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

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Decision and Direction of Election, the Region conducted a mail ballot election in a unit of hourly associates employed by Amazon.com Services LLC (Employer) at its Bessemer, Alabama, distribution center. Of the approximately 5,867 eligible voters, 738 votes were cast for and 1,798 votes were cast against the Retail, Wholesale and Department Store Union (Union), with 505 challenged ballots. The Union timely filed objections to the election, and the matter was scheduled for hearing. On August 2, 2021, the hearing officer issued her Report on Objections recommending that certain objections be sustained and that a second election be directed. The Employer filed exceptions to the Hearing Officer's Report on Objections, and the Union filed a brief in opposition to the Employer's exceptions.

I have reviewed the entire record, including the evidence, the Employer's exceptions, and the parties' arguments. I agree with the hearing officer's recommendations. Accordingly, I affirm the hearing officer's rulings, I adopt her recommendation to sustain certain objections, and I order a second election.

I. PROCEDURAL HISTORY

The Employer operates a global internet-based consumer retail business that sells and distributes goods and services directly to consumers. The Employer began operations at its Bessemer, Alabama, distribution center around March 2020, as the global Covid-19 pandemic took hold in the United States. The Bessemer facility is an Amazon robotic sortable fulfillment center from which the Employer distributes sortable goods weighing less than 25 pounds to the consumer. Hourly associates receive, pick, pack, and ship the sortable goods. The Employer employed nearly 6,200 hourly associates in or around January 2021.[1]

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

[1] All dates herein are in 2021 unless otherwise stated.

Election (DDE) issued directing a mail ballot election, which commenced on February 8 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 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. The Acting Regional Director ordered a hearing on Objections 1 through 19; the interrogation allegation in Objection 20; and Objections 22 and 23.[2] The hearing officer heard testimony and received evidence between May 7 and May 26. The Union requested to withdraw Objections 8, 9, 12, 16, 18, and 22 at the

[2] Objections 20 (in part) and 21 allege that the Employer disciplined and discharged union supporters. On April 26, the Acting Regional Director ordered that these Objections be held in abeyance because the Union filed a related unfair labor practice charge in Case 10-CA-276082 alleging that the Employer violated Section 8(a)(3) of the Act. After the objections hearing, the Union requested, and I approved, the withdrawal of Case 10-CA-276082. Thus, Objections 20 (in part) and 21 are now before me. The Board has held that it will not inquire into an objection when "the gravamen of [the] contention is an unfair labor practice, requiring a finding that the Employer's conduct constituted a violation of Section 8(a)(3) of the Act," as making such a finding in a representation case "would conflict with the statutory scheme which vests the General Counsel with final authority as to the issuance of complaints based upon unfair labor practice charges and the prosecution thereof." *Texas Meat Packers, Inc.,* 130 NLRB 279, 279-280 (1961). **Accordingly, I am dismissing Objections 20 (in part) and 21, alleging the 8(a)(3) discipline and discharge of union supporters, because in the absence of a related charge, "a [discipline and] discharge will be presumed to be for cause." *Texas Meat Packers*, 130 NLRB at 280.**

conclusion of the hearing. The hearing officer recommends approval of the Union's withdrawal request. **I approve the Union's request to withdraw Objections 8, 9, 12, 16, 18, and 22.**

On August 2, the hearing officer issued her Report on Objections recommending that Objections 5, 7, 10, 11 (in part),[3] 13, 14, 15, 19, the interrogation allegation in Objection 20, and Objection 23 be dismissed. **As neither party filed exceptions to the hearing officer's recommendation to dismiss, I am dismissing Objections 5, 7, 10, 13, 14, 15, 19, the interrogation allegation in Objection 20, and Objection 23.**

The Hearing Officer's Report on Objections further recommends that Objections 1, 2, 3, 4, 6, 11 (in part), and 17 be sustained, and that a second election be directed. The Employer filed exceptions to the hearing officer's findings and recommendations sustaining these objections and her recommendation that the election results be set aside, and a second election conducted. The Employer maintains that the hearing officer erred in making findings of fact, as well as credibility resolutions.[4] The Union timely filed an answering brief in response to the Employer's exceptions, urging the Region to adopt the hearing officer's recommendations. **I agree with the hearing officer's recommendations, and I am sustaining Objections 1, 2, 3, 4, 6, 11 (in part), and 17 and ordering a second election.** Below is my discussion and analysis of the objectionable conduct and the Employer's exceptions.

II. OBJECTIONS 1, 2, 3, 4, 6, AND 17 – THE MAILBOX OBJECTIONS

> **Objection 1:** During the critical period before the due date for receipt of mail ballots and throughout the election, the Employer had a collection box installed in the employee parking lot in a location exclusively selected by the Employer without authorization from the Regional Director to install such a box and in contravention to the January 15, 2021 Decision and Direction of Election. The Employer covered the collection box with a tent and created the impression that the collection box was a polling location and that the Employer had control over the conduct of the mail ballot election. *North American Plastics Corp.,* 326 NLRB 835 (1998) (observing that is it highly prejudicial for the Board to allow a process that creates the impression that the employer and not the Board controls the mechanics of the election).

[3] In Objection 11, the Union alleged that the Employer engaged in objectionable conduct by distributing "Vote No" paraphernalia in small-group meetings; by polling to gauge union support; and by interrogating/polling employees concerning whether they had voted. The hearing officer dismissed the second and third polling and interrogation allegations. The Employer excepts only to the hearing officer's finding that the Employer engaged in polling by distributing paraphernalia in small-group meetings.

[4] The Board's established policy is that a hearing officer's credibility findings in proceedings of this type should only be reversed "when the clear preponderance of all the relevant evidence convinces [the Board] that the [hearing officer's] resolution is incorrect." *Stretch-Tex Co.,* 118 NLRB 1359, 1361 (1957). Having reviewed the record, I see no basis for reversing the hearing officer's credibility resolutions.

Objection 2: During the critical period and throughout the election, the Employer had a collection box installed in the employee parking lot in a location exclusively selected by Amazon without authorization from the Regional Director to install such a box and in contravention to the January 15, 2021 Decision and Direction of Election. The Employer covered the collection box with a tent and created the impression that the collection box was a polling location [and] thereby interfered with the NLRB's exclusive control over the election.

Objection 3: During the critical period and throughout the election, the Employer created the impression of surveillance regarding the collection box installed in the employee parking lot. The Employer maintains security cameras in the employee parking lot and such cameras could record the employees entering and exiting the tent erected around the collection box to cast ballots, i.e., to engage in protected activity.

Objection 4: During the critical period and throughout the election, the Employer created the impression that it was recording the identity of employees who voted through the security cameras in the employee parking lot that could record employees entering and exiting the tent erected around the collection box.

Objection 6: During the critical period and throughout the election, the Employer electioneered near the collection box it had installed for the exclusive purpose of collecting mail ballots. The tent erected around the collection box had a central campaign message of the Employer printed on at least one side of the tent.

Objection 17: During the critical period and throughout the election, the Employer's agents circulated a rumor prior to the date set for the mailing of ballots that a collection box would be installed for the benefit of employees. The Union informed employees that the Decision and Direction of Election (DDE) did not authorize a collection box at the facility even though the Employer had requested one. The Employer's subsequent installation of the collection box undermined the Union's message and the Employer's text message announcing the installation of the collection box created the impression among employees that the Employer had the power to override the DDE and confer a "benefit." The Employer's actions were done for the purpose of influencing the outcome of the election and was reasonably calculated to have that effect.

These six objections relate to the Employer's orchestration of the installation of a United States Postal Service (Postal Service) mailbox at the Bessemer distribution center. The evidence shows that shortly after the pre-election hearing ended and while awaiting the Region's decision and election instructions, the Employer independently initiated the process of acquiring an official Postal Service mailbox on its premises to aid in collecting employee-voter mail ballots. The Employer's communications with the Postal Service demonstrate that it had a specific timeline for installing the mailbox, with installation scheduled to coincide with the start of the anticipated mail ballot election. The Employer told the Postal Service that it needed the mailbox installed due to

the facility hosting a mail ballot election and the Employer's desire to encourage high voter turnout.

After discussions between the Employer and Postal Service in January and February, the Postal Service installed a gray "cluster box unit" – instead of its more typical blue mailboxes – on February 4. The Postal Service installed the mailbox on the walkway at the main entrance of the facility, one of three locations suggested by the Employer, and in plain sight of the Employer's security cameras.[5] The mailbox did not bear Postal Service insignia or other any signage associating it with the Postal Service. The Employer subsequently erected a tent around the mailbox and attached a large banner that read, "SPEAK FOR YOURSELF! MAIL YOUR BALLOT HERE." Notably, the "speak for yourself" message was part of the Employer's campaign slogan encouraging employees to vote against the Union. Graphics beneath the banner's written message depicted several ethnically diverse hands grasping a yellow ballot envelope. The Employer sent messages to employees informing them that the Postal Service had installed a secure mailbox outside the main entrance, "making mailing your ballot easy, safe, and convenient."

The hearing officer properly observed that the Employer's installation, selected location, and encouraged use of the mailbox raised several election-related issues. These issues include solicitation, the collection and security of the mail ballots, surveillance or the impression of surveillance, and the false impression that the Employer – not the Board – controlled the election. After reviewing the Union's objections individually and collectively, the hearing officer concluded that the aggregate effect of the newly installed mailbox interfered with the laboratory conditions necessary to conduct a fair election. She concluded that the totality of circumstances cast doubt on the Board's authority and control of its own election procedures. Accordingly, the hearing officer recommended that a second election be ordered.

The Employer filed 95 exceptions to the hearing officer's findings of fact and recommendations.[6] As to the mailbox objections, the Employer asserts four main arguments: 1)

[5] The Employer excepts to the hearing officer's finding that the Employer, not the Postal Service, selected the location of the mailbox installation. In support of its contention that the Postal Service selected the location, the Employer relies on the testimony of its Procurement Operations Analyst, who testified specifically, "So I picked three spots so the Postal Service could assess where they wanted to put it." As the Employer's agent admits that the Postal Service selected from three Employer-provided options, I agree with the hearing officer's conclusion that the Employer ultimately controlled where the Postal Service installed the mailbox.

[6] To the extent not addressed elsewhere in this decision, I clarify here a few discrepancies in the Hearing Officer's Report that the Employer noted in its exceptions. The Hearing Officer's Report twice mentions that the Postal Service installed the mailbox "50 feet" from the facility entrance; yet, on another occasion, the report states that the mailbox was "135 feet" away from the entrance. I find that the record established that the mailbox is located 135 feet from the facility entrance. Additionally, the Employer excepts to the hearing officer's finding that the Postal Service installed the mailbox on February 4, 2020. The record establishes that the Postal Service installed the mailbox in 2021. Finally, to the extent the Hearing Officer's Report elsewhere misstated dates, the record establishes that the Postal Service installed the mailbox on February 4, 2021, and the Board denied the Employer's request for review of the DDE on February 5, 2021,

the mailbox served a perfectly legitimate purpose; 2) the mailbox did not contravene the pre-election DDE; 3) the mailbox is not objectionable under Board precedent; and 4) even if objectionable, the mailbox could not have affected the election results. My analysis and discussion of the Employer's arguments follow below.

Discussion and Analysis

Representation elections are vital to upholding the tenets of the National Labor Relations Act. To this end, the Board has consistently held that maintaining and protecting the integrity and neutrality of its procedures are of the utmost importance in conducting elections. See *Fessler & Bowman, Inc.* 341 NLRB 932, 933 (2004). "Accordingly, the Board, throughout its history, has zealously safeguarded the integrity of its elections against irregularity and even the appearance of irregularity." *Professional Transportation, Inc.,* 370 NLRB No. 132, slip op. at 1 (2021). "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees … [W]hen the requisite laboratory conditions are not present … the experiment must be conducted over again." *General Shoe Corp.*, 77 NLRB 124, 127 (1948). The Board employs an objective test to determine if "the conduct of a party to an election has the tendency to interfere with the employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995). The Board ensures that its election procedures are protected from actual interference and from the appearance of irregularity. *Professional Transportation,* 370 NLRB No. 132 at slip op. 1.

The Board will set aside an election when the alleged objectionable conduct "so interfered with the necessary 'laboratory condition' as to prevent the employees' expression of a free choice in the election." *Dairyland USA Corp*., 347 NLRB 310, 313 (2006), enfd. sub nom. *NLRB v. Food & Commercial Workers Local 348-S*, 273 Fed. Appx. 40 (2d Cir. 2008). In determining whether a party's misconduct has the tendency to interfere with employee free choice requiring that an election be set aside, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division,* 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

I will now address the Employer's arguments.

1. Whether the mailbox served a "perfectly legitimate purpose" is irrelevant

not on the same date. I find these discrepancies immaterial to the questions underlying the Objections and, therefore, I do not find that these minor errors require that I overrule the Hearing Officer's Report.

According to the Employer, installing the mailbox enhanced employees' ability to return their mail ballots and is not objectionable conduct, but rather a "perfectly legitimate purpose." The Employer cites Board precedent and guidance recognizing the Board's investment in ensuring maximum voter participation in representation elections. Strikingly absent from the Employer's recitation of Board law is precedent establishing that the Board allows, permits, authorizes, or otherwise condones either party taking unilateral action to increase voter turnout. The Employer opines that employees may not have felt that they had a "secure or reliable way to mail their ballots from their homes" and may "have had to make a special trip out of their way to use a secure USPS mailbox," in the absence of the newly installed mailbox. However, employee sentiments regarding the best way to return their ballot are not unique to this election. To the extent an employee sought the extra security of dropping his or her ballot in a postal collection box, the record indicates that there were more than 49 postal branches with secure receptacles within 20 miles of the distribution center, in addition to the residential mailboxes available to most employees. Employees had a variety of choices in returning their ballots and did not need the Employer's intervention in the name of convenience.

The Employer essentially argues that its sincere and good-faith intent in increasing voter turnout absolves it of any appearance of impropriety. Simply put – it does not. It is patently clear from the Employer's arguments and the record that, but for the Board election, the Employer would not have asked the Postal Service to install a mailbox outside the main entrance of its facility. Tellingly, the Employer has not proffered a business justification unrelated to the election to justify its urgent need for the mailbox. Indeed, the crux of the Employer's argument hinges on its belief that the newly installed mailbox would increase voter participation, not that it needed a new mail receptacle. The Board has expressed that "… maximum voter participation in Board-sponsored elections is a laudable goal. However, the Board must protect employee free choice in all voting decisions." *United Cerebral Palsy Assn. of Niagara County*, 327 NLRB 40, 40 (1998). "Where the challenged conduct is objectionable, i.e., it has a reasonable tendency to influence the election outcome, the fact that the conduct may also encourage voter turnout is immaterial." *Atlantic Limousine, Inc.*, 331 NLRB 1025, 1029 (2000). The Employer's good faith and the usefulness of the mailbox are, therefore, irrelevant to the analysis.

2. The mailbox contravenes the pre-election DDE and established Board election procedures.

The hearing officer found that by installing the mailbox, the Employer acted in a manner inconsistent with the pre-election DDE's instructions and, by doing so, undermined the Board's authority. In its exceptions, the Employer argues that because the pre-election DDE never explicitly prohibited installation of a "general-purpose, USPS-serviced mailbox," its conduct did not contravene the DDE and is not objectionable. According to the Employer, if the installation of the mailbox did not in fact contravene the DDE, then the hearing officer's findings rest on a flawed premise and should be set aside.

This argument is specious. The pre-election DDE did not explicitly address the Employer's unilateral request for and the Postal Service's subsequent installation of a postal mailbox, as the

Region did not envision the Employer would seek to undertake such an extraordinary measure.[7] However, the DDE did address the Employer's pre-election proposal to use Employer-provided equipment – such as pass-through boxes or vending machines – to address COVID-19 exposure concerns about safely collecting voter ballots on the Employer's premises during a manual election. The DDE expressly stated that such collection apparatuses imply "a problematic amount of Employer involvement in election proceedings," and I rejected the Employer's proposal when I directed the mail ballot election. Rather than install its own collection equipment, which I specifically rejected, the Employer instead successfully sought to have the Postal Service install postal-owned equipment – the cluster mailbox – on its premises. The impact and implication are the same. By permitting the Postal Service to install a mailbox on its premises, voters are left with the impression that the Employer is involved in conducting the election. An argument can be made that the Employer's ability to convince the Postal Service to install a mailbox for the purposes of collecting ballots is even more problematic than the Employer's initial proposal, as it demonstrates the Employer's influence over the very entity tasked with ensuring that ballots arrive securely and promptly to the Board.

The DDE directed a mail ballot election in accordance with established Board procedures. As the hearing officer observed, those procedures do not include a party's independent solicitation of the installation of an onsite postal mailbox or third party-owned equipment to collect voter mail ballots. Although the DDE did not provide an exclusive or exhaustive list of the countless ways that the Employer should refrain from engaging in objectionable conduct, the parties were instructed to follow the Board's Rules and Regulations, and any deviation therefrom is undertaken at one's own peril.[8]

To be clear, this is not a question of whether it was objectionable for employees to mail their ballots at the Employer's facility. Rather, the issue is whether the Employer – by causing a postal mailbox to be installed at its facility during the critical period, in full view of security cameras, with its slogan on a tent surrounding the mailbox – contravened the Region's instructions to abide by the Board's mail ballot procedures and, therefore, altered election procedures to give the appearance of irregular and improper Employer involvement. The answer is a resounding yes. Accordingly, I agree with the hearing officer that the Employer-directed installation of the mailbox is inconsistent with the Board's laboratory conditions and contravenes the DDE's instructions cautioning against perceived Employer involvement in the neutral election proceedings.

3. The installation of the onsite postal mailbox is objectionable conduct.

The Employer next argues that the newly installed mailbox is not objectionable under Board precedent and excepts to the hearing officer's findings that it essentially created an official

[7] Moreover, generally, Regional Offices do not give specific guidance on how *not* to violate the Act.

[8] "Preelection campaign interference is an area characterized by a myriad of different factual situations, involving all kinds of nuances and shades of difference. Accordingly, it is impossible to give a full account of this area of law in summary form." NLRB Outline of Law and Procedure in Representation Cases, Sec. 24-200.

polling location; gave the impression of surveillance; electioneered at the unauthorized polling location; undermined the Union's message that the Board did not authorize this polling location; and created the impression that it had the power to supersede the Board's authority.

The hearing officer correctly observed that the installation of a postal mailbox appears to be a question of first impression for the Board. The Employer takes a slightly nuanced position, asserting that Board law does not the prohibit its installation of a mailbox. However, as with its argument regarding the DDE, the Employer seeks to view the mailbox in a vacuum, separate from the totality of the circumstances surrounding the election, including the Employer's efforts to orchestrate the installation of the mailbox.[9]

By installing the mailbox and through related communications to employees, the Employer gave the false impression that it properly had a role in the collection and control of mail ballots. The onsite mailbox did not exist prior to the vote, and the Employer did not promote it as a receptable for any and all outgoing personal or non-work-related mail. As evidenced by numerous emails and testimony, the Employer's sole reason for the initial installation of the mailbox was to provide an "easy, safe, and convenient" collection point for employees mailing their ballots. The Employer surrounded the mailbox with a tent that literally stated "… mail your ballot here." In effect, despite the directed mail ballot election, the Employer single-handedly created an onsite polling location. The Employer's own actions bolster this finding, as the Employer admits to instructing managers explicitly not to enter or go near the mailbox tent. If the mailbox were merely an ordinary postal mailbox for general use, there would have been no need to instruct managers to stay away from it. Only if the mailbox is viewed as a polling place does the Employer's instruction make sense, as it is well established that the continued presence of managers or supervisors in or around the polling place constitutes objectionable conduct. See *Performance Measurements Co.*, 148 NLRB 1657, 1659 (1964); *Mountaineer Park, Inc.*, 343 NLRB 1473, 1484 (2004).

Further, the location of the mailbox left employees with the impression that the Employer could watch them deliver (or abstain from delivering) their ballot. Board precedent establishes that security cameras that happen to record protected activity do not rise to the level of objectionable conduct. See *Pacific Coast Sightseeing Tours & Charters, Inc*., 365 NLRB No. 131, slip op. at 11 (2017) (the Board has held that it is neither unlawful nor objectionable to operate security cameras that happen to record protected activity while operating in a normal, customary manner). On the other hand, an employer engages in objectionable surveillance when, for example, its agents have a continued presence near a polling location. See *Performance Measurements*, 148 NLRB at 1659 (1964) (the continued presence of the employer's president near the polling location interfered with employees' freedom of choice); *ITT Automotive*, 324 NLRB 609, 623-625 (1997), enfd. in part 188 F.3d 375 (6th Cir. 1999) (the employer engaged in objectionable conduct when

[9] In her report, the hearing officer stated, "the Employer argues that the USPS installed the [mailbox], not the Employer. As discussed below, this is mere scapegoating." The Employer excepts to the hearing officer's statement, demanding that the "harsh language" be corrected. As grating as the Employer may find it, the hearing officer's characterization is verbiage, not an objective factual finding. I agree with the hearing officer's overall conclusion that, though the Postal Service is normally in charge of the timing and location of new mailboxes, in this instance, the sole reason the Postal Service added a new mailbox at the entrance to the Employer's facility in February 2021 was the Employer's request for same.

supervisors remained present in an area where employees had to pass on their way to the polling location); *Electric Hose & Rubber Co.*, 262 NLRB 186, 216 (1982) (supervisor stationed 10 to 15 feet from polling location destroyed laboratory conditions required for conducting an election).

Here, there is no evidence that employees were actively surveilled. However, the presence of security cameras at the front of the building facing the mailbox, along with the Employer's mass messaging campaign urging voters to use the mailbox, gave the impression that voters were expected and encouraged to vote under the watchful eye of the Employer. Employees credibly testified that they believe cameras watch their every move throughout the distribution center, including in the employee parking lot. The hearing officer astutely observed that all three locations the Employer presented the Postal Service for placement of the mailbox were in front of the main entrance in plain view of the Employer's security cameras. Though the Postal Service selected the final location, its selection was based on the Employer's presented options. As a result, though the Employer did not install new security cameras to surveil employees' protected activities, it caused the erection of an unauthorized polling location directly in the sightlines of its existing security cameras, which employees reasonably believed were constantly watching their activities.

The hearing officer considered the Union's argument that in addition to creating an unsanctioned "polling place," the Employer engaged in impermissible electioneering by erecting a tent around the mailbox with a sign containing the Employer's campaign slogan "Speak for Yourself!" The record reflects that the phrase "speak for yourself" was not a mere neutral directive, but was instead language integral to the Employer's anti-union campaign, in which the Employer posted banners and paraphernalia urging employees to "vote no, speak for yourself."

The Employer correctly notes that the Notice of Election does not warn against electioneering near the polling place. The Employer also correctly notes that in a mail ballot election, there is no designated polling place.[10] However, as discussed earlier, I agree with the hearing officer that the Employer essentially created a polling place by arranging the installation of a postal mailbox at its facility for the sole purpose of collecting mail ballots.

[10] The Employer excepts to the hearing officer's reliance on *Bally's Park Place, Inc.*, 265 NLRB 703 (1982), and *American Medical Response*, 339 NLRB 23 (2003). In *Bally's Park Place*, the Board found that absent specific designation of a "no-electioneering area" by the Board agent, the area "at or near the polls" falls within Board's strict rules against electioneering. 265 NLRB at 703. The Employer attempts to distinguish this case by noting that in *Bally's Park Place*, the Notice of Election contained the standard prohibition on electioneering at or near polling places. As noted already, the Employer is correct that the Notice of Election in this case did not contain such a warning – because it is not standard to have a polling place in a mail ballot election. However, by creating a polling place by unilaterally installing the mailbox on its premises, the Employer brought the question of electioneering into play. The hearing officer also cites to *American Medical Response* for the proposition that signs at or near the polls can constitute unlawful electioneering. That the Board did not find the signs in *American Medical Response* to be unlawful electioneering does not forestall the proposition that other signs could be objectionable if they meet the standard articulated in the decision. 339 NLRB at 23 fn. 1.

The Board has specifically prohibited electioneering "at or near the polls." *Claussen Baking*, *Co.,* 134 NLRB 111, 112 (1964). This prohibition applies to signage and banners as noted in *Pearson Education*, *Inc.,* 336 NLRB 979 (2001), enfd. 373 F.3d 127 (D.C. Cir. 2004).[11] While this is a question of first impression for the Board, it is not unreasonable to believe the Board would extend the rules prohibiting electioneering to the mail ballot context. The Board has done this in other situations, such as the rule against captive audience meetings within 24 hours of poll opening. *Guardsmark, LLC*, 363 NLRB No. 103, slip op at 4 (2016) (finding this rule applies in a mail ballot context as well as in manual elections). Thus, if the Employer created an impermissible polling place by installing the mailbox, it follows that the Employer engaged in unlawful electioneering by placing its campaign slogan on the tent surround the polling place.[12]

Representation elections are to be conducted under the Board's exclusive direction and supervision as it is the very federal agency tasked with upholding employee rights under the Act. "There is well established precedent that the Board in conducting elections must maintain and protect the integrity and neutrality of its procedures." *Alco Iron & Metal Co.*, 269 NLRB 590, 591 (1984).[13] Neither an employer nor a union is permitted to control any aspect of the election process or convey the impression to eligible voters that it possesses such control. Here, the Employer's actions in installing a mailbox and erecting a tent around it emblazoned with its campaign slogan and a message to vote clearly ran afoul of the Board's policy against permitting parties to control any aspect of the election process or convey the impression to eligible employees that it does so. *Ceva Logistics U.S., Inc*., 357 NLRB 628, 629 (2011).

The Employer contends that the newly installed mailbox is a typical mail receptacle unconnected to the election and, therefore, finding it to be the locus of objectionable conduct calls

[11] The Employer excepts to the hearing officer's reliance on the Board's decision in *Pearson Education*. The Employer differentiates *Pearson* by noting the signs/posters in *Pearson* involved a much more charged, partisan statement listing union strikes and were strategically posted in areas that employees passed on their way to the polling location. The hearing officer properly noted these facts, and it is clear that she cites to this case for the proposition that signs and banners can constitute "electioneering" materials – not for the proposition that the Employer's sign on the tent around the mailbox was the same as the posters at issue in *Pearson*.

[12] Notably, the Employer had initially sought to place information on the mailbox itself to point out the mail slot, "like an arrow or a vote here sticker." The Postal Service responded "no," stating that it did not want to see anything placed around or on the mailbox.

[13] The Employer excepts to the hearing officer's reliance on *Alco Iron & Metal* and *Monroe Mfg. Co.*, 200 NLRB 62 (1972). The Hearing Officer's citations to these cases clearly indicate their use to support the proposition that the Board does not want any party other than the Board to oversee elections. Thus, in *Alco* when a Board agent engaged in misconduct, the issue was that the misconduct made it appear that the petitioner was running the election. *Alco*, 260 NLRB at 591-92. In *Monroe*, the employer misconduct gave the impression that the employer had some sort of control over the election. 200 NLRB at 74. These cases are cited not for establishing the party responsible for the misconduct, but for the proposition that the Board does not allow interference with its laboratory conditions and any appearance that a non-Board party is in control of the election process constitutes such interference. Therefore, I do not find merit to the Employer's exceptions or arguments regarding the hearing officer's reliance on these cases.

into question all types of mail receptacles at businesses across the country. The Employer also argues that the onsite mailbox was merely "one option" for employees to mail their ballots and there is no evidence that any Employer agent coerced or solicited employees to use the mailbox to mail their ballots. The Employer repeatedly asserts that the newly installed mailbox was a convenient and safe location for employees to mail their ballots.

The argument that the mailbox was like "any other mailbox" is strained. The uncontradicted facts here establish that once the Employer realized the likelihood of a mail ballot election, it used its considerable resources and undeniable influence to have a postal mailbox quickly installed on its property. When its attempt to install an official Postal Service blue mailbox or a privately purchased blue mailbox (which would have looked very much like an official Postal Service mailbox) could not come to fruition quickly enough, it settled for installation of a neutral-gray cluster mailbox unit. The installed mailbox did not look like the typical official Postal Service drop boxes, but rather resembled the collection boxes usually found at residential or retail complexes. However, the *only* signage posted around the mailbox was the Employer's own, and included the Employer's campaign slogan urging employees to use the mailbox to cast their ballots.

The question here is not whether employees could mail their ballots through the existing standard mail collection process at an employer's facility. Rather, we are confronted with a scenario in which the Employer created what appeared to be an Employer-controlled receptacle for collecting employees' mail ballots, thereby altering the necessary laboratory conditions needed to ensure a fair and impartial election process. I agree with the hearing officer's findings and conclusions that the Employer's unilateral installation of the mailbox constituted objectionable conduct as it created an unofficial polling location; gave the impression of surveillance; included impermissible electioneering; and gave the impression that the Employer had superseded the Board's authority regarding the control of the election.

4. The mailbox is grounds for setting aside the election.

The Employer contends that, even if the installed mailbox is objectionable conduct, the hearing officer erred in finding that it affected the election results because the vote was "lopsided" in the Employer's favor. It asserts that the Union did not meet its burden to show that the newly installed mailbox had an actual effect on employees in the voting unit. The Employer examines the election results and argues that it stretches credibility to believe that enough votes would have been changed or otherwise cast to affect the results of the election.

As discussed above, the Board considers nine factors when analyzing objectionable conduct: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness

of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton*, 336 NLRB at 158.

Eight of the nine factors are present here. The installed mailbox is not the only Employer misconduct. As discussed in more detail below, I find that the Employer engaged in objectionable polling (factor 1); the mailbox likely caused employees to believe that the Employer – not the Board – controlled the election process (factor 2); all 5,867 eligible voters were subject to the Employer's campaign blitz encouraging use of the mailbox and likely saw the new mailbox and tent in the employee parking lot when they reported to work (factor 3); the Employer installed the mailbox during the critical period, and it remained during the voting period (factor 4); the impression that the Employer controlled the election process is the kind of conduct that would tend to persist in employees' minds, especially when the voting process is supposed to be conducted by a neutral arbiter – the Board (factor 5); even if an eligible voter did not personally observe the mailbox, the Employer widely disseminated the installation and availability of the mailbox to the entire unit (factor 6); there is no alleged Union misconduct to counterbalance the Employer's misconduct (factor 7); and the Employer is undeniably responsible for the installation of the mailbox (factor 9).

The test here is whether the Employer's misconduct "tended to interfere with employees' freedom of choice." *Cambridge Tool,* 316 NLRB at 716. The narrowness of the election results (factor 8) is a relevant consideration in the analysis. *Id*. at 716 fn. 5 (the Board emphasized that the election may have been decided by one vote, thus the objectionable conduct "could well have affected the outcome of the election."). The Board has refused to overturn elections in which pre-election misconduct is "de minimis" with respect to its effect on the results of the election. *Caron International*, *Inc.,* 246 NLRB 1120, 1120 (1979). Additionally, objectionable conduct that is isolated without evidence of dissemination, coupled with a "sharply lopsided vote," did not warrant setting an election aside. *Bon Appetit Management, Co.,* 334 NLRB 1042, 1044 (2001). However, even with a "lopsided" vote, the Board has overturned elections when the misconduct is far more than de minimis, and the extent of the effect of the misconduct "cannot be determined with any mathematical certainty." *Scientific Atlanta*, *Inc.,* 278 NLRB 467, 468 (1986). In *Scientific Atlanta*, the election tally showed 490 votes for and 1207 against the petitioner. Yet, the Board still set the election aside due to the employer's four separate instances of objectional conduct. All instances occurred within the critical period and affected a large swath of the workforce. The record did not contain a specific accounting of affected employees; thus, the Board estimated that around 20% of employees were subject to the misconduct. *Id*.

Here, the Postal Service installed the mailbox on February 4, four days before mail balloting commenced on February 8. The Employer corralled the mailbox within a tent, affixed its campaign slogan on the tent's side, and encouraged employees to "mail [their] ballot here." As this set-up remained in place for the entirety of the polling period at the main (and only) employee entrance to the facility, there is a very strong likelihood that every eligible voter saw it. Even if employees did not see the mailbox firsthand, the Employer notified them of the new mailbox and encouraged them to use the mailbox as an "easy, safe, and convenient" way to mail their ballot. In effect, the Employer *intended* its conduct to impact the entire unit and acted accordingly. To find that, despite the pervasive nature of the conduct affecting the entire unit, the lopsided vote militates

against a second election is to reward the Employer's achievement of the goal of its objectionable conduct. Accordingly, given the aggregate effect of the mailbox on employee free choice and the Employer's interference with the Board's authority in conducting a free and fair election, I agree with the hearing officer's recommendation that a second election be directed.

The Employer's flagrant disregard for the Board's typical mail-ballot procedure compromised the authority of the Board and made a free and fair election impossible. In the pre-election DDE, I specifically disapproved of the Employer's suggestions for making voting "easier" because the Employer is neither responsible for conducting elections nor is it tasked or authorized to aid the process. Such responsibility and authority rests solely with the Board. The Employer ignored the spirit of my directive by unilaterally requisitioning the installation of a postal mailbox. The Employer asserts that it installed the mailbox to provide employees with a convenient voting location; to make voting easier for employees; and to encourage as high a turnout as possible, clearly perceived the mailbox as beneficial to employees. As the hearing officer noted, this pre-election grant of benefits created the impression that the Employer conducted the election process rather than the Board.[14] By installing a postal mailbox at the main employee entrance, the Employer essentially highjacked the process and gave a strong impression that it controlled the process. This dangerous and improper message to employees destroys trust in the Board's processes and in the credibility of the election results.

In sum, I agree with the hearing officer that by causing the Postal Service to install a cluster mailbox unit, communicating and encouraging employees to cast their ballots using the mailbox, wrapping the mailbox with its slogan, and placing the mailbox at a location where employees could reasonably believe they were being surveilled, the Employer engaged in objectionable conduct that warrants setting aside the election. **Accordingly, I sustain Objections 1, 2, 3, 4, 6, and 17.[15]**

[14] In her Report, the hearing officer also analyzes whether the Employer unlawfully conferred a benefit to employees during the critical period. She cites to *B&D Plastics, Inc.*, 302 NLRB 245, 245 (1991), to support her argument that an increase in benefits is the "suggestion of a fist inside the velvet glove," indicating that the source of the current benefit is also the source of future benefits, and that which can be granted can be taken away. The hearing officer took this analogy further here to note that, by granting employees the benefit of making voting easier and more convenient than the Board's own processes, the Employer implied that it has the means and will to cause federal agencies to bend to its will. The Employer excepts to the hearing officer's application of *B&D Plastics*. Specifically, the Employer asserts that the "benefit" of voting convenience is not a "material" benefit as imagined by *B&D Plastics*, and therefore the hearing officer's analysis is misplaced. I disagree. The hearing officer clearly cites to *B&D Plastics* to demonstrate that the Board finds a grant of benefits problematic because such grant can signal the employer's seeming "power" and the potential futility of not acceding to the employer's wishes. Here, by assuming unwonted responsibility for delivery of a friction-free voter experience (and doing so with the seeming cooperation of the Postal Service, the very entity tasked with delivering the ballots to the Board), the Employer created the impression that it is in charge not only of its workplace, but of federal agencies that might seek to regulate it.

[15] In its exceptions, the Employer sought guidance concerning the continuing presence of the cluster mailbox at its facility. Such guidance will be provided if and when the Region determines that a second election should be conducted via mail ballot. See fn. 18, infra.

III. OBJECTION 11 – "VOTE NO" PARAPHERNALIA POLLING

Objection 11: During the critical period and throughout the election, the Employer's agents engaged in an extensive campaign of polling employees and/or interrogating them with respect to their support for the Union thereby interfering with their rights to an election free of coercion and interference.

The Union began openly organizing employees around October 20, 2020, and filed the petition on November 20, 2020, the start date for the critical period in this election.[16] The Employer began conducting mandatory small group meetings for unit employees around January 10. During this four-week "Phase 1" of the Employer's campaign, the Employer utilized "mini-campaign owners" and consultants to provide information to employees during these small group meetings of 12 to 25 employees held meetings six days a week, 18 hours a day, to ensure all approximate 6,000 employees could attend a meeting. The "mini-campaign owners" were employee relations managers. During these group meetings, a human resources manager placed "Vote No" accessories on a table in the back of the room. The speaker at the meeting told employees that the items were available for pick-up as they left the meeting. The Employer held the last captive audience meetings on February 6, two days before election ballots were mailed to eligible voters on February 8.

The Union asserts, in part, that these meetings constituted polling as the employees were directed to pick up the "Vote No" paraphernalia in plain view of the Employer's agents, including the mini-campaign owners, hired consultants, and human resource managers. The hearing officer sustained this objection and recommended finding that the Employer's conduct constituted objectionable polling as employees could reasonably perceive that the Employer tried to discern their support for or against the Union based on whether they picked up the paraphernalia.

The Employer excepts to this finding, primarily arguing that there was no actual pressure to take or refuse the items. The Employer also focuses on the asserted impossibility of tracking who took the paraphernalia, arguing no reasonable employee would have believed it could track who accepted or declined the merchandise given the hundreds of meetings and thousands of employees. The Employer also argues because these interactions took place before ballots were mailed and potentially weeks before employees cast their votes, any alleged coercive pressure would have dissipated by the time the employees voted.

Discussion and Analysis

The Board has repeatedly found that "any attempt by an employer to ascertain employee views and sympathies regarding unionism generally tends to cause fear of reprisal in the mind of the employee ... and, therefore tends to impinge his Section 7 rights." *Struksnes Construction Co.*, 165 NLRB 1062, 1062 (1967). Objectionable polling occurs when "employees are forced to make

[16] An election's critical period runs from the filing of the petition and extends through the date of the election. *Ideal Electric Mfg.*, 134 NLRB 1275, 1278 (1961).

an observable choice that demonstrates their support for or rejection of the union." *Barton Nelson, Inc.*, 318 NLRB 712, 712 (1995). As the Employer correctly noted, merely making antiunion items available is not in and of itself objectionable, but the question is whether the offer of such materials somehow pressures employees to make an "open or observable choice." See, e.g., *Columbia Alaska Regional Hospital*, 327 NLRB 876 (1999); *Black Dot, Inc*., 239 NLRB 929 (1978), *2 Sisters Food Group, Inc*., 357 NLRB 1816, 1818–1819 (2011); *Circuit City Stores*, *Inc.,* 324 NLRB 147 (1997); *Barton Nelson, Inc.*, 318 NLRB 712 (1995); *A.O. Smith Automotive Products Co.*, 315 NLRB 994 (1994); *Gonzales Packing Co*., 304 NLRB 805 (1991) (citing *Pillowtex Corp.*, 234 NLRB 560 (1978)).[17]

It is undisputed that the Employer offered employees "Vote No" items, including Peccy pins, rearview mirror tags, and lanyard tags at the conclusion of intimate mandatory 30-minute captive audience meetings attended by groups of 12 to 25 employees. As employees entered the meetings, the Employer took attendance by scanning the employees' work badges. During the meeting, the human resources representatives set out various "Vote No" items on tables located near the exit door. At the conclusion of its presentation, the Employer's agents told employees that they could grab a "Vote No" item if they wanted to on their way out. These human resources representatives, as well as the consultants and the mini-campaign owners remained present as employees filed out past the "Vote No" items. Employees thus had to make an "open or observable choice" to pick up or decline to pick up anti-union material in full view of the Employer's agents. The Employer repeated this process at hundreds of meetings as it sought to ensure the attendance of the entire eligible voter pool. By fragmenting the enormous unit into tiny groups, logging attendance for each group meeting by electronically scanning badges, then funneling each group's attendees past "Vote No" paraphernalia as they exited the meeting in full view of the Employer's agents, employees could reasonably believe that the Employer was tracking employees' union sentiments.

The Employer attempts to align its actions with various cases finding that similar conduct was not objectionable. Again, I am not persuaded. The Employer did not simply leave its giveaway items in a central location where employees could take or not take the items outside the scrutiny of management. Moreover, that immediate supervisors were not necessarily present at employees' small captive-audience meetings is immaterial. Given the data stored in employees' badges, the Employer does not need direct supervisors to personally verify individual employee attendees at meetings.

[17] The Employer excepts to the hearing officer's interpretation, application, and reliance on *Valmet, Inc.*, 367 NLRB No. 84 (2019), *2 Sisters Food Group, Inc.*, 357 NLRB 1816 (2011), *Circuit City Stores*, 324 NLRB 147 (1997), *Barton Nelson, Inc.*, 318 NLRB 712 (1995), *A.O. Smith Automotive Products Co.*, 315 NLRB 994 (1994), and *Gonzales Packing Co.*, 304 NLRB 805 (1991). The hearing officer cited to these cases to support her finding that the Employer engaged in unlawful polling by setting out the "Vote No" items during mandatory captive audience meetings. Specifically, these cases represent instances when the Board found that an employer's offer of antiunion paraphernalia pressured employees to make an open or observable choice. The hearing officer likewise distinguished the cases when, under the circumstances, the offer of paraphernalia was not objectionable. Contrary to the Employer's contention, the hearing officer did not fail to adequately note the similarities and differences in these cases.

The Employer also argues that these meetings ended well before any employee cast his or her ballot and, therefore, should not be viewed as conduct that could affect the outcome of the election. I do not find this persuasive. The critical period began November 20, 2020. If the Employer's conduct would be objectionable in a manual election, it should also be objectionable in a mail ballot election if conducted during this critical period. The Employer offers no support for treating the critical period differently based on the method of election. As the Union correctly notes, the Board has found that problematic conduct can still have a coercive effect on voters if it occurs right before voters receive their ballots. See *Guardsmark LLC*, 363 NLRB No. 103, slip op. at 4 (2016) (the Board extended the rule of no captive audience meetings within 24 hours of polls opening to the mail-ballot context because allowing employers to hold captive audience meetings when employees are set to receive their ballots had the same coercive effect as allowing similar meetings right before employees are set to vote).

Reviewing the nine factors the Board considers when assessing objectionable conduct, I find the conduct described in this objection weighs in favor of setting aside the election. Based on the size of the meetings, at a minimum, the Employer held at least 240 separate meetings to ensure the attendance of approximately 6,000 employees. The Employer held these meetings over four weeks, six days a week, 18 hours a day. This high number of "incidents" goes to factor 1. The record does not reflect sufficient evidence of Factor 2, severity of incidents. Factor 3 weighs in favor of setting aside the election as it is undisputed that the entire voting unit was subject to these meetings and, therefore, to this misconduct. Factor 4 weighs in favor of setting aside the election as the meetings took place continuously during nearly the entirety of the critical period. Factor 5 weighs in favor of setting aside the election as attending an intimate group meeting with high-ranking managers and consultants and being offered "Vote No" material in their presence is likely to persist in employees' minds. Factor 6 weighs the same as factor 1 as the entire voting unit was subject to the misconduct. Factor 7 does not provide a mitigating factor for the Employer as the Union has not been found to have engaged in objectionable behavior to offset the Employer's conduct. Factor 8 tilts in favor of the Employer as the vote total was not close. Factor 9 leans toward setting aside the election as this conduct is solely the responsibility of the Employer. Thus, seven of the nine factors support the hearing officer's finding that this objectional polling affected enough of the voting unit to set aside the election.

In sum, I agree with the hearing officer's conclusion that the Employer improperly polled employees when it presented small groups of employees with the open and observable choice to pick up or not pick up "Vote No" paraphernalia in front of Employer agents. **Accordingly, I sustain Objection 11.**

CONCLUSION

Having carefully reviewed the entire record, the Hearing Officer's Report on Objections, and the Employer's exceptions and arguments, **I sustain the Union's Objections 1, 2, 3, 4, 6, 11, and 17.**

IT IS ORDERED that the election that commenced on February 8 is set aside, and a new election shall be conducted.

DIRECTION OF SECOND ELECTION

The National Labor Relations Board will conduct a second secret ballot election among the unit employees. Employees will vote whether they wish to be represented for purposes of collective bargaining by the Retail, Wholesale and Department Store Union. The manner, date, time, and place of the election will be specified in a Notice of Second Election.[18] The Notice shall also contain the following language:

NOTICE TO ALL VOTERS

> The election that commenced on February 8, 2021, was set aside because the National Labor Relations Board found the Employer interfered with the employees' exercise of a free and reasoned choice by creating the appearance of irregularity in the election procedure due to issues surrounding the installation of a mailbox outside the main entrance and by improperly polling employees' support during mandatory meetings. Therefore, a new election will be held in accordance with the terms of this Notice of Second Election. All eligible voters should understand the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.

Eligible to vote in the second election are those employees in the unit who were employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any 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 which commenced less than 12 months before the date of the first election, 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.

[18] The question of whether the second election should be a manual or mail ballot election is not yet ripe for determination. Both parties raise concerns about the location of a potential in-person election. The Board's Rules and Regulations provide for mechanisms to request review of this decision, and it is possible that the second election could be set in the near or distant future. Currently, the Agency relies on GC Memorandum 20-10, issued on July 6, 2020, and *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), to determine the appropriate type of election to order, and relevant factors for consideration change on a weekly basis due to the ongoing Covid-19 pandemic. Prior to the issuance of the Notice of Second Election, the parties will be requested to file their written positions as to their preferred date, time, and method for the second election. To the extent a party seeks a manual election, the party must, in its written position, address the protocols and assurances addressed in GC Memorandum 20-10 regarding "Suggested Manual Election Protocols."

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 date of the first election and who have been permanently replaced.

Voter List

The Employer must provide the Regional Director and parties named in the decision an alphabetized 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, accompanied by a certificate of service on all parties. When feasible, the Employer must electronically file the list with the Regional Director and electronically serve the list on the other parties.

To be timely filed and served, the list must be *received* by the Regional Director and the parties **two business days after date of issuance of the direction of election**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.** The Employer's failure to file or serve the list within the specified time or in the proper format is 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 in the specified time or in the proper format if it is responsible for the failure.

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.

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

Notice Posting

The Employer must post copies of the Notice of Second Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full

working days prior to 12:01 a.m. on the day of the election and must also distribute the Notice of Second Election electronically to any employees in the unit with whom it customarily communicates electronically. A letter outlining additional details will issue accompanying the Notice of Second Election. The Employer's failure to timely post or distribute the election notices is grounds for setting aside the election if proper and timely objections are filed. However, a party is estopped from objecting to the nonposting or nondistribution of notices if it is responsible for the nonposting or nondistribution.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington, D.C. **by 10 business days from the date of this decision**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

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.

Dated: November 29, 2021

Lisa Y. Henderson
Regional Director
National Labor Relations Board
Region 10
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