UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Greenville, Texas

QUIKTRIP CORPORATION

Employer

and

WORKER’S UNITED FRONT

Petitioner

DECISION AND DIRECTION OF ELECTION

QuikTrip Corporation (Employer) is an Oklahoma company that operates retail convenience stores with locations throughout the United States. On June 2, 2022, Worker’s United Front (Petitioner) filed a representation petition seeking to represent certain employees employed by the Employer at its store located in Hunt County at 1400 East Joe Ramsey Boulevard, Greenville, Texas 75402 (Greenville Store). The parties stipulated that an appropriate unit includes all full-time and regular part-time clerks, ERP/BLERP clerks, 2nd assistants, relief assistants, and night assistants employed by the Employer at the Greenville Store and excludes all other employees, ERP/BLERP clerks primarily employed at other stores, 1st assistants, managerial employees, temporary employees, professional employees, guards and supervisors as defined by the Act.

In this decision, I address two issues.

First, the Employer contends that the Petitioner is not a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (Act) because it has no “structure” and there have been inadequate “dealings” with the Employer by the Petitioner, and that, to the extent it has dealt with the Employer, those dealings have failed to show a concerted effort toward addressing grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work on behalf of the group. As such, the Employer asserts that its employees may not be represented by the Petitioner. The Petitioner contends that it is a labor organization because

1 The Petitioner originally filed the petition under the name “QuikTrip Labor Union” but during the hearing, the Petitioner moved to amend the petition and formal papers to reflect its new name, “Worker’s United Front,” as identified herein. The transcript makes references to the original name, QuikTrip Labor Union, to “The Front,” and to the amended name, Worker’s United Front. During the hearing, the parties also submitted a joint motion to the Regional Director to amend the petition and other formal documents to correctly reflect the names as set forth in Board Exhibit 2.
employees participate in the organization, and it exists for the purpose of dealing with employers regarding wages and other terms and conditions of employment.

The second matter before me is the method of election. The Employer takes the position that any election should be held manually, asserting that it is the preferred method of election by the Board. The Petitioner opposes a manual election due to the increased COVID-19 positivity rates and is amenable to a mail ballot election. Although election details, including the type of election to be held, are nonlitigable matters left to my discretion, the parties were permitted to present their positions and file post-hearing briefs regarding the mechanics of the election.

On June 23, 2022, a hearing officer for the National Labor Relations Board (Board) conducted a hearing by videoconference, during which the parties were invited to present their positions and supporting evidence. Thereafter, the parties submitted post-hearing briefs. I have duly considered all testimony, evidence, and arguments.

Based on the entire record and consistent with Board law, I find that the Employer has failed to sustain its burden of demonstrating that the Petitioner is not a labor organization, as defined by Section 2(5) of the Act. In this regard, I find that the Petitioner is a labor organization in which employees participate and that exists for the purpose of dealing with employers concerning wages, hours, and other terms and conditions of employment. Accordingly, and as discussed in further detail below, the Petitioner qualifies as a labor organization as defined by Section 2(5) of the Act.

Pursuant to the Board’s decision in Aspirus Keweenaw, 370 NLRB No. 45 (2020), I also find that a mail ballot election is warranted due to the high COVID-19 testing positivity rate in Hunt County. As such, I am directing a mail ballot election for the appropriate unit of employees as jointly stipulated to by the parties.

I. FACTS

The Employer’s Greenville Store is a retail convenience store. The petitioned-for unit includes about thirty-five employees. The Petitioner obtained signatures from at least 30% of employees authorizing the Petitioner to represent employees in collective bargaining with the Employer.

The Petitioner was founded sometime in early March 2022, when it first began gathering signatures to obtain a showing of interest in order to file a representation petition with the Board. The Petitioner seeks to represent employees solely at the Greenville Store discussed herein and has no affiliation with any other unions or labor organizations. The Petitioner has not yet established any official positions within the organization aside from the Petitioner’s representative who filed the petition, who is currently acting as an officer. Petitioner does not currently have a

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2 Sec. 102.66(g)(1) of the Board’s Rules and Regulations. See also, Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (2019) (citing Manchester Knitted Fashions, Inc., 108 NLRB 1366, 1367 (1954)).
3 See Board Exhibit 2.
4 The record does not further reflect in what capacity the representative is serving as an officer.
constitution, bylaws or other internal governing procedures. The Petitioner has not filed grievances, conducted arbitrations, or negotiated collective bargaining agreements on behalf of employees with the Employer or any other employer.

The Petitioner is not incorporated or registered with the Texas Secretary of State. The Petitioner has no financial information to report at this time and has not yet collected dues from members. The Petitioner has not filed under the Labor Management Reporting and Disclosure Act of 1959 or submitted financial disclosure statements because it was (1) founded prior to the end of a fiscal year; and (2) is seeking recognition as a first step.

The Petitioner has not held in-person meetings. Instead, employees have engaged in a series of virtual group discussions on the phone application “Group Meet.” In these virtual group discussions, employees have discussed the next planned steps after gaining recognition through the Board’s election processes. After gaining recognition, the Petitioner, as discussed in the employee group chats, plans to build a structure for its organization to include the election of union officers. The Petitioner admits that it has not yet negotiated on behalf of employees, but also asserts that in anticipation of such negotiations, it has been discussing with employees subjects related to, but not limited to, grievances, labor disputes, wages, rates of pay, hours of employment and/or conditions of work. These employee discussions also involve internal union organizational issues such as the process of union elections to be held post-recognition, including voting procedures and union structure, and the formation of a union constitution.

II. POSITION OF THE PARTIES

A. Employer

The Employer contends the Petitioner is not a labor organization because it does not meet the definition of an “organization” as defined by Merriam-Webster, which defines an organization as “an administrative and functional structure.”

To this point, the Employer notes the Petitioner has no structure—neither administrative, functional, nor financial. In support, the Employer asserts that the Petitioner (1) is not organized or registered in the State of Texas; (2) has no bank account; (3) has no officers; (4) has no constitution or bylaws; (5) has never addressed grievances with the Employer; (6) has never held physical and/or regular meetings with members; and (7) has never handled an arbitration or negotiated a collective bargaining agreement. Citing Vencare Ancillary Services, 334 NLRB 965, 969 (2001), the Employer further asserts that the Petitioner has not demonstrated a pattern or practice of addressing grievances or other issues with the Employer.

With respect to the method of election, as noted above, the Employer takes the position that any election should be held manually and it will agree to fully comply with the Board’s safety protocols as established in GC Memorandum 20-10. The Employer argues that the Board should not mechanically apply its standard under Aspirus Keweenaw, 370 NLRB No. 45 (2020), but instead should apply the standard under San Diego Gas & Elec., 325 NLRB 1143 (1998), under

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5 https://www.merriam-webster.com/dictionary/organization
which, it contends, a manual election would be appropriate. The Employer also highlights that manual elections are more accurate and fair, arguing that, based on a select few return rates, some recent mail ballot elections conducted by this Region involved a lower participation rate, ranging from about 30% to 60%. Per the Employer, even assuming the Aspirus Keweenaw test applies, a manual election is still appropriate as the Region is not subject to a mandatory telework order, there are no government orders restricting gathering, the Employer agrees to abide by the necessary Board protocols, and there is no current COVID-19 outbreak at the Greenville Store.

B. Petitioner

The Petitioner argues that it is a labor organization because employees participate in the organization and it exists to deal with the Employer concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Citing, National Labor Relations Board v. Cabot Carbon Co., 360 U.S. 203 (1959), the Petitioner notes that any questions in relation to its officers, dues and constitution are irrelevant to the discovery of whether it is a labor organization, as the Act does not require dues, a formalized structure, or any other issues that the Employer may list. According to the Petitioner, any lack of success in carrying out these duties as an organization at this time is based solely on its current lack of recognition.

The Petitioner cites Aspirus Keweenaw, 370 NLRB No. 45 (2020), in support of its argument that the election should be held by mail ballot. Specifically, the Petitioner does not believe that the parties can meet the safety standards set forth in Aspirus Keweenaw, noting that truck drivers and other customers frequent the Greenville store after traveling throughout the United States, Mexico and Canada, increasing the exposure to COVID-19 to all within the store.

III. BOARD LAW ON LABOR ORGANIZATION STATUS

A proposed bargaining representative must qualify as a “labor organization” to lawfully obtain an election or certification. Section 2(5) of the Act defines “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, 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 or employment, or conditions of work.” 29 U.S.C. § 152(5).

The Board uses a three-part test to determine whether a labor organization exists: (1) employees must participate; (2) the organization must exist, at least in part, for the purposes of “dealing with” the employer; and (3) these dealings must concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” Vencare Ancillary Services, 334 NLRB 965, 969 (2001); Electromation, Inc., 309 NLRB 990, 994 (1992).

While the existence of structural formality within a union can support a determination of “labor organization” under Section 2(5) of the Act, the absence of structural formality does not disqualify a union as a labor organization. See NLRB v. Cabot Carbon Co., 360 U.S. 203, 211-13 (1959); Butler Mfg. Co., 167 NLRB 308 (1967); Yale University, 184 NLRB 860 (1970); Stewart-Warner Corp., 123 NLRB 447 (1959); cf. Raymond Karvis Center for Performing Arts, 351 NLRB
143 (2007), *enfd.* 550 F.3d 1183 (D.C. Cir 2008) (discussing internal union elections, stating that “the Board should not lightly interfere with the internal affairs of unions”). A union is similarly not disqualified from labor organization status when its representative activities are limited because it is in the early stages of development and has not yet won representation rights. *Roytype, Division of Litton*, 199 NLRB 354 (1972); *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970); *see also Comet Rice Mills*, 195 NLRB at 674. A union can establish labor organization status over either obstacle by showing employee participation and that it was formed for the purpose of representing its membership and intends to do so if certified. *Id.*

### IV. ANALYSIS

The record establishes that the Petitioner meets the statutory definition of “labor organization.” As a newly developing organization, the Petitioner has adequately met the three elements required to be a labor organization: (1) employee participation; (2) organization existence, at least in part, for the purposes of “dealing with” an employer; and (3) that these dealings concern “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” *Vencare Ancillary Servs.*, 334 NLRB at 969 (2001); *Electromation, Inc.*, 309 NLRB at 994; *Cf. Coinmach Laundry Corp.*, 337 NLRB at 1287.

The Petitioner has established employee participation. The requisite showing of at least 30% of employees’ voluntary authorization for the Petitioner to represent the bargaining unit in collective bargaining with the Employer is evidence of employee participation. Further employee participation occurs when the Petitioner’s officer discusses with employees subjects related to their grievances, labor disputes, wages, rates of pay, hours of employment and/or conditions of work. These employee discussions involve the process of union elections to be held post-recognition, including voting procedures and union structure, and the formation of the internal constitution. The employees meet virtually to participate in these conversations.

Although it disputes that the Petitioner has established that it exists, at least in part, for the purposes of “dealing with” the Employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work,” the Employer points to no other purpose for which the Petitioner would exist. Under the relevant case law, Petitioner has established the requisite purpose. See *Vencare Ancillary Servs.*, 334 NLRB at 969 (2001); *Electromation, Inc.*, 309 NLRB at 994; *Cf. Coinmach Laundry Corp.*, 337 NLRB at 1287. Contrary to the Employer’s assertions, the organization is not required to identify any by-laws, constitution, prior processed grievances, or other documents that state or demonstrate its purpose of dealing with the Employer. See *Electromation, Inc.*, 309 NLRB at 993-94. The Petitioner’s various communications with and solicitation of employees, along with its stated purpose, suggest that it exists, at least in part, for the purpose of “dealing with” the Employer concerning “grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

Comparing the matter to one entirely inapposite*, the Employer points to the Petitioner’s lack of formal structure. The Board has long held that an organization’s lack of structural

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6 The Employer cites *Vencare Ancillary Servs.*, 334 NLRB at 969 (2001) but fails to establish any similarity of facts or issues with that case. In *Vencare*, a group of five, unrepresented, hospital employees joined each other in drafting
formality—for instance, the absence of a constitution or bylaws, or a failure to collect dues or initiation fees—does not disqualify a union as a labor organization, provided it was established for the purpose of representing its membership and intends to do so if certified. *Butler Mfg. Co.*, 167 NLRB 308 (1967); see also *Yale University*, 184 NLRB 860 (1970); *Stewart-Warner Corp.*, 123 NLRB 447 (1959); *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959).

Further, the Employer’s argument about the Petitioner’s lack of bargaining history is unpersuasive. Under the Employer’s theory, only those unions which were able to achieve bargaining relationships prior to certification would be eligible to petition as employee representatives. This illogical theory has no support in the law. Under decades’ old precedent, although the Petitioner herein has not negotiated a collective bargaining agreement with any employer, this fact does not preclude a finding that the Petitioner is a labor organization. See *Advance Industrial Security, Inc.*, 225 NLRB 151 (1976) (wherein the petitioner’s mere indication that, in the future, if certified, it intends to perform collective bargaining activities to represent employees is sufficient to find labor organization status); *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970) (in which the Board found that evidence that employees participated in the petitioner’s activities and that the petitioner existed for the purpose of engaging in collective bargaining with the employer was sufficient to establish labor organization status). In fact, the Petitioner has taken steps to represent employees with regard to their terms and conditions of employment by filing the instant petition.

Finally, regardless of whether the Petitioner has filed financial statements, violations of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) do not affect Board policy, since Section 603(b) of the Act explicitly provides: “nor shall anything contained in [Titles I through VI] . . . of this Act be construed . . . to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.” An organization’s (or its agent’s) possible failure to comply with the LMRDA should be litigated in the appropriate forum under that Act, and not by the indirect and potentially duplicative means of the Board’s consideration in the course of determining the union’s status under Section 2(5) of the Act. *Caesar’s Palace*, 194 NLRB 818, 818 fn. 5 (1972); see *Meijer Supermarkets, Inc.*, 142 NLRB 513, 513 fn. 3 (1963); *Harlem River Consumers Cooperative*, 191 NLRB 314, 316 (1971). A violation of the Labor-Management Relations Act of 1947 was likewise held not to disqualify a petitioner from filing a representation petition. *Chicago Pottery Co.*, 136 NLRB 1247 (1962). As stated in *Lane Wells Co.*, 79 NLRB 252, 254 (1948), “excepting only the few restrictions explicitly or implicitly present in the Act, we find nothing in Section 9, or elsewhere, which vests in the Board any general authority to subtract a memorandum and engaging in a work stoppage to protest of wage cuts. Significantly, the group’s demand related to a single issue and a single action. The group had no leader, no name, no authorization cards, and no plans to represent the employees in any other way. Because of its loose affiliation and the single-issue nature of the group’s activity, the Board found that that the group was not a labor organization, an issue which was only raised because of its implications for the hospital industry pre-strike requirements set forth in Section 8(g) of the Act. See *id.* (“The five employees elected no leaders, they met only once as a group prior to engaging in the work stoppage, they did not request recognition from the Respondent, they asked to meet with upper management on only a single issue (the wage cuts), and they presented their grievance memo at their regularly scheduled morning meeting prior to engaging in the work stoppage.”).

Notably, the Petitioner has not been operational for a year and accordingly, does not have any annual financial statements to present at this time.
from the rights of employees to select any labor organization they wish as exclusive bargaining representative.” See also National Van Lines, 117 NLRB 1213 (1957).

Based upon the record evidence set forth above, I find that the Petitioner is an organization that exists, at least in part, for the purpose of representing employees in dealings with their employer regarding their terms and conditions of employment and that employees participate in the functioning of the Petitioner. Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

V. METHOD OF ELECTION

A. The COVID-19 Pandemic

The COVID-19 pandemic has had a profound impact on daily life in the United States in the last two years. Despite unprecedented efforts to limit transmission, to date 88 million people in the United States have been infected with COVID-19 and over 1 million people have died.8

The Centers for Disease Control and Prevention (CDC), has determined that “[l]imiting close face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).”9 Many of the measures recommended by the federal, state, and local governments to prevent the spread of the virus are well-known at this point: avoid crowds, practice good hygiene, maintain at least a 6-foot distance between individuals, and use masks when around other people.

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

B. Board Standard and Determination

Congress has entrusted the Board with a wide degree of discretion in establishing the procedures and safeguards necessary to ensure the fair and free choice of bargaining

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representatives, and the Board, in turn, has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.*, 325 NLRB at 1144-45.

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

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

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

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

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

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

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10 The provisions of the Casehandling Manual are not binding procedural rules: it is issued by the General Counsel of the National Labor Relations Board and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).
4. The employer fails or refuses to commit to abide by GC Memo 20-10, “Suggested Manual Election Protocols;”

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or

6. Other similarly compelling circumstances.

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

Several of the _Aspirus_ factors are not relevant to my determination in this case. The Region tasked with conducting the election is not operating under mandatory telework status, mandatory state or local health orders relating to maximum gathering size are not at issue, the Employer has committed to abide by Memorandum GC 20-10, and there is no evidence of a current outbreak at the Employer’s facility. Ultimately, I have determined that a mail ballot election is appropriate in this case due to the remaining factor: the 14-day trend in number of new confirmed cases in the county where the facility is located is increasing, or the 14-day testing positivity rate in Hunt County, Texas is 5 percent or higher.

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

The first contingency at issue here is whether the 14-day trend in number of new confirmed cases in the county where the facility is located is increasing. Publicly available data shows that the number of confirmed cases in Hunt County has been increasing over the last 14 days, an upward trend that began about June 20, 2022.\(^{11}\)

Regarding the second contingency, whether the 14-day testing positivity rate in Hunt County is 5 percent or higher, the current positivity rate is 28.9%, thus this contingency is triggered.\(^{12}\) Consistent with the upward trend in total numbers, the positivity rate is up since June 27, when Hunt County reported a positivity rate of 22.3%.

\(^{11}\) See https://covidactnow.org/us/texas-tx/county/hunt_county/?s=36802434 (Last checked July 11, 2022)(Showing an increase from 30.4 per 100,000 on June 20, 2022, to 124.8 cases per 100,000 on June 27, 2022, to 166.8 per 100,000, as of July 11, 2022)

\(^{12}\) See https://covidactnow.org/us/texas-tx/county/hunt_county/?s=36802434 (Last checked July 11, 2022)
Aspirus directs that a mail ballot election may be appropriate where either one of the two contingencies described above are met. Under these circumstances I do not find it necessary to discard the framework utilized in Aspirus. To the extent the Employer’s argues that Aspirus is not applicable, these are arguments best directed to the Board, as I am obligated to apply its decisions, and I have done so here in directing a mail ballot election.

I conclude that a mail ballot election is appropriate based on the COVID-19 test positivity rate in Hunt County, the county where the Greenville store is located. Accordingly, due to the Aspirus factors, I am directing a mail ballot election.

VI. CONCLUSIONS

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

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

2. The parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.\(^\text{13}\)

3. I find that Petitioner is a labor organization within the meaning of Section 2(5) of Act.

4. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Worker’s United Front.

5. 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.

6. The parties stipulated, and I find, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and regular part-time clerks, ERP/BLERP clerks, 2\(^{nd}\) assistants, relief assistants, and night assistants employed by the Employer at its facility located at 1400 East Joe Ramsey Boulevard, Greenville, Texas.

**EXCLUDED:** All other employees, ERP/BLERP clerks primarily employed at other stores, 1\(^{st}\) assistants, managerial employees, temporary employees, professional employees, guards and supervisors as defined by the Act.

\(^\text{13}\) QuikTrip Corporation, an Oklahoma corporation, operates retail convenience stores throughout the United States including the facility located at 1400 East Joe Ramsey Boulevard, Greenville, Texas. During the past 12 months, the Employer derived gross revenues in excess of $500,000 and purchased and received at its Greenville, Texas facility goods valued in excess of $5,000 directly from points outside the State of Texas.
VII. 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 Worker’s United Front.

A. Election Details

The election will be conducted by United States mail.

On Tuesday, July 19, 2022, the ballots will be mailed to voters by a designated official from the National Labor Relations Board, Region 16.

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, July 29, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 16 Office at (817) 978-2921 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 16 office prior to the close of business at 4:45 p.m. on Tuesday, August 16, 2022. All ballots will be commingled and counted by Region 16 of the National Labor Relations Board on Tuesday, August 23, 2022, at 2:00 p.m. with participants being present via videoconference provided the count can be safely conducted on that date and at the Regional Director’s discretion. No party may make a video or audio recording or save any image of the ballot count. In order to be valid and counted, the returned ballots must be in an envelope signed by the voter and must be received in the Region 16 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 10, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as directed above.
Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

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

To be timely filed and served, the list must be received by the regional director and the parties by Wednesday, July 13, 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.

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14 The Petitioner has agreed to waive the entire 10-day period it is permitted to receive the voting list prior to the opening of the polling period.
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.

VIII. RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency’s website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.
DATED at Fort Worth, Texas, this 11th day of July 2022.

[Signature]

Timothy L. Watson
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