatherings and in-person activities, the pandemic has also impacted the way the Board conducts its elections. The Board has traditionally conducted in-person, manual elections and used mail-ballot elections in limited circumstances. In 2020, in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the Board addressed the circumstances where the pandemic may dictate appropriate use of mail-ballot elections. As the pandemic has ebbed and flowed over the years since *Aspirus* the result has been an increase in the use of the mail-ballot procedures. *KMS Commercial Painting, LLC*, 371 NLRB No. 69, slip op. at 1 (2022) (304 mail ballot elections taking place in fiscal year 2022). Mail-ballot procedures have allowed the Board to continue conducting elections even in the face of high COVID-19 transmission rates. As the Board stated in *KMS*, “during the pandemic, the Board's mail ballot procedures have served the Board's mission of ensuring free and fair elections, while also ensuring the health and safety of employees, parties, and Board personnel throughout the election process.” *Id.*

B. Board Standard

Congress has entrusted the Board with a wide degree of discretion in establishing the procedures and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements


The Board’s longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, supra at 1145.

After a brief pause in elections early in the pandemic, the Board resumed conducting elections in April 2020, with many Regional Directors, including this Region’s, directing primarily mail-ballot elections in light of the extraordinary circumstances presented by the COVID-19 pandemic. To assist Regional Directors in determining when a manual election could be conducted safely, on July 6, 2020, the General Counsel issued a memorandum titled “Suggested Manual Election Protocols,” *Memorandum GC 20-10*, setting forth detailed suggested manual election protocols.

In *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the Board addressed how Regional Directors should assess the risks associated with the COVID-19 pandemic when considering the appropriate method of election. In doing so, the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. Specifically, when one or more of the following situations is present, a Regional Director should consider directing a mail-ballot election:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;

2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;

3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;

4. The employer fails or refuses to commit to abide by *GC Memo 20-10*, “Suggested Manual Election Protocols;”

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5 I note that the provisions of the Casehandling Manual are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board (General Counsel) and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

_Id._ slip op. at 4-7. The existence of one or more of these situations will normally suggest that a mail ballot is appropriate under the “extraordinary circumstances presented by this pandemic.” _Id._ slip op. at 4. The Regional Director has discretion to conduct an election by mail ballot “under the peculiar conditions of each case.” _Id._ slip op. at 3 (citing _National Van Lines_, 120 NLRB at 1346). The Regional Director’s determination to conduct an election manually or by mail is subject to an abuse of discretion standard. _Aspirus_, 370 NLRB No. 45, slip op. at 3 (citing _San Diego Gas & Electric_, 325 NLRB at 1144 n. 4). Finally, in _Aspirus_, the Board noted that a Regional Director who directs a mail-ballot election under one or more of the foregoing six situations will not have abused her or his discretion. _Aspirus_, 370 NLRB No. 45, slip op. at 8.

C. Determination

Several of the _Aspirus_ factors are not relevant to my determination in this case. The Region tasked with conducting the election is not operating under mandatory telework status, mandatory state or local health orders relating to maximum gathering size are not at issue, the Employer has committed to abide by _Memorandum GC 20-10_, and there is no evidence of a current outbreak at the Employer’s facility. Ultimately, I have determined that a mail ballot election is appropriate in this case due to the remaining factor: the 14-day trend in number of new confirmed cases 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.

The Board in _Aspirus_ directed Regional Directors to, in considering these statistical factors, utilize the data published by Johns Hopkins University, or from official state or local government sources. The Board further stated where county level data is not available, Regional Directors should look to state level data.

The first contingency at issue here is whether the 14-day trend in number of new confirmed cases in the county where the facility is located is increasing. Johns Hopkins University & Medicine Coronavirus Resource Center reports a -14 day case count in Multnomah County, where the facility is located, of 69 cases and a -1 day case count of 100 cases, an increase.6 As such, I conclude the 14-day trend in confirmed COVID-19 cases in Multnomah County is increasing.

Regarding the second contingency, whether the 14-day testing positivity rate is 5 percent or higher, Multnomah County, publishes COVID-19 data collected by the Oregon Health Authority, including the weekly test positivity rate by county.7 Over the prior two weeks Multnomah County has reported test positivity of 2.8 and 2.7 percent, respectively. This is almost

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identical to the test positivity level of Oregon overall as of March 30, reported by Johns Hopkins, of 2.84 percent.8

Aspirus directs that a mail ballot election may be appropriate where either one of the two contingencies described above are met. While the second contingency regarding testing positivity appears below the 5 percent level referenced in Aspirus, the first contingency is present, an increasing trend in cases in the county where the election would take place. Under these circumstances a mail ballot election is appropriate.

III. CONCLUSION

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. 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 unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time budtenders and shift leads employed by the Employer at its facility located at 7536 NE Martin Luther King Jr. Blvd., Portland, Oregon.

EXCLUDED: All agricultural employees, managerial employees, and guards and supervisors as defined by the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Local 555.

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8 https://coronavirus.jhu.edu/testing/testing-positivity (last viewed March 30, 2022)
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 by a designated official of the National Labor Relations Board, Subregion 36, 1220 SW 3rd Avenue, Suite 605, Portland, OR 97204 on Tuesday, April 12, 2022, at 4:30 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, April 19, 2022, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 office at 503-326-3085 or our national toll-free line at 1-866-762-NLRB (1-866-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Subregion 36 office by 3:00 p.m. on Tuesday, May 3, 2022. The mail ballots will be comingled and counted by an agent of Subregion 36 of the National Labor Relations Board on Tuesday, May 3, 2022, at 3:00 p.m. with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count. If, at a later date, it is determined that a ballot count can be safely held in the Subregion 36 office, the Region will inform the parties with sufficient notice so that they may attend.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending March 26, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.
C. Voter List

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

To be timely filed and served, the list must be received by the regional director and the parties by Monday, April 4, 2022. The list must be accompanied by a certificate of service showing service on all parties. The region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.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 accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to

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9 Petitioner waived its 10 days with the voter eligibility list.
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.

V. RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated at Seattle, Washington, this 31st day of March, 2022.

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
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Seattle, Washington 98174