



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
103 S. GAY STREET - 8TH FLOOR
BALTIMORE, MD 21202-4061

Agency Website: www.nlr.gov
Telephone: (410)962-2822
Fax: (410)962-2198

October 18, 2011

Christopher M. Feldenzer, Esq.
Serrotte, Rockman & Wescott, P.A.
409 Washington Ave., Suite 610
Baltimore, MD 21204-4903

Steve Schwartz, Esq.
Service Employees International Union Local 500
901 Russell Ave., Suite 300
Gaithersburg, MD 20879-3281

RE: Center for Social Change, Inc.
Case 5-RC-065270

Dear Messrs. Feldenzer and Schwartz:

This letter sets forth the election arrangements pursuant to the Regional Director's Decision and Direction of Election (DDE), which issued on October 13, 2011.¹ Eligible to vote in the election will be the employees identified in the bargaining unit set forth in the DDE.

For the reasons set forth below, this election will be conducted among the bargaining unit employees by mail ballot. At 4:45 P.M. on **Friday, November 4, 2011**, ballots will be mailed to eligible voters from the National Labor Relations Board, Region Five, Baltimore Regional Office, 103 South Gay Street, Baltimore, Maryland, 21202. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Thursday, November 10, 2011**, should communicate immediately with the National Labor Relations Board by calling the Baltimore Regional Office collect at (410)962-2931.

All mail ballots will be commingled and counted at the Baltimore Regional Office on **Monday, November 21, 2011, at 3:00 P.M.** In order to be valid and counted, the returned ballots must be received in the Baltimore Regional Office prior to the counting of the ballots.

The petition in this matter was filed on September 23. A Notice of Representation Hearing issued the same day, setting a hearing for October 3. The Employer requested a

¹ Unless otherwise noted, all dates are in 2011.

postponement of that hearing on September 29, and the hearing was rescheduled for October 7. The hearing was held on October 7 and, on October 13, the Regional Director's DDE issued. In the DDE, the parties were advised that the mechanics of the election – the sole issue raised at the hearing – would be addressed in this election arrangements letter. Both parties filed post-hearing briefs, which have been carefully considered. The issue is whether the election should be conducted manually, as proposed by the Employer, or by mail ballot, as proposed by the Petitioner.

The Employer provides various services for individuals with developmental disabilities and related disorders. The Employer operates seven days a week, twenty-four hours per day. Bargaining unit employees work at thirty-three different locations throughout Baltimore and Howard counties. There are twenty-four different shifts that bargaining unit employees work.² Employees work part-time, full-time, and weekend schedules.

For the election, the Employer proposed using training rooms at the following two locations: 6600 Amberton Drive, Elkridge, Maryland and 9300 Liberty Road, Randallstown, Maryland. The employer proposed that polls should be open simultaneously at both election sites on Sunday, October 30 and Monday, October 31. The polls would be open Sunday from 9:00 p.m. until midnight and on Monday from 3:00 p.m. until midnight.³ At the hearing, the Employer's witness testified that such a schedule would accommodate ninety-five percent of bargaining-unit employees by providing a polling time close to the beginning or ending of one of their shifts. Additionally, the Employer calculated that all of the Employer's facilities were located six or fewer miles from one of the polling sites, except one location that was roughly twenty miles away from the closest polling location.⁴ Thus, the Employer argued that employees could easily vote at one of the locations and the Board should adhere to its preference for manual elections.

At the hearing, the Petitioner objected to the Employer's proposal and argued that a mail ballot election would best allow the employees to vote with the fewest obstacles. The Petitioner argued that employees may have difficulty getting to a polling site due to the large number of worksites, variety of shifts, and range of personal difficulties such as a lack of personal transportation, additional jobs, school, and family responsibilities.

Having carefully reviewed the record in light of the parties' arguments at the hearing, I find that circumstances warrant the conducting of a mail ballot election.

It is settled that the Board possesses a "wide degree of discretion" in representation matters. *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946); *NLRB v. Waterman Steamship Corp.*, 309 U.S. 206, 226 (1940). The Board has consistently held that a Regional Director has broad discretion in arranging all the details of an election, including whether to conduct an election – in whole or in part – by mail. *San Diego Gas and Elec.*, 325 NLRB 1143 (1998);

² See Employer Exhibit 2.

³ See Employer Post-Hearing Brief page 3.

⁴ See Employer Exhibit 1a and 1b.

National Van Lines, 120 NLRB 1343, 1346 (1958); *Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31, (1951); *North American Aviation, Inc.*, 81 NLRB 1046 (1949). See also *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366 (1954); NLRB Casehandling Manual Section 11301.2. My exercise of this discretion, on behalf of the Board, in deciding to conduct a mail ballot election is guided by Section 101.21(d) of the Board's Rules, the NLRB Case Handling Manual (CHM), and the Board's decision in *San Diego Gas and Electric*, 325 NLRB 1143 (1998). Specifically, CHM Section 11301.2 provides that situations may arise were a manual election, though possible, would be impractical and a Regional Director may conclude that an election conducted by mail ballot would enhance the opportunity for all to vote. In *San Diego Gas and Electric*, 325 NLRB at 1145, the Board held that the use of mail ballot election procedures may be preferable:

- (1) where eligible voters are "scattered" because of their job duties over a wide geographic area;
- (2) where eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and
- (3) where there is a strike, a lockout or picketing in progress.

Regarding consideration (1), it is undisputed that bargaining unit employees operate from a minimum of thirty-three various locations spread over two counties. Regarding consideration (2), it is undisputed that at least twenty-four different shifts exist for bargaining unit employees and rarely are they all present at a common location at the same time. It is my opinion that these facts indicate the voters are "scattered" in the sense the Board contemplated in *San Diego Gas and Electric*, 325 NLRB at 1145 n. 7, as described in CHM Section 11301.2. Consideration (3) is not an issue in the case at hand.

As the Board held in *San Diego Gas and Electric*, 325 NLRB at 1145, "If any of the foregoing situations exist, the Regional Director, in the exercise of discretion, should also consider the desires of all the parties, the likely ability of voters to read and understand mail ballots, the availability of addresses for employees, and finally, what constitutes the efficient use of Board resources, because efficient and economic use of Board agents is reasonably a concern." As previously stated, the Employer desires a manual election and the Union a mail ballot election. There is no evidence that voters lack the ability to read and understand the mail ballots, or that availability of addresses for employees will be an issue. Concerning the Board's resources, a mail ballot election is likely to result in a more cost effective and efficient use of resources given that the Employer's proposal would require a minimum of two Board agents working at two polling sites for at least twelve hours each, a majority of which would occur for two days, outside normal business hours. In sum, after carefully considering the arguments of the parties, I conclude that the paramount goal of enhancing the opportunity for all to vote, while at the same time efficiently using the Board's resources, will best be served by conducting a mail ballot election.

The following is a reminder of some of the Board's requirements regarding the posting of Election Notices:

1. The Employer shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 AM of the day of the election.
2. The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
3. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the Election Notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the Election Notice.
4. Failure to post the Election Notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a) of the Board's Rules and Regulations.

IN THE EVENT THE EMPLOYER DOES NOT RECEIVE COPIES OF THE NOTICE OF ELECTION AT LEAST FIVE (5) WORKING DAYS PRIOR TO THE DAY OF THE ELECTION, THE OFFICE OF THE ASSISTANT TO THE REGIONAL DIRECTOR SHOULD BE CONTACTED AT (410) 962-3155.

Thank you for your cooperation in this matter.

Yours truly,

Wayne R. Gold
Regional Director