

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

San Antonio, Texas

JOHNSON CONTROLS, INC.

Employer

and

Case 16-RC-256972

**SMART – SOUTHWEST GULF COAST
REGIONAL COUNCIL**

Petitioner

DECISION AND DIRECTION OF ELECTION

On February 26, 2020,¹ SMART – Southwest Gulf Coast Regional Council (“Petitioner”) filed a representation petition under Section 9(c) of the Act seeking to represent certain employees of Johnson Controls, Inc. (“Employer”).

On March 4, I approved a stipulated election agreement for a manual election to take place on March 26, however, on March 17, I issued an Order Postponing Election because of safety concerns related to the COVID-19 pandemic in the United States. Two days later, on March 19, the National Labor Relations Board (“Board”) ordered all Board-conducted elections temporarily suspended. The Board lifted its suspension and resumed conducting elections on April 6. In ending the suspension, the Board noted appropriate measures for conducting elections in a safe and effective manner were available and the determination as to such measures would be left to the Regional Directors.

Because mail ballots have the advantage of significantly reducing social interactions, after the Board lifted the suspension of Board elections, the Region solicited the parties’ positions as to the appropriateness of a mail-ballot election. Thereafter, the parties submitted their positions. The Employer opposed holding the election by mail, asserting a manual election could be conducted safely at its facility, while the Petitioner advocated for a mail-ballot election.

On April 23, after considering the parties’ positions, I revoked the stipulated election agreement and scheduled a hearing for the parties to present evidence and witnesses regarding the appropriate unit and their positions on the method of election. The next day, April 24, the Employer and Petitioner filed a joint motion to proceed with a manual election, proposing an agreed-to date, time, and place for the election, which I denied.

¹ All dates are in 2020 unless otherwise noted.

On May 4, a hearing officer of the Board held a telephonic hearing in this matter.² The parties stipulated to an appropriate bargaining unit³ and presented offers of proof on the method of election.

I. DECISION

Based on the parties' stipulations at hearing, having reviewed the parties' positions, and having considered other factors, as addressed below, I have determined that because of the extraordinary circumstances presented by the ongoing pandemic, the Board will conduct this election by mail-ballot.

Although the type of election to be held is not a litigable issue at a hearing,⁴ I herein provide the basis for my decision to order a mail-ballot election in this case.

National, state, county, and local authorities have all declared states of emergency or disaster, and public health officials recommend minimizing in-person contact. I am unconvinced by the Employer's position that measures could be undertaken which would allow for the safe and effective conducting of a manual ballot election at this time. The most responsible measure to ensure a safe election is to change the method to a mail-ballot election, which will minimize the risk of exposing employees, Board agents, Employer and Union representatives, their families, and the public to this virus and, thereby, maximize participation. Additionally, given the current rapidity of changes to both recommended and mandatory virus countermeasures, a manual ballot election would be fraught with uncertainty and subject to unpredictable changes. A mail-ballot election provides the certainty of process and procedure to conduct an election within a reasonably prompt period and in an effective manner.

² The Employer argued it was not appropriate to proceed with the hearing because it had submitted a Request for Review with the Board on the preceding business day, however, requests for review do not operate to stay a hearing unless specifically ordered by the Board, which did not happen in this case. See Section 102.67(c) of the Board's Rules and Regulations.

³ There are approximately 149 employees in the stipulated unit, however, the parties could not agree on the inclusion or exclusion of hourly plant clericals employees (including quality control, engineering, maintenance, production, and warehouse). According to the record, there are about 7 plant clericals. Because the Employer raises eligibility issues affecting at most approximately 5 percent of the unit, I conclude the Employer's contentions do not significantly change the size or character of the unit and thus are not relevant to a question concerning representation. Consequently, the parties were not permitted to present evidence at the hearing, as I concluded that it was unnecessary to resolve the eligibility issues before the election is conducted. Consistent with Section 102.64 of the Board's Rules and Regulations, I direct that the individuals in those classifications may vote in the election and that their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

⁴ See, for example, *2 Sisters Food Group, Inc.*, 357 NLRB 1816 (2011); *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954).

II. BACKGROUND AND POSITIONS OF THE PARTIES

The Employer is a Wisconsin corporation engaged in diverse industrial and technological endeavors. At its facility in San Antonio, Texas, the workplace at issue in the instant petition, the Employer designs and produces heating, ventilation and air conditioning (HVAC) systems, industrial refrigeration, building management systems, fire and security systems, and mechanical equipment for commercial and residential buildings.

Although the Petitioner initially advocated for a mail-ballot election, it subsequently asserted a manual election is the most appropriate method of election and, citing the Board's press releases, notes that such an election can be held at the discretion of Regional Directors. However, Petitioner argues that if the Regional Director does not deem a manual election safe in this case, it should not cause further delay and, per the Board's Rules and Regulations, this case involves extraordinary circumstances warranting a mail-ballot election.

The Employer does not reject the contention that the present pandemic requires special considerations, but it maintains that the risk can be mitigated, and that it is capable of taking steps which would ensure a safe manual election. In this regard, the Employer indicates it is able to provide a well-ventilated area, including an outdoor opening, that will allow room for social distancing; a plexiglass partition between the voters, the election observers, and the Board agents conducting the election; ample disposable pens or pencils for single-use voting; masks for the election observers, Union representatives, and Board agents; and gloves for the election observers and Board agents. The Employer stresses that there have been no confirmed, reported, or even suspected cases of COVID-19 at its San Antonio facility.

The Employer asserts only a manual election would be appropriate, arguing the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998) provides that representation elections should be held manually, and that mail balloting is only permissible where it enhances the opportunity for all to vote. The Employer contends there are no such circumstances here and that conducting a manual election while observing social distancing and other safety protocols at the Employer's facility is manageable. Further, it argues that under *San Diego Gas*, the rare exception to the manual election presumption has been where employees are widely scattered and cannot easily visit the workplace to vote, which is not the case here.

III. CONDUCTING A MANUAL BALLOT ELECTION WOULD RISK INFECTING EMPLOYEES, THE BOARD AGENTS CONDUCTING THE ELECTION, AS WELL AS JEOPARDIZING THE HEALTH OF THE PUBLIC AT LARGE

At the time of this decision, despite unprecedented efforts to limit transmission, over 72,000 deaths from COVID-19 have been reported in the United States, with over 1.2 million confirmed cases.⁵ The voting group of employees, other personnel at the Employer's facility, National Labor Relations Board Region 16 personnel, and the general population of south-central

⁵ Johns Hopkins University & Medicine *Coronavirus Resource Center* <https://coronavirus.jhu.edu/map.html>, (last accessed May 6, 2020).

Texas are subject to the risks of COVID-19 transmission. This risk has been recognized by officials in several declarations, recommendations, and orders at the national, state, and local level. President Donald J. Trump, issued a “Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” on March 13.⁶ That same day, Governor Greg Abbott, similarly issued a proclamation certifying that COVID-19 poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas.⁷ On April 12 Governor Abbott issued Executive Order 18 extending his disaster declaration for all Texas counties in response to COVID-19.⁸

Texas has been significantly affected by the novel coronavirus, with new confirmed cases and deaths every day. On April 23, Texas had reported almost 22,000 cases of COVID-19, with 1,649 patients in the hospital because of the virus. By May 6, less than two weeks later, reported cases have increased more than 50% to over 34,000; there are now 1,812 patients in hospitals because of the virus; and statewide fatalities have increased from 561 to 948 people.⁹ In Bexar County, where the Employer’s facility is located, 1,677 cases have been confirmed and 52 people have died from COVID-19.¹⁰

Government agencies and authorities, recognizing the danger of this pandemic, have taken appropriate measures to limit exposure. Bexar County Judge Nelson Wolff has ordered all citizens to stay at home except for travel related to essential activities, and to observe social distancing and face covering requirements, and has prohibited all indoor and outdoor public or social gatherings of any number of people outside of a single household (unless specifically exempted by the order) until May 19.¹¹ On April 29, City of San Antonio Mayor Ron Nirenberg indefinitely extended his declaration of a local state of disaster and health emergency.¹² Federal courts in the Western District of Texas have postponed all trials scheduled through May 31.¹³

Although Region 16 has available personnel who would appear to be infection free, the virus is believed to spread through presymptomatic and asymptomatic individuals. At some point in the future, testing may be more widespread. Currently, sending a Board agent to conduct the election would risk the exposure of everyone at the facility. Eligible voters along with other employees who may come into contact with these participants, Board agents, and party representatives, would risk being exposed to the virus and spreading it to the community and their

⁶ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last accessed May 5, 2020).

⁷ “Governor Abbott Declares State of Disaster In Texas Due To COVID-19,” <https://tdem.texas.gov/covid-19/#1584552291367-2b8805f2-7b68> (last accessed May 5, 2020). As of April 29, 2020, Governor Abbott has issued 20 executive orders related to COVID-19.

⁸ “Governor Abbott Extends Disaster Declaration For COVID-19,” <https://gov.texas.gov/news/post/governor-abbott-extends-disaster-declaration-for-covid-19> (last accessed May 5, 2020).

⁹ Texas Department of State Health Services, “[Texas Case Counts: COVID-19 Case Dashboard](#),” (last accessed May 6, 2020).

¹⁰ Ibid.

¹¹ <https://www.bexar.org/DocumentCenter/View/26838> (last accessed May 5, 2020).

¹² Mayor’s Emergency Declaration No. 6. <https://www.sanantonio.gov/Portals/0/Files/health/COVID19/Public%20Info/4.29%20Mayor's%20Emergency%20Declaration%20No.%206.pdf?ver=2020-04-29-173056-153> (last accessed May 5, 2020).

¹³ See <https://www.txwd.uscourts.gov/coronavirus-covid-19-guidance/>.

families. Therefore, the number of people placed at risk for exposure is much greater than just the number of employees eligible to vote.

The Board's manual election procedures require close proximity for the duration of the election between Board agents, election observers, and voters. Even if single-use disposable pens or pencils are used, Board agents hand fresh ballots to eligible voters and voting takes place in an enclosed booth before the marked ballot is placed in a sealed box; each ballot is individually handled by the Board agent conducting the election and available for inspection by the party representatives. Before voting, voters are required to give their names to party observers, who then check the name off the same voter list. These procedures carry the risk of exposure for employees at the facility, party representatives, Board personnel, their families, and the community.

IV. THE ONLY ACCEPTABLE WAY TO MITIGATE THESE RISKS IS A MAIL-BALLOT ELECTION

In its position statement, the Employer contends the following measures can ensure a safe and effective manual election: using social distancing measures by making sure voters are not less than six feet apart at any given time and maintaining a sanitary and disinfected place for all on the premises. While the Employer offered to provide floor markings at more than the appropriate distance, there are no means for enforcing social distancing. I have also considered the feasibility and efficacy of its other proffered measures. Regarding the election itself, I have considered using masks and gloves, frequently sanitizing election equipment, and the use of plastic barriers. I have also considered the required testing of participants (regardless of symptoms) and whether a Board agent conducting the election could observe appropriate restrictions while traveling to the election site.

Additionally, as discussed, I have considered using a mail-ballot election and measures associated with a mail-ballot election. I have considered requiring Region 16 personnel to sanitize outgoing mail, limiting the number of people who may participate in the count; and requiring social distancing for count attendees.

Regarding the Employer's proposed social distancing in the voting area, I agree social distancing could reduce the risk of spread; however, I note the experts disagree about the distance required for safety and that guidelines are subject to change. Current Center for Disease Control guidance defines "good social distance" as "about 6 feet."¹⁴ Some scientists disagree that 6 feet is enough.¹⁵ Given the uncertainty of determining an "appropriate" distance, we cannot be sure current guidelines sufficiently mitigate risk. Additionally, it is possible guidelines could change between the time of an election order and the date of the election.

¹⁴ See the Center for Disease Control website entry: Coronavirus Disease 2019 (COVID-19), Prevent Getting Sick, How COVID-19 Spreads. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last accessed May 5, 2020).

¹⁵ See, for example, Lydia Bourouiba, "[Turbulent Gas Clouds and Respiratory Pathogen Emissions Potential Implications for Reducing Transmission of COVID-19](#)," *Journal of American Medicine*, March 26, 2020 ("Given the turbulent puff cloud dynamic model, recommendations for separations of 3 to 6 feet (1-2 m) may underestimate the distance, timescale, and persistence over which the cloud and its pathogenic payload travel, thus generating an underappreciated potential exposure range for a health care worker").

Regarding the use of masks and gloves, the Regional Office currently has none available. These supplies are most needed by healthcare institutions at this time. Although the Employer has offered to make such personal protective equipment available, the safest method would involve Board agents bringing their own equipment. I also note the role of the observer would be made more difficult if voters were wearing masks covering their faces and obscuring their identity. Removal of the masks by the voter during voting would result in potential cross-contamination, thereby rendering the process even more risky.

Regarding sanitation and disinfecting of the voting place, these measures would do little to substantially reduce the potential for spread, given the number of individuals coming in and out of the voting area, the need for the passing of papers and proximity of individuals for the purpose of providing ballots and checking off names.

Based on the foregoing, I conclude the use of a mail-ballot election would provide the framework for more certain election procedures.

V. DISCUSSION

Although the Employer is considered an essential business during this time, the health of its employees and their families must be protected. The Employer highlights that no confirmed, reported, or suspected cases of COVID-19 have occurred at the facility, however, even as new outbreaks occur around the state,¹⁶ testing in Texas has lagged significantly behind the rest of the nation.¹⁷ In Bexar County, fewer than 20,000 people out of more than 2 million have been tested.¹⁸ Given that many—if not the majority—of people infected with (and capable of spreading) the novel coronavirus display no symptoms,¹⁹ this low rate of testing and likely greater than reported rate of infection²⁰ is particularly worrisome. Moreover, given the necessary attendance of offsite participants such as Board agents and parties' representative at a manual election, not to mention offsite contacts by employees with unknown parties in the days and hours preceding the election, a manual election has a high potential for contributing to the spread of infection. Given the conditions in Texas at this time, and the available risk mitigation measures, I conclude that conducting an election placing employees in close proximity to Board agents and party observers, who may be traveling from areas with higher rates of infection than Bexar County—and who may unknowingly be carrying the virus—is not acceptable.

¹⁶ Christopher Collins and Sophie Novack, "[COVID-19 Cases Now Tied to Meat Plants in Rural Texas Counties Wracked with Coronavirus](#)," *Tex. Observer*, April 22, 2020.

¹⁷ Asher Price, "[As Abbott looks to reopen Texas, coronavirus testing lags most other states](#)," *Statesman*, April 20, 2020

¹⁸ City of San Antonio Metropolitan Health District, [Novel Coronavirus \(COVID-19\) Public Info](#), accessed April 27, 2020 (19,245 tests administered in Bexar County to date).

¹⁹ Monica Gandhi, Deborah S. Yokoe, and Diane V. Havlir, "[Editorial: Asymptomatic Transmission, the Achilles' Heel of Current Strategies to Control Covid-19](#)," *New Eng. J. Med.*, April 24, 2020 ("Asymptomatic transmission of SARS-CoV-2 is the Achilles' heel of Covid-19 pandemic control through the public health strategies we have currently deployed.")

²⁰ Kathleen M. Jagodnik et al., "[Correcting under-reported COVID-19 case numbers: estimating the true scale of the pandemic](#)," MedRxiv preprint, posted April 5, 2020 ("This study suggests that the current reporting of COVID-19 cases significantly underestimates the true scale of the pandemic. The lack of testing complicates the estimation of the true CFR and causes significant misinformation.")

The Employer contends that delay has never been a reason cited by the Board for ordering a mail-ballot election and argues the Board has delayed manual elections rather than use mail balloting. However, the Employer points to scant authority to support this contention.

In its Response to Order to Show Cause, the Employer primarily cites to *A&B HVAC Services, Inc.*, JD(NY)-44-13 (2013) (2013 WL 5305832), and *Kanuai Coconut Beach Resort*, 317 NLRB 996 (1995) both of which are inapposite. Neither of these cases supports the Employer's contention, "previous circumstances akin to the current environment did not result in an 'entitlement' to a mail ballot but, rather, a necessary delay to proceed with the Board's preferred manual ballot format."

In *A&B HVAC* an administrative law judge issued a decision regarding whether certain unfair labor practice allegations had been committed, and if so, whether they affected the election results in an election that had already taken place. In a passing footnote, the administrative law judge noted the election, "was originally scheduled for November 1, but had been postponed due to the effects of Hurricane Sandy," until November 15, 2012. This cited case has no bearing on the case at hand. To begin with, an administrative law judge's decision is not binding precedent unless the Board has adopted it over a party's exception.²¹ Even assuming that the Board had adopted the decision and its passing footnote, it still would have no bearing on this case as the footnote was merely providing factual background. While the footnote is not useful as a point of law, neither is it even useful as an historical anecdote. Importantly, there is no evidence that, in light of the "Superstorm," a mail-ballot election was an available, possible alternative. Given the devastation wrought by the superstorm, employees might have been scattered and residing in temporary or new houses, and regular Postal Service may have been interrupted. If anything, *A&B HVAC* stands for the proposition that on the eve of a massive hurricane, a Board office closed, canceled an election, and then rescheduled it for a new date two weeks later. That proposition does nothing to bolster Employer's contentions.

The other case the Employer relies on, *Kanuai Coconut*, 317 NLRB 996 (1995), is even less relevant. There were no election scheduling issues in that case. Rather, the only the issue present in that matter was whether the Employer's scheduling of a pay increase affected the election.

Although neither of the cases cited by the Employer address "circumstances akin to the current environment," there is Board precedent for using mail ballots in times of emergency to expedite resolving questions concerning representation. During World War II, the Board changed its default method of election for employees at sea from manual elections on docked ships to mail balloting at sea. It did so "in the interest of expediency." *Isbrandsten Steamship Co., Inc.*, 51 NLRB 883, 885 (1944). See also, *Ore Steamship Corp.*, 59 NLRB 1216, 1218 (1944) (specifically

²¹ See, e.g., *Colorado Symphony Assoc.*, 366 NLRB No. 122, slip op. at 1 fn. 3 (2018) and Sec. 13–200 of the NLRB's Bench Book ("In reviewing prior decisions to determine whether any of the ALJ's findings or analyses have precedential value, it is important to check... 1) which party or parties filed exceptions to the ALJ's decision (this is usually stated in the first paragraph of the Board's decision); 2) whether no exceptions were filed to any of the judge's findings or analyses (this is usually stated in a footnote in the Board's decision); 3) whether the Board did not pass on any of the judge's findings or analyses for some reason (this is also usually stated in a footnote); and 4) whether the Board affirmed any of the findings on different grounds than the ALJ.")

authorizing regional director discretion to use mail balloting for employees at sea). More recently, the Board has ordered mail-ballot elections because of circumstances that would temporarily prevent or delay a manual election for an indefinite time. *San Diego Gas* mentions such a condition—a strike—as one in which a mail-ballot election would be appropriate. Presumably, a manual election could have been held at some unknown time after the strike ended, however, the Board recognized this was at least one situation where an election delay would be grounds for mail balloting, rather than a manual election.

The Board has also upheld the use of mail-ballot elections during the off-season for seasonal employees.²² Even though it would have been possible to delay an election and hold it manually later in the year, when seasonal employees were present at work, the Board found a mail-ballot election proper in these circumstances.

Here, a manual election cannot be held without endangering the health and safety of employees, party observers, Board agents, and the broader community. Since the Board has allowed mail-ballot elections to take place in situations where a manual election would be delayed because of strikes or the absence of seasonal workers, and the current pandemic presents extraordinary circumstances preventing a manual election under the facts presented in this case, a mail-ballot election is appropriate.

A Regional Director has broad authority over conducting representation elections;²³ however, the Board has provided guidelines for reasonably exercising this discretion when ordering a mail-ballot election. The Board’s policy for when a Regional Director should order a mail-ballot election was described in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998):²⁴

When deciding whether to conduct a mail-ballot election or a mixed manual-mail-ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are “scattered” because of their job duties over a wide geographic area; (2) where eligible voters are “scattered” in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources,

²² See, for example, *Pennsylvania Interscholastic Athletic Assn.*, 365 NLRB No. 107 (2017); *Sitka Sound Seafoods*, 325 NLRB 685 (1998).

²³ The Board has long held that a Regional Director has broad discretion to decide issues of election conduct, so long as this discretion is not abused or exercised arbitrarily, capriciously, or unreasonably. This includes determining whether to conduct an election by mail, even if the Direction of Election did not provide for mail balloting. See, for example, *California Pacific Medical Center*, 357 NLRB 197, 198 (2011); *North American Plastics Corp.*, 326 NLRB 198 (1998); *E.I. Dupont du Nemours*, 79 NLRB 345, 346 (1948); *Postex Cotton Mills, Inc.*, 73 NLRB 673, 677 (1947); *Fedders Mfg. Co.*, 7 NLRB 817, 822 (1938).

²⁴ See also NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11301.2 (Jan. 2017); Outline of Law & Procedure in Representation Cases Sec. 22-110.

because efficient and economic use of Board agents is reasonably a concern. We also recognize that there may be other relevant factors that the Regional Director may consider in making this decision, but we emphasize that, in the absence of extraordinary circumstances, we will normally expect the Regional Director to exercise his or her discretion within the guidelines set forth above.

Although there is a preference for conducting manual elections in ordinary circumstances, *San Diego Gas* allows a Regional Director to exercise discretion and order a mail-ballot election in extraordinary circumstances.²⁵ *San Diego Gas* did not claim to provide an exhaustive list of circumstances where mail-ballot elections would be allowed, but rather *at least* three cases where mail-ballot elections should normally be used.

The Board rejected limitations implied by outdated language in the Casehandling Manual suggesting mail-ballot elections were proper only if manual elections were “infeasible,” as well as suggestions that a mail-ballot election should never be held where it would be possible to conduct an election manually. *Id.* at 1145, fn 6, 10.

The Board, in *San Diego Gas*, clarified the use of mail-ballot elections is not limited to three enumerated circumstances, but that “other relevant factors,” especially in “extraordinary circumstances” may be considered by a Regional Director. The present circumstances, a worldwide pandemic in which more than 185,000 deaths have occurred, are extraordinary, and present many relevant factors suggesting that a mail-ballot election would be appropriate.

VI. CONCLUSION

This election must be held “on the earliest date practicable consistent with the Board’s rules.”²⁶ A manual election cannot be held safely at this time. There is no indication when a manual election could be safely held. Waiting until it would be safe to conduct a manual election would further delay this already-delayed election. However, a mail-ballot election would allow this election to be held safely and without further delay.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

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.²⁷

²⁵ In their joint motion to proceed with manual election, the parties state their desire is “central” to the election method issue; however, *San Diego Gas* clearly makes it one of several considerations. Importantly, the Board recognized a Regional Director may use other unspecified factors when extraordinary circumstances are present.

²⁶ NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11302.1.

²⁷ The Employer, Johnson Controls, Inc., a Wisconsin corporation with a facility located at 5692 FM 1346, San Antonio, Texas, the only facility involved in this matter, is engaged in the business of manufacturing HVAC chillers.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. 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:

INCLUDED: All hourly, direct & indirect, production, manufacturing, and maintenance employees (including leadmen, test stand, shipping, warehouse, painters, forklift operators, assemblers, welders, electricians, machinists, quality inspectors, insulators, tubefitters, and shipping clerks) employed by the Employer at its facility currently located at 5692 FM 1346, San Antonio, Texas.

EXCLUDED: All other employees, office clericals, temporary agency employees, guards, and supervisors as defined in the Act.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether plant clerical employees are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by SMART – Southwest Gulf Coast Regional Council.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit on May 18. Voters must return their mail ballots so that they will be received by close of business on June 8. The mail ballots will be counted on June 16 at 2:00 p.m. at a location to be determined, either in person or otherwise, after consultation with the parties, provided the count can be safely conducted on that date.

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 16 office by no later than 4:45 p.m. on May 26, in order to arrange for another mail ballot kit to be sent to that employee.

During the past 12 months, a representative period, the Employer, in conducting its business operations, purchased and received at its San Antonio, Texas facility goods valued in excess of \$50,000 directly from points located outside of the State of Texas.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 25**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals who will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 11**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, included in this Decision and Direction of Election, 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

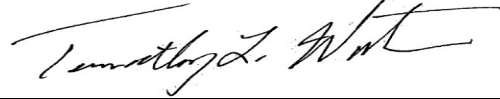
Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.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. 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.

JOHNSON CONTROLS, INC.
Case 16-RC-256972

DATED at Fort Worth, Texas, this 7th day of May 2020.



Timothy L. Watson, Regional Director
National Labor Relations Board, Region 16
Fritz G. Lanham Federal Building
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6107