

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**MAJOR LEAGUE RUGBY, LLC**

**Employer**

**and**

**Case 13-RC-319773**

**UNITED STATES RUGBY PLAYERS  
ASSOCIATION**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Major League Rugby, LLC (“Employer”), along with its constituent member teams, is a professional rugby league with headquarters located in Dallas, Texas, and teams located throughout North America. United States Rugby Players Association (“Petitioner”) filed the instant petition with Region 13 of the National Labor Relations Board (“Board”) under Section 9(c) of the National Labor Relations Act (“Act”), seeking to represent all rugby players employed by the Employer.<sup>1</sup>

This case is before me pursuant to a stipulated record entered into between the parties on June 30, 2023.<sup>2</sup> The parties waived their right to a preelection hearing and stipulated the only issues are the timing and method of election, which are nonlitigable matters. Sec. 102.66(g)(1) of the Board’s Rules and Regulations.<sup>3</sup> The parties were allowed to present their positions “on the type, date(s), time(s), and location(s) of the election and the eligibility period.” Ibid. The parties were instructed to address the situations and factors discussed in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998). Both parties submitted timely written statements regarding their respective positions.

I have carefully considered the record, including the parties’ positions, written statements, and arguments, and, for the reasons discussed below, I find that a mail-ballot election commencing after the start of the Employer’s 2024 preseason is appropriate in this case given the geographic and temporal scatter of employees and lack of usable offseason mailing addresses.

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<sup>1</sup> The parties stipulated to the following appropriate unit of employees:

Included: All rugby players employed by Major League Rugby, LLC, on its rugby teams.

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

<sup>2</sup> All dates are in 2023 unless otherwise noted.

<sup>3</sup> See also *Planned Building Services, Inc.*, 02-RD-274535 at fn. 3 (Aug. 27, 2021) (unpublished); Representation-Case Procedures, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)).

## **I. The Employer's Operations**

The Employer operates a professional rugby league in North America. At the time of the stipulated record, the Employer had 12 constituent member teams:<sup>4</sup>

1. Chicago Hounds (Bridgeview, Illinois, near Chicago)
2. Dallas Jackals (Arlington, Texas, near Fort Worth)
3. Houston SaberCats (Houston, Texas)
4. New England Free Jacks (Quincy, Massachusetts, near Boston)
5. NOLA Gold (Metairie, Louisiana, near New Orleans)
6. Old Glory DC (Leesburg, Virginia, near Washington, DC)
7. Rugby ATL (Atlanta, Georgia)<sup>5</sup>
8. Rugby New York (Mount Vernon, New York, near New York City)
9. San Diego Legion (San Diego, California)
10. Seattle Seawolves (Seattle, Washington)
11. Utah Warriors (Herriman, Utah, near Salt Lake City)
12. Toronto Arrows (Toronto, Ontario, Canada)

A thirteenth constituent member team, the Miami Sharks (Fort Lauderdale, Florida, near Miami), is an expansion team who will start competing during the Employer's 2024 season.<sup>6</sup>

At the time of the stipulated record, the Employer employed approximately 485 rugby players, some who are salaried employees under contract and some who are hourly employees.<sup>7</sup> Regardless of whether they are salaried or hourly, players may perform work for the Employer from the first date of the preseason through the last date of the postseason and receive pay during the same time period. The Employer does not pay them during the offseason. The last payroll period for the 2023 season ended on July 9.

During the offseason, players can and often do hold other employment, including playing internationally for other teams or organizations. For example, the Employer's statement of position estimated more than 200 players would leave the United States during the offseason and

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<sup>4</sup> Locations taken from the websites of each constituent member team.

<sup>5</sup> Following the stipulated record, on August 17, the Employer "announced that subject to certain closing conditions, Rugby ATL plans to relocate to Los Angeles for the 2024 season upon closing of the acquisition by the new ownership group." "Major League Rugby's Atlanta Team to Relocated to Los Angeles" (Aug. 17). Major League Rugby. <https://www.majorleague.rugby/news/major-league-rugbys-atlanta-team-to-relocate-to-los-angeles/> (accessed Oct. 3).

<sup>6</sup> "Major League Rugby's Miami Sharks Launch 2024 Season with Expansion Draft" (July 28). Major League Rugby. <https://www.majorleague.rugby/news/major-league-rugbys-miami-sharks-launch-2024-season-with-expansion-draft/> (accessed Oct. 3) ("Expansion Draft Timeline: The Miami Sharks, this week, selected 25 players in the Draft; Now – August 6: Miami negotiations with drafted players; August 6/Sunday: Terms finalized with selected players OR players are released back to their existing MLR club").

<sup>7</sup> Petitioner labels hourly players as part-time employees and contends they may hold concurrent employment outside of the Employer and rugby. The record contains no details regarding hourly or part-time players, including how many are employed by the Employer or their typical hours or days of work.

Petitioner's written statement indicated up to 69 players would be traveling overseas with just the United States and Canadian national rugby teams during the offseason. Even though player contracts may extend through the offseason or portions thereof, the record contains no evidence that players report to Employer work locations ("team sites") during the offseason.

The Employer's 2024 preseason begins on January 22, 2024, at which time players will generally report to their team site and begin receiving pay.

Each of the Employer's constituent member teams maintains a roster of approximately 40 players of which about 23 to 26 players typically travel to games not held at their team's home location.

Neither party contends nor is there any evidence that there is a strike, a lockout, or picketing in progress. No party has suggested that the petitioned-for employees would be unable to understand the mail-balloting procedure or the postal service in the relevant areas is unable to deliver mail.<sup>8</sup>

The parties stipulated ballots and Notices of Election should be in English and Spanish.

## **II. Position of the Employer**

The Employer proposes a 13-site manual election at each of its constituent member team sites to be conducted by 13 different offices of the Board sometime after January 22, 2024, when its 2024 preseason begins.

The Employer contends it does not monitor player activities during the offseason and does not maintain offseason mailing addresses for players. It posits that, during the offseason, approximately 268 players planned to leave the state where the Employer employed them during its 2023 season, including over 200 players who planned to leave the United States for various countries abroad," such as Argentina, Australia, Canada, Chile, England, Fiji, France, Ireland, Malaysia, Namibia, New Zealand, Nigeria, Paraguay, Samoa, Scotland, South Africa, and Tonga. According to its written statement, the Employer "will have reliable mailing addresses for players once the 2024 preseason begins (when all players are back in the United States and/or reporting to their work locations) and when [2023] W-2s are sent."

The Employer asserts none of the *San Diego Gas* factors are present. Specifically, the Employer argues its players are not scattered geographically or temporally "when viewed from the proper perspective." It acknowledges that some players may not be regularly reporting to

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<sup>8</sup> In its statement of position, the Employer suggests the Region's postage meter is not capable of international postage for return envelopes. This is not correct. The Region has the ability to send international postage-paid return envelopes.

their team site during the preseason<sup>9</sup> and offers to “direct all players to be present on the date specified by the Board for the election.”

### III. Position of Petitioner

Petitioner filed the instant petition on June 9, seeking a mixed manual-mail ballot election with in-person voting on July 7 for players on teams advancing to the Employer’s championship finals at the postseason playoff location (Bridgeview, Illinois near Chicago) and mail balloting from June 30 to July 21 for players on teams not advancing to the finals.

In its responsive statement of position and written statement, Petitioner proposes a prompt mail-ballot election during the offseason with an 8-week polling period “in order to accommodate the sending of ballots to remote locations.” It claims the Employer maintains documents with players’ international mailing addresses, specifically I-129 and W-2 forms, and contends the Employer has the ability to obtain updated addresses and confirm the accuracy of existing addresses.

Petitioner argues that the “workforce of players is a stable quantity not subject to fluctuations and is presently a full contingent of known individuals,” and that part-time players “often hold other outside employment, are not assigned to take part in each team training session, and can live significant distances from team training and game facilities even during the ... season.”

### IV. Board Law and Its Application to the Instant Case

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board, in turn, has delegated the discretion to determine the arrangements for an election to Regional Directors. *Ceva Logistics US*, 357 NLRB 628, 628 (2011) (cases cited therein); *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998) (citing *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *Halliburton Services*, 265 NLRB 1154, 1154; *National Van Lines*, 120 NLRB 1343, 1346 (1958)). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas* at 1144–1145. “[W]hatever determination a Regional Director makes should not be overturned unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries, Inc.*, 326 NLRB 470, 471 (1998) (citing *San Diego Gas* at 1144 fn. 1; *National Van Lines* at 1346).

The Board’s longstanding preference is that elections should, as a general rule, be conducted manually. *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 1 (2020). However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or other “extraordinary

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<sup>9</sup> Employer written statement at 4 fn. 6 (“During the 2024 Preseason, all (or nearly all) MLR players will otherwise already be reporting to work at their respective team sites,” emphasis added).

circumstances.” *San Diego Gas*, above at 1145. In exercising discretion in such situations, a Regional Director should also consider factors including the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and what constitutes the efficient use of Board resources. *Ibid*.

It is undisputed the petitioned-for players are currently scattered geographically throughout the world and the Employer does not regularly maintain offseason addresses for its players, including the documents Petitioner points to in its responsive statement of position. The Petition for a Nonimmigrant Worker (USCIS Form I-129) is filed before an employee begins working in the United States (i.e., before the Employer’s preseason) and does not require the non-U.S. mailing address of the worker.<sup>10</sup> Even assuming a non-U.S. address was included, this would be at best the employee’s address immediately *before* the preseason and not indicative of their residence for the several months following the postseason. Similarly, because employers are not required to provide Form W-2, Wage and Tax Statement, to employees until January 31 of the year following their employment<sup>11</sup> and the Employer’s 2024 season starts in January 2024, it typically disperses W-2s using international players’ post-arrival U.S. addresses—not their offseason international addresses. There is no record evidence the Employer regularly communicates with players in the offseason.

Petitioner cites to several mail-ballot cases for employees in higher education in support of its proposal for prompt mail balloting; however, these cases are nonprecedential, as they do not involve Board decisions on the method or timing of the election, and are easily distinguishable, involving situations where the parties stipulated to mail balloting and/or the polling periods occurred when the petitioned-for employees were performing work for the employer. See *Santa Clara University*, 32-RC-294533 (approving consent election agreement for summer mail-ballot election); *McDaniel College*, 05-RC-175386 (approving stipulated election agreement for spring semester mail-ballot election); *Antioch University Seattle*, 19-RC-128561 (approving stipulated election agreement for summer mail-ballot election); see also *Loyola University Chicago*, 13-RC-189548 (directing election where parties stipulated to mail balloting during spring semester); *Duke University*, 10-RC-187957 (directing mail-ballot election during spring semester). However, the Board has a longstanding precedent for delaying elections until employees are available to vote via Board processes.<sup>12</sup> See, for example, *Tusculum College*, 199 NLRB 28, 33 (1972) (directing election “be held after the commencement of classes for the fall quarter” when faculty members returned to campus, citing *Fordham University*, 193 NLRB 134

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<sup>10</sup> See “Form I-129, Petition for a Nonimmigrant Worker” and “Instructions for Form I-129.” United States Customs and Immigration Services. <https://www.uscis.gov/i-129> (accessed Oct. 3).

<sup>11</sup> “Deadline Dates to File W-2s.” Social Security Administration. <https://www.ssa.gov/employer/filingDeadlines.htm> (accessed Oct. 3).

<sup>12</sup> Petitioner’s argument the Region “can utilize electronic notices of election to the same e-mail addresses that players have provided to the [Employer] for official communications” is contrary to law. *CenTrio Energy South LLC*, 371 NLRB No. 94, slip op. at 3 (2022) (noting “the Board’s annual budget appropriation from Congress has included a policy statement that the agency may not conduct elections electronically,” citing *Aspirus*, 370 NLRB No. 34, slip op at 11 fn. 12 (then-Member McFerran, concurring); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, tit. IV, § 407 (2021)).

(1971); *Garin Co.*, 148 NLRB 1499, 1502 (1964)). See also *Trustees of Columbia University in the City of New York*, 364 NLRB 1080, 1090 fn. 92 (2016).<sup>13</sup>

Accordingly, mail balloting during the offseason risks depriving a large portion of the unit the right to participate in the election and cannot reasonably be accomplished.

Around January 22, 2024, players will report to 13 separate team sites for the start of the Employer's preseason. The Employer misapprehends the Board's use of geographically "scattered" in *San Diego Gas*, when it posits "the eligible voters here are not 'scattered' by location." In *San Diego Gas*, the Board specifically found employees "scattered over a large geographic area" where it involved eight worksites within 80 miles of one another and the possibility a manual election could be conducted by a single Board agent. 325 NLRB at 1143, 1151–1152. In the instant case, there are at least 13 worksites spread across North America, requiring at least one Board agent apiece.<sup>14</sup>

In addition, the record indicates all players, including hourly or part-time players, may not be regularly reporting to their respective team sites during the preseason. In these circumstances, players are scattered temporally in addition to geographically. The Employer's offer to "direct all [] players to be present on the date" of a manual election is unavailing. Not only does it indicate not all players would typically be present at the polling places during the proposed polling periods,<sup>15</sup> but the Board eschews one party changing employees' normal terms and conditions to accommodate voting. See, for example, *Rivers Casino*, 356 NLRB 1151, 1153 (2011) ("Without the agreement of all parties, neither the employer nor the union is permitted to control any aspect of the election process or convey the impression to eligible employees that it does so"). See also *Ceva Logistics*, 357 NLRB at 629; *North American Plastics Corp.*, 326 NLRB 835, 836 (1998) (Chairman Gould, concurring) ("The unilateral change of any aspect of the work relationship which is within the employer's absolute control cannot be a prerequisite to employee access to the Board's electoral process"). As such, a manual election may require lengthy polling sessions over multiple days to capture all eligible voters.

Due to the geographic and temporal scatter of employees, balloting by mail will better facilitate employee participation in the election and allow all players a convenient opportunity to exercise their right to vote.<sup>16</sup> Since the Employer will have accurate mailing addresses and the ability to obtain updated mailing addresses at the start of the 2024 preseason, a mail-ballot

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<sup>13</sup> See also Regional Director's Decision and Direction of Election in *Pacific Lutheran University*, Case 19-RC-102521 (June 7, 2013) ("very few of the proposed unit members (approximately a dozen of the 176 contingent faculty) work during the summer term. While the Employer produced no specific evidence that a significant number of faculty leave the area during the summer months, without employment at the University during the summer there is nothing requiring their presence. Thus, an election held during the summer months risks denying eligible voters with an adequate opportunity to exercise their right to vote ...").

<sup>14</sup> I also note the Employer did not provide the facility names or addresses of the "team sites" it proposes as polling places and did not specifically indicate whether it owns or controls the team sites.

<sup>15</sup> The Employer failed to "provide the specific date(s) and hours and place(s) available for the manual election, not including the 30-minute preelection conference or postelection ballot count" per the parties' stipulation.

<sup>16</sup> As noted above, no party contends voters are unable to read or understand the balloting procedures.

election after that time is feasible. Also, it would not constitute an efficient use of Board resources to conduct a manual election using at least 13 Board agents in 13 different geographic areas. *GPS Terminal Services, Inc.*, 326 NLRB 839, 839 (1998); *San Diego Gas*, 353 NLRB at 1145.

For the above reasons, I conclude a mail-ballot election is appropriate in this matter and it should commence following the Employer's first payroll period in the 2024 preseason and the date it is required to disperse W-2s. Due to the extraordinary circumstances of this case, among other things, the absence of players performing work for the Employer during the offseason, lack of offseason mailing addresses, and the known start of the 2024 preseason when players begin performing work for the Employer and receiving pay, the eligibility date used will be the first payroll period in 2024 which is February 4, 2024. Accordingly, due to these extraordinary circumstances, the voter list is not due until the day after the end of the first 2024 preseason payroll period. Sec. 102.67(l) of the Board's Rules and Regulations.

## **V. Direction of Election**

The 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 United States Rugby Players Association.

### **A. Election Details**

The election will be conducted by mail, and the ballots will be mailed to voters by personnel of the National Labor Relations Board, Region 13, on **Monday, February 19, 2024**, at 5:00 p.m. Central Time ("CT"). 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 by mail and do not receive a ballot in the mail by **Monday, February 26, 2024**, should communicate immediately with the National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Regional Office on **Thursday, March 28, 2024**, at **9:00 a.m. CT**. In order to be valid and counted, the returned ballots must be received by the Regional Office prior to the counting of the ballots. No party may make a video or audio recording or save any image of the ballot count.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **February 4, 2024**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail-ballot election, employees are eligible to vote if

they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.<sup>17</sup>

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period and, in a mail-ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

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

To be timely filed and served, the list must be received by the Regional Director and the parties by **Monday, February 5, 2024**. 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.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](https://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with the Subregion and served electronically on the other parties named in this decision. The list must be electronically filed with the Subregion by

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<sup>17</sup> Neither party argues an eligibility formula other than the Board's standard formula is necessary. While Petitioner's written statement contains a standalone comment that delaying the election until the 2024 preseason "would create further complications on other issues such as voter eligibility determinations due to the [Employer]'s stated expansion plans," Petitioner does not contend expansion players will not be on the Employer's payroll by the first payroll period in 2024 or otherwise explain how voter eligibility would be affected.



using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

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

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election, per each location's respective local time, 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.

#### **VI. Right to Request Review**

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

**Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), 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. 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](http://www.nlrb.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. 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.

Unless specifically ordered by the Board, neither the filing of a request for review nor the Board's granting a request for review will stay the election or cause the ballots in this matter to be impounded.

Dated: October 10, 2023

/s/ *Angie Cowan Hamada*

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