

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

MHM HEALTH PROFESSIONALS, LLC D/B/A
CENTURION PROFESSIONALS

Employer

and

Case 05-RC-356811

1199SEIU UNITED HEALTHCARE WORKERS
EAST A/W SERVICE EMPLOYEES
INTERNATIONAL UNION, SOC

Petitioner

DECISION AND DIRECTION OF ELECTION

MHM Health Professionals, LLC d/b/a Centurion Professionals (“the Employer”) is engaged in the business of providing healthcare services to State-regulated correctional facilities throughout the United States, including at the Baltimore Central Booking & Intake Center currently located at 300 E. Madison Street, Baltimore, Maryland, the only facility involved in this proceeding. On December 17, 2024, 1199SEIU United Healthcare Workers East a/w Service Employees International Union, SOC (“the Petitioner”) filed the instant petition with the National Labor Relations Board (“the Board”) under Section 9(c) of the National Labor Relations Act (“the Act”). The Petitioner seeks to represent a unit of professional employees who are employed by the Employer and provide medical and mental health services at Baltimore Central Booking & Intake Center. A hearing officer of the Board heard this case via videoconference on January 2, 2025, wherein the parties entered into several stipulations.

There are two issues in this proceeding. First is whether I properly deferred litigation of a contested classification to post-election proceedings and whether the election should proceed with these issues deferred. The second issue involves the appropriateness of a manual election.

Based upon the entire record, including the stipulations of the parties, I find that the issue of eligibility of a certain classification was properly deferred to post-election proceedings, and I am directing an election be conducted as described below.

FACTS AND POSITIONS OF THE PARTIES

A. Deferral of Eligibility Issues

The petitioned-for unit is as follows:

Included: All full-time, regular part-time and per diem medical and mental health providers (doctors, physician assistants, nurse practitioners, mental health counselors, psychiatrists, and psychiatric nurse practitioners) employed by the Employer at its Baltimore Central Booking location.

Excluded: All other employees, guards and supervisors as defined in the Act.

The petitioned-for unit includes approximately 38 employees. In its timely-filed statement of position, the Employer disputed the appropriateness of the petitioned-for unit, and maintained that physicians should be excluded because they are statutory supervisors. During the hearing, the parties brokered a stipulation that modified the petitioned-for unit. Specifically, the parties agreed to the following inclusions and exclusions:

Included: All full-time, regular part-time and per diem professional employees providing medical and mental health services, including physician assistants, nurse practitioners, mental health counselors, psychiatrists, and psychiatric nurse practitioners employed by the Employer at Baltimore Central Booking & Intake Center currently located at 300 E. Madison St., Baltimore, Maryland.

Employees are eligible to vote if they have worked in the unit an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. *Davison-Paxon Co.*, 185 NLRB 21 (1970)

Excluded: All non-professional employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act.

The parties' stipulation also reflected that they could not agree on whether physicians should be included in or excluded from the bargaining unit. The Petitioner continued to maintain that physicians are employees within the meaning of Section 2(3) of the Act, whereas the Employer maintained its argument that physicians are supervisors within the meaning of Section 2(11) of the Act.¹

At the outset of hearing, the hearing officer advised the parties that I would be exercising my discretion to defer litigation and resolution of the eligibility issue surrounding the physician classification. In response, the Employer summarized the evidence it was prepared to offer in support of its argument that physicians are supervisors within the meaning of Section 2(11) of the Act, and it noted its opposition to deferral. Specifically, the Employer argued that a decision to defer litigation and resolution of the eligibility issue surrounding the physician classification deprived the Employer of its right to litigate the issue and receive a written determination on whether physicians are statutory supervisors. It maintained that prompt resolution of this issue is beneficial to the employees in the stipulated unit, as they would then know exactly who is included in the unit at the time they cast a ballot. Deferral of resolution, on the other hand, could create the appearance of bias, as employees could perceive that the government has already taken a view on the eligibility of physicians.

¹ As of the date of the hearing, the Employer stated that it employed seven physicians at Baltimore Central Booking & Intake Center.

The Employer also put forth a number of arguments that call into question the Board's Rules and Regulations and the constitutionality of the Board. The Employer contends that the Board's Rules and Regulations, which provide Regional Directors with the discretion to defer litigation and resolution of the eligibility issues, are contrary to the plain language of the Act and violate the Administrative Procedures Act. The Employer continues on to state that given the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), the Board was not entitled to any deference in its implementation of its Rules and Regulations. The Employer also points to the Supreme Court's decision in *Securities & Exch. Comm'n v. Jarkesy*, 144 S. Ct. 2117 (2024), and notes that it brought to light structural issues in the Board's processes and composition. The Employer asserts that Board members' removal protections infringe on a president's constitutional power to remove executive officials. It further claims that the Board's decision-making, rule-making, and prosecutorial powers violate its due process rights. With Regional Directors' authority in representation cases coming from the Board, the Employer argues that the same constitutional and structural issues that disable the Board also impact the Regional Office. The Employer also maintains that constitutional questions surrounding the structure of administrative law judges (ALJ) are implicated by a decision to defer litigation and resolution of the physicians' status. According to the Employer, deferral creates uncertainty and a possibility of unfair labor practice (ULP) charges in connection with the physicians arising from any conduct during the critical period. The Employer argues that such ULPs would unquestionably go before an ALJ, who may not be empowered to decide the case(s) given the varying constitutional questions surrounding the ALJ structure.

The Petitioner did not offer a response to the Employer's opposition detailed above, and the hearing officer did not permit litigation of the issue.

B. The Election Arrangements

The parties also entered into a stipulation regarding election arrangements. Within the stipulation, the parties agreed that a secret-ballot election should be held under my supervision on the date and at the hours and place specified below:

| Date | Hours | Location |
|------------------|--|--|
| January 21, 2025 | 7:30 a.m. – 9:30 a.m. and 3:30 p.m. – 5:30 p.m. | TBH Room Location, Jail Industries Building currently located at 531 E. Madison Street, Baltimore, Maryland |

The stipulation further provided that the arrangements described above were contingent on the Region receiving confirmation from the party (or parties) that controls the election site that the Region and all parties to the election can access the site during all phases of the election. The parties agreed that if this confirmation cannot be provided, the election will be subject to cancellation and/or the Regional Director may direct the election be conducted by mail. Following the close of the hearing, the Employer advised the Region that the State of Maryland,

which controls Baltimore Central Booking & Intake Center, will not allow the election to be held at its facility.²

DISCUSSION

A. Deferral Is Permissible and Appropriate

On the issue of eligibility, I find that deferral of eligibility litigation is appropriate in this instance and is permitted under the currently applicable representation rules found within the Board's Rules and Regulations.

On December 18, 2019, the Board published a final rule amending various aspects of representation-case procedures. 84 FR 69524, Dec. 18, 2019. Within the amendments was an amendment to 29 CFR 102.64(a) which would require parties to litigate all disputes over voter eligibility prior to the election. This was a modification from the 2014 representation case rules, which, among other things, vested Regional Directors with the discretion to defer litigation on the eligibility of classifications and vote those disputed classifications subject to challenge.

Following the publication of the final rule, the United States District Court for the District of Columbia issued an order vacating certain provisions of the final rule and enjoining their implementation. *AFL-CIO v. NLRB*, 466 F. Supp. 3d 68 (D.D.C. 2020). Subsequently, the United States Court of Appeals for the District of Columbia Circuit issued a decision reversing the District Court on two of the five provisions of the final rule, including the provision speaking to litigation of eligibility issues. *AFL-CIO v. NLRB*, 57 F.4d 1023 (D.C. Cir. 2023). Before the District Court's injunction on this provision—which never went into effect—was set to expire, the Board issued a stay of the effective date of this provision (along with the amendment to Section 102.67(b)) until September 10, 2023. 88 FR 14913, Mar. 10, 2023. On August 25, 2023, the Board issued a final rule substantially rescinding the 2019 rule, including the provision speaking to litigation of eligibility issues. 88 FR 58076, Aug. 25, 2023. The Board's final rule, which took effect on December 26, 2023, provides that disputes concerning individuals' eligibility and inclusion issues ordinarily do not need to be litigated or resolved prior to the election, and Regional Directors have the authority to exclude evidence that is not relevant to

² Given the State of Maryland's decision, the Employer proposed two alternative locations for a manual election: (1) its Regional office located at 3104 Lord Baltimore Drive, Suite 105, Baltimore, Maryland; and (2) The Common Area Room at St. Frances Academy located at 501 E. Chase Street, Baltimore, Maryland. As the Employer only proposed these locations after the close of the hearing, the Petitioner was unable to provide its position on the proposed locations on the record. When the Region advised the Petitioner of the proposals, the Petitioner informed the Region that it was opposed to both locations.

determining whether there is a question of representation. See Sections 102.64 and 102.66 (a) and (c) of the Board's Rules and Regulations.

Pursuant to the Board's Rules and Regulations, a Regional Director may defer litigation of eligibility and inclusion issues affecting a small percentage of the appropriate voting unit to the post-election stage if those issues do not have to be resolved in order to determine if an election should be held. In many cases, those issues will not need to be litigated because they have no impact on the results of the election.

Specifically, the United States Court of Appeals for the Fifth Circuit held that the 2014 modifications to litigation on eligibility did not exceed the Board's statutory authority under the Act. The ability of the Board—through its Regional Directors—to limit the scope of pre-election hearings by precluding parties from contesting voter eligibility issues prior to the election has been upheld. *Associated Builders & Contractors of Texas, Inc. v. NLRB*, 826 F.3d 215, 220 (5th Cir. 2016).

Based on the foregoing, deferral of eligibility questions is undeniably permitted under the Board's Rules and Regulations. Regarding the Employer's contention that deferral deprives the Employer of its right to litigate the issue and receive a written determination on whether physicians are statutory supervisors, this argument is incorrect. Should any prospective challenges be determinative, the Employer and Petitioner will have every opportunity to litigate the eligibility of the challenged ballots in accordance with the Board's Rules and Regulations. Absent determinative challenges and assuming the majority of valid votes are cast in favor of representation and that the parties are unable to resolve the status of physicians through bargaining, the parties would still have the opportunity to litigate the issue through a unit clarification petition.

The Employer's remaining arguments against deferral are similarly without merit. As noted above, the Employer maintained that prompt resolution of this issue is beneficial to the employees in the stipulated unit, as the Employer would then know exactly who is included in the unit at the time they cast a ballot. I do not question the appeal of the Employer's argument on this point. However, the Board, in its policy-making role, first stayed the provision that would have required such litigation, and then rescinded it. In short, the Board has rejected the Employer's argument on this point. Assuming *arguendo* there were a benefit in resolution of this question, the fact remains that the purpose of a hearing conducted under Section 9(c) of Act is to determine if a question of representation exists, and I do not need to resolve the status of physicians to conclude that a question of representation exists. With respect to the Employer's argument that deferral of resolution could create the appearance of bias, it is hard to imagine how such an appearance could be created when Regional Directors' decisions to defer litigation and resolution of eligibility issues specifically provide that: (1) no decision has been made regarding whether the individuals in disputed classifications are included in, or excluded from, the bargaining unit; and (2) the eligibility or inclusion of individuals in disputed classifications will be resolved, if necessary, following the election. Ultimately, the Employer's claim about the appearance of bias is conjecture. The Board exercised its policy-making authority to remove

such barriers to the expeditious resolution of representation questions, and I have exercised my discretion to defer a determination about these individuals.

Turning to the Employer's arguments about the Board's ability to engage in rulemaking and the overall constitutionality of the Board, I must note at the outset that the Employer did not raise such issues in its Statement of Position. See Board Exhibit 3. Given the Employer's failure to raise the issues in its Statement of Position, I consider it at least arguable that the Employer is precluded from raising the issues at hearing. Assuming such arguments could be read to fall within the jurisdictional exception to preclusion, the Employer's arguments still do not cause me to conclude that deferral is not permitted. The Employer's argument regarding removal protections for Board members and ALJs fails because "there is no evidence that the [Employer] suffered any harm from the Board members' and administrative law judge's removal protections." *Amazon.com Services LLC*, Case 29-CA-261755, slip op. at 2 fn. 3 (2024) (not reported in Board volumes); *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. at 1 fn. 4 (2023) (citing *Collins v. Yellen*, 141 S. Ct. 1761, 1787 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), rev'd per curiam on other grounds, 598 U.S. 623 (2023)); *YAPP USA Auto. Sys., Inc. v. NLRB*, No. 24-12173, 2024 WL 4119058, at *9-10 (E.D. Mich. Sept. 9, 2024) (applying causal-harm standard to reject constitutional challenge to removal protections enjoyed by Board members and administrative law judges), appeal docketed, No. 24-1754 (6th Cir. Sept. 9, 2024); *Cortes v. NLRB*, No. 1:23-cv-02954, 2024 WL 1555877, at *7 (D.D.C. Apr. 10, 2024) (declining to address the constitutionality of Board members' removal protections because "the Court could 'dispose of the case' on the harm requirement" (quoting *Bond v. United States*, 572 U.S. 844, 855 (2014))), appeal docketed, No. 24-5152 (D.C. Cir. June 10, 2024). Furthermore, "Supreme Court precedent recognizing that Congress may establish expert agencies like the Board, led by a group of principal officers and removable by the President only for good cause, forecloses [any] claim" that the Act unconstitutionally shields Board members from removal. *SJT Holdings*, above at 1 (citing *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935)). And Congress may make administrative law judges removable only for "good cause" under 5 U.S.C. § 7521(a) to protect those judges' qualified right of decisional independence. The Constitution does not require a different result, even for judges employed by agencies whose heads enjoy for-cause removal protection. See *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 763-65 (10th Cir. 2024); *Calcutt*, 37 F.4th at 319; *Alivio Med. Ctr. v. Abruzzo*, No. 24-cv-7217, 2024 WL 4188068, at *11 (N.D. Ill. Sept. 13, 2024); *YAPP USA Auto. Sys.*, above at *7-8; *H&R Block Inc. v. Himes*, No. 24-00198-CV-BP, 2024 WL 3742310, at *3-6 (W.D. Mo. Aug. 1, 2024), appeal docketed, No. 24-2626 (8th Cir. Aug. 9, 2024); see also *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1133 (9th Cir. 2021), cited in *Amazon.com Services*, above, at 2 fn. 3; see generally Brief for the Petitioner at 44-65, *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024) (No. 22-859), 2023 WL 5655520.

Similarly, the Employer's argument about its Seventh Amendment rights is foreclosed by binding Supreme Court precedent as well as extant Board precedent. The Supreme Court definitively held long ago—in upholding the constitutionality of the Act—that the Seventh Amendment has "no application" to the Board's unfair-labor-practice proceedings, which vindicate unique statutory rights "unknown to the common law" and which are "not [suits] at

common law or in the nature of such [suits].” *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 48-49 (1937). The Supreme Court has repeatedly reaffirmed this categorical holding that the Board’s unfair-labor-practice proceedings are covered by the “public rights” exception to the Seventh Amendment. *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 453-56 (1977); *Curtis v. Loether*, 415 U.S. 189, 194-95 (1974); see *YAPP USA Auto. Sys.*, 2024 WL 4119058, at *12 (holding that a Seventh Amendment challenge to unfair-labor-practice proceeding “would likely fail based on the public-rights exception”).

Regarding the Employer’s reference to *Loper Bright Enterprises v. Raimondo*, this Supreme Court decision involves a standard of review that courts might apply in certain limited circumstances when reviewing a Board decision, rule, or other agency matter. As such, *Loper Bright v. Raimondo* does not impact the Board’s administrative processes, unless or until the Board might issue some modification.

As to the merits of deferral, here, the eligibility dispute is limited to the physician classification. The number of disputed individuals in this classification is fewer than the informal 20 percent threshold for evaluation of the appropriateness of deferral. I thus find it appropriate to exercise the discretion afforded me under the Rules and Regulations to direct this disputed classification vote subject to challenge, with their eligibility to be resolved in post-election proceedings, if necessary.

B. The Election Will Be Conducted By Mail Ballot

The parties stipulated to various election arrangements for a manual election, but those arrangements were contingent upon the Region receiving confirmation from the party (or parties) that controls the election site that the Region and all parties to the election can access the site during all phases of the election. As noted above, the State of Maryland, which controls Baltimore Central Booking & Intake Center where the Employer’s employees work, will not allow the election to be held at its facility. Following the close of the hearing, the Employer proposed two alternative sites for a manual election. The Petitioner is opposed to conducting a manual election at the alternative sites.

The final choice of a place for holding an election is within the Regional Director’s discretion and is not litigable, although the parties’ positions on the location(s) of the election are solicited at the pre-election hearing. Rule § 102.66(g)(1). The Board has held that the mechanics of an election, such as date, time, and place, are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011) (finding that the Regional Director acted within his discretion when he directed an election on a day on which employees were scheduled to attend a meeting at the employer's facility, but were not scheduled to work); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954) (stating that the Regional Director has the discretion to determine the time and place for an election).

The Act is silent on the location of elections, and the Board must exercise its discretion to determine appropriate election sites. *2 Sisters Food Grp., Inc.*, 357 NLRB 1816, 1819 (2011)

citing *Austal USA*, 357 NLRB 329 (2011). The Board has vested Regional Directors with discretion to choose the election site based on their direct appraisal of the physical layout and other factors that they may deem appropriate to consider on a case-by-case basis. *2 Sisters Food Grp., Inc.*, supra at 1819. It is well established that the Board has a strong preference for conducting manual elections. Sec. 11301.2 of the Casehandling Manual; *San Diego Gas & Electric*, 325 NLRB 1143 (1998). Yet it also has a history of conducting elections by mail when necessary. As the Board noted in *London's Farm Dairy, Inc.*, 323 NLRB 1057 (1997), “[f]rom the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.”

Here, I find it appropriate to conduct the election by mail ballot under the circumstances. As discussed above, the State of Maryland, which controls Baltimore Central Booking & Intake Center where the Employer’s employees work, will not allow the election to be held at its facility. Thus, the parties’ agreed-upon site for a manual election is no longer feasible, and under the terms of the parties’ stipulation, I can direct a mail-ballot election. In deciding to conduct the election by mail ballot, I do not rely solely upon the parties’ stipulation, but I am very mindful that the parties agreed that I may direct a mail ballot if the contingency of the State of Maryland’s permission was not satisfied. That contingency has not been satisfied, and thus I am left with the parties’ stipulation that I may conduct the election by mail ballot. I also note that the circumstances of this case do not seem conducive to an off-site manual election. Notably, the Employer is providing healthcare services to a State-regulated correctional facility. Generally speaking, an employee’s work assignments in healthcare services may not always fall neatly within the scheduled start and end times of an employee’s shift. Furthermore, the employees at issue here provide healthcare services at a correctional facility, and such facilities generally maintain security protocols for individuals who are entering and departing the facility. Each of these potential factors could delay a voter attempting to access the alternative voting sites that are between approximately half of a mile to 17 miles away from the employees’ work site.³ Such potential delays could disenfranchise voters. For all of the foregoing reasons, I am directing that the election be conducted by mail ballot.

CONCLUSIONS

Based upon the entire record in this matter, including the parties’ stipulations, 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.

³ The alternative site at 501 E. Chase Street is approximately half of a mile from Baltimore Central Booking & Intake Center. The alternative site at 3104 Lord Baltimore Drive is approximately 9-17 miles away from Baltimore Central Booking & Intake Center, depending on the route traveled.

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.⁴
3. At all material times, the Employer has been operating a health care institution within the meaning of Section 2(14) of the Act at Baltimore Central Booking & Intake Center.
4. 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.
5. 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 an election in this matter.
6. 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.
7. 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, regular part-time and per diem professional employees providing medical and mental health services, including physician assistants, nurse practitioners, mental health counselors, psychiatrists, and psychiatric nurse practitioners employed by the Employer at Baltimore Central Booking & Intake Center currently located at 300 E. Madison St., Baltimore, Maryland.

Employees are eligible to vote if they have worked in the unit an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. *Davison-Paxon Co.*, 185 NLRB 21 (1970)

Excluded: All non-professional employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act.

⁴ The parties stipulated to the following commerce facts: The Employer, MHM Health Professionals, LLC d/b/a Centurion Professionals, a limited liability company with an office and place of business in Sterling, Virginia, is engaged in the business of providing healthcare services to State-regulated correctional facilities across the United States, including at the Baltimore Central Booking & Intake Center currently located at 300 E. Madison St., Baltimore, Maryland, the only facility involved in this proceeding. In conducting its operations during the 12-month period ending December 31, 2024, the Employer performed services valued in excess of \$50,000 in states other than the Commonwealth of Virginia.

Others Permitted to Vote: At this time, no decision has been made regarding whether the classification of physicians is included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

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 by 1199 SEIU United Healthcare Workers East a/w Service Employees International Union, SOC.

A. Election Details⁵

The election will be conducted by United States mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 5, located at Edward A. Garmatz U.S. Courthouse, 101 W. Lombard Street, Suite 700, Baltimore, Maryland 21201, on Tuesday, January 21, 2025 at 3:00 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, January 28, 2025, as well as those employees who require a duplicate mail ballot kit, should communicate immediately with the National Labor Relations Board by calling the Baltimore Regional Office at 410-962-2822.

All ballots will be commingled and counted at the Baltimore Regional Office on Tuesday, February 11, 2025, at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Baltimore Resident Office prior to the counting of the ballots.

All persons, including party representatives and observers, must comply with the NLRB Field Office Visitor Requirements then in effect. Any person who does not comply with the NLRB Field Office Visitor Requirements will not be admitted to the NLRB offices, will be asked to leave, and/or will be removed.

⁵ Following the close of the hearing, the Petitioner informed the Region, in writing, that it would waive as many of the 10 days it was entitled to possess the Voter List prior to the start of any election to ensure the earliest practicable election date.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 11, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

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

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **January 16, 2025**. 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.

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. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election 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 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, 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.

Dated at Baltimore, Maryland this 14th day of January 2025.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
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