UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

BROADWAY PARTY RENTALS
Employer

and **Case 22-RD-276257**

ALEJANDRO MOYA, an individual
Petitioner

and

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 2013[1]
Involved Party

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

Broadway Party Rentals (the Employer) is engaged in the business of renting party and event equipment and products to its clients. Alejandro Moya (the Petitioner) filed a petition seeking to decertify United Food and Commercial Workers Union, Local 2013 (the Union), as the exclusive bargaining representative for the following bargaining unit:

> **INCLUDED**: All full time and regular part-time warehouse, kitchen, packers, checkers, sewers, laundry workers, bulk, drivers and helpers employed by the Employer at its 990 Paterson Plank Road, East Rutherford, New Jersey facility.
>
> **EXCLUDED**: All executive employees, guards and supervisors as defined in the Act, and all other employees.

The parties stipulate, and I find, that this is an appropriate unit.

This cases involves two issues. First, the parties disagree as to whether the bargaining unit is or will be expanding. Second, the parties disagree as to the voting eligibility of certain employees based on their "inactive" or laid-off status following the Employer's announcement that it was

[1] The parties' full and correct names appear as amended.

permanently relocating its facility.[2] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the authority to decide this matter to me.

As further discussed below, I find that the Employer's current workforce constitutes a substantial and representative complement of employees, and that the employees in an "inactive status" or laid-off status do not have a reasonable expectation of recall. Accordingly, I will direct an election in this matter of the Employer's current compliment of actively working employees. To provide context for my discussion of this matter, I begin with an explanation of the Employer's operations, including details as to its recent relocation and the effect of the COVID-19 on its business. I then consider the parties' positions and evidence related to the issues of whether the unit is expanding and the voting eligibility of inactive and laid-off employees. Next, I discuss my determination on each of the issues. I conclude with my findings.

II. THE EMPLOYER'S OPERATIONS

As noted in the introduction, the Employer is engaged in the business of the rental of party and event equipment and products, including tables, chairs, china, glass, silver, linens, cooking equipment, crow-control equipment, and staging equipment. The Employer's current facility is located at 990 Paterson Plank Road, East Rutherford, New Jersey.

The Employer moved its operations from Brooklyn, New York, to East Rutherford, New Jersey, in July 2020.[3] Prior to the move, the Employer issued WARN letters[4] to its employees on March 26, 2020, to inform them that (1) the Brooklyn facility would close permanently; (2) layoffs would occur between June 24, 2020, and July 7, 2020; (3) all affected employees would receive an offer of employment at the East Rutherford facility; and (4) employees rejecting continued employment would be permanently laid off. The Employer intends to continue offering its services

[2] At hearing, the parties also described their positions as to the sufficiency of the showing of interest. As detailed in Section 11021 of the Casehandling Manual, "The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency and is not dispositive of whether a representation question exists." The eligibility of certain employees will, of course, affect the extent of interest in this matter. Should I direct an election in a unit larger than the petitioned-for unit, the Petitioner will have a reasonable period of time to secure the additional showing of interest. See Section 11031.1 of the Casehandling Manual.

[3] Employer CEO Robert Skriloff testified that the Employer decided to move away from Brooklyn because rent was becoming unaffordable and because the Employer wanted to move to a bigger and better space. The Employer sought a location near New York City with access to quick public transportation, as the Employer sought to retain as many of its employees as possible. Skriloff testified that the Employer moved from a 40,000 square-foot facility in Brooklyn to a 90,000 square-foot facility in East Rutherford.

[4] I take administrative notice of the New York State Worker Adjustment and Retraining Notification (WARN) Act. WARN letters are notifications to certain individuals and entities, including affected employees, regarding closures and layoffs. See https://dol.ny.gov/worker-adjustment-and-retraining-notification-warn.

to the same locations as it did prior to the move, including all five boroughs of New York City, Long Island, and New Jersey.

Employer CEO Robert Skriloff testified that the Employer asked all of its employees to assist in packing up the Brooklyn facility for the move to East Rutherford. The Employer's records show that 65 employees refused to assist in packing for the move at the Brooklyn facility.[5] After completing the packing, the Employer asked its employees to assist with unpacking and setting up the facility in East Rutherford. The Employer's records show that, of those employees who had helped pack for the move, 23 employees refused to work in East Rutherford. Later, one additional employee quit in March 2021. As of the hearing in this matter, the Employer's records showed 24 employees actively working for the Employer at its East Rutherford facility and 13 employees in a "pending" status, who were willing to work and waiting for the Employer to recall them. Additionally, one employee was on maternity leave. Skriloff testified that, when business picked up, the Employer planned to recall those pending employees.

Skriloff testified that, as of the hearing, the Employer had no plans to hire additional employees; instead, the Employer was only reacting to demand. Skriloff also testified that the summer months were some of the "quietest" months for business.

Skriloff, when questioned on cross examination, testified that the Employer would not be averse to hiring if business were to pick up. Initially, prior to the pandemic, the Employer's intention was to hire new employees after moving to East Rutherford in order to replace any employees who did not make the move from Brooklyn. The Employer had also reached out to some recruiting companies. However, the Employer has not spoken with any recruiting companies in 2021.

Upon questioning by the hearing officer, Union Local 2013 Director of Collective Bargaining Jill Pitman testified that no employees had reported to the Union that the Employer refused to return them to work. Pitman testified to being unaware of any job ads for bargaining-unit positions with the Employer.

The parties agree that, for at least the five years prior to the COVID-19 pandemic in 2020, the Employer regularly employed between 90 and 130 or more employees in the bargaining unit.

The record shows that, in 2019, the Employer completed work orders for 19,678 events. In 2020, the Employer completed work orders for 3,089 events. In the first quarter of 2019, the Employer had work for 3,748 events. In the first quarter of 2020, the Employer had work for 2,714 events. In the first quarter of 2021, the Employer had work for 185 events.

III. THE PARTIES' POSITIONS & EVIDENCE

[5] Union Representative Freddie Salgado, who was the union representative for bargaining-unit employees prior to the Employer's move to East Rutherford, testified that about 40 employees had indicated to the Union that they would not continue working for the Employer once the Employer moved to East Rutherford.

A. The Employer & Petitioner

Neither the Employer nor the Petitioner submitted post-hearing briefs in this matter. The Employer gave a closing statement at the end of the hearing; the Petitioner did not.

The Employer argues that the employees who never returned to work after the Employer completed its move to the East Rutherford facility are no longer part of the bargaining unit. The Employer also argues that the evidence in this matter does not support finding that the bargaining unit is expanding. The Employer generally points to Section 10-600 of the Outline of Law and Procedures in Representation Cases to support its position that the bargaining unit is not expanding.

In support of its argument that employees who did not return to work after the Employer announced its move or after it completed its move to East Rutherford were permanently laid off, the Employer presented evidence of its communications with Tri-State Administrators, the entity that manages the Union's welfare fund. Skriloff testified that the Employer informed Tri-State Administrators that the amount of the Employer's remittance for the Union's welfare fund dropped from September to October because of employees that it terminated in September and October. In an e-mail from November 17, 2020, the Employer told Tri-State Administrators that employees without remittances for September were terminated as of August 31, 2020, for refusing to travel to New Jersey to work in the new warehouse, and employees without remittances in October were terminated as of September 27, 2020, presumedly after determining that the commute to the East Rutherford facility was unacceptable for them.[6]

In support of its argument that the bargaining unit is not expanding, Skriloff testified that the Employer had cut business costs and attempted to look for additional business income. The Employer renegotiated its leases with its showroom, renegotiated all of its insurance rates based on the volume of work that it had, negotiated to turn in its leased vehicles early to avoid additional payments, and renegotiated its truck leases. The Employer has also cut payroll for nonunion staff. For additional income, the Employer, as of the hearing in this matter, had unsuccessfully attempted to sublease a portion of its warehouse in East Rutherford.

Skriloff testified generally that all job classifications are covered by the employees currently working for the Employer in East Rutherford. Skriloff testified that, of those 24 employees, the employees are frequently performing duties of multiple classifications. Skriloff gave the example that although one of the employees is a sewer, the Employer has not had any sewing work for two weeks, and so the sewer has been performing other duties.

---

[6] The Employer's agent in these e-mails was an individual named Ken Chan. The record does not disclose Chan's position or title. Chan does not appear in any list of bargaining-unit employees. Tri-State Administrators' agent in these e-mails was Remittance Processor Brittney Estevez. Although Tri-State Administrators Fund Manager Jacqueline Dowling testified that Estevez reports to Dowling, Estevez's e-mail shows a "ufcw2013.org" e-mail address, and her e-mail signature shows a title of "Remittance Processor" and lists "LOCAL 2013 HEALTH & WELFARE FUND" beneath her title.

Petitioner Moya, who is a checker for the Employer, testified that he continues to do checking duties[7] as well as packing duties since the move to East Rutherford. Moya testified that there is one sewer working at the East Rutherford facility, two employees working in laundry, four or five employees in kitchen, five drivers, and six or seven helpers. Moya testified that a busy day of checking in Brooklyn included checking between 120 to 140 orders, and a busy day since moving to East Rutherford consisted of checking only 10 orders. On slow days, when there may be only 2 orders to check, Moya has washed dishes and performed other cleaning duties. Moya testified that, although the busy March/April season was upon the Employer at the time of the hearing, the Employer's workforce was completing orders in a timely manner and without the need for additional workers.

B. The Union

The Union provided a closing statement at hearing and submitted a post-hearing brief.

The Union argues that the Employer's current complement of bargaining-unit employees is not substantial or representative because the unit is, or will soon be, expanding to its pre-pandemic staffing levels. In support of this argument, the Union argues that, as business and social restrictions that were in place due to the COVID-19 pandemic continue to be lifted, the "restoration of business operations is inevitable and will result in a fundamental restoration of the Employer's business from that of the date of the petition." The Union would apply the factors identified in *Toto Industries (Atlanta)*, 323 NLRB 645 (1997), to find that the current complement is not substantial or representative, and that the bargaining unit will expand in the near future.[8]

Also in support of its argument that the bargaining unit will expand, Local 2013 Director of Collective Bargaining Pitman testified that she had many conversations with Employer CEO Skriloff concerning the employees' layoffs and the Employer's decision to move its business. According to Pitman, Srkiloff never mentioned that the Employer sought to continue its business in East Rutherford with fewer employees.

Relying on records the Union found on the internet, the Union notes that the Employer received two paycheck protection program (PPP) loans from the government. The Union argues

[7] Checkers, as their name implies, check orders that have been packed to ensure that the packed order contains all the items a customer has rented.

[8] The nine factors identified in *Toto Industries* include (1) the size of the present work force at the time of the representation hearing; (2) the size of the employee complement who are eligible to vote; (3) the size of the expected ultimate employee complement; (4) the time expected to elapse before a full work force is present; (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement; (6) the certainty of the expansion; (7) the number of job classifications requiring different skills which are currently filled; (8) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and (9) the nature of the industry.

that, in order for the Employer to receive forgiveness of its PPP loans, the Employer would have to spend some amount of the loan money on its workforce.[9]

Local Union Representative Freddie Salgado, who represented the bargaining unit from 2018 to 2020 while the Employer's operations were still in Brooklyn, testified to having visited the Brooklyn facility once per month. Salgado testified that he had communicated with one of the Employer's managers concerning approximately 40 to 46 employees who were not going to move from the Brooklyn facility to the East Rutherford facility.

Tri-State Administrators Fund Manager Jacqueline Dowling testified that Tri-State Administrators sought clarification from the Employer as to the meaning of the "inactive status" of some employees as of February 2021. In an e-mail dated February 22, 2021, one of the Employer agents, Ken Chan, stated that "[i]nactive is a chance to come back."

The Union points out that Petitioner Moya testified that, as of the hearing in this matter, the Employer's business had increased somewhere between 10 and 20 percent.[10]

The Union argues on brief that there is an "absolute certainty that the catering and party industry will quickly increase as [COVID-19] mandates have been lifted." The Union notes that these lifted mandates include (1) the 50-person limit on indoor gatherings; (2) the 250-person limit for political gatherings, weddings, memorial services, performances, and catered and related events; and (3) the 30 percent capacity limit for indoor venues with a capacity of 1,000 people or more. Additionally, the Union relies on various sources to support its assertion that that the Employer's industry will have increased business in 2021.[11]

The Union asserts that two Board cases decided during the pandemic weigh in favor of dismissing the present petition. First, the Union notes that, in *Housing Works, Inc.*, Case 29-RC-256430 (Oct. 15, 2020) (not reported in Board volumes), the Board allowed an employer to withdraw from a stipulated election agreement based on unusual and special circumstances created by the pandemic, including the employer's layoff and furloughing of 196 employees and its

[9] On brief, the Union states that "Skriloff acknowledged that the PPP loan forgiveness terms require the rehiring of approximately 60% of the pre-COVID-10 workforce and acknowledged that he was going to try to run the business in a way to get the maximum loan forgiveness, which includes hiring." This is incorrect. At hearing, Skriloff stated that, as part of the requirements for loan forgiveness, 60 percent of the PPP loan had to be spent on payroll. Skriloff also expressly rejected the Union's statement that one of the requirements of the PPP loan was for the money to be used to retain at least 90 percent of the pre-COVID workforce.

[10] Moya also testified that, even with the increase in work, the Employer did not need more employees, and employees were finishing their work on time.

[11] These sources include anecdotal predictions from companies working in the catering, foodservice, and events industry; the U.S. Bureau of Economic Analysis's reported growth in the country's gross domestic product; and a survey conducted by the Federal Reserve Bank of New York.

creation of new lines of business. Second, the Union points to *Texas Station Gambling Hall & Hotel*, 370 NLRB No. 11 (2020), stating that the Board found that a petition premature based on uncertainty due to the pandemic.

As an alternative position, the Union argues that I should allow the Employer's currently laid-off workers to vote should I direct an election. The Union asserts that employees listed as inactive have an opportunity to return to work based on the February 22, 2021 e-mail between Chan and Estevez and the WARN letters that the Employer issued to employees on March 26, 2020.

IV. DISCUSSION

A. The Bargaining Unit Is Not Expanding

In cases where a party contends that the bargaining unit is expanding, the Board will direct an election if the employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the future. *Yellowstone International Mailing, Inc.*, 332 NLRB 386, 386 (2000). The Board has traditionally considered this issue on a case-by-case basis, considering factors such as the size of the employee complement at the time of the hearing, the nature of the industry, and the time expected to elapse before a full, or substantially larger, complement of employees is on hand. *Clement-Blythe Companies*, 182 NLRB 502 (1970). The Board has also considered the "acuity of the employer's projection" with regard to the size of the eventual workforce. *Laurel Assoc., Inc.*, 325 NLRB 603 (1998). While not applied as an absolute rule, the Board has generally found an existing set of employees substantial and representative when at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Shares Inc.*, 343 NLRB 455 fn. 2 (2004); *MJM Studios*, 336 NLRB 1255, 1256 (2001); *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994). In assessing an employer's projected plans for expansion, the Board will not dismiss a petition where the plans for expansion are mere speculation or conjecture. See, for example, *General Engineering, Inc.*, 123 NLRB 586, 589 (1959); *Meramec Mining Co.*, 134 NLRB 1675, 1679-1680 (1962).

Based on the circumstances of this case, I find it appropriate to direct an election at the present time. Here, I find that the Union's contention that the bargaining unit is or will be expanding is unsupported by the record and is merely speculation or conjecture.

The Union essentially bases its argument to find an expanding unit on two factors: (1) its speculation that the COVID-19 pandemic is ending, which will result in a rise in demand for the Employer's services, and (2) the historical number of employees in the bargaining unit. As to the Union's first factor, I find this unpersuasive. On brief, the Union cites to a number of sources that forecast growth for the economy and the Employer's industry. However, the record reflects little evidence of growth in the Employer's operations. The only evidence of growth is in Moya's testimony that, as of the hearing, business had picked up by approximately 10 to 20 percent. However, the record further shows the following: the Employer has no plan to recall or hire any particular number of employees by any certain date in the near future; the Employer's current workforce is overstaffed for the volume of business that the Employer currently has; the Employer has engaged in numerous actions to cut costs, including an attempt to sublease a portion of its East Rutherford facility; and the summer months are a slow season for the Employer. In balancing this

evidence with Moya's testimony of a slight increase in the Employer's business, I find that the record does not establish that the bargaining unit is or will be expanding in the near future.

Additionally, I find the Union's reliance on *Housing Works* and *Texas Station*, above, to be misplaced. First, *Housing Works* dealt only with an employer's request to withdraw from a stipulated election agreement—the Board made no findings on the appropriateness of the petition in that case. Indeed, the Board explicitly noted that it expressed "no view on whether [the employer's operational changes] render the petitioned-for and/or stipulated unit (minus the permanently closed locations) inappropriate." Furthermore, the Board the Board made no sweeping conclusions regarding the pandemic's effect on the processing of petitions. Instead, the Board specifically noted that it did not, by its decision, "suggest that any operational change occasioned by COVID-19 will always constitute unusual circumstances permitting a party to withdraw from an election agreement."

Second, the Union oversimplifies the Board's decision in *Texas Station* by stating that the Board dismissed the union's petition in that case based on uncertainty due to the pandemic. Rather, the Board found in that case that the petitioned-for employees, whom the employer had laid off after closing its facility due to circumstances created by the pandemic, had no reasonable expectation of recall, and, consequently, the petitioned-for unit consisted of no eligible voters. Accordingly, the Board dismissed that petition. I note, however, that *Texas Station* is instructive to the present matter inasmuch as the Board has taken into account the uncertainty caused by the pandemic when applying its usual analyses, such as whether employees have a reasonable expectation of recall. I will return to this point further in the following section concerning employees' eligibility to vote.

Turning to the Union's second basis for finding an expanding unit, the Union has not offered, and I have not found, any standard in Board law for considering an employer's past staffing when determining whether a unit is expanding. However, even if such a standard were in place, for the reasons detailed above, the record fails to support finding that the bargaining unit is expanding.

As to the general consideration of whether at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications, I find it inappropriate to rely on this method for the present case. Here, there is no evidence to support finding an eventual complement of any size other than the Employer's present workforce.[12]

For the above reasons, I find that the bargaining unit is not expanding. Accordingly, I will direct an election in this matter.

[12] In any event, although the Employer's and the Petitioner's evidence with respect to the number of employees working in each classification were estimates, the Employer's current workforce consists of at least six of the nine bargaining-unit classifications. Petitioner Moya testified to the current employees working in six of the nine classifications. Skriloff testified that at least one employee is working in each classification and many employees are working in several classifications.

B. "Inactive" and Laid-Off Employees Are Not Eligible to Vote

Having found that an election is warranted in this case, I now turn to the Union's alternative position that employees who are inactive or laid off have a reasonable expectation of return and should be deemed eligible to vote. As detailed below, I disagree.

In determining whether laid-off employees are eligible to vote in an election, the Board considers "whether there exists a reasonable expectancy of employment in the near future." *Higgins, Inc.*, 111 NLRB 797, 799 (1955). "The Board examines several factors in determining voter eligibility, including the employer's past experience and future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall." *Apex Paper Box Co.*, 302 NLRB 67, 68 (1991). "In the absence of evidence of past practice regarding layoffs, where an employee is given no estimate as to the duration of the layoff or any specific indication as to when, if at all, the employee will be recalled, the Board has found that no reasonable expectancy of recall exists." Id. at 69.

In the present matter, I find that all laid-off employees—including the 13 employees whom the Employer recognizes as "pending" and awaiting recall—are ineligible to vote based on the lack of any reasonable expectation of recall. The record shows that the Employer has given its employees no estimate for when they may be recalled, and the Employer has no plan for recalling employees. Indeed, at hearing, Skriloff testified that his plan for the business was "to survive," and that he had no plan to grow the business until the Employer was "out of the pandemic."

The circumstances of the laid-off employees in the present case are not dissimilar from those in *Texas Station*. In that case, the Regional Director observed that the employer had not announced, or had any plans for, fundamental changes to its business, and the Board ultimately found that the employees had no reasonable expectation of recall. The same is true in the present case.

While the Union argues that employees listed as "inactive" by the Employer should be eligible to vote in an election, I do not find that the record supports such a finding. As noted above, the Union relies on an e-mail from February 22, 2021, in which Employer Agent Chan stated that inactive meant "a chance to come back," to support finding that these inactive employees had an expectation of recall. Assuming, for sake of argument, that Chan's February 22, 2021 e-mail constitutes evidence that the Employer had some plan or intention to recall inactive employees, I note that Chan's February 22, 2021 e-mail only went to Remittance Processor Estevez, Skriloff, and one additional individual, Shu Chiu, who had an employer e-mail address. Chiu does not appear on any list of inactive employees. The record does not reflect that the Employer forwarded Chan's e-mail to any inactive employees or told employees through any other method that they had a chance to return to work. Thus, I find that there is no evidence that these employees were even aware of their "inactive" status.[13]Furthermore, Chan's e-mail only indicates that inactive

[13] Compare *Nordam, Inc.*, 173 NLRB 1153, 1154 (1968) (Board concluded that employer clearly communicated to employees that layoffs were temporary through supervisors orally telling employees that layoffs were temporary and they would be recalled in two to three weeks, and the

employees had a "chance" to return to work—it did not contain a specific or estimated timeframe for employees to possibly return to work.

Additionally, other evidence supports finding that the majority of the inactive employees are, in fact, permanently laid off. The Employer's March 26, 2020 WARN letter clearly informs employees that they would be offered continued employment at the East Rutherford facility after the Brooklyn facility's permanent closing, and "employees who reject[ed] continued employment [would] be *permanently* laid off." (Emphasis added.) The Employer's records show that 65 employees refused to work in Brooklyn as of July 2020, after the WARN letters had issued, and an additional 23 employees refused to work at the East Rutherford facility as of September 2020. Furthermore, the Employer's e-mail exchange with Tri-State Administrators in November 2020 explicitly stated that employees without remittances for September and October 2020 were terminated. Lastly, Local 2013 Director of Collective Bargaining Pitman testified that no employees had reported to the Union that the Employer refused to return any them to work. Based on these considerations, I find that these employees who ceased working for the Employer are not eligible to vote.

CONCLUSIONS AND FINDINGS

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

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

2. The Employer is engaged in commerce within the meaning of the act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[14]

3. The Involved Party (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.

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.

---

employer had announced plans to expand its operations and had a practice of recalling employees when jobs became available).

[14] The parties stipulated that the Employer is a New Jersey corporation, with a place of business located 990 Paterson Plank Road, East Rutherford, New Jersey, the only facility involved herein. The Employer is engaged in the business of the rental of party and event equipment and products. During the preceding twelve months the Employer, in the course and conduct of its business operations described above, purchased and received goods and supplies in excess of $50,000 directly from suppliers located outside the State of New Jersey.

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:

> **INCLUDED**: All full time and regular part-time warehouse, kitchen, packers, checkers, sewers, laundry workers, bulk, drivers and helpers employed by the Employer at its 990 Paterson Plank Road, East Rutherford, New Jersey facility.
>
> **EXCLUDED**: All executive employees, guards and supervisors as defined in the Act, and all other 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 United Food and Commercial Workers Union, Local 2013.

A. Election Details

The election will be conducted by United States mail.[15] The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On **TUESDAY, JULY 6, 2021**, ballots will be mailed to voters by National Labor Relations Board, Region 22. 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.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 22 office by close of business on **TUESDAY, JULY 27, 2021**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **JULY 13, 2021**, should communicate immediately with the National Labor Relations Board by either calling the Region 22 Office at (862) 229-7065, or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

I further direct that the ballot count will take place virtually on a date to be determined by the undersigned Regional Director, during the period from **TUESDAY, AUGUST 3, 2021, through TUESDAY, AUGUST 10, 2021**, inclusive. The Region will provide notice to the parties of the scheduled date for the count at least 24 hours prior to the count. For the same reasons, the count will take place virtually on a platform (such as Skype, Zoom, WebEx, etc.) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

[15] The parties stipulated to conducting an election by mail.

If the dates the ballots are due to be deposited by Region in the mail, or the date set for their return, or the date, time, and place of the count for the mail ballot election are postponed or canceled, the Regional Director, in his or her discretion, may reschedule such dates, times, and places for the mail ballot election.

B. Voting Eligibility

Eligible to vote are those unit employees who were employed by the Employer during the payroll period ending **TUESDAY, JUNE 15, 2021,** including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike that commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility; (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 **FRIDAY, JUNE 18, 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.

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 party(ies) named in this decision (to Petitioner at alejandromoya66@yahoo.com; and to the Union at dwatkins@obbblaw.com). The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Notices of Election will be electronically transmitted to the parties, if feasible, or by overnight mail if not feasible. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. You must also distribute the Notice of Election electronically to any employees in the unit with whom you customarily communicate electronically. In this case, the notices must be posted and distributed **before 12:01 a.m. on JUNE 30, 2021**. If the Employer does not receive copies of the notice by **JUNE 28, 2021**, it should notify the Regional Office immediately. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on non-posting of the election notice.

To make it administratively possible to have election notices and ballots in a language other than English and Spanish, please notify the Board Agent immediately if that is necessary for this election. If special accommodations are required for any voters, potential voters, or election participants to vote or reach the voting area, please tell the Board Agent as soon as possible.

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the

circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated: JUNE 16, 2021.

ERIC SCHECHTER,
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 22
VETERANS ADMINISTRATION BUILDING
20 WASHINGTON PLACE, 5TH FLOOR
NEWARK, NJ 07102