

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

In the matter of:

UNITED MAINTENANCE COMPANY, INC.,)	
)	
Employer,)	
)	
and)	Case 13-RC-106926
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 1,)	
)	
Petitioner.)	

**PETITIONER’S STATEMENT IN OPPOSITION TO
EMPLOYER’S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR’S DECISION TO CONDUCT MAIL BALLOT**

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Employer United Maintenance Company has filed its *second* Request for Review in two weeks. In its latest endeavor, the Employer improbably requests review over the Regional Director's July 24, 2013 determination to conduct the election in this matter by mail ballot, arguing that the Regional Director incorrectly applied *San Diego Gas & Electric*, 325 NLRB 1143 (1998). A copy of the Regional Director's letter is enclosed herewith.

The Employer claims to have authority to seek review of the Regional Director's decision under NLRB Rule and Regulation Section 102.67, but there is nothing in this section granting the right to review such determinations, which rest within the Regional Director's sound discretion.

The nature of a Regional Director's discretion to decide whether to conduct mail or in-person balloting has been reviewed by the Seventh Circuit Court of Appeals, which has jurisdiction over the geographic area encompassed by Region 13, where this case originates. In *Cast North America (Trucking) Limited*, 207 F.3d 994 (7th Cir. 2000), the Seventh Circuit ruled that Regional Directors have been vested with the discretion to make these decisions:

The NLRB has wide discretion in the administration of representation elections. *See Kwik Care Ltd. v. NLRB*, 317 U.S. App. D.C. 318, 82 F.3d 1122, 1126 (D.C. Cir. 1996). The NLRB has delegated a portion of this authority to the Regional Directors who have discretion to determine election arrangements, including whether the election should be conducted manually or by mail ballot. *San Diego Gas & Elec.*, 325 N.L.R.B. 1143, 1998 WL 414986, at *2 (1998).

Id., at 999. The Court made clear that the Regional Director's decision in this regard will not be subject to review, and noted that the Board in *San Diego Gas & Electric*

expressly stated that it was "clarifying the circumstances under which it is *within the Regional Director's discretion* to direct the use of mail ballots." *Id.* at *3 (emphasis added). *San Diego Gas* does not hold that mail ballot elections must be held in all cases in which they may be appropriate, but rather reaffirms the broad discretion enjoyed by the Regional Directors in determining which type of election is appropriate.

Id., at 1000.

In the alternative, if the Board treats the Request for Review as a request for special permission to appeal the Regional Director's direction of a mail ballot election, the request should be denied since there is no basis to conclude that the Regional Director's decision was an abuse of discretion. *GPS Terminal Services, Inc.*, 326 NLRB 839, 839 (1998); *M & N Mail Service*, 326 N.L.R.B. 451(1998).

The Employer's appeal consists of nothing more than unsupported statements of fact. Further, the appeal tacitly acknowledges that the Regional Director considered all the factors dictated under *San Diego Gas & Electric*, including that employees are scattered across the airport and have different schedules, making it difficult to conduct in-person balloting when all employees will be present. The Regional Director also appropriately considered language issues and security issues at the airport that would further burden or impair a timely election. The Employer simply disagrees with the Regional Director's decision, which does not establish an abuse of discretion.

For the foregoing reasons, the Employer's Request for Review should be denied.

Respectfully submitted,

/s/ Robert E. Bloch
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned caused a copy of the Petitioner's Statement in Opposition to Employer's Request for Review to be served by electronic mail on August 7, 2013 on:

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