UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 7

ASCENSION PROVIDENCE ROCHESTER HOSPITAL
Employer

and

Case 07-RD-293701

ALYSE GSCHWENDER¹
Petitioner

and

LOCAL 40, OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (OPEIU), AFL-CIO
Union

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to decertify the Union as the exclusive collective-bargaining representative of an acute care hospital’s existing nonconforming unit of all full-time and regular part-time registered and unregistered medical technical laboratory employees employed at the Employer’s laboratory.² The Union asserts that the petition must be dismissed because the Employer has announced an intention to contract out its laboratory operations to another entity. However, the evidence adduced at hearing does not establish that contracting out of the bargaining unit work is imminent and definite. As such, and because the existing Unit consists of professional and non-professional employees, I order a self-determination election in the manner set forth in Sonotone Corp., 90 NLRB 1236 (1950).

Furthermore, in conjunction with the Board’s recent guidelines set forth in Aspirus Keweenaw, 370 NLRB No. 45 (2020), I have determined that a mail ballot election is appropriate in view of the circumstances discussed below related to the current state of the COVID-19 pandemic.³

¹ The petition was originally filed by Petitioner Delaney Warren. On May 16, 2022, I granted the Petitioner’s Motion to Substitute Petitioner.

² The Unit, as set forth in the recognition clause of the most recent collective-bargaining agreement between the parties, is as follows: All full-time and regular part-time registered and unregistered medical technical laboratory employees at the Employer’s laboratory including section heads, but also excluding students, casual employees, supervisors, PRN and all other employees as certified by the Michigan Employment Relations Commission on September 6, 1974 in Case No. R73 J-409.

³ The Union filed a Motion to Dismiss or in the alternative, Block the Processing of the Petition. The Motion asserts that the petition must be dismissed, or in the alternative, blocked from further processing, because the Region is currently investigating a charge in Case 07-CA-291149, alleging that the Employer has failed and refused to provide information that is necessary to engage in collective bargaining. In accordance with Section 103.20 of the Board’s
I. FACTS

The Employer operates an acute care hospital in Rochester, Michigan. The Union has been the exclusive collective-bargaining representative of the Unit since approximately 2018, following a merger with an independent Union that had represented the Unit since being certified by the Michigan Employment Relations Commission on September 6, 1974. The Unit consists of approximately 24 technologists and technicians employed in the Employer’s laboratory. The current collective-bargaining agreement was effective from October 1, 2019 to January 31, 2022, and was extended until April 30, 2022. The parties are negotiating a successor collective-bargaining agreement and met most recently on April 18, 2022. The parties have not agreed to further extend the collective-bargaining agreement.4

On about February 10, 2022, the Employer’s Labor Relations Partner, Kimberly Jackson, contacted Unit Vice-President Michelle Foster and informed her that the Employer had decided to contract out the work of the Unit to another company. Jackson explained further that this transition was expected to be completed at the end of June.

On April 21, 2022, representatives of the contracting Employer (Labcorp) held a “town-hall” meeting for employees in the bargaining unit. The presentation shown to employees at that time reflected that Labcorp seeks to “be ready on Day 1” for which it is “targeting end of May pending regulatory approval” and that “All…Onboarding Information Provided Prior to Closing of the Transaction is Contingent Upon a Successful Closing.” The slides further explain that employment offer letters would be emailed to bargaining unit employees beginning the week of May 2 and that new-hire orientation sessions for onboarding and benefits enrollment information would be scheduled. Another slide indicates that the employment screening process would begin the week of May 9 and a pre-closing town hall would be held during the week of May 16. The final step, according to that slide, would be various onboarding tasks that are scheduled for “late May (dependent on closing date).”

Thereafter, Labcorp emailed a copy of the presentation and the link to a website to the bargaining unit employees. The website, maintained by Labcorp, contains a graphic labeled “Transition Milestones” that states, in relevant part, that in late-May to July, employees will “experience their first day as a [Labcorp] employee”, receive their first paycheck from Labcorp, complete their new hire orientation, and take required training. The Transition Milestones title is marked with an asterisk that notes that the timeline is “subject to satisfaction of transaction closing conditions, including necessary regulatory approvals” and that “timing [is] subject to change.” The FAQ portion of the website reaffirms that the transition is currently expected to occur around the end of May but “it may be later than that, however, due to customary closing

Rules and Regulations, the Motion to Dismiss is denied. The Union’s request to block further processing of the petition is also denied inasmuch as the Union’s request does not comport with the requirements of Section 103.20(a) of the Board’s Rules and Regulations.

4 Effects bargaining over the decision to subcontract has “been brought up in conversation” but the record does not show that the Union has requested to bargain the effects of the subcontract. The Vice-President of the Unit also testified that the Union has advised the Employer that it would like to continue negotiations with the Employer for a successor collective bargaining agreement in case the subcontract is not effectuated.
conditions or delays in obtaining regulatory approval.” The record does not establish what steps have been taken to secure regulatory approval, the specifics of the regulatory approval, such as what regulatory approval is needed and from whom, or when regulatory approval could reasonably be expected if, indeed, it is granted.

II. ANALYSIS

The Board’s longstanding policy is that it will not conduct an election where permanent changes to the scope and composition of an otherwise appropriate unit are imminent and certain. Hughes Aircraft Co., 308 NLRB 82 (1992); Martin Marietta Aluminum, 214 NLRB 646, 646–647 (1974); Cooper International, 205 NLRB 1057, 1057 (1973). The party asserting an imminent cessation of operations bears the burden of showing, through concrete evidence, that cessation is both imminent and definite. Retro Environmental, Inc., 364 NLRB No. 70, slip op. at 4 (2016); Hughes Aircraft Co., 308 NLRB 82, 83 (1992); Martin Marietta Aluminum, 214 NLRB 646, 646–647 (1974). A petition will not be dismissed based on conjecture or uncertainty concerning future operations. See Canterbury of Puerto Rico, Inc., 225 NLRB 309 (1976). Similarly, a petition will be processed where the evidence shows that an employer’s initial anticipated date for completing its operations is inaccurate. Gibson Electric, 226 NLRB 1063 (1976).

The evidence adduced at hearing does not establish that the cessation of or permanent changes to the Employer’s operations is definite and imminent. The Employer and Labcorp have set a goal, subject to regulatory approval, of completing the transaction by the end of May. However, this is a different date than what was initially reported to the Union when the Employer advised that it intended to complete the transaction by the end of June. Indeed, nothing in the record establishes a date certain that employees will become employees of Labcorp. Further, no evidence was presented as to the nature of the regulatory approval sought, how likely it is to be granted, and what, if any, impact that has on the continuing operations of the Employer related to the unit in question. All the documents in the record indicate that such a transition is likely, but consistently indicate that the timelines provided for such a transition are goals, and not firm deadlines. Thus, the evidence is insufficient to indicate that the proposed outsourcing is imminent or certain such that the need for an election for the current unit is obviated.5

Accordingly, the Union has not met its burden to show that the cessation of or permanent change to the Employer’s operations is imminent and definite.

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5 The situation here is different from other cases where there were firm and demonstrable plans to cease business. See, Larson Plywood Co., 223 NLRB 1161 (1976) (finding imminent cessation based on resolution to liquidate business within 90 days and no evidence of inconsistent action). Cf. Cal-Neva Lodge, 235 NLRB 1167 (1978) (dismissing petition where operations had ceased and testimony they would resume in near future was speculative).
III. SELF-DETERMINATION PRINCIPLES

Under Section 9(b)(1) of the Act, the Board is prohibited from including professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. Thus, the desires of the professional employees must be ascertained as to inclusion in a unit with nonprofessional employees. To carry out the statutory requirement, the Board adopted a special type of self-determination procedure in an election for determining whether professional employees wish to be included in a unit with non-professional employees, known as a Sonotone election. Sonotone Corp., 90 NLRB 1236 (1950). Additionally, the Board requires that there be a Sonotone election each time that there is an election in which professionals and nonprofessionals may be included in the same unit. American Medical Response, Inc., 344 NLRB 1406, 1408-1409 (2005) (emphasis added) (holding that subsequent Sonotone elections are required in the same unit regardless of whether the professionals have already voted for inclusion in the overall unit.)

As previously stated, the unit is a pre-existing nonconforming acute care unit of certain technologists and technicians. The Employer introduced into evidence the job description of each bargaining unit position, which are as follows:

Histology Tech; Technician II; Technologist III; Technologist IV; Technologist V Sec/Head BB; Technologist V Sec/Head Chem; Technologist V Cytology; Technologist V Sec/Head HemCoag; Technologist V Sec/Head Histo; Technologist V Sec/Head Micro.

No party sought to rebut the presumption that the technologists are professional employees as defined in the Act. Group Health Assn., 317 NLRB 238 (1995); Pontiac Osteopathic Hospital, 327 NLRB 1172 (1999), and I find, based on the record evidence, that the Technologist III, Technologist IV, Technologist V Sec/Head BB, Technologist V Sec/Head Chem, Technologist V Cystology, Technologist V Sec/Head HemCoag, Technologist V Sec/Head Histo, and Technologist V Sec/Head Micro classifications are professional employees as defined the Act.

Regarding the Histology Tech and Technician II classifications, Director of Clinical Operations Kimberly Russell testified that the job duties of Histology Tech and Technician II are as described in the job descriptions. The job summary of Histology Tech employees indicate that

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6 Section 9(b)(1) provides in pertinent part that “the Board shall not ... decide that any unit is appropriate ... if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; ...”

7 In Leedom v Kyne 358 U.S. 184, 188 (1958), the Supreme Court found Section 9(b)(1) to be “clear and mandatory” and indicated that the self-determination election is a “right” given by Congress to professional employees and that Congress intended that right to be enforced.

8 The Health Care Rule excepts from its coverage “existing nonconforming units.” Rules sec. 103.30(a). See Crittenton Hospital, 328 NLRB 879, 880 (1999).
they “[work] closely with Section Leader of Histology-Cytology toward the completion of the routine section workload for patients of all age groups” and that “duties encompass manual procedures requiring sufficient dexterity as well as working with various devices, machines, and instruments.” The job summary also notes that Histology Tech employees “[perform] only routine procedures, but may assist histotehnologists in more complex technical tasks when requested.” Similarly, Technician II employees “[work closely] with Medical Technologists and Section Leader of his/her assigned section toward the completion of the routine section workload for patients of all age groups” and “duties may encompass but not exclusively entail working with various devices, machines and instruments that aid in the production of clinical data.” The job summary also states that Technician II employees “[perform] only routine tests, but may assist technologist in more complex technical procedures when requested.” The job descriptions of the Histology Tech and Technician II classifications state that employees are expected to have theoretical and practical knowledge of tests and procedures necessary to perform technical functions and evaluations as generally acquired through completion of an associate degree in their respective fields.\(^9\)

The term “professional employee” is defined in Section 2(12) of the Act as follows:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

The record does not reflect that the Histology Tech and Technician II employees are professional employees as defined in the Act. The work of these employees, as demonstrated by the record evidence, is not predominantly intellectually and varied in character as opposed to routine mental, manual, or physical work. Further, there does not appear to be any requirement that these positions undertake an advanced type of learning acquired by a prolonged course of specialized intellectual instruction as opposed to generalized training on the performance of routine processes. Accordingly, I find that the Histology Tech and Technician II employees are not professional employees as defined in the Act, and, as detailed below, I am ordering a Sonotone election in this matter.

\(^9\) The record does not show how often, if at all, the technicians are asked to assist with more complex technical procedures.
IV. ELECTION DETAILS

A. Applicable Framework When Considering a Mail Ballot Election

On November 9, 2020, the Board reiterated its longstanding preference for manual elections under San Diego Gas & Electric, 325 NLRB 1143, 1144 (1998) while also providing more specific and defined parameters under which Regional Directors should exercise their discretion in determining election type against the backdrop of COVID-19. The Board set forth “six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic,” noting that “[w]hen one or more of these situations is present, a Regional Director should consider directing a mail-ballot election” under the extraordinary circumstances presented by the COVID-19 pandemic. Aspirus Keweenaw, 370 NLRB slip op. at 1 (2020). Those six situations are:

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 GC Memo 20-10 protocols;\(^{10}\)

5. There is a current Covid-19 outbreak at the facility or the employer refuses to disclose and certify its current status;\(^{11}\) and

6. Other similarly compelling considerations.

Accordingly, I analyze the instant petition using the prevailing circumstances in the state and county where the facility is located and in light of the Board’s guidance in Aspirus. 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 and mandatory state or local health orders relating to maximum gathering size are not at issue. However, the Covid-positivity rate in the county where the Employer is located is well above the five percent set as a

\(^{10}\) July 6, 2020, General Counsel Memorandum 20-10, “Suggested Manual Election Protocols” (GC Memo 20-10). See also, GC Memo 21-01, dated November 10, 2020, stating “[a]side from elements set forth in GC Memo 20-10, upon which the Aspirus Keweenaw Board relies in part, the instructions set forth in this memorandum supersede all other instructions on the subject.”

\(^{11}\) The Board clarified its direction regarding the fifth “current outbreak” factor in Rush University Medical Center, 370 NLRB No. 115, slip op. at 1-2 (April 27, 2021).
When assessing Covid positivity rates, 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 stated 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 (italics added). For the former, Aspirus did not specifically detail how the 14-day trend in the number of new cases should be evaluated, but it did direct that “the 14-day period should be measured from the date of the Regional Director’s determination, or as close to that date as available data allow” and that county-level data for the potential polling place should be accessed through the “Coronavirus Resource Center” website maintained by Johns Hopkins University. Aspirus, 370 NLRB No. 45, slip op. at 5, fn. 20 & 22.

Currently, the Johns Hopkins website does not provide positivity rates as it has in the past and appears to aggregate the data posted on State of Michigan’s Coronavirus website, which currently only updates its Covid-19 data on Mondays, Wednesdays and Fridays. However, those databases, in conjunction with the Michigan Safe Start Map, which aggregates Michigan Department of Health and Human Services and CDC data, indicate that, as of May 20, 2022, the Covid positivity rate in Oakland County is 20.7% and has been rising steadily for the past 14 days. According to the Oakland County Health Department’s Covid Dashboard, which shows 276.7 Covid cases per day from 4/11 through 4/25/22 and 462.2 Covid cases day from 4/25 through 5/8/22, and 582.6 Covid cases per day from 5/2/22 through 5/15/22, which shows that the 14-day trend in the number of new confirmed cases in the county where the Employer’s facility is located is increasing.

On May 14, 2022, the Union filed a Motion to Take Notice stating that the Centers for Disease Control and Prevention recently elevated the community risk level for Covid-19 transmission in Oakland County from Medium
V. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude 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.\footnote{The parties stipulated that the Employer operates an acute care hospital located at 1101 West University Drive, Rochester, Michigan. During the calendar year ending December 31, 2021, the Employer derived gross revenues in excess of $250,000, and purchased and received at its Rochester, Michigan facility goods valued in excess of $5,000 directly from points outside the State of Michigan.}

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

4. A question 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. In accordance with Section 9(b) of the Act, I make the following unit determinations:

   (a) If a majority of the full-time and regular part-time technologists in Voting Group A vote for inclusion in the same unit with the technicians in Voting Group B, the following employees will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time Histology Techs; Technicians II; Technologists III; Technologists IV; Technologists V Sec/Head BB; Technologists V Sec/Head Chem; Technologists V Cytology; Technologists V Sec/Head HemCoag; Technologists V Sec/Head Histo and Technologists V Sec/Head Micro employed by the Employer at its Rochester, Michigan facility located at 1101 West University Drive, Rochester, Michigan; but excluding all other employees, guards and supervisors as defined in the Act.

   (b) If a majority of the full-time and regular part-time technologists in Voting Group A do not vote for inclusion in the same unit with the nonprofessional employees in Voting Group B, the following units will each constitute appropriate units for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   \footnote{There is no need to rule on this Motion because I have already decided that the Aspirus factors weigh in favor of a mail ballot election.}
UNIT A: All full-time and regular part-time Technologists III; Technologists IV; Technologists V Sec/Head BB; Technologists V Sec/Head Chem; Technologists V Cytology; Technologists V Sec/Head HemCoag; Technologists V Sec/Head Histo and Technologists V Sec/Head Micro employed by the Employer at its Rochester, Michigan facility located at 1101 West University Drive, Rochester, Michigan; but excluding all other employees, guards and supervisors as defined in the Act.

UNIT B: All full-time and regular part-time Histology Techs and Technicians II employed by the Employer at its Rochester, Michigan facility located at 1101 West University Drive, Rochester, Michigan; but excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting groups set forth above. The professional employees in Voting Group A will vote whether or not they wish to be included in a unit with the nonprofessional employees in Voting Group B and the employees in both voting groups will vote whether or not they wish to be represented for purposes of collective bargaining by Local 40, Office and Professional Employees International Union (OPEIU), AFL-CIO.

A. Election Details

The election will be conducted by United States mail.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:00 p.m. on Monday, June 6, 2022, ballots will be mailed to voters by personnel of the National Labor Relations Board, Region 7. 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 Friday, June 17, 2022 should communicate immediately with the National Labor Relations Board by either calling Elections Specialist Callie Clyburn-Pierce at (313) 334-8049 or (202) 600-1483, Board Agent Daniel Molenda at (313) 335-8034, the Region 7 Office at (313) 226-3200 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters should return their mail ballots so that they will be received in the National Labor Relations Board, Region 7 Detroit Regional Office by the close of business, 4:45 p.m. (Eastern) on Monday, June 27, 2022. All ballots will be commingled and counted beginning at 2:00 p.m. (Eastern) on Tuesday, June 28, 2022. In order to be valid and counted, the returned ballots must be received in the Detroit Regional Office prior to the counting of the ballots. The method for the count will be determined by the Regional Director and will require video participation.
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 Region 7 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 **Saturday, May 14, 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 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, 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 May 25, 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 list must be filed electronically 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. The list must also be served electronically on the other parties named in this decision.

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

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

D. Posting of Notices of Election

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

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

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: May 23, 2022

Elizabeth Kerwin  
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