

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

AMAZON.COM SERVICES LLC

Employer

and

Case 10-RC-269250

**RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION**

Petitioner

ORDER SCHEDULING MAIL BALLOT ELECTION

By way of an Order dated November 30, 2021, I asked the parties to provide their positions on whether a second election should be conducted manually or by mail ballot. After reviewing the positions and considering the factors outlined in GC Memorandum 20-10 and *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), I am directing a mail ballot election.

I. Procedural History

On November 20, 2020, the Union filed a petition in this matter seeking to represent the Employer's hourly associates. Following a pre-election hearing, a Decision and Direction of Election (DDE) issued on January 15, 2021, directing a mail ballot election in the following unit:

All hourly full-time and regular part-time fulfillment associates, seasonal fulfillment associates, lead fulfillment associates, process assistants, learning coordinators, learning trainers, amnesty trainers, PIT trainers, AR quarterbacks, material handlers, hazardous waste coordinators, sortation associates, WHS specialists, onsite medical representatives, data analysts, dock clerks, transportation associates, interim transportation associates, transportation operations management support specialists, field transportation leads, seasonal learning trainers, seasonal safety coordinators, seasonal process assistants, and warehouse associates (temporary) employed by the Employer at its Bessemer, AL facility; excluding all truck drivers, office clerical employees, professional employees, managerial employees, engineering employees, maintenance employees, robotics employees, information technology employees, loss prevention specialists, guards, and supervisors as defined by the Act.

The tally of ballots dated April 9, 2021, shows that of the approximately 5,867 eligible voters, there were 738 votes cast for the Union and 1,798 votes against the Union, with 505 challenged ballots, a number that was not sufficient to affect the election results.

The Union timely filed 23 objections to the election results. Between May 7 and 26, 2021, a hearing officer for Region 10 heard testimony and received evidence. On August 2, 2021, the hearing officer issued her Report on Objections recommending that certain objections be dismissed, that certain objections be sustained, and that a second election be directed. The Employer filed exceptions to the hearing officer's findings and recommendations.

On November 29, 2021, I issued a Decision and Direction of Second Election, leaving open the matter of whether to hold the second election by manual or mail ballot. On November 30, 2021, I issued an Order requesting the parties' positions and evidence on whether the election should be conducted manually or by mail ballot. On December 14, 2021, both parties timely filed their respective positions on this issue.

II. The Parties' Positions

The Petitioner requested an off-site manual ballot election. It proposed the Bessemer Civic Center as a reasonable location where the COVID-19 safety protocols, as outlined in GC Memorandum 20-10, could be met. Its reasons for requesting an off-site location include the nature of the Employer's objectionable conduct during the first election, including creating the impression that the NLRB was not in control over the election, and the Employer's use of surveillance at its location.

The Employer requested an on-site manual ballot election. It indicated that COVID-19 rates are down from early 2021 and the vaccine is readily available. It further indicated it would install a large, climate-controlled tent in the parking lot in which to hold the election while complying with the factors in GC Memorandum 20-10.

III. Analysis

In *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), the Board set forth six situations under which a Regional Director should consider directing a mail ballot election. The six situations are as follows:

1. The Agency office tasked with conducting the election is operating under "mandatory telework" status;
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by the GC Memorandum 20-10 protocols;

5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and
6. Other similarly compelling considerations.

No Regional Office, including Subregional and Resident Offices, has been in a mandatory telework status since mid-June 2020. The Employer’s proposed polling place does not appear to violate any mandatory state or local health orders, and the Employer’s proposed precautions exceed those contemplated by GC Memorandum 20-10.

The Board has not defined an in-facility outbreak, nor is there a standard medical definition of “outbreak.” However, I note that any presence of COVID-19 in an employer’s facility has been cited as a factor in favor of conducting a mail ballot election in multiple Directions of Election, and I shall do so here. The Employer’s position statement included an affidavit from Workplace Health and Safety Manager Joe Bailey who testified that there were 50 employees who had tested positive for COVID-19 within the 14 days preceding the Employer’s December 14 position statement, in addition to 9 who were awaiting test results and 46 who were exhibiting symptoms of COVID-19 (exclusive of those who had tested positive).

The Employer’s facility is located in Bessemer, Jefferson County, Alabama. According to the Centers for Disease Control, the testing positivity rate for Jefferson County is 38.42 percent as of January 10, 2022, which is up significantly from 16.93 percent as of December 27, 2021.^[1] Also, the 14-day trend in the number of new confirmed COVID-19 cases in Jefferson County is also rising, increasing from 475 new cases on December 27, 2021 to 2,271 new cases on January 9, 2022, with a high of 2,682 new cases on January 2, 2022, according to the Johns Hopkins COVID-19 status report.^[2]

As of January 10, 2022, Johns Hopkins University’s website showed the following number of new cases in Jefferson County for each day for the preceding fourteen days (note that January 1 was a holiday):

Date	Number of New Cases
January 9	2,271
January 8	1,484
January 7	2,042
January 6	2,176
January 5	1,667
January 4	1,501
January 3	783
January 2	2,682
January 1	0
December 31	1,810
December 30	1,910

^[1] See <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited January 10, 2022).

^[2] See <https://bao.arcgis.com/covid-19/jhu/county/01073.html> (last visited January 10, 2022).

December 29	1,347
December 28	898
December 27	475

The Mayo Clinic’s COVID-19 map, which shows a rolling average of daily cases for the past week, shows, as of January 7, 2022, 1,585.0 average daily cases in Jefferson County, which is 240.2 cases per 100,000 people.^[3]

As of January 9, 2022, the Alabama Department of Public Health indicates an overall State positivity rate over a 7-day average as 41.2 percent and 41.6 percent for Jefferson County, an increase from the December 27, 2021, overall positivity rates of 18.2 percent for the State and 21.5 percent for the County. The Department of Health gave an increased risk rating of “High” for the overall level of community transmission in both the State and County.^[4]

The New York Times reports that as of January 9, 2022, Jefferson County’s positivity rate is at 16 percent over a 14-day average, reflecting a 357 percent increase in 14 days at an average of 1,703 cases per day.^[5]

I have carefully considered the parties’ preference for a manual election, and though a manual election might be the practical course in the absence of the COVID-19 pandemic, I have determined that it is appropriate to direct that a second election be conducted by mail ballot here. This is the safest and most appropriate method of conducting a prompt election in view of the extraordinary circumstances presented by the pandemic. Although the Employer has agreed to the safety precautions required in GC Memorandum 20-10, I have determined that an in-person manual election under the current circumstances in Jefferson County, Alabama, poses significant and unnecessary risks to the health and safety of voters, observers, party representatives, and Board agents. The conduct of a manual election invariably requires participants to come within fewer than six feet of one another, while social distancing guidelines provided by Federal, State and Local authorities recommend that individuals remain at least six feet apart. Although certain safety measures, if obeyed by everyone and carried out to perfection, might limit some close interaction and mitigate some of the unnecessary risks associated with conducting a manual election here, the Board’s mail-ballot process all but eliminates the inherent safety risks and equally ensures that employees can conveniently and freely exercise their rights to vote or refrain from voting in secret. It is unquestionably possible to perform a fair election that enfranchises all voters via mail ballot.

Finally, the Employer requested the Region provide clear guidance regarding its expectations for the mailbox that was placed outside the facility in January 2021 and was the subject of several objections. The United States Postal Service has moved or will move the mailbox to a neutral location on the Employer’s property away from the entrance to the facility.

^[3] See <https://www.mayoclinic.org/coronavirus-covid-19/map/alabama> (last visited January 10, 2022).

^[4] See <https://alpublichealth.maps.arcgis.com/apps/dashboards/ea2a3c6bca554bdebf8e52d9ffb5d4a9#/d5ba87c6d814f80938cf89beaa38971> (last visited January 10, 2022).

^[5] <https://www.nytimes.com/interactive/2021/us/jefferson-alabama-covid-cases.html> (last visited January 10, 2022).

No party shall erect a canopy, tent, banner, sign, or other object on, at, around, or in view of the mailbox. Nor shall any party issue a directive, suggestion, or other statement to voters concerning use of the mailbox for the purposes of this election.

Accordingly, **IT IS HEREBY ORDERED** that the second election shall be conducted as a mail ballot election.

IV. Conclusion

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit previously found appropriate. Also eligible to vote are all employees in the unit who have worked an average of four hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. The record evidence indicates that the payroll period ends every Saturday. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Retail, Wholesale and Department Store Union.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. On **Friday, February 4, 2022**, at 1:00 p.m. Central Time, ballots will be mailed to voters by the National Labor Relations Board, Region 10. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 10 office by close of business on **Friday, March 25, 2022**.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by February 18, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Atlanta Office at 404-331-2896 or the Region 10 Birmingham Resident Office at 205-933-3018.

The Region will count the ballots beginning at **10:00 a.m. Central Time on Monday, March 28, 2022**. Due to the extraordinary circumstances of the COVID-19 pandemic and the directions of state or local authorities including Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Skype, WebEx, Zoom, etc.) to be determined by the Regional Director. The ballot count will continue on consecutive business days until completed. Each party will be allowed to have four observers participate with the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of the Notice of Section Election (attached to this Order),

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.

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 Thursday, January 13, 2022. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

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

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object

to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

D. Posting of Notices of Election

The Notice of Second Election is attached to this Order. Section 102.67(k) of the Board's Rules and Regulations requires the Employer to timely post copies of the Board's official Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted. The Employer must also distribute the Notice of Election electronically to any employees in the unit with whom it customarily communicates electronically. In this case, the notices must be posted and distributed no later than 12:01 a.m. on February 1, 2022. Pursuant to Section 102.67(k), a failure to post or distribute the notice precludes an employer from filing objections based on nonposting of the election notice.

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

Please be advised that in a mail ballot election, the election begins when the mail ballots are deposited by the Region in the mail.

Dated: January 11, 2022



LISA Y. HENDERSON
REGIONAL DIRECTOR
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**AFFIDAVIT OF SERVICE OF: ORDER SCHEDULING MAIL BALLOT ELECTION,
dated January 11, 2022**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on January 11, 2022, I served the above documents by electronic mail upon the following persons:

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Designated Agent of NLRB

Name

/s/ Kalsey Harrison

Signature