

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

PARAGON SYSTEMS INC.

Employer

and

**LAW ENFORCEMENT OFFICERS SECURITY
UNIONS LEOSU-CA, LEOS-PBA**

Case 21-RC-262650

Petitioner

and

**INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA,
(SPFPA) AND ITS LOCAL 52**

Intervenors

DECISION AND DIRECTION OF ELECTION

Law Enforcement Officers Security Unions LEOSU-CA, LEOS-PBA (“Petitioner”) seeks, by the instant petition, to represent a bargaining unit of security guards employed by Paragon Systems Inc. (“Employer”) and currently represented by the International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local 52 (“Intervenors”). The bargaining unit currently represented by the Intervenors (“existing unit”) consists of security guards employed at multiple Federal facilities throughout southern California. The petitioned-for employees, approximately a dozen guards employed at the Air and Marine Operations Center (“AMOC”) located at March Air Reserve Base in Riverside, California, have been part of the existing unit in the past.

The Intervenors take the position that the petitioned-for employees remain in the existing unit, and the collective-bargaining agreement covering the existing unit bars the instant petition, consistent with the Board’s contract-bar principles. Additionally, The Intervenors maintain that, even if the petitioned-for employees are no longer part of the existing unit, a unit consisting of only the employees employed at the AMOC facility is not an appropriate bargaining unit. In response, Petitioner argues that the petitioned-for employees are no longer part of the existing unit, and that the Intervenors have not overcome the presumption that a single-facility is a presumptively appropriate bargaining unit. The Employer has not taken a position regarding the issues in dispute.

A Hearing Officer of the National Labor Relations Board (“Board”) held a hearing on July 27, 2020, in this matter. Following the hearing, the Petitioner and the Intervenors filed briefs. For the reasons I have described in the following sections, I agree with the Petitioner that the petitioned-for unit is no longer part of the existing bargaining unit and that the contract-bar principles therefore do not apply. Further, I find

that the Intervenors have not overcome the presumption that a single-facility unit is appropriate. Accordingly, based on the record evidence, the arguments presented, and appropriate Board law, I am directing the petitioned-for election.

I. Record Evidence

In June 2011, the International Union, Security, Police and Fire Professionals of America (“Intervenor SPFPA”) was certified as the exclusive collective-bargaining representative of a unit of security guards employed by the Employer at multiple Federal facilities in southern California. In relevant part, the unit description in that certification identified the employees in the existing unit as all security officers:

employed by [the Employer] in the counties of San Diego, San Bernardino, Riverside, and Imperial, California, pursuant to a contract between the Employer and the United States Department of Homeland Security, Federal Protective Services (“DHS/FPS”) Contract Number GS-07F-0420N, or its successor(s).

Because the AMOC facility is in Riverside County, California, and because at that time its security was contracted pursuant to Federal Protective Services Contract Number GS-07F-0420N, both conditions created by the recognition language were met and the guards employed at the AMOC facility (“AMOC guards”) were included in the existing unit.

Later in August 2011, the Employer and the Intervenors executed a collective-bargaining agreement, effective until November 30, 2014 (“2011-2014 Agreement”), covering the existing unit. The recognition clause of the 2011-2014 Agreement described the employees in the unit as:

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to a contract between the Company and the United States Department of Homeland Security, Federal Protective Services (“DHS/FPS”) Contract, or its successor(s).

But for the omission of the specific Federal Protective Services contract number, the recognition language in the contract was the same as that contained in the certification from earlier that year.

There is no dispute that the AMOC guards were covered by the 2011-2014 Agreement, and continued to be included when, in 2014, the Employer and the Intervenors executed a successor agreement. That agreement, effective until November 30, 2017 (“2014-2017 Agreement”) retained the same recognition language as the 2011-2014 Agreement.

The first deviation from the existing unit by the AMOC guards occurred In August of 2017. At that time the Department of Homeland Security notified the Employer that it would be removing AMOC security from a Federal Protective Services Contract and, going forward, AMOC security would be administered by another arm of the Department of Homeland Security, Customs and Border Protection.

In response, the Employer and the Intervenors executed a letter of agreement ("2017 letter of agreement") that affirmatively applied the terms of the 2014-2017 Agreement to the AMOC guards – who were no longer covered by the recognition language in the 2014-2017 Agreement because they were no longer employed under a Federal Protective Services contract – for the remainder of the term of the 2014-2017 Agreement. The 2017 Letter of Agreement described the employees covered as

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to a contract between the Company and the United States Department of Homeland Security, or any sub-agency thereunder, including any successor contract covering the same facilities with employees performing the same or substantially similar functions. This shall include, but shall not be limited to, security officers employed by the Company and its successors at the United States Customs and Border Protection Air and Marine Operations Center; at the United States Ports of Entry; and at all other locations currently serviced by the Company under contract with the Department of Homeland Security and its sub-agencies.

The 2017 Letter of Agreement terminated on the same day as the 2014-2017 contract, November 30, 2017.

The Employer's former Vice President for Labor Relations and General Counsel, who now works as General Counsel for the Employer's parent company, testified that it was the Employer's position that the AMOC guards were no longer part of the existing unit, and no longer covered by the 2014-2017 Agreement, when the change to the Customs and Border Protection contract took place. This is consistent with the fact that the Employer and the Intervenors executing the 2017 Letter of Agreement, extending the terms of the 2014-2017 Agreement to these employees.

In 2017, the Employer and the Intervenors entered into a successor collective-bargaining agreement, their current agreement, effective from December 1, 2017, to November 30, 2021 ("2017-2021 Agreement"). The recognition clause of the 2017-2021 Agreement identified the unit as:

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to Contract No. HSHQW9-13-D-00004 between the Company and the United States Department of Homeland Security, Federal Protective Services ("DHS/FPS") Contract, and its successor(s), excluding temporary personnel as defined in Section 1.4 of this Agreement, Irregular part-time personnel as defined in Section 1.6 of this Agreement, office clericals, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, and all other personnel.

The recognition clause of the 2017-2021 agreement contained the Federal Protective Services criteria, as the agreements had in the past, and it is undisputed that at this time

the security at the AMOC facility was administered by Customs and Border Protection. Intervenor maintain that the terms of the 2017-2021 Agreement were applied to the AMOC guards in the same manner the agreement was applied to other employees in the existing unit, but the record evidence is silent on this issue. The only evidence regarding the terms and conditions of the AMOC guards' employment under the Customs and Border Protection contract between 2017 and 2019, compared to when the contract was previously administered by the Federal Protective Services, are some minor changes in medical and other testing administered by the Employer. The record does not indicate whether these changes were consistent, inconsistent, or outside the terms of the 2017-2021 Agreement.

In 2019, the Employer and the Intervenor executed a wage revision to the 2017-2021 Agreement ("2019 Letter of Agreement"). The 2019 Letter of Agreement stated, in part:

Article 7, Section 7.1, is amended to reflect the following changes to wage rates: Current:

\$32.18

Effective October 1, 2019, all work at posts located in Riverside and San Bernardino Counties, and all non-duty time for employees who regularly work in Riverside and San Bernardino Counties (San Diego and Imperial County employees are unaffected):

\$33.18

Effective January 1, 2020, all work at posts located in San Diego and Imperial Counties, and all non-duty time for employees who regularly work in San Diego and Imperial Counties (Riverside and San Bernardino County employees are unaffected):

\$33.40

When the changes identified in the 2019 Letter of Agreement took effect, they were *not* applied to the AMOC guards. In response, Security, Police and Fire Professionals of America, Local 52 ("Intervenor Local 52") filed a grievance.¹

In June of 2020 Intervenor SPFPA and the Employer began negotiations for a collective-bargaining agreement covering the AMOC guards.² Petitioner maintains the negotiations were for a standalone agreement covering the AMOC guards, while the Intervenor claim the negotiations were for a collective-bargaining agreement that would have returned the AMOC guards to the existing bargaining unit. The record June 11,

¹ Intervenor argued at hearing that the wage rates in the 2019 Letter of Agreement were applied to the AMOC guards. However, Intervenor SPFPA's Regional Vice-President of Region 3 testified at hearing that they were not paid the wage rate identified in the 2019 Letter of Agreement, and that Intervenor Local 52 filed a grievance separate from Intervenor SPFPA. Accordingly, the record evidence does not appear to be in dispute on this point.

² At some point in early 2020 Intervenor SPFPA and Intervenor Local 52 began acting independently in certain regards for reasons not described in the record. Where relevant, that distinction is noted. They appear jointly in this case as Intervenor, and as such all other references in this Decision are to the Intervenor collectively.

2020 proposal from Intervenor SPFPA wherein the included employees in the recognition language are defined as:

the term "employees" shall mean all security officers employed by the Company in Riverside, California pursuant to Contract No. GS-07F-0418K/HSBP1017F00191 between the Company and the United States Customs & Border Protection ("CBP") and its successor(s) ("Government Contract")

Neither Intervenor SPFPA nor the Employer claim these negotiations have resulted in an agreement.

In communications addressing the grievance and the negotiations for a new collective-bargaining agreement for the AMOC guards, officials of both Intervenor SPFPA and the Employer appear to explicitly reference the AMOC guards not being covered by the 2017-2021 contract. In a June 1, 2020, email to officials of Intervenor SPFPA, the Employer's President stated, "My understanding they [sic] are under separate contract and not part [sic] our LA or San Diego contracts." On June 19, an official of Intervenor SPFPA stated, in discussing the ongoing negotiations:

Finally, as the circumstances are that the members assigned to AMOC were previously on the FPS Government contract and were "carved out" at no fault of the Employer or the Union, but rather the Government actions, the Union would propose by way of MOU that should any of the current AMOC bargaining unit members request and are approved to transfer from AMOC back to the FPS contract, he/she shall maintain their seniority upon being transferred.

The same official, in an email on June 26, 2020, stated:

So has a clear understanding (sic), it is our understanding the AMOC Officers when "carved out" from FPS to a separate government contract were at, and are still currently paid at that rate today, at \$33.18/hour. Is the Employer's proposal to increase the rate of pay effective with the Contract to \$33.44 with a reopener to be effective 9/28/2020. If so we can agree to that.

Additionally, we would maintain grandfathering the existing officers at AMOC if they are approved to transfer back to the FPS contract their Union Seniority date would be maintained. We would propose to codify with an MOU.

Although the communications speak in terms of the Federal Protective Services and Customs and Border Protection contracts, they address how, among other issues, to merge seniority lists of employees under two separate agreements.

II. Position of the Parties

A. Contract Bar

Regarding the contract-bar issue, the Intervenor's argue that the 2017-2021 contract, and the 2019 Letter of Agreement that modifies that collective-bargaining

agreement, present a contract bar to the instant petition. The Intervenor argue that the AMOC guards are covered by these documents because the 2017-2021 Agreement and 2019 Letter of Agreement establish wages, benefits and other terms and conditions of employment applied to the AMOC guards. The Intervenor also argue that the language in the 2019 Letter of Agreement, stating that “all work at posts located in Riverside and San Bernardino Counties” has the effect of recognition language. Because the AMOC guards are performing work for the Employer in Riverside County, they are covered by the four corners of the contract, and anything else is parole evidence and should be disregarded.

In response, Petitioner asserts the above arguments fail for two reasons. First, the recognition language in the 2017-2021 Agreement expressly limits that collective-bargaining agreement to employees covered by Federal Protective Services Contract No. HSHQW9-13-D-00004. It is undisputed that the AMOC employees are not employed pursuant to that contract. Further, the Customs and Border Protection Contract is not a “successor” to the Federal Protective Services Contract because the “successor” language of the recognition clause is referring to rebidding by the Federal Protective Services of the same work with a different contract number.

Second, even if the 2017-2021 Agreement did cover the AMOC guards, Intervenor SPFPA and the Employer “carved out” the AMOC employees when they reached a tentative agreement on the scope of the agreement; an agreement they agreed covered only the AMOC guards. Petitioner argues that while the Intervenor SPFPA and the Employer may not have reached full agreement on a collective-bargaining agreement, the scope was determined, and as a permissive subject of bargaining neither could insist on impasse to change this tentative agreement, they were bound.

The Employer declined to take a position regarding whether a contract bar existed in the present case.

B. Single-Facility Unit

The Intervenor argue that the single-facility unit sought is not an appropriate unit, and that the only appropriate unit must include all the facilities where Intervenor SPFPA Local 52 represents the Employer’s employees: the existing unit. Intervenor further maintain that factors such as centralized control over labor relations, shared skills and functions between the employees at issue, as well as shared wages, hours, and working conditions. Finally, the Intervenor argue that the bargaining history supports its contention, as the AMOC guards have been part of the existing unit (and indeed the Intervenor argue they still are part of that unit).

The Intervenor anticipate Petitioner’s argument and maintain that its negotiations with the Employer for a collective-bargaining agreement in 2020 are not inconsistent with the above, as these negotiations were not for a standalone contract covering the AMOC guards.

Petitioner argues, in response, that the Intervenor’s own actions invalidate their argument, as the Intervenor were clearly negotiating a standalone collective-bargaining agreement for the AMOC guards at the time the Petitioner filed the instant petition. Only

this change led Intervenor to attack the single-facility nature of the bargaining unit. Petitioner also argues that, by taking the position it was seeking to return the AMOC guards to its existing bargaining unit, the Intervenor is impermissibly trying to convert Petitioner's petition into one seeking a unit clarification and accretion.

The Employer declined to take a position regarding whether the petitioned-for single-facility unit was appropriate in the present case.

III. Analysis

A. Contract-Bar Doctrine

One method utilized by the Board in balancing the conflicting goals of industrial stability and employees' freedom of choice is the contract-bar doctrine. The contract-bar doctrine prevents the processing of a representation petition during the term of a collective-bargaining agreement, if the agreement at issue meets certain requirements. *Hexton Furniture Co.*, 111 NLRB 342 (1955). The doctrine is intended to provide stability, but at the same time allow employees an opportunity to change or eliminate their bargaining representative if they wish to do so. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

In order to demonstrate that a contract bar exists, the Board has traditionally placed numerous requirements on the party asserting a contract bar. These include requirements such as that the contract is written, signed, and lays out substantial terms and conditions of employment. *Waste Management of Maryland, Inc.*, 338 NLRB 1002 (2003); *De Paul Adult Care Communities*, 325 NLRB 681 (1998); *Artcraft Displays, Inc.*, 262 NLRB 1233, 1235 (1982). Of particular importance in this case is that the purported contract must clearly, by its terms, encompass the petitioned-for employees, as the agreement will not constitute a bar if it does not. *Houck Transport Co.*, 130 NLRB 270 (1961).

I agree with Petitioner that no contract bar is present in the instant case, but for reasons that differ somewhat from those put forth by Petitioner. Before turning to specific arguments made by the Intervenor and by Petitioner, it is necessary to address a basic factual issue in this case. All the record evidence – the recognition clause language in all of the collective-bargaining agreements, the 2017 Letter of Agreement, the June 11, 2020, bargaining proposal by Intervenor SPFPA, the June 2020 communication between Intervenor SPFPA and the Employer – demonstrate that following the 2017 change from the Federal Protective Services to the Customs and Border Protection contract, the AMOC guards were no longer part of the existing unit. Yet, Intervenor claims the opposite. While I have addressed the arguments below in more detail, this fundamental issue, that the text of the 2017-2021 Agreement recognition clause establishes that the agreement does not cover the petitioned-for employees, is alone sufficient to reject Intervenor's contract-bar arguments.

Turning to specifics, Intervenor takes four words in the 2019 Letter of Agreement, "all work" and "Riverside . . . Counties," and assert that this is the relevant recognition language, and dismiss everything else as parole evidence. I strongly disagree. The text of the 2019 Letter of Agreement in no way suggests it is defining or redefining the recognition clause of the 2017-2021 Agreement. The 2019 Letter of Agreement makes

no reference to Article 1, Section 1.2, the recognition language in the 2017-2021 Agreement, and instead explicitly references Article 7, Section 7.1, the wage provision. The 2019 Letter of Agreement modifies wages, merely distinguishing the rate based on the counties where the work is performed. Intervenor is simply choosing words from unrelated text and attempting to create recognition language where none exists.

A change in the recognition language is necessary because Intervenor's arguments fail under the recognition language in the 2017-2021 Agreement. That recognition language clearly does not include the AMOC guards; it is undisputed that security at the AMOC facility was, at that point, not provided pursuant to a Federal Protective Services Contract. Since certification in 2011, the existing unit has consistently been defined by two conditions, the *location* of employment and the *contract* covering the facility in question. The AMOC guards clearly only meet the former criteria under the 2017-2021 Agreement recognition clause.

Intervenor also tries to circumvent this problem by relying on the "successor" language contained in the recognition clauses of the various collective-bargaining agreements. They argue that the Customs and Border Protection contract was a successor to the Federal Protective Services contract, the 2014-2017 contract still applied, and that the AMOC guards have remained in the existing unit to present. The first problem with this argument is that, from 2017 onward, the Intervenor and the Employer treated the AMOC guards as separate. This is demonstrated by their actions and the Employer's former vice president for labor relations and general counsel confirmed as much at hearing. While the language of the 2017 Letter of Understanding does arguably identify the Customs and Border Protection contract as a successor to the Federal Protective Services Contract, it does not necessarily follow that the AMOC guards remained in the unit, but merely that their terms and conditions of employment remained unchanged for the remainder of the 2014-2017 contract term.

Second, and more problematic to the successor argument, is that subsequent to the 2017 Letter of Agreement, the Employer and the Intervenor entered into the 2017-2021 Agreement, an agreement with a recognition clause that partially defined the unit by reference to the Federal Protective Services contract, clearly excluding the AMOC guards. Intervenor cites to no authority whereby part of a bargaining unit can continue to be included in perpetuity under successor language, while subsequent contracts adopt recognition language that excludes these employees.³ I do not find that the Intervenor's argument regarding successorship, has merit.

For these reasons I find that the 2017-2021 Agreement does not, by its terms, encompass the petitioned-for employees in the manner required by Board law to apply

³ This is one area where I disagree with Petitioner. Petitioner asserts that the successor language in the collective-bargaining agreements is only referring to rebidding by the Federal Protective Services of the same work with a different contract number. This may be the understanding of those involved, but I do not find this contention is supported by the record evidence. I also do not reach the conclusion argued by Petitioner regarding the 2020 negotiations: the negotiations demonstrate that Intervenor SPFA and the Employer agreed to sever the AMOC guards in 2020, even if they did not do so in 2017. I am not inclined to make factual findings regarding the 2020 negotiations based on the limited evidence in the record. I merely find that the 2020 negotiations are consistent with the AMOC guards being treated as a separate bargaining unit since 2017.

contract-bar principles. Accordingly, I do not find that agreement is a bar to the petitioned-for election.

B. Single-Facility Unit

The Board has long held that a single-facility bargaining unit is presumptively appropriate. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514 (1998). When a petitioner seeks a unit employed at a single location, the “single-facility” presumption can be rebutted by a showing that the petitioned-for unit has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Hilander Foods*, 348 NLRB 1200 (2006). To determine whether the presumption has been rebutted, the Board examines factors such as central control over daily operations and labor relations, similarity of employee skills, functions, and working conditions, the degree of employee interchange, the distance between locations, and bargaining history, if any. *J&L Plate*, 310 NLRB 429 (1993).

Before considering any community-of-interest factors, and the presumption the Intervenor must overcome, I first find it necessary to return to Intervenor SPFPA's contention that the AMOC guards remained in the existing unit and Intervenor SPFPA was not seeking a standalone contract in its 2020 negotiations with the Employer. As described in the previous section, this contradicts all the evidence in the record. Regarding the 2020 negotiations specifically, the record shows the Employer and the Intervenor discussing a collective-bargaining agreement for “all security officers employed by the Company in Riverside, California pursuant to Contract No. GS-07F-0418K/HSBP1017F00191 between the Company and the United States Customs and Border Protection.” This can only mean the AMOC guards, and only the AMOC guards. At hearing, and on brief, the Intervenor has provided no explanation that synthesizes this evidence with Intervenor SPFPA's assertion it was not seeking a standalone unit. I have addressed the community-of-interest factors below, but given that all the evidence demonstrates that Intervenor SPFPA was negotiating a standalone single-facility unit themselves immediately prior to the filing of the petition, their position that a single-facility unit is inappropriate is extremely dubious.

I do not find the single-facility presumption has been rebutted by the Intervenor. It is true that the AMOC guards had historically been part of a multi-facility unit, but this historical fact does not dictate that this unit scope must continue in perpetuity. While the Intervenor has identified some factors beyond bargaining history that could support overcoming the single-facility presumption – centralized control over labor relations, the similarity in skills, functions, and working conditions, and the relatively minor distance between locations – the evidence is scant and conclusory. For example, I do not find it enough, as here, to simply establish that the Employer has a single human resources department and single employee handbook to establish that the Employer has centralized control over labor relations, particularly when the record lacks any evidence of how issues are handled at the local level. See *New Britain Transportation Co.*, 330 NLRB 397 (1999) (centralization of operations and labor relations alone is insufficient to rebut the presumptive appropriateness of a single-facility unit where there is evidence of significant local autonomy).

While it is true that the employees in the existing unit are security guards, and the employees at the AMOC facility are security guards, this shared title is insufficient to carry weight under this factor. The record contains no evidence of what skills the guards possess, what specific functions they serve, or how they perform these duties. There is additionally no evidence, cursory or otherwise, of factors such as interchange.

Intervenors have a high burden to carry in rebutting the single-facility presumption. This type of general reference and conclusory statements requiring significant inference are not sufficient to meet this burden. For this reason, I do not find that the Intervenors have rebutted the single-facility presumption. The petitioned-for unit is accordingly an appropriate one, and I have directed an election accordingly.

CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in the petitioned-for unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

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.⁴
3. The Petitioner and the Intervenors are labor organizations within the meaning of Section 2(5) of the Act and claim 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.
5. The following employees of the Employer constitute an appropriate bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time armed security officers employed by the Employer performing guard duties as defined in Section 9(b)(3) of the

⁴ During the hearing the parties stipulated to the following commerce facts:

The Employer, Paragon Systems Inc., an Alabama corporation with its principal offices located at 13900 Lincoln Park Drive, Suite 300, Herndon, Virginia, is engaged in the business of providing security services to the federal government, including at various locations within the State of California. During the past 12 months, a representative period, the Employer performed services valued in excess of \$50,000 in states other than the State of California.

Act, pursuant to its contract with the U.S. Customs and Border Protection, at the Air and Marine Operations Center (AMOC) located at March Air Reserve Base in Riverside, California.

Excluded: All other employees, office clerical employees, confidential employees, professional employees, managerial employees, and supervisors as defined in the Act.

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 **LAW ENFORCEMENT OFFICERS SECURITY UNIONS LEOSU-CA, LEOS-PBA; INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA, (SPFPA) AND ITS LOCAL 52; or NEITHER.**

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit **at 2:30 p.m. on Friday, September 4, 2020.** Ballots will be mailed to voters by the National Labor Relations Board, Region 21. 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 Friday, September 11, 2020,** as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 21 office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

The ballots will be commingled and counted by the Region 21 office **at 10:00 a.m. on Tuesday, September 29, 2020.** In order to be valid and counted, the returned ballots must be received by the Region 21 office prior to the counting of the ballots. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during **payroll period ending August 13, 2020⁵** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but

⁵ In its Statement of Position dated July 16, 2020, the Employer indicated that its payroll periods were biweekly, and its last payroll period had ended on July 2, 2020.

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 by mail as described above.

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

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 **Monday, August 24, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must 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 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 elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. Unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden, a request for review must be E-Filed through the Agency's website. A request for review 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 why the filing party does not have access to the means for filing electronically 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 at Los Angeles, California, this 20th day of August, 2020.



William B. Cowen, Regional Director
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