

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

CHANTICLEER HOLDINGS, INC.

Employer/Petitioner

and

Case 19-RM-242193

**LITTLE BIG UNION/INDUSTRIAL WORKERS
OF THE WORLD**

Union

DECISION AND DIRECTION OF ELECTION

The Employer/Petitioner, Chanticleer Holdings, Inc. (“Employer”) operates multiple “Little Big Burger” restaurants in the Portland, Oregon, metropolitan area. The Union, Little Big Union/Industrial Workers of the World (“Union”), made a request for recognition as the exclusive collective bargaining representative of a unit of employees employed at 13 of these locations on March 16, 2019. On May 24, 2019, the Employer filed the instant petition asserting it has a good-faith uncertainty as to the Union’s majority status, and on June 7, 2019, a hearing was held on the petition.

The parties have reached a stipulation on all substantive matters, including the appropriateness of the bargaining unit, consisting of employees employed at 12 of these locations. The only contested matter, and the only issue the parties addressed on the record at hearing, concerns the logistics of holding the petitioned-for election, which is a non-litigable issue. As explained in greater detail in the following sections, I will direct a mail-ballot election.

THE EMPLOYER’S OPERATION

The Little Big Burger locations involved in the instant case are located within an 11-mile radius in Portland, Oregon, and its suburbs. Approximately 113 non-supervisory employees are employed at these 12 locations, and at least a portion are part-time employees. A site supervisor that is excluded from the bargaining unit is also employed at each location. The locations in question are open from 11:00 a.m. to 10:00 p.m. daily.

Each individual location is small. All have a kitchen and some customer seating, but storage areas and break rooms are limited or do not exist at some locations. The Employer represented at hearing that at seven of the locations a voting area could be fashioned in the back area of the restaurant, but at five of the locations the space for a polling area simply does not exist. Dedicated parking exists at some, but not all, of the locations.

The Employer seeks a manual election and has proposed several solutions to address the logistical difficulties presented by its operations. These include conducting an election at a subset of locations that have available space, closing certain locations for a brief period so polling may take place in areas normally used by customers, or having a mobile polling place in a vehicle travel between locations. The Union maintains that under the circumstances a mail-ballot election is appropriate.

CONCLUSION

Election arrangements, including the voting method, are not matters within the scope of a pre-election hearing. Pursuant to its longstanding practice, the Board has left such determinations to the discretion of the Regional Director. *Austal USA, LLC*, 357 NLRB 329, 330 (2011); *Halliburton Services*, 265 NLRB 1154, 1154 (1982); see also NLRB Casehandling Manual (Part Two), Representation Proceedings Sections 11228, 11301.4. I recognize that it is also the Board's longstanding policy that representation elections should, generally, be conducted manually, but there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical and the use of a mail ballot enhances the opportunity for all employees to vote. *Id.* at 11301.2. This includes situations where eligible voters are "scattered" because of their job duties over a wide geographic area, or 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. *Id.*

I have determined that a mail-ballot election will be held because the employees in the proposed bargaining unit work at 12 separate locations and are thus scattered. In such situations, the Board has recognized that mail balloting is appropriate. *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). I also note that at least a portion of the eligible employees are employed on a part-time basis and may work with some irregularity, thus scattering due to work schedule variation is also a factor in my determination.

Here, it is not in dispute that a manual election cannot be held at all 12 sites involved. Manual elections are preferable, in part, because when held in an employee's workplace they facilitate the opportunity for all employees to vote. However, conducting a manual election at only a subset of locations has the opposite effect for many employees, placing a significant burden on those not employed at those locations, requiring them to travel to an entirely separate location. I find this is especially true here because of the potential of part-time employees working an irregular schedule. While the Employer has suggested running the election over multiple days I find the potential of requiring an employee to report to a location where they do not work, on a day they do not work, inconsistent with enhancing an employee's ability to vote.

A manual election also typically involves a minimal disruption in an employer's business, not the case if the business is closed for voting, even if only for a brief period of time. Finally, a mobile polling place may be a workable option under some circumstances, but here, where at least some of the restaurants are located in a major metropolitan area without designated parking, there is no predictability regarding where the polling place would be in advance. As such, in reviewing the options, I have determined it is not feasible to conduct voting sessions at all the worksites without a significant risk of disenfranchisement. Under these circumstances, I find it is appropriate to conduct a mail-ballot election.

Based upon the entire record in this matter, 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.¹
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time associates and key shift employees employed by the Employer at the following locations: 7705 S.W. Capitol Highway; 787 N.E. Holladay Street; 122 N.W. 10th Avenue; 930 23rd Avenue; 3747 N. Mississippi Avenue; 2038 N.E. Alberta Street; 2028 S.E. Hawthorne Boulevard; 3810 S.E. Division Street; and 3704 S.W. Bond Avenue in Portland, Oregon; 940 N.E. Orenco Station Loop, #41, Hillsboro, Oregon; 12345 S.W. Horizon Boulevard, Beaverton, Oregon; and 3 Monroe Parkway, Suite T, Lake Oswego, Oregon.

Excluded: All other employees, managers, office clerical workers, guards and supervisors as defined in the Act.

¹ The Employer, a State of Delaware corporation, which operates 13 restaurants located throughout the State of Oregon, is engaged in the operation of a fast food restaurant chain. Within the previous twelve months, a representative period, the Employer derived gross revenues in excess of \$500,000 and purchased goods and supplies valued in excess of \$50,000 directly from firms located outside the State of Oregon.

A. Election Details

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 4:30 pm on **Monday, July 1, 2019**, from the National Labor Relations Board, Subregion 36, Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Suite 605, Portland, Oregon. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Monday, July 8, 2019**, should communicate immediately with the National Labor Relations Board by either calling the Subregion 36 Office at 503-326-3085 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted by the Subregion 36 Office at the Green-Wyatt Federal Building, 1220 SW 3rd Avenue, Portland, Oregon, on **Tuesday, July 23, 2019, at 3:00 pm**. In order to be valid and counted, the returned ballots must be received in the Subregion 36 Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **May 19, 2019**, 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.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Tuesday, June 18, 2019**. 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 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 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.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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: June 14, 2019.



Ronald K. Hooks, Regional Director,
National Labor Relations Board, Region 19
915 2nd Ave., Suite 2948
Seattle, WA 98174-1006