UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

AMAZON.COM SERVICES LLC,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 29-RC-288020
	)	
AMAZON LABOR UNION,	)	
	)	
Petitioner.	)	

AMAZON.COM SERVICES LLC'S MOTION FOR SEQUESTRATION OF WITNESSES AND FOR A CLOSED HEARING

Pursuant to Sections 102.64 and 102.65 of the National Labor Relations Board's Rules & Regulations, 29 C.F.R. §§102.64(b); 102.65(a), Amazon.com Services LLC ("Amazon" or the "Company") respectfully requests that the Hearing Officer sequester all witnesses throughout the post-election objections hearing in this matter, scheduled to begin on June 13, 2022, at 10:00 a.m. The hearing in this case concerns objections to the conduct of the Amazon Labor Union ("ALU") and Region 29 of the National Labor Relations Board ("Region 29") in a union election of over 8,000 eligible voters. The NLRB's Guide for Hearing Officers contemplates that in cases such as this, which turn on witness credibility, "the hearing officer should normally impose a sequestration order." 40 GUIDE FOR HEARING OFFICERS IN NLRB REPRESENTATION AND SEC. 10(K) PROCEEDINGS, § 6.

Because Region 28 has ordered this hearing to be conducted remotely via Zoom, and that makes it nearly impossible to accomplish the objectives of a sequestration order and protect the integrity of the hearing if it's open to anyone, the Company further requests that the hearing be closed to the general public. There is no practical way in which the Hearing Officer can effectively police who will be viewing the hearing via the publicly available Zoom invitation—including

potential witnesses. Nor can she control or even know whether unauthorized attendees are photographing or recording the proceedings on personal electronic devices and making those available to others—including potential witnesses.

Board proceedings are typically open to the public. But they are ordinarily conducted live. The Board's rules were not written with Zoom and other remote platforms in mind. It is undoubtedly easier to control witness access to a hearing and prevent the unauthorized recording and dissemination of trial proceedings in a live setting than it is in a virtual one. In cases such as this, the Board simply cannot guarantee the normal safeguards of due process without taking more affirmative measures to prevent exposure of these proceedings to sequestered witnesses.

Section 102.64(b) of the National Labor Relations Board's Rules and Regulations contemplates that the Hearing Officer can order the closing of a hearing to the public. Accordingly, Amazon respectfully requests that the Hearing Officer close the hearing to the general public, permitting only the trial team of the Company and a Company representative; the trial team of the ALU and a Union representative; the Hearing Officer from Region 28 of the National Labor Relations Board; and the testifying witness (collectively, the "Hearing Participants"), to attend the entirety of the virtual hearing.

In support of these requests, Amazon states the following:

I. <u>Relevant Background Leading to a Virtual Hearing</u>

1. On December 22, 2021, the Amazon Labor Union ("Petitioner" or "Union") filed its petition in case 29-RC-288020. The Union sought an election in a bargaining unit of all full-time and regular part-time fulfillment center employees working at Amazon's JFK8 Fulfillment Center in Staten Island, NY.

2. The election was held pursuant to a Stipulated Election Agreement and took place on March 25, 26, 28, 29, and 30, 2022. *See* Stipulated Election Agreement, attached as Exhibit A. Ballots were tallied on March 31 and April 1, 2022, at Region 29's Brooklyn field office.

3. Amazon timely filed its Objections to the Results of the Election on April 8, 2022. *See* Objections, attached as Exhibit B.

4. On April 8, 2022, Amazon filed its Motion to Transfer Proceedings, in which it argued that case 29-RC-288020 should be "transferred out of Region 29 for a hearing on Amazon's timely objections to conduct affecting the results of the election . . . ." *See* Motion to Transfer Proceedings, at 1, attached as Exhibit C.

5. On April 14, 2022, General Counsel Jennifer A. Abruzzo granted Amazon's Motion and entered the Order Transferring Case from Region 29 to Region 28. *See* Order Transferring Case from Region 29 to Region 28, attached as Exhibit D.

6. On April 22, 2022, Amazon timely served its offer of proof on Regional Director Overstreet, Barbara Baynes (Assistant Regional Director for Region 28), and Christopher Doyle (Supervisory Field Attorney for Region 28).

7. On April 29, 2022, Regional Director Overstreet entered an Order Directing Hearing and Notice of Hearing on Objections, scheduling a hearing on all twenty-five of Amazon's objections. *See* Order Directing Hearing and Notice of Hearing on Objections, attached as Exhibit E. The Order provided that the hearing was to be conducted virtually via the Zoom platform.

8. On May 23, 2022, Hearing Officer Lisa Dunn e-mailed counsel for Amazon and the ALU regarding Zoom hearing instructions and protocols. *See* Email from Hearing Office Dunn and Email Attachment (Post-Election Zoom Hearing Instructions and Protocols), attached as Exhibit F. The protocol states, among other things, "[t]he hearing is a public hearing, and the public and press may attend . . . . All non-party observers and members of the press must register to attend

the Zoom hearing. A Registration Link will later be provided to the parties. Please refer all non-participant observers to the designated Registration Link. Once completed, the registered user will receive a link to the Zoom hearing." Exhibit F at 3.

9. It also provides that "all other hearing participants may observe the hearing proceedings but generally should have their cameras off and their audio on mute (unless directed otherwise by the Hearing Officer or Bailiff)." *See* Exhibit F at 3.

II. <u>The Legal Authority Supports Sequestered Witnesses and a Closed Hearing</u>

A. The Hearing Officer Should Sequester Witnesses For the Duration of the Hearing

10. "The purpose of sequestration is to prevent one witness from hearing the testimony of another so as to reduce the risk of fabrication, collusion, and inaccuracy." *Gossen Co.*, 254 NLRB 339, 343 (1981); *see also Robin Am. Corp.*, 245 NLRB 822, 825–26 (1979) ("[A] major purpose of sequestering witnesses during a trial is to prevent their hearing each other's testimony and thus being able, consciously or subconsciously, to tailor testimony to a consistent and mutually corroborative support of the position of the party for whom they will testify").

11. Under longstanding Board precedent, the Company has a right to sequester non-discriminatee witnesses in Board proceedings. *See Unga Painting Corp.*, 237 NLRB 1306, 1307 (1978); *Greyhound Lines*, 319 NLRB 554 (1995). In *Unga Painting Corp.*, the Board reviewed its approach to witness sequestration in light of FRE Rule 615 and stated that it shall order witnesses excluded when a party so requests it. 237 NLRB 1306, 1307 (1978). In reviewing its approach, the Board noted that sequestration of witnesses is an effective tool to "minimize fabrication and combinations to perjure" as well as a tool to minimize inaccuracy. *Id.* The Guide for Hearing Officers in NLRB Representation and Section 10(K) Proceedings also provides: "[a]ccordingly, in a postelection hearing with multiple witnesses present where credibility of witnesses is at issue,

the hearing officer should normally impose a sequestration order." 40 GUIDE FOR HEARING OFFICERS IN NLRB REPRESENTATION AND SEC. 10(K) PROCEEDINGS, § 6.

12. In this case, obtaining a full, unbiased and untainted account of events from witnesses is critically important given how many (if not all) of the Hearing Officer's determinations will hinge on her evaluation of each witness' credibility. Witnesses who testify without having been exposed to the testimony of other witnesses are more likely to "declare [their] own unbiased knowledge." *Unga Painting Corp* at 1306. Here, Amazon's Motion to sequester the witnesses should be granted, as it is the Company's right, and sequestration will maximize the Hearing Officer's ability to obtain a complete, unbiased, and untainted record.

B. The Hearing Officer Should Also Close the Hearing to the Public in Order to Ensure Her Sequestration Order is Effectively Enforced

13. To ensure the proper sequestration of witnesses during the videoconference hearing, the Hearing Officer should additionally close the hearing to the public. Board Rule 102.64(b) grants the Hearing Officer the ability to close the hearing to the general public.

14. The combination of the unprecedented national media coverage of this proceeding with the fact that this hearing will be conducted via videoconference makes it virtually impossible to ensure the proper sequestration of witnesses during the hearing unless access is limited. The events leading up to the election, the election itself, and the post-election objections phase of the proceeding have been covered by almost every major media outlet and have garnered national and international attention. *See* Sample media publications in the New York Times, Washington Post, and CNN, attached as Exhibit G.

15. Under these circumstances, admonishing attendees to "have their cameras off and audio on mute" and to allow participants to "Hide Nonvideo Participants" is likely ineffective to enforce a sequestration order *See* Exhibit F at 3. With the expected volume of registered attendees,

there is no conceivable way the Hearing Officer can know whether subpoenaed witnesses are viewing the hearing, or viewing the hearing with a non-party attendee, as camera will be turned off.

16. Moreover, while the Board reserves the right to exclude registered attendees who fail to abide by the Hearing Officer's protocols, it will be too late at that point to remedy violations that have occurred. The publication by media outlets of witness testimony or, worse, recorded segments of testimony, will compromise the parties in their evidentiary presentations and impede the Hearing Officer's ability to ensure a complete record.

III. Conclusion

17. The Board may strike tainted witness testimony if a party is prejudiced by the violation. *Suburban Trails*, 326 NLRB 1250 n. 1 (1998). Allowing the general public to access the hearing invites such prejudice. Under the exceptional circumstances of this particular case, the Hearing Officer should not expose the parties to such a risk.

18. The Company requests that the Hearing sequester all witnesses for all parties throughout the entire post-election objections virtual hearing, and close the post-election objections hearing to the general public, permitting only the trial team of the Company and a Company representative; the trial team of the Amazon Labor Union and a Union representative; the Hearing Officer from Region 28 of the National Labor Relations Board; and the testifying witness, to attend the entirety of the virtual hearing.

19. Undersigned counsel for Amazon has notified counsel for the Petitioner of its intent to file this Motion. As of the time of filing, counsel for Petitioner has not stated its position regarding the instant Motion.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Amber M. Rogers

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was electronically filed with the NLRB and was served by electronic mail this 7th day of June, 2022 to:

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Region 28, National Labor Relations Board
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/s/ Amber M. Rogers
Amber M. Rogers

EXHIBIT A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STIPULATED ELECTION AGREEMENT

Amazon.com Services LLC **Case 29-RC-288020**

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. Amazon.com Services LLC, herein called the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, a Delaware limited liability company with a Fulfillment Center located at 546 Gulf Avenue, Staten Island, New York, herein called the JFK8 Facility, has been engaged in the retail sale of consumer products throughout the United States. During the past 12-month period, the Employer, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received at its JFK8 Facility goods and supplies valued in excess of $5,000 directly from enterprises located outside the State of New York.

3. LABOR ORGANIZATION. Amazon Labor Union, herein called the Petitioner, is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

4. ELECTION. A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

DATE: **Friday, March 25, 2022;**
Saturday, March 26, 2022;
Monday, March 28, 2022;
Tuesday, March 29, 2022; and
Wednesday, March 30, 2022

HOURS: **8:00AM to 1:00PM and 8:00PM to 1:00AM**

PLACE: **In a tent located in the parking area of the Employer's facility at 546 Gulf Avenue**, **Staten Island, NY**

In addition, the election will be conducted consistent with the following safety protocols:

(i) Provide a spacious polling area, sufficient to accommodate six (6) foot distancing, which will be marked on the floor with tape to insure separation for observers, Board Agents and voters;

Initials: _____

(ii) Have separate tables spaced six (6) feet apart so Board Agent, observers, ballot booth and ballot box are at least six (6) feet apart;

(iii) Place markings on the floor to remind/enforce social distancing;

(iv) Provide sufficient disposable pencils without erasers for each voter to mark their ballot;

(v) Provide tape to seal challenge ballot envelopes;

(vi) Provide plexiglass barriers of sufficient size to protect the observers and Board Agent and to separate observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for observers.

(vii) Allow for an inspection of the polling area by video conference or in person, on **March 22, 2022, at 11:00AM**, or at least 24 hours prior to the election, so that the Board Agent and parties can view the polling area. A representative of Amazon Labor Union will be present during the walkthrough;

(viii) Ensure that, in accordance with CDC guidance, all voters, observers, party representatives, and other participants will wear CDC conforming masks in all phases of the election. The Employer will post signs in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives and other participants of this requirement;

(ix) Provide the Region with required certification pre and post-vote regarding positive COVID-19 tests, if any.

(x) Prior to the date of the manual ballot election, the Regional Director may reassess the COVID-19 infection rates in Richmond County, NY. The Regional Director may, in accordance with guidance set forth in *Apsirus Keweenaw*, 370 NLRB No. 45 (2020), determine that the scheduled, manual ballot election cannot be safely conducted and the Regional Director may cancel, postpone, or order a mail ballot election. If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, place of the election, or method of the election.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All hourly full-time and regular-part time fulfillment center associates employed at the Employer's JFK8 building located at 546 Gulf Avenue, Staten Island, New York.

Excluded: Truck drivers, seasonal employees, temporary employees, clerical employees, professional employees, managerial employees, engineering employees, maintenance employees, robotics employees, information technology employees, delivery associates, loss prevention employees, on-site medical employees, guards and supervisors as defined by the Act.

Employees will be called to vote according to a Release Schedule to be approved by the Regional Director. The Employer will post the Release Schedule alongside the Notice of Election. The parties understand that the Board agent conducting the election will not police the release schedule. The Board agent will allow any voter who is in line during the polling period to vote, regardless of whether they are voting according to the release schedule.

Initials: _____

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending February 12, 2022**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. VOTER LIST. Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common, everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, 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. 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. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The ballots will be in English and Spanish and the Regional Director, in her discretion, will decide any other additional language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of the need to have the Notice of Election and/or ballots translated.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Amazon Labor Union?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Notice of Election will be in English and Spanish, and the Regional Director, in her discretion, will decide any additional the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, including, but not limited to, on the Employer's bulletin boards, the Employer's Notification tab of AtoZ (to be re-posted at the beginning of March 22, 23, and 24, 2022) and on no fewer than five (5) of the Employer's electronic video displays, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required may be grounds for setting aside the election whenever proper and timely objections are filed.

Initials: _____

9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Felipe Santos, General Manager; P: 347-215-3436; 546 Gulf Avenue, Staten Island, NY.

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station three (3) authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. SHOWING OF IDENTIFICATION. The parties have agreed that voters will be required to show identification, employer or government issued (i.e. driver's license) or any identification showing a picture and the full name of the individual, upon voting. If a voter fails to present identification, they will vote subject to challenge.

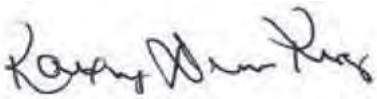
13. TALLY OF BALLOTS. The ballot count will be conducted on **Thursday, March 31, 2022**, at 10:00AM, and on consecutive days until the count is completed, at a Region 29 hearing room located at 2 MetroTech Center, Brooklyn, New York. All ballots cast will be comingled and counted, and a tally of ballots prepared and immediately made available to the parties.

14. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Amazon.com Services LLC	**Amazon Labor Union**
(Employer)	(Petitioner)
By: /s/ Amber M. Rogers 2/16/2022	**By:** /s/ Eric M. Milner 02/16/2022
(Signature) (Date)	(Signature) (Date)
Print Name:	**Print Name:**

Recommended: /s/ Ioulia Fedorova 2/17/2022
IOULIA FEDOROVA, Field Examiner (Date)

Date approved: 2/17/2022



Regional Director, Region 29
National Labor Relations Board

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AMAZON.COM SERVICES LLC,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 29-RC-288020
	)	
AMAZON LABOR UNION,	)	
	)	
Petitioner.	)	

AMAZON.COM SERVICES LLC'S OBJECTIONS
TO THE RESULTS OF THE ELECTION

Of the 8,325 Amazon employees eligible to vote in this election, only 2,654—less than 32% of the eligible JFK8 workforce—voted for the Amazon Labor Union ("ALU" or "Union"). The Union began and ended this campaign with far less than majority support. Region 29 of the National Labor Relations Board ("Region 29") has known this from the beginning but has acted throughout this proceeding in a manner that unfairly and inappropriately facilitated the ALU's victory. Region 29's interference and mismanagement of the election process, coupled with the ALU's own objectionable, coercive, and misleading behavior throughout the campaign, destroyed the laboratory conditions necessary for a free and fair election.

Most glaringly, the Region abandoned the appearance of neutrality when it publicly initiated a 10(j) injunction lawsuit against Amazon in federal court seeking the reinstatement of former employee Gerald Bryson a mere week before the election—but ***more than twenty-three months*** after Bryson's discharge and ***more than fourteen months*** after Region 29 initiated litigation in the underlying case in December 2020. Region 29's filings and public commentary—which questioned the possibility of a fair election absent the immediate reinstatement of an employee terminated years ago for a sexist verbal assault against a female co-worker—painted

Amazon in a misleading and negative light to voters and suggested the Board's preference for the ALU.

The Region's mishandling of this proceeding began months ago when it accepted the ALU's petition without the support required by the NLRB's decades-old rules and standards. After it failed to generate enough support for its original petition, the ALU publicly complained that it was "impossible" to obtain the required 30% showing of interest and called on the Region to help the ALU. The Region acquiesced, arbitrarily removing over 1,500 employees from the list of employees in the petitioned-for unit. It then used that artificially reduced number to calculate whether the ALU's submission met the 30% showing of interest threshold. The Region's willingness to bend its rules lent a false air of legitimacy to the Union and constituted obvious and improper assistance to the ALU.

After fostering this impression throughout the critical period, during the election itself the Region demonstrated the appearance of support for the ALU in front of voters in the polling place while they were voting. The Region required employees wearing "Vote No" shirts to cover up their shirts before entering the polling place, but permitted employees wearing ALU paraphernalia to display it in the polling place. The Region also hindered voter turnout by mismanaging the beginning stages of the election and bringing insufficient resources to support the size of the election. The Region's unpreparedness produced chaos and hours-long lines to vote on the first polling day, discouraging other employees from voting. The Region also allowed camera crews, including the ALU President's personal videographer, to photograph, video, and interview employees standing in line to vote. This scared away those who understandably did not desire to have a microphone or news camera in their face or a reporter publicly interrogating them about how they planned to vote.

The ALU's own misconduct during the critical period likewise chilled voters, suppressed turnout, and destroyed laboratory conditions. Among other things, the ALU unlawfully intimidated employees to support the ALU, stating among other things "if you vote no, I will know"; threatened violence against its detractors; perpetuated lies about Amazon's conduct in the NYPD's arrest of ALU President Christian Smalls for trespassing; recorded voters in the polling place; engaged in electioneering in the polling area; distributed marijuana to employees in exchange for their support; and surveilled employees as they exited the voting tent. All of these actions had a tendency to suppress voter turnout and interfere with laboratory conditions.

The actions of both the Region and the ALU are substantially more egregious than the installation of a mailbox by the United States Postal Service that the Board concluded destroyed and interfered with laboratory conditions in Amazon's landslide election victory in Case 10-CA-269250. The Region and ALU's improper actions here warrant at least the same result.

"The Board in conducting representation elections must maintain and protect the integrity and neutrality of *its procedures*." *Ensign Sonoma LLC*, 342 NLRB 933, 933 (2004) (emphasis in original) (quoting *Athbro Precision Eng'g Corp.*, 166 NLRB 966, 966 (1967)). Because that patently did not happen here, the Board must order a rerun election.

OBJECTIONS

OBJECTION 1 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it sought a 10(j) injunction in *Drew-King v. Amazon.com Services LLC*, E.D.N.Y., No. 22-01479, on March 17, 2022. The Region sought this injunction 23 months after the alleged discriminatee (Gerald Bryson) was discharged, 18 months after the charge was filed, and 14 months after the complaint was issued in Case 29-CA-261755. Delaying the filing of this lawsuit until the eve of the election improperly

influenced employees' perception of Amazon mere days before they were to vote. The Regional Director admitted as much in a statement to multiple press outlets, specifically referencing the imminent election in Case 29-RC-288020, stating the Board's support for the ALU and alleging Amazon was a lawbreaker. Specifically, the Regional Director said:

> We are seeking an injunction in District Court to immediately reinstate a worker that Amazon ***illegally*** fired for exercising his Section 7 rights. We are also asking the Court to order a mandatory meeting at JFK8 with all employees at which Amazon will read a notice of employees' rights under the National Labor Relations Act. ***No matter how large the employer***, it is important for workers to know their rights—***particularly during a union election***—and that the NLRB will vociferously defend them.

(emphasis added).[1] Mr. Bryson was discharged in May of 2020 for verbally berating a female co-worker. This video[2] of the incident, which the Region attempted to conceal from Amazon throughout the investigation and trial, revealed that Mr. Bryson called his female co-worker, amongst other names, "gutter bitch," "crack ho," "queen of the slums," and "crack-head" over a bullhorn in front of their workplace because she exercised her Section 7 rights to disagree with him. Yet, on the eve of the election, the Region pursued this injunction suggesting that only ALU supporters' Section 7 rights matter, and that Amazon's actions were worthy of an extraordinary remedy.

OBJECTION 2 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it delayed investigating numerous unmeritorious and frivolous unfair labor practice charges that were pending during the critical period rather than properly dismissing them or soliciting withdrawals.

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[1] *See* Mitchell Clark, The NLRB is suing Amazon to get a fired activist his job back, THE VERGE (Mar. 17, 2022), https://www.theverge.com/2022/3/17/22983692/nlrb-amazon-labor-activism-gerald-bryson-jfk8-warehouse-injunction; *see also* Karen Weise, N.L.R.B sues Amazon over labor practices at a Staten Island Facility, NY TIMES (Mar. 17, 2022), https://www nytimes.com/2022/03/17/business/amazon-staten-island-facility.html.

[2] *See* https://www facebook.com/bella nagengast/videos/1079803845739201.

The Region's inaction enabled the ALU to perpetuate its false campaign narrative[3] that Amazon was a recidivist violator of the National Labor Relations Act ("Act"), when in fact there has not been a single NLRB order finding that Amazon has violated the Act. The ALU exploited the Region's inaction by continuing to file numerous baseless unfair labor practice charges throughout the critical period. Many of these charges challenge conduct that is lawful under extant Board precedent (*e.g.*, charges about Weingarten rights and captive audience meetings). Some were later withdrawn by the ALU while others were withdrawn and then refiled to create the appearance of a greater volume of charges.

OBJECTION 3 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it allowed the ALU's petition in Case 29-RC-288020 to proceed to election knowing that the Union did not have the required 30% showing of interest in the petitioned-for unit. It did so after public threats by the ALU to expose "concerning issues" about the Region, including public comments from ALU officials that urged the Board to "work with" and help the ALU through the process, and to relax its rules. The Board's validation of the ALU's insufficient petition in response to and after these public threats and comments reasonably suggested to employees that the ALU had more support in the petitioned-for unit than it did and/or that the Region favored the ALU in its case processing.

OBJECTION 4 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it impermissibly allowed the ALU for more than a month (from December 22, 2021 to January 25, 2022) to continue gathering and submitting late signatures to bolster its insufficient showing of interest. This is contrary to Board procedure for verifying a petitioner's showing of interest. *See* NLRB,

[3] The ALU has repeatedly, and falsely, claimed that it has filed "over 40" unfair labor practice charges against Amazon.

CASEHANDLING MANUAL-PART TWO, REPRESENTATION PROCEEDINGS § 1103.1(a) (Sept. 2020) (CASEHANDLING MANUAL) (requiring a petitioner to file evidence in support of the showing of interest at the time the petition is filed or, when the petition is e-filed or faxed, within two days of filing).

OBJECTION 5 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it unilaterally altered the scope and size of the petitioned-for unit for the purpose of investigating the ALU's showing of interest. These unilateral modifications to the scope of the petitioned-for unit, which neither party endorsed, were used by the Region solely to support its flawed conclusion that the ALU purportedly met the minimum requirement of a 30% showing of interest. The petition and Stipulated Election Agreement reflect identical unit descriptions. However, in completing the public record NLRB FORM-4069, Region 29 altered the description, changing it from "All hourly full-time and regular-part time fulfillment center employees employed at the JFK8 Building located at 546 Gulf Avenue, Staten Island, NY 10314," as requested by the ALU, to "FC Employee I, working at JFK8 building," thereby reducing the size of the unit and excluding other petitioned-for classifications of employees. Region 29 also concluded that only 6,038 employees worked in that unit, while Amazon provided the Region with extensive payroll documentation and additional evidence that the petitioned-for unit was comprised of approximately 7,500 employees at the time of the filing of the petition. Soon after recording these manipulated and inaccurate facts, and approving the further processing of the petition, Region 29 reverted to the broader unit definition included in the ALU's petition and did not question Amazon's submission of a voter list containing 8,325 employees. The Region's manipulated and inaccurate conclusion regarding the contested

showing of interest perpetuated the false impression that the ALU had sufficient support to proceed forward with an election when it clearly did not have sufficient support.

OBJECTION 6 - The Region failed to protect the integrity of its procedures when it deviated from the Casehandling Manual on Representation Proceedings by failing to staff the election adequately. Among other things, the Region provided an insufficient number of Board Agents for check-in and failed to provide adequate equipment for the election, supplying only three voting booths for an election with more than 8,000 potential voters. CASEHANDLING MANUAL § 11316. The Region was well aware of the size of the petitioned-for unit and potential number of voters. *See* Voter List, filed on February 22, 2022 (including 8,325 employees in the petitioned-for unit). These inactions caused extraordinarily long lines during the first voting session, widely publicized in the news media, and discouraged many employees from voting in subsequent polling sessions, particularly as the temperatures dropped to 20 degrees during two nights of polling. The Board's actions had a reasonable tendency to disenfranchise voters (as evidenced by extremely low voter turnout), and contributed to the Board's ineffective policing of the polling area, as further described in objections below.

OBJECTION 7 - The Region failed to protect the integrity of its procedures when it turned away voters when they attempted to vote during open polling sessions, and told voters they were only being allowed to vote in alphabetical order. The parties' Stipulated Election Agreement provided that "the Board Agent will allow any voter who is in line during the polling period to vote." These actions disenfranchised those voters who were turned away, but also other voters who learned that voters were turned away from the polls and chose not to participate in the election.

OBJECTION 8 - The Region failed to protect the integrity of its procedures when it failed to control media presence in and around the voting area. Amazon specifically raised concerns to

the Region about media interference in the voting process prior to the start of the election. Yet during the first polling session, numerous media members—including a documentary film crew retained by Mr. Smalls—entered Amazon's private property, filmed and recorded employees who were in line to vote, and even asked voters how they planned to vote, within feet of Board Agents. Photographs and quotes of these employees were then publicly broadcast across the nation. All of this media filming, recording, and broadcasting took place within the same zone around the polling place where the Region required Amazon to disable its security cameras during voting. The Board's failure to stop the media from surveilling and interrogating voters standing in line to vote had a reasonable tendency to discourage other employees from voting in subsequent polling sessions (as evidenced by extremely low voter turnout).

OBJECTION 9 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it allowed non-employee ALU President Smalls to loiter around the polling location and within the "no-electioneering zone" established by the Region on multiple occasions during polling times, where he was able to observe who participated in the election. Mr. Smalls' presence in and around the "no-electioneering zone" during polling times reasonably tended to intimidate, coerce, and create the impression of surveillance among voters and prospective voters.

OBJECTION 10 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it directed voters to cover up "Vote NO" shirts, but allowed other voters to wear ALU shirts and other ALU paraphernalia in the polling area. There was no basis for this direction as the Board has consistently held that wearing stickers, buttons, and similar campaign insignia by participants and observers at an election is, without more, not prejudicial. *R. H. Osbrink Mfg. Co.*, 114 NLRB 940, 941-43

(1955); *see also Furniture City Upholstery Co.*, 115 NLRB 1433, 1434–1435 (1956). The Board has held that the impact on voters is not materially different "whether the observers wear prounion or antiunion insignia of this kind." *Larkwood Farms*, 178 NLRB 226, 226 (1969) (observer wearing "Vote No" hat not objectionable). The Region's discriminatory directions toward ALU opponents created the impression for all voters present, as well as all potential voters who learned of these incidents, that the Board appeared to favor the ALU over Amazon in the outcome of the election. "No participant in a Board election should be permitted to suggest to the voters that this Government agency, or any of its officials, endorses a particular choice." *Am-O-Krome Co.*, 92 NLRB 893, 894 (1950).

OBJECTION 11 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it repeatedly allowed an ALU observer to audio/video record the check-in tables and voting area on his mobile phone while serving as an observer during multiple voting sessions. CASEHANDLING MANUAL §§ 11318.2(b) and 11326.2. The Region permitted this individual to continue serving as an ALU election observer following his conspicuous recording of the voting area while the polls were open. These actions further constitute objectionable list keeping of voters, objectionable surveillance of voters, and also created the impression for voters and potential voters that the ALU was surveilling them.

OBJECTION 12 - The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the ALU when it solicited unfair labor practice charges against Amazon in the presence of voters in the polling area while the polls were open. During the election, an employee entered the polling area and complained about Amazon's actions during the campaign. Rather than tell the employee that they could discuss

the matter privately, the Board Agent, within earshot of voters, stated to the employee that the employee could file unfair labor practice charges against Amazon with the NLRB.

OBJECTION 13 - During the critical period and while the polls were open, the ALU's members and agents harassed and threatened physical violence and other reprisals against employees who were not supportive of the ALU's cause. "Threats by union agents warrant the setting aside of an election where they 'reasonably tend[] to interfere with the employees' free and uncoerced choice in the election.'" *Robert Orr-Sysco Food Servs. LLC*, 338 NLRB 614, 615 (2002) (quoting *Baja's Place*, 268 NLRB 868 (1984)).

OBJECTION 14 - The ALU improperly promised employees in the final days of the campaign that it would not charge them dues unless and until the ALU secured a raise for employees during collective bargaining. Prior to and during the critical period, the ALU was clear that it would charge employees dues immediately following a successful vote. After employees expressed reluctance to pay dues, the ALU directly contradicted its earlier statements and asserted for the first time, late in the campaign, that it would not charge dues unless and until it secured higher wages in contract negotiations with Amazon. The ALU made these promises to employees during employee meetings, on social media, and in a letter from the ALU's President to all eligible voters two days before the polls opened. The ALU's failure to file any foundational documents and LM filings with the Department of Labor, as required by the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), coupled with its late-hour promise of free union representation, allowed it to make promises regarding its dues structure in a way that deprived Amazon of the ability to effectively respond, and denied employees the opportunity to assess the credibility of the promise. Additionally, the ALU's promises of free union representation is an objectionable grant of a benefit because this benefit is within the ALU's power to effectuate. *See*,

e.g., *Alyeska Pipeline Serv. Co.*, 261 NLRB 125, 126-27 (1982) (union controlled all access to construction jobs in Alaska for employees participating in election, and thus union's suggesting only way to get union card was by voting for union in upcoming election was objectionable as union was clearly promising to grant members advantage over nonmembers and had power to do that); *see also Go Ahead N. Am., LLC*, 357 NLRB 77, 78 (2011) (finding objectionable union's offer to waive back dues).

OBJECTION 15 - The ALU engaged in repeated and deliberate attempts to interfere with and "shut down" Amazon's small group meetings, solicited employees during Amazon's educational meetings in violation of Amazon's policies, and destroyed Amazon's campaign materials. The ALU's actions intentionally created hostile confrontations in front of eligible voters and hindered Amazon's lawful right to communicate its views to employees during the campaign. *See, e.g.*, *Livingston Shirt Corp.*, 107 NLRB 400, 406-07, 409 (1953) (union has no right to campaign or solicit during employer's lawful small group meetings); *United Steelworkers of Am. v. NLRB*, 646 F.2d 616, 627 (D.C. Cir. 1981) (same, unless an employer has a broad rule prohibiting solicitation during nonworking time [Amazon has no such policy]).

OBJECTION 16 - Non-employee ALU organizers repeatedly trespassed on Amazon's property. Over the course of many months, Amazon informed non-employee ALU organizers on several occasions that they had no right to solicit on Amazon's property and that their presence on Amazon's property constituted unlawful trespass. Nevertheless, Mr. Smalls and other non-employee ALU organizers continued to trespass on Amazon's property for the purpose of soliciting employee support during the critical period. On February 23, 2022, during the critical period, Mr. Smalls and two ALU organizers initiated a confrontation with the New York Police Department after Mr. Smalls repeatedly refused to leave Amazon's property, which resulted in

their arrests. After his arrest, Mr. Smalls and the ALU consistently misrepresented what had occurred, claiming that he merely dropping off food for employees and was akin to an Uber Eats driver, and that Amazon "called the cops on employees." Mr. Smalls consistently failed, however, to mention in his social media posts and interviews on the subject that on the date of his arrest, he brought a film crew[4] onto Amazon's property without authorization, conducted an interview (that can be seen on social media), and then proceeded to trespass and loiter for over one hour. The ALU also filed ULP charges—which the Region has yet to investigate—and falsely alleged that Amazon had "violated its national settlement" with the NLRB. The ALU then amplified these misrepresentations and the pendency of the charge in the media. All of these actions had a reasonable tendency to interfere with laboratory conditions. *See Phillips Chrysler Plymouth*, 304 NLRB 16, 16 (1991) (Board set aside election when union agents invaded the employer's premises without permission and refused to leave when asked, engaging in a confrontation with company management).

OBJECTION 17 - The ALU unlawfully polled employee support, engaged in unlawful interrogation, and created the impression of surveillance during the critical period. During the critical period, the ALU distributed a pledge form that asked employees to fill out their name, state what day they planned to vote, what time they planned to vote, their phone number, their address, and to sign a commitment that they would vote "Yes." This constitutes objectionable polling and interrogation. The ALU's request that employees identify what time and date they would vote reasonably gave the impression that the ALU would surveil when and if they chose to vote, and the commitment to vote "Yes" gave the impression that they could not change their mind if they signed one of these commitment forms. *See, e.g., Kusan Mfg. Co. v. NLRB*, 749 F.2d 362, 365

[4] *See* Addison Post, *Amazon Did Everything it Could to Bust Staten Island Union*, THE INTERCEPT (Apr. 2, 2022), https://theintercept.com/2022/04/02/amazon-union-staten-island/.

(1984) (citing *NLRB v. Claxton Mfg. Co.*, 613 F.2d 1364 (5th Cir.1980)) (recognizing that an employer may successfully challenge a representation election by showing that pre-election polling by the union was coercive).

OBJECTION 18 - After disparaging—and celebrating its independence from—established, institutional unions for months leading up to the vote, the ALU's President and attorney asserted in 11th hour communications to voters that the ALU was backed by established unions with millions of union members, that those more-established unions were actively involved in the ALU's campaign, were providing funding and other services to the ALU, and would also be involved in contract negotiations if the ALU was elected. The ALU's failure to file any foundational documents and LM filings with the Department of Labor as required by the LMRDA, coupled with its late-hour promise of operational support from and affiliation with other unions, deprived Amazon of the ability to effectively respond and employees the opportunity to assess the ALU's credibility. These misrepresentations are objectionable conduct because, under the circumstances, employees were unable to discern the truth of these statements regarding which labor organization would be representing them.

OBJECTION 19 - ALU supporters misled employees by telling them that they would lose their benefits if they did not support the ALU. Relying on language barriers and misrepresentations of the election processes, during the critical period, ALU organizers specifically targeted Amazon employees who recently immigrated from Africa and threatened that their continued benefits were contingent on their support of the ALU. While the ALU's conduct in this regard is a deplorable scare tactic targeted at an immigrant population, these false threats also constitute objectionable

conduct because they reasonably tended to coerce employees into supporting the ALU solely out of fear that they would lose their benefits.

OBJECTION 20 - The ALU deployed a light projector outside the JFK8 facility that projected mass messaging on the façade of the JFK8 building immediately prior to the election. Late at night on March 23, 2022, and through the early morning hours, after the voting tent was in place, the ALU projected messaging on the front of JFK8 immediately over the polling area which read: "Amazon Labor Union"; "VOTE YES"; "VOTE YES! TO KEEP YOUR PHONES"; "BE THE FIRST IN HISTORY"; "THEY FIRED SOMEONE YOU KNOW"; "THEY ARRESTED YOUR COWORKERS"; and "ALU FOR THE WIN". *See, e.g.*, Rachel Gumpert (@rlgumpert), TWITTER (Mar. 27, 2022), https://twitter.com/rlgumpert/status/1508089747289219082 (last visited Apr. 8, 2022). The ALU's light projections are also objectionable misrepresentations inasmuch as they caused confusion about the identity of the messenger, suggested that Amazon supported the messaging, and misrepresented the purpose and consequences of the vote. The ALU's light projections also reiterated the ALU's false campaign narrative that Amazon sought the arrest of employees. "[E]mployers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election." *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953). Because "the Board's goal is to keep voters as free of uninvited mass messages as possible during the period just prior to the conduct of the election," the ALU's mass projection of its campaign messaging falls squarely within the prohibitions of *Peerless Plywood*. *See Bro-Tech Corp.*, 330

NLRB 37, 39 (1999) (holding union's use of sound truck broadcasting pro-union music constituted objectionable conduct).

OBJECTION 21 - The ALU failed to file forms required by the LMRDA. The LMRDA requires all unions purporting to represent private sector employees to file, among other things, detailed financial reports. 29 U.S.C.A. §§ 431-432. As acknowledged by the LMRDA, these disclosures are necessary to eliminate or prevent improper practices on the part of labor organization, their officers, and their representatives and to protect employees from the activities of labor organizations. *Id*. § 401(b)-(c). To date, the ALU has not filed any financial or other reports required by the LMRDA despite being under a legal obligation to do so. The ALU's failure to comply with the LMRDA deprived employees from access to critical financial information about the ALU's operations during a critical time period (*i.e.*, whether to vote for them as their bargaining representative). ALU President Smalls brazenly told CNN the week before the election that he would not file these disclosures until after the election, if at all.[5]

OBJECTION 22 - The ALU distributed marijuana to employees in return for their support in the election. Amazon made the Region aware of such conduct several times. The Board, as a federal agency and regulator, cannot condone such a practice as a legitimate method of obtaining support for a labor organization. *See e.g., Stand Up for California! v. U.S. Dep't of the Interior*, 959 F.3d 1154, 1165 (9th Cir. 2020) (citing *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018) ("We will not presume that Congress would enact a statute that requires a federal agency to violate federal law.")); *see also Epic Sys. Corp.*, 138 S. Ct. at 1624 (courts should strive to give effect to both laws when two are in conflict). The ALU's distribution of marijuana was an impermissible

[5] *See* Sara Ashley O'Brien, Two Amazon warehouses are vying to make history with company's first union, but they're very different, CNN BUSINESS, (Mar. 30, 2022), https://www.cnn.com/2022/03/25/tech/amazon-new-york-alabama-union-elections/index.html.

grant of benefit and interfered with employees' free choice in the election. *See Go Ahead N. Am., LLC*, 357 NLRB at 77-78 (setting aside election where union granted benefits with a value in excess of "minimal").

OBJECTION 23 - On March 25, 2022, Mr. Smalls posted to his social media accounts a video of himself standing outside the voting area over 20 minutes after voting began and after he had told certain employees that the ALU would know how they voted. Employees viewing a video of the ALU's President appearing to stand outside the polling area while the polls were open reasonably tended to coerce and intimidate voters and potential voters and lead them to believe that the ALU and Mr. Smalls was or would surveil them. Mr. Smalls' social media post also reasonably tended to create the impression with voters that the Board supported ALU in the election, as it failed to properly police and/or took no actions to remove him from the "no-electioneering zone" established by the Board.

OBJECTION 24 - The ALU engaged a camera/documentary crew that maintained a consistent presence in the polling place. Despite being directed to leave the area by Amazon in front of the Board Agent and ALU President Smalls, the crew returned several times and filmed employees in line waiting to vote, and employees entering and exiting the voting tent. These actions reasonably tended to coerce and intimidate voters and potential voters and lead them to believe that Mr. Smalls and the ALU would know if or how they voted, and created the impression of surveillance.

OBJECTION 25 - ALU officials, agents, and supporters, including but not limited to non-employee ALU President Smalls and non-employee Gerald Bryson, engaged in objectionable conduct, including loitering in the "no-electioneering zone" established by the Board and/or within view of the polling area while polls were open, creating the impression among employees that the

ALU was surveilling the polling area, and otherwise engaging in electioneering. This conduct reasonably tended to coerce and intimidate voters and potential voters.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

/s/ Kurt Larkin

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document was electronically filed with the NLRB and was served by electronic mail this 8th day of April, 2022 to:

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/s/ Amber M. Rogers
Amber M. Rogers

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Date Submitted: Friday, April 8, 2022 4:31 PM Eastern Standard Time
Submitted E-File To Office: Region 29, Brooklyn, New York

Case Number: 29-RC-288020
Case Name: Amazon.com Services LLC
Filing Party: Employer

Contact Information:
Amber Rogers
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Attached Documents:
Objections to an Election:29-RC-288020 Amazon_s Objections.pdf

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EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AMAZON.COM SERVICES LLC,	)	
	)	
Employer,	)	
	)	
and	)	Case No. 29-RC-288020
	)	
AMAZON LABOR UNION,	)	
	)	
Petitioner.	)	

AMAZON.COM SERVICES LLC'S MOTION TO TRANSFER PROCEEDINGS

Pursuant to Section 102.72(a)(3) of the National Labor Relations Board's Rules & Regulations, 29 C.F.R. §102.72(a)(3), Amazon.com Services LLC, ("Amazon" or the "Company"), respectfully requests this matter be transferred out of Region 29 for a hearing on Amazon's timely objections to conduct affecting the results of the election in the above-captioned matter. In support of its request, Amazon states the following:

1. Amazon is timely filing objections in the above-captioned matter.

2. A number of Amazon's objections assert objectionable conduct by both the Regional Director of Region 29 and various Board Agents who, upon information and belief, work out of the Region 29 office.[1]

3. It is appropriate to transfer a representation case proceeding for purposes of a post-election objections hearing where the subject matter of those objections involves Regional or Board Agent action. Such a transfer enables a Hearing Officer outside the Regional Office to hear

[1] The Board Agents did not identify where they work, thus Amazon is unable to discern if the various Board Agents present during the 10 voting sessions all work in Region 29's office. Upon information and belief, some of the Board Agents work in Region 2's office. Accordingly, if any Board Agents present for any voting session were from Region 2, or another Region, Amazon contends this matter should not be transferred to that Region, as the objections related to objectionable conduct of Board Agents extends to them.

the objections relating to the Region at issue and an out-of-Region Director to review the Hearing Officer's report. Specifically, General Counsel Memorandum 15-06 states: "If the subject matter of the objections involves regional or Board Agent misconduct that would require that a Hearing Officer outside the Regional office be assigned to hear the matter, the case should be transferred to another Region before an order directing a hearing issues so that exceptions to the Hearing Officer's report will be reviewed by the out-of-region director." General Counsel Memorandum 15-06 ("Guidance Memorandum on Representation Case Procedure Changes Effective April 14, 2015") at 31.

4. Moreover, Section 11424.2(a) of the Board's Representation Casehandling Manual requires that a case be transferred to a different Region where an employer, as Amazon does here, alleges individualized objectionable conduct by Board personnel in the originating Region.

5. Because Amazon objects to actions taken by Regional Director Drew-King and various Board Agents, including, but not limited to, the improper docketing of the petition; inappropriately seeking a 10(j) injunction a week before the election and specifically tying that unrelated 10(j) injunction to the election; making public statements that call into question the Region's "neutral" stance during the election; taking steps—whether intended or not—to disenfranchise voters, and making statements—whether intended or not—purporting to support ALU's cause in front of voters, it would be inappropriate for those same individuals to serve as judges of their own alleged objectionable conduct. Indeed, the Hearing Officer in a postelection objections hearing "makes (1) credibility resolutions and (2) findings, conclusions, and recommendations, whereas the preelection Hearing Officer does neither." CASEHANDLING MANUAL § 11424.3(b).

6. In the interest of fairness, and pursuant to the Board's Rules and Regulations, General Counsel Memorandum, and Casehandling Manual the processing of objections related to this petition should be transferred to another Region.

Respectfully submitted,

HUNTON ANDREWS KURTH LLP

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Other:29-RC-288020 Amazon_s Motion to Transfer Proceedings.pdf

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EXHIBIT D

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

AMAZON.COM SERVICES LLC

Employer

and

CASE 29-RC-288020

AMAZON LABOR UNION

Petitioner

ORDER TRANSFERRING CASE
FROM REGION 29 TO REGION 28

Case 29-RC-288020, having been filed with the Regional Director for Region 29, and transferred to Region 28, and the General Counsel of the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act, and to avoid unnecessary costs and delay

IT IS HEREBY ORDERED, in accordance with the Rules and Regulations of the National Labor Relations Board, that Case 29-RC-288020 be, and hereby is, transferred back to and continued in Region 28.

/s/ Joan A. Sullivan

FOR:

Jennifer A. Abruzzo
General Counsel

Dated: April 14, 2022

at Washington, DC

cc: Region 29, Region 28

EXHIBIT E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

AMAZON.COM SERVICES LLC

Employer

and **Case 29-RC-288020**

AMAZON LABOR UNION

Petitioner

ORDER DIRECTING HEARING AND NOTICE OF HEARING ON OBJECTIONS

Based on a petition filed on December 22, 2021, and pursuant to a Stipulated Election Agreement, an election was conducted on March 25, 26, 28, 29, and 30, 2022[1] to determine whether a unit of employees of Amazon.com Services LLC (the Employer) wished to be represented for purposes of collective bargaining by Amazon Labor Union (the Petitioner). That voting unit consists of:

> INCLUDED: All hourly full-time and regular part-time fulfillment center associates employed at the Employer's JFK8 building located at 546 Gulf Avenue, Staten Island, New York.
>
> EXCLUDED: Truck drivers, seasonal employees, temporary employees, clerical employees, professional employees, managerial employees, engineering employees, maintenance employees, robotics employees, information technology employees, delivery associates, loss prevention employees, on-site medical employees, guards and supervisors as defined by the Act.

[1] All dates hereinafter are in 2022, unless otherwise specified.

The Tally of Ballots prepared at the conclusion of the election shows the following:

Approximate number of eligible voters	8325
Number of void ballots	17
Number of votes cast for Petitioner	2654
Number of votes cast against participating labor organization(s)...	2131
Number of valid votes counted	4785
Number of challenged ballots	67
Number of valid votes counted plus challenged ballots	4852

Challenges were not sufficient in numbers to affect the results of the election.

On April 8, the Employer timely filed objections to conduct affecting the results of the election. The objections are as follows:

THE OBJECTIONS

1. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it sought a 10(j) injunction in *Drew-King v. Amazon.com Services LLC*, E.D.N.Y., No. 22-01479, on March 17, 2022.

2. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it delayed investigating numerous unmeritorious and frivolous unfair labor practice charges that were pending during the critical period rather than properly dismissing them or soliciting withdrawals.

3. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it allowed the Petitioner's petition in Case 29-RC-288020 to proceed to election knowing that the Petitioner did not have the required 30% showing of interest in the petitioned-for unit.

4. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it impermissibly allowed the Petitioner for more than a month (from December 22, 2021 to January 25, 2022) to continue gathering and submitting late signatures to bolster its insufficient showing of interest.

5. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it unilaterally altered the scope and size of the petitioned-for unit for the purpose of investigating the Petitioner's showing of interest.

6. The Region failed to protect the integrity of its procedures when it deviated from the Casehandling Manual on Representation Proceedings by failing to staff the election adequately. Among other things, the Region provided an insufficient number of Board Agents for check-in and failed to provide adequate equipment for the election, supplying only three voting booths for an election with more than 8,000 potential voters.

7. The Region failed to protect the integrity of its procedures when it turned away voters when they attempted to vote during open polling sessions, and told voters they were only being allowed to vote in alphabetical order.

8. The Region failed to protect the integrity of its procedures when it failed to control media presence in and around the voting area.

9. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it allowed [redacted] Petitioner [redacted] to loiter around the polling location and within the "no-electioneering zone" established by the Region on multiple occasions during polling times, where [redacted] was able to observe who participated in the election.

10. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it directed voters to cover up "Vote NO" shirts, but allowed other voters to wear Petitioner shirts and other Petitioner paraphernalia in the polling area.

11. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it repeatedly allowed a Petitioner's observer to audio/video record the check-in tables and voting area on his mobile phone while serving as an observer during multiple voting sessions.

12. The Region failed to protect the integrity and neutrality of its procedures and created the impression of Board assistance or support for the Petitioner when it solicited unfair labor practice charges against the Employer in the presence of voters in the polling area while the polls were open.

13. During the critical period and while the polls were open, the Petitioner's members and agents harassed and threatened physical violence and other reprisals against employees who were not supportive of the Petitioner's cause.

14. The Petitioner improperly promised employees in the final days of the campaign that it would not charge them dues unless and until the Petitioner secured a raise for employees during collective bargaining. Prior to and during the critical period, the Petitioner was clear that it would charge employees dues immediately following a successful vote. After employees expressed reluctance to pay dues, the Petitioner directly contradicted its earlier statements and asserted for the first time, late in the

campaign, that it would not charge dues unless and until it secured higher wages in contract negotiations with the Employer.

15. The Petitioner engaged in repeated and deliberate attempts to interfere with and "shut down" the Employer's small group meetings, solicited employees during the Employer's educational meetings in violation of the Employer's policies, and destroyed the Employer's campaign materials.

16. (b) (6), (b) (7)(C) Petitioner organizers repeatedly trespassed on the Employer's property.

17. The Petitioner unlawfully polled employee support, engaged in unlawful interrogation, and created the impression of surveillance during the critical period.

18. After disparaging—and celebrating its independence from—established, institutional unions for months leading up to the vote, the Petitioner's President and attorney asserted in 11th hour communications to voters that the Petitioner was backed by established unions with millions of union members, that those more-established unions were actively involved in the Petitioner's campaign, were providing funding and other services to the Petitioner, and would also be involved in contract negotiations if the Petitioner was elected. These misrepresentations are objectionable conduct because, under the circumstances, employees were unable to discern the truth of these statements regarding which labor organization would be representing them.

19. Petitioner's supporters misled employees by telling them that they would lose their benefits if they did not support the Petitioner. Relying on language barriers and misrepresentations of the election processes, during the critical period, Petitioner's organizers specifically targeted Amazon employees who recently immigrated from (b) (6), (b) (7)(C) and threatened that their continued benefits were contingent on their support of the Petitioner. While the Petitioner's conduct in this regard is a deplorable scare tactic targeted at an immigrant population, these false threats also constitute objectionable conduct because they reasonably tended to coerce employees into supporting the Petitioner solely out of fear that they would lose their benefits.

20. The Petitioner deployed a light projector outside the JFK8 facility that projected mass messaging on the façade of the JFK8 building immediately prior to the election. Late at night on March 23, 2022, and through the early morning hours, after the voting tent was in place, the ALU projected messaging on the front of JFK8 immediately over the polling area which read: "Amazon Labor Union"; "VOTE YES"; "VOTE YES! TO KEEP YOUR PHONES"; "BE THE FIRST IN HISTORY"; "THEY FIRED SOMEONE YOU KNOW"; "THEY ARRESTED YOUR COWORKERS"; and "ALU FOR THE WIN". The Petitioner's light projections are also objectionable misrepresentations inasmuch as they caused confusion about the identity of the messenger, suggested that Amazon supported the messaging, and misrepresented the purpose and consequences of the vote. The Petitioner's light projections also

reiterated the Petitioner's false campaign narrative that the Employer sought the arrest of employees.

21. The Petitioner failed to file forms required by the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"). The LMRDA requires all unions purporting to represent private sector employees to file, among other things, detailed financial reports. To date, the Petitioner has not filed any financial or other reports required by the LMRDA despite being under a legal obligation to do so. The Petitioner's failure to comply with the LMRDA deprived employees from access to critical financial information about the Petitioner's operations during a critical time period (i.e., whether to vote for them as their bargaining representative).

22. The Petitioner distributed marijuana to employees in return for their support in the election. The Petitioner's distribution of marijuana was an impermissible grant of benefit and interfered with employees' free choice in the election.

23. On (b) (6), (b) (7)(C), Petitioner's (b) (6), (b) (7)(C) posted to (b) (6), social media accounts a video of (b) (6), (b) (7)(C) standing outside the voting area over 20 minutes after voting began and after [redacted] had told certain employees that the Petitioner would know how they voted. Employees viewing a video of the Petitioner's (b) (6), (b) (7)(C) appearing to stand outside the polling area while the polls were open reasonably tended to coerce and intimidate voters and potential voters and lead them to believe that the Petitioner and (b) (6), (b) (7)(C) was or would surveil them. (b) (6), (b) (7)(C) social media post also reasonably tended to create the impression with voters that the Board supported Petitioner in the election, as it failed to properly police and/or took no actions to remove (b) (6), (b) (7) from the "no-electioneering zone" established by the Board.

24. The Petitioner engaged a camera/documentary crew that maintained a consistent presence in the polling place. Despite being directed to leave the area by the Employer in front of the Board Agent and Petitioner (b) (6), (b) (7)(C) the crew returned several times and filmed employees in line waiting to vote, and employees entering and exiting the voting tent. These actions reasonably tended to coerce and intimidate voters and potential voters and lead them to believe that (b) (6), (b) (7)(C) and the Petitioner would know if or how they voted, and created the impression of surveillance.

25. Petitioner's officials, agents, and supporters, including but not limited to non-employee Petitioner (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) engaged in objectionable conduct, including loitering in the "no-electioneering zone" established by the Board and/or within view of the polling area while polls were open, creating the impression among employees that the Petitioner was surveilling the polling area, and otherwise engaging in electioneering. This conduct reasonably tended to coerce and intimidate voters and potential voters.

On April 8 –the same day the Employer filed its objections – the Employer filed with the Regional Director for Region 29 of the National Labor Relations Board (the Board) a Motion to Transfer Proceedings for a hearing on the Employer's objections to conduct affecting the results of the election. Among the reasons stated by the Employer in support of its Motion were, "A number of Amazon's objections assert objectionable conduct by both the Regional Director of Region 29 and various Board Agents who, upon information and belief, work out of the Region 29 office.[footnote omitted]" On April 14, the General Counsel of the Board transferred the case from Region 29 to Region 28 for further proceedings on the Employer's objections.

CONCLUSION AND ORDER

I have concluded that the evidence described in the offers of proof submitted by the Employer in support of its objections could be grounds for overturning the election if introduced at a hearing. Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations,

IT IS ORDERED that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised with respect to the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses.

Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the objections.

NOTICE OF HEARING

Starting at 10:00 a.m. (Eastern Time) on May 23, 2022, the hearing on objections as described above will be conducted before a Hearing Officer of the National Labor Relations Board and shall continue on consecutive days thereafter until concluded unless I determine that

extraordinary circumstances warrant otherwise. The hearing will be conducted by videoconference using the Zoom platform or other platform deemed appropriate for this purpose by the Hearing Officer. The Hearing Officer will email the parties the information necessary to participate in the videoconference hearing.

Dated in Phoenix, Arizona on the 29th day of April, 2022.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board, Region 28

EXHIBIT F

From: "Dunn, Lisa J" <Lisa.Dunn@nlrb.gov>
Date: May 23, 2022 at 6:34:14 PM CDT
To: "Rogers, Amber" <arogers@hunton.com>, "Larkin, Kurt G." <klarkin@hunton.com>, rsingla@workingpeopleslaw.com, jmirer@julienmirer.com, rjulien@julienmirer.com, emilner@simonandmilner.com, "Meyers, Kerstin" <Kerstin.Meyers@nlrb.gov>
Cc: "Doyle, Christopher J." <christopher.doyle@nlrb.gov>
Subject: Post-Election Zoom Hearing Instructions and Protocols: Amazon.com Services LLC (29-RC-288020)

Caution: This email originated from outside of the firm.

Counsel:

I have been designated by the Regional Director of NLRB Region 28 as the Hearing Officer of this post-election hearing scheduled to commence by Zoom on Monday, June 13, 2022, at 10:00 a.m. Eastern Time. Attached are the Post-Election Zoom Hearing Instructions and Protocols for this hearing. Please review them completely and follow them diligently. As the designated Hearing Officer, please refrain from communicating with me *ex parte* about this post-election hearing. If it is necessary to communicate with me outside of the hearing, please ensure all counsel are included.

You will receive separate emails from the NLRB containing an email invitation for the designated SharePoint Site for this Zoom hearing as well as the Registration Link for non-party observers to register to attend this Zoom hearing. You will also be notified regarding the contact information for the assigned Bailiff(s) and court reporter(s) for this Zoom hearing.

Sincerely,

Lisa J. Dunn, Hearing Officer

Lisa J. Dunn, Attorney
NLRB Region 28, Phoenix
2600 N Central Ave., Suite 1400
Phoenix, AZ 85004
(602) 640-2160 office
(602) 640-2178 fax
lisa.dunn@nlrb.gov

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

AMAZON.COM SERVICES LLC

Employer

and **Case 29-RC-288020**

AMAZON LABOR UNION

Petitioner

POST-ELECTION ZOOM HEARING INSTRUCTIONS AND PROTOCOLS

1) **Participating in the hearing**. A post-election hearing is an official Government proceeding. As such, you are expected to abide by the following protocols.

2) **Decorum and conduct.** Observe rules of decorum, civility, and ethics and show respect for the dignity of the legal proceeding by your conduct, language, and attire.

3) **Cooperation and compliance**. Cooperate with each other and the court reporter, and comply with the hearing officer's reasonable instructions (e.g., to adjust your position, lighting, or web camera, or to mute or unmute your microphone).

4) **There is to be no videotaping or recording.** No videotaping or audio recording is permitted during any part of the Zoom proceeding, except by the court reporter who is responsible for preparing the official record.

5) **Please refrain from communicating with me *ex parte* about this post-election hearing.** If it is necessary to communicate with me outside of the hearing, please ensure that all counsel are included.

6) If you fail to abide by these protocols, you may be removed from the Zoom hearing and/or sanctioned under Sec. 102.177 of the NLRB's Rules and Regulations.

I. HEARING DATES

The invitation to the Zoom is attached as Exhibit A. This hearing is scheduled to begin on Monday, June 13, 2022, at 10:00 am Eastern Time. Exhibit A provides the access links and numbers necessary for all identified participants (counsel and party representatives, assistants, and witnesses, and the court reporter and any interpreters) and observers to join the Zoom hearing. It also includes detailed instructions and protocols for joining and participating in or

observing the Zoom hearing. ***Read and follow them carefully*. Do not share this link with non-witness, non-party observers.**

1) The hearing will open on **Monday, June 13, 2022, at 10:00 am Eastern Time** and will **reconvene at 10:00 am Eastern Time on consecutive business days thereafter until completed**. The parties should plan on the hearing ending at approximately **6:00 pm Eastern Time** each hearing day. Please bring any scheduling issues which arise to the Hearing Officer's attention as soon as possible.

2) On the first day of the hearing, on Monday, June 13, 2022, we will address procedural and preliminary matters, including opening the hearing record, introducing the formal papers, resolving any outstanding disputes regarding subpoenas, producing subpoenaed documents, addressing any other pending motions, and opening statements. **Counsel for the Employer should be prepared to begin presenting its witnesses at 10:00 a.m. Eastern Time on Tuesday, June 14, 2022**.

II. HEARING GUIDELINES

As preliminary resources that may assist with preparing for hearing, hearing participants (attorneys, representatives, and witnesses) may refer to the attached – *Attorney/Representative Instructions and Guidelines for Video Hearings* (Exhibit B) and *Witness Instructions and Guidelines for Video Hearings* (Exhibit C).

III. BAILIFF

A Zoom Assistant ("Bailiff") will be assigned to participate in the hearing in this case. The Bailiff will be available during the hearing to assist with managing the hearing, handling exhibits, and addressing technical issues with Zoom, should any arise. The Bailiff will be a Board agent from a field office of the National Labor Relations Board. To the extent that any technical issues arise that the Bailiff cannot resolve, the Agency's technical support (OCIO) team will be available to address them.

IV. PARTICIPANTS

1) Identification of Participants
   a) In order to maintain order in the hearing, it is necessary to identify all observers and participants in the preceding. There are at least six types of participants – designated parties, attorneys, witnesses, non-participating party observers, non-party observers (e.g. the public), and the press. While there are no qualifications required for observing the hearing, in order to maintain control and order, only identified individuals will be granted access to the hearing.
      i) **Parties and Party Observers**
         (1) **The parties are expected to notify** the Hearing Officer and/or the Bailiff in advance of the names and positions of all **designated party participants, attorneys, and non-participating observers**. The parties may forward Exhibit A, the Zoom invite, directly to these individuals.

(2) By noon the day before the hearing begins, the parties must furnish the Hearing Officer and/or Bailiff with a written list of the above participants and party observers, identifying them by name, title/position, role in the proceeding, and providing an email address for each.

(3) This list can be supplemented by noon the day before any additional participants or observers anticipate attending the hearing.

ii) Witnesses

(1) By noon (Eastern time) the business day beforehand, the parties attorneys will submit the Hearing Officer a written list of witnesses they anticipate calling the following business day. **For each witness, the parties should include the witness's name, e-mail address, telephone number and identify which objection(s) the witness's testimony will address**. Notwithstanding these instructions, a party will not be precluded from calling a witness who is not on the party's witness list if the witness is necessary for presenting the party's case.

(2) **It is the parties' responsibility to notify witnesses of the expected time and date of their testimony and when the witness should be available, to provide the witness with the Zoom link, and ensure that the witness has adequate equipment and internet access to participate**. *Instructions for Witnesses is included herein at Exhibit C.*

iii) **Non-Party Observers (e.g. the public, and the press)**

(1) The hearing is a public hearing, and the public and press may attend**.**

(2) All non-party observers and members of the press must register to attend the Zoom hearing. A Registration Link will later be provided to the parties. Please refer all non-participant observers to the designated Registration Link. Once completed, the registered user will receive a link to the Zoom hearing.

2) To limit the number of video images on the Zoom video display during hearing, the following participants generally should be **the only participants with their cameras turned on – the Hearing Officer; one attorney per party** (typically the attorney presenting argument or handling the witness);[1] **and the witness**. **All other hearing participants may observe the hearing proceedings but generally should have their cameras off and their audio on mute** (unless directed otherwise by the Hearing Officer or Bailiff). This will enable all participants to select "Hide Nonvideo Participants" in Zoom settings and focus their attention on the video images of participants who are actively involved in the hearing.

3) Non-participant party observers, non-party observers, and the press may observe the Zoom hearing by video and/or audio but must have their outgoing audio on mute and their outgoing video turned off throughout the hearing (unless directed otherwise by the Hearing Officer or Bailiff). **Non-participant observers may not disrupt the hearing in any way and may be subject to removal and/or other sanctions if they disrupt the hearing or violate the Hearing Officer's instructions.**

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[1] This guideline does not preclude another attorney from turning their video and/or audio on if the need arises to speak briefly during the hearing.

4) **Prohibition of Videotaping or Recording the Hearing:** The official court reporter is the only individual permitted to record the hearing. Accordingly, **do <u>not</u> video record, audio record, broadcast, televise, stream, screenshot, photograph, or otherwise copy the hearing in any manner**. Violation of this rule may result in removal and other sanctions.

5) **Court reporter and interpreter**. The NLRB Regional Office is responsible for scheduling a court reporter and forwarding the court reporter the Zoom invitation. **If an interpreter is needed for a witness, the party calling that witness is responsible to request an interpreter through the NLRB Region 28 Office, through its Acting Administrative Officer, at (602) 640-2160, <u>at least three (3) business days in advance</u> of the witness's testimony.**

V. <u>WITNESSES</u>

1) Each party is responsible for ensuring the following for any witness it intends to call during the hearing:
   a) **Invitation** Providing your witnesses with this Zoom invitation, the Zoom link, and the Instructions for Witnesses (Exhibit C).
   b) **Instructions and protocols** Ensuring that your witnesses understand and follow all the Zoom hearing instructions and protocols set forth in this invitation.
   c) **When to join hearing** Informing your witnesses when they should join the Zoom hearing and enter the waiting room.
   d) **Notification to the Hearing Officer** Providing the Hearing Officer or Bailiff a list of anticipated witnesses by noon the day preceding their projected testimony, including the identity of your witnesses, e-mail address, telephone number and identifying the objections the witness will likely provide testimony.
   e) **Sequestration** Informing your witnesses of any sequestration order issued by the Hearing Officer and ensuring they do not violate it by observing or listening to the Zoom hearing.

VI. <u>EXHIBITS</u>

1) **Formatting exhibits**
   a) Exhibits must be in the following formats:
      i) PDF for documents,
      ii) JPG for photographs/images, and
      iii) MP4 for videos

2) **Marking exhibits**
   a) **Exhibits must be pre-marked before they are shared and offered at the hearing** (e.g., Bd. Ex. 1, P. Ex. 1, or E. Ex. 1). There is no requirement that they be offered at the hearing in the same numerical order (for example, Ex. 3 can be offered into evidence before Ex. 2). Similarly, there is no requirement that your exhibits be sequentially numbered. If there are gaps in the numbering because some exhibits were not offered, this will not create an issue.

b) **Paginating exhibits - Exhibits longer than one page must include page or Bates numbers**.

3) **Sharing exhibits**. With certain exceptions (e.g., *Jencks* statements and exhibits used to refresh recollection or impeach), the parties are strongly encouraged to distribute as many exhibits to the other parties, the hearing officer, and the witness either before the hearing or before a witness testifies. Options for distributing or sharing exhibits before and during the hearing include:
   a) **NLRB SharePoint Site** (before and during hearing). This is recommended for exhibits that may be too large to send by email, such as audio and video recordings. (Instructions for using the Amazon.com Services SharePoint Site are attached hereto as Exhibit D.)
   b) **Hand delivery/hard copy** (before hearing). This is strongly recommended for witnesses.
   c) **Email** (before and during hearing). This may be used to distribute small and moderate-sized exhibits. However, if used during the hearing, it may take several minutes for everyone to receive the email.
   d) **Zoom share-screen function** (during hearing). This may be used to share an exhibit, including audio and video recordings, with a witness and other participants during the hearing. Counsel should practice using this function before the hearing. For helpful instructions, see https://support.zoom.us/hc/en- us/articles/201362153-Sharing-your-screen-in-a-meeting

4) **Consolidating and bookmarking exhibits**. To the extent possible, multiple exhibits should be emailed to participants or uploaded to the NLRB SharePoint Site in a single PDF document with each exhibit bookmarked so they can be accessed and viewed easily.
   a) Instructions: Open a PDF document; left-click on "Tools"; left-click on "Combine files"; and follow the instructions, adding each pre-marked exhibit in numerical order. When all the exhibits have been added, right-click on the open PDF document; left-click "Add Bookmark" in the popup window; place the cursor at beginning of the first exhibit; left-click the new bookmark icon in the shaded left-side column (the ribbon with a plus sign); and type the exhibit number in the shaded box. Then move the cursor to the beginning of the next exhibit and repeat. When finished, save the bookmarked PDF document.
5) Providing exhibits to court reporter. The parties are responsible for ensuring that their exhibits are provided to the court reporter for inclusion in the official record. The exhibits should be provided by email or uploaded to the NLRB SharePoint Site for retrieval no later than the end of the same day they are offered and admitted or the beginning of the next hearing day.
6) Redacting sensitive personal identifying information (SPII). Redact any SPII from exhibits, including social security numbers, driver's license numbers, and credit card and financial account numbers.

VII. Technical Problems

Technical problems (internet, audio, or video delays or interruptions) may occur during the hearing. They usually cause only short delays provided the proper steps are taken.

1) Follow the instructions and protocols. Follow the instructions and protocols above by using a strong and reliable internet connection, having a secondary or backup device to access or communicate with the Zoom hearing or participants if necessary, and emailing your alternative contact information to the Hearing Officer and/or other participants prior to the hearing. (This information should not be shared orally during the Zoom hearing if it is considered private.)
2) Mute your microphone if not speaking or actively participating. This will help to prevent others from hearing your audio feedback or background noise on their devices.
3) Immediately notify the Hearing Officer or Bailiff if your audio and/or video feed is delayed or otherwise not working properly. You may do so either orally or by signaling with your hands that you are having a problem. The Hearing Officer or Bailiff will try to communicate with and assist you by contacting you on your secondary or backup device.
4) Reboot your computer. Often technical problems can be fixed by rebooting your computer or laptop and then re-accessing the Zoom hearing with the same link and numbers. If possible, advise the Hearing Officer and/or other participants that you will be doing this before leaving the hearing, or as soon as possible thereafter by phone or email if you have already been disconnected from the hearing. You will be re-admitted to the hearing when the Hearing Officer sees that you have re-entered the Zoom waiting room.

Dated at Phoenix, Arizona, this 23rd day of May, 2022.

/s/ Lisa J. Dunn
Lisa J. Dunn, Hearing Officer

Served via email on:
arogers@huntonak.com
klarkin@hunton.com
rsingla@workingpeopleslaw.com
jmirer@julienmirer.com
rjulien@julienmirer.com
emilner@simonandmilner.com
kerstin.meyers@nlrb.gov

Attachments:
Exhibit A, B, C & D

Exhibit A

Zoom Invite

NLRB, Region 28 is inviting you to a scheduled ZoomGov meeting.

Join ZoomGov Meeting
https://www.zoomgov.com/j/1612923146?pwd=dkdKVWJNbWQvRDY2NzVOWnBsQWR5QT09

Meeting ID: (b) (6), (b) (7)(C)
Passcode: (b) (6), (b) (7)(C)
One tap mobile
+16692545252,,(b) (6), (b) (7)(C)#,,,,*(b) (6), (b) (7)(C)# US (San Jose)
+16468287666,,(b) (6), (b) (7)(C)#,,,,*(b) (6), (b) (7)(C)# US (New York)

Dial by your location
+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
+1 551 285 1373 US
+1 669 216 1590 US (San Jose)
Meeting ID: (b) (6), (b) (7)(C)
Passcode: (b) (6), (b) (7)(C)
Find your local number:
https://www.zoomgov.com/u/ab1vouVRW4

Join by Skype for Business
https://www.zoomgov.com/skype/1612923146

Exhibit B

Instructions for Attorneys

ATTORNEY/REPRESENTATIVE INSTRUCTIONS AND GUIDELINES FOR ZOOM HEARINGS

Due to the compelling circumstances created by the COVID-19 pandemic, the Hearing Officer will conduct the hearing in this matter on the Zoom for Government videoconferencing platform. The following guidelines and instructions are for the attorneys and/or representatives who will be participating in the video hearing. (Thereare separate instructions for individuals who expect to testify as witnesses in the video hearing.)

I. GENERAL HEARING PROTOCOL

1) A post-election objections hearing is an official Government legal proceeding. As such, you are expected to abide by the following protocols:
   a) Decorum and conduct. Observe rules of decorum, civility, and ethics and show respect for the dignity of the legal proceeding by your conduct, language, and attire.
   b) Cooperation and compliance. Cooperate with each other and the court reporter, and comply with the Hearing Officer's reasonable instructions (e.g., to adjust your position, lighting, or web camera, or to mute or unmute your microphone).
   c) No videotaping or recording. No videotaping or audio recording is permitted during any part of the Zoom proceeding, except by the court reporter who is responsible for preparing the official record.
   d) If you fail to abide by these protocols, you may be removed from the Zoom hearing and/or sanctioned under Sec. 102.177 of the NLRB's Rules and Regulations.

II. BEFORE THE ZOOM HEARING

1) Technology Requirements

   a) To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker, and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.
   b) The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at https://zoom.us/test.
   c) It is also recommended that you set up a free Zoom account using your first and last name and your email address. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as an attorney/representative. You may set up a Zoom account at: https://zoom.us.
   d) In addition to setting up their own account/access, counsel are responsible for ensuring that their witnesses have the equipment and internet access necessary to fully participate in the Zoom video hearing. Please bring any issues to the Hearing Officer's attention as

soon as possible.

e) It is highly recommended that you practice using Zoom with your witnesses before the hearing, including practice with handling and reviewing exhibits.

III. HEARING PREPARATION

1) Internet connection required. You must have access to a strong and stable internet connection— either wired/ethernet cable (recommended) or wireless/Wi-Fi.
2) Preparing for the hearing. Take the following steps at least 30 minutes before joining the Zoom hearing:
   a) Location. Set up your computer, laptop, or other primary device in a quiet room or space where you will not be distracted or interrupted.
   b) Background. Make sure there are no uncovered windows, lights, or distracting images or messages directly behind you. Virtual backgrounds should also be free of distracting images or messages. Witnesses may not use virtual backgrounds.
   c) Power source. Connect your primary and secondary devices to electrical outlets or portable power sources to ensure they will not run out of battery.
   d) Internet. Test your internet connection. Close any unnecessary applications on your primary device other than Zoom. If using Wi-Fi, disconnect other devices, including your secondary device (unless or until needed), from the same Wi-Fi network.
   e) General Camera Setup:
      i) Set up computer, laptop, tablet, or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;
      ii) Position the web camera at or slightly above eye level;
      iii) Test your equipment and internet connection (www.zoom.us/test);
      iv) Close out and avoid running unnecessary applications besides Zoom during the hearing;
      v) To the extent possible, limit the number of other devices connected to the internet/Wi-Fi service at your location during the hearing;
      vi) Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and
      vii) Microphone and speaker. Make sure the microphone is close enough to pick up your voice. And raise the speaker volume so it is loud enough for you to hear others. If you will be using separate devices for video and audio (e.g., a computer for video and a phone for audio), be sure that the microphone and the speaker on the video device are off to prevent audio feedback, and
      viii) Set your mobile phone notifications on vibrate only.

IV. JOINING THE HEARING

1. Participants must join the video hearing at least 5 minutes before the scheduledstart time by clicking the “Join ZoomGov Meeting” link in the invitation or clicking“Join a Meeting” in Zoom and entering the Meeting ID and Password. If asked whether to open Zoom in your browser or in the Zoom app, open in the Zoom app.Select “Join by Computer Audio,” even if connecting via smartphone or tablet.

2. Upon joining the virtual hearing, each participant will initially appear in a Waiting Room. The Hearing Officer or Bailiff will admit counsel and parties into the video hearing room. Unless otherwise ordered, witnesses will remain in the Waiting Room until called to testify.
3. The video hearing is an official proceeding. Please approach the hearing with the same level of respect and civility that you would approach an in-person proceedingin a courthouse, and accordingly wear appropriate clothing and use appropriate language.
4. *Microphone and Video*: When each participant is admitted to the video hearing room, the participant's video should be on and audio should be muted until the hearing or any pre-hearing discussions begin. To the extent necessary, the Hearing Officer or Bailiff may mute any participant's microphone and/or turn off a participant's video during the hearing.

V. DURING THE HEARING

1. The court reporter is the only person authorized to record the hearing. Participantsand observers may not record, duplicate, screenshot or save any audio or video ofthe video hearing, including conferences or sidebars.
2. Participants must speak one at a time and pause before speaking in case there is any "lag" or delay in the audio/video feed. Before speaking, counsel should wait forthe witness to finish her or his answer, and the witness should wait for counsel to finish his or her question. If there is an objection, the witness should stop speakingand wait for instruction from the Hearing Officer.
3. While testifying, witnesses may not communicate with anyone else about their testimony (including during breaks), and may not review any documents, devices,or other items unless asked to do so by the Hearing Officer or by an attorney as part of a question during testimony.
4. In most hearings, the Chat feature in Zoom will be turned off. Attorneys may use their cell phones to text their co-counsel and/or an individual designated as essentialto assisting the attorney with presenting her case. Texting is not permitted with a designee while that person is on the stand testifying as a witness.
5. Counsel may ask the Hearing Officer for the opportunity to confer with clients privately during the hearing. The Hearing Officer or Bailiff will send counsel and the client(s) into a Zoom Breakout Room where the attorney and client may confer privately. The Hearing Officer or Bailiff may set a time limit for completing discussions in the Breakout Roomand returning to the video hearing. When finishing a session in a Breakout Room, do not click on "Leave Meeting" because doing so will end your connection to the Zoom hearing (though you can reconnect by repeating the login process).
6. Counsel may request a sidebar with counsel and the Hearing Officer. The Hearing Officer will send counsel into a Breakout Room for the sidebar. At the end of thesidebar, counsel will all return to the video hearing room.

Exhibit C

Witness Instructions

WITNESS INSTRUCTIONS AND GUIDELINES FOR ZOOM HEARINGS

You are receiving these instructions because you may be appearing as a witness in a National Labor Relations Board hearing. Due to the compelling circumstances created by the COVID-19 pandemic, the Hearing Officer ("Hearing Officer") will conduct the hearing using the Zoom videoconferencing platform. The guidelines and instructions for the video hearing are as follows:

I. Before the Video Hearing

A. Technology Requirements

To participate in the hearing, you will need access to a reliable internet connection and a device you can use to participate in the hearing by audio and video. It is recommended that you use a computer or laptop with a microphone, speaker, and a web camera. In the alternative, you may use a smartphone or tablet, but those devices may be less effective if/when you need to receive and review documents. Regardless of the device you use, it is recommended that you use a headset or earphones with a microphone to help reduce feedback and background noise.

The hearing will be conducted on the Zoom videoconferencing platform. Accordingly, you should load the Zoom application on the device you will be using, and verify that you can connect to Zoom by doing a test connection at https://zoom.us/test.

It is also recommended that you set up a free Zoom account using your first and last name and the email address that you will provide to your attorney or the attorney calling you as a witness. By setting up a Zoom account in that manner, your first and last name will appear when you join the hearing, which will make it easier to identify you as a witness.
You may set up a Zoom account at: https://zoom.us.

If you have any problems setting up a Zoom account or obtaining the necessary equipment and/or internet access, please contact your attorney, or the attorney calling you as a witness, as soon as possible. It is strongly recommended that you practice using Zoom before testifying at the hearing.

B. Invitation to Video Hearing

One of the attorneys (most likely your attorney or the attorney calling you to testify as a witness) will provide you with an email copy of the invitation to attend the video hearing. The invitation will contain a link to "Join ZoomGov Meeting" and a "Meeting ID" and "Password" that you can use to participate in the video hearing through Zoom. You (or your attorney) should communicate with the attorney calling you to estimate when you will be needed to testify. Do not share the contents of the invitation with others as participation in the hearing may be limited. If you know someone who would like to listen to the hearing, please discuss it with your attorney or the attorney who sent you the Zoom invitation and be prepared to provide the individual's name, email address and telephone number.

C. Hearing Preparation

Before the hearing, please take the following steps:

1. Set up your computer, laptop, tablet, or smartphone in a well-lit and quiet room with no distractions, and with the strongest light source in front of you;

2. Position the web camera at or slightly above eye level;

3. Test your equipment and internet connection (www.zoom.us/test);

4. Turn off any virtual background on Zoom;

5. Close out and avoid running unnecessary applications besides Zoom during the hearing;

6. To the extent possible, limit the number of other devices connected to the internet/Wi-Fi service at your location during the hearing;

7. Mute sounds from other applications (e.g., email notifications, chat messaging, etc.); and

8. Plug your device into a good power source.

If you have any issues, please contact your attorney or the attorney calling you as a witness.

D. Joining the Hearing

1. The attorney who has called you as a witness will notify you (or your attorney) about when to log into Zoom and be available to testify. Because the exact time for your testimony may change, please provide the attorney with multiple ways to contact you (e.g., telephone, cell phone, email), and be on standby to log on to Zoom and testify on short notice.

2. Please join the video hearing at least 5 minutes before the time you are asked to testify. You can join the hearing by clicking the "Join ZoomGov Meeting" link in the invitation or clicking "Join a Meeting" in Zoom and entering the "Meeting ID" and "Password." If you receive a message asking whether to open Zoom in the browser or in the Zoom app, select the Zoom app. Select "Join by Computer Audio," even if you are connecting via smartphone or tablet.

3. When you join the Zoom hearing, you will first see that you are in a Zoom "Waiting Room." Please do not disconnect from the Waiting Room. The Hearing Officer will receive a message that you are in the Waiting room, and will bring you into the video hearing when it is your turn to testify.

4. The video hearing is an official court proceeding. Please approach the hearing with the

same level of respect that you would approach an in-person proceeding in a courthouse, and accordingly wear appropriate clothing and use appropriate language.

5. Your video should be on when you join the video hearing. If your audio is on "Mute," as indicated by a microphone symbol with a slash mark at the bottom of your device screen, then no one will be able to hear you when you speak during the video conference. You may "Unmute" yourself by clicking on the microphone symbol one time, which will remove the slash mark on the microphone symbol and allow everyone to hear you when you testify.

E. <u>During the Hearing</u>

1. The court reporter is the only person authorized to record the hearing. Participants, witnesses, and observers may not record, duplicate, save or photograph any video or audio portions of the proceeding, including conferences or sidebars.

2. Please do not talk over another person. Due to the potential for the audio and/or video connection to "lag" or delay, pause before speaking to avoid having more than one person speaking at the same time. Consistent with that guideline, please wait for the attorney to finish her or his question before starting your answer. If one of the attorneys makes an objection, please stop speaking and wait for instruction from the Hearing Officer.

3. While testifying, you may not communicate with anyone else about your testimony (including during breaks), and you may not review any documents, devices, or other items unless the attorney or Hearing Officer asks you to do so as part of a question they pose during your testimony. You may be asked to use your camera to show your surroundings before or while testifying.

4. During the hearing, the attorneys may ask you to look at an exhibit. They may show you the document on your device screen, or if allowed, they may electronically send you the document. Please make sure you have provided an email address that you can access during the hearing. You should answer any questions about the exhibit, and then put the exhibit aside once the attorney moves on to another line of questions.

5. At the end of your testimony, the Hearing Officer will give you some final instructions, including the instruction to not tell any other possible witness about your testimony. The Hearing Officer will then advise you when to disconnect from the Zoom video hearing. One of the attorneys will contact you if you need to appear again to provide additional testimony.

6. If you experience any connection or technology related issues during the hearing, please immediately notify the Hearing Officer and/or the attorney who called you as a witness.

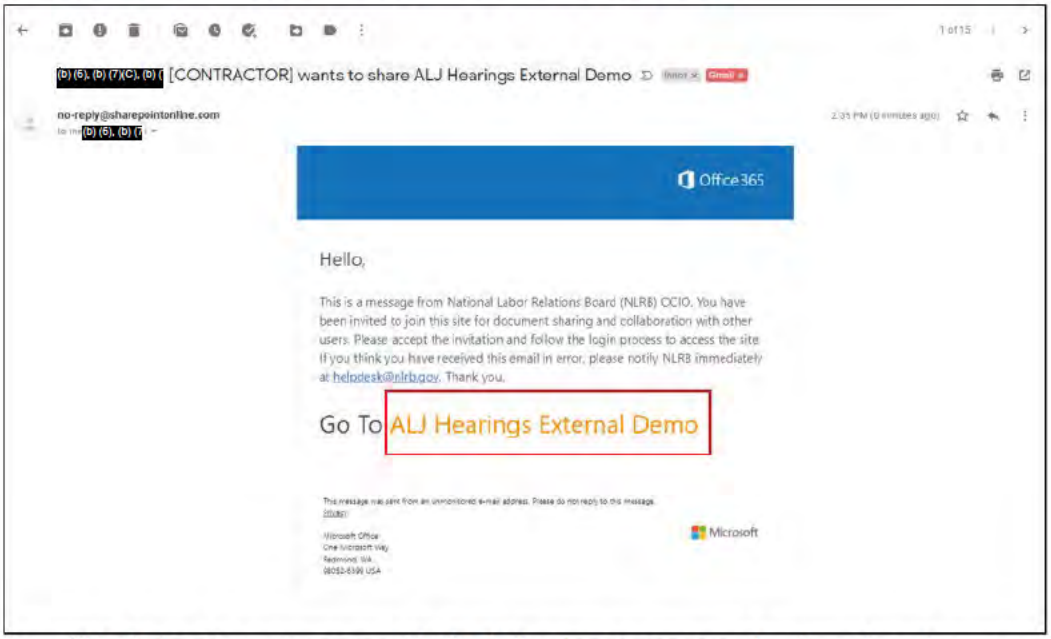
Exhibit D

NLRB SharePoint Site Instructions

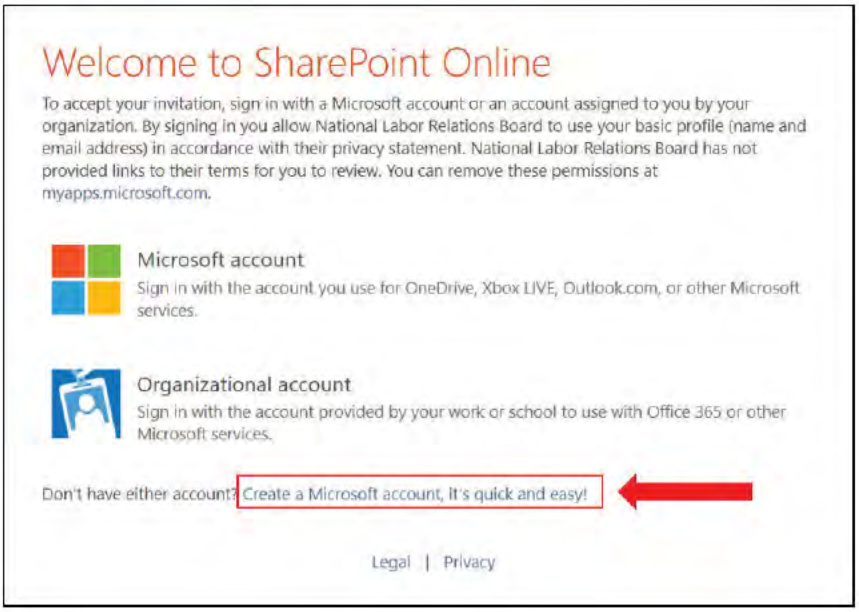
Steps to Access SharePoint Site using an external email address

Please follow the steps given below once you receive an email invitation from National Labor Relations Board (NLRB). **NOTE: NLRB IT is available for technical support at sharepointhelp@nlrb.gov on business days from 9:30 am to 5:00 pm EST. To avoid delays, please follow these access instructions as far before the hearing as possible.**

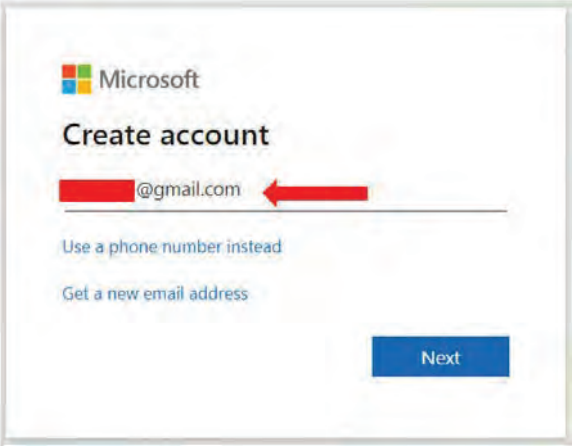
1. Open your email invite and click on the link highlighted below:



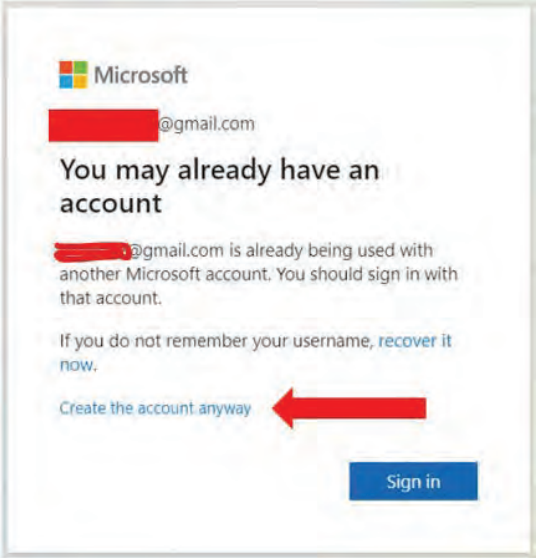
2. You will be taken to a new page with the following message and options to setup your account. Click on the link highlighted below.



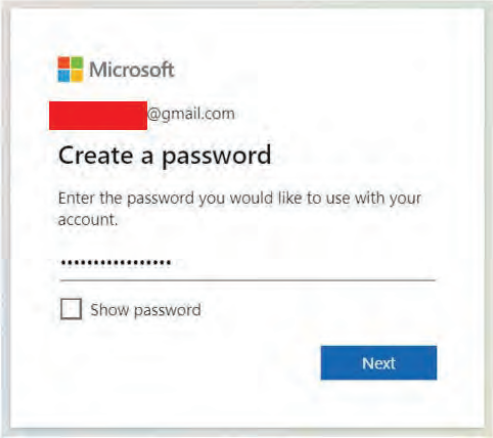
3. You will see a new pop-up on your screen to setup a new account. You can type in the same email address where you received the invitation.



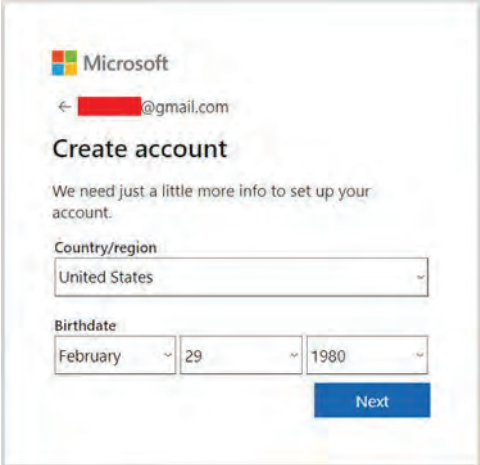
4. If you have used the same email address to sign up for another site, you may see the following message. If you do, click on the link highlighted below. If you haven't used this email address before, please jump to step # 5



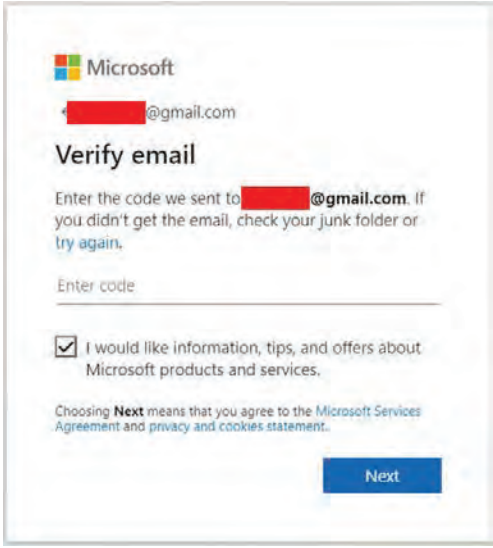
5. Create a strong password. You will use this password to log in to NLRB SharePoint site.



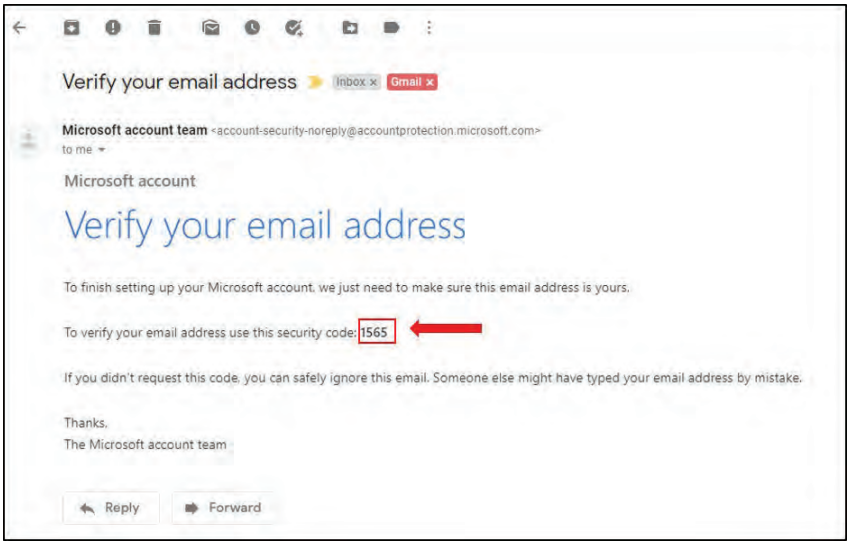
6. Provide additional information as shown below.



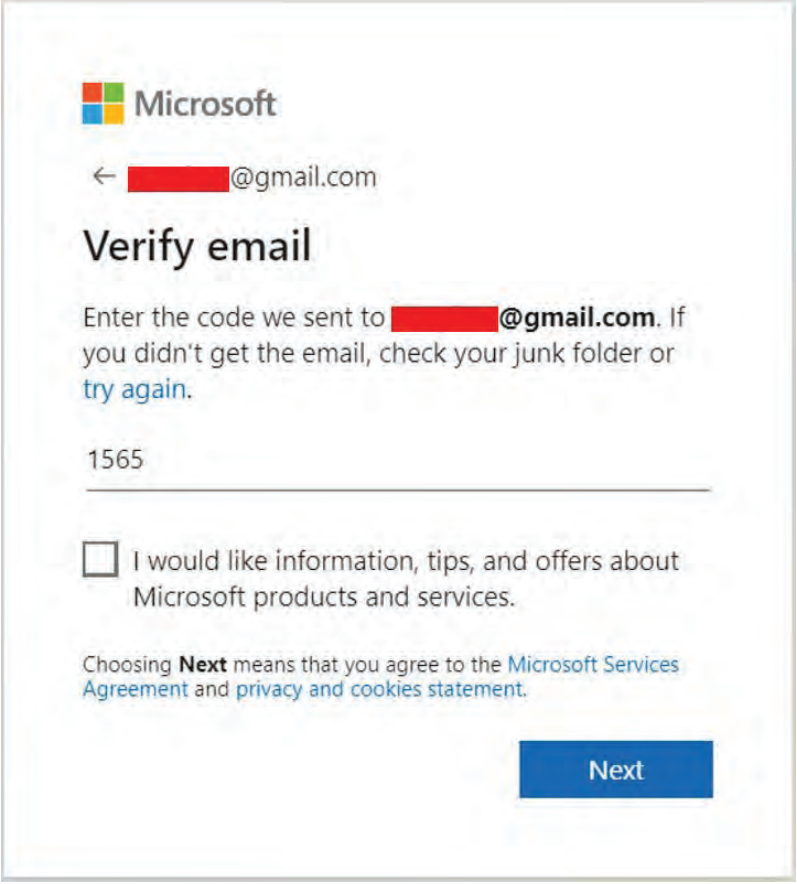
7. You will get the following prompt on the next screen. Please log in to your email to retrieve the code and enter it in the prompt shown below.



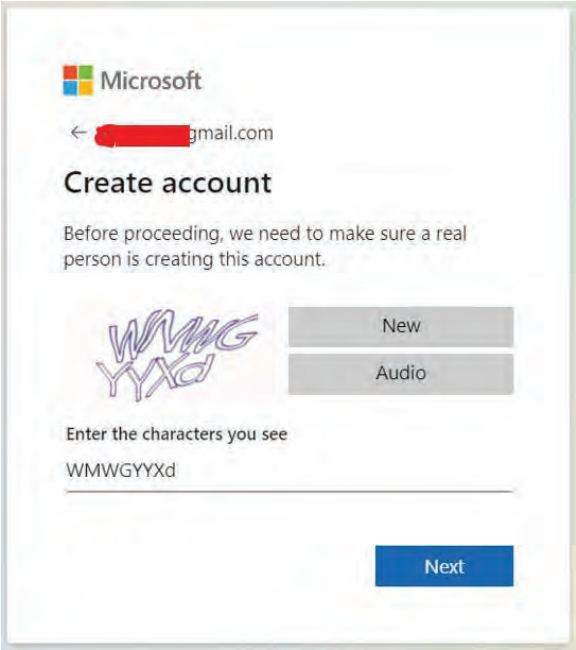
8. Email from Microsoft with the verification code will look like the sample shown below.



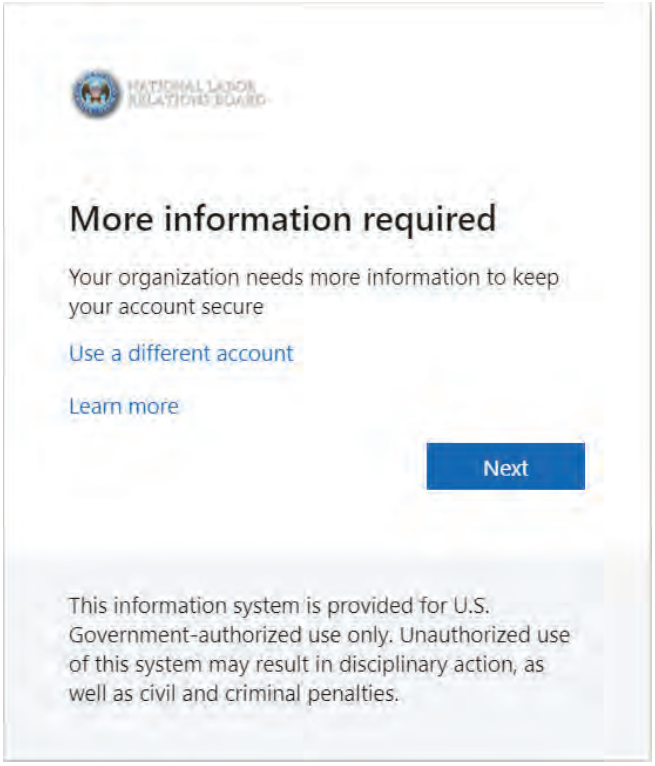
9. Enter the code in the prompt as shown below and click on Next.



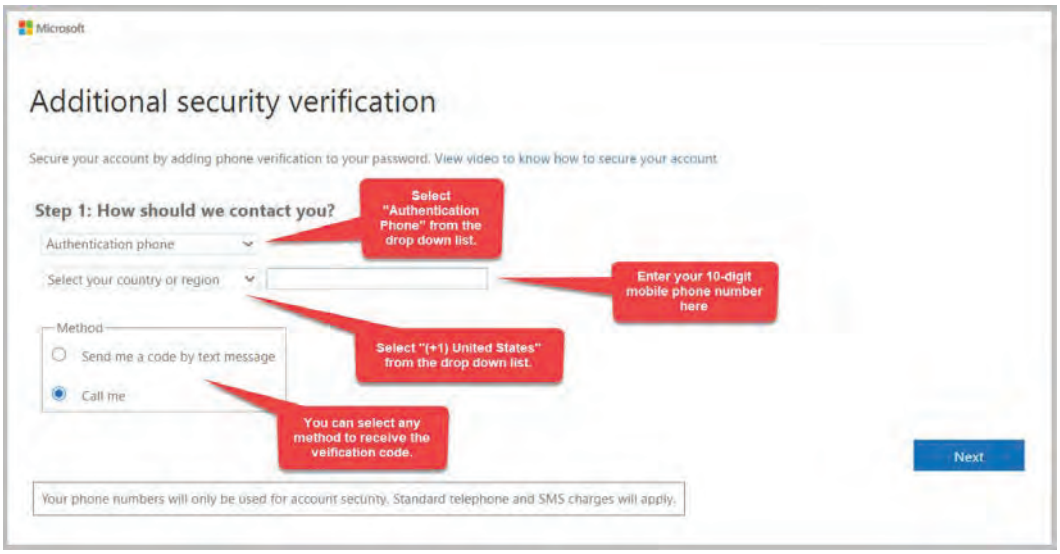
10. Next prompt is for verification purposes. Once you have entered the characters shown on the prompt, click on next.



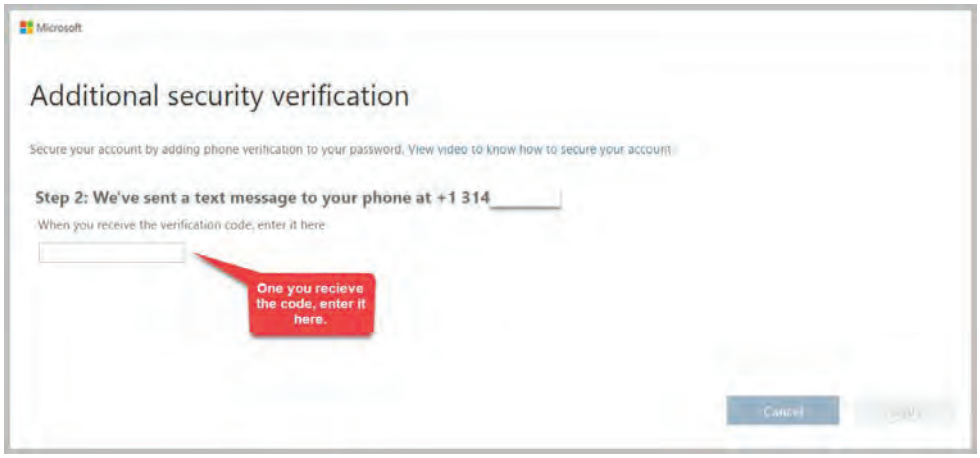
11. At this point, you will be asked to provide some additional information to ensure secure access to the site. Click on “Next”.



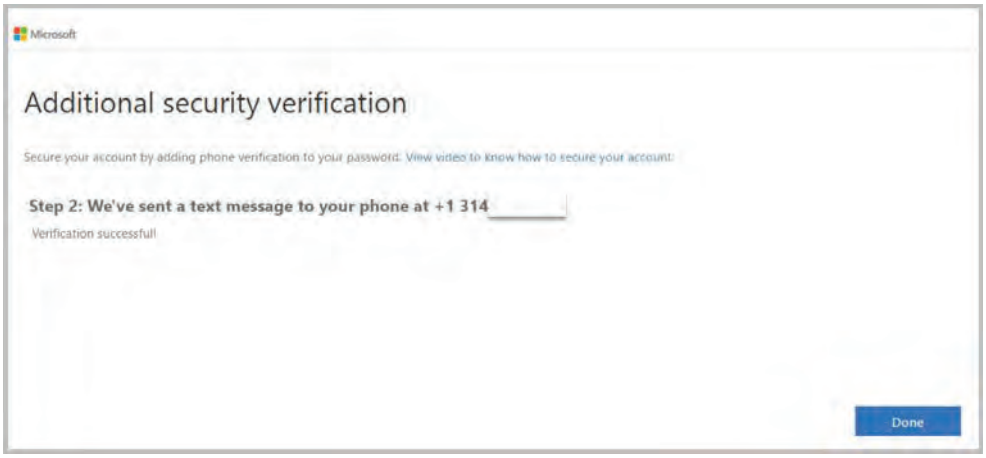
12. On the next screen, you will need to provide your mobile phone number for verification purposes. This is an additional layer of security required as a part of NLRB IT security policy. Fill out the required fields as shown below and click on “Next”.



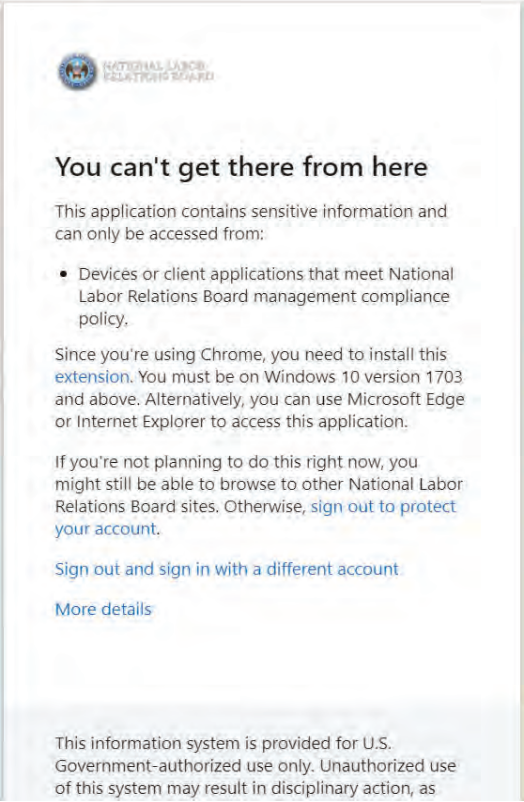
13. Once you receive the code on your mobile phone as a text message or call, enter it in the text box as shown below and click on “Verify”.



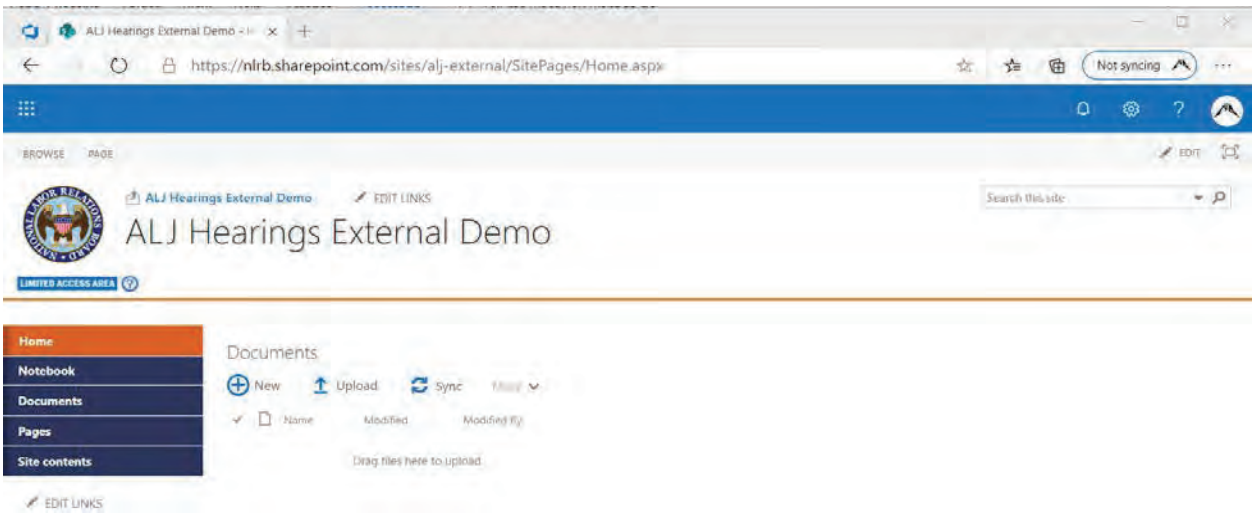
14. Once your code is verified, you will receive the following confirmation screen. Click on “Done”.



15. **ATTENTION**: After step 14, you will be presented with the following message on your screen. This is due to an additional layer of security in our system that requires account clearance. Please reach out to NLRB IT support team at the following addresses:
    a. Mark Eskenazi (mark.eskenazi@nlrb.gov)
    b. SharePoint Help (sharepointhelp@nlrb.gov)



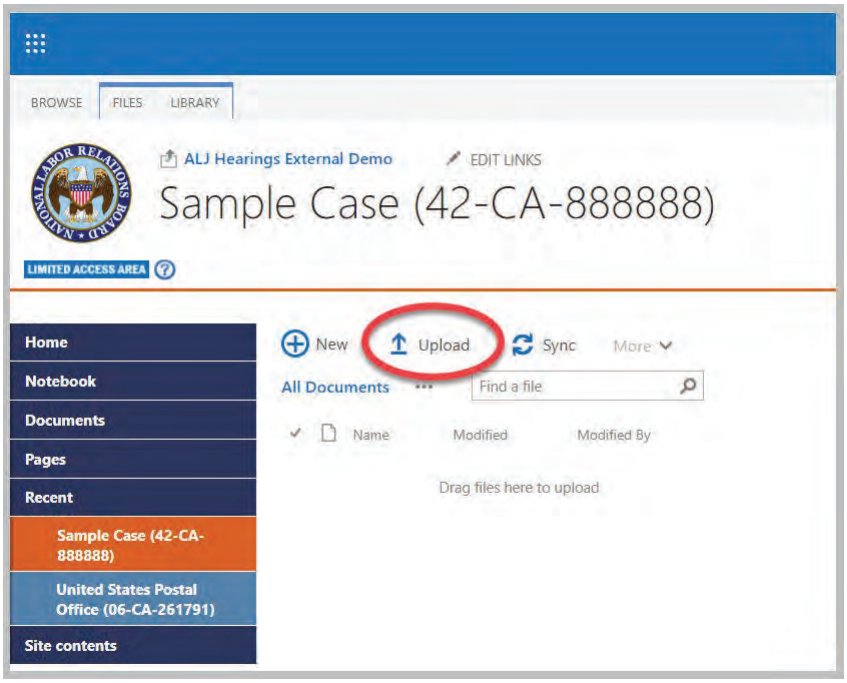
16. Once your account has been cleared through security, please log in again and you will be taken to the SharePoint site that has been shared with you.



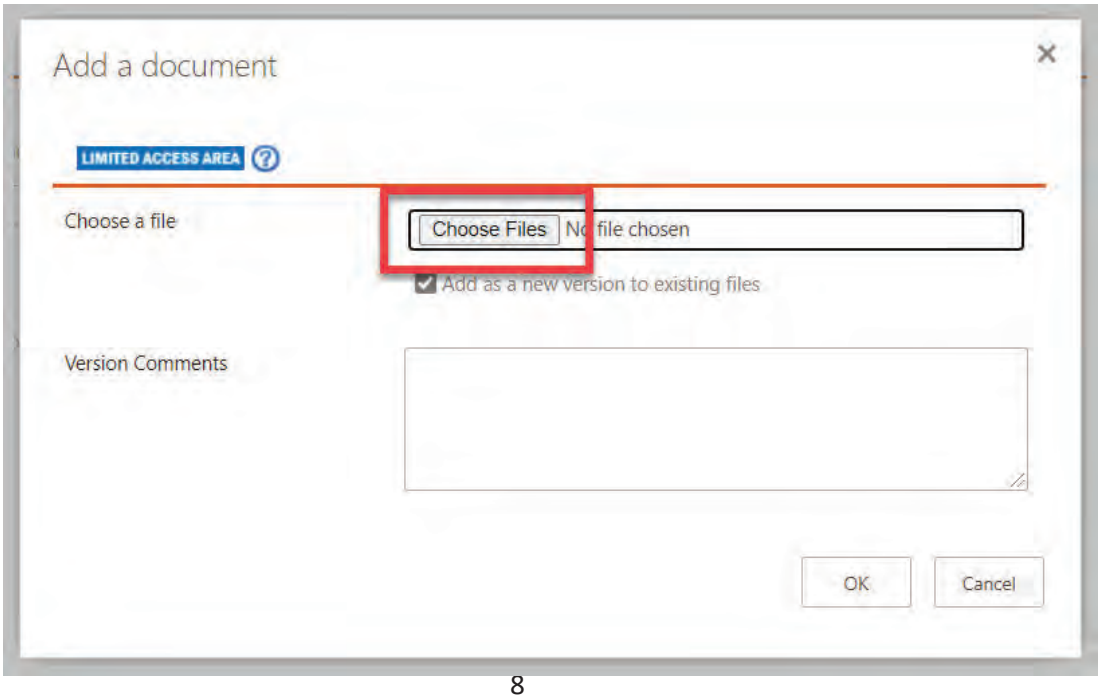
SharePoint - Upload an Existing Document

If you have an existing document on your computer and want to save it in the SharePoint document library, you can easily upload it. To do that follow the steps below:

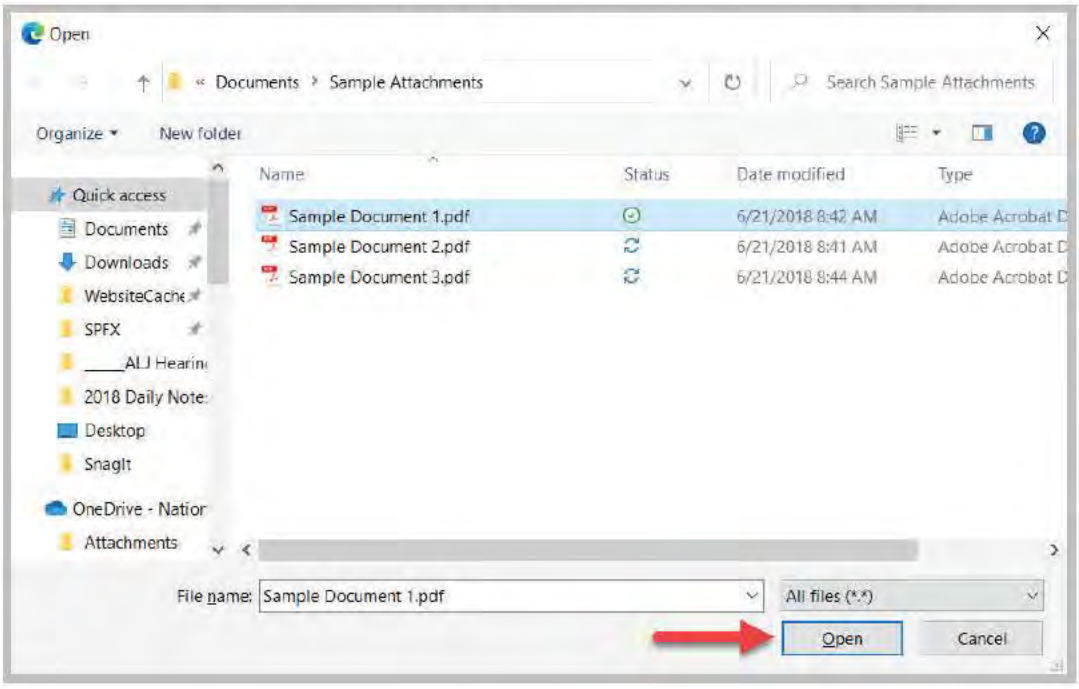
1. Once you are in the document library, click on “Upload” button.

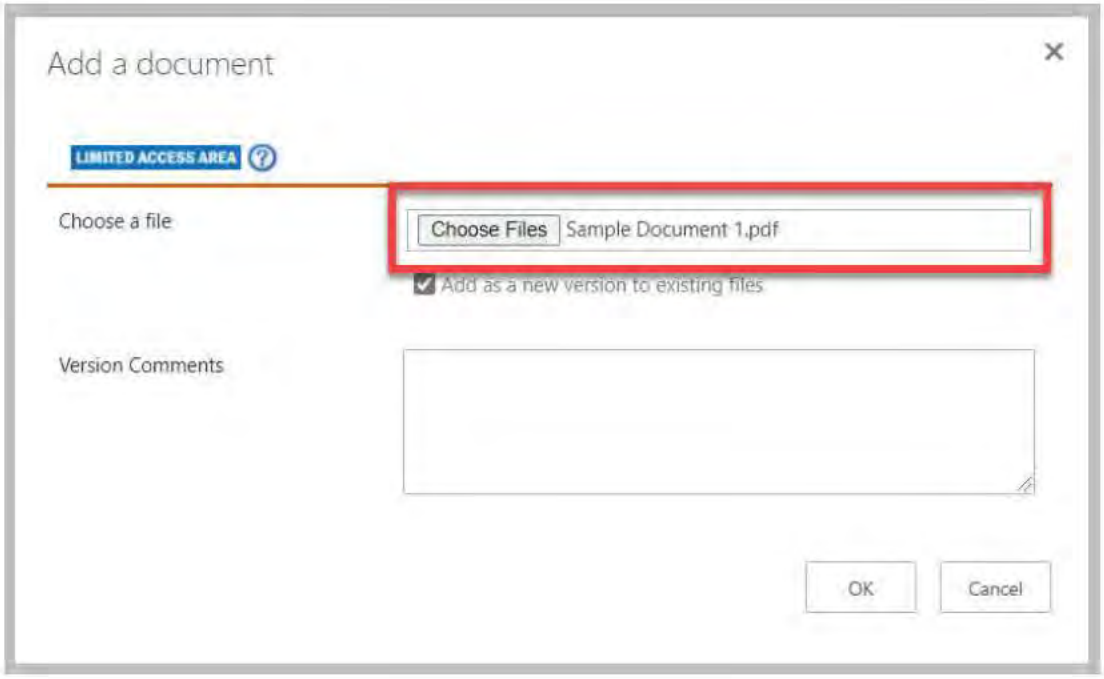


2. An “Add a document” prompt will appear on the screen, click on “Choose Files” button.

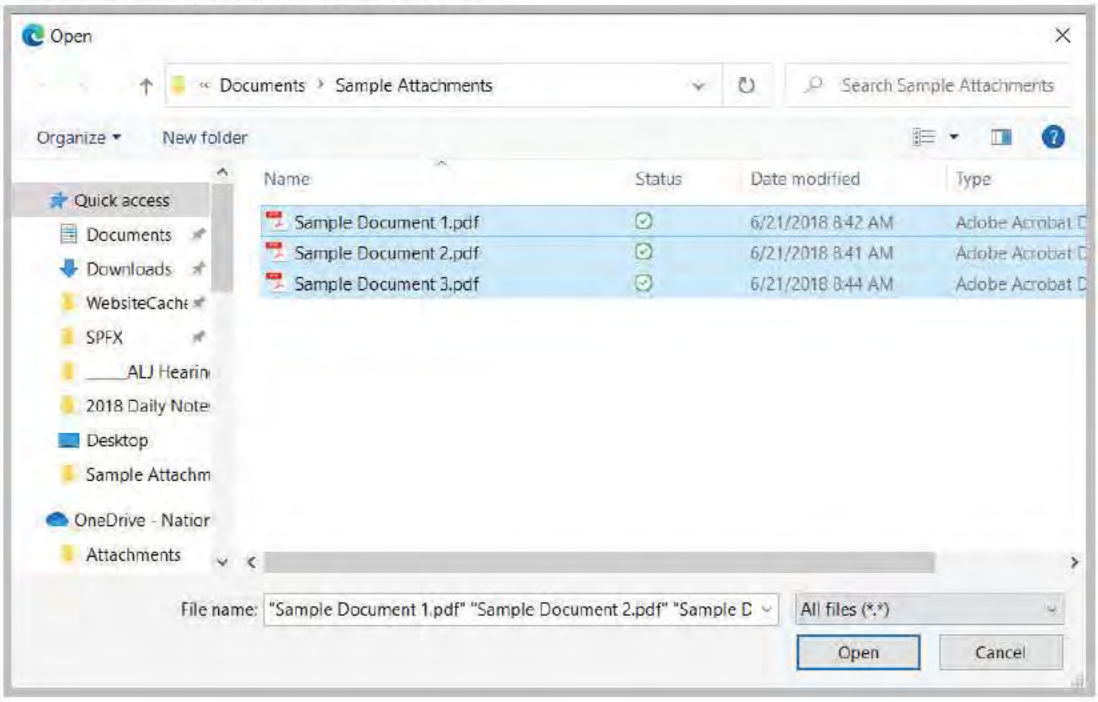


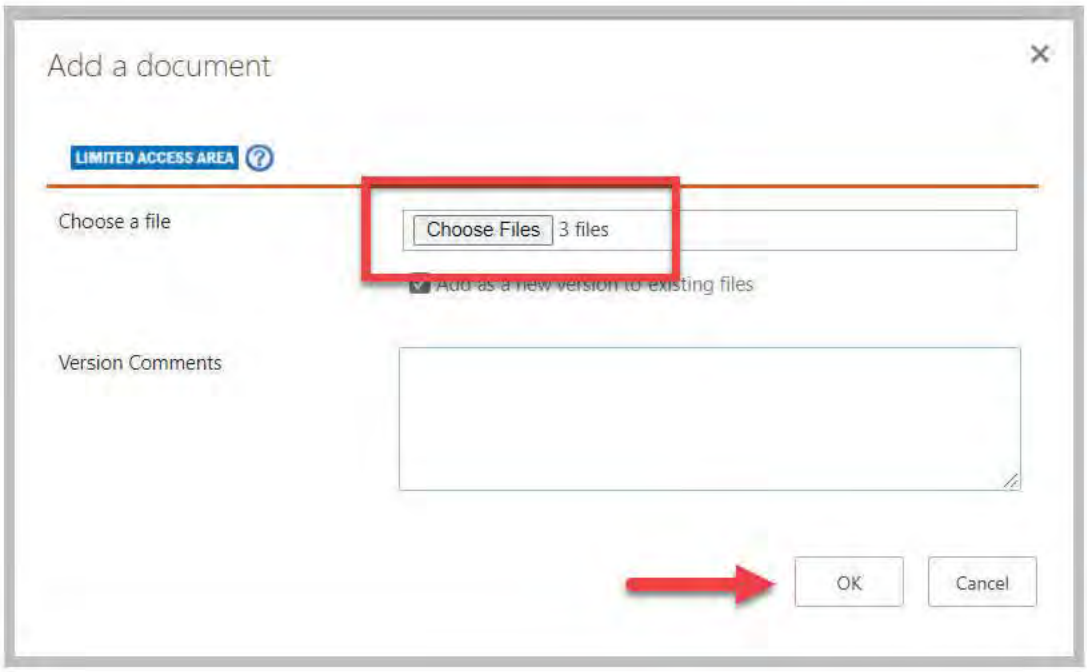
3. On the next window, you can select any type of document from your computer (including word, excel spreadsheet, pdf etc.) and then click on "Open" button. Click on "Ok" button on the "Add a document" prompt to finally upload the selected document in document library.



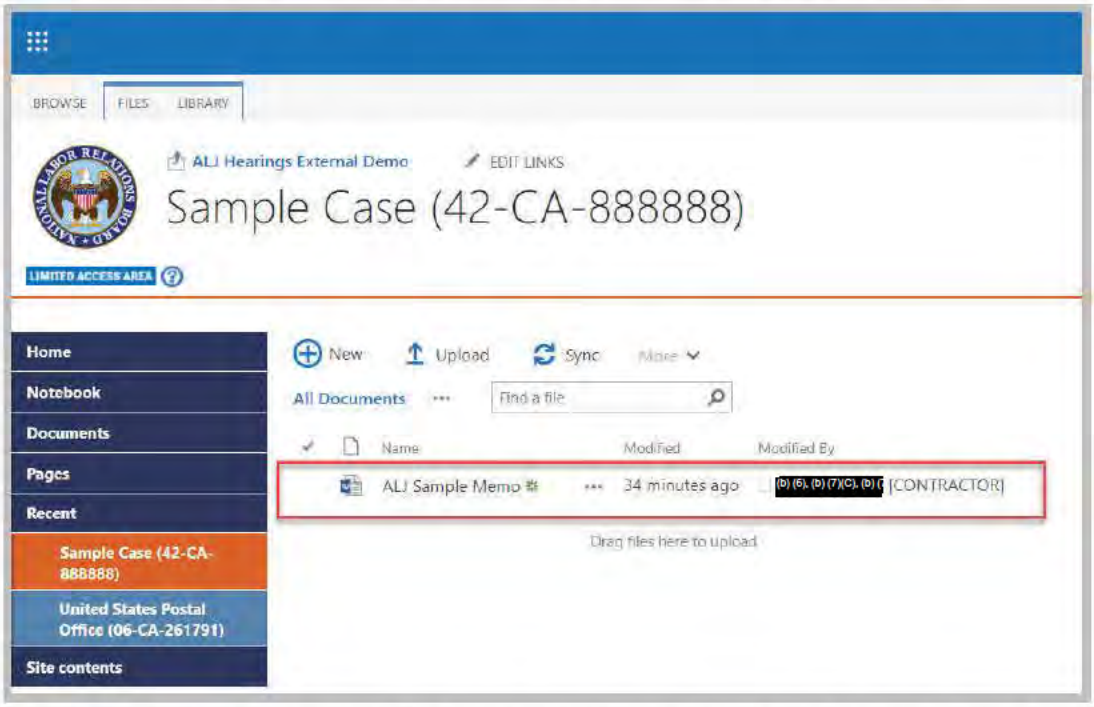


4. **You can also select multiple files to upload. To do this, while keeping "Ctrl" key on the keyboard pressed use left mouse button and click on all the files you would like to select. Once selection has been made, click on "Open" button.**



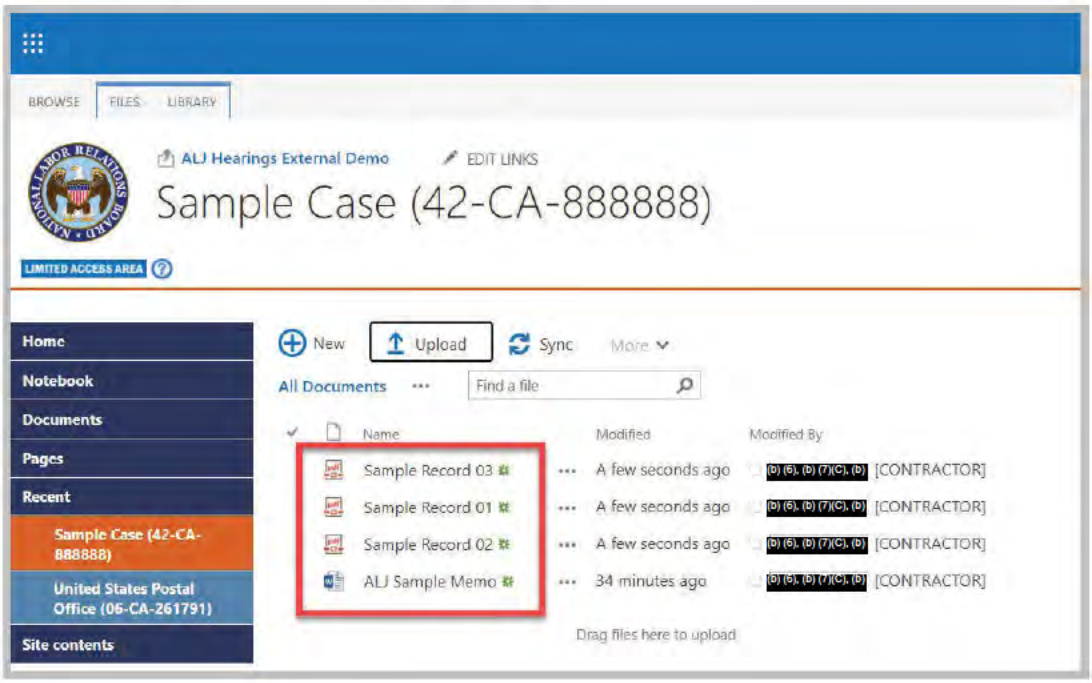


5. Your document/s has now been uploaded to the document library successfully.



6. You can also upload documents from your computer to SharePoint document library by simply click-and-drag the document/s over to the browser.

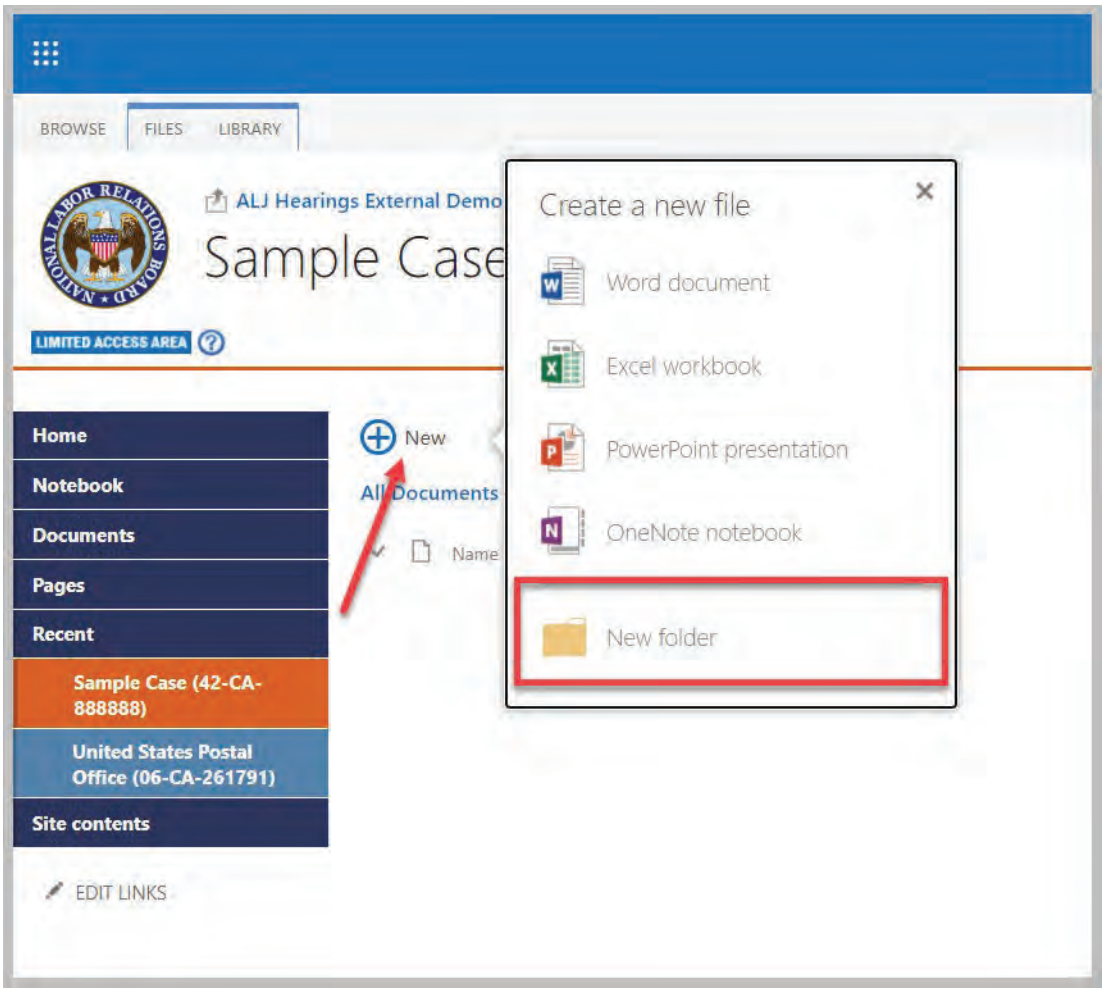
7. Once you drop the document/s, they will appear in the document library.



Create a Folder

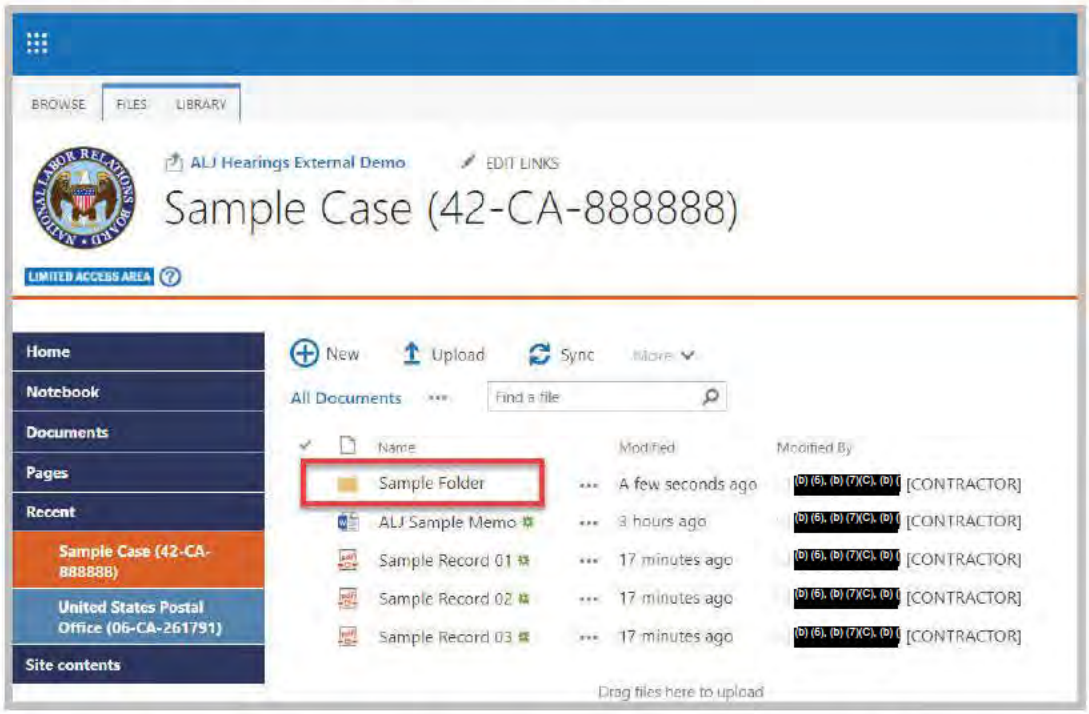
If or when you need to organize your documents, you can use folders. To create a folder, follow the steps below:

1. Once you are in the document library, click on "Create" button and select "New Folder".

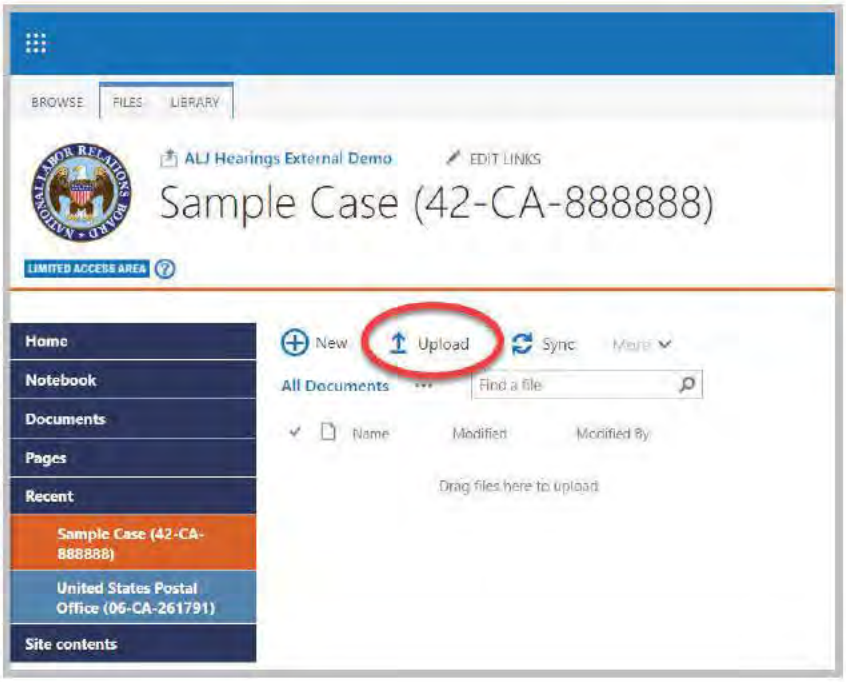


2. You will get a “Create a folder” prompt on your screen. Enter the folder name of your choice and click on “Create” button.

3. You can now see a new folder in the document library.



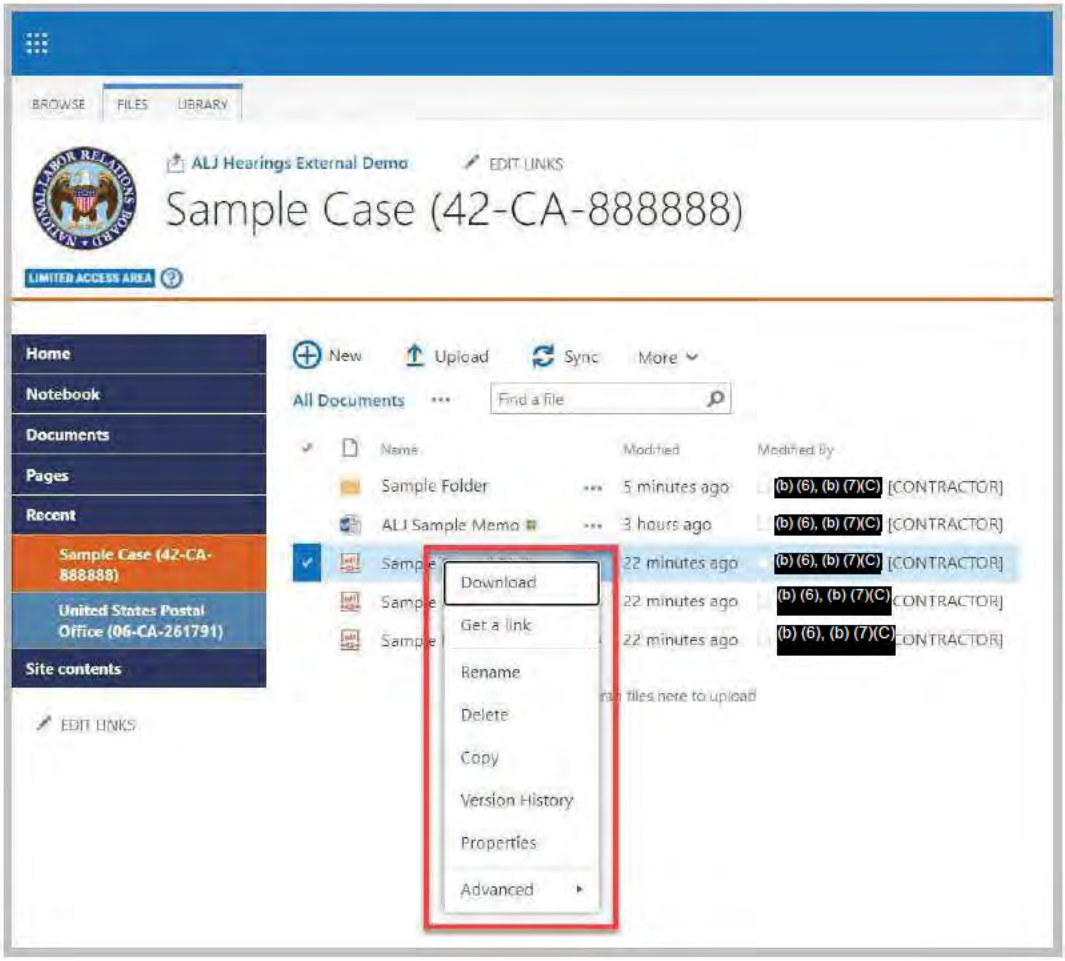
4. If you want to add documents to the folder, simply click on the folder name to get inside the folder and follow the steps given above in the "Upload an Existing Document" section of this guide.



Document Actions Inside a Document Library:

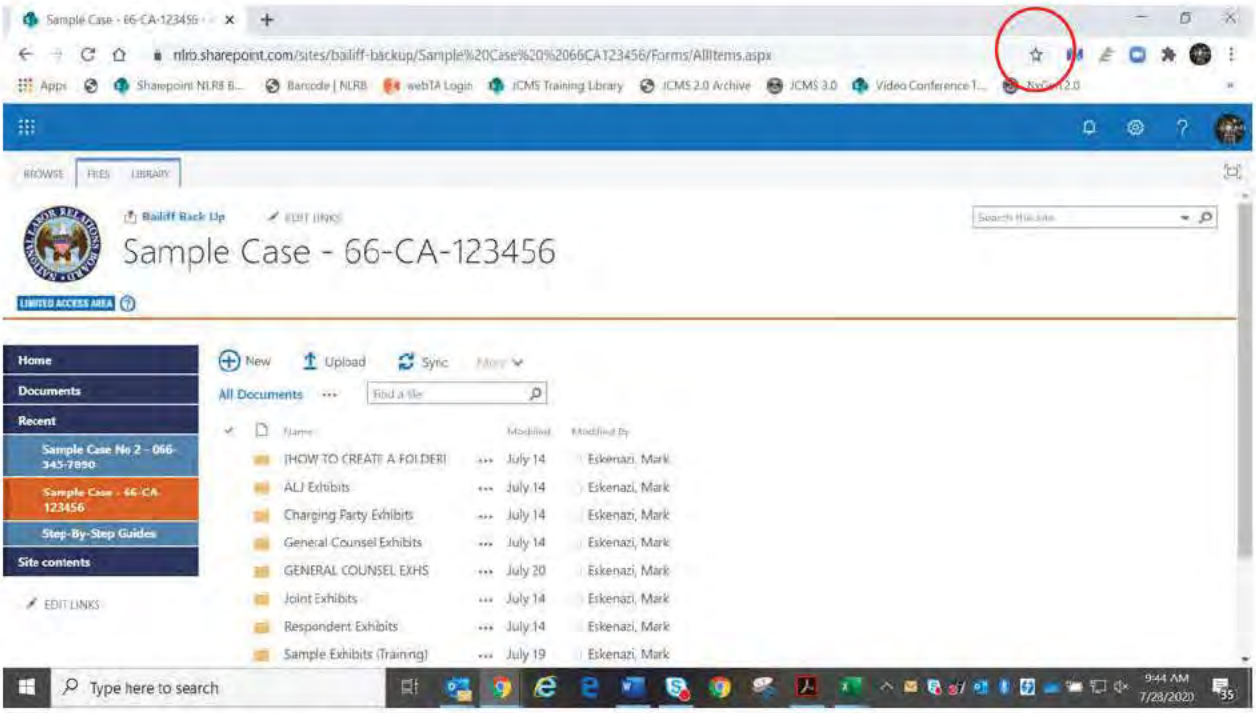
Inside the document library, when you right-click on any available document (inside the folder as well), you will be able to perform additional actions as shown in the screen shot. Some of the popular actions are given below:

Action	Description
Download	This option allows you to download the document to your computer.
Rename	This option allows you to rename the document.

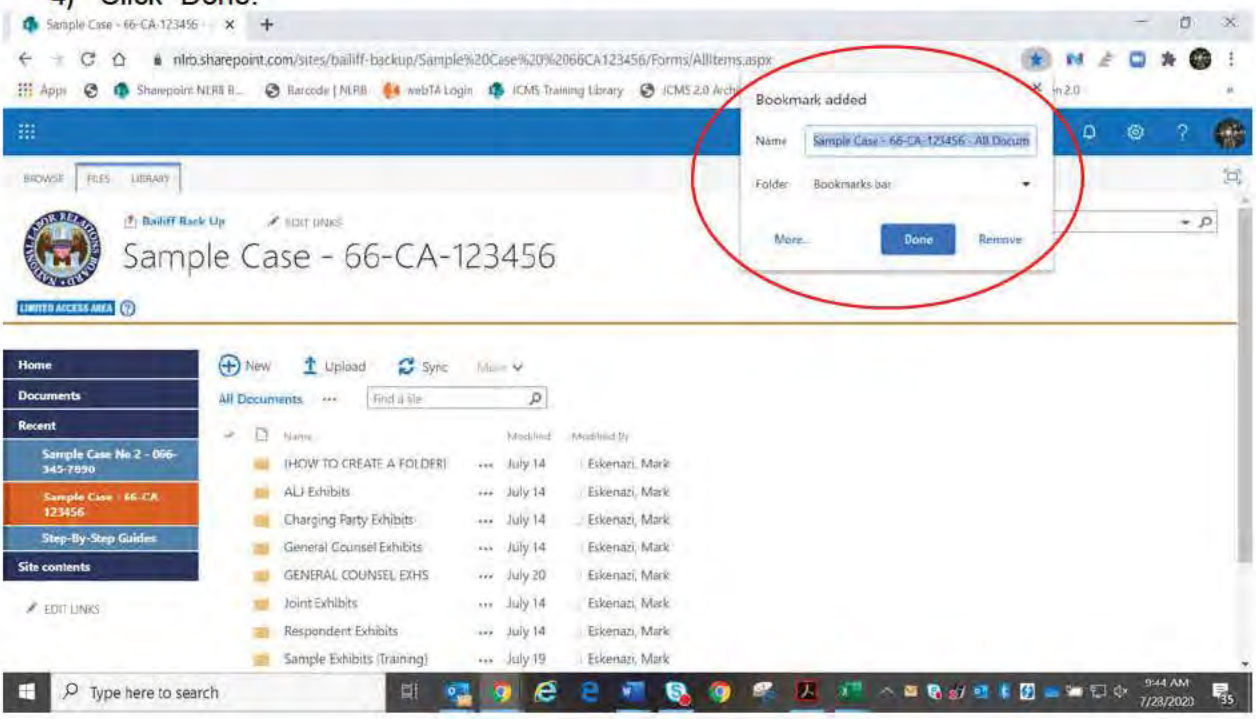


How to Save a SharePoint Page to Your Chrome "Favorites:"

1) From the email you receive from OCIO, open the link to the SharePoint page in your Chrome web browser.
2) Click the star at the top.



3) If you wish, modify the name of how you want to save the page.
4) Click "Done."



5) Depending on how many Favorites you have, the Sharepoint page will be saved either at the top of the browser or by clicking the very small arrow button on the right side, in which case it will be saved in a column that opens.

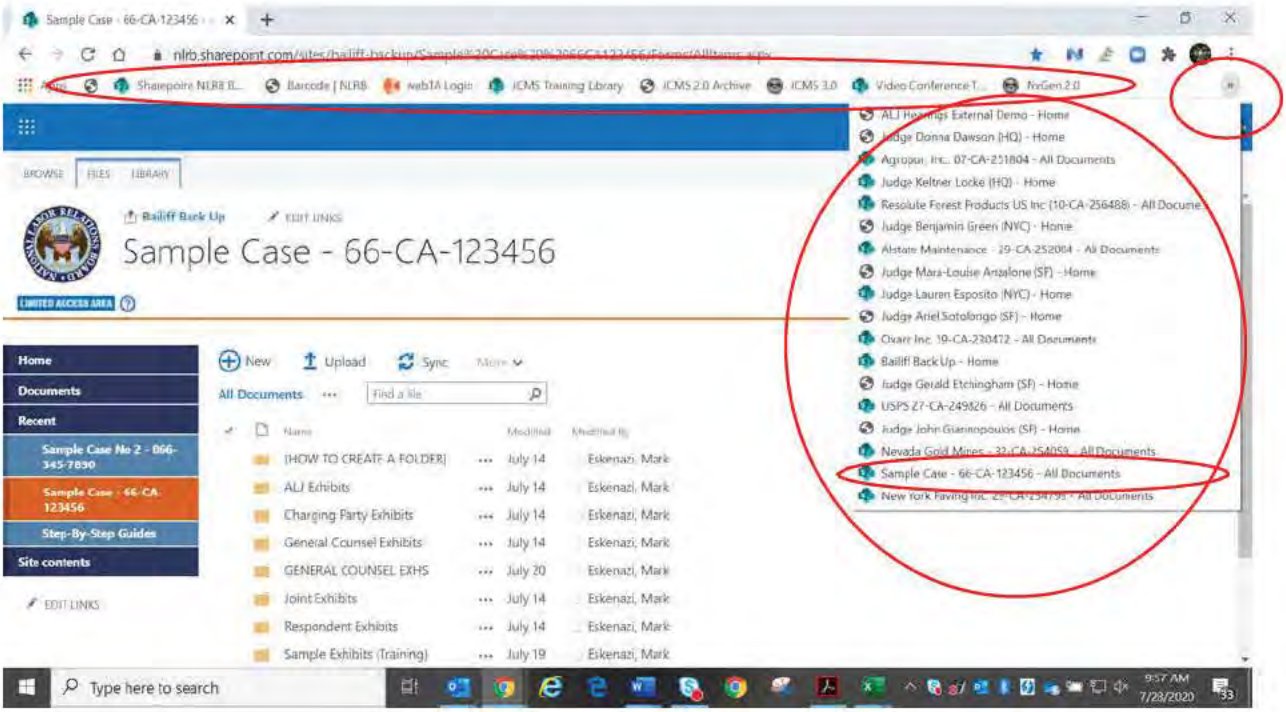


EXHIBIT G

The New York Times https://www.nytimes.com/2022/04/02/business/amazon-union-christian-smalls.html

How Two Best Friends Beat Amazon

The company's crackdown on a worker protest in New York backfired and led to a historic labor victory.

By Jodi Kantor and Karen Weise

Published April 2, 2022 Updated April 14, 2022

In the first dark days of the pandemic, as an Amazon worker named Christian Smalls planned a small, panicked walkout over safety conditions at the retailer's only fulfillment center in New York City, the company quietly mobilized.

Amazon formed a reaction team involving 10 departments, including its Global Intelligence Program, a security group staffed by many military veterans. The company named an "incident commander" and relied on a "Protest Response Playbook" and "Labor Activity Playbook" to ward off "business disruptions," according to newly released court documents.

In the end, there were more executives — including 11 vice presidents — who were alerted about the protest than workers who attended it. Amazon's chief counsel, describing Mr. Smalls as "not smart, or articulate," in an email mistakenly sent to more than 1,000 people, recommended making him "the face" of efforts to organize workers. The company fired Mr. Smalls, saying he had violated quarantine rules by attending the walkout.

In dismissing and smearing him, the company relied on the hardball tactics that had driven its dominance of the market. But on Friday, he won the first successful unionization effort at any Amazon warehouse in the United States, one of the most significant labor victories in a generation. The company's response to his tiny initial protest may haunt it for years to come.

Mr. Smalls and his best friend from the warehouse, Derrick Palmer, had set their sights on unionizing after he was forced out. Along with a growing band of colleagues — and no affiliation with a national labor organization — the two men spent the past 11 months going up against Amazon, whose 1.1 million workers in the United States make it the country's second-largest private employer.

At the bus stop outside the warehouse, a site on Staten Island known as JFK8, they built bonfires to warm colleagues waiting before dawn to go home. They made TikTok videos to reach workers across the city. Mr. Palmer brought homemade baked ziti to the site; others toted empanadas and West African rice dishes to appeal to immigrant workers. They set up signs saying "Free Weed and Food."

The union spent $120,000 overall, raised through GoFundMe, according to Mr. Smalls. "We started this with nothing, with two tables, two chairs and a tent," he recalled. Amazon spent more than $4.3 million just on anti-union consultants nationwide last year, according to federal filings.

The unionization vote reflects an era of rising worker power. In recent months, a string of Starbucks stores have voted to organize as well. But JFK8, with 8,000 workers, is one of Amazon's signature warehouses, its most important pipeline to its most important market.

Amazon's JFK8 warehouse on Staten Island runs 24/7 and employs thousands. Business boomed during the pandemic as the site kept New York City supplied under lockdown. Dave Sanders for The New York Times

Amazon has fought unionization for years, considering it a dire threat to its business model. Its ability to speed packages to consumers is built on a vast chain of manual labor that is monitored down to the second. No one knows what will happen if the newly organized workers try to change that model or disrupt operations — or if their union is replicated among the more than 1,000 Amazon fulfillment centers and other facilities across the country.

For all their David-versus-Goliath disadvantages, the Staten Island organizers had the cultural moment on their side. They were buoyed by a tightened labor market, a reckoning over what employers owe their workers and a National Labor Relations Board emboldened under President Biden, which made a key decision in their favor. The homegrown, low-budget push by their independent Amazon Labor Union outperformed traditional labor organizers who failed at unionizing Amazon from the outside, most recently in Bessemer, Ala.

"I think it's going to shake up the labor movement and flip the orthodoxy on its head," said Justine Medina, a box packer and union organizer at JFK8 who had waited with an exuberant crowd in Brooklyn to hear the vote results.

The future of American unionizing efforts "can't be about people coming in from the outside with an organizing plan that people have to follow," said Sara Nelson, head of the flight attendants' union, in an interview. "It has to come from within the workplace."

Now, both the nascent JFK8 union and Amazon face pressing questions. The union, with no traditional infrastructure, experience or leadership, is likely to face a legal battle over the vote and challenging contract negotiations. The company, which did not respond to a request for comment for this article, will have to decide whether to reconsider some of its tactics and address the underlying labor dissatisfaction that handed it such a sweeping defeat.

"Amazon wanted to make me the face of the whole unionizing efforts against them," Mr. Smalls wrote in a tweet on Friday, appearing undaunted by the task ahead. "Welp there you go!"

The Walkout

When Amazon opened the sprawling JFK8 site in 2018, the company was both drawn to and wary of New York, America's most important consumer market. The established Retail, Wholesale and Department Store Union announced a bold goal: to turn JFK8 into the first organized Amazon warehouse in the country.

Soon Amazon withdrew from its highly touted plan to open a second headquarters in the city, as a backlash grew over public subsidies it would receive and its history of opposing unions. But the talk of organizing JFK8 went nowhere. In labor circles, many believed that Amazon's turnover was too high, and its tactics too combative, for a union to succeed.

When the first coronavirus cases were confirmed at JFK8 in March 2020, Mr. Palmer and Mr. Smalls confronted managers with safety concerns. Employees were increasingly worried about rising infection rates and felt that Amazon was not notifying them about cases in a timely manner, managers documented in newly released court records.

But Amazon refused to pause operations, saying it had taken "extreme measures" to keep workers safe. The pandemic had turned JFK8 into a lifeline for the city, where 24/7 shifts and a fleet of trucks delivered supplies as it went into lockdown.

A walkout in March 2020 over employees' concerns about Covid-19 began the organizing movement at JFK8. Spencer Platt/Getty Images

As Amazon moved to fire Mr. Smalls that March, two human resource employees at JFK8 doubted the wisdom of his dismissal. "Come on," one messaged. Mr. Smalls was outside, peaceful and social-distancing, she wrote. His firing, she predicted, would be "perceived as retaliation." But the termination proceeded.

After the firing, the chief counsel's smear against Mr. Smalls — a full apology came only later — and the dismissal of another protester, the two friends resolved to take action. Mr. Smalls was outspoken, Mr. Palmer deliberate. They were both Black men from New Jersey and the same age (31 then, 33 now). Both had dropped out of community college, prided themselves on high scores on Amazon's performance metrics and once hoped to rise within the company.

Now they made new plans. Mr. Palmer would keep working at JFK8, the better to change it from inside.

In early 2021, they took a road trip to another Amazon warehouse. When workers held a union drive in Bessemer, Ala., Mr. Palmer and Mr. Smalls wanted to witness it. But they found organizers from the retail union — the one that had previously declared an interest in JFK8 — less than welcoming to them and thought the professionals seemed like outsiders who had descended on the community.

Representatives from the Retail, Wholesale and Department Store Union outside the Amazon warehouse in Bessemer, Ala. Dustin Chambers/Reuters

By April, workers in Bessemer had rejected the union by more than a 2-to-1 margin. Mr. Palmer and Mr. Smalls declared their intention to organize JFK8, but few took them seriously. Why should they win when better-funded, more experienced operatives had been beaten?

Turnover and Morale

As they set about their first task — gathering thousands of worker signatures to trigger a unionization vote — cracks in Amazon's employment model were evident.

JFK8 had offered jobs to workers laid off by other industries during the pandemic. But a New York Times investigation last June revealed that the warehouse was burning through employees, firing others because of communication and technology errors and mistakenly depriving workers of benefits.

Black associates at JFK8 were almost 50 percent more likely to be fired than their white peers, according to an internal document. Even before the pandemic upended work, Amazon warehouses had an astonishing annual turnover rate of 150 percent.

As Mr. Palmer and Mr. Smalls approached workers at the bus stop, Amazon's tone toward its employees kept shifting. Jeff Bezos, the company's founder, was handing over the role of chief executive to Andy Jassy, and the company raised wages and added the goal of being "Earth's best employer" to its guiding principles. It pledged to listen to complaints and improve working conditions.

Workers' speed at the JFK8 warehouse is monitored down to the second. Chang W. Lee/The New York Times

Packages ship off for delivery in the New York region, Amazon's most important market. Chang W. Lee/The New York Times

At other times, it was contentious. In a widely publicized Twitter exchange about the Bessemer organizing, Amazon sounded so dismissive about workers who could not take bathroom breaks and had to urinate in bottles that it had to apologize.

In May at JFK8, an anti-union consultant called the mostly Black labor organizers "thugs," according to a complaint filed against Amazon by the N.L.R.B. The retailer denied the episode.

And in November, the labor agency said Amazon had showed "flagrant disregard" for the law and threw out the results of the Bessemer warehouse vote, ordering another.

That fall, after months of gathering support, the New York union organizers delivered more than 2,000 signatures to the labor board, but they were rejected for not meeting the minimum required to hold an election. Mr. Smalls said Amazon had submitted payroll data to the board indicating that the company believed half the people who had signed cards no longer worked at the warehouse.

"After all those months of hard work, it seemed like the momentum was gone," Mr. Palmer recalled in an interview. Between working his shifts and organizing at JFK8 on his time off, he had spent barely a day away from the warehouse for months. Some of the employees he approached were skeptical of unions or dues, or just grateful for Amazon's health care and pay, which starts above $18 an hour at JFK8. Others seemed too exhausted and wary to even engage.

The Path to Victory

To press onward, the union leaders posted the TikTok videos, made outdoor s'mores and sang along to hip-hop and Marvin Gaye. When workers faced family crises, the budding union prayed. One fired employee became homeless, and the group set up a fund-raising campaign.

Their near-constant presence at the warehouse helped. "The more comfortable they get with us, that's when they start opening up to us," Mr. Palmer said of other workers.

Some union sympathizers took jobs at JFK8 specifically to help the organizing effort, according to Ms. Medina, who was among them.

Amazon countered with the full force of its anti-union apparatus. It monitored organizers' social media, court filings show, pelted workers with text messages and blanketed the warehouse with signs saying "Vote NO" or claiming the union leaders were outsiders. The company often held more than 20 mandatory meetings with workers a day, The Times reported last month, in which managers and consultants cast doubt on the effort.

"The Amazon Labor Union has never negotiated a contract," one presentation said. Dues would be expensive, it continued, and the union "has no experience managing this massive amount of money."

Andro Perez, 35, works at a smaller Amazon warehouse near JFK8, where another union vote is scheduled this month. He's leaning toward voting yes, he said, because Amazon's mandatory meetings mostly criticized unions. He would rather his employer address the question: "What could you do better?"

Mr. Smalls, right, held a barbecue outside the warehouse to encourage workers to sign union cards. Dave Sanders for The New York Times

Mr. Palmer spoke with an Amazon truck driver about workers' desire to organize. Dave Sanders for The New York Times

The organizers at JFK8 fought back, filing dozens of complaints with the N.L.R.B. claiming that Amazon violated workers' rights to organize. Amazon has denied their allegations, but the labor board found many to be credible and pursued them in administrative court.

By Christmas, the organizers scored a major legal win. Amazon agreed to a nationwide settlement, among the largest in the agency's history, that said workers could stay in the buildings to organize when they were off the clock.

With that, the organizers moved their potlucks indoors, giving them more access and legitimacy. Mr. Smalls's aunt provided home-cooked soul food: macaroni and cheese, candied yams, collard greens and baked chicken.

"What you do is you create a community that Amazon never really had for workers," said Seth Goldstein, a lawyer who represented the organizers free of charge.

One day this February, Mr. Smalls was bringing lunch to the break room when Amazon called the police, saying he had trespassed. He and two current employees were arrested. The response may have backfired: The union's videos of the episode on TikTok have been viewed hundreds of thousands of times.

Kathleen Lejuez, 41, employed by Amazon for nine years, said she was not a "union fan" but voted for the organizing effort to send a message to a company that she felt had lost its connection to workers. "The humanity at Amazon is gone," she said in an interview.

In the weeks before the count, Amazon, which has consistently said its workers are best served by a direct relationship with the company, laid the groundwork for potential challenges to the election — arguing in legal filings that the labor board had abandoned "the neutrality of their office" in favor of the union.

On Friday morning inside the agency's offices in Brooklyn, Mr. Smalls, in siren-red streetwear, sat next to Amazon's lawyer to review each ballot. His knee jittered as each vote was presented.

Members of the new union celebrated in Brooklyn on Friday night. Eduardo Munoz Avarez/Associated Press

The votes were tallied — 2,654 for the union, 2,131 against. With a comfortable margin secured, Mr. Palmer, Mr. Smalls and other representatives emerged into the spring light, screamed with joy and clasped one another in a tight circle.

A few miles away, at JFK8, workers were stealthily monitoring the results in between packing and stowing boxes. There was no formal announcement. Instead, a shout rose up from somewhere on the floor: "We did it! We won!"

Grace Ashford and Noam Scheiber contributed reporting.

The New York Times https://www.nytimes.com/2021/12/22/business/amazon-union-staten-island.html

Labor organizers at Amazon's Staten Island warehouse refile petition for a union election.

Organizers are aiming to form a new union, the Amazon Labor Union.

This article is part of our Daily Business Briefing

By Karen Weise

Dec. 22, 2021

Labor organizers at an Amazon warehouse on Staten Island said they had submitted more than 2,500 worker signatures to the National Labor Relations Board in a petition to hold a union election.

Kayla Blado, the press secretary for the agency, confirmed that the group had filed the petition.

The effort is being organized by current and former Amazon workers aiming to form a new independent union, called the Amazon Labor Union. It focuses on Amazon's only fulfillment center in New York City, known as JFK8, which employs more than 5,000 people.

Amazon Labor Union had initially filed for an election in October at JFK8 and three nearby Amazon buildings, but it withdrew the petition several weeks later after organizers said the labor board told them they did not have enough signatures of current employees to proceed. The New York Times reported that turnover at the company was about 150 percent a year even before the pandemic increased attrition.

By now focusing just on JFK8, "we are taking a different approach," said Christian Smalls, a former Amazon worker who is leading the effort. "We are hoping that not only do we have more than enough, but we have more than enough that are still employed."

Petitions need at least 30 percent of workers to demonstrate sufficient interest in holding an election, though typically unions file with far more.

Kelly Nantel, a spokeswoman for Amazon, said in a statement that the company's "focus remains on listening directly to our employees and continuously improving on their behalf." She said Amazon continued to doubt the organizers had enough signatures to merit an election.

Separately, the labor board in November threw out the results of a failed union election at an Amazon warehouse in Alabama. The agency said Amazon inappropriately interfered with the election and ordered the vote to be reheld next year. Amazon has not appealed the decision, though it can still do so.

Karen Weise is a technology correspondent based in Seattle, covering Amazon, Microsoft, and the region's tech scene. Before joining The Times in 2018, she worked for Bloomberg Businessweek and Bloomberg News, as well as ProPublica. @kyweise

Here's what to know about the Amazon union push in New York

The upstart union fought against one of America's most powerful companies, scoring a huge symbolic win for the labor movement

By Rachel Lerman and Gerrit De Vynck

Updated May 1, 2022 at 6:00 a.m. EDT | Published April 1, 2022 at 3:09 p.m. EDT

Amazon workers in Staten Island will find out whether a second warehouse has voted to unionize when ballots are tallied on Monday.

The vote this time was at a smaller warehouse, where about 1,500 people work. It is led by the same independent labor union that organized the first successful vote at an Amazon facility in the United States.

Workers at the larger warehouse across the street voted in April to join the upstart Amazon Labor Union. The first win was a milestone moment for Amazon workers and for the future of the American labor movement, which has been hoping for a resurgence in the wake of the pandemic.

Here's why the union vote on Staten Island is such a big deal and what comes next for the movement.

WHAT TO KNOW

- What's going on with the second warehouse?
- What happens next for labor movements at Amazon?
- Why does the first successful vote matter?
- Are there other attempts happening right now to get Amazon warehouses unionized?
- What has Amazon said about the union votes?

How does this fit into the broader picture for unions and organized labor?

Show all questions

What's going on with the second warehouse?

The second Staten Island warehouse to vote on whether to unionize is called LDJ5 and has about 1,500 workers. It's across the street from the larger warehouse, JFK8, which voted to unionize last month. Workers at LDJ5 are also voting on whether to join the Amazon Labor Union, and they cast their ballots in person last week.

The National Labor Relations Board will tally the votes Monday to determine whether the facility will join the union.

Labor experts say it could be a big moment for the labor push at Amazon if the union prevails — already, workers at many other warehouses have expressed interest in organizing, according to the ALU.

"It would create incredible momentum for organizing at Amazon and beyond if the ALU were to win a second election," said John Logan, chair of the labor and employment studies department at San Francisco State University. "But a defeat for the ALU would be far less damaging for future organizing campaigns than a second ALU victory would be for Amazon's anti-union campaign."

What happens next for labor movements at Amazon?

The ALU wants to take its efforts nationwide, though it will first take a break from campaigning to map out its plan, interim union president Chris Smalls said.

At the same time, increased labor momentum at Starbucks and within Amazon have gotten many national labor organizers and unions interested. National union leaders have pledged support to the ALU's movement, and some have also expressed interest in organizing Amazon themselves.

It's unclear where in the country the next major organizing effort could pop up at Amazon.

Why does the first successful vote matter?

Previous attempts by Amazon workers to unionize had fizzled out or ended in workers voting against unionization. The company has always strongly opposed any initiatives to form a union by its workers, and labor organizers have accused it of using unfair tactics to squash union drives. Nationally, union participation in most industries is lower than it has been in previous decades. The Staten Island workers, led by a former Amazon worker Smalls, also formed their own union instead of working with a big, countrywide organization with lots of resources and expertise.

Despite all that, the organizers managed to make their case to enough of their fellow workers to win by a sizable margin. Winning this battle gives the labor movement a huge symbolic win that will probably inspire other

workers — at Amazon and elsewhere — to try to unionize their own workplaces. For Amazon, it means that the era of being a union-free workplace in the United States is over. (Some warehouses in Europe are unionized.)

Are there other attempts happening right now to get Amazon warehouses unionized?

Yes. In Bessemer, Ala., thousands of workers voted this year in a redo election to join the national Retail, Wholesale and Department Store Union. In an April tally, workers cast 993 "no" votes to the union's 875 "yes" votes. But before the counting started, both Amazon and the Retail, Wholesale and Department Store Union (RWDSU) were able to challenge ballots they thought might be problematic.

Those ballots — 416 — are likely to determine the final results. But it could take weeks or months to reach a final determination as both sides litigate whether they should be included.

Bessemer workers made history last year when they were the first Amazon workers in seven years — and by far the largest group — to hold a union election. The union lost that vote by a wide margin, but federal regulators ordered a new election when they found that Amazon had improperly interfered.

What has Amazon said about the union votes?

Amazon put out a statement after the JFK8 vote was tallied, saying it was "disappointed" in the outcome of the Staten Island vote. "We believe having a direct relationship with the company is best for our employees," the company said. It also accused the National Labor Relations Board, the independent government agency that adjudicates union elections, of "inappropriate and undue influence."

The company filed a list of 25 objections with regulators, seeking to get a new election called. The objections will be discussed at a hearing scheduled for May 23.

The company strongly opposed unionization and has tried hard to persuade its workers to vote "no." In both Bessemer and Staten Island, Amazon hired consultants to urge workers that unions were not the best choice for them. The company used posters, text messages and held mandatory classes for workers to oppose the unions. It told workers that the unions would not necessarily guarantee greater benefits and would act as a middleman between the company and the workers.

Amazon has also defended its safety record and its pay and benefits, saying that it works hard to treat workers well.

Amazon founder Jeff Bezos owns The Washington Post.

How does this fit into the broader picture for unions and organized labor?

Union membership rates overall declined in 2021, falling to 2019 levels. But labor unions see momentum

Union membership rates overall declined in 2021, falling to 2019 levels. But labor unions see momentum building in the various organizing drives happening across the country — workers at several Starbucks stores have voted to unionize this year, as well as at a few media companies and at an REI store in New York. Some Apple Store employees are also working toward that goal.

The pandemic, and the resulting tight labor market, has empowered workers to demand better treatment in a way labor groups have not seen in years. Unions are trying to take advantage of this moment to bolster their ranks in different industries.

"That momentum is starting to pick up and starting to grow legs," said newly inaugurated Teamsters general president Sean O'Brien. "Employers do not treat their employees with dignity and respect, and now's the time."

What is the Amazon Labor Union?

The independent union was formed last year by Smalls and others to organize workers at the Staten Island warehouse. Its organizers are mostly current and former workers, and it has chosen to stay independent, rather than partnering with a large, national labor union.

Smalls, the lead organizer, said the union has a unique, inside view of what goes on at Amazon because it's led by workers.

"We decided to go this way instead of going with and establishing is because we felt like as Amazon workers, whether former or current, we have the best odds at organizing this company," Smalls said last year.

He has said the union wants to take its organizing efforts nationwide.

Greg Jaffe and Anna Betts contributed reporting.

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Amazon files its appeal of historic union vote at New York City warehouse

By Sara Ashley O'Brien, CNN Business

Updated 7:58 PM EDT, Fri April 8, 2022

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(CNN Business) — One week after Amazon workers at a New York City warehouse made history by voting to form a union, the tech giant is calling for a do-over election in filing Friday that lays out 25 objections that form the basis of its appeal.

In its filing to the National Labor Relations Board, Amazon (AMZN) alleges how the independent federal agency's regional office which oversaw the election at its Staten Island facility, known as JFK8, "unfairly and inappropriately facilitated the [Amazon (AMZN) Labor Union's] victory."

It claims the agency used an "artificially reduced number" of employees in the voting unit to calculate whether ALU had garnered enough support to even hold an election. It also claims the agency delayed investigating what it calls "frivolous" unfair labor practice charges that it says were "exploited" by the union. And it alleges that the agency failed to properly staff the polls during the election, which ultimately "produced chaos and hours-long lines to vote on the first polling day, discouraging other employees from voting."

Amazon also outlines alleged misconduct on the part of ALU, the grassroots labor organization started by current and former employees of the facility. Among its claims about the ALU, it says the union unlawfully intimidated employees and "threatened violence against its detractors."

Amazon spokesperson Kelly Nantel said in a statement Friday: "Based on the evidence we've seen so far, as set out in our objections, we believe that the actions of the NLRB and the ALU improperly suppressed and influenced the vote, and we think the election should

the ALU improperly suppressed and influenced the vote, and we think the election should be conducted again so that a fair and broadly representative vote can be had."

The Staten Island election marked the first time a group of US workers have successfully voted to form a union in the company's 27-year history. On Thursday, Amazon was granted a two-week extension on filing the proof to support its objections.

In its filing requesting the extension from the NLRB regional director, Amazon noted that the election at the facility "was one of the largest in the Board's recent history" and said that its "objections are anticipated to be substantial, both in the number ... and the scope of the conduct."

Out of approximately 8,325 eligible voters, 4,785 votes were counted. There were 2,654 votes in favor of unionizing and 2,131 votes against it. Another 67 ballots were challenged and 17 were voided.

RELATED ARTICLE
Amazon warehouse workers in New York made history voting for a union. Here's what could happen next

The ALU did not immediately respond to a request for comment.

The company first indicated last week that it was exploring filing objections over what it claimed was "inappropriate and undue influence" on the part of the NLRB. Kayla Blado, acting director and press secretary for the NLRB, said in a statement to CNN Business last week: "The NLRB is an independent federal agency that Congress has charged with enforcing the National Labor Relations Act. All NLRB enforcement actions against Amazon have been consistent with that Congressional mandate."

Amazon said last week that it was "disappointed" with the Staten Island results. While Amazon has repeatedly said in statements that its "employees have always had the choice of whether or not to join a union," it also spent $4.3 million last year on anti-union consultants and used a combination of texting, on-site signage and mandatory meetings

consultants and used a combination of texting, on-site signage and mandatory meetings to convince workers to vote against unionizing.

Last Thursday, the same day the public vote count began for the Staten Island election, the ballots of a do-over union election at an Amazon warehouse in Bessemer, Alabama, were also tallied, but the outcome remains too close to call. There are 416 ballots being challenged, which is enough to sway the result. The NLRB is expected to hold a hearing to review the contested ballots in the coming weeks.

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Biden signals support for Amazon workers' unionization efforts: 'Amazon, here we come'

In contrast to the bootstrapped Staten Island effort, the Bessemer drive was done in tandem with the Retail, Wholesale and Department Store Union, an 85-year-old labor union. The original election, held a year ago, favored Amazon, but the results were scrapped after an NLRB regional director determined that Amazon illegally interfered, a decision the company called "disappointing."

The RWDSU this week filed objections to the do-over election, arguing that Amazon again interfered with its employees right to vote freely in a fair election and it called for the NLRB regional director to hold a hearing to determine if the results should be set aside once more. The RWSDU alleged there were instances of termination and retaliation of union supporters, intimidation and surveillance of employees engaged in organizing activities, and discrepancies with the list of eligible voters provided to the union. The RWSDU also alleged Amazon applied new rules to prohibit organizing, removed pro-union literature, and threatened to close the facility if the union succeeded.

"We've said from the beginning that we want our employees' voices to be heard, and we hope the NLRB counts every valid vote," said Amazon's Nantel in a statement about the Bessemer vote.

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The RWDSU previously filed several unfair labor practice complaints over Amazon's conduct at the facility. One complaint took issue with required group meetings where Amazon representatives conveyed its anti-union stance to workers, which the union

argued violated workers' right to refrain from organizing-related activities.

While these required meetings are a common tactic similarly used by a number of other employers and one that is legally permitted, the union asked the NLRB to review the law. On Thursday, NLRB General Counsel Jennifer Abruzzo issued a memo calling for the agency to reconsider its stance on mandatory meetings of this nature.

Amazon, which previously told CNN Business the RWDSU's complaint has no merit, declined to comment on Abruzzo's memo.

The battle over treatment of workers inside Amazon's facilities is widely viewed as central to the future of work in the United States. The company is the nation's second largest private employer and is known for its heavy emphasis on automation and tracking of productivity. Its high turnover rates, on-the-job injuries and increased worker activism, have also drawn significant attention to its workplace conditions in recent years.

In late May, Amazon shareholders are expected to have the opportunity to vote on a resolution for an independent audit of the company's warehouse working conditions, according to a Reuters report on Thursday.

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Amazon workers at New York warehouse vote to form company's first US union

By Sara Ashley O'Brien, CNN Business

Updated 4:27 PM EDT, Fri April 1, 2022

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(CNN Business) — Amazon (AMZN) warehouse workers at a facility in New York City have voted to form the first US union in the tech giant's 27-year history, marking a stunning victory for a bootstrapped effort led by a fired employee.

In a closely watched election, workers at a Staten Island, New York, facility known as JFK8 voted in favor of forming a union with a newly-established organization called Amazon Labor Union (ALU), which was started by current and former warehouse employees.

There were 2,654 votes in favor of unionizing and 2,131 votes against it by the end of the second and final day of public vote counting on Friday. Out of approximately 8,325 eligible voters, 4,785 votes were counted and another 67 were challenged. Seventeen ballots were voided.

The parties have five business days to file any objections.

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Amazon union vote in Alabama is too close to call

In a statement after the vote, Amazon indicated that it is exploring various legal channels to fight the results. "We're disappointed with the outcome of the election in Staten Island because we believe having a direct relationship with the company is best for our employees," Amazon said in the statement. "We're evaluating our options."

The staggering result could prove to be a milestone moment for Amazon and the broader labor movement in the United States. The union vote has the potential to upend how Amazon, the country's second largest private employer, engages with some members of its vast workforce. It could also add fuel to organizing both within the company's own sprawling empire, where some efforts are already underway such as at an Amazon Fresh store in Seattle, as well as at other companies across the country.

The outcome was hailed by advocacy groups, large labor unions and the White House, with press secretary Jen Psaki telling reporters Friday that President Joe Biden was "glad to see workers ensure that their voices were heard." John Logan, professor of labor and employment studies at San Francisco State University, called the ALU win a "jaw-dropping result." He added: "There really is no bigger prize for unions than winning at Amazon."

Shortly after the tally was complete, Christian Smalls, the president of ALU who is largely the face of the organization, joined a crowd of other ALU organizers and members of other labor groups that had gathered in downtown Brooklyn to celebrate the win. Sipping from a bottle of champagne and wearing pants emblazoned with the brand name "Billionaire Boys Club," Smalls gave a brief history of his contentious relationship with the company.

"Two years ago, my life changed forever," said Smalls, who was fired from his job at the facility in March 2020 after leading a walkout to protest pandemic related health and safety concerns. (Smalls says he was retaliated against; Amazon says he was terminated for violating its policy that required him to quarantine after being notified of a possible Covid-19 exposure.) "I only wanted to do the right thing and

speak up for workers behind me," he said

In his speech, he also mentioned a widely reported suggestion by an Amazon executive in 2020 to disparage Smalls as "not smart or articulate." At the time, the executive said his comments were "personal and emotional," and that he'd allowed his emotions to "get the better of me."

"It's not about me. Amazon tried to make it about me from day one," Smalls said. "It's always going to be Amazon versus the people and today, the people said they wanted a union."

At the gathering, some handed out fliers that read, "Vote Yes For The Union. Despite what Amazon tells you, the union isn't some outside organization. It's a legal recognition of our right to have a say at work — as a group instead." Members of another pro-labor group held a large sign that read: "Amazon and Starbucks: Stop Union Busting! Recognize the union and negotiate now!"

The results of a separate do-over election at a facility in Bessemer, Alabama were too close to call. A total of 875 workers at the facility voted for joining a union and 993 voted against it, according to the tally, which was also conducted on Thursday. But another 416 ballots were challenged. The National Labor Relations Board expects to hold a hearing on the matter in the next few weeks to determine whether any of the challenged ballots will be opened and counted.

A bootstrapped push succeeds while an established union stumbled

Both union efforts were borne out of worker frustrations with Amazon's treatment of workers amid the pandemic and were also motivated in part by increased national attention to racial justice issues and labor rights. But there are key differences between the two.

The Alabama effort was done in coordination with the Retail, Wholesale and Department Store Union (RWDSU), an 85-year-old labor union, which has organized tens of thousands of workers. By contrast, the Staten Island push is not aligned with an existing labor union but rather is trying to create its own.

Jeenah Moon/Bloomberg via Getty Images

A demonstrator during the vote count to unionize Amazon workers outside the National Labor Relations Board offices in the Brooklyn borough of New York, U.S., on Friday, April 1, 2022.

Smalls previously told CNN Business that ALU is running on "pennies compared to other campaigns," garnering $100,000 in donations raised through pages on GoFundMe, a crowdfunding platform.

He has sought to differentiate his organizing effort from the one in Bessemer, stating that having an independent union led by current and former employees of the facility "was working and resonated with the workers." (ALU has also garnered enough signatures for an NLRB

election at a nearby Amazon facility in Staten Island later this month.)

The two union pushes are also unfolding in two very different parts of the country. The RWDSU drive occurred in Alabama, a right-to-work state, where union membership is low. New York, on the other hand, has the second highest union membership in the nation. Amazon's starting wage for workers of at least $15 an hour also fares differently in Alabama where the minimum wage is $7.25, compared to New York City's $15.

"They're enormously important elections. [Amazon] is a company that is not just retail, it is not just logistics, it cuts across almost every sector of the economy," Logan said.

"I think lots of pro-union Amazon workers will take inspiration from this. There's nothing exceptional about Staten Island to suggest that you can win at Amazon there but not somewhere else," Logan said, "All of a sudden, organizing at Amazon no longer seems futile."

Logan credits the initial RWDSU Bessemer drive one year ago, which was celebrated by a number of celebrities and politicians alike, with broadly creating "energy and enthusiasm amongst young people interested in organizing themselves." While the results of that election favored Amazon, a do-over was called for after the company was deemed to have illegally interfered. (An Amazon spokesperson called the decision "disappointing" at the time.)

Labor experts have repeatedly said that organizing Amazon workers is an incredibly difficult task given current labor law and the company's opposition to such efforts. Amazon's anti-union campaigns included signage inside its warehouses, text messages, and meetings that workers were required to attend before the election periods kicked off.

"In both cases, it's a David and Goliath situation. They're up against a very powerful, determined opponent," Ruth Milkman, a labor sociologist at City University of New York, previously told CNN Business. "In both cases, it's a very heavy lift because of Amazon's resources and determination to stamp out any unionization efforts."

Amazon has previously said its "employees have always had the choice of whether or not to join a union" and that it is focused on "working directly with our team to make Amazon a great place to work."

For more on the biggest and most important technology companies of our time, watch Land of the Giants: Titans of Tech on CNN+. This exclusive new series investigates the complicated history and meteoric rise of Meta (formerly Facebook), Apple, Amazon, Netflix and Google.

Catherine Thorbecke and Clare Duffy contributed to this report

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