EMPLOYER'S REQUEST FOR SPECIAL PERMISSION TO APPEAL
THE REGIONAL DIRECTOR'S ORDER CONVERTING THE ELECTION TO A MAIL BALLOT ELECTION AND EMPLOYER’S SPECIAL APPEAL OF SUCH RULING

Packers Sanitation Services, Inc. (PSSI) (the “Employer), pursuant to Rule 102.26 of the Board’s Rules and Regulations, files this Request for Special Permission to Appeal the Regional Director’s Order on May 23, 2022, in which the Regional Director (“RD”) abused his discretion to cancel the in-person, manual election set for Friday, May, 27, 2022 and ordered a mail ballot election based only on his conclusion that the 14-day trend of new confirmed COVID-19 cases in McLennan County, Texas, is increasing and that the 14-day “testing positivity rate” in McLennan County, Texas, is higher than 5 percent. The Regional Director did not make any effort to evaluate the relevant circumstances and confirm whether for this particular unit and location a manual election was both the preferred and safe method for allowing employees to decide the issue of union representation. The late and sudden change in the election process has and will interfere with the rights of employees if the mail-ballot process is allowed to occur. In support of this Request and Special Appeal, the Employer states as follows:
1. Based on the facts of this case, the Regional Director’s Order issued on May 23, 2022, is an abuse of discretion.

2. On April 20, 2022, the Union filed a petition for an election with the National Labor Relations Board (“NLRB” or the “Board”) in which the Union seeks to be certified as the bargaining representative of certain employees of the Employer at the Employer’s Waco, Texas facility.

3. The applicable unit consist of approximately 126 eligible voters.

4. On May 10, 2022, the RD approved a Stipulated Election Agreement (the “Agreement”) between the Employer and the Union. (Ex. A, Agreement.) The Agreement provided for a secret, manual-ballot election to take place on May 27, 2022, between 12:15 a.m. CST and 1:45 a.m. CST, and 3:00 p.m. CST and 4:00 p.m. CST in the Training Room at the Employer’s facility located at 500 E. Lake Shore Drive, Waco, Texas. The agreement further outlined the safety protocols the Employer agreed to abide by during the election—which are the protocols required by GC Memo 20-10, *Suggested Manual Election Protocols*.

5. On May 23, 2022, at approximately 5:37 p.m. (CST), the RD issued an Order cancelling the manual ballot election and converting the election to a mail ballot election. (Ex. B, Order.). The RD did so without a hearing and despite the Employer’s objection to the change.

6. However, all of the six “parameters” the Board outlined in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020) that should be considered before deciding whether to order a mail-ballot election favor an in-person election.

7. Currently, Region 16 is not under mandatory telework status as noted on the Board’s website. Therefore, the first factor does not weigh in favor of a mail ballot election.
8. The Board’s website further notes that the “COVID Community Level” in all three Region 16 office locations is “low.”¹ In fact, the level is Waco is below the threshold set by the Board in Aspirus Keweenaw as the City of Waco’s website lists the COVID-19 positivity rate as 4%.² Thus, although the RD’s Order notes that according to COVIDActNow.org, new confirmed cases in McLennan County are increasing and the positivity rate is above 5%, the City of Waco lists the positivity rate at 4%—which is below the 5% threshold in Aspirus Keweenaw—and the Board deems the COVID-19 rate in Region 16 to be “low.” Further, it is indisputable that daily COVID-19 testing performed in Texas has decreased to its lowest levels in years.³ While the COVID-19 positivity rate may have increased, it is evident that individuals are no longer testing themselves for Covid-19 in the same large numbers as occurred in October 2020 when the Board decided Aspirus Keweenaw and only those with symptoms are testing making it substantially more likely that a higher percentage will test positive in May 2022 than in October 2020 (e.g., in October 2020 the daily average of COVID-19 test in Texas surpassed 70,000 compared to less than 20,000 daily tests in May 2022). Thus, even if Waco exceeded the threshold set in Aspirus Keweenaw, which it currently is not, a threshold of 5% is no longer reasonable and the Employer avers the county-, state-, and nation-wide positive case trend should not be examined in a vacuum and form the sole basis of a mail-ballot election. This is especially true here where the Employer continued to operate throughout the Pandemic, has had no major outbreaks of Covid-19 at its Waco Facility, and has not had a single reported Covid-19 case in the last one hundred (100) days at its Waco facility. Finally, the most prevalent strain of Covid-19 currently present in the United States is substantially less severe than the most prevalent strain in October 2020—providing further support

for not basing a mail-ballot election on this single factor. The presence of one or more of these six “situations” outlined in Aspirus Keweenaw does not require a mail-ballot election. Aspirus Keweenaw, 370 NLRB, slip op. at 8.

9. The proposed election location—the training room—would not violate any state or local health orders governing maximum gathering size. In fact, there currently are no restrictions on the size of gatherings or physical distancing within McLennan County. Even if there were, the Agreement notes that the training room is large enough to easily accommodate a table and three chairs, with more than six feet of space between them, and separate doorways for entry and exit. The third factor, therefore, also weighs against direction of a mail ballot election.

10. Pursuant to the Agreement, the Employer is willing and able to fully comply with all manual election requirements set forth in GC Memo 20-10. This includes certifying that the polling area was sanitized in compliance with applicable CDC standards; certifying the number of individuals who test positive, are awaiting test results, or who are exhibiting symptoms or sustain exposure over the two weeks preceding the election; making the polling area available for video inspection at least 24 hours prior to the election; furnishing disposable pencils, glue sticks, and tape for purposes of sealing envelopes within the polling area; marking the floor of the polling area with tape to ensure sufficient separation at all times; providing plexiglass barriers to separate those seated at the table in the polling area from one another and from others in the polling area; and providing masks, hand sanitizer, gloves, and wipes. Accordingly, the fourth factor favors an in-person election.

11. There is no Covid-19 outbreak at the Employer’s Waco Facility. In fact, the Employer has not had a single reported Covid-19 positive employee in the last one hundred (100) days. Therefore, the fifth factor does not support a mail ballot election.
12. No other compelling considerations or circumstances support a mail ballot election in this case. Again, the Employer is more than capable of taking those proactive steps necessary to ensure the safety of all election participants and NLRB and third-party representatives. It should also be noted that the Employer’s workforce has been reporting to their workplace each and every day throughout the pandemic. The notion that they are fully capable of doing so in the course of performing their duties every day but not for purposes of casting their ballots over the course of two and a half hours falls completely flat. Therefore, the last factor does not weigh in favor of a mail ballot election.

13. If the RD’s Order is not overturned, the Board should, at least, require a full and complete hearing to determine if, at this point in the declining COVID-19 pandemic, it is possible to have a safe, in-person, manual election for the unit and location in question.

14. To the extent there is a mail-ballot election in this matter, the Employer request that all ballots be impounded and not counted until the significant and novel issues in this matter have been fully and thoroughly reviewed, briefed, and properly decided.

WHEREFORE, the Employer respectfully requests special permission to appeal the Regional Director’s Order cancelling the manual ballot election and converting the election to a mail ballot election and submits that such ruling should be reversed.

Respectfully submitted, this 24th day of May 2022.

/s/ Michael D. Carrouth
Michael D. Carrouth
COUNSEL FOR PACKERS SANITATION SERVICES, INC., LTD. (PSSI)
EXHIBIT A
The parties AGREE AS FOLLOWS:

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

   The Employer, Packers Sanitation Services, Inc., Ltd., a Ohio corporation, with a place of business located at 2500 E. Lake Shore Drive, Waco, Texas 76705, the only facility herein involved, is engaged in the business of providing food safety solutions. During the last twelve months, a representative period, the Employer, in conducting its business and operations, derived gross revenues in excess of $500,000, and purchased and received at its Waco facility goods and materials valued in excess of $50,000 directly from points located outside the State of Texas.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

   DATE: May 27, 2022
   HOURS: 12:15 a.m. CST to 1:45 a.m. CST
   and
   3:00 p.m. CST to 4:00 p.m. CST

   PLACE: The Training Room at the Employer's facility located at 2500 E. Lake Shore Drive, Waco, Texas.

If the election is postponed or canceled, the Regional Director, in his discretion, may reschedule the date, time, and place of the election.

The Regional Director has and retains the full and complete discretion to determine whether it is unsafe, for any reason, to conduct a manual election on the stipulated date. Further, if the Regional Director determines a manual election is unsafe, or if the election is postponed or cancelled for any other reason, the Regional Director has and retains sole and complete discretion to reschedule the date, time, location, and/or manner of the election, including converting the election to a mail ballot election, as he deems appropriate.

Initials: MDC
5. **UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All regular full-time and part-time food safety sanitation employees, including Employee Retention Program Trainers (ERP Trainers), Food Safety Sanitors, Food Safety Utility Sanitor, Value Added Services Person (VASP) and Leads working at the JBS/Pligrim’s facility located at 2500 E. Lake Shore Drive, Waco, Texas 76705.

**EXCLUDED:** All other employees, office clericals, confidential employees, managers, guards, and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending May 8, 2022**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the above 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 any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

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

6. **VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. **THE BALLOT.** The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

Initials: _MDC_
The question on the ballot will be “Do you wish to be represented for purposes of collective bargaining by UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION LOCAL 540 AFL-CIO, CLC?” The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer’s designated Notice of Election onsite representative:

Derek Waters; Site Manager; 2500 E. Lake Shore Drive, Waco, Texas 76705; plant.365@pssi.com; telephone: (888) 871-6335; cellphone: (817) 454-7609

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

14. SAFETY PROTOCOLS. If these protocols cannot be followed (or attested to as required by Memorandum GC 20-10), the Regional Director reserves the right to cancel or reschedule the manual election, or convert the election to a mail-ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date. Given the COVID-19 pandemic, in order to protect the voters, observers, Board agent(s), and others during the election and ballot count:

a. The Employer will provide four separate tables with three chairs that will be placed at least 6 feet apart in the voting area: there will be one table for the Employer’s Election Observers, one for the Union’s Election Observer(s), one for the Board Agent(s), and one for the ballots/ballot box/writing utensils. In the event the space of the voting area will not allow for four separate tables; the Employer will set the voting area up to ensure that 6 feet of space between the voters, the Board Agent, and the Election Observers can be maintained at all times.

b. Employer will place markings throughout the voting area, and in the immediate vicinity outside of that area, to ensure proper social
distancing for voters and to ensure that the voting line does not exceed 4 voters at a time.

c. Employer will ensure that the voting area has sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area (the Board Agent will direct the flow of traffic to allow only one voter in the area at a time).

d. Employer will ensure the voting area has a separate entrance and exit for voters, with markings to depict safe traffic flow throughout the polling area.

e. Employer will provide hand sanitizers and an abundant number of sanitizing wipes for the voting area.

f. Employer will provide masks for all voters.

g. Employer will provide masks and gloves for all party representatives and observers.

h. The Board Agent, voters, and Election Observers shall wear masks in the voting area during the entirety of the election process. In accordance with the “Voting Place Notice”, Form NLRB-5017, the Board Agent has the discretion to advise a voter who is not properly masked to leave the voting area and return when properly masked.

i. Employer will provide a sufficient number of disposable pencils without erasers for each voter to mark their ballot.

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

k. 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.

l. The Board Agent has the discretion to limit attendance at the counting of the ballots to the number of people who can maintain 6 feet of space between one another.

m. All individuals attending the pre-election conference and ballot count shall wear masks. The Board Agents have the discretion to advise a conference or count attendee who is not properly masked to leave the conference/count and return when properly masked.

n. An inspection of the polling area will occur by Zoom videoconference with all parties at **10:00 a.m., on May 26, 2022** so that the Board Agents and parties can view the polling area.

Initials: _MDC_
o. Employer will post signs immediately adjacent to the Notice of Election to notify voters, observers, party representatives, and other participants of the mask requirement.

p. Employer will sanitize the polling area the day of the election, prior to the start of the pre-election conference.

q. Parties will immediately notify the Regional Director in writing if any participant in the election, including all representatives, observers, and eligible voters, test positive for COVID-19 or if they have been directly exposed to individuals who have tested positive for COVID-19 during the 14 days immediately preceding the election date.

r. The Employer will complete and submit GC 20-10 COVID-19 Certification Forms A and B to the Region within the time frame set forth on the forms. The Forms will be considered by the Regional Director in determining whether conducting the election manually will jeopardize public health. Failure to provide accurate or timely forms may result in the election being cancelled, rescheduled, or converted to a mail ballot election.

s. The Petitioner and the Union will complete and submit GC 20-10 COVID-19 Certification Form B to the Board Agent conducting the election within the time frame set forth on the form.

t. Individuals for which Form B was not submitted will not be permitted to be physically present at the pre-election conference, to serve as an observer during the election or at the ballot count.

u. All parties agree to immediately notify the Regional Director, if, within 14 days after the day of the election, any individuals who were present in the facility on the day of the election:

- have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
- are awaiting results of a COVID-19 test;
- are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath;
- have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).

Initials:  MDC  

Case 16-RC-29433  
Page 5
Packers Sanitation Services, Inc., Ltd.  
(Petitioner)

By:  
(Signature)  
(Date)

Print Name:  

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UNITED FOOD & COMMERCIAL WORKERS  
INTERANTIONAL UNION LOCAL 540 AFL-CIO, CLC  
(Petitioner)

By:  
(Signature)  
(Date)

Print Name:  

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(Union)

By:  
(Signature)  
(Date)

Print Name:  

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Recommended:

Taylor V. Whetsel  
May 10, 2022
TAYLOR V. WHETSEL, Field  
Examiner (Date)

Date approved:  
5-10-2022

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Regional Director, Region 16  
National Labor Relations Board

Initials:  MDC  

Case 16-RC-294333  
Page 6
The parties AGREE AS FOLLOWS:

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

   The Employer, Packers Sanitation Services, Inc., Ltd., a Ohio corporation, with a place of business located at 2500 E. Lake Shore Drive, Waco, Texas 76705, the only facility herein involved, is engaged in the business of providing food safety solutions. During the last twelve months, a representative period, the Employer, in conducting its business and operations, derived gross revenues in excess of $500,000, and purchased and received at its Waco facility goods and materials valued in excess of $50,000 directly from points located outside the State of Texas.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

   DATE: May 27, 2022

   HOURS: 12:15 a.m. CST to 1:45 a.m. CST
   and
   3:00 p.m. CST to 4:00 p.m. CST

   PLACE: The Training Room at the Employer's facility located at 2500 E. Lake Shore Drive, Waco, Texas.

If the election is postponed or canceled, the Regional Director, in his discretion, may reschedule the date, time, and place of the election.

The Regional Director has and retains the full and complete discretion to determine whether it is unsafe, for any reason, to conduct a manual election on the stipulated date. Further, if the Regional Director determines a manual election is unsafe, or if the election is postponed or cancelled for any other reason, the Regional Director has and retains sole and complete discretion to reschedule the date, time, location, and/or manner of the election, including converting the election to a mail ballot election, as he deems appropriate.
5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All regular full-time and part-time food safety sanitation employees, including Employee Retention Program Trainers (ERP Trainers), Food Safety Sanitors, Food Safety Utility Sanitor, Value Added Services Person (VASP) and Leads working at the JBS/Pligrim’s facility located at 2500 E. Lake Shore Drive, Waco, Texas 76705.

EXCLUDED: All other employees, office clericals, confidential employees, managers, guards, and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending May 8, 2022, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the above 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 any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls or by mail as described above in paragraph 4.

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

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.
The question on the ballot will be “Do you wish to be represented for purposes of collective bargaining by UNITED FOOD & COMMERCIAL WORKERS INTERANTIONAL UNION LOCAL 540 AFL-CIO, CLC?” The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day the ballots are mailed to employees. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative:

Derek Waters; Site Manager; 2500 E. Lake Shore Drive, Waco, Texas 76705; plant.365@pssi.com; telephone: (888) 871-6335; cellphone: (817) 454-7609

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally. Each party may designate an observer or observers to participate in the count, including challenging the eligibility of voters.

12. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

14. SAFETY PROTOCOLS. If these protocols cannot be followed (or attested to as required by Memorandum GC 20-10), the Regional Director reserves the right to cancel or reschedule the manual election, or convert the election to a mail-ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date. Given the COVID-19 pandemic, in order to protect the voters, observers, Board agent(s), and others during the election and ballot count:

a. The Employer will provide four separate tables with three chairs that will be placed at least 6 feet apart in the voting area: there will be one table for the Employer’s Election Observers, one for the Union’s Election Observer(s), one for the Board Agent(s), and one for the ballots/ballot box/writing utensils. In the event the space of the voting area will not allow for four separate tables; the Employer will set the voting area up to ensure that 6 feet of space between the voters, the Board Agent, and the Election Observers can be maintained at all times.

b. Employer will place markings throughout the voting area, and in the immediate vicinity outside of that area, to ensure proper social
distancing for voters and to ensure that the voting line does not exceed 4 voters at a time.

c. Employer will ensure that the voting area has sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area (the Board Agent will direct the flow of traffic to allow only one voter in the area at a time).

d. Employer will ensure the voting area has a separate entrance and exit for voters, with markings to depict safe traffic flow throughout the polling area.

e. Employer will provide hand sanitizers and an abundant number of sanitizing wipes for the voting area.

f. Employer will provide masks for all voters.

g. Employer will provide masks and gloves for all party representatives and observers.

h. The Board Agent, voters, and Election Observers shall wear masks in the voting area during the entirety of the election process. In accordance with the “Voting Place Notice”, Form NLRB-5017, the Board Agent has the discretion to advise a voter who is not properly masked to leave the voting area and return when properly masked.

i. Employer will provide a sufficient number of disposable pencils without erasers for each voter to mark their ballot.

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

k. 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.

l. The Board Agent has the discretion to limit attendance at the counting of the ballots to the number of people who can maintain 6 feet of space between one another.

m. All individuals attending the pre-election conference and ballot count shall wear masks. The Board Agents have the discretion to advise a conference or count attendee who is not properly masked to leave the conference/count and return when properly masked.

n. An inspection of the polling area will occur by Zoom videoconference with all parties at 10:00 a.m., on May 26, 2022 so that the Board Agents and parties can view the polling area.
o. Employer will post signs immediately adjacent to the Notice of Election to notify voters, observers, party representatives, and other participants of the mask requirement.

p. Employer will sanitize the polling area the day of the election, prior to the start of the pre-election conference.

q. Parties will immediately notify the Regional Director in writing if any participant in the election, including all representatives, observers, and eligible voters, test positive for COVID-19 or if they have been directly exposed to individuals who have tested positive for COVID-19 during the 14 days immediately preceding the election date.

r. The Employer will complete and submit GC 20-10 COVID-19 Certification Forms A and B to the Region within the time frame set forth on the forms. The Forms will be considered by the Regional Director in determining whether conducting the election manually will jeopardize public health. Failure to provide accurate or timely forms may result in the election being cancelled, rescheduled, or converted to a mail ballot election.

s. The Petitioner and the Union will complete and submit GC 20-10 COVID-19 Certification Form B to the Board Agent conducting the election within the time frame set forth on the form.

t. Individuals for which Form B was not submitted will not be permitted to be physically present at the pre-election conference, to serve as an observer during the election or at the ballot count.

u. All parties agree to immediately notify the Regional Director, if, within 14 days after the day of the election, any individuals who were present in the facility on the day of the election:

- have tested positive for COVID-19 (or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
- are awaiting results of a COVID-19 test;
- are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, shortness of breath;
- have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who are awaiting test results for COVID-19 or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).
Packers Sanitation Services, Inc., Ltd. (Employer)

By:  /s/ Michael D. Carrouth  5/10/22  
     (Signature) (Date)

Print Name: ________________________________

UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION LOCAL 540 AFL-CIO, CLC (Petitioner)

By:  ____________________________  5/10/22  
     (Signature) (Date)

Print Name: David K. Watsky

(Union)

By:  ____________________________  
     (Signature) (Date)

Print Name: ________________________________

Recommended:  Taylor V. Whetsel  May 10, 2022  

TAYLOR V. WHETSEL, Field Examiner (Date)

Date approved:  5-10-2022

Regional Director, Region 16  
National Labor Relations Board

Initials:  [BCW]
EXHIBIT B
ORDER CANCELLING ELECTION AND CONVERTING
METHOD OF ELECTION TO MAIL BALLOT ELECTION
AND DETAILS FOR ELECTION

Based on a petition filed on April 20, 2022, and pursuant to a Stipulated Election Agreement (Agreement) approved on May 10, 2022, a manual election was scheduled to be conducted on May 27, 2022, to determine whether certain employees of Packers Sanitation Services, Inc., Ltd. (the Employer) wish to be represented for purposes of collective bargaining by United Food & Commercial Workers International Union Local 540, AFL-CIO, CLC (Petitioner). The appropriate collective bargaining unit consists of:

INCLUDED:  All regular full-time and part-time food safety sanitation employees, including Employee Retention Program Trainers (ERP Trainers), Food Safety Sanitors, Food Safety Utility Sanitor, Value Added Services Person (VASP) and Leads working at the JBS/Pilgrim’s facility located at 2500 E. Lake Shore Drive, Waco, Texas 76705.

EXCLUDED: All other employees, office clericals, confidential employees, managers, guards, and supervisors as defined in the Act.

The parties agreed, pursuant to paragraph 4 of the Agreement, that the Regional Director retains the right to cancel or reschedule the manual election or convert the manual election to a mail-ballot election given the changing nature of the COVID-19 pandemic.

Since the approval of the Agreement, changes and trend developments in the COVID-19 pandemic in McLennan County, Texas, have resulted in the factors for safely holding a manual election as set forth by the Board in Aspirus Keweenaw, 370 NLRB No. 45 (2020) and as discussed in General Counsel Memorandum GC 21-01 no longer being met. Specifically, the 14-day trend of new confirmed cases of COVID-19 in McLennan County, Texas is increasing and the 14-day testing positivity rate in McLennan County, Texas is higher than 5 percent.¹

¹ Information regarding COVID-19 activity is taken from COVIDActNow.org.
As such, it is **HEREBY ORDERED** that the manual election schedule for May 27, 2022, is cancelled and **CONVERTED** to a mail-ballot election as set forth below:

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 16, on **Wednesday, June 8, 2022, at 4:45 p.m. (CST)**. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 office by **Friday, July 8, 2022, by close of business at 4:45 p.m. (CST)**. The mail ballots will be counted by a designated Board Agent of the National Labor Relations Board on **Friday, July 15, 2022, at 2:00 p.m. (CST)**, by videoconference, provided the count can be safety conducted on that date and at the Regional Director’s discretion.

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 void. In order to be valid and counted, the returned ballots must be received by the Region 16 Office prior to counting the ballots.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact Region 16 office by no later than 4:45 p.m. (CST) on **Friday, June 17, 2022**, in order to arrange for another mail ballot kit to be sent to that employee.

A revised Notice of Election will issue reflecting these details. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) **full working days prior to 12:01 a.m. of the day the ballots are mailed to employees**. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

Inasmuch as the May 27, 2022, election is cancelled, the Employer should post this Order next to all Notices of Election that were previously posted.

**DATED** in Fort Worth, Texas on this 23rd day of May 2022.

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Timothy L. Watson  
Regional Director  
National Labor Relations Board  
Region 16  
Fritz G. Lanham Federal Building  
819 Taylor Street, Room 8A24  
Fort Worth, TX  76102-6178
CERTIFICATE OF SERVICE

It is hereby certified that Employer Packers Sanitation Services, Inc.’s Request for Special Permission to Appeal and Special Appeal in the above-captioned case has been served on Petitioner by electronic mail to:

Gonzalo Reyes
Organizing Director
17780 Preston Road
Dallas, TX 75252
gonzalo@ufcw540.org

s/Michael D. Carrouth
Michael D. Carrouth

May 24, 2022