

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

**DUKE UNIVERSITY**

**Employer**

**and**

**Case 10-RC-313298**

**SOUTHERN REGION WORKERS UNITED,  
A/W SEIU**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

Duke University (the Employer) is a corporation that operates a private non-profit university providing higher education. Southern Region Workers United, affiliated with the Service Employees International Union (SEIU) (the Petitioner or Union) filed the instant petition on March 3, 2023, with Region 10 of the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). Petitioner filed an amended petition on March 17, 2023. Petitioner seeks to represent a unit of all PhD students in Duke University departments housed at its campuses in Durham and Beaufort, North Carolina, who are working toward PhD degrees offered by the Duke Graduate School and who are employed by Duke University to provide instructional services in undergraduate or graduate-level courses or labs (including, but not limited to, Teaching Assistants, Graduate Assistants, Instructors, and Graders) or to provide research services (including but not limited to Research Assistants and Graduate Assistants), but excluding all students at Duke Kunshan University and Duke-NUS Medical School, all students not working towards PhD degrees offered by the Duke Graduate School, and all other employees, guards and supervisors as defined in the Act.

The Employer contends that the petition should be dismissed because the petitioned-for students are not employees within the meaning of Section 2(3) of the Act. The Employer also contends that should an election be directed, it should be conducted by a mixed mail/manual ballot such that mail ballots would be sent to those in the unit who are on the remote Beaufort, North Carolina, campus and those who are known to be doing field work outside of the Raleigh-Durham metropolitan area. The Union argues that an election conducted during the summer semester, i.e., before August 22, 2023, should be done a) as a mixed mail/manual ballot such that all voters have the opportunity to vote manually or by mail, or b) entirely by mail.

The parties agree that should an election be directed that occurs in the summer semester, a three-semester, excluding summer semester, “look-back” eligibility formula should apply to include individuals who have served in the positions identified in the unit at any time during the Spring 2023, Fall 2022, or Spring 2022 semesters.

A hearing officer of the Board held a hearing in this matter on March 27 and 29, 2023. Because this Region heard evidence and issued a ruling in 2017 concerning this same issue from these same parties, I allowed the parties to present evidence concerning any purported changes from 2017 that would affect employee status. The parties submitted over 740 pages of a joint exhibit, including a five-page joint stipulation outlining specific changes to this Region's 2017 Decision and Direction of Election in Case 10-RC-187957 (the 2017 Decision). The parties also each submitted post-hearing briefs.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. I have carefully considered the record, including the parties' positions and arguments. As described below, based on the record and relevant Board cases, including the Board's decision in *Columbia University*, 364 NLRB 1080 (2016), I find that the students sought in the petition are employees within the meaning of the Act. Accordingly, I am directing an election in an appropriate unit as set forth below.

## II. FACTS

Most of the facts as laid out in the 2017 Decision are still accurate. I have outlined the salient differences below as stipulated by the parties.

Instead of employing 1,714 tenured or tenure-track faculty, the Employer now employs 1,600 tenured or tenure-track faculty. The Employer now employs more than 2,200 non-tenure faculty instead of the more than 1,700 non-tenure faculty it employed as of the 2017 Decision. There are now approximately 10,600 graduate and professional students enrolled as opposed to the approximate 8,000 enrolled as of the 2017 Decision.

In fiscal year 2016, gross revenue from tuition and fees in fiscal year 2016 was \$733 million, and revenue from research grants and contracts was about \$1.13 billion. In fiscal year 2022, gross revenue from tuition and fees was \$950 million, and revenue from research grants and contracts was about \$1.4 billion.

The Dean of the Graduate School and Vice Provost for Graduate Education is now Dr. Suzanne Barbour rather than Dr. Paula McClain.

The Employer now offers more than 50 PhD programs; in 2017, it offered 47. These programs are grouped into four divisions: Humanities, Biological and Biomedical Sciences, Physical Sciences and Engineering, and Social Sciences.

In the 2017 Decision, the Region pointed out that, while the parties stipulated that the benefits PhD students receive were "significantly different" from the benefits offered to other Duke employees, the stipulation and the record were silent as to what benefits those other employees have. In this case, the parties submitted a joint exhibit containing a list of the benefits available to other employees, including medical, dental, and vision benefits; reimbursement accounts; employee discounts; retirement; holidays, sick time, vacation, paid time off, leaves of absence, and flexible work options; tuition assistance; and life and disability insurance.

The petitioned-for unit is still covered under the Student Medical Insurance Plan (SMIP). In addition to this coverage, the Employer offers a medical assistance program of up to \$10,000 (as opposed to the \$5,000 offered as of the 2017 Decision) for medical expenses not covered by the SMIP. The childcare subsidy was raised from \$5,000 per year to \$7,000 per year, and the Employer raised paid parental leave time from seven weeks to nine weeks.

In 2017, some PhD students received 9-month stipends and some received 12-month stipends. Now, all PhD students receive 12-month stipends. The stipend amount has been equalized to \$33,660 and a \$1,000 Cost of Living Adjustment, as opposed to stipends ranging from about \$27,000 to slightly over \$30,000 in 2017.

Those in the petitioned-for unit are still paid for their work. They generally receive \$6,100 (as opposed to \$6,000 in 2017) per course for serving as a teaching assistant (TA) and \$3,050 (as opposed to \$3,000 in 2017) for serving as a Grader. Unlike in 2017, there is no separate position of Head TA. Those working in the Humanities, Social Sciences, and some Natural Science departments receive more than \$3,000 (as opposed to \$3,000 in 2017) per semester for serving as a research assistant (RA). Those funded through research grants are currently paid \$2,805 (as opposed to \$2,500 in 2017) per month for serving as an RA.

Portions of the Director of Graduate Studies Manual have been updated since the 2017 Decision. In 2017, the Manual stated:

Compensation for the living wage (i.e. salary) for PhD student research assistants must be paid through the faculty/staff payroll system. This coupled with tuition remission and fringe benefits must reflect appropriate compensation for work services performed on the research grant or institutional research project. Student compensation must be charged to each funding source in proportion to the level of effort expended.

The current Manual contains a section entitled “Student Payments Through SISS And University Payroll,” which states:

Stipend and assistantship distributions are made through University payroll systems. Fellowship stipends generally have no teaching or research training requirements and are distributed through the non-compensatory system near the last day of each month. Assistantship funding for teaching or research is made through the compensatory system and is generated near the 25th of each month.

In a section specifically for TA Training, the current Manual states:

All graduate departments and programs to support teaching training are encouraged to use the budgeted per-course rate established by Trinity College. The balance of the stipend should be processed as fellowship on the non-compensatory payroll system.

In a section specifically for RA Training, the current Manual states:

Stipend support for PhD student research training must be processed through the compensatory system. This, coupled with tuition remission and fringe benefits, must reflect appropriate support levels for research performed on the research grant or institutional research project. Student stipend support must be charged to each funding source in proportion to the level of effort expended.

Under “Tax Liability,” the current Manual states, “Research or teaching stipends, however, are subject to federal and state income taxation, even if the training is a requirement for the degree.”

As in 2017, PhD students are permitted to supplement their stipends with additional work as RAs or TAs, provided they do not perform service-based opportunities more than 19.9 hours per week. However, contrary to the \$3,000 limit as of the 2017 Decision, there no longer appears to a monetary maximum to the amount that can be earned.

In the 2017 Decision, the Region noted that PhD students on 9-month stipends did not earn any formal paid vacation but generally only performed duties when school was in session. PhD students on 12-month stipends were officially entitled to a minimum of two weeks’ paid vacation, although the faculty member in whose lab they worked could allow more. The current policy is that PhD students who serve as RAs, TAs, or graduate assistants (GAs) are entitled to a minimum of 12 days of vacation.

Unlike in 2017, some grants that are considered “outside funding” are now paid directly to the student and are not distributed through the Employer.

In 2017, the Graduate School required evaluations of all PhD students in the spring of each academic year. Currently, the Graduate School only requires annual evaluations of PhD students beyond their second year.

Unlike in 2017, TAs now may receive audit credit for courses they assist in teaching.

There are now 13, versus 6, programs in the School of Medicine in which teaching is neither required nor encouraged. There are now 4 programs, versus 9 departments, in which students are funded primarily as RAs but are also required to serve as TAs.

As in 2017, PhD students in Religious Studies are expected to serve as RAs during both semesters of their first year. However, PhD students currently in Religious Studies also must serve as a TA or preceptor each semester in their second through fourth years.<sup>1</sup> In their fifth year, PhD students in Religious Studies have optional teaching or acting as a TA. There no longer appears to be the allowance announced at the end of the fall 2016 semester that PhD students in

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<sup>1</sup> Previously, PhD students in Religious Studies were expected to serve as TAs in their third through fifth years.

Religious Studies can take two semesters off from teaching during their third through fifth years and still receive their full stipend.

The 2017 Decision stated that many RAs work 60 hours a week or more in their labs. Currently, many RAs work in laboratories between 40 and 60 hours a week.

In 2017, collaboration between labs meant that students may be directed to perform work for another lab that did not relate to the work being done in their own labs and would, therefore, not be related to their dissertation research. Now, RAs may be asked to assist in another lab that aligns with their research.

PhD students in the Medical Sciences programs are now expected to affiliate with a laboratory after their first year instead of after their second year as was the case in 2017. There are now about 600 (versus 1,280 in 2017) PhD students in the School of Medicine's Basic Medical Sciences Programs.

The admission and re-admission letters the Employer sent in the 2016-17 academic year have been updated. While the language has changed, the letters still tie funding to teaching or research service. For example, PhD students who receive a "Research Assistantship Letter" were told in 2016-17 that their "offer includes a first-year research assistantship, which will compensate you with tuition remission and a stipend for the services you will be providing." The updated letter now states that they "will receive a first-year research assistantship that consists of a tuition and fee scholarship, student health and dental insurance coverage, and a stipend." PhD students who receive a "Teaching Assistantship Letter" were told in 2016-17 that their "stipend will consist, in part, of a salary that will be earned through providing teaching assistant support to your department or program..." They are now told:

[Y]ou will receive a first-year financial award that consists of a tuition and fee scholarship, student health and dental insurance coverage, and a departmental stipend. As part of Ph.D. training, we believe one needs to practice the art of teaching by being a teaching assistant. Your department will provide more information on teaching assistant expectations as well as other particulars specific to your department.

In addition to the letters sent by the Graduate School, individual departments or programs send their own letters to admitted PhD students. These letters are either service requirement letters or welcome letters that include service requirements. The Employer instructs departments to state whether the departmental service requirements are for academic or compensatory purposes. The template provided to departments states:

Your funding for the first academic year, [date range], will consist of a [fellowship / teaching assistantship / research assistantship / graduate assistantship]. Your [fellowship / teaching assistantship / research assistantship / graduate assistantship] stipend will be paid to you in equal monthly installments on the [last workday of the month / 25th of the month], beginning in [month and

year]. [If necessary, also state the following: As a condition of accepting the teaching assistantship / research assistantship / graduate assistantship, you must provide evidence of employability as required by federal government regulations.]

Funding for the second through the fifth years of Ph.D. study will be provided through a combination of [fellowship / teaching assistantship/ research assistantship / graduate assistantship] funds. At the beginning of each of those years, you will receive an annual reappointment letter describing the financial support and service requirements for that year. Note that, as part of their [academic funding] requirements, all Ph.D. students in the [Program Name] department are expected [to teach / to do research / to provide faculty assistance] for [specified number] semesters. This [teaching / research / faculty assistance] requirement must be met during [specified timeframe] of your graduate studies.

The Literature Program sent a reappointment letter in 2022 outlining a stipend of \$25,245. The letter stated, “The stipend consists of a fellowship component in the amount of \$13,045, for which no work service is required, and either a teaching or graduate assistantship in the amount of \$12,200, which represents a reasonable value for the services you will be providing.”

The Thompson Writing Program sent a letter in 2022 offering a PhD student a position as a writing consultant for the fall 2022 semester for which he would be paid \$6,100 “[i]n recognition of [his] service.” The letter had a place for the PhD student to sign, attesting “I have received, reviewed, and understand the terms and conditions of employment contained in this letter.”

Other letters refer to PhD students’ immediate supervisors, compensatory stipends, job descriptions, and work stipends. One letter from the Biology department states:

In the case of failure to fulfill your obligations competently or to the satisfaction of the professor or department, the department reserves the right to take disciplinary action or enact penalties. These may include verbal and written warnings, a reduction in future teaching or research opportunities, or, for repeated or serious infractions, job termination or suspension from the program.

The Employer maintains that the Graduate School policy provides that if a PhD student is expected to perform a teaching assistantship position in a given semester, the student must receive their full funding package each semester even if extenuating circumstances are present, such as, for example, the student being unable to teach due to research out of the country. The Petitioner, however, provided examples of students not receiving the TA portion of stipends when unable to perform teaching work. The Employer stated that while as a technical matter the funding source would need to change if a student is not teaching, the fellowship amount is increased in the same amount from another funding source so that the student's funding package is made whole. The record is unclear as to whether this was actually the case for the students

cited by the Petitioner or if those students simply did not receive an amount equivalent to the TA portion of their stipends.

### **III. BOARD LAW**

Board law has not changed since the 2017 Decision. In *Columbia University*, 364 NLRB 1080 (2016), the Board held that student assistants are statutory employees when, in connection with their studies, they provide services under the direction of the university in exchange for compensation. The decision overruled *Brown University*, 342 NLRB 483 (2004), where the Board had determined that students could not be statutory employees because they were “primarily students and ha[d] a primarily educational, not economic, relationship with their university.” Id. at 487.

In concluding that students were employees under Section 2(3) of the Act, the *Columbia* Board applied the common law doctrine of agency, which “generally requires that the employer have the right to control the employee’s work, and that the work be performed in exchange for compensation.” *Columbia*, above at 1094. The Board held that students were statutory employees because they performed teaching and research services directed by the university in exchange for compensation. “Statutory coverage is permitted by virtue of an employment relationship; it is not foreclosed by the existence of some other, additional relationship that the Act does not reach.” Id. at 1080. Even where the economic component is relatively small in comparison to other aspects of the relationship, “the payment of compensation, in conjunction with the employer’s control, suffices to establish an employment relationship for purposes of the Act.” Id. at 1085.

### **IV. APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE**

The facts of this case have not changed significantly enough to warrant a different finding than this Region made in 2017. It is clear that the Employer invests substantial resources in insuring that PhD students learn to teach well and research effectively, and students undoubtedly benefit from teaching and researching. It is also clear that the requirement to serve as a TA, Grader, or RA is an integral part of PhD students’ training, and many times the work they do is in furtherance of and even essential to their dissertations. Notwithstanding the above, the record also establishes that the Employer benefits from the work that TAs and RAs perform inasmuch as they carry out instruction the Employer must provide to its non-PhD students, and they undertake research to meet the expectations of outside sources that have provided funds to the university for such purposes.

TAs, Graders, and Humanities RAs reduce the faculty’s workload by performing duties that a faculty member would otherwise have to perform. In the courses they teach, PhD students as instructors of record eliminate the need for a faculty member altogether. In research labs, RAs perform many tasks that non-student staff would otherwise do. Further, the university benefits from the research of laboratory RAs because the university owns any patents laboratory RAs develop.

In agreement with prior decision, I do not find it significant that the Employer, unlike Columbia University, does not have a mandatory core curriculum or that some students receive training before they begin to teach instead of being “thrust wholesale into many of the core duties of teaching.” *Columbia*, above at 1095. The *Columbia* Board merely noted that some students taught some courses contained in the undergraduate core curriculum, *id.* at 1093, and that although teaching was a degree requirement, students still assisted in “the business of universities by providing instructional services for which undergraduate students pay tuition.” *Id.* at 1095.

Here, the evidence demonstrates that PhD students teach or assist in teaching a number of undergraduate courses, including required courses. For example, the university requires that all undergraduates in certain degree programs take three semesters of foreign language or otherwise reach a 300-level course. All introductory language courses in French, Spanish, Italian, and Portuguese are taught by PhD students and adjunct faculty; tenured or tenure-track professors do not teach these courses. The Mathematics department also relies on PhD students to teach introductory courses even though teaching is not required in that department for students to obtain a PhD. The record shows that during the fall 2016 semester, 34 of the 52 100-level courses offered had PhD students as instructors of record.

TAs and RAs receive compensation for their services. The Graduate School provides a variety of funding to PhD students unrelated to their service as TAs or RAs. However, that does not change the fact that students serving as TAs or RAs are performing services for the university, many of which are also performed by paid faculty members, staff, and non-PhD students. Payments attributed to TA and RA services are paid through the university payroll system. The amounts are reported on a W-2 as regular income, and students must provide I-9 employment verification. Duties are referred to as “work,” and although the Employer may prefer the term “service,” those duties are mandatory. When students other than laboratory RAs voluntarily perform more duties than are required, they receive additional money for doing so. Finally, although the Graduate School contends that students’ stipends are not reduced when they do not perform services, other record evidence shows that they are.<sup>2</sup> Even if the student’s funding does remain the same, it would be comprised entirely of non-compensatory payments rather than a combination of compensatory and non-compensatory amounts.

The University directs the work of RAs and TAs through training and regulations. The faculty member to whom the student is assigned tells the student what tasks to perform and how to perform them. For example, TAs consult their assigned faculty member about how to grade student assignments. Some laboratory RAs may operate with a large degree of independence, but their research must still be within the terms of the grant, and they must account for the cost of their research.

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<sup>2</sup> Based on the minimal record evidence provided, it appears quite rare that a student is unable to meet the service requirements. Accordingly, examples of an exception or two to the service expectations for good cause does not override the overwhelming expectation that PhD students must meet the service requirements.

Poor performance by TAs and RAs may have consequences. A primary investigator on a grant may ask that a student be removed from his or her lab. While this does not result in the student's dismissal from the program, the student will make no further progress on his or her degree until they find another lab. TAs who do not perform well may be required to undergo remedial training or to repeat the teaching assignment.

I find that PhD students who provide instructional services in undergraduate or graduate-level courses or labs and who are compensated by and subject to the direction and control of Duke University are employees within the meaning of Section 2(3) of the Act. I further find that a unit comprised of such employees is appropriate for the purposes of collective bargaining. There are approximately 2,500 employees in the unit.

## V. CONCLUSIONS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The parties stipulated and I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All PhD students in Duke University departments housed at its campuses in Durham and Beaufort, North Carolina, who are working toward PhD degrees offered by the Duke Graduate School and who are employed by Duke University to provide instructional services in undergraduate or graduate-level courses or labs (including, but not limited to, Teaching Assistants, Graduate Assistants, Instructors, and Graders) or to provide research

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<sup>3</sup> The parties stipulated to the following commerce facts: Duke University, a North Carolina corporation with its principal office located in Durham, North Carolina, is a private non-profit university engaged in the business of providing higher education. During the past 12 months, in the course and conduct of its business, Duke University has derived gross revenues in excess of \$1 million. During the same 12-month period, Duke University purchased and received goods valued in excess of \$50,000 from points located outside the State of North Carolina.

services (including but not limited to Research Assistants and Graduate Assistants); but excluding all students at Duke Kunshan University and Duke-NUS Medical School, all students not working towards PhD degrees offered by the Duke Graduate School and all other employees, guards and supervisors as defined in the Act.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Southern Region Workers United, a/w SEIU.<sup>4</sup>

### **A. Election Details**

The Employer argues that for an election held during the summer, a mixed manual/mail ballot is appropriate such that PhD students enrolled at the remote Beaufort Campus or those who are out of the Raleigh area should receive mail ballots while all other PhD students should vote manually. Petitioner argues that for an election held during the summer, all those in the unit should be provided the opportunity to vote by mail or manually.

Having reviewed the parties' positions, I find that holding a mail ballot election would be the best means of conducting the election in this matter. Attempting to hold a manual election during the summer when many students are away provides too little opportunity to vote. Holding a mixed mail/manual where students can choose how to vote is not an administrative option<sup>5</sup> and would nonetheless be administratively difficult in making sure approximately 2,500 eligible voters only vote once. A mail ballot, on the other hand, while taking somewhat more time, would be targeted to the actual voters in the unit to addresses the employees have provided, thereby ensuring to the extent possible that each voter will receive a ballot and have the opportunity to vote.<sup>6</sup>

In light of the above, the election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit at 10:00 a.m. on **Monday, July 24, 2023**, from an office of the National Labor Relations Board,

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<sup>4</sup> The name of the Petitioner appears as shown in the caption of the parties' Joint Stipulation. This is how the name of the Petitioner will appear on the ballot unless the Petitioner makes a request to have its name shown in a different manner. The Petitioner has two business days from the date of this decision to make such a request with a copy to the Employer.

<sup>5</sup> A mixed manual-mail election is an election in which one portion of the unit votes manually and the other portion votes by mail ballot, not a situation where every voter gets a choice as to which method to vote.

<sup>6</sup> I am, of course, mindful that the university asserts it has multiple addresses for some unknown number of employees. I will address this issue under the Voter List section.

Region 10. After receiving their ballots, voters who wish to vote must appropriately mark their ballots and return them in the provided return envelopes. Voters must sign the outside of the envelopes in which the ballots are returned. Any ballot received in an envelope that is not signed will be automatically void. Those employees who believe that they are eligible to vote and who do not receive a ballot in the mail by 4:30 p.m. on July 31, 2023, should contact the Region 10 Atlanta Regional Office at (404) 331-2896 or the Region 10 Winston-Salem Subregional Office at (336) 631-5201 and ask to speak with the Information Officer or the Assistant to the Regional Director so that a replacement ballot can be timely mailed.

All ballots will be commingled and counted at the Region 10 Subregional Office located at One West Fourth Street, Suite 710, Winston-Salem, NC 27101, at 10:00 am on **Tuesday, August 22, 2023**. In order to be valid and counted, the returned ballots must be received in the Region 10 Winston-Salem Subregional Office prior to the counting of the ballots.

### **B. Voting Eligibility**

The Parties agree that any election held prior to the start of the Fall 2023 semester should include a lookback period of Spring 2023, Fall 2022, and Spring 2022.

I agree that this formula is appropriate. I am directing an election in the petitioned-for unit according to the following eligibility formula:

All unit employees who hold or have held a unit position during the Spring 2023, Fall 2022, or Spring 2022 semesters.

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, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of

all eligible voters. Where the Employer has multiple addresses on file, the Employer is to use the addresses used on each voter's 2022 W-2 form.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 12, 2023**. 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](http://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](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board

Dated: July 10, 2023



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