UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE ARC OF MONROE COUNTY,

Employer,

-and- **Case 03-RC-081311**

SEIU LOCAL 200UNITED,

Petitioner.

SEIU LOCAL 200UNITED'S RESPONSE IN OPPOSITION TO THE ARC OF MONROE'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION DIRECTING A MAIL BALLOT

The Arc of Monroe County ("Employer") has requested that the National Labor Relations Board review the Regional Director's decision on June 5, 2012, and following letter dated June 7, 2012, directing a mail ballot election in the instant case. Service Employees International Union Local 200United ("Union" or "Petitioner") respectfully submits this position paper in opposition to the Employer's request.

The Board's Rules and Regulations, 29 C.F.R. §102.67(b), provides that the Board will grant a request for review only under very limited circumstances and where "compelling reasons exist therefor." The Rules and Regulations provide that a request for review will only be granted upon one or more of the following grounds:

(1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent;

(2) That the regional director's decision on a substantial factual issue is clearly erroneous

on the record and such error prejudicially affects the rights of a party;

(3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error;

(4) That there are compelling reasons for reconsideration of an important Board rule of policy.

Id.

Although the Employer claims that its right to a fair election has been prejudiced by the Regional Director's decision directing a mail ballot, it is respectfully submitted that the Employer has not met its burden in any respect under any of the above standards for review. The Employer claims that the facts do not support the Regional Director directing a mail ballot and that the Regional Director relied on an alleged erroneous survey submitted by the Union. However, neither of these stated reasons demonstrate that the Regional Director's decision is "clearly erroneous," nor that the Employer is in any respect prejudiced by a mail ballot, rather than a manual ballot. The Employer has submitted no evidence to the Board in this request for review, nor, in fact, to the Regional Director, that the facts relied on by the Regional Director are wrong or that it has or will suffer any prejudice as a result of the Regional Director's decision directing a mail ballot.

It is well settled that the mechanics of an election, such as the date, time, place and method are left to the discretion of the Regional Director. See CEVA Logistics U.S., Inc., 357 NLRB No. 60, 2011 NLRB LEXIS 463 (August 24, 211) at *3-4. The Board will review a regional director's order of a mail ballot election under an abuse of discretion standard. See California Pacific Med. Ctr. (St. Luke's Hosp. Campus), 357 NLRB No. 21, 2011 NLRB LEXIS

392 (July 28, 2011) at *9. The Regional Director did not abuse her discretion in ordering a mail ballot by relying on facts agreed upon or uncontested by the Employer and the Union and past Board precedent.

I. INTRODUCTION

The Employer provides housing, habilitation, employment, and related services to people with intellectual and/or developmental disabilities in Monroe County, New York, The petitioned-for unit consists of approximately 450 to 500 "nonprofessional direct care full-time, relief and per diem Individual Support Specialists including Assistant House Managers." The unit employees are assigned to 38 of the Employer's 39 locations in 7 towns in the greater Rochester, New York, area. These 38 locations include 30 group homes, which much be staffed 24 hours a day, requiring varied schedules and staggered shift changes as some employees arrive for work and others disperse throughout the area to start second jobs, fulfill child care commitments, take classes, and commute to their homes.

Because of the scattered work sites, schedules, and outside commitments of the petitioned for unit, it would not be realistically possible for unit employees to be present at a common time and place, or even multiple times and places, to vote manually.

II. A MAIL BALLOT ELECTION WAS PROPERLY ORDERED BECAUSE OF UNIT EMPLOYEES' SCATTERED JOB DUTIES, SCATTERED WORK SCHEDULES, OUTSIDE COMMITMENTS, AND FOR THE EFFICIENT USE OF AGENCY RESOURCES.

Mail balloting should be considered in "circumstances that would tend to make it difficult for eligible employees to vote in a manual election." San Diego Gas & Electric, 325 NLRB 1143, 1144 (1998). It is proper where voting by mail "would enhance the opportunities for all to

vote." Id. This is true even when manual balloting "might be possible, but would be impracticable, or not easily done." Id. at 1145, n. 6.

Pursuant to thee principles, a mail ballot is normally appropriate

> where employees are scattered because of their job duties in terms of geography and/or varied work schedules so that all employees cannot be present at a common place and at a common time to vote manually. Where these situations exist, the Regional Director in the exercise of discretion should also consider, *inter alia*, the desires of the parties and the efficient use of Board resources.

GPS Terminal Servs., 326 NLRB 839, 839 (1998); San Diego Gas & Electric, supra. See also NLRB Representation Casehandling Manual., Sec. 11301.2 (describing employees' scattered job duties and schedules as "situations that normally suggest the propriety of using mail ballots").

The Regional Director properly determined that the factors indicating a mail ballot are present in this case. The Regional Director properly determined that (1) the eligible voters were "scattered" because of their job duties over a wide geographic area and that (2) the eligible voters work schedules vary significantly, so that they are not present at a common location at common times. If the election were held manually, accounting for these factors, it would need to be conducted at numerous multiple sites of multiple days, which would be impracticable and an inefficient use of Board resources. Importantly, as the Regional Director stated, it would not enhance the employees' opportunities to exercise their statutory right to vote.

A. The Eligible Voters are Scattered Geographically.

The Employer does not contest that its 39 locations are spread throughout 7 towns in the greater Rochester, New York area.[1] The Employer also does not contest that its 39 locations

[1]The Employer's locations are in Rochester (28), Henrietta (1), Penfield (1), Rush (1), East Rochester (1), Fairport (5), and Pittsford (2). All locations are in Monroe County, New York. Attachment 1 is a map and list of the addresses of the Employer's locations.

consist of 30 group homes, four day habilitation programs, a day program where the Employer's clients are employed at contracted tasks such as manufacturing ("ARCWorks"), an office focused on finding outside employment for the Employer's clients ("JobPath"), a transportation hub, and a Headquarters office location. The locations span an area of 22 miles from north to south and 20 miles from east to west.

The Employer does not contest that unit employees are assigned to 38 of the Employer's 39 locations (no unit employees are assigned to the transportation hub, which is the subject of another petition for representation by SEIU Local 200United). Approximately 70% of the unit works at one of the 30 group home locations. The group homes employ an average of approximately 10 workers each, but staffing levels vary from just one to more than 20 employees. Most workers have a regular work site that they are assigned to, although they may pick up shifts from time to time at other locations. There are about 50 per diem or relief workers who may be assigned to different locations from week to week, or not work in any given week or period of weeks.

Given the existence or 38 job sites in 7 different cities or towns, the unit employees are plainly "scattered" in terms of geography. For instance, in Massangale Electrical-Mechanical, Inc., 326 NLRB 493, 493 (1998), the Board affirmed the Regional Director's conclusion that employees were "widely scattered" where the proposed unit consisted of just eight job sites in three cities.

Manual voting is not viable because even if voting were held at multiple locations, nearly all of the unit would still be required to travel.[2] The Board has found that forcing even a portion

[2]The Employer's Request for Review affirms this conclusion by the Affidavit of Karen

of voters to travel to vote warrants a mail ballot. See Odebrecht Contractors, 326 NLRB 233, 233 (1998) (finding voters "sufficiently 'scattered'. . . to warrant an election by mail ballot" where "a significant number . . . would have to travel at least some distance to vote"). Cf. Delta Projects, 1-RC-22416 (Jan. 28, 2010) (finding the mail ballot requirements satisfied where employees at "at least 22 of the 27 work sites would be forced to travel").

None of the conceivable voting arrangements would address the problem that nearly all unit employees would have to travel in order to vote. In order to quantify this, all conceivable manual voting arrangements were thoroughly analyzed, as explained below.

The Employer suggests that a manual vote be held at its Headquarters. However, manual voting at just the Employer's Headquarters location would be among the worst possible manual voting arrangements. Average one-way driving times from other Employer sites would be approximately 15 minutes, with a maximum of approximately 24 minutes. Approximately 440 to 490 of the unit employees (all but the approximately 10 who work at Headquarters) would have to travel. Unit employees do not regularly work at or visit Headquarters, whether to pick up checks or for any other reason.[3] The primary significance of the Headquarters to employees

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Jenkins and the argument for review, page 2. The Employer argues that the employees can use the Employer's vehicles to travel to vote at its headquarters. However, nowhere does the Employer adequately address the issue of travel for employees who would not be scheduled to work at a location with a vehicle, but rather would be home, such as per diem employees or off-shift employees who would not be working during any manual voting time.

[3]The Employer's evidence in the Affidavit of Karen Jenkins wholly fails to establish that the unit employees regularly visit headquarters or that it is part of their daily or even weekly regular routine. Jenkins merely affirms that the Employer requires unit employees to travel to headquarters twice a year, hardly a sufficient number of times to establish that they regularly visit the location. She alleges that many employees also travel to the central office for various training and benefits, yet fails entirely to provide any numbers or frequency of these alleged visits. The Regional Director correctly noted in her June 7, 2012, letter, "There is no evidence establishing how many employees report to the central office for any of the reasons enumerated

is the place where hiring, firing, and discipline decisions are made and investigations take place. The Headquarters is not part of the unit employees' daily lives; rather, it is a location associated with management authority and discipline.

Although approximately 70% of the unit works at the Employer's group homes, it would not be feasible to hold voting at any of the group home locations. The group homes are small private residences which generally have only one room converted into an office. Those rooms are not large enough to serve as polling places. Importantly, the group homes are private homes where the Employer's clients live. Holding voting in a private residence would require a flow of people in and out of the homes, which would be disruptive to client care and would infringe on the clients' rights to peaceful enjoyment of their homes.

The other eight Employer sites (the Ballantyne, Southwest, East Henrietta, Fairport, and CAC Day Habilitation Programs, the transportation hub, and the ArcWorks and JobPath sites) also are inappropriate to serve as voting locations. Significant travel for nearly all unit employees would be required if voting were to be held at any other single Employer location. One-way driving times were calculated between each of the Employer's 39 locations and the 8 sites above that possibly could be considered as voting locations.[4] The analysis is attached as Attachment 2.[5]

Significant travel for nearly all unit employees would be required if voting were to be

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above, or the frequency with which they may do so."

[4]The Union estimates that the following number of unit employees are assigned to these sites: 35 at Ballantyne, 15 at ArcWorks; 20 at JobPath, 10 at Headquarters, 0 at Transportation, 29 at Fairport Day, and 15 at CAC.

[5]Attachment 2 is a chart showing the one-way driving times between each Employer location and the 8 sites considered as possible voting locations. Driving times were calculated using Google Maps. The bottom rows of the chart show the average, median, and maximum

held at any single Employer location. Average one-way driving times from other Employer locations would range between 14 and 19 minutes, with maximum drive times between 23 and 29 minutes. See Attachment 2. If voting were to be held at the 8 non-group home Employer locations, average one-way driving times from the other locations would be 7 minutes, and up to 13 minutes one way for some employees. See Attachment 2. Approximately 70% of the unit would not work at one of these 8 sites and would thus have to travel to vote. The following chart shows the one-way drive times between the various Employer locations and 7 or the 8 potential voting sites.[6]

One-Way Driving Time from Work Locations to Nearest Feasible Employer Voting Site

	ArcWorks	JobPath	HQ	Transportation	Southwest Day Hab	Fairport Day Hab	CAC Day
Within 5 min	–	–	–	1 site	1 site	2 sites	1 site
5-10 min	4 sites	2 sites	2 sites	--	2 sites	5 sites	1 site
10-15 min	5 sites	2 sites	1 site	1 site	--	1 site	--

The data on the chart is based on the optimistic assumption that voters wold encounter little or no traffic on their way to or from the polls. The numbers also must be doubled to account for round-trip journeys. Of course, under any of these arrangements, employees not scheduled to work on the day(s) of the election would have to commute to the polls from their homes or from

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driving times to each potential location from all other non-voting locations.

[6]Ballantyne is not included on this chart because it is not the closest location for any other Employer location, so it would not make sense for other unit employees to travel there to vote. The Transportation hub is included as a voting site even though no unit employees work there because it is the closest Employer voting location for two other sites.

second jobs, classes, or other outside obligations.

Thus, based on the above, the Regional Director correctly concluded that the unit employees are "scattered" geographically and that even if the Employer permitted the employees to utilize the Employer's shuttle or drove by their own transportation

> a manual election would require employees to be away from their work sites for a significant portion of the work day, or will alternatively require them to extend the workday by the amount of time required to travel to and from the polling location. Further, if the election is conducted manually, a significant portion of the eligible employees, who are not scheduled to work any given day or during the hours that the polls would be open would have to travel from locations other than their work sites on their own time, or would have to travel to their respective worksites and then utilize the Employer's shuttle service to and from the voting site if the Employer permits them to do so.

Regional Director's Letter dated June 7, 2012, page 3.

B. The Employees are Scattered in Terms of Varied Work Schedules.

The Employees' schedules are also severely scattered, a fact which is not contested by the Employer in its Request for Review. See generally Reynolds Wheels Int'l, 323 NLRB 1962, 1962 (1997) (affirming the Regional Director's decision to order a mail ballot election where, "although the eligible voters [were] not scattered geographically. . . they [were] scattered in terms of working staggered shifts"). In the instant case, starting and ending times for shifts are widely staggered; there are no identifiable time blocks when most of all of the unit would be changing shifts. Schedules are also staggered in terms of days since the group homes are staffed twenty-four hours a day, 7 days a week. The result is that on any given day, about half of the group home workers, or 35% of the overall unit, would not be scheduled to work on the day. Even if voting were held over a two-day period, about 25% of the group home employees, or

17.5% of the overall unit, would not be scheduled to work at any point during the voting period.[7] The staggering of shifts in terms of hours of the day is evident in a recent group home schedule, which shows that at a single home at which 21 workers were scheduled to work in the course of a week, there were 13 different shift schedules:

6am-10am	4pm-10pm	11am-9pm
6am-12pm	4pm-8pm	3pm-8pm
6am- 2 pm	4pm-9pm	7am-2pm
6am-2:30pm	2pm-8pm	
2pm-10pm	10pm-8am	

Given the scattering of shift change times on any given day, it is not possible to identify discrete voting periods that would cover all or most shift change times. This difficulty is exacerbated by the fact that approximately 50 of the unit employees, or about 10% or more of the unit, are relief workers who take shifts at multiple sites and work on call. It is difficult to predict the relief workers' schedules or work locations week to week, and field reports to the Union indicate that relief worker schedules do not match employer schedules published before the

[7]These statistics are based on an analysis of a recent one-week schedule for group home workers. See Attachment 3 for detail on this data and analysis. For the one-day calculation, the number of group home workers scheduled to work on each day was divided by the total number of workers listed on the schedule (392). The day with the highest percentage of group home workers scheduled to work was Tuesday, when 55% of those workers were on the schedule.

To analyze two-day voting periods, each consecutive two-day period from midnight to midnight was analyzed. All workers who were on overnight shifts from the prior day, and thus would be finishing a shift during the two-day period, as well as workers who began their shift during the 48-hour period, were included. The total number of employees scheduled to work at any time during the two-day period was divided by the 392 workers on the schedule. The two weekdays when the largest portion of the unit was on schedule was Wednesday and Thursday. 292 group home workers, or 74% of all group home workers, finished or ended at least one shift during those two days.

beginning of a week. Even some non-relief workers' schedules are not fixed.

It is instructive to compare this situation to that in M&N Mail Service, Inc., 326 NLRB 451 (1998), where the Board affirmed the Regional Director's decision to order a mail ballot because the employees were "scattered" in terms of their schedules. Specifically, if a manual election had been held on any given two-day workday period, "15 percent of the unit would not be scheduled to work or available at the Employer's premises for a manually conducted election." This fact alone was sufficient for the Board to uphold a mail ballot election.

The Employer's Request for Review did not contest any of the above facts and did not argue that the employees were not "scattered" in terms of their work schedule. The Employer did not submit any evidence that the employees' schedules were not scattered or that the employees work in distinct groups or clumps of times. The Employer did not offer any solution for the travel time and scheduling issues of the approximately 50 relief workers who may not even be scheduled any time during the week of a manual vote.

Thus, the Regional Director correctly reached the conclusion that the employees were "scattered" in their various work schedules. The Regional Director correctly concluded that the single largest group of eligible voters work at the group homes on varied shifts, and that consequently, many of the employees work irregular shifts. She also correctly concluded that many employees are not scheduled to work on any given day, in particular the per diem employees. See Regional Director's letter dated June 7, 2012, page 3.

C. The Union's Survey Provided Raw Evidence Of Employees' Outside Commitments That Would Increase The Difficulty of Voting Outside Their Scheduled Shifts.

The Union submitted the results of a survey it conducted to provide additional information to the Regional Director concerning employees' schedules and outside work commitments. The Union's survey was responded to by 55 employees. Respondents affirmed that 87% of those surveyed take classes, work second jobs, or are responsible for child care duties when not scheduled at a group home or day program. More specifically, the survey showed that 56% of the survey respondents work a second job, and almost half have child care responsibilities when not working.

The Employer objected to the Regional Director relying on the survey in her letter directing a mail ballot election and labeled the survey unscientific. However, the Union's survey was not significant in the Regional Director's decision and should be considered relative to Board precedent that *presumes* employees' off-duty commitments. See, e.g., Delta Projects, 1-RC-22416 (January 28, 2010) ("Although no specific evidence was presented on the matter, it also seems likely that many employees would have other jobs, child care responsibilities, or other commitments that would dissuade them from making the extra trip during rush hour, in both directions, to go to vote"). Thus, the Union's survey provided in the very least some evidence of raw numbers of employees' outside commitments that would interfere with their ability to vote in a manual election. The Employer provided no such evidence whatsoever.

It cannot be assumed that these or any unscheduled workers have the time or financial resources to drive to a polling place before or after a scheduled shift. This is especially true where a voting facility is in a different direction from a voter's pre-existing commitment. As stated in Delta Projects, 1-RC-22416 (January 28, 2010), "It would be even less likely to expect a voter to come to vote [before or after a work shift] if the nearest voting location was in a

different direction from the employee's home." See also GPS Terminal Servs., 326 NLRB at 839 (affirming the Regional Director's decision to direct a mail ballot election because "a significant proportion of the unit employees would be unavailable at the Employer's premises for a manually conducted election absent significant alterations of work schedules of a substantial proportion of employees"); Shepard Convention Servs., 314 NLRB 689, 689-690 (1994) ("[N]oting that a number of the employees may have other employment which may restrict their ability to reach the polls, the Board finds that the Regional Director abused his discretion by denying the Petitioner's request for a mail ballot for the 'on-call' employees").

The Board rightly recognizes that inhibiting an employee's ability to vote by failing to remove entirely avoidable scheduling impediments unfairly prejudices the union in the eyes of the voters:

> We are merely noting that mail ballots would avoid inconveniencing the need to impose work schedule changes on a significant number of employees, who may well have family responsibilities or other plans for what would normally be their off-work time and might resent the change as something effectively forced on them by those who initiated and supported the organizing campaign.

London's Farm Dairy, Inc., 323 NLRB 1057, 1057 (1997).

The Employer's objection to the Union's survey should be seen against the backdrop that the Employer did not provide any evidence as to the employees' work schedules or outside work commitments. Further, the Union survey provided some evidence that many employees have commitments outside of work that would likely inhibit their ability to participate in a manual ballot. Thus, the Regional Director correctly noted the evidence supplied by the Union as to the employees' outside work commitments as a further reason why manual voting would not be feasible, especially if the balloting were to take place on a time in which the employees were not

scheduled to work. See Regional Director's letter dated June 7, 2012, page 2.

D. The Employer Incorrectly Criticizes the Regional Director For Not Considering A Mixed Mail/Manual Ballot Or Multiple Locations.

The Employer incorrectly criticizes the Regional Director for purportedly not considering a mixed election of mail ballots for per diem employees and manual ballots for other employees or multiple locations for manual ballots. However, contrary to the Employer's contentions, the Regional Director did consider a mixed mail/manual ballot election and a manual election at multiple locations and properly rejected them. See Regional Director's letter dated June 7, 2012, page 3, n. 2. The Regional Director reasoned that these proposals would only address issues with respect to the approximately 50 relief workers and "does not address the geographic and work scattering of the remaining 400 to 450 employees in the petitioned-for unit." Id.

The Regional Director also noted in her letter that she "should consider the efficient use of the Agency's resources in determine whether to conduct a mail ballot election." Id. at page 2. The Regional Director is correct in her conclusion that a mixed mail/manual ballot or multiple locations would not be feasible. First, mixed mail/manual balloting is not desirable as it "imposes additional complexity upon the election process and requires substantially more Agency resources than either a manual election or a mail ballot election" See Case Handling Manual, §11335.2.

Additionally, manual voting at multiple locations also would be logistically confusing and unnecessarily deplete Agency resources. Region 1 discussed this issue in its Delta Projects decision:

> [T]he situation is ripe for confusion at the polls. With so many work sites and voting locations, employees may make different calculations for their travel than one would anticipate, to account for the direction of their homes, errands, second

> jobs, traffic jams, etc. This would make it very hard to accurately prepare eligibility lists broken down by anticipated voting location for each employee, thereby increasing the likelihood that voters would show up at locations where they were not expected and cause an abnormally high number of challenged ballots.

Delta Projects, 1-RC-22416 (January 28, 2010).

If manual voting were held at multiple locations, these factors would likewise be present in the instant case and would cause confusion and unnecessary use of Agency resources for the balloting process and an increased number of challenges and irregularities in the voting.

E. The Employer's Concerns About The Integrity Of Mail Balloting Is Unsupported And Must Be Weighed Against Enhancing The Opportunities For All To Vote.

The Employer lists a litany of claims about the potential for fraud and lack of voter integrity in a mail ballot election. The Employer's contentions are bald assertions and have no support except for references to alleged lower voter turnout in mail ballot elections than in manual ballot elections. To this end, the Employer sites an article by Sara Slinn and William A. Herbert, "Some Think of the Future, Internet, Electronic, and Telephonic Labor Representation Elections," published in the SelectedWorks of William A. Herbert, January, 2011. A reading of this article reveals that the Employer's contentions are unsupported by the article or the study cited within. First, the authors themselves did not conduct the study cited, which was a study from 1972 New York State public sector elections. See Slinn and Herbert, supra, page 189 n. 99. The authors also reference a 1994 NLRB General Counsel Memorandum indicating that fewer eligible voters vote in mail ballot elections than in manual ballot elections. However, neither the GCM nor the Slinn-Herbert article indicate whether that analysis uses proper comparators. A proper comparison would be between the number of eligible voters in a given work site who

would vote by mail or who would vote manually. Data demonstrating that there is voter turnout differences in mail ballot elections than manual ballot elections may only indicate the that mail ballot elections occur in workplaces inherently difficult in planning an election that enhances voter opportunity because of the geographic and schedule scatter of the voters, whereas a higher voter turnout in manual ballot elections may only indicate the ease in which coherent bargaining units working consistent schedules in one location have in exercising their right to vote. In sum, no conclusion as to *cause and effect* may be presumed from such data. The authors themselves recognized that care must be exercised in analyzing these statistics and that further study needs to be done of this phenomenon, factors not mentioned by the Employer. See Slinn and Herbert, supra, page 189. Each workplace must be analyzed for *its own* circumstances and consideration given to the type of ballot that would enhance employees' exercise of their right to vote, as the Regional Director did in this case. The Regional Director correctly stated in her decision:

> Maximizing the opportunity for employees to exercise their statutory right to determine whether or not they wish to be represented for the purposes of collective bargaining is the Agency's primary objective in these circumstances.

Regional Director's Letter dated June 7, 2012, page 3.

The Employer's Request for Review states that an employee's decision whether to be represented by the Union is a "serious consideration for employees and should not be considered lightly." The Employer further asserts that going to vote in a manual election is a "minor inconvenience" for such an important decision. This statement ignores all the factors to be considered by the Regional Director about enhancing employees' ability to vote as enumerated in San Diego Gas & Electric, supra. The Slinn-Herbert article further states that mail balloting may foster reliability by offering voters the potential for greater periods of reflection, an aspect

of the

article ignored by the Employer. See Slinn and Herbert, supra, at p. 188.

F. Experience In This Industry Shows that Mail Balloting Is Appropriate.

Recent decisions in other Regions ordering elections by mail ballots for other employers who operate group homes and related supportive services illustrate the appropriateness of that form of election given the practical realities of the Employer's operations. In addition to Delta Projects, supra, (more than 25 group homes, Region 1 has ordered mail ballot elections in Sullivan & Associates, 1-RC-22493 (November 2, 2010) (94 locations including 91 24-hour group homes and scattered shifting) and in Alternatives Unlimited, 1-RC-006471 (October 6, 2011) (50 locations including 36 group homes and scattered shifting); Region 5 has ordered mail ballot election in Metro Homes and Metro Day Treatment, Inc., Case 5-RC-16623 (February 7, 2011) (14 different locations including 13 group homes encompassing 25 different sites and scattered shifting).

G. Recent Board Cases Support The Factors Militating In Favor Of Conducting The Election By Mail Ballot.

In its recent case, 2 Sisters Food Group, Inc., 357 NLRB No. 168 (December 29, 2011), the Board discussed the factors granting the Regional Directors the discretion to determine the manner of representation elections. In that case, the Board recognized that it does not require that elections by conducted on the employer's premises, and further recognized the factors indicating the use of mail ballot elections in appropriate circumstances, See id. n. 13. The Board further discussed its previous holding in Austal USA, LLC, 357 NLRB No. 40 (2011), in which one of the appropriate factors for Regional Directors' consideration when exercising their discretion on the manner of holding an election is the Petitioner's objection to holding the

election on the employer's premises and the grounds therefor. Id. Other appropriate factors to be considered by Regional Directors are the advantages available to the Employer if an election is conducted on premises it owns or otherwise controls and the alternative site proposed by the Petitioner. Id. While it is acknowledged that 2 Sisters concerned a rerun election, and not an initial representation election, the considerations for a rerun election and an initial representation election are essentially the same.

In California Pacific Medical Center, 357 NLRB No. 21 (July 29, 2011), the Board held that the Regional Director in Region 20 did not abuse his discretion in ordering a mail ballot election. In that case, a manual election would have required three polling sessions on one day at one facility and three polling sessions over two days at the other three employer facilities, which amounted to some 15 polling sessions over a two- to three-day period. According to the Board, the Regional Director properly took into account the scattered nature of the employees' work schedules and the personnel required to run a manual election. Id. The Board further rejected the dissent's and employer's claim that mail ballot elections should only be used in extraordinary circumstances. Id. The Board stated, "Neither our precedent nor common sense supports such a stringent approach to the use of mail ballots." Id.

III. CONCLUSION

In the instant case, based on the above reasons and authorities, the Regional Director properly concluded that a mail ballot election would best enhance the employees' right to vote whether to be represented for the purposes of collective bargaining by the Petitioner. The

Employer's Request for Review does not meet its burden of justifying Board review and does not demonstrate that the Regional Director abused her discretion in directing a mail ballot. As discussed, supra, the Petitioner has clearly explained and factually supported why holding a mail ballot election is preferable in the instant case to at traditional manual ballot election. Therefore, the Petitioner Union respectfully requests that the Board's Request for Review of the Regional Director's decision be denied in it entirety.

Dated: June 25, 2012

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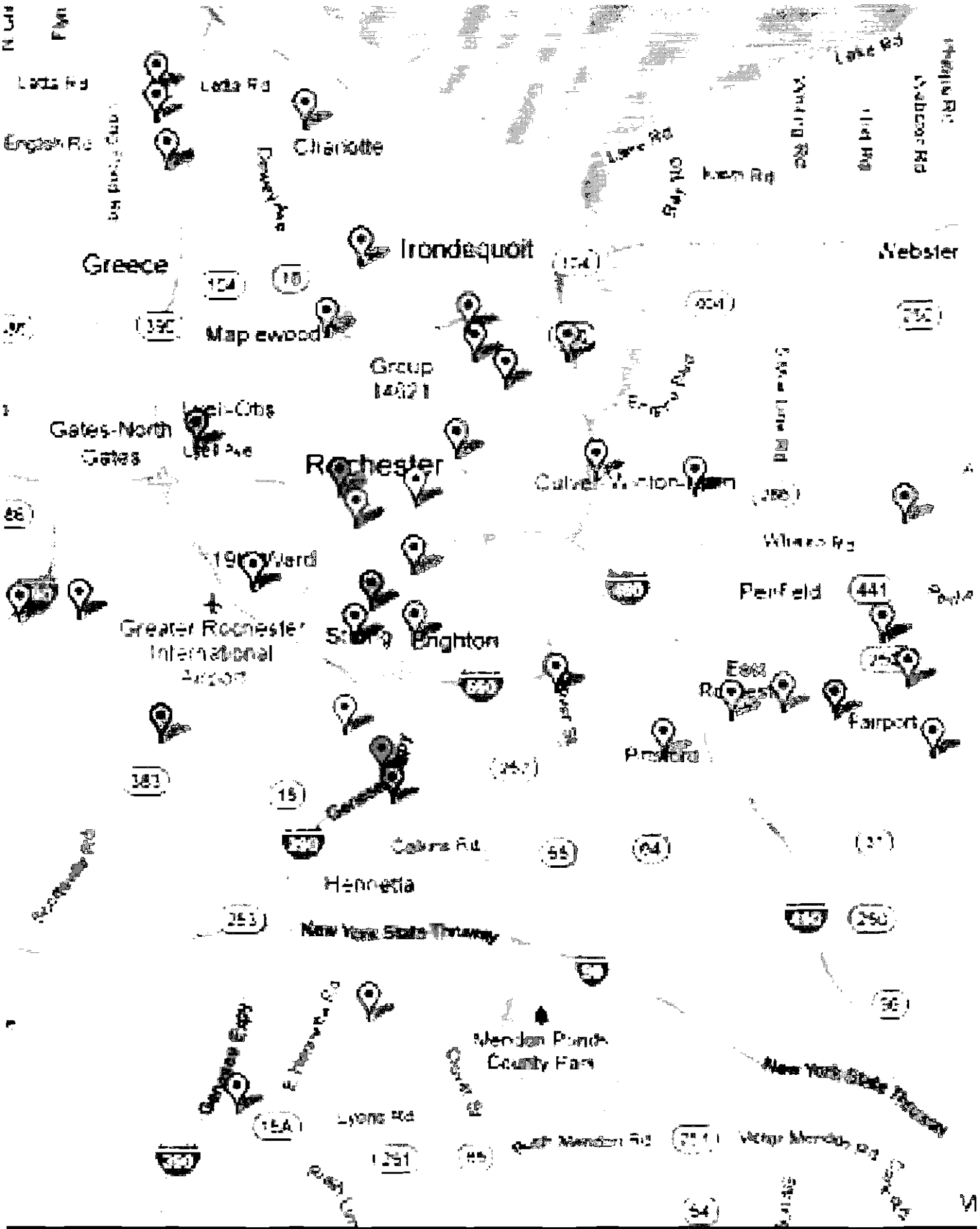
ATTACHMENT 1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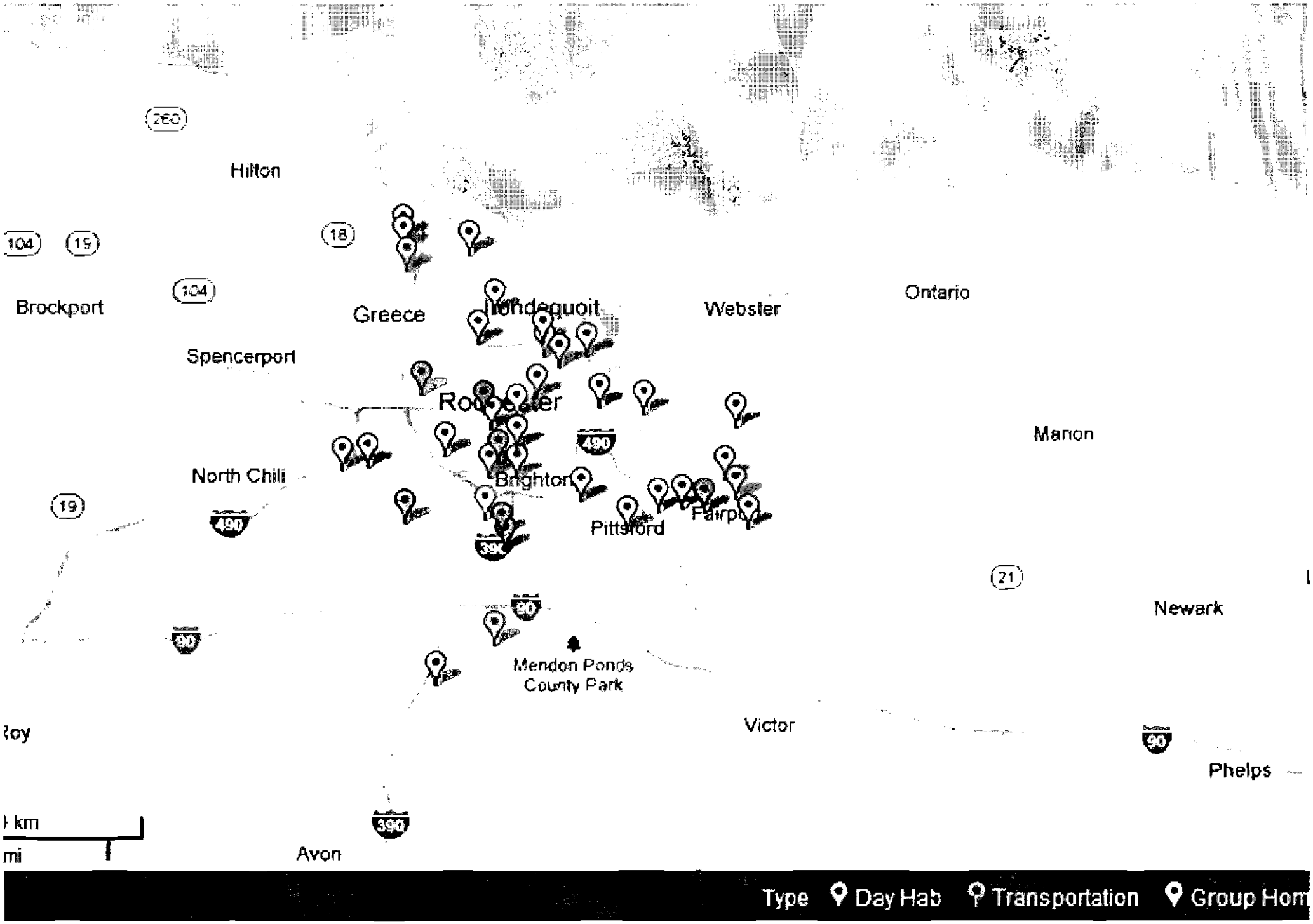

Monroe County ARC Locations

Site	Type	Address	City	State
ArcWorks	Day Hab	1651 Lyell Ave	Rochester	NY
Ballantyne	Day Hab	10 Ballantyne Rd	Rochester	NY
Brooks	Group Home	595 Brooks Ave	Rochester	NY
CAC	Day Hab	1000 Elmwood Ave	Rochester	NY
Chili	Group Home	2692 Chili Ave	Rochester	NY
Church	Group Home	19 Church St	Pittsford	NY
Clarissa	Group Home	570 Clarissa St	Rochester	NY
Clover	Group Home	465 Clover Hills Dr	Rochester	NY
Crescent	Group Home	139 Crescent Rd	Fairport	NY
Crossroads	Group Home	44 Crossroads Ln	Rochester	NY
Denise	Group Home	603 Denise Rd	Rochester	NY
E. Henrietta	Group Home	191 E. Henrietta Rd	Rochester	NY
E. Henrietta Day	Day Hab	2070 E. Henrietta Rd	Rochester	NY
E. Main	Group Home	1105 Main St	E. Rochester	NY
Eaglevale	Group Home	4407 Nine Mile Point Rd	Fairport	NY
Everett	Group Home	45 Everett Dr	Rochester	NY
Fairport	Day Hab	1387 Fairport Rd	Fairport	NY
Farmbrook	Group Home	12 Farmbrook Dr	Rochester	NY
Fernwood	Group Home	134 Fernwood Pk	Rochester	NY
Glendower	Group Home	3 Glendower Circle	Pittsford	NY
Gorsline	Group Home	106-108 Gorsline St	Rochester	NY
Havens	Group Home	105 Havens Rd	Rochester	NY
Hillcrest	Group Home	163 Hillcrest St	Rochester	NY
Homestead	Group Home	17 Homestead Dr	Fairport	NY
Homewood	Group Home	130 Homewood Ln	Rochester	NY
HQ	Office	2060 Brighton Henrietta Town Line Rd	Rochester	NY
Job Path	Office	233 Alexander Street Suite 1	Rochester	NY
Ledgemont	Group Home	20 Ledgemont Dr	Fairport	NY
Middle	Group Home	1969 Middle Rd	Rush	NY
Norran	Group Home	499 Norran Dr	Rochester	NY
Pearson	Group Home	312 Pearson Ln	Rochester	NY
Penfield	Group Home	1860 Nine Mile Point Rd	Penfield	NY
Rockingham	Group Home	359 Rockingham St	Rochester	NY
Shaftsbury	Group Home	11 Shaftsbury Rd	Rochester	NY
Sherri Ann	Group Home	55 Sherri Ann Ln	Rochester	NY
Southwest	Day Hab	3318 E. Henrietta Rd	Rochester	NY
St. Paul	Group Home	2835 St. Paul Blvd	Rochester	NY
Transportation	Transportation	1 Van Auker St	Rochester	NY
Ward	Group Home	299 Ward Hill Rd	Henrietta	NY

ATTACHMENT 2

One-way drive times to Possible Employer Voting Locations

Group Homes and Other Non-Voting Locations	Ballantyne	ArcWorks	Job Path	HQ	Transportation	Southwest Day	Fairport Day	CAC	Closest Voting Location	Driving Time
Denise	22	13	20	22	20	24	26	21	ArcWorks	13
Crossroads	20	11	18	20	18	22	29	19	ArcWorks	11
Pearson	20	11	19	20	18	23	29	20	ArcWorks	11
St. Paul	20	11	14	20	14	23	22	19	ArcWorks	11
Everett	10	10	16	17	16	20	26	17	ArcWorks	10
Gorsline	18	9	12	18	12	21	20	16	ArcWorks	9
Chili	10	8	14	13	14	16	24	13	ArcWorks	8
Sherri Ann	17	8	16	17	15	20	26	17	ArcWorks	8
Brooks	9	5	12	9	7	11	19	7	ArcWorks	5
Shaftsbury	15	11	8	11	8	13	11	5	CAC	5
Rockingham	14	8	5	10	6	14	15	4	CAC	4
Penfield	26	22	20	22	19	24	10	21	Fairport	10
Church	18	16	15	15	15	14	9	15	Fairport	9
Eaglevale	26	20	18	21	18	23	5	20	Fairport	5
Glendower	21	16	13	17	13	20	5	16	Fairport	5
Homestead	27	22	19	23	19	26	5	22	Fairport	5
Ledgemont	28	23	20	24	20	27	5	23	Fairport	5
Crescent	21	16	14	17	14	20	3	16	Fairport	3
E. Main	20	15	13	16	13	19	3	15	Fairport	3
Clover	14	12	13	10	11	12	15	11	HQ	10
Havens	14	11	8	7	9	12	17	6	HQ	7
E. Henrietta Group Home	11	9	8	5	10	9	13	2	HQ	5
Homewood	17	13	10	13	10	15	13	13	Job Path	10
Norran	22	13	10	18	13	20	18	17	Job Path	10
Fernwood	21	14	9	17	12	19	17	16	Job Path	9
Hillcrest	21	13	9	18	12	20	18	16	Job Path	9
Middle	16	18	22	14	22	8	26	17	Southwest Day Hab	8
Ward	19	21	24	15	24	6	24	19	Southwest Day Hab	6
E. Henrietta Day Hab (small site, difficult for voting)	10	11	16	5	15	3	19	9	Southwest Day Hab	3
Farmbrook	18	14	13	14	11	16	24	14	Transportation	11
Clarissa	12	7	6	12	3	16	17	7	Transportation	3
AVERAGE	17.967742	13.25806	14	15	13.90322581	17.290323	16.5483871	14.6		7.45161
MEDIAN	18	13	14	17	14	19	17	16		8
MAXIMUM	28	23	24	24	24	27	29	23		13

ATTACHMENT 3

Sunday on:	197	50.26%
Monday on:	201	51.28%
Tuesday on:	215	54.85%
Wednesday on:	197	50.26%
Thursday on:	186	47.45%
Friday on:	203	51.79%
Saturday on:	178	45.41%
Not on any week days:	33	8.42%
M/T on schedule including Sunday overnights	276	70.41%
T/W on schedule including Monday overnights	283	72.19%
W/Th on schedule including Tuesday overnights	292	74.49%
Th/F on schedule including Wednesday overnights	283	72.19%
F/Sat on schedule including Thursday overnights	286	72.96%
Sat/Sun on schedule including Friday overnights	301	76.79%
Sun/M on schedule including Saturday overnights	272	69.39%