

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

**GI INDUSTRIES DBA WASTE MANAGEMENT**

**Employer**

**and**

**Case 31-RC-275296**

**TEAMSTERS LOCAL UNION NO. 186**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

On April 8, 2021,<sup>1</sup> Teamsters Local Union No. 186 (Petitioner or Union) filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent certain employees of GI Industries dba Waste Management (Employer). After the Region issued a Notice of Hearing, the parties waived their right to a hearing before a Hearing Officer and entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) on April 27, which I approved the same day. The petitioned-for unit was clarified in the Stipulation to include all full-time and part-time employees of the Employer working at its Simi Valley, California Waste Disposal Facility, including residential drivers, commercial drivers, roll-off drivers, rent-a-bin drivers, valet drivers, lift-gate/bulk drivers, heavy equipment operators, relief drivers, helpers, scout drivers, maintenance department employees, mechanics, diesel technicians, preventive technicians, welders, painters, and general laborers; and exclude all other employees, office, clerical, and administrative employees, managerial employees, guards, and supervisors as defined in the Act. There are approximately 182 employees in the petitioned-for unit.

The only issue unresolved by the Stipulation is whether the election should be held manually at the Employer's facility or by mail ballot, considering the continuing COVID-19 pandemic.<sup>2</sup> The parties agreed in the Stipulation that they would each file their respective written statements on this issue, including – in addition to providing its argument on whether a manual election could be safely held – providing a detailed description of the proposed election arrangements, including the location, size and layout of the room; the location of entrances and exits; and ventilation. The parties agreed in the Stipulation that a manual election proponent would provide a proposal for how a manual election could be conducted consistent with protocols described in General Counsel Memorandum 20-10, *Suggested Manual Election Protocols* (GC Memo 20-10). The parties also agreed in the Stipulation that a manual election proponent would provide the number of employees who have within the last 3 months tested positive for COVID-19, exhibit symptoms of COVID-19, and/or who were subject to quarantine for any reasons related to COVID-19. Finally, the parties agreed in the Stipulation that the

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<sup>1</sup> All dates hereinafter are in 2021 unless otherwise noted.

<sup>2</sup> Throughout this decision, the terms "COVID-19," "coronavirus," and "virus" are used interchangeably.

Employer would provide certifications required by *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 7 (2020), related to the presence of COVID-19 at the Employer's facility.

In this case, the Employer and the Union both request a manual election at the Employer's Simi Valley, California facility. The Employer argues that an election can be held safely utilizing the protocols it has proposed for the setup and conduct of the election at its facility, and under the Board's "guidance" issued in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020). The Union likewise asserts that a manual election can be safely conducted at the Employer's facility pursuant to the factors outlined in *Aspirus Keweenaw* and *Rush University Medical Center*, 370 NLRB No. 115 (April 27, 2021).

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, relevant Board law, and the circumstances of the COVID-19 pandemic, for the reason described more fully below, I shall direct a manual ballot election.

## **I. FACTUAL OVERVIEW AND POSITION OF THE PARTIES**

### **A. The COVID-19 Pandemic in the United States**

The United States has surpassed the one-year anniversary of the COVID-19 pandemic and daily life remains profoundly changed in the face of this unprecedented challenge. Throughout the pandemic, public health authorities have issued guidelines and directions designed to slow transmission of this deadly respiratory infection. The Centers for Disease Control and Prevention (CDC), an agency of the United States government, has issued guidance about recommended precautions to avoid contracting the virus, including: getting the COVID-19 vaccine, wearing a mask that covers your nose and mouth, staying at least 6 feet apart from others who do not live with you, avoiding crowds and poorly ventilated indoor spaces, and washing your hands often with soap and water, or using hand sanitizer if soap and water are not available.<sup>3</sup> This guidance has been evolving over time, including modifications for individuals who have been fully vaccinated. Since the beginning of the year, the United States has expanded a nationwide vaccination effort, and as of May 12, approximately 117,647,439 people or about 35.4 percent of the population has been fully vaccinated.<sup>4</sup>

Unfortunately, with the hopeful news regarding vaccination, the nation has also faced new challenges. In recent months, new variant strains of COVID-19 have emerged, including the B.1.1.7, B.1.351, and P.1. strains.<sup>5</sup> The CDC has stated that these variants "have mutations in the virus genome that alter the characteristics and cause the virus to act differently in ways that are significant to public health (e.g., causes more severe disease, spreads more easily between humans, requires different treatments, changes the effectiveness of current vaccines)."<sup>6</sup>

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<sup>3</sup> I take administrative notice of the information, guidance, and recommendations of the CDC regarding COVID-19. See, e.g., <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed May 13, 2021).

<sup>4</sup> <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last accessed May 13, 2021).

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/variant-surveillance/variant-info.html> (last accessed May 13, 2021)

<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant-cases.html> (last accessed May 13, 2021).

Initial research suggests, as stated by the CDC, “[t]hese variants seem to spread more easily and quickly than other variants, which may lead to more cases of COVID-19.”<sup>7</sup> The CDC further cautions that we do not yet know how widely these new variants have spread, how the disease caused by these new variants differs from the disease caused by other variants that are currently circulating, and how these variants may affect existing therapies, vaccines, and tests.<sup>8</sup> The government has developed a variant classification scheme that defines three classes of COVID-19 variants: variant of interest, variant of concern, and variant of high consequence.<sup>9</sup> A variant of high consequence would require an announcement of strategies to prevent or contain transmission and recommendations to update treatments and vaccines.<sup>10</sup> To date, no variants of high consequence have been identified in the United States.<sup>11</sup>

## **B. The COVID-19 Pandemic in Ventura and Los Angeles Counties**

In Ventura County, where the Employer’s Simi Valley, California facility is located, the 7-day COVID-19 testing positivity rate as of May 12 is 1.0%.<sup>12</sup> In addition, reviewing the data from the 14 days preceding May 12, there have been 336 COVID-19 positives of approximately 47,171 tests administered in Ventura County during that period, which means that only 0.071% of the COVID-19 tests during that period have been positive.<sup>13</sup> Furthermore, during the same 14-period, the trend in the number of new confirmed COVID-19 cases in Ventura County is not increasing.<sup>14</sup> Similarly, in Los Angeles County, where the Employer provides services and where some of its employees live, the COVID-19 testing positivity rate has been at or below 1% every day during the 14-period preceding May 12, and the trend in the number of new confirmed COVID-19 cases in Los Angeles County has not been increasing during the same time period.<sup>15</sup> With respect to COVID-19 variants, the California Department of Public Health has confirmed the presence of at least five variants of concern in the state as of May 12.<sup>16</sup>

According to the California Department of Public Health, every Californian 12 years old or older is now eligible for vaccination.<sup>17</sup> As of May 12, approximately 14,845,598 Californians, or 46.7% of the state’s population, have been fully vaccinated, including 8,392,273 doses administered in Los Angeles County and 743,047 in Ventura County.<sup>18</sup>

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<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last accessed May 13, 2021).

<sup>8</sup> Ibid.

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/variant-surveillance/variant-info.html> (last accessed May 13, 2021).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> <https://www.venturacountyrecovers.org/> (last accessed May 13, 2021).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> [http://dashboard.publichealth.lacounty.gov/covid19\\_surveillance\\_dashboard/](http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/) (see “Daily Tests by Specimen Collection Date” graph; last accessed May 13, 2021).

<sup>16</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-Variants.aspx> (last accessed May 13, 2021).

<sup>17</sup> <https://covid19.ca.gov/vaccines/> (last accessed May 13, 2021).

<sup>18</sup> <https://covid19.ca.gov/vaccination-progress-data/> (last accessed May 13, 2021).

### **C. The Employer's Business, Position on a Manual Election, and Suggested Safety Protocols**

The Employer provides waste and recycling pick-up and delivery services in Ventura County and in some areas in Los Angeles County from its facility in Simi Valley, California. During the pandemic, the Employer has continued to operate six days per week, Monday through Saturday. Drivers at the facility report to work on staggered shifts starting at 4:30 a.m., 5:00 a.m., 5:15 a.m., 5:30 a.m., 6:00 a.m., and 6:30 a.m., with approximately 30 drivers reporting for work during each of these start times. The drivers spend most of their time away from the facility in their routes and do not have designated end times, but typically return to the facility between 3:00 p.m. and 6:00 p.m. Most shop employees start their shift at 3:00 p.m., but a few report to work at 4:15 a.m. and 10:00 a.m. There are typically no more than 60 employees at the facility at any time.

With respect to the COVID-19 pandemic, the Employer has implemented numerous safety protocols and procedures. In the past three months, only two employees have tested positive for COVID-19, with one of those two positives occurring in the 14 days preceding May 4, the day when the Employer signed the required certification. Besides the one positive test in the 14 days preceding May 4, to the Employer's knowledge, no other employees are awaiting results of a COVID-19 test, exhibiting symptoms of COVID-19, or have had contact with anyone who has tested positive for COVID-19 during the same 14-day period.

The Employer proposes a manual election. In support of its position that a manual election can be conducted safely, the Employer commits to complying with all the protocols identified in GC 20-10 and more specifically proposes: (1) separate tables spaced six feet apart so the Board Agent, observers, ballot booth, and ballot box are at least six feet apart; (2) markings on the floor to remind/enforce social distancing; (3) sufficient disposable pencils without erasers for each voter to mark their ballot; (4) glue sticks or tape to seal challenge ballot envelopes; (5) plexiglass barriers of sufficient size to protect the observers and Board Agent; (6) masks, hand sanitizer, gloves and wipes for observers; and (7) signs notifying all present of the requirement to wear CDC-conforming masks in the facility.

The Employer asserts that during the last three months, the Employer has not experienced a COVID-19 outbreak in the facility, as only two employees have tested positive for COVID-19. The Employer submits that the lack of cases at its facility is due to the preventive measures in place at the facility. Furthermore, the Employer submits that California has one of the lowest COVID-19 case rates in the United States at 1.1% and that Ventura County has had a positivity rate below 5.0%.

The Employer proposes a manual election at one of two areas in its facility. The first area is a portable building approximately 60 feet long by 23 feet wide, with 8-foot ceilings, and windows that can be opened for additional ventilation. The building has doors that provide for separate entrance and exit for voters. The second area is a tent that is 47 feet by 50 feet, with ceilings exceeding 50 feet high and which is completely open on one side (Tent 1). The open side provides for ventilation and for employees to enter and exit the polling area maintaining social distancing. There is also a second tent that can be used for additional space since the tents are right next to each other (Tent 2).

The Employer proposes that the manual election take place from 4:00 a.m. to 7:00a.m. and 2:30 p.m. to 3:30 p.m. on May 21. It argues this proposed date and these times would allow all employees to vote safely, while allowing the Employer to run its business, and respect the Agency's resources. The Employer strongly objects to the Union's proposed polling periods noted below (5:00 a.m. to 8:00 a.m. and 3:00 p.m. to 6:00 p.m.) because: it believes that the Employer's proposed morning polling period will be sufficient for most employees to vote, citing Casehandling Manual guidance about how many employees can typically vote per hour in a manual election; the Union's proposed morning polling period would not allow a sizable group of employees who begin work before 5:00 a.m. to vote at the start of their shift; the Union's proposed three-hour afternoon polling period is not necessary and will not guarantee that drivers returning from their routes will be back in time to vote during that session because they do not have designated end times; the tents are typically not available after 3:30 p.m. because maintenance staff begin using them at that time and "[w]hile the Employer can delay this for a short amount of time ... it cannot properly run its business if it is required to wait until after 6:00 p.m. to utilize the area;" because drivers returning to the facility at the end of their shift "need assistance from management to complete their shift paperwork or address common issues, it is less likely that the tented area will remain private or free from distractions" during the Union's proposed afternoon polling period; and "making the voting area accessible to all employees before they start work for the day is the best way to ensure all employees are able to vote without any additional fear, pressure, or inappropriate campaigning ... while they are out on their routes."

#### **D. The Union's Position on a Manual Election**

The Union would prefer a manual ballot election conducted at the Employer's facility. It argues that a manual election can be safely conducted at the Employer's facility pursuant to the factors outlined in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), and *Rush University Medical Center*, 370 NLRB No. 115 (April 27, 2021).

The Union proposes that the election be conducted in Employer's Tent 1 on May 14, 2021. It also proposes the polling hours to be from 5:00 a.m. to 8:00 a.m. and 3:00 p.m. to 6:00 p.m.

## **II. 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 such elections. The Board's obligation to perform the function of conducting secret ballot elections must be taken very seriously, particularly at this time when the nation and the local community continue to deal with the COVID-19 pandemic. Regional Directors have an obligation to appropriately exercise their discretion concerning the timing and manner of the election with due consideration to safety considerations in the context of a pandemic.

Although the Board prefers to conduct manual elections over conducting mail ballot elections, 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).<sup>19</sup> Thus, “[o]nly 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*, 325 NLRB 1143, 1144 (1998). The Board clarified that Regional Directors should consider, at a minimum, where employees are located geographically, if employees are temporarily scattered, whether there is an ongoing strike, lockout, or picketing, and the ability of voters to read and understand a mail ballot. *Id.* at 1145. The Board went on to say 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 former General Counsel issued GC 20-10 on July 6, 2020, setting forth detailed suggested manual election protocols.

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), providing 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.

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<sup>19</sup> 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 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).

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.
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.

Recently, in *Rush University Medical Center*, 370 NLRB No. 115 (April 27, 2021), the Board provided further guidance regarding some of the factors outlined in *Aspirus*. First, the Board noted that “the *Aspirus* current outbreak factor is not satisfied by evidence that Covid-19 is present at a facility.” *Id.*, slip op. at 1. The Board explained,

Instead, the Regional Director should determine whether the Covid-19 cases at the facility would reasonably be expected to affect the conduct of a manual election. Relevant considerations in this regard include whether (1) the number or physical location of such Covid-19 cases, or the likelihood that those cases will result in unit employees being exposed to Covid-19, indicates that a manual election would pose a threat to health or safety; or (2) current Covid- 19 cases among unit employees would result in their disenfranchisement by a manual election.

*Id.*, slip op. at 1-2. Second, the Board considered whether the emergence of COVID-19 variants, which were not yet in the United States at the time of the Board’s decision in *Aspirus*, constitute a compelling circumstance justifying directing a mail-ballot election. The Board found that “no changes in prevention strategies have been recommended by the CDC based on [COVID-19] variants currently in circulation. Such changes are only recommended for ‘variants of high consequence,’ and no such variants have been identified by the CDC to date.” *Id.*, slip op. at 2. Thus, the Board concluded that “the CDC’s determination that new variants exist does not, as of this date, constitute a ‘similarly compelling circumstance’ within the meaning of *Aspirus* factor 6.” *Id.*

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### III. ANALYSIS

I have carefully considered the positions and arguments presented by the parties and the applicable legal authority. Based on the foregoing facts, the current status of the COVID-19 pandemic in Ventura and Los Angeles Counties, and Board law, I find that, in light of the Board's decision in *Rush University Medical Center*, the circumstances here are not sufficient to justify directing a mail-ballot election under any of the factors outlined in *Aspirus*. More specifically:

- 1. The Agency office tasked with conducting the election is operating under "mandatory telework" status.**

The Regional office is not 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.**

As detailed above, with respect to both Ventura County (where the Employer's facility is located) and Los Angeles County (where some of the Employer's employees live and/or perform work), the 14-day trend in the number of new confirmed cases of COVID-19 as of May 12 was not increasing, and the 14-day testing positivity rate was below 1% during the same time period.

- 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.**

The proposed election location site can be established/set up in a way that complies with state and local health orders governing maximum gathering size.

- 4. The Employer fails or refuses to commit to abide by GC 20-10.**

The Employer has committed to comply with all the protocols outlined in GC 20-10.

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

I note that one employee tested positive for COVID-19 in the 14 days preceding May 4, the day when the Employer signed the required certification. However, I am bound by the Board's decision in *Rush University Medical Center*, in which the Board stated that "the *Aspirus* current outbreak factor is not satisfied by evidence that Covid-19 is present at a facility." *Id.*, slip op. at 1. Thus, applying *Rush University Medical Center*, I find that this single positive test in the last 14 days "would [not] reasonably be expected to affect the conduct of a manual election," particularly considering – as the Employer asserts – that the employee who tested positive during this period is not part of the petitioned-for unit and that, as of May 4, their last day at the facility was April 29.



## 6. Other similarly compelling circumstances.

Likewise, although I have some concerns regarding the presence of COVID-19 variants in California, including in Ventura and Los Angeles Counties, I am bound by the Board's decision in *Rush University Medical Center*. Thus, given that there continue to be no variants of high consequence present in the country, I must find that "the CDC's determination that new variants exist does not, as of this date, constitute a 'similarly compelling circumstance' within the meaning of *Aspirus* factor 6." *Id.*, slip op. at 2.

Accordingly, for the reasons above and in accordance with the Board's duty under Section 9(a) of the Act to conduct secret ballot elections to determine employees' union representation preference and consistent with the Board's decisions in *Aspirus* and *Rush University Medical Center*, I am directing a manual election in this matter as soon as practicable.

## IV. CONCLUSIONS AND FINDINGS

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

1. The parties stipulated and I find that 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.<sup>20</sup>
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 collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or other bar, to this proceeding.
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 parties stipulated and I find that the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**Included:** All full-time and part-time employees of the Employer working at its Simi Valle, California Waste Disposal Facility, including residential drivers, commercial drivers, roll-off drivers, rent-a-bin drivers, valet drivers, lift-gate/bulk drivers, heavy equipment operators, relief drivers,

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<sup>20</sup> The Employer, GI Industries dba Waste Management, a Utah corporation with an office and place of business located at 195 W. Los Angeles Ave., Simi Valley, California, is engaged in the business of operating a waste disposal facility. Within the last 12 months, a representative period, the Employer purchased and received at its Simi Valley, California facility goods valued in excess of \$50,000 directly from points outside California.

helpers, scout drivers, maintenance department employees, mechanics, diesel technicians, preventive technicians, welders, painters, and general laborers.

**Excluded:** All other employees, office, clerical, and administrative employees, managerial employees, guards, and supervisors as defined in the Act.

Thus, for the reasons detailed above, I will direct a manual election in the Unit above, which includes approximately 182 employees.

### **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 **TEAMSTERS LOCAL UNION NO. 186**.

#### **A. Election Details**

The election will be held on **Friday, May 28, 2021** from **4:00 a.m. to 7:00 a.m. and 2:30 p.m. to 5:00 p.m. in Tent 1** at the Employer's facility located at 195 W. Los Angeles Avenue, Simi Valley, California.

In addition, the election will be conducted consistent with the following:

- Each party will be allowed one representative and one observer to attend the pre-election conference and the ballot count.
- Individuals present in the polling area must maintain six feet of distance from any other person, and individuals who are not a party, party representative or an observer, must stay at least 15 feet away from the Board Agent at the pre-election conference and the ballot count.
- Each party will be permitted to have one observer present during each polling period, and observers cannot be switched, replaced, or substituted in the middle of a polling period.
- There will be two voter lists, one for each observer.
- Only one voter will approach the observers' tables and election booth(s) at a time to ensure social distancing.
- After clearance by the observers, the Board agent will place an individual ballot on a table for the voter and then step back to maintain social distance.
- The polling area will be set up with the following tables:
  - One table for each observer with plexiglass barriers on three sides of the table that are of a sufficient size to protect the observers;
  - One table for the Board agent with plexiglass barriers on three sides of the table that are of a sufficient size to protect the Board agent;
  - One table for the Board agent to place ballots on for voters to pick up;
  - One table for the ballot box; and

- Tables equal in number to the election booths to be used, about which the Board agent will inform the parties during the pre-election conference.
- All tables in the polling area must be at least six feet apart.
- The Employer will provide markings on the floor to remind/enforce social distancing, including:
  - Marking spaces six feet apart outside of the polling area for voters waiting in line to vote; and
  - Marking separate entrance and exit points for the polling area, including markings to depict safe traffic flow throughout the polling area.
- The Employer will provide sufficient disposable pencils without erasers for each voter to mark their ballot.
- The Employer will provide masks, hand sanitizer, gloves, and wipes for observers.
- The Employer will provide glue sticks or tape to seal challenge ballot envelopes.
- In accordance with CDC guidance, all voters, observers, party representatives, and other participants should wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area, or while observing the count. Signs will be posted in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives, and other participants of this requirement.
- An inspection of the polling area will be conducted by video conference at least 24 hours prior to the election so that the Board agent and parties can view the polling area.

#### **B. Voting Eligibility**

Eligible to vote are those in the Unit who were employed during the payroll period ending **Saturday, May 8, 2021**, 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.

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### C. Certifications Required

1. No earlier than 48 hours before the election but no later than 24 hours before the election, the Employer must:

- certify in writing that the polling area is consistently cleaned in conformity with established CDC hygienic and safety standards; and
- certify in writing how many individuals have been present in the facility within the preceding 14 days, who:
  - have tested positive for COVID-19 (or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
  - are awaiting results of a COVID-19 test;
  - are exhibiting symptoms of COVID-19, including a fever of 100.4 or higher, cough, or shortness of breath; or
  - have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).<sup>21</sup>

2. Each party, party representative, and observer participating at the pre-election conference, serving as an election observer, or participating in the ballot count, must certify in writing that, within the preceding 14 days:

- they have not tested positive for COVID-19 (or been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
- they are not awaiting results of a COVID-19 test; and
- they have not had direct contact with anyone in the previous 14 days who has tested positive for COVID-19 (or who is awaiting test results for COVID-19 or has been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested).<sup>22</sup>

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

- have tested positive for COVID-19 (or have been directed by a medical professional to proceed as if they have tested positive for COVID-19, despite not being tested) within the prior 14 days;
- are awaiting results of a COVID-19 test;

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<sup>21</sup> These certifications may be provided using Attachment A to GC Memorandum 20-10. Based on these certifications, the Regional Director or designee will consider whether the election should be conducted as scheduled. If the certifications are not timely provided, the Regional Director or designee has the discretion to cancel the election.

<sup>22</sup> These certifications may be provided using Attachment B to GC Memorandum 20-10. Individuals who do not provide such certifications will not be permitted to be physically present at the pre-election conference, to server as an observer, or to be physically present at the ballot count.

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

#### **D. 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 **Monday, May 17, 2021**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.** The Union has waived its right to possess the voter list for 10 days prior to the date of the election and has also waived its right to file objections over this issue.

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.

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**E. 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.nlr.gov](http://www.nlr.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.

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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 Los Angeles, California this 13th day of May 2021.



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