

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 18**

**AMERIPRIDE SERVICES, LLC**

**Employer**

and

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 289**

**Petitioner**

**Case 18-RC-262007**

**DECISION AND DIRECTION OF ELECTION**

This case is before me pursuant to a stipulated record entered between the parties on July 7, 2020.<sup>1</sup> The parties waived their right to a pre-election hearing and stipulated that the sole issue is whether the election should be conducted in person or by mail ballot, which is a non-litigable matter.<sup>2</sup> The Board has delegated its discretion in determining such arrangements to Regional Directors. *San Diego Electric*, 325 NLRB 1143, 1144 (1998). The Employer argues for a manual election. The Petitioner did not submit a position statement in the matter, though the Employer represents in its position statement that the Union believes a manual election is appropriate.<sup>3</sup> In carefully considering the arguments made by the Employer on this issue, I find that a mail ballot election is appropriate under the extraordinary circumstances presented by the COVID-19 pandemic at this time.

**CONCLUSIONS**

Based upon the entire record in this matter, I conclude as follows:

1. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.<sup>4</sup>

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<sup>1</sup> All dates are in 2020, unless otherwise noted.

<sup>2</sup> See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

<sup>3</sup> The Union informed the Region via email, after the deadline for submission of statements of position, that it would agree with the Employer's position on how to conduct a safe election, as long as the temperature checks were conducted by an impartial party. Although untimely, I accept this as the Union's position.

<sup>4</sup> The Employer is engaged in the business of providing industrial laundry, linen and uniform services out of its Hibbing, Minnesota facility. The parties stipulated that during the last calendar year ending December 31, 2019, a representative period, the Employer purchased and received goods valued in excess of \$50,000 directly from points located outside the State of Minnesota.

2. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
4. There are no contract bars or any further bars in existence that would preclude the Region from processing the petition.
5. 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:

All full-time and regular part-time production employees including maintenance mechanics, truck loaders, janitors and warehouse employees; but excluding managers, office staff, customer service representatives (CSRs), security employees, and guards and supervisors as defined by the Act.

#### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters Local 289. For the reasons described below, I have determined that a mail ballot election will be conducted in this matter.

##### **1. Employer Operations**

The Employer maintains a facility in Hibbing, Minnesota, out of which it provides laundry, linen and uniform services. The Employer employs approximately 47 employees in the proposed bargaining unit.

##### **2. The Employer's Position**

The Employer argues for a manual election. It points out that manual elections are normally favored by the Board. In asserting that a manual election would be safe under the circumstances and pose minimal risks to all individuals present, the Employer points out that none of its employees have tested positive for COVID-19, which it attributes to the safety measures it has implemented at its facility. This includes regular employee temperature checks, screening employees for COVID-19 symptoms, and mandated use of masks and gloves. Finally, the Employer also proposes various additional safety measures which could be implemented for the manual election to

reduce the risk of COVID-19, including those suggestions included in General Counsel Memorandum 20-10 entitled “Suggested Manual Election Protocols.”

### **3. A Mail Ballot Election Is Appropriate**

The Board’s decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail ballot election would normally be appropriate. In *San Diego Gas & Electric*, the Board also recognized that “there may be other relevant factors that the Regional Director may consider in making this decision” and that “extraordinary circumstances” could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

Consistent with the recognition of the discretion afforded to Regional Directors in extraordinary circumstances in *San Diego Gas*, on April 17, 2020, the Board issued an announcement regarding the COVID-19 pandemic titled, “COVID-19 Operational Status,” which states in pertinent part:

Representation petitions and elections are being processed and conducted by the regional offices. Consistent with their traditional authority, Regional Directors have discretion as to when, where, and if an election can be conducted, in accordance with existing NLRB precedent. In doing so, Regional Directors will consider the extraordinary circumstances of the current pandemic, to include safety, staffing, and federal, state and local laws and guidance.

Recently, the Board has denied review of several mail ballot elections ordered by Regional Directors under the current COVID-19 circumstances, citing the local, state and federal directives and the current pandemic conditions in the local area as evidence that the Regional Director did not abuse his or her discretion. See *TDS Metrocom LLC*, 18-RC-260318 (unpublished June 23, 2020); *Vistar Transportation, LLC*, 09-RC-260125 (unpublished June 12, 2020); and *Roseland Community Hospital*, 13-RC-256995 (unpublished May 26, 2020).<sup>5</sup> Most recently, on July 14, 2020, the Board again affirmed that it will continue to consider whether manual elections should be directed based on

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<sup>5</sup> In these decisions, the Board also cited to the fact that the Regions involved were under mandatory telework. Although Region 18 is not currently under mandatory telework as of the time of this decision, operating practices, safety protocols and telework status of employees is closely monitored based on local conditions and recently, local conditions reflect an increase in the number of COVID cases. In exercising my discretion to order a mail ballot under these circumstances, I rely on the remaining factors identified by the Board in its April 17 announcement and as I describe below.

the circumstances then prevailing in the region charged with conducting the election. See *Brink's Global Services USA, Inc.*, 29-RC-260969 (unpublished July 14, 2020).<sup>6</sup> Accordingly, I find that the COVID-19 pandemic is an extraordinary circumstance based on the current surge of COVID-19 in Minnesota, including the local area (election location, location of employees who would travel, and the areas that would be traveled through to get to the election site); local, state and federal guidance; and the ongoing uncertainties presently created by COVID-19.

COVID-19 has created a public health crisis, responsible for upwards of 130,000 deaths in this country. Currently, the number of new COVID-19 cases continues to climb and is surging in several areas of the country. Unfortunately, Minnesota is no exception. The 7-day rolling average of confirmed cases in Minnesota continues to climb dramatically.<sup>7</sup> In Minnesota, the COVID-19 pandemic appears to have significantly worsened since the Board's April 17 Operational Status Update. As of April 17, the average daily number of confirmed positive cases (based on a rolling seven-day average) was 105. It is now 592, continuing its week-long upward trajectory.<sup>8</sup> St. Louis County, where the election is to take place, has not been spared, having recently experienced its largest uptick in positive cases to date.<sup>9</sup> It is not possible for me to know if these numbers represent an increase in the number of infections, a reflection of more widespread testing or better reporting. However, it is sufficient to establish that there is no seen improvement in COVID conditions and that there continues to be spread of COVID, factors which lead me to conclude there is too much risk to holding a manual election at this time or in the near future.

The U.S. Center for Disease Control and Prevention (CDC) explains that COVID-19 is primarily spread from person to person and that a person may become infected when an "infected person coughs, sneezes or talks" or by "touching a surface or object that has the virus on it, and then by touching your mouth, nose or eyes."<sup>10</sup> Guidance

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<sup>6</sup> The Decision and Direction of Election in *Brinks Global* issued after the NLRB Agency lifted its mandatory telework requirement.

<sup>7</sup> *Latest on COVID-19 in MN: 2 more deaths, 499 new cases*. Minnesota Public Radio News. Retrieved from <https://www.mprnews.org/story/2020/07/13/latest-on-covid19-in-mn> (accessed on July 13, 2020).

<sup>8</sup> *Coronavirus in the U.S.: Latest Map and Case Counts*, *New York Times*. Retrieved from <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (accessed on July 13, 2020).

<sup>9</sup> *Saint Louis County Minnesota, Public Health & Human Services Department, St. Louis County sees 15 new cases of COVID-19, largest single day increase to date*. (July 7, 2020 news release, available at: <https://www.stlouiscountymn.gov/departments-a-z/public-health-human-services>).

<sup>10</sup> U.S. Center for Disease Control and Prevention, COVID-19 Guidance Documents, Coronavirus disease 2019 (COVID-19) Factsheet – CDC, *What you should know about*

issued by the CDC recommends “limit[ing] in-person contact as much as possible.” This guidance is echoed by the State of Minnesota’s Department of Health and St. Louis County, both of which recommend limiting in-person contact at this time.<sup>11</sup> This election would also involve travel to the facility by a Board Agent and party representatives. The CDC continues to maintain that “[b]ecause travel increases your chances of getting infected and spreading COVID-19, staying home is the best way to protect yourself and others from getting sick.”<sup>12</sup>

Manual election procedures inherently require substantial interaction among voters, observers, party representatives and the Board agent, all of whom must be present at the Employer’s facility. The Board Agent, observers and party representatives participate in a pre-election conference in which they must inspect the voting area and check the voter list. The Board Agent and observers must be present in the same space for the duration of the election period. In this regard, the proposed four-hour voting period will greatly extend the period of time the Board Agent and observers will spend together. Given the availability of a mail ballot election, ordering a manual election under the current circumstances would be in direct contradiction to the federal, state and local guidance, all of which advise avoiding in-person contact, which a manual election necessitates. This guidance is even more critical now given the resurgence of COVID-19 statewide.

Furthermore, a mail ballot election avoids the uncertainties created by COVID-19. For example, it is now well-established, although the exact percentage is uncertain, that certain individuals infected with COVID-19 will remain asymptomatic and display no symptoms. It may take several days for a person who has been infected to start displaying symptoms, even though they are contagious prior to display of symptoms. As a result, despite the proposed screening measures, infected individuals could participate in the election, unknowingly exposing co-workers, party representatives, observers, and the Board Agent, who, along with the observers, will be in the voting area for a very long and sustained period of time. A mail ballot election eliminates this risk.

Moreover, if an employee tests positive for COVID-19, suspects they may have COVID-19 due to symptoms, has an elevated temperature, or must be quarantined due

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*COVID-19 to protect yourself and others* (available at:

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>)

<sup>11</sup> Minnesota Department of Health, *Protect Yourself and Others: COVID-19* (available at: <https://www.health.state.mn.us/diseases/coronavirus/prevention.html#slow>); Saint Louis County Minnesota, Public Health & Human Services Department, *St. Louis County sees 15 new cases of COVID-19, largest single day increase to date* available at: <https://www.stlouiscountymn.gov/departments-a-z/public-health-human-services>)

<sup>12</sup> U.S. Center for Disease Control and Prevention, *Coronavirus in the United States- Considerations for Travelers* available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html> (accessed July 13, 2020)

to COVID-19 exposure, they will be deprived of their vote in a manual election, as there is no absentee ballot or remote voting options under the Board's manual election rules. A mail ballot election avoids this significant pitfall and ensures all have an opportunity to vote regardless of their exposure to COVID-19 or health status. Furthermore, there is no known date at which the guidance and circumstances I have described above will change. As a result, a mail ballot election in this matter will allow for holding of the election "at the earliest date practicable" consistent with the Board's Rules and Regulations Section 102.67(b).

In its position statement, the Employer proposed various safety measures to mitigate COVID-19, including holding the election in an open tent with multiple shielded tables spaced at least six feet apart; regularly sanitizing the voting area; providing disposable writing and other instruments for voting procedures; requiring voters to wear masks; and performing temperature checks of voters.<sup>13</sup> It also agrees to abide by the suggestions made in General Counsel Memorandum 20-10, entitled "Suggested Manual Election Protocols." I have carefully considered the Employer's suggestions and the suggestions in GC Memo 20-10. Ultimately, as GC Memo 20-10 recognizes, the decision to conduct the election by mail ballot is within my discretion. In this case, as I have already described, we have not reached a safe enough juncture in the pandemic. I have determined that the most appropriate course of action at this time is to follow accepted guidance to limit in-person contact and travel within the state.

A mail ballot election would also meet the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees. I note that neither party has argued that the petitioned-for employees would be unable to understand the mail balloting procedure. There is no contention that the addresses of the eligible employees are not known or up to date. Any mail ballot election, held at any time under any circumstances, includes and ensures procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. There is no evidence that the mail service in Minnesota, the state in which the mail ballots will be sent and received, has been disrupted. Mail balloting provides no additional risk to Board Agents, parties, voters, or the public and is consistent with current guidance of limiting in-person contact and travel. Even in the midst of this pandemic, the Region has already successfully conducted a number of mail ballot elections. Although an in-person count may be infeasible, arrangements can be made for a virtual remote count that provides all the safeguards of a traditional count.

For the above reasons, I find that the appropriate and most responsible measure to ensure a safe election is a mail ballot election. A mail ballot election will eliminate the

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<sup>13</sup> Some of these proposals, such as conducting an election in an "open tent" and having the Employer clear individuals to vote based on the result of their temperature check, raise separate concerns related to the secrecy and integrity of the election process. I am not addressing those concerns in this Decision, as I am not directing a manual election.

risk of unnecessarily exposing employees, Board agents, party representatives, and their families to COVID-19, and it will ensure that the Unit employees have the opportunity to vote promptly.

### **ELECTION DETAILS**

I have determined that the election will be conducted through mail ballot. 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 18, on July 31, 2020, at 4:30 p.m. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 18 office by close of business at 4:30 p.m. on August 17, 2020. The mail ballots will be counted at the Region 18 office located 212 3<sup>rd</sup> Avenue South, Suite 200 in Minneapolis, Minnesota at 3:00 p.m. on August 20, 2020.

To help avoid the untimely return of a ballot, any person who has not received a ballot by August 7, 2020, or otherwise requires a duplicate mail ballot kit, should contact the Region 18 office in order to arrange for another mail ballot kit to be sent to that employee.

To ensure the safety of the Board Agent and the public, the count shall be conducted virtually. Additional instructions will follow.

### **VOTING ELIGIBILITY**

Eligible to vote are those in the unit who were employed during the weekly payroll period ending July 10, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (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.

## 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 cellphone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **July 20, 2020**. 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.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.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.nlr.gov](http://www.nlr.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.

## POSTING OF NOTICES OF ELECTION

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the



Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

### **RIGHT TO REQUEST REVIEW**

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlrb.gov](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>14</sup> 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.

Although 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, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties retain the right to file a request for

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<sup>14</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.

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review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated July 16, 2020.

/s/ Jennifer A. Hadsall

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Attachment