UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

DUKE UNIVERSITY

Employer

and **Case 10-RC-276475**

WASHINGTON-BALTIMORE NEWS GUILD, LOCAL 32035

Petitioner

REGIONAL DIRECTOR'S DECISION ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

Based on a petition filed on May 3, 2021,[1] and pursuant to a Stipulated Election Agreement, a mixed manual-mail ballot election was conducted in the petitioned-for unit of employees beginning June 2. The results of the election were inconclusive initially as there were 35 votes cast for the Petitioner, 31 votes cast against representation, one void ballot, and eight challenged ballots, a number sufficient to affect the results of the election. The Employer timely filed objections to conduct affecting the results of the election.[2]

On August 10 and 19, a hearing was conducted concerning the Employer's objections and the eligibility of the challenged voters. At the hearing, five of the eight challenges were withdrawn by the parties. On October 1, the hearing officer issued a report recommending that the objections be overruled in their entirety. The hearing officer further recommended that I overrule the three remaining challenges and that those ballots be opened and counted. The Employer filed timely exceptions to the hearing officer's report.

On November 10, I issued an Order approving the five withdrawn challenges made at the hearing and scheduling a ballot count, as the withdrawn challenges were sufficient in number to potentially render the objections and the three remaining challenges non-determinative.

On November 15, a count of the five withdrawn challenged ballots was conducted. One vote was cast for the Petitioner, and four votes were cast against representation. The final tally of the first Revised Tally of Ballots showed 36 votes cast for the Petitioner, 35 votes cast against representation, one void ballot, and the three remaining undetermined challenged ballots. As the undetermined challenged ballots were sufficient in number to affect the results of the election, by Order issued December 14, I affirmed the hearing officer's recommendations to overrule the remaining challenges and ordered that the ballots be opened and counted and that a second revised tally of ballots be issued.[3]

---

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

[2] By an Order dated July 21, this case was transferred to Region 7.

[3] On December 29, the Employer filed with the Board a request for review of my December 14 Decision and Order. The Board denied the Employer's request on February 4, 2022.

On February 11, 2022, the three remaining ballots were counted. Two votes were cast for the Petitioner, and one vote was cast against representation. The final tally of the Second Revised Tally of Ballots showed 38 votes cast for the Petitioner, 36 votes cast against representation and one void ballot.

As the Second Revised Tally shows that the Petitioner has received a majority of the eligible votes, I shall now rule on the Employer's Objections to determine whether the election should be set aside and a second election directed.

I. THE OBJECTIONS

The Employer filed the following "Objections to Conduct Affecting the Results of the Election," a copy of which was served on Petitioner in accordance with the Board's Rules and Regulations.

OBJECTION 1: The Region failed to include return postage on its initially sent mail ballot return envelopes, thus undermining laboratory conditions and preventing the administration of a free and fair election.

OBJECTION 2: The Region impermissibly and unilaterally reset the mail ballot return deadline and ballot count date without agreement of the parties, absent Stipulated Election Agreement language permitting the Region to implement such unilateral changes.

OBJECTION 3: The Region's reset June 29 ballot receipt deadline provided insufficient additional time to remedy the absence of return postage on initial mail ballot return envelopes, thus undermining laboratory conditions and preventing the administration of a free and fair election.

OBJECTION 4: During the portion of the June 29 videoconference ballot count in which the parties reviewed duplicate mail ballots and in-person challenges, the Board agent conducting the count left the Zoom meeting due to technical issues for approximately seven to ten minutes, thus transferring control of the ballot count videoconference to a Petitioner observer, and removing ballots and ballot envelopes in various stages of processing from the parties' view.

OBJECTION 5: During the portion of the June 29 videoconference ballot count in which the Board agent counted ballots, the Board agent conducting the count lost audio connection with the Zoom meeting due to technical issues for approximately five to seven minutes, resulting in the agent making no audible call of the preference expressed (or potential void/valid determination) of at least two ballots.

As set forth above, on August 10 and 19, a hearing was conducted concerning the Employer's Objections. The hearing officer recommended that the Employer's objections be overruled in their entirety.

II. THE EXCEPTIONS

The Employer maintains that the hearing officer erred in recommending that I overrule the Objections and argues that alleged procedural irregularities in the election warrant setting it aside and conducting a second election. Objections 1 through 3 pertain to the missing postage on

the return mail ballot envelopes that Region 10 sent to voters on June 2. Objections 4 and 5 involve two technical problems that occurred during the June 29 ballot count.

To set aside an election based on regional office procedural irregularities, the objecting party must show that there is evidence that the alleged irregularity raises a reasonable doubt as to the fairness and validity of the election. *Durham School Services, LP*, 360 NLRB 851, 854 (2014), citing *Polymers, Inc*., 174 NLRB 282 (1969), enfd. 414 F.2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970). In addition, the Board applies an objective standard to potential disenfranchisement cases in order to maintain the integrity of its own election proceedings. *Garda World Security Corp*., 356 NLRB 594 (2011). Under that standard, an election will be set aside if the objecting party shows that an election irregularity possibly disenfranchised a sufficient number of voters to affect the election outcome. *Dayton Malleable Iron Co.,* 123 NLRB 1707, 1709 (1959); *Midwest Canvas Corp.,* 326 NLRB 58 (1998).[4]

A. Mail Ballot Issues – Objections 1-3

The facts relevant to Objections 1 through 3 are as follows. The parties entered into a Stipulated Election Agreement regarding the mechanics of the election, including the processing of mail ballots. Pursuant to that Agreement, on June 2, Region 10 sent mail ballot "kits" to all eligible employees.[5] Approximately one week after sending the kits, Region 10 received reports from the parties and unit employees that postage was missing from the yellow return envelopes sent on June 2. In response, on June 11, the Acting Regional Director for Region 10 sent duplicate mail ballot kits to the eligible employees and issued an Order Rescheduling Ballot Count. In her Order, the Acting Regional Director explained:

> It is unclear whether pre-paid deliver postage was included on the original return yellow envelopes. As result and in order to correct this administrative oversight, the Region will be issuing duplicate mail ballot election kits to all employees on the mail ballot voter list. All employees who want to vote in the election should return their mail ballot received from the duplicative mail ballot election kit that are being mailed out today, June 11, 2021. If you want to make sure that your

[4] In the instant matter, the Tally of Ballots states that there are 77 eligible voters. However, that number does not include Christopher Drew Sisk. Mr. Sisk's name did not appear on the voter list and his ballot was challenged by the Board agent. In my Decision and Order of December 14, I determined that Mr. Sisk was an eligible voter, and his ballot was opened and counted along with other resolved challenged ballots on February 11, 2022. Therefore, the actual number of eligible voters is 78. As set forth above, the final tally of the Second Revised Tally of Ballots shows 38 votes cast for the Petitioner; 36 votes cast against representation; and one void ballot. Thus, 75 of the 78 eligible voters cast ballots in the election, leaving three employees who did not cast ballots, a number sufficient to affect the election outcome. Therefore, this is a potential disenfranchisement case. *Id.*

[5] Per NLRB Casehandling Manual (Part 2) Representation Proceedings, Section 11336.2(c), a mail ballot kit includes an inner blue envelope and an outer yellow postage-paid return envelope addressed to the Regional Office. Also included with the kit is Form NLRB-4175 Instructions to Eligible Employees Voting by United States Mail, as well as contact information for a designated Regional Office employee, including address and telephone number. The voter is instructed to mark the ballot, place it in the blue envelope, and seal that envelope. The voter then inserts the blue envelope in the yellow envelope, which the voter seals and signs, enabling the parties to challenge particular voters' ballots at the vote count. At the ballot count, after the challenged ballots are segregated, the remaining yellow envelopes are opened and the blue envelopes are removed from them and thoroughly mixed. The blue envelopes are then opened and then mixed again before being counted. *Professional Transportation, Inc.,* 370 NLRB No. 132, slip op. at 3, (June 9, 2021) citing Casehandling Manual (Part 2), Section 11324; and *Air 2, LLC*, 341 NLRB 176, 185-186 (2004), enfd. mem. 122 Fed. Appx. 987 (11th Cir. 2004).

vote will be counted in the election, you should send in the mail ballot you will be receiving from the mail ballot election kit mailed today, whether you sent in a mail ballot before or not. Please carefully follow the instructions included with your mail ballot election kit and please call the telephone numbers provided on the form should you have any questions.

The Order extended the deadline for ballots to be submitted from June 21 to June 29. The ballot count was also rescheduled, from June 22 to June 29. Region 10 sent a copy of the Order to every employee with the duplicate mail ballot election kits on June 11. There is no evidence that either party objected to the Order or raised any concern with regard to its terms at the time it issued.

In Objection 1, the Employer maintains that the election should be set aside and a new election conducted because the absence of postage on the return envelopes sent by Region 10 on June 2, resulted in the possible disenfranchisement of a dispositive number of eligible voters. The hearing officer recommended that Objection 1 be overruled, finding "no evidence in the record that any eligible voter did not receive notice of the election, was not given adequate opportunity to vote, or was prevented from voting by the conduct of one of the parties or by unfairness in the scheduling or mechanics of the election." In this regard, the hearing officer noted: "all witnesses (who were eligible to vote) testified that they were able to successfully cast a ballot. Therefore, the Employer's evidence of prejudicial harm is merely speculative."

In its Exceptions, the Employer argues that the hearing officer erred by relying on "the irrelevant fact that all testifying witnesses cast ballots." The Employer further argues that the hearing officer erred in his interpretation of two cases cited by the Employer in support of Objection 1.

As set forth above, under the objective standard applied by the Board to potential disenfranchisement cases an election will be set aside if the objecting party shows that the number of voters possibly disenfranchised by an election irregularity is sufficient to affect the election outcome. *Garda World Security Corp*., supra. In *Wolverine Dispatch, Inc*., 321 NLRB 796, 797 (1996), the Board held that in cases involving election irregularities, the proper standard is whether the number of employees possibly disenfranchised is sufficient to affect the election outcome, not whether that number of voters, or any voters at all, were *actually* disenfranchised [emphasis in original]. *Id*. at 796. As such, I do not rely on the hearing officer's findings regarding the absence of evidence of disenfranchisement or that all testifying witnesses were able to successfully cast ballots.

Nevertheless, under the circumstances here, I agree with the hearing officer that Objection 1 should be overruled. The alleged irregularity – the missing postage on the return envelopes sent on June 2 – was cured by Region 10's timely actions after it learned of the problem. Consistent with the Stipulated Election Agreement and Board procedure, Region 10 promptly sent duplicate mail ballot kits to the eligible employees with postage paid return envelopes. Included with the duplicate kit was a copy of the Acting Regional Director's Order of June 11, which explained the issue with the return envelopes sent on June 2, provided clear directions on how to cast a ballot, and advised that the count was being rescheduled from June 22 to June 29, to provide employees with additional time to return their ballots.

In *North American Aviation, Inc*., 81 NLRB 1046 (1949), the Board ordered a new election based on several "irregularities," including postage missing from return envelopes sent with the mail ballot kits. I find the instant matter distinguishable from *North American Aviation* in two significant respects. First, in that case the Board found that the regional director did not have time to cure the postage error, whereas the Acting Regional Director here was able to rectify the situation by timely providing voters with duplicate mail ballot kits in a manner consistent with the Board's policies and procedures.[6] Second, in *North American Aviation*, the Board found that the alleged irregularities allotted *less time* than ordinary for the receipt and return of the mailed ballots. *Id.* at 1048. Here, as discussed below, the Acting Regional Director's June 11 Order provided employees with *more time* than usual to return their ballots.

The absence of postage on the yellow return envelopes sent by Region 10 on June 2, was regrettable. But the Board has long recognized that such lapses are part of the "normal hazards of conducting a mail ballot election." *North American Aviation*, supra at 1049. This no doubt explains why the Board's case handling policies and procedures provide a course of action to rectify errors like this when they occur, and why the Stipulated Election Agreement explicitly reserves the Regional Director's authority to take necessary action in such instances to preserve the integrity of the election. Because I find that Region 10 cured the alleged irregularity, I conclude that the Employer has failed to show that the absence of postage on the first set of return envelopes possibly disenfranchised any of the three eligible voters who did not cast ballots in the election, or that it raises reasonable doubt as to the fairness and validity of the election. Thus, I agree with the hearing officer that Objection 1 should be overruled. [7]

In Objection 2, the Employer contends that the election should be set aside and a new election conducted because the Acting Regional Director's June 11 Order Rescheduling Ballot Count "unilaterally extended the mail ballot return deadline and ballot count date established by the parties' Stipulated Election Agreement." The hearing officer recommended that I overrule Objection 2, finding that the Acting Regional Director's extensions of these deadlines was authorized by the plain language of the Stipulated Election Agreement.

In its Exceptions, the Employer maintains that the hearing officer erred in recommending that Objection 2 be overruled arguing that the Acting Regional Director's failure to consult with the parties prior to extending the mail ballot return deadline and ballot count date constitutes a breach of the Stipulated Election Agreement and grounds for setting aside an election. In support, the Employer cites *T&L Leasing*, 318 NLRB 324 (1995) for the proposition that election agreements are "contracts," binding on the parties that executed them, and argues that the Stipulated Election Agreement here contains "no provision granting the Acting Regional Director the authority to unilaterally change the parties' agreed-upon election arrangements."

---

[6] NLRB Casehandling Manual (Part 2) Representation Proceedings, Section 11336.4 – "Kit Not Received by Voter; Duplicate Kit."

[7] I agree with the hearing officer that *Fresenius USA Manufacturing, Inc.,* 352 NLRB 679 (2008) and *Paprikas Fono*, 273 NLRB 1326 (1984) cited by the Employer in support of Objection 1, are distinguishable. In addition to the reasons stated by the hearing officer, I find these cases inapposite because the alleged irregularities in those cases were not subsequently corrected like the return postage issue in the instant case. I also do not rely on *Fresenius* because it is a two-member Board decision. See *New Process Steel, L.P. v. NLRB,* 560 U.S. 674 (2010).

I agree with the hearing officer that the record does not establish that Region 10 breached the terms of the Stipulated Election Agreement. The parties' Stipulated Election Agreement provides, in pertinent part, as follows:

> The election will be conducted in part by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from an office of the National Labor Relations Board, Region 10, at 12 noon on June 2, 2021. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region office by close of business on June 21, 2021. The mail ballots will be counted at the Region office located at 4035 University Parkway, Suite 200, Winston-Salem, North Carolina, at 1:00 PM EDT, on June 22, 2021, by videoconference.
>
> Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be void.
>
> If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region office by no later than 4:30 pm EDT on June 9, 2021, in order to arrange for another mail ballot kit to be sent to that employee.
>
> **If the election and/or count is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election (emphasis added).** [Joint Exhibit 2 at pg. 6].

The Employer's argument that the Stipulated Election Agreement contains "no provision granting the Acting Regional Director the authority to unilaterally change the parties' agreed-upon election arrangements" is belied by the plain language of the Agreement. The Employer argues that the bolded clause above "can only refer back to the possibility of changes to the manual portion of the election, because otherwise that sentence is impossibly circular." I find no such ambiguity in the language cited by the Employer, either contextually or semantically.

Even assuming the Acting Regional Director's actions here constituted a breach of the Stipulated Election Agreement, the Board explained in *T&L Leasing*, that "not every breach of an election agreement is a basis for a new election. The breach must be material or prejudicial." *Id.* at 326. In my view, the Acting Regional Director's decision to extend the deadline for employees to cast their ballots under the circumstances here was neither a material nor prejudicial breach of the Stipulated Election Agreement. To the contrary, it was consistent with that Agreement and Board policy, and obviously intended to promote fairness in the election.

Beyond the plain language of the Stipulated Election Agreement, it has long been held that a regional director may, in her discretion, reschedule an election. *Alladin Plastics, Inc.*, 182 NLRB 64 (1970) (not objectionable for regional director to reschedule an election where election was not held on originally stipulated date because of Board agent error).[8] Under the circumstances here, I find that the Acting Regional Director acted well within her discretion in rescheduling the ballot count to provide additional time for the return of mail ballots from all

[8] Indeed, in certain circumstances even a Board agent has discretion to extend voting time. NLRB Casehandling Manual (Part 2) Representation Proceedings, Section 11324.

eligible voters. *Superior of Missouri, Inc*., 327 NLRB 248 (1998). See also, NLRB Casehandling Manual (Part 2) Representation Proceedings, Sections 11302.1(b).

I further find that the Employer acquiesced in the Acting Regional Director's decisions to allow additional time for employees to cast their mail ballots. The record shows that the Employer did not object to the Order Rescheduling Ballot Count when it issued. By failing to object to the extension of the mail ballot return deadline and ballot count date, the Employer indicated its assent, and is now estopped from asserting this as a meritorious post-election objection. *Consolidated Print Works, Inc.,* 260 NLRB 978, 979 (1982). (The Board rejected a regional director's setting aside an election based on an alleged material breach of a stipulated election agreement because the objecting party did not contest the change at the time).

For these reasons, I conclude that the Employer has not established that the Acting Regional Director's extensions of the mail ballot return deadline and ballot count date constitute election irregularities that possibly disenfranchised any of the three eligible voters who did not cast ballots in the election, or that raise reasonable doubt as to the fairness and validity of the election. Therefore, I agree with the hearing officer that Objection 2 should be overruled.

In its related Objection 3, the Employer argues that the extended ballot receipt deadline ordered by the Acting Regional Director provided insufficient additional time to remedy the absence of return postage on the yellow envelopes initially sent by Region 10. The hearing officer recommended that this Objection be overruled, and I agree. Again, it is well settled that the Board has granted broad discretion to regional directors in making election arrangements. *Independent Rice Mill*, *Inc*., 111 NLRB 536 (1955). As such, the Board does not interfere with a regional director's exercise of her discretion in making arrangements with respect to the conduct of elections and the counting of ballots. *Continental Smelting and Refining*, 117 NLRB 1388, 1390 (1957) citing *Independent Rice Mill* at 537. Thus, in the absence of objective evidence that this discretion has been abused, an election should be upheld. *Id.*

I find no abuse of discretion by the Acting Regional Director regarding the amount of time she provided for the employees to return their mail ballots. Board policy states that while the deadline for return of mail ballots depends on the circumstances, "usually two weeks should be allowed from the date of mailing to date of return." See NLRB Casehandling Manual (Part 2) Representation Proceedings, Section 11336.2(d). In this case, Region 10 sent the duplicate kits on June 11, with a return deadline of June 29 (18 days), thus exceeding the number of days typically allowed under Board policy. The Employer argues that the Acting Regional Director should have taken into consideration possible postal delays when she extended the deadline for mail ballots, but there is no evidence that the Acting Regional Director failed to do so.

Accordingly, I agree with the hearing officer's conclusion that Objection 3 should be overruled. The Acting Regional Director's decision to allow 18 days for employees to return their mail ballots was not an abuse of her discretion; nor did it constitute an election irregularity that possibly disenfranchised any of the three eligible voters who did not cast ballots, or raise a

reasonable doubt as to the fairness and validity of the election. Therefore, I adopt the hearing officer's recommendation to overrule Objection 3.[9]

B. Technical Issues During the June 29 Ballot Count – Objections 4 and 5

In Objections 4 and 5, the Employer argues that two interruptions during the virtual ballot count, one in the video feed and another separate interruption in the audio connection, raise reasonable doubt as to the fairness and validity of the election. The hearing officer recommended that these Objections be overruled finding that the record does not establish that the Board agent failed to follow established election procedures or acted improperly in handling or counting the ballots. The Employer takes exception arguing that these technical issues created grounds for speculation about the fairness of the election.

The facts relevant to Objections 4 and 5 are not in dispute. The June 29 ballot count was conducted virtually using the Zoom platform for video, and a separate telephone line for audio. The first technical issue occurred when the Board agent's computer lost power and she was disconnected from the video conference. The loss of the Board agent's video feed had no effect on the audio connection and the Board agent advised the parties that she had lost power and was endeavoring to resolve the issue. According to the Employer's witness, Director Smith, it took the Board agent approximately seven to ten minutes to restore her video connection. Director Smith further testified that here was no processing of the ballots or envelopes until the Board agent's video feed was restored.

The second technical issue occurred during the portion of the count in which the Board agent was removing ballots from the blue envelopes, showing them to the parties, and placing them into "Yes," "No," or "Void" piles. For a period of "a minute or two," according to the Petitioner's witnesses, or "five to seven" minutes, according to Director Smith, the Board agent's audio connection was interrupted. It is undisputed that during this time, the video connection remained functioning. It is also undisputed that upon learning that her audio connection to the meeting had failed, the Board agent immediately stopped counting ballots. Director Smith testified that the Board agent processed two ballots before realizing the issue with her audio feed. Yet, according to Smith, in each instance the Board agent displayed the ballot to the parties, the parties could see the markings on the ballots, and the Board agent placed each of the two ballots in the appropriate pile ("Yes, "No" or "Void"). Once the Board agent's audio was restored, she completed the count, confirmed the tally of ballots with the election observers, and announced the result. Neither party objected to the Board agent's designation of the two ballots counted while the audio was interrupted.

Under these circumstances, I agree with the hearing officer for the reasons he states that the Employer failed to show that the two brief interruptions during the count created a reasonable doubt as to the fairness and validity of the election. At all times during the interruption in the Board agent's video connection, all ballots remained in their individual sealed blue or yellow envelopes and those sealed envelopes remained in the Board agent's possession. The record does not establish that any of the blue envelopes were opened or ballots removed during this

---

[9] I agree with the hearing officer that it is significant that the Employer did not request an additional postponement of the ballot count to allow time for additional ballots to arrive at the Region 10 office. See e.g., *North American Aviation*, supra at 1049; *Consolidated Print Works, Inc.,* supra at 979.

time. Further, all parties observed the Board agent open each of the sealed blue envelopes and remove the ballot from inside. They then saw the Board agent show and count each of the eligible ballots.

I agree with the hearing officer that unlike those cases where the Board has set aside elections, the record here does not establish that the Board agent failed to follow established election procedures or acted improperly in handling or counting the ballots. The Board's decision in *Paprikas Fono*, supra, cited by the Employer in its Exceptions regarding Objections 4 and 5, is distinguishable. In that case, the Board found reasonable doubt regarding the validity and the fairness of an election where the Board agent failed to follow normal procedures for handling impounded ballots. The Board explained that election procedures are "designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative challenge procedure." *Id.* at 1328. The Board found that the Board agent's conduct denied the parties the opportunity to assure the security of the ballots. *Id.* As set forth above, in the instant case, all ballots remained in the Board agent's possession in their individual sealed blue or yellow envelopes during the interruption in the video connection. Similarly, the two ballots counted during the interruption in the Board agent's audio connection were shown to the parties who were able to see the markings on the ballots and watched the Board agent place the ballot in the appropriate pile. The record does not establish that the technical issues during the ballot count denied the Employer the opportunity to monitor the conduct of the ballot count.[10] Nor do these issues suggest a "reasonable possibility of a violation of the integrity of the ballot box." *Ashland Chemical Co*., 295 NLRB 1039, 1039, fn. 2 (1989). See also, *Polymers, Inc*., supra at 283. Thus, I find that the brief interruptions in the Board agent's video and audio connections during the June 29 ballot count did not create a reasonable doubt as to the fairness and validity of this election, as argued by the Employer.[11] As such, I adopt the hearing officer's recommendations to overrule Objections 4 and 5.[12]

III. CONCLUSION

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Based on the above and having carefully reviewed the entire record, including the hearing officer's report and recommendations, the Employer's Exceptions, and the arguments made by the parties, for the reasons set forth above I overrule the Objections, and certify the Petitioner as the representative of the appropriate bargaining unit.

[10] I find *Austill Waxed Paper Co.*, 169 NLRB 1109, 1109 (1968), also cited by the Employer in its Exceptions, distinguishable for the same reasons.

[11] In so concluding, I agree with hearing officer that there is no evidence that the few minutes the Zoom video conference listed the Petitioner's observer as the Zoom meeting "host" had any effect on the ballot count or that it raises any reasonable doubt about the fairness of that process.

[12] As I have decided to overrule each of the Employer's Objections, I find no merit to its argument that the hearing officer erred by failing to consider the "cumulative impact of all Objectionable issues."

IV. CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for Washington-Baltimore News Guild, Local 32035 and that it is the exclusive representative of all the employees in the following appropriate bargaining unit:

> All full-time and regular part-time employees employed by Duke University Press; excluding all other employees, managerial employees, confidential employees, guards, and supervisors as defined in the Act.

V. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, 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 by April 4, 2022**.** If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be E-Filed by electronically submitting (E-Filing) it through the Agency's website, unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001 and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules and Regulations does not permit a request for review to be filed by facsimile transmission. 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: March 21, 2022

Elizabeth Kerwin, Regional Director
National Labor Relations Board, Region 07
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 05-200
Detroit, MI 48226

Attachment: Notice of Bargaining Obligation

NOTICE OF BARGAINING OBLIGATION

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,[1] an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

---

[1] Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.