

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

Pathways of the River Valley, Employer	:	
and	:	Case No. 01-RD-062053
Diana Richardson, Petitioner	:	
and	:	
AFSCME Council 93, Union	:	August 31, 2011

**UNION’S OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW
AND/OR REQUEST FOR SPECIAL PERMISSION TO APPEAL**

I. INTRODUCTION

This decertification petition seeks a new election to reverse the results of an election won by AFSCME Council 93 (“the Union”) last year. That election was conducted by mail ballot, pursuant to the agreement of the parties. In the instant case, the parties entered into a Stipulated Election Agreement which provides that “the mechanics of the election will be determined by the Regional Director....” The Acting Regional Director then determined that this election, like the previous election, should be conducted by mail ballot.

As the Acting Regional Director noted in her letter establishing the mechanics of the election, a regional director has considerable discretion in determining whether to conduct a mail ballot or a manual election. The Acting Regional Director explained the factors that she considered and the manner in which she balanced those factors. The Employer has now filed a document labeled "Request for Review or, in the Alternative, Request for Special Appeal," in which it disputes the manner in which the Regional Director weighed these considerations. The Employer cites no basis for claiming that the Acting Regional Director abused her discretion, other than the Employer's disagreement with her exercise of discretion. The Employer has come forward with no reason for the Board to intervene in the mechanics of this election. The Acting Regional Director's determination should be upheld by the Board.

II. **FACTS**¹

The bargaining unit consists of approximately 150 employees working at more than 15 locations who provide services to people with developmental disabilities and brain injuries. In Case No. 1-RC-22450, the parties entered into a Stipulated Election Agreement which provided for voting by mail ballot. Of the approximately 150 eligible voters, 122, more than 80%, voted. No objections were filed. The Employer does not claim in its appeal that any improprieties or problems arose in that election as a result of the mail ballot procedure.

¹ The facts as stated herein are based upon the Acting Regional Director's letter setting forth her determination as to the mechanics of the election and the other attachments supplied by the Employer.

In the instant case, the parties entered into a Stipulated Election Agreement which provides, in relevant part:

12. DATE, HOURS AND PLACE OF ELECTION

The mechanics of the conduct of the election will be determined by the Regional Director and the parties agree that any party aggrieved by the decision will have the right to *request permission* to file a special appeal with the Board as to this issue only.

(Copy supplied by Employer; original in boldface type). The Acting Regional Director exercised this discretion as explicitly provided for in this Election Agreement by ordering a mail ballot. Dissatisfied with this decision, the Employer now seeks to have the Board intervene.

III. ARGUMENT

A. The Acting Regional Director Acted within her Discretion

As the Acting Regional Director noted, a regional director has broad discretion to determine the location and method of an election. In addition to the cases cited by the Acting Regional Director, see Sutter West Bay Hospital, 357 NLRB No. 21 at 9-10 (2011); Mental Health Association, Inc., 356 NLRB No. 151 at fn. 5 (2011); Smithfield Packing Co., 344 NLRB 1, 14 (2004); Federated Logistics and Operations, 340 NLRB 255, 258 n. 12 (2003); Halliburton Services, 265 NLRB 1154 at 1154 (1982); Manchester Knitted Fashions, 108 NLRB 1366 (1954). The parties explicitly agreed that the Acting Regional Director would decide on the mechanics of the election, thus reinforcing her discretion to make this decision. While the Board has expressed a preference for manual elections, it has also held that a regional director should consider

a mail ballot in at least three circumstances. One of these circumstances is in an election in which the voters are “scattered” because of their job duties. San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). Where circumstances indicate that a mail ballot or offsite election may be appropriate, the Board may require a regional director to explain her decision whether to utilize a mail ballot, but the decision remains with the regional director, not the Board. Austal USA, LLC, 357 NLRB No. 40 (2011).

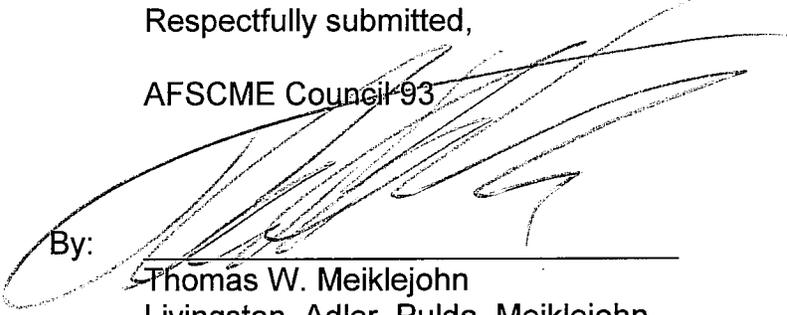
In the instant case, it is undisputed that the eligible voters are “scattered.” The Acting Regional Director so found, and the Employer does not dispute this finding. Rather, the Employer developed a proposal which, it claimed, would have enabled the voters to get to one of four of the Employer’s facilities in order to vote during work time. The Acting Regional Director rejected that proposal. She explained the basis upon which she exercised her discretion, citing the difficulty voters might encounter in traveling to those locations, potential confusion about where employees should go to vote, the successful mail ballot conducted last year, and the fact that some voters would be required to travel 20 miles round trip, at their own expense, to vote in the manner proposed by the Employer. These are all relevant and appropriate factors to be considered by the Acting Regional Director. San Diego Gas & Electric, supra. The Employer disagrees with the Acting Regional Director’s conclusion, but sets forth no basis for any claim of an abuse of discretion. Rather, the Employer asks the Board to substitute its judgment for that of the Acting Regional Director.

The Acting Regional Director’s determination should not be disturbed.

Respectfully submitted,

AFSCME Council 93

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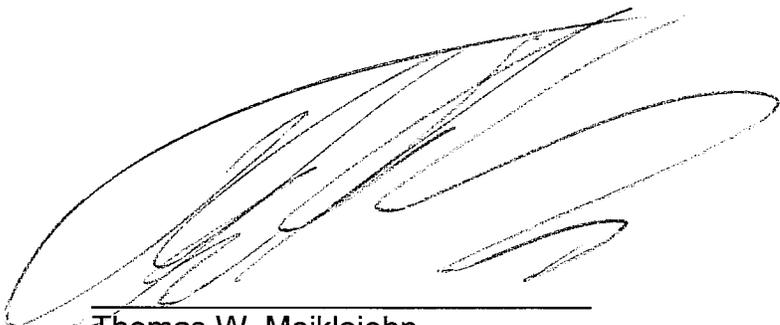
CERTIFICATE OF SERVICE

This is to certify that the foregoing Union's Opposition to Employer's Request for Review And/or Request for Special Permission to Appeal was filed electronically and sent by electronic mail on this 31st day of August, 2011, to the following parties of record:

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