UNIVERSAL STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

BFS GROUP LLC
Employer

and

BRENT JOHNSON
Petitioner

and

CABINET MAKERS, MILLMEN
AND INDUSTRIAL CARPENTERS,
LOCAL 721
Union

DECISION AND DIRECTION OF ELECTION

BFS Group LLC (Employer) is a wholesale supplier of lumber, tools and related material. On April 22, 2022, Brent Johnson (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act, as amended (the Act) seeking to decertify Cabinet Makers, Millmen and Industrial Carpenters, Local 721 (Union) as the exclusive collective-bargaining representative of the current bargaining unit consisting of all full-time and regular part-time CDL Drivers 1, CDL Drivers 2, MFG Forklift Operators I, MFG Forklift Operators II, Material Handlers I, and Group Leaders employed by the Employer at its Lancaster, California facility. There are approximately 16 employees in the bargaining unit.

On April 22, a hearing on this matter was scheduled for May 12. Thereafter, the parties entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) and agreed that the Stipulation, exhibits, and each party’s written statement constitute the entire record in this matter. The Stipulation contains 22 itemized stipulations, relating to the appropriateness of the bargaining unit, the Union’s labor organization status, the Employer’s commerce information, contents to be contained in the party’s written statements, and certain manual election details. On May 10, the Regional Director approved the Stipulation. The only issue left to be determined

1 The parties stipulated to amend the formal documents to correctly reflect the names of the parties as indicated herein.

2 All dates are in 2022 unless otherwise noted.
following the Stipulation is the method of election. On May 16, each party submitted a written statement in support of their position on this issue.

As set forth in greater detail below, the Employer and Petitioner seek a manual election, while the Union requests a mail-ballot election. The Employer contends that a manual election maximizes voter participation. The Petitioner agrees with the Employer and points out that a manual election is the Board’s preferred election method. The Union urges that a mail-ballot election is most appropriate due to employees’ “scattered” schedules, the pandemic,³ and for other extraordinary circumstances.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. For the reasons set forth below, based on the record, relevant Board law, COVID-19 data, and upon careful consideration of the parties’ statements, I find that it is appropriate to direct a mail-ballot election.

I. Method of Election

A. Applying Board Law, a Mail-ballot Election is Appropriate

i. Agency Directives and Legal Authority

The Board is charged, under Section 9 of the Act, with the duty to conduct secret ballot elections to determine employees’ union representation preference and to certify the results of these elections. The Board’s obligation to conduct secret ballot elections must be taken seriously, particularly at this time when the country and local community are facing a public health crisis. Regional Directors have an obligation to properly exercise their discretion concerning the timing and manner of the election with due contemplation of safety considerations in the context of a pandemic.

It is well established that the Board has a strong preference for conducting manual elections. San Diego Gas & Electric, 325 NLRB 1143 (1998). However, the Board has acknowledged that circumstances may necessitate adaptations on the Board’s part to facilitate an election. In National Van Lines, 120 NLRB 1343 (1956), the Board asserted that “circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions.” 120 NLRB at 1346, citing Shipowners’ Assn. of the Pacific Coast, et al., 110 NLRB 479, 480 (1954). The Board noted that, “[b]ecause of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections should be conducted.” Id.; see also NLRB Casehandling Manual (Part Two) Representation Procedures Sec. 11301.2 (Casehandling Manual).⁴ Thus, “[o]nly

³ Throughout this decision, the terms “COVID-19,” “COVID,” and pandemic are used interchangeably.

⁴ I note the provisions of the Casehandling Manual are not binding procedural rules; the Casehandling Manual is issued by the General Counsel, not the Board, and is intended to provide guidance to regional personnel in the handling of representation cases. Patient Care, 360 NLRB 637, 638 (2014) (citing Solvent Services, 313 NLRB 645, 646 (1994)); Superior Industries, 289 NLRB 834, 837 fn. 13 (1988); Aaron Medical Transportation, Inc., Case 22-RC-070888 (unpublished 2013) (citing Hempstead Lincoln
where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him [or her] to conduct representative elections will the Board nullify an election and prescribe other election standards.” National Van Lines, 120 NLRB at 1346.

The Board has determined that there are some instances in which a mail-ballot election is appropriate because “of circumstances that would tend to make it difficult for eligible employees to vote in a manual election.” San Diego Gas and Electric, supra at 1144 (1998). The Board clarified that a mail-ballot election may be appropriate where employees are scattered because of their job duties in terms of geography and/or varied work schedules such that “they are not present at a common location at common times” or if there is an ongoing strike, lockout, or picketing. Id. at 1145. The Board further concluded that there may be other relevant factors to consider and that “extraordinary circumstances” may warrant a departure from the specific guidelines articulated in that case. Id.

Thus, while there is a clear preference for conducting manual elections in ordinary circumstances, a Regional Director may exercise discretion to order a mail-ballot election where conducting an election manually is not feasible and, under extraordinary circumstances, the Regional Director should tailor the method of conducting an election to enhance the opportunity of unit employees to vote. In light of the COVID-19 pandemic, to assist Regional Directors in determining when a manual election could be conducted safely, the General Counsel issued General Counsel Memorandum 20-10 (GC 20-10) on July 6, 2020, setting forth detailed suggested manual election protocols. GC 20-10 does not provide an enforcement mechanism for any of its suggestions other than canceling an election.

Ultimately, after several months of considering requests for review of decisions directing mail-ballot elections during the current pandemic, the Board issued its decision in Aspirus Keweenaw, 370 NLRB No. 45 (Nov. 9, 2020), which provided guidelines for when a mail-ballot election would be appropriate during the COVID-19 pandemic. After affirming the Board’s longstanding policy favoring manual elections, the Board set forth six situations related to the pandemic that Regional Directors should consider and stated that where one or more of the situations is present, it would “suggest the propriety of using mail ballots under the extraordinary circumstances presented by this pandemic.” Id., slip op. at 4. Those situations are as follows:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status.
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size.
4. The Employer fails or refuses to commit to abide by GC 20-10.

Mercury Motors Corp., 349 NLRB 552, 552 fn.4 (2007)); Queen Kapiolani Hotel, 316 NLRB 655, 655 fn.5 (1995). See also Sunnyvale Medical Clinic, 241 NLRB 1156, 1157 fn. 5 (1979).
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status.

6. Other similarly compelling circumstances.

_Id_, slip op. at 4–7. 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.

ii. The Employer’s Position on the Method of Election

The Employer seeks a manual election and argues that a mail-ballot election would disenfranchise voters. In this regard, it notes that voter participation is generally lower in mail-ballot elections and that mail delivery is unreliable and ballots may fail to reach the Regional Office in time to be counted. It asserts that a manual election can be safely conducted and is the best method for maximizing participation.

In addition, the Employer points out that all eligible voters currently report to regular shifts in a single, fully-operational facility. As of the date it submitted its written statement, the Regional office conducting the election was not operating under mandatory telework status, the reported 7-day daily average testing positivity rate for Los Angeles County was well below 5 percent, and the Employer had not had any COVID-19 cases reported since January 2022, all factors supporting the propriety of a manual election.

The Employer proposes the election be conducted at its warehouse located at its Lancaster, California facility. The warehouse is approximately 150 feet long and 40 feet wide encompassing about 6000 square feet. The Employer maintains that the warehouse is well ventilated, has a separate entrance and exit, and is sufficiently spacious to allow at least 6 feet of distance between observers, Board agents, voters, ballot box, and voting booth. In the Stipulation, the parties agreed that if a manual election is directed, it would be held on a Thursday from 1:00 p.m. to 5:00 p.m. Since the polling period would be four hours long and given the relatively small unit size (16 employees), the Employer maintains that voters would not be crowded at this proposed polling location. Moreover, the Employer has agreed to abide by all safety protocols and provide all required certifications and notifications outlined in GC 20-10.

iii. The Petitioner’s Position on the Method of Election

The Petitioner requests a manual election in accordance with the Board’s longstanding preference for in-person elections. The Petitioner avers that mail-ballot elections demand additional steps for voters, including following complicated instructions and mailing ballots, creating uncertainty and a burden on voters. The Petitioner likewise argues that there is less voter participation in mail-ballot elections and expressed concern about mail delivery disruptions, citing _CentTrio Energy South_, 371 NLRB No. 94 (2022) (Regional Director refused to count ballots that, due to the United States Postal Service, arrived late; the Board denied review of
this determination). Regarding a central question as to whether the pandemic warrants a mail-ballot election, the Petitioner believes that the criteria outlined in *Aspirus* have generally not been met, although he acknowledges that the COVID case rates have modestly risen. The Petitioner adds that despite this modest increase, the Centers for Disease Control and Prevention (CDC) reports that Los Angeles has “low” community transmission levels.

### iv. The Union’s Position on the Method of Election

The Union seeks a mail-ballot election on a variety of grounds. It notes that, from May 4 to May 11, there were 2,997 new COVID cases reported, reflecting a 51.1 percent increase in cases over the prior 14 days; and that there is an upward trend in cases in Lancaster specifically. A related concern is that there is one employee who is immunocompromised and, therefore, particularly vulnerable to COVID-19. The Union reports that there have been two employees who have tested positive for COVID during the last three months. Contrary to the Employer, it maintains that an in-person election could not be safely held and, in accordance with *Aspirus*, a mail-ballot election should be directed.

Moreover, the Union avers that an election by mail ballot is warranted here because employees are scattered, since eight employees are drivers who make approximately nine off-site deliveries per shift, sometimes return to the office after other unit employees have left, and occasionally do not report back to the facility at the end of the shift. Relatedly, the Union argues that the Region should consider the desires of the parties which does not require unanimity of position and that a manual election would be an inefficient use of Agency resources.5

Finally, the Union asserts that other extraordinary conditions warrant a mail-ballot election, including that one employee suffered a broken ankle and has limited standing ability, one employee is immunocompromised (as noted above), and two employees will be on leave for a certain period. It contends that the Employer has coerced employees to sign cards giving rise to the instant petition and that employees may feel intimidated to vote against the Union “if they are forced to vote in the presence of [the] Employer and its managerial staff and agents.”

### v. Analysis

In view of the *Aspirus* criteria set forth above, several factors support directing a manual election. First, the Region tasked with conducting the election is not operating under mandatory telework status. Second, the proposed manual election site can be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size. Third, the Employer has committed and appears able to comply with the protocols set forth in GC 20-10. Fourth, there is no current COVID-19 outbreak at the Employer’s facility.6

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5 *Section 11301.2 of the Casehandling Manual* provides that in situations where employees are scattered geographically or by work schedules, or in instances of strikes, lockouts or picketing, the Regional Director “should also consider the desires of all the parties . . . [and] should also consider the efficient use of the Agency’s financial resources.” See also, *San Diego Gas and Electric*, supra at 1145.

6 Although the Employer reported in its written statement that no employee has tested positive for COVID-19, exhibited symptoms of COVID or were subject to quarantine for any reason related to...
this factor, I am mindful that there is conflicting information from the parties regarding the number of COVID cases at the facility over the past three months. Although there is no set number of cases, or percentage rate, which defines an “outbreak,” even accepting the larger number, I conclude that two reported COVID cases in three months is not an outbreak. Finally, there are no other similarly compelling circumstances.

However, the criteria that 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 where the facility is located is 5 percent or higher suggest the propriety of a mail-ballot election in this case. Specifically, based on the 14 most recent days for which the Los Angeles County Department of Public Health has complete data, I find that the 14-day trend in the number of new confirmed cases of COVID-19 in Los Angeles County, where the Employer’s facility is located, is increasing.

<table>
<thead>
<tr>
<th>Date</th>
<th>Daily Cases</th>
<th>7-Day Daily Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 14, 2022</td>
<td>1906</td>
<td>3584</td>
</tr>
<tr>
<td>May 15, 2020</td>
<td>1948</td>
<td>3649</td>
</tr>
<tr>
<td>May 16, 2022</td>
<td>4550</td>
<td>3844</td>
</tr>
<tr>
<td>May 17, 2022</td>
<td>4284</td>
<td>3993</td>
</tr>
<tr>
<td>May 18, 2022</td>
<td>4329</td>
<td>4166</td>
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<td>4139</td>
<td>4341</td>
</tr>
<tr>
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<td>3802</td>
<td>4498</td>
</tr>
<tr>
<td>May 21, 2022</td>
<td>2151</td>
<td>4586</td>
</tr>
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<td>May 22, 2022</td>
<td>2006</td>
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<td>May 23, 2022</td>
<td>5440</td>
<td>4840</td>
</tr>
<tr>
<td>May 24, 2022</td>
<td>4915</td>
<td>4983</td>
</tr>
</tbody>
</table>

COVID-19 in the past three months, it did not certify, by affidavit, how many individuals present in the facility within the preceding 14 days have tested positive for COVID-19 or are awaiting test results, are exhibiting characteristic symptoms, or have had contact with anyone who has tested positive in the previous 14 days.

7 The dates included in this table represent the most recent 14-day period for which the Los Angeles County Department of Public Health has complete data. See http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/ (select “Daily” from the drop-down menu that appears on the middle of the page; last accessed June 2, 2022), which notes: “Recent dates are incomplete due to lags in reporting. The gray box corresponds to dates that are likely to not yet be reported completely.” Also, the temporary decrease in the number of daily cases from May 20-22 is consistent with the historic trend in the county data, which shows a drop in the number of confirmed cases on weekends regularly, which correlates with a regular drop in the number of tests administered on weekends in comparison to weekdays. See http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/ (select “Testing” from the left-hand column, then select “Daily Tests” from the drop-down menu that appears on the middle of the page; last accessed June 2, 2022).

8 See http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/ (select “Testing” from the left-hand column, then select “7 Day Avg Daily Tests” from the drop-down menu that appears on the middle of the page; last accessed June 2, 2022).
As noted in the table above, between May 14 and May 27, the daily number of new
confirmed cases has increased during that period. As explained in a footnote above, to the extent
that there is a temporary decrease in the number of cases during the weekend of May 20-22, that
decrease is the product of fewer COVID-19 tests being conducted on weekends, rather than a
shift in the trend of new cases. I note that the number of new confirmed cases on Monday, May
23 was significantly higher than the prior Monday, May 16 – a difference of almost 900 cases.
In addition, although the total number of new confirmed daily cases was less on May 24 thru 27
than on May 23, the new confirmed daily cases for that week was significantly greater than the
prior week; as already noted above, between Monday, May 16 and Monday, May 23, the daily
number of cases increased by almost 900 (i.e. 19.5 percent). Thus, the slight drop in the number
of new confirmed daily cases over the last three days included in the 14-day period does not
negate the increasing trend in the number of new confirmed daily cases over the 14-day period
as a whole. Indeed, the 7-day daily average of new confirmed cases, the right-most column
on the table above, confirms the consistent increase in the number of cases during the 14-day
period. This increasing trend in the new confirmed daily cases over the noted 14-day period is
clearly reflected in the trend line graph below, which is based on the daily cases data from the
table above.

As such, the data fully supports finding that the 14-day trend in the number of new confirmed
cases of COVID-19 is increasing, a fact Petitioner acknowledged and the Employer did not
dispute. Although the 7-day daily average testing positivity rate is below 5% in Los Angeles
County, that fact does not undermine the evidence showing the increasing trend in the daily
number of cases over the 14-day period. Moreover, the second factor of the Aspirus test
is whether either the 14-day trend in the number of new confirmed cases of COVID-19 is
increasing or the 14-day testing positivity rate is 5 percent or higher. In other words, this factor only requires one of the two options/metrics to be true. Such is the case here, inasmuch as the 14-day trend in the number of new confirmed cases of COVID-19 is increasing.⁹

Regarding the Union’s traditional bases for seeking a mail-ballot election, I find that there is insufficient evidence to establish that employees are scattered because of their job duties or by their work schedules. The truck drivers are apparently not over-the-road drivers and there was no evidence that they worked varying shifts. In short, the record failed to prove that voters cannot be present at a common place at a common time to vote in person. Given this conclusion, I need not consider the desires of the parties or Agency resources. San Diego Gas and Electric, supra at 1145. The cases cited by the Union where mail-ballot elections were directed because employees were scattered are easily distinguished from the facts here. See California Pacific Medical Center, 357 NLRB 197 (2011) (a manual election would require 15 polling sessions at four facilities over a period of two to three days); GPS Terminal Services, Inc., 326 NLRB 839 (1998) (a significant portion of the unit were on-call employees scheduled as work was available); M & N Mail Service, Inc., 326 NLRB 451 (1998) (unit employees were over-the-road truck drivers whose schedules varied significantly such that 15 percent of the unit were not scheduled to work in any given two-workday period).¹⁰ Thus, I conclude that a mail-ballot is warranted solely because it is appropriate under the criteria set forth in Aspirus, as explained above.

B. Summary

For foregoing reasons and in accordance with the Board’s responsibility under Section 9(a) of the Act to conduct secret ballot elections to determine employees’ union representation preference, I am directing an election in this matter as soon as practicable. To ensure the safety of all participants and compliance with the Agency’s obligations and duties, I am directing a mail-ballot election, consistent with the Board’s decision in Aspirus. A mail-ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in a safe, responsible, and effective manner.

II. Conclusions and Findings

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

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⁹ With regard to the Employer’s and Petitioner’s argument concerning the unpredictability of mail delivery, certainly, when the Board issued Aspirus it was cognizant that mail service is imperfect. Thus, such uncertainty does not undermine the appropriateness of a mail-ballot election. Moreover, in contrast to CenTrio, supra, in which there were sixteen days between the ballots’ issuance and return deadline, I have provided for a three-week period between the issuance of the ballots and their due date.

¹⁰ Similarly, I conclude that employees’ particular circumstances – a broken ankle, immunodeficiency, or pending leave – do not constitute extraordinary circumstances warranting a mail-ballot election. Likewise, any claim of unlawful coercion may be addressed in the unfair labor practice context and, moreover, employees in a manual election would not be voting in the presence of the Employer or its agents.
1. The Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.\textsuperscript{11}

2. The parties stipulated and I find that 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.

3. The parties stipulated and I find that there is no contract bar, or any other bar, to this proceeding.\textsuperscript{12}

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

   \textbf{Included}: All full-time and regular part-time CDL Drivers I, CDL Drivers 2, MFG Forklift Operators I, MFG Forklift Operators II, Material Handlers I, and Group Leaders employed by the Employer at its facility located at 43755-43717 N. Division Street, Lancaster, California 93535.

   \textbf{Excluded}: All other employees, office clerical employees, Inventory Control Specialists, Dispatchers, Location Managers, managerial employees, confidential employees, guards, and supervisors as defined in the Act, as amended.

   Accordingly, for the reasons detailed above, I will direct a mail-ballot election in the Unit above, which includes approximately 16 employees.

   \textbf{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 Cabinet Makers, Millmen and Industrial Carpenters, Local 721.

\textsuperscript{11} The Employer, BFS Group LLC, a Delaware limited company, with a place of business located at 43755-43717 N. Division Street, Lancaster, California 93535, is engaged in business as a wholesale supplier of lumber, tools, and related materials. During the past 12 months, a representative period, the Employer purchased and received at its Lancaster, California facility goods, supplies, and/or materials valued in excess of $50,000 directly from suppliers located outside the state of California.

\textsuperscript{12} The Employer and Union are parties to a collective-bargaining agreement covering the bargaining unit effective July 1, 2019 to June 30, 2022.
A. Election Details

For the reasons I have explained above, I have determined that a mail-ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 5:00 p.m. on Tuesday, June 21, 2022, ballots will be mailed to voters from the National Labor Relations Board, Region 31. 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 Thursday, June 30, 2022, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310) 235-7352 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

The returned ballots must be received by the Region 31 office by 5:00 p.m. on Tuesday, July 12, 2022. All ballots will be commingled and counted by the Region 31 office on Wednesday, July 13, 2022, at 2:00 p.m. In order to be valid and counted, the returned ballots must be received by the Region 31 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which will be held by videoconference. A meeting invitation for the videoconference will be sent to the parties’ representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count. Upon conclusion of the count, a tally of ballots will be prepared and immediately made available to the parties by email.

B. Voting Eligibility

Eligible to vote are those in the Unit who were employed during the payroll period ending Friday, May 27, 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.

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 Tuesday, June 7, 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 in conspicuous places, including all places where notices to employees in the Unit found appropriate are customarily posted. English and Spanish-language versions of the Notice of Election will be sent by the Region separately. 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: June 3, 2022

Mori Rubin

MORI RUBIN, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 WEST OLYMPIC BLVD, SUITE 600
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