

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

**IMPERIAL BAG & PAPER CO. LLC
d/b/a IMPERIAL DADE**

Employer

and

Case 12-RD-368839

LIONEL POWELL, an Individual

Petitioner

and

**TEAMSTERS LOCAL UNION NO. 385,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

Union

DECISION AND DIRECTION OF ELECTION

Imperial Bag & Paper Co. LLC d/b/a Imperial Dade (the Employer) is engaged in the business of storing and distributing goods from its facilities in Orlando, Florida. On July 7, 2025,¹ Lionel Powell (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) seeking to decertify Teamsters Local Union No. 385, International Brotherhood of Teamsters (the Union) as the collective-bargaining representative of the employees in the following unit, consisting of approximately 42 employees:

All full-time and regular part-time drivers and shuttle drivers employed by the Employer at its facilities located at 4522 E. Wetherbee, Orlando, Florida, the only location involved herein; excluding all other employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined by the Act.

The Employer contends that as a regional director I have no authority to process petitions, hold hearings, certify election results, or otherwise engage in representation case procedures in the absence of a Board quorum, and the processing of the petition should be stayed or placed in abeyance, or the petition should be dismissed. Both the Petitioner and the Union oppose the Employer's position and urge that an election be directed. The only other disagreement between the parties concerns the date of the election.

¹ All dates herein are in 2025 unless otherwise stated.

The Employer and the Union timely filed statements of position. A hearing was conducted on July 16. The parties were permitted to make oral arguments and to submit written positions at the hearing. I have carefully considered the parties' contentions and the Employer's "Written Closing Statement."

In view of the delegation of authority to regional directors under Section 3(b) of the Act and the below-described Rules and Regulations of the Board and case authority I am directing an election to be held on August 7, 2025 for the reasons stated below.

I. THE BOARD QUORUM ISSUE

President Donald J. Trump removed Board Member Gwynne A. Wilcox from her position on January 27, leaving Chairman Marvin E. Kaplan and Member David A. Prouty as the only two members of the Board. Member Wilcox sought declaratory and injunctive relief, and on March 6, the District Court for the District of Columbia held that her removal violated the removal protections for Board members set forth in Section 3(a) of the Act and enjoined her removal in *Wilcox v. Trump*, Case 1:25-cv-00334-BAH. On March 28, a panel of the United States Court of Appeals for the D.C. Circuit granted an emergency motion to stay the District Court's order, once again leaving the Board without a quorum. On April 7, the D.C. Circuit granted motions for en banc reconsideration of the matter, vacated the March 28 order granting a stay pending appeal, and denied the government's motions for a stay pending appeal, thus renewing the District Court's reinstatement of Member Wilcox. On April 9, Chief Justice John G. Roberts, Jr. of the United States Supreme Court stayed the District Court's order "pending further order of the undersigned or of the Court." *Trump v. Wilcox*, --- S.Ct. ----, 2025 WL 1063917 (Mem). Most recently, on May 22, the Supreme Court granted the stay sought by the Government, holding that the Government was likely to succeed on merits of its claim that the President's executive power allowed him to terminate Member Wilcox without cause, and the risk of harm to Government favored stay pending Government's appeal. *Trump v. Wilcox*, 145 S.Ct. 1415. Thus, the Board has not had a quorum since May 22 or at any time since the petition herein was filed on July 7.

Section 3(b) of the Act authorizes the Board to delegate its powers in representation cases under Section 9 of the Act to regional directors, including its powers to determine appropriate units for collective bargaining, determine whether a question concerning representation exists, direct an election, take a secret ballot, and certify the results thereof, subject to review by the Board if a request for review is filed. The Board delegated that authority to regional directors effective on May 15, 1961, and has never withdrawn it. 26 FR 3885, 3889, 3911 (May 4, 1961).

In addition, the Board's Rules and Regulations at "Subpart X – Special Procedures When the Board Lacks a Quorum" include the following relevant provisions:

- 29 CFR Section 102.178 (76 FR 77700, December 14, 2011) states, "The policy of the National Labor Relations Board is that during any period when the Board lacks a quorum normal Agency operations should continue to the greatest extent permitted by law."

- 29 CFR Section 102.182 (82 FR 11786, February 24, 2017) provides that when the Board lacks a quorum “to the extent practicable, all representation cases may continue to be processed and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review, subject to revision or revocation by the Board pursuant to a request for review filed in accordance with this subpart.”

The Board has rejected the arguments raised in the Employer’s motion. Regarding the lack of a Board quorum, see *Brentwood Assisted Living Community*, 355 NLRB No. 149, slip op. at 1, fn.2 (2010), enfd. 675 F.3d 999 (6th Cir. 2012) (finding that the Regional Director properly processed a representation case pursuant to the authority delegated to him notwithstanding the fact that the Board lacked a quorum); see also, *UC Health v. NLRB*, 803 F.3d 669 (DC Cir. 2015); *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534 (4th Cir. 2016); *Overstreet v. El Paso Disposal LP*, 625 F.3d 844, 853 (5th Cir. 2010); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011).

In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court found that the Board could not delegate authority to a future Board with fewer than the 3 members required by statute. However, the Supreme Court further stated:

... we do not adopt the District of Columbia Circuit's equation of a quorum requirement with a membership requirement that must be satisfied or else the power of any entity to which the Board has delegated authority is suspended. See *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469, 475 (2009). (“[T]he Board quorum provision establishes that the power of the Board to act exists [only] when the Board consists of three members. The delegee group's delegated power to act ... ceases when the Board's membership dips below the Board quorum of three members” (citation omitted)). The Board may not, of course, itself take any action absent sufficient membership to muster a quorum (three), and in that sense a quorum requirement establishes a minimum membership level. **Our conclusion that the delegee group ceases to exist once there are no longer three Board members to constitute the group does not cast doubt on the prior delegations of authority to nongroup members, such as the regional directors or the general counsel. The latter implicates a separate question that our decision does not address.**

560 U.S. at 684, fn. 4. Emphasis added. Accordingly, the Employer’s reliance on the *Laurel Baye* case for the proposition that prior delegations of authority to nongroup members such as regional directors ignores Supreme Court decision in *New Process Steel* and is without merit. For the same reason, the Employer’s assertion that *New Process Steel* supports its contention that to permit processing of the petition would improperly permit regional directors to act in place of the Board “*ad infinitum*” also misstates the Supreme Court’s ruling.² The decisions of regional directors remain reviewable by the Board, a higher authority, once a quorum of Board members has been confirmed by the U.S. Senate.

² I note that on July 17, President Trump nominated Scott Mayer and James Murphy to the Board, subject to Senate confirmation.

The Employer argues that the Supreme Court's opinion in *Loper Bright Enterprises v. Raimondo*, 603 US 369 (2024), overruling the doctrine of court deference to statutory interpretations by administrative agencies in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), requires the conclusion that regional directors do not have delegated authority whenever there is not a quorum of Board members. However, the Employer's argument fails to recognize the possibility that an independent statutory interpretation of this issue by the courts may result in agreement with the Board that the Act permits it to authorize regional directors to exercise Board delegations of authority to process representation cases and to certify election results that were granted before the Board's loss of its quorum. In any event, *Loper Bright* involves a standard of review that is only to be applied by the courts and it does not affect my analysis.

Based on Section 3(b) of the Act and the above-cited Board Rules and case authority, the Employer's request to hold this case in abeyance or dismiss the petition is without merit, and the processing of the instant petition is lawful under my authority as the Regional Director for Region 12.

II. THE ELECTION DATE

The parties agree that the election should be held at the training room in the Employer's Orlando, Florida facility from 4:00 a.m. to 9:00 a.m. With respect to the election date, in the petition the Petitioner urged that the election be held on Thursday, August 7. In their respective statements of position, the Union urged that the election be held on Friday, August 1, and the Employer sought an election on Thursday, August 21. At the hearing the parties modified their positions. The Union stated the election should be held as soon as practicable and urged that the election be held on Thursday, July 31, Friday, August 1, or at the latest, Thursday, August 7. The Employer argued against holding the election on a Friday because that is a popular day for employees to take leave. The Employer further contended that the election should be held on Thursday, August 21, or on a date after August 11, because schools in the area serviced by the Employer reopen on Monday, August 11, and the first two weeks of August, especially up until August 11, is the busiest time of the year for the Employer and that traffic and overtime schedules will "take drivers away from focusing on and being able to participate in - - and choosing to participate in the secret ballot election." The Employer did not specify any data or specifics regarding its contentions about traffic and overtime. The Employer further argues that its preferred election date of Thursday, August 21 will help the Employer "ensure efficiency and excellent service for its customers" during its busy period. The Petitioner initially contended that the election should be held on a Friday to maximize voter turnout, but later argued, in agreement with the Employer, that the election should be held on Thursday, August 21 to maximize voter turnout.

Section 102.67(b) of the Board's Rules and Regulations provides that when an election is directed, "[t]he Regional Director shall schedule the election for the earliest date practicable consistent with these Rules." I am directing that the election be held on Thursday, August 7. This will permit time for the Employer to submit the voter list and for the Petitioner and Union to have the voter list for the full 10 days before the election, as sought by the Petitioner, and it is the first Thursday after that 10-day period, which appears to be a day of the week acceptable to all

parties. Experience shows that traffic will actually increase after schools open.³ In addition, the Employer's statement of position shows that the unit consists of 42 drivers who work staggered shifts, the vast majority of which start during the morning, and it appears likely that drivers will vote either outside their scheduled work hours, probably before their shift starts, or between the start of their shifts and the time they begin their routes. The staggered start times and the agreed-upon 5-hour voting period, from 4:00 a.m. to 9:00 a.m., make it highly likely that only small numbers of employees will vote at any given time, and that the voting process will be a quick one for each employee. I find that the Employer's arguments about reasons to delay the election are without merit. Accordingly, I am directing that the election be conducted on August 7.

III. CONCLUSIONS

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

1. The rulings of the Hearing Officer at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find that 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. The parties stipulated, and I find that 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.
4. The parties stipulated, and I find that there is no collective-bargaining agreement covering any of the employees in the unit sought in the Petition herein and there is no contract bar to this proceeding.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

³ See generally, [As Schools Reopen And Traffic Increases, Safety Group Urges Caution](#) (last viewed July 23, 2025); [Back to School: AAA emphasizes safety with increase in school zone traffic](#) (last viewed July 23, 2025).

⁴ The parties stipulated that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board based on the following commerce facts: The Employer, Imperial Bag & Paper Co. LLC d/b/a Imperial Dade, is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board. The Employer is a Delaware limited liability company engaged in the business of storing and distributing foodservice packaging, supplies, and equipment out of its facilities located at Orlando, Florida. During the past twelve months, a representative period, the Employer in the course of its business operations, purchased and received at its facilities, goods valued in excess of \$50,000 directly from points located outside the State of Florida.

6. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time drivers and shuttle drivers employed by the Employer at its facilities located at 4522 E. Wetherbee, Orlando, Florida.

Excluded: All other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act

IV. DIRECTION OF ELECTION

A. Election Details

The National Labor Relations Board will conduct a secret ballot election among the employees in the above unit. Employees will vote whether or not they wish to be represented for the purposes of collective bargaining by International Brotherhood of Teamsters, Local Union No. 385.

A manual election will be conducted on Thursday, August 7, 2025, from 4:00 a.m. to 9:00 a.m. at the Employer's premises, Large Training Room, 4522 Wetherbee, Orlando, Florida.

The ballots and Notice of Election shall be printed in English and Spanish.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending July 20, 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.

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 lists must be *received* by the regional director and the parties by **July 25, 2025**. The lists must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter lists.**

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 lists 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 lists 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 and Direction of Election 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.

V. 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: July 23, 2025.



David Cohen, Regional Director
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