UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

Vireo Health of New York, LLC	)	
Employer	)	
and	)	Case No. 29-RC-228861
Warehouse Production Sales and Allied Service Employees Union, Local 811, AFL-CIO	)	
Petitioner	)	
and	)	
Local 338, Retail, Wholesale, and Department Store Union, United Food and Commercial Workers	)	
Intervenor	)	

DECISION AND DIRECTION OF ELECTION

Vireo Health of New York, LLC ("the Employer") is engaged in the manufacturing and dispensing of medical marijuana. On October 10, 2018,[1] Warehouse Production Sales and Allied Service Employees Union, Local 811, AFL-CIO ("the Petitioner" or "Local 811") filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent all full-time and regular part-time medical marijuana drivers employed by the Employer at 89-55 Queens Boulevard, Elmhurst, New York, but excluding all other employees employed at the Employer's Elmhurst facility. Local 338, Retail, Wholesale, and Department Store Union, United Food and Commercial Workers ("the Intervenor" or "Local 338") intervened based on the existence of a collective bargaining agreement with the Employer.

The Employer asserts that the employees in the petitioned for-unit are guards under Section 9(b)(3) of the Act and therefore an election could not be held with either Petitioner or Intervenor on the ballot, and that if they are not guards, these employees are already covered by a collective bargaining agreement between the Employer and the Intervenor. The Intervenor also maintains that the collective bargaining agreement bars an election.

A hearing was held before John Mickley, a hearing officer of the National Labor Relations Board.

[1] All dates hereinafter are in 2018 unless otherwise indicated.

I find that the employees in the petitioned-for unit are not guards under Section 9(b)(3) of the Act. I further find that the Employer's collective bargaining agreement with Local 338 does not bar an election in this case. I will direct an election accordingly.

I. Background

The Employer manufactures and dispenses medical marijuana. The Employer operates under the New York State Medical Marijuana Program. The Employer opened its first dispensary approximately three years ago.

The Employer grows and cultivates medical marijuana in a greenhouse in Johnson City, New York. The Employer currently operates four dispensaries: Johnson City, Albany, White Plains and the Elmhurst, New York facility involved in the present case.

Patient Care Coordinators fill patients' prescriptions. The prescriptions can be filled at any of the four dispensaries. Patients can visit a dispensary to pick up their prescriptions or the Employer can deliver their prescriptions to them. The Employer received approval from New York State to make home deliveries of medical marijuana in January 2017; it began home delivery in April 2017. The Employer currently employs fifteen drivers.

II. The Drivers Are Not Guards

A. Facts

1. Duties

The drivers work from 8:30 a.m. to 6:30 p.m. They work in pairs; one employee drives and one employee rides as the passenger (referred to as the "passenger" in this report). The employees can alternate who drives and who rides as the passenger. When employees arrive at the Employer's facility, they enter the Employer's secure dispensing room, which is a restricted access room. This room contains a vault which stores the medication. At this time, one of the drivers in the pair gets a vehicle key, which is kept in a vault. The driver then proceeds to a secure parking garage in a shopping center a few blocks from the Employer's facility where the Employer is a monthly parking tenant. Once the driver gets the car, s/he returns to the front of the facility to wait for the passenger.

The Employer uses Toyota RAV 4s for deliveries. The cars are equipped with a safe for the marijuana, a safe for cash, and a dashboard camera. The dashboard camera shows both the route and the car's medical marijuana safe. The marijuana safe is located in the back hatch of the vehicle and can be opened by combination lock. The cash safe is located in the backseat of the vehicle. Originally, the cash safe was accessed from standing outside the car, but now it is accessed from within the car so the drivers are not exposed while handling cash.

While the driver goes to the garage, the passenger will collect equipment for the team, including two company cell phones, a body camera, a mobile tablet, a delivery manifest including all of the deliveries with names and addresses for their route, a messenger bag, petty cash (about $250), and the medication. The medication is in a tamper resistant pouch prepared by the pharmacist. The amount of medication a team takes out varies, but generally it could range in value from $3,000 to $5,000 per vehicle. The pair must also have a locked drop box for cash. The lockbox goes into the cash safe within the car. The passenger gets keys from the dispensary that open the car safe to secure

the drop box, but the box itself cannot be opened by the drivers. The passenger then meets the driver outside and places the medication in the medication safe. Once the cash drop box is secured in the car's cash safe, the passenger returns the key for the cash vault to the dispensary, so the drivers do not have access to the drop box during the day.

The drivers then complete their routes. When they reach a customer's house, the passenger will retrieve the correct package of medication for the patient from the medication safe, put the medication in the messenger bag, and go to the door. The body camera is attached to the messenger bag. The passenger will deliver the medication directly to the patient or to a caretaker who is authorized to accept the medication on the patient's behalf. No other individuals may receive the prescription. The patient can pay by cash or credit card, which is processed on the tablet. Cash payments are deposited into the drop box in the cash safe. The driver stays in the car. At the end of the day, the drivers return the drop box to the facility.

The drivers use the cell phones for GPS while they are making deliveries and also for calling their supervisor, Ed Seibert, the Employer's director of home delivery operations, if any issues come up during their route. For example, if there is a problem with a customer's payment or if a customer had a question about his or her delivery, the driver will call Seibert or, if he is not available, the pharmacy manager on duty. In addition, if there were a security concern, the drivers would call Seibert. For example, if a driver saw on the dashboard camera that the medical marijuana was not secure, s/he would call Seibert or the Employer's security department and report the situation. Seibert testified that if the drivers were ever threatened, they would comply with the threat and that they would not be expected to put themselves in harm's way. Seibert specifically testified that if a security problem arose while the drivers were making deliveries, the drivers are expected to call him or a pharmacy manager or the Employer's corporate security department, which is located in upstate New York. The drivers are not expected to risk their own safety.

Anthony Mendoza, a driver employed by the Employer, testified that he has contacted Seibert or the pharmacy manager from the road, but he has never been in touch with corporate security. The emergencies that Mendoza has experienced have all been vehicle related. On one occasion following a minor accident, Mendoza contacted Seibert and the police.

According to Seibert, the body cameras provide safety and security of the drivers given that they are handling medical marijuana and cash.

At the end of their shift, the drivers return to the Employer's facility. The passenger goes to the secure dispensing room. S/he brings in the locked cash drop box and any undelivered medication. They return the cash drop box to Seibert or the pharmacy manager who will make sure that the cash reconciles. Any undelivered medication is stored in a vault. The passenger returns the keys for the car cash safe. The driver returns the car to the garage and then brings the keys back to the Employer's facility. Once the cash is reconciled, their shift ends.[2] It is the Employer's policy not to leave medication or cash in any of the cars overnight, but it has happened on occasion by mistake.

The drivers do not carry weapons, are not bonded, do not carry badges, and do not wear uniforms. They are not licensed as guards. They must only maintain a valid driver's license.

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[2] Seibert testified that if the drivers are back from their route early, they might help clean up or take out recycling, but that this does not occur on a regular basis.

2. Hiring

In its job posting, the Employer states that the drivers deliver the medication to patients homes; follow route and time schedules; load, unload, prepare, inspect, and operate the delivery vehicles; verify the identity of the patient; collect payment; maintain contact with the dispatcher; and comply with the Employer's policies and New York State regulations. In the qualifications, the Employer lists, among other items, drivers must be at least 21 years old; have a valid New York State Driver's license with a clean record; and possess basic computer skills and familiarity with iphone operations and applications. In addition, the posting states that delivery driver or courier and law enforcement backgrounds are desired, but not required. Seibert testified that only one of the current drivers has a law enforcement background.

Before hiring a driver, the Employer reviews the applicants' resumes. The Employer then conducts a phone interview. Successful applicants then have and in person interview to which they must bring proof of a clean driver's license from the Department of Motor Vehicles. Seibert testified that he looks for candidates with driving experience, delivery experience, and customer service skills. He stated that a law enforcement background is a plus. Once an offer is made, the Employer conducts a criminal background check and drug screening.

3. Training

The Employer provides peer training for drivers. New drivers go on a route with an experienced team for his/her first couple of days. The driver learns everything from the start of the day, including securing the medication, securing the cash, and the logistics of day-to-day operations. After a few days, the driver will complete his or her own route. A third experienced driver will accompany the new driver to offer feedback throughout the route. The experienced driver will also give feedback to Seibert, who can follow up with the new driver.

The Employer also provided a document summarizing training for a new driver. Er. Ex. 1. The training includes topics such as documentation check (regarding patient documentation) and delivery procedures. There is a section entitled "security," which refers to an introduction by Jennifer Duey and Jennifer Sylvester, both of whom head the Employer's corporate security department. Seibert confirmed that employees no longer meet with Duey and Sylvester and that this particular reference is obsolete. The summary also references training about vigilance, body position, and demeanor, security and safety procedures, vehicle training and personality composure, and emergency situations. Er. Ex. 1. Seibert testified that "security and safety procedures" in the training materials referred to safekeeping the medication and the cash at all times.

Driver Anthony Mendoza testified about his training when he started working for the Employer in April 2017. At that time, Duey and Sylvester did address employees about security. Mendoza testified that with regard to training about staying vigilant, the Employer merely told employees to stay vigilant in general. Mendoza described the training as "common sense."

B. Discussion

The Act defines a guard as "any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." NLRA, Sec. 9(b)(3). Guard responsibilities generally include duties typically

associated with traditional police and plant security functions, including enforcement of rules directed at other employees, the authority to compel compliance with those rules, security procedure and weapons training, weapon possession, performing security rounds or patrols, monitoring and controlling access to the employer's premises, and wearing of guard uniforms or displaying other guard insignia. *See The Boeing Co.*, 328 NLRB 128, 130 (1999). The "Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibility." *Id.*

The Board has considered specifically the guard status of delivery employees or couriers in a number of cases. In such cases, the Board must determine if the employees' "basic function must involve 'directly and substantially, the protection of valuable property of the Employer's customers.' Accordingly, the issue here is whether the basic duties of the instant courier-guards focus on the *protection* of customer property so as to make these employees classifiable as guards under Section 9(b)(3)." *Purolator Courier Corp.*, 300 NLRB 812, 814 (1990) *quoting Purolator Courier Corp.*, 266 NLRB 384, 385 (1983).

The Board's 1990 *Purolator* decision is instructive here. In that case, the couriers at issue were responsible for the pick up, transportation, and delivery of various types of freight. Their cargo included time-sensitive, perishable, and valuable items, such as "payroll checks, bank instruments, documents of title, securities, airline tickets, jewelry, art work, credit card receipts, Walt Disney World tickets, controlled pharmaceuticals, body parts, blood, biological specimens, sealed construction bids, architectural drawings, medical diagnostic data, computer equipment, telephone equipment, electronic equipment, cash letters, furs, flowers, live rats and mice, and dead animals." *Purolator*, 300 NLRB at 812. These couriers wore uniforms and carried identification badges. They drove vans marked with the employer's name. The employer represented itself as a delivery service, not a guard service. The couriers occasionally made pick ups from and deliveries to steel security vaults maintained by the employer. In these cases, the couriers would use keys for the vaults provided to them by the dispatcher. The employer required that the couriers were bondable, but they were not actually bonded. The couriers received on the job training as well as formal training regarding how to complete a bill of lading. In addition, the couriers received materials referring to the need for security and, taking precautions, and their responsibility for their delivery vehicle and its contents. The Board found that this training was minimal with regard to the security and safety of customer property. These couriers were unarmed and are not expected or authorized to use force to safeguard the customers' property. They were instructed to call the dispatcher or the police if they witnessed suspicious activity. The couriers were not "required by the [e]mployer to enforce against employees and other persons rules to protect the property of the [e]mployer or to protect the safety of persons on the [e]mployer's premises. The [couriers were] never instructed to safeguard the premises of customers." *Id.* at 813. Given these facts, the Board found that the couriers were "not engaged directly and substantially in the protection of customer property, and therefore are not statutory guards. Instead, the record demonstrates that the [e]mployer's courier-guards essentially function not as guards but as delivery drivers for the [e]mployer's customers." *Id.* at 814. Accordingly, the Board found that they were not guards within the meaning of Section 9(b)(3) of the Act.

In the instant case, the record similarly does not establish that the Employer's drivers are guards. The Employer does not operate as a guard service, but as a medical marijuana dispensary. The drivers are not bonded and do not carry weapons. While they receive some security training, it is not the focus of their training, much of which covers the day to day operations of making deliveries. If there is an incident while they are making deliveries on their routes, including a security incident, the protocol is for them to call their supervisor, Ed Seibert, or a pharmacy manager. They are not expected

to risk their own safety to protect the medication or cash with them. Although they are involved in transporting a substance with considerable monetary value and a controlled substance, the intrinsic value of their freight does not render the drivers guards, as illustrated by *Purolater*, discussed above, where the couriers transported items of great value. Based on the record, I find that the drivers are "not engaged directly and substantially in the protection of customer property." *Id.* at 814. Accordingly, I find that the drivers employed by the Employer are not statutory guards. *See also Pony Express Courier Corp.*, 310 NLRB 102 (1993) (in which the Board declined to find that couriers were guards within the meaning of Section 9(b)(3) of the Act where there couriers were unarmed and were not expected to use force to secure property in their possession, even where the couriers some training regarding security measures for making deliveries).

III. The Collective Bargaining Agreement Between the Employer and the Intervenor Does Not Bar an Election

A. Facts

In May 2015, the Intervenor entered into a neutrality agreement with Empire State Health Solutions, LLC. The record reflects that Empire State Health Solutions, LLC combined with Minnesota Health Solutions to become Vireo, but does not contain specific details regarding the creation of Vireo. The neutrality agreement expressly states that the term "employees" includes drivers, among other titles. Int. Ex. 2. The Employer did not employ any employees in May 2015, when the neutrality agreement was signed.

The Employer and the Intervenor both signed a collective bargaining agreement in August 2016, after the Employer began operations but before it employed any drivers. The agreement is effective from September 1, 2016 to July 31, 2019. The bargaining unit in that agreement includes "all full-time and regular part-time employees working at the Employer's present and future cannabis production and cannabis dispensary place(s) of business in the state of New York." Bd. Ex. 3 at Article 1. The recognition provision specifies that "the parties' intention is for the Union to represent a wall-to-wall unit," and states that "the parties will bargain over the wages of any job classifications not specified in this Agreement . . . ." Id. The collective bargaining agreement specifies wages for horticultural technicians, pharmacy technicians, manufacturing technicians/lab techs, patient associates, and pharmacists. Id. at Exhibit A. The collective bargaining agreement excludes head horticulturists, pharmacy managers, guards, managers and supervisors as defined by the Act. Id. at Article 1. The collective bargaining agreement contains terms and conditions, including wages, a union security clause, vacation time, paid holidays, hours of work, and overtime.

When the Employer first hired drivers in April 2017, it took the position that the drivers were guards, and so did not apply the collective bargaining agreement to the drivers. The Employer and the Intervenor have never bargained over the drivers' wages as contemplated for furture hires under the collective bargaining agreement. The terms of the collective bargaining have never been applied to the drivers.

Joseph Fontano, a representative of the Intervenor, testified that the Intervenor intended for the collective bargaining agreement to cover all employees employed by the Employer and did not intend to exclude drivers from the unit. When the Employer first hired drivers, the Intervenor collected union

authorization cards from a number of the drivers.[3] According to Fontano, the Intervenor collected cards as a precaution. Fontano further testified that in or about late 2017, a representative for the Employer told him that the drivers hired by the Employer were guards and so not part of the bargaining unit. At that time, Fontano asked another Union representative to investigate the duties of the drivers to determine if they were guards. On October 25, 2018, after the filing of the instant petition by the Petitioner and after the opening of the hearing in this case, the Intervenor filed a grievance with the Employer alleging that the drivers were improperly excluded from the bargaining unit.

B. Discussion

In order to serve as a bar to a petition, a contract must be written, be signed by all parties, cover an appropriate unit, and contain substantial terms and conditions of employment which would provide stability to the bargaining relationship. *See Appalachian Shale Products, Co.*, 121 NLRB 1160 (1958); *see also Moveable Partitions*, 175 NLRB 915 (1969). In addition, to "serve as a bar, a contract must clearly by its terms encompass the employees sought in the petition." *Appalachian Shale*, *supra,* at 1164. A contract may serve as a bar for up to three years. *See General Cable Corp.*, 139 NLRB 1123 (1962). A contract must also be implemented to serve as a bar. *See Tri-State Transportation Co.*, 179 NLRB 310 (1969). The party asserting contract bar bears the burden of proving that the contract in question bars a petition. *See Roosevelt Memorial Park*, 187 NLRB 517 (1970).

In this case, the bargaining unit in the collective bargaining agreement includes "all full-time and regular part-time employees working at the Employer's present and future cannabis production and cannabis dispensary place(s) of business in the state of New York." Bd. Ex. 3 at Article 1. As stated above, to enjoy bar quality, a contract must clearly encompass the employees sought in the petition. Although the collective bargaining agreement at issue here states that the parties' intention is to include a wall-to-wall unit, the collective bargaining agreement was negotiated before the Employer had a full complement of employees and before the Employer employed any drivers.[4] In fact, the Employer was not authorized to make home deliveries of medical marijuana until several months after the collective bargaining agreement became effective. When the Employer started hiring drivers in April 2017, approximately eight months after the collective bargaining agreement became effective, the Employer took the position that these employees were guards and so not covered by the collective bargaining agreement.[5] It is undisputed that the Employer has never applied the terms of the collective bargaining agreement to the drivers, that the Employer and Intervenor have never bargained over

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[3] The Petitioner offered a signed authorization card to show that despite the existence of the collective bargaining agreement, the Intervenor felt it was necessary to organize the drivers. The Hearing Officer accepted a partially redacted copy of the authorization card over the Intervenor's objection. I reverse this ruling of the hearing officer, sustain the Intervenor's objection to the admission of the authorization card, and strike Petitioner's Exhibit 3 from the record. Further, I have not relied on any testimony in the record regarding how many drivers signed authorization cards or those individuals' identities.

[4] The record does not indicate whether the Employer employed the requisite number of employees and job classifications at the time the collective bargaining agreement was executed for the contract to bar an election. *See General Extrusion Co.*, 121 NLRB 1165, 1167 (1958) ("When the question of a substantial increase in personnel is in issue, a contract will bar an election only if at least 30 percent of the complement employed at the time of the hearing had been employed at the time the contract was executed, *and* 50 percent of the job classifications in existence at the time of the hearing were in existence at the time the contract was executed."). The Petitioner and the Intervenor bore the burden of establishing the bar quality of their collective bargaining agreement. Because I have found that their agreement does not have bar quality for other reasons, I do not make a ruling on this issue.

[5] I do not rely on the language in the 2015 neutrality agreement entered into between the Intervenor and Empire State Health Solutions, LLC, which specified that drivers were included in the definition of employees. The record does not contain sufficient evidence regarding the relationship between the Employer and Empire State Health Solutions, LLC to render that document reflective of the Employer's intent.

wages for the drivers, that the Employer informed the Intervenor that the drivers were guards, and that the Intervenor did not seek application of the collective bargaining agreement to the drivers until after the Petitioner filed the instant petition. Given these facts, the record does not demonstrate that the Employer and the Intervenor agreed to include drivers in the bargaining unit covered by their collective bargaining agreement. The Employer and the Intervenor have not established that their collective bargaining agreement clearly encompasses the drivers.

In *Middletown Lumber Co.*, 126 NLRB 170 (1960), the Board considered a similar case. In that case, an employer sought an election among its production and maintenance employees consisting of yard laborers, truck drivers, and millworkers. A union which represented "all employees of the Employer coming within the jurisdiction of the United Brotherhood of Carpenters and Joiners of America," urged that its contract with the employer barred an election. The employer argued that the contract did not bar an election because that contract covered only carpenters employed by the employer on outside construction projects and excluded the yard laborers, truck drivers, and millworkers. The contract contained wage rates only for journeyman and apprentice carpenters and piledrivers. Although the contract had been effective for over a year, it had never been applied to the yard and mill employees employed by the employer. Further, those employees did not work on outside construction jobs as the carpenters did. Accordingly, the Board found that the contract did not encompass the employees sought in the petition and so could not bar an election. *See also Moore-McCormack Lines*, 181 NLRB 510 (1970) (declining to find contract bar where, *inter alia*, it was undisputed that the contracts at issue had never been applied to petitioned-for employees); *Tri-State Transportation Co.*, 179 NLRB 310, *supra* (in which the Board declined to find contact bar where an employer did not apply the terms of a contract to certain petitioned-for employees, and the union did not seek to administer the contract to those employees). Because the drivers are not encompassed in the bargaining unit contained in the collective bargaining agreement between the Employer and the Intervenor, I find that the collective bargaining agreement does not bar an election.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. Except as stated above in footnote 3, I find that the rulings made by the Hearing Officer at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Vireo Health New York, LLC, a limited liability corporation with a corporate office located at 205 East 42nd Street, New York, New York, and a place of business located at 89-55 Queens Boulevard, Elmhurst, New York, is engaged in the manufacturing and dispensing of medical marijuana. During the 2017 calendar year, which period is representative of its annual operations generally, the Employer derived gross annual revenues in excess of $1,000,000, and purchased and received raw materials and equipment valued in excess of $5,000 directly from points located outside the State of New York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that Warehouse Production Sales and Allied Service Employees Union, Local 811, AFL-CIO and Local 338, Retail, Wholesale, and Department

Store Union, United Food and Commercial Workers are labor organizations as defined in Section 2(5) of the Act. The Petitioner and Intervenor 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. I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time drivers employed by the Employer at its 89-55 Queens Boulevard, Elmhurst, New York, but excluding all other employees, guards, and supervisors as defined by Section 2(11) of the Act.

If a majority of the valid ballots in the election are cast for the Petitioner, the employees in the above appropriate unit will be deemed to have indicated their desire to be represented in a unit including only drivers. If a majority of the valid ballots in the election are cast for the Intervenor, the employees in the above appropriate unit will be deemed to have indicated their desire to be included in the existing bargaining unit currently represented by the Intervenor, and it shall bargain for those employees as part of that unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

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 **Warehouse Production Sales and Allied Service Employees Union, Local 811, AFL-CIO; Local 338, Retail, Wholesale, and Department Store Union, United Food and Commercial Workers**; or **Neither**.

A. Election Details

The election will be held on **Tuesday, December 11, 2018** from 8:30 a.m. to 9:30 a.m. in the break room at the Employer's facility located at 89-55 Queens Boulevard, Elmhurst, New York.

B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending **November 24, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

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 **November 29, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

When feasible, the list shall be filed electronically with the Region and served electronically on the other 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.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

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. Notices will be posted in English and Spanish.

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 14 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 may be E-Filed through the Agency's website but 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. 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 Brooklyn, New York, on November 26, 2018.

Kathy Drew-King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201