

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

CENTER FOR SOCIAL CHANGE, INC.

and

Case 5-CA-72211

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

**MOTION TO TRANSFER PROCEEDINGS TO THE BOARD AND
MOTION FOR SUMMARY JUDGMENT**

Counsel for the Acting General Counsel, pursuant to Sections 102.24 and 102.50 of the Board's Rules and Regulations and Statements of Standard Procedures, Series 8, as amended, respectfully moves that the National Labor Relations Board, herein called the Board: (1) transfer this case and continue proceedings before the Board; (2) deem the allegations set forth in the Complaint and Notice of Hearing issued on January 18, 2012, to be true as alleged, without receiving evidence; and (3) grant summary judgment and issue a Decision and Order based on the following:

1. On September 23, 2011, the Service Employees International Union, Local 500, herein called the Union, filed a Petition in Case 5-RC-65270. See Exhibit 1. A representation hearing was conducted on October 7, 2011. The Regional Director for Region 5 issued a Decision and Direction of Election on October 13, 2011. See Exhibit 2. On October 18, 2011, the Regional Director of Region 5 issued a Letter Setting Forth Election Arrangements ordering the election be conducted by mail ballot. See Exhibit 3.

2. On October 27, 2011, Center for Social Change, Inc., herein called Respondent, filed a Request for Review of the Regional Director for Region 5's decision. See Exhibit 4. On November 18, 2011, the Board issued an Order treating Respondent's "request for review" as a request for special permission to appeal, and denying same. See Exhibit 5.

3. A mail ballot election was held from November 4, 2011, through November 21, 2011. On November 21, 2011, the parties were served with a Tally of Ballots showing that, of approximately 229 eligible voters, 103 cast valid ballots for the Union and 6 cast valid ballots against the Union. There were 26 non-determinative challenged ballots. See Exhibit 6. No subsequent objections were filed by either party.

4. On December 1, 2011, the Regional Director for Region 5 issued a Certification of Representative certifying the Union as the exclusive collective-bargaining representative of the following unit:

All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, and direct care-week-end, job coach, and maintenance associates employed by the Employer at its facilities in Maryland, but excluding office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

See Exhibit 7.

5. By letter dated December 16, 2011, the Union requested that Respondent bargain collectively with the Union about the terms and conditions of employment of the unit described in Paragraph 4. See Exhibit 8.

6. Respondent, by letter dated January 5, 2012, refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit described in Paragraph 4. See Exhibit 9.

7. On January 9, 2012, the Union filed a charge in Case 5-CA-72211 alleging that Respondent violated Section 8(a)(1) and (5) of the Act. See Exhibit 10. The charge was served on Respondent by regular mail on January 11, 2012. See Exhibit 11.

8. On January 18, 2012, the Regional Director for Region 5 issued a Complaint and Notice of Hearing alleging, in pertinent part, that since on or about January 5, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit for which the Union was certified. The Complaint and Notice of Hearing was served on Respondent on January 18, 2012. See Exhibit 12.

9. On February 1, 2012, Respondent filed an Answer to the Complaint, in which it admitted the following: (a) that it is a Maryland not-for-profit corporation, engaged in the business of providing in-patient residential services for adult individuals and children, adult day care services, and supported employment programs for individuals with developmental disabilities and disorders; (b) during the past twelve-months, in providing these services, it derived gross revenue in excess of \$250,000; (c) during the past twelve months it purchased and received at its Maryland facilities products, goods and materials valued in excess of \$5,000 directly from points located outside the State of Maryland; (d) it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; (e) the Unit, as described above in Paragraph 4, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act; (h) on December 1, 2011, the Regional Director of Region 5 issued the certification described above in Paragraph 4; (i) the Union requested bargaining on December 16, 2011; and (j) Respondent has refused to recognize and bargain with the Union. The Respondent denied the following: (a) service of the charge in Case 5-CA-72211 on January 11, 2012; (b) the Union is a labor organization within the meaning of Section 2(5) of

the Act; (c) Joseph Mathew has held the positions of President and CEO and has been a supervisor and agent of Respondent within the meaning of Section 2(11) and (13) of the Act; (d) at all times since December 1, 2011, based on Section 9(a) of the Act, the Union has been the exclusive, collective-bargaining representative of the Unit; (e) by the conduct described above, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive, collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act; and (f) the unfair labor practices of Respondent affect commerce within the meaning of section 2(6) and (7) of the Act. See Exhibit 13.

10. Respondent's Answer fails to raise any material issues of fact, as Respondent admits it has failed and refused to recognize and bargain with the Union as the exclusive, collective-bargaining representative of the Unit. Proof of service of the charge in Case 5-CA-72211 is attached hereto as Exhibit 11. Respondent's denial of the Union's status as a labor organization within the meaning of Section 2(5) of the Act is a reversal from Respondent's previous stipulation during the representation proceedings in Case 5-RC-65270.¹ See Exhibit 14. Respondent's denial of the supervisory and agency status of its President and CEO is frivolous. In any event, Respondent's denial does not raise any issues of material fact because Respondent admits in its answer that it has refused to recognize and bargain with the Union. On very similar facts in *George Washington University*, 346 at fn. 9, the Board held an employer's denial of supervisory and agency status did not preclude summary judgment or raise material

¹ See also *George Washington University*, 346 NLRB 155 (2005), where the Board previously determined that this Union is a labor organization within the meaning of Section 2(5) of the Act. In footnote 7, the Board noted that although the employer denied the labor organization status of the union in the unfair labor practice case, the employer effectively stipulated to the union's status as a labor organization, within the meaning of the Act, in the underlying representation proceeding. *Id.* at fn. 7. Thus, the Board found the employer's denial did not raise any issue warranting a hearing. *Id.*

issues of fact warranting a hearing because the employer admitted that it refused to bargain with the union in its answer.

11. Respondent's defense number two alleging the Complaint was *ultra vires* should be stricken or disregarded by the Board. The Board has found that it is not appropriate for it to decide, in an unfair labor practice case, whether or not the President made a proper appointment of an Acting General Counsel under the Federal Vacancies Reform Act of 1998 (the "FVRA"), 5 U.S.C. §§ 3345-3349. *Lutheran Home at Moorestown*, 334 NLRB 340, 340 (2001). In deciding whether to proceed with the disposition of a case on the merits, notwithstanding a claim concerning the Acting General Counsel's authority, the Board applies the well-settled "presumption of regularity support[ing] the official acts of public officers in the absence of clear evidence to the contrary." *Lutheran Home at Moorestown*, 334 NLRB at 341, citing *U.S. v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926). See also *Anderson v. P.W. Madsen Inv. Co.*, 72 F.2d 768, 771 (10th Cir. 1934) ("There is a presumption of authority for official action rather than want of authority..."). Given this presumption, the Board will not adjudicate claims concerning the authority of an Acting General Counsel, so long as there is nothing to suggest that the Acting General Counsel's appointment was "clearly improper." *Lutheran Home at Moorestown*, 334 NLRB at 340. Respondent has proffered nothing whatsoever to suggest that the appointment of the Acting General Counsel was improper. Thus, Respondent's second defense fails to raise any material issues of fact. Based on the foregoing, Counsel for the Acting General Counsel requests that the Board, after transferring this proceeding to itself, strike Respondent's second defense, or, in the alternative, requests the Board to disregard this defense.

12. Respondent's defense number three regarding the date of complaint lacks merit, as the correct date of the Complaint and Notice of Hearing is January 18, 2012. See Exhibit 12.

Respondent was served with a copy of the Complaint and Notice of Hearing that incorrectly bore the date November 30, 2011. This single typographical error in Respondent's service copy, resulting from administrative oversight, did not adversely impact Respondent nor did it render the service ineffective. All other aspects of the Complaint and Notice of Hearing served on Respondent were correct and Respondent filed an Answer within the specified deadline.

13. The additional defenses raised by Respondent are legal arguments that do not raise any material issues of fact. Respondent's defenses one and four merely make legal arguments that the pleadings are insufficient and that there is no derivative Section 8(a)(1) violation in Section 8(a)(5) conduct. Respondent's defenses five through ten merely attack the propriety of the underlying Certification of Representative. These defenses do not raise any material issues of fact.

14. Respondent's answer fails to present any evidence or assert any issues, if any exist, in support of its defense to the Complaint, other than those issues presented by Respondent in the representation proceedings in Case 5-RC-65270.

15. Where, as here, a party fails to meet and bargain following certification by the Board, it is the Board's policy that absent newly discovered or previously unavailable evidence or special circumstances, the party is not allowed to relitigate, in a proceeding alleging unfair labor practices, issues that were, or could have been, litigated in a prior representation proceeding. *Westinghouse Broadcasting Company, Inc.*, 218 NLRB 693, 694 (1975); *Keco Industries, Inc.*, 191 NLRB 257, 258 (1971). Here, Respondent does not argue that there is newly discovered or previously unavailable evidence or special circumstances.

16. Because a genuine issue of fact does not exist in this case and Respondent has not shown that newly discovered, relevant evidence is now available, the Board should transfer this

case and continue the proceedings before it, deem the allegations set forth in the Complaint to be true without receiving evidence, grant summary judgment and issue a Decision and Order. It is respectfully requested that the Board make its findings of fact based on the allegations in the Complaint and conclude that, as a matter of law, Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint and order an appropriate remedy, including an order that the initial certification year shall be deemed to begin on the date Respondent commences to bargain in good faith with the Union as the certified bargaining representative of the employees in the appropriate unit. *Campbell Soup Company*, 224 NLRB 13 (1976).

Dated at Baltimore, Maryland this 3rd day of February 2012.

Respectfully Submitted,



Matthew J. Turner
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, Maryland 21202-4061
Telephone: (410) 962-2200
Facsimile: (410) 962-2198
E-mail: matthew.turner@nrlb.gov

APPENDIX: LIST OF EXHIBITS

Exhibit 1	Petition (September 23, 2011)
Exhibit 2	Decision and Direction of Election (October 13, 2011)
Exhibit 3	Letter Setting Forth Election Arrangements (October 18, 2011)
Exhibit 4	Respondent's Request for Review (October 27, 2011)
Exhibit 5	Board Order denying Respondent's Request for Review (November 18, 2011)
Exhibit 6	Tally of Ballots (November 21, 2011)
Exhibit 7	Certification of Representative (December 1, 2011)
Exhibit 8	Letter from Union to Respondent requesting bargaining (December 16, 2011)
Exhibit 9	Letter from Respondent to Union refusing to recognize and bargain with the Union (January 5, 2012)
Exhibit 10	Charge in Case 5-CA-72211 (January 9, 2012)
Exhibit 11	Transmittal Letter and service of charge in Case 5-CA-72211 (January 11, 2012)
Exhibit 12	Complaint and Notice of Hearing and Affidavit of Service (January 18, 2012)
Exhibit 13	Respondent's Answer to the Complaint and Notice of Hearing (February 1, 2012)
Exhibit 14	Stipulation from Case 5-RC-65270 (October 7, 2011)

CERTIFICATE OF SERVICE

This is to certify that on February 3, 2012, copies of the Acting General Counsel's Motion to Transfer Proceedings to the Board and Motion for Summary Judgment were served by e-mail on:

Mr. Christopher M. Feldenzer, Esq.
Serotte, Rockman & Wescott, P.A.
409 Washington Ave., Suite 610
Baltimore, MD 21204-4920
cfeldenzer@srwlaborlaw.com

Mr. Nicholas C. Sokolow
Serrote, Rockman & Wescott, P.A.
409 Washington Ave., Suite 610
Baltimore, MD 21204-4920
nsokolow@srwlaborlaw.com

Mr. Steve Schwartz, Esq.
Service Employees International Union
901 Russell Ave., Suite 300
Gaithersburg, MD 20879-3281
schwartzs@seiu500.org



Matthew J. Turner
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, Maryland 21202-4061
Telephone: (410) 962-2200
Facsimile: (410) 962-2198
Email: matthew.turner@nlrb.gov

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 5-RC-065270	Date Filed 9/23/11

INSTRUCTIONS Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1 PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees

RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded

UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees. (Check one) In unit not previously certified In unit previously certified in Case No. _____

AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2 Name of Employer CENTER FOR SOCIAL CHANGE, INC **Employer Representative to contact** JOSEPH MATHEW **Tel No** 410-579-6789

3 Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 6600 AMBERTON DRIVE, ELKBRIDGE, MD 21075 **Fax No** 410-798-1201

4a Type of Establishment (Factory, mine, wholesaler, etc.) NON-PROFIT COMMUNITY RESIDENTIAL, DAY & VOCATIONAL SERVICES **4b Identify principal product or service** DEVELOPMENTAL DISABILITIES SERV **Cell No** **e-Mail**

5 Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification) **6a Number of Employees in Unit**

Included ALL FULL-TIME, REGULAR PART-TIME & ON-CALL/RELIEF DIRECT CARE, DIRECT CARE AWAKE-OVERNIGHT, DIRECT CARE-WEEK-END, JOB COACH & MAINTENANCE ASSOCIATES EMPLOYED BY THE EMPLOYER. **Present** 200

Excluded ALL PROFESSIONAL EMPLOYEES, MANAGERIAL EMPLOYEES, GUARDS, CORDINATORS AND SUPERVISORS AS IDENTIFIED IN THE ACT. **Proposed (By UC/AC)**

6b. Is this petition supported by 30% or more of the employees in the unit? Yes No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a Request for recognition as Bargaining Representative was made on (Date) 9-22-2011 and Employer declined recognition on or about (Date) NO PEPLY RECEIVED (If no reply received, so state)

7b Petitioner is currently recognized as Bargaining Representative and desires certification under the Act

8 Name of Recognized or Certified Bargaining Agent (If none, so state) NONE **Affiliation**

Address **Tel. No** **Date of Recognition or Certification**

Cell No. **Fax No** **e-Mail**

9 Expiration Date of Current Contract If any (Month, Day, Year) **10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop** (Month, Day and Year)

11a Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No **11b If so, approximately how many employees are participating?**

11c The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, at (Insert Address) _____ Since (Month, Day, Year) _____

12 Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Address	Tel. No	Fax No

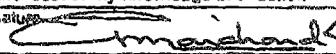
13 Full name of party filing petition (if labor organization, give full name, including local name and number) SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500

14a Address (street and number, city, state, and ZIP code) 901 RUSSELL AVENUE, SUITE 300, GAITHERSBURG, MD 20879 **14b Tel No** EXT 301-740-7100 **14c Fax No** 301-740-7139

14d Cell No 301-385-7873 **14e e-Mail** SCHWARTZS@SEIU500.ORG

15 Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization) SERVICE EMPLOYEES INTERNATIONAL UNION

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) RICHARD KWAME AMO **Signature**  **Title (if any)** LEAD ORGANIZER

Address (street and number, city, state, and ZIP code) 901 RUSSELL AVENUE, SUITE 300, GAITHERSBURG, MD 20879 **Tel No** 301-385-7707 **Fax No** 301-7407139

Cell No 240-421-4471 **eMail** AMOR@SEIU500.ORG

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary, however, failure to supply the information will cause the NLRB to decline to invoke its processes.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

CENTER FOR SOCIAL CHANGE, INC.
Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 500

Petitioner

CASE NO. 5-RC-065270

DATE OF MAILING October 13, 2011

AFFIDAVIT OF SERVICE OF DECISION AND DIRECTION OF ELECTION

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

NEAL SEROTTE, ESQ.
SEROTTE, ROCKMAN AND WESCOTT, P.A.
409 WASHINGTON AVE., SUITE 610
BALTIMORE, MD 21204-4920

JOSEPH MATHEW
CENTER FOR SOCIAL CHANGE, INC.
6600 AMBERTON DR.
ELKRIDGE, MD 21075-6216

RICHARD AMO, LEAD ORGANIZER
SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU), LOCAL 500
901 RUSSELL AVE., STE. 300
GAITHERSBURG, MD 20879-3281

STEVE SCHWARTZ, ESQ.
SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 500
901 RUSSELL AVE., STE. 300
GAITHERSBURG, MD 20879-3281

CHRISTOPHER M. FELDENZER, ESQ.
NICHOLAS SOKOLOW, ESQ.
SEROTTE, ROCKMAN & WESTCOTT, P.A.
PNC BANK-TOWSON BUILDING
409 WASHINGTON AVE., STE. 610
BALTIMORE, MD 21204-4903

Subscribed and sworn to before me on October 13, 2011.	DESIGNATED AGENT /s/VIVIAN BROWN NATIONAL LABOR RELATIONS BOARD
--------------------------------------------------------	-------------------------------------------------------------------------------

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE

CENTER FOR SOCIAL CHANGE, INC.

Employer

and

Case 05-RC-065270

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

Petitioner

DECISION AND DIRECTION OF ELECTION

On October 7, 2011, the Region conducted a representation hearing in this case. Upon the commencement of the hearing, the parties reached stipulations covering all litigable issues. The only dispute involves the date, time, and manner of conducting the election. The Employer contends that the election should be a traditional, on-site manual election; the Petitioner asserts that the election should be conducted by mail ballot.

Whether to conduct an election by mail is a discretionary, non-litigable matter the Board has entrusted to Regional Directors. In the instant case, the hearing officer permitted the parties to put on evidence regarding this issue solely to assist me in making this determination. 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); *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. An election arrangements letter setting forth my determination as to the mechanics of the election will issue anon but after due consideration of the parties' positions, the record, and any post-hearing briefs.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, Service Employees International Union, Local 500, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer, Center for Social Change, Inc., a Maryland not for profit corporation with its principle headquarters in Elkridge, Maryland, and places of business located in Baltimore and Howard Counties, Maryland, is engaged in providing in-patient residential services for adult individuals and children, adult day care services, and supported employment programs for individuals with developmental disabilities and related disorders. During the past 12 months, a representative period, the Employer in the course of

conducting its business operations derived gross revenues in excess of \$250,000, and purchased and received at its Maryland facilities, products, goods, and materials valued in excess of \$5,000 directly from points outside the State of Maryland.

6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, and direct care-week-end, job coach, and maintenance associates employed by the Employer at its facilities in Maryland, but excluding office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

I. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Union Rights for Security Officers. The date, time, and manner of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strikes, who have retained their status as strikers but who have been permanently replaced, as well as

their replacements are eligible to vote. Unit employees 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 since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **October 20, 2011**. No extension of time to file this list will be granted except in extraordinary

circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **October 27, 2011** at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: October 13, 2011

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202



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 where 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

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

CASE NO. 5-RC-065270

Center for Social Change, Inc.

Employer

v.

**Service Employees
International Union,
Local 500**

Labor Organization/Petitioner

**CENTER FOR SOCIAL CHANGE INC.'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION AND ORDER TO CONDUCT THE UPCOMING
ELECTION BY MAIL BALLOT**

October 27, 2011

Neal Serotte
Christopher M. Feldenzer
Nicholas C. Sokolow
SEROTTE, ROCKMAN & WESCOTT, P.A.
409 Washington Avenue, Suite 610
Baltimore, MD 21204
Telephone: 410-825-7900
Facsimile: 410-825-7913

Attorneys for Employer
Center for Social Change, Inc.

I. STATEMENT OF THE CASE

A hearing was held on October 7, 2011 at Region 5 of the National Labor Relations Board (“NLRB” or the “Board”) on a Petition filed on September 23, 2011 by the Service Employees International Union, Local 500 (“the Petitioner” or “the Union”) for certification as the exclusive bargaining agent for certain employees of the Center for Social Change, Inc. (“the Employer” or “CSC”). The sole issue at that hearing was whether the election would be conducted manually, as proposed by the Employer, or by mail ballot, as proposed by the Petitioner. On October 13, 2011, the Regional Director, Wayne R. Gold, prior to receiving the post-hearing briefs of the parties, issued a Decision and Direction of Election (“DDE”). The DDE resolved all issues in the representation proceeding except for the disputed issue of the mail ballot procedure, and it stated that this issue would be addressed separately in an “elections arrangements letter.” (DDE at 2). On October 18, 2011, the Regional Director issued this “elections arrangements letter” (the “Letter Decision”) ordering that the election be conducted by mail ballot rather than the standard manual election with all its established safeguards.¹ The employer hereby files this Request for Review of the Regional Director’s Letter Decision.

II. FACTS

CSC is a non-profit organization that provides residential and employment program services for individuals with developmental disabilities such as mental retardation and associated

¹As a matter of law, the Regional Director’s issuance of the DDE on October 13, 2011 represents a denial of due process to the Employer and is simply a transparent effort to afford the Union the earliest possible election. The Employer is entitled to two (2) weeks from the DDE to file a Request for Review, not, as here, nine (9) days from the Letter Decision.

conditions. (Bd. Exh. 2, ¶6)² (Tr. 46). CSC operates 33 different group homes in the Baltimore, Maryland metropolitan area where the employees in the petitioned-for bargaining unit provide care to these individuals. (Tr. 46). Specifically, the group homes lie within a confined geographical radius in two adjacent Maryland counties (ER Exhs. 1A and 1B). In addition, CSC maintains a headquarters location at 6600 Amberton Drive, Elkridge Maryland 21075 and a training facility at 9300 Liberty Road, Randallstown, MD 21133 (Tr. 9-10). Both of these locations are regularly utilized by CSC employees for training and staff meetings. (Tr. 40)

At the hearing, the Employer proposed two locations for the manual election: (1) 6600 Amberton Drive, Elkridge, Maryland and (2) 9300 Liberty Road, Randallstown, Maryland. (Tr. 9-10). Virtually every one of the Employer's worksites is located within 6 miles of one of the two proposed polling sites (ER Exh. 1A and 1B). Testimony by CSC's Director of Finance and Human Resources showed that employees regularly travel to the proposed voting locations for the purposes of training, staff meetings, and to pick up their paychecks. (Tr. 50-53). In addition, the Amberton Drive polling site is used extensively by the petitioned-for-job coaches to bring their assigned individuals for job training as well as for staff meetings. (Tr. 40). The Employer proposed voting times of Sunday, October 30th from 9:00 p.m. to 12:00 midnight and Monday, October 31st from 3:00 p.m. to 12:00 midnight at both of these locations. (Tr. 9-10, 58). As confirmed by the scheduled shifts listed in ER Exh. 3 and the summary chart of such shifts (ER Exh. 2) this would have allowed all of the employees in the proposed bargaining unit to easily vote either before or after their shifts at the convenient locations proposed by the Employer. (Tr.

² References to the October 7, 2011 hearing transcript are designated as Tr.____; and references to Board hearing exhibits and Employer hearing exhibits are designated Bd Exh____, or ER Exh.____, respectively.

58). Nevertheless, the Regional Director rejected the Employer's request for a manual election, the type of election historically favored by the Board, and ordered a mail ballot election, a procedure not sanctioned by the National Labor Relations Act, (NLRA), historically utilized only in "usual circumstances" and prone to low turnout and the potential for abuse.

III. REQUEST FOR REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, CSC requests review of Regional Director Wayne R. Gold's October 18, 2011 Letter Decision which ordered a mail ballot procedure. The grounds for the Employer's Request for Review are as follows:

1. A substantial question of law and policy is raised because of the Regional Director's departure from established Board and precedent and policy, and;
2. There are compelling reasons for reconsideration of an important Board rule or policy.

The Regional Director's direction of the election by mail ballot is an abuse of discretion because a mail ballot election in this circumstance is not appropriate under established Board precedent and long standing Board policy. The Letter Decision's claim that CSC employees are sufficiently "scattered" as to justify a mail ballot has no basis in the law or on the facts contained in the record. As the Letter Decision noted, all of the Employer's thirty-three facilities, except for one, are located within "six or fewer miles" from one of the polling sites. (Letter Decision at 2). The Letter Decision also noted that the employer's proposed polling dates and times "would accommodate ninety-five percent of the bargaining-unit employees by providing a polling time close to the beginning or ending of one of their shifts." The Letter Decision cites no authority, and

there is none, that under these circumstances voters are “scattered.” The Board requires, as announced in *San Diego Gas and Elec.*, 325 NLRB 1143, 1145 (1998), that voters must be “scattered” in order for a Regional Director to order a mail ballot election.

Further, the Letter Decision indicates that the mail ballot election has been ordered purportedly because such an election would be “a more cost effective and efficient use of [Board] resources,” (Letter Decision at 3), which is impermissible under Board precedent and policy. In that regard, the Letter Decision cites the concern that the Employer’s proposal for a manual election would “require a minimum of two Board agents working at two polling sites for at least twelve hours each...for two days...outside normal business hours.” (Decision at 3). It is obvious from this language that finances factored largely into the Regional Director’s decision, since employees are not in fact “scattered” as the Regional Director claims, the only remaining alleged justification for ordering mail ballots here are the resources purportedly saved by the Region. Such an impermissible justification, has been rejected by the Board which has held that Regional Directors “should not order mail ballot elections based solely on budgetary concerns.” *San Diego*, 325 NLRB at 1145 n.8, (emphasis supplied) (citing *Willamette Industries*, 332 NLRB 856 (1997)).

Finally, compelling reasons for reconsideration of important Board rules and policies exist in this case. Where a question of representation exists, the National Labor Relations Act (the “Act” or NLRA) requires that a Regional Director “...shall direct an election by *secret ballot* and shall certify the results thereof” 29 USC § 159(c)(1)(B) (emphasis supplied). In addition, the applicable regulation provides that “...all elections shall be *by secret ballot.*” 29 CFR §102.69 (emphasis supplied). As discussed *infra*, a mail ballot is not secret ballot and therefore it is inappropriate to use a mail ballot procedure in any circumstance, especially here, where Board

precedent compels a manual election. Significant policy concerns related to ballot secrecy and employee free choice, including but not limited to ensuring the secrecy and integrity of the ballots, preserving laboratory conditions by shielding voters from coercive influences, and maximizing voter participation necessitate manual, rather than mail ballot elections both generally and in this case.

CSC respectfully asks the Board to grant its Request for Review, vacate the Regional Director's decision to conduct this election by mail ballot, and order Region 5 to conduct a manual election at the Employer's 6600 Amberton Drive Elkridge Maryland, and 9300 Liberty Road, Randallstown, Maryland locations.

IV. THE REGIONAL DIRECTOR ABUSED HIS DISCRETION IN ORDERING THE USE OF MAIL BALLOTS IN THIS CASE.

A. The Regional Director Departed from Officially Reported Board and Federal Appellate Court in Ordering the use of Mail Ballots.

“Long-standing [Board] policy favors the use of in-person manual elections.” *San Diego*, 325 NLRB at 1144. In making the important decision of which election procedure to follow, “a Regional Director’s discretion...is not unfettered and is to be exercised within certain guidelines.” *San Diego*, 325 NLRB at 1144. The Board’s most recent edition of *An Outline of Law and Procedures in Representation Proceedings* provides that “[m]ail balloting is used, if at all, *in unusual circumstances*, particularly where eligible voters are scattered either because of their duties or their work schedules, or in situations where there is a strike, picketing or lockout in progress.” *Id.* §22-110. (Emphasis supplied) Thus, as discussed below, the Board has upheld the propriety of mail ballot elections only in *unusual* situations where “circumstances...would tend to make it difficult for eligible employees to vote in a manual election:

- (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; or
- (3) where there is a strike, a lockout or picketing in progress.”

Id. at 1144-1145; *See also NLRB Case Handling Manual (Part Two) Representation Proceedings* at § 11301.2.

No “unusual circumstances” are present in this case. As *San Diego* explains, employees are only considered to be “scattered” when, for example, “a significant number of voters” “have duties that keep them in the field for substantial periods of time,” “work only on an on-call basis,” or “work in the same areas but travel on the road.” *San Diego*, 325 NLRB at 1144-1145. None of those facts are present here. The petitioned-for employees work in group homes which are in extremely close in geographic proximity to the proposed voting locations which are in fact company facilities regularly utilized for training and staff meetings. All but one of the worksites are located within 6 miles or less of the proposed voting locations (Letter Decision at 2). All employees that work regular schedules will be able to vote in polling sessions that span little more than a 24-hour period and involve only two locations. (Letter Decision at 3). Critically, the Board noted in *San Diego* that “the mere fact that employees may work multiple shifts, thereby necessitating more than one voting session... is not in and of itself a sufficient basis for directing a mail ballot election.” *Id.* at 1145. Utilizing the manual election procedure here would allow virtually every employee to vote either immediately before or after their scheduled shifts. (Letter Decision at 2). Thus, as discussed below, neither their geographic locations nor their work-shifts

are “scattered” for purposes of the Board’s *San Diego* analysis.

1. *The record established that CSC employees’ job duties are not “scattered” geographically.*

While the Regional Director has pointed to the numerosity of the Employer’s worksites as a reason for holding a mail ballot election, this has never been a relevant factor for consideration under the Board’s *San Diego* analysis, *supra*. This case is readily distinguishable from cases, including those cited in the Decision, where the Board has upheld the direction of a mail ballot election due to the “scattered” nature of the voters’ job duties “over a wide geographic area..” *San Diego* 325 NLRB at 1144. In *San Diego*, the petitioned for employees worked at sites spread across a broad geographic area of over 80 miles. *Id.* 1144-1145. This is a far cry from the maximum 6 mile distance between the 32 out of 33 of CSC’s group homes and the proposed polling locations. The Decision notes that the Employer’s facilities are spread over “two counties” (Decision at 3), but this description is misleading as Maryland is a very small state and Baltimore County and Howard County are both within the Baltimore metropolitan area, adjacent to one another, and the facilities in both counties are located in close proximity to the boundary line.

In the cases cited by the Regional Director in the Letter Decision, where the Board found employees to be geographically “scattered,” the facts differ markedly from the circumstances of this case. *See National Van Lines*, 120 NLRB 1343, 1344 (1958) (scattered due to “widespread over-the-road driving duties...throughout the United States.”); *Northern American Aviation, Inc.* 81 NLRB 1046, 1047 (1949) (“scattered” insofar as Employer “refused to permit the election to be held on its premises”). Two other cases cited in the decision, *Manchester Knitted Fashions*,

Inc., 108 NLRB 1366 (1954) and *Haliburton Services*, 265 NLRB 1154 (1982) do not discuss the mail ballot issue. *Haliburton*, however, does note that “[t]he best place to hold an election from the standpoint of accessibility to voters, is somewhere on the employer’s premises. In the absence of good cause to the contrary, the election should be held there.” *Id.* at 1188. Finally, the Letter Decision cites *Southwestern Michigan Broadcasting Company*, 94 NLRB 30, 31 (1951), a case decided 47 years before the now-controlling *San Diego* analysis was set forth in 1998, and which contains little discussion of the facts and no discussion of the “scattered” nature of worksites or work shifts.

More recent cases in which the Board and the U.S. Court of Appeals for the District of Columbia have addressed the issue of whether employees are geographically “scattered,” are easily distinguished from the facts of this case. *See London’s Farm Dairy, Inc.* 323 NLRB 1057 (1997) (worksites were over a hundred miles apart); *Saltwater, Inc.*, 325 NLRB 343 (1997) (employees stationed on fishing vessels and processing plants located across thousands of miles of land and ocean in Alaska, the Bering Sea and the Gulf of Alaska); *Masiongale Electrical-Mechanical*, 326 NLRB 493 (1998) (employees scattered across the State of Indiana, with the furthest site being separated by 70 miles); *M&N Mail Services*, 326 NLRB 451 (1998) (long-distance truck drivers where 15% of the unit would necessarily be traveling and unavailable to vote during any two-day period); and *Sitka Sound Seafoods, Inc. v. NLRB*, 206 F.3d 1175 (D.C. Cir. 2000) (seasonal employees were scattered far and wide three months after the “peak season” had ended).

Thus, the Regional Director abused his discretion in ordering a mail ballot procedure to the extent his decision is based on the geographic locations of the CSC’s group homes. Never

before has the Board determined employees to have geographically “scattered” job duties where those job duties are performed in a confined area as here, and where all of the Employers worksites, except for one, are within 6 miles of the proposed voting locations.

2. *CSC Employees do not work on “scattered” shifts as the Board has defined “scattered.”*

CSC employees do not work on “scattered” shifts as the Board has defined “scattered.” The simple fact that Employer maintains a 24-hour operation, and there are shifts covering every hour, is not sufficient in and of itself to consider the shifts “scattered.” If such “scattering” of shifts was sufficient, no 24-hour operation would be eligible for a manual election and all such operations would necessitate mail ballot procedures. Indeed, the Board has repeatedly upheld the decisions of Regional Directors to have manual polling in shifts rather than mail ballot elections. *See Coast North America*, 325 NLRB 980 (1998) (affirming Regional Director’s utilization of manual polling in shifts from 4-7 a.m and 4-7 p.m. rather than a mail ballot election); and *Nouveau Elevator Industries*, 326 NLRB 470 (1998) (affirming Regional Director’s utilization of manual polling of over 1600 employees in nine-hour sessions over two days where employer maintained a 24-hour operation).

In *CPMC-St. Lukes Hospital*, 357 NLRB No. 21 (2011), the Board upheld the Regional Director’s decision to order a mail ballot election where the parties had agreed that “some 15 polling sessions, encompassing 2 to 3 days” would have been required in order to accommodate the “scattered” nature of employee shifts. Similarly, in *Reynolds Wheels International* 323 NLRB 1062 (1997), the Board upheld the direction of a mail ballot election where “...the voters’ shifts are so varied that it would...require 3 consecutive days of voting.” Here, only two sessions

spanning little more than 24 hours would be required for all employees to participate in the election. The vast majority of employees would be able to participate either immediately before or after their shifts. (Letter Decision at 2).

In *Shepard Convention Services, Inc. v. NLRB*, 85 F.3d 671 (D.C. Cir. 1996) the NLRB received a strong rebuke for ordering mail balloting for on-call employees who would not be at the workplace during the manual balloting. The court found that the Regional Director (whose decision to hold a manual election was later overturned by the Board), had “properly denied the Union’s request for an election by mail” where there was an “absence of any evidence indicating [the] ‘infeasibility’ of a manual election.” *Id.* at 647.

No such infeasibility for the preferred manual election was established in this case. As Shown in ER Ex. 2, over 60% of CSC employees work on just four shifts. The Union never challenged this assertion and the Regional Director’s Letter Decision never acknowledged this circumstance. The Board has deemed the nature of shifts to be “scattered” only where numerous polling sessions would be required over periods of time that are 48 hours or longer. As in *Cast North America*, 325 NLRB 980, and *Nouveau Elevator Industries*, 326 NLRB 470, the two polling sessions, which would occur within a time span of only 27 hours, demonstrates that CSC employee shifts are not “scattered.”

B. The Minimal Financial Resources Required to Run an Election is not a Valid Reason for Denying CSC Employees the Right to Vote in a Secret Ballot Election.

Efficiency of Board operations is only to be considered if “one or more of the other factors...outlined above [“scattered” employees, a strike, lockout, picket] is present. Accordingly,

Regional Directors *should not order mail ballot elections based solely on budgetary concerns.*” (*San Diego* 325 NLRB at 1145 n.8, emphasis supplied (citing *Willamette Industries*, 322 NLRB 856 (1997)).

Given that CSC employees are not “scattered” with respect to their geography or shifts, the Regional Director’s purported reliance upon the Region’s resources as a basis for ordering a mail ballot procedure is also an abuse of discretion. The Region’s expenditure of financial resources, by itself, is not sufficient to render the Regional Director’s order of a mail ballot permissible. *San Diego* 325 NLRB at 1145; *Willamette* 322 NLRB at 856. Moreover, the Letter Decision offers no dollar figures or other evidence that would show that the Region would actually save money by having a mail ballot election. The Decision only states that “...the Employer’s proposal would require a minimum of two Board agents working at two polling sites for at least twelve hours each...outside normal business hours.” As the Board is aware, many elections across the country take place outside of normal business hours and require two or more Board agents at multiple locations. The fact that Region 5 employees generally work only “9 to 5” cannot constitute “unusual circumstances.” If these circumstances were enough to warrant a mail ballot election then there would be no point in having Regional offices conduct elections at all since elections could be administered by mail ballot from the General Counsel’s office in Washington, D.C. This result would obviously be absurd. The Board’s charge under the Act includes administering elections. The mere fact that many workplaces are 24/7 operations does not warrant the disenfranchisement of such employees because of NLRB’s “9 to 5” schedule.

In *Willamette*, *supra*, the Board found that the fact that the election site was 80 miles from the Board’s office was “insufficient to justify a departure from the normal manual election

procedure....” 322 NLRB 856. If an 80 mile drive is an insufficient reason to forego the manual election procedure, then certainly the concern that Board agents would have to oversee manual elections outside the hours of 9:00 a.m. and 5:00 p.m. at election sites no more than 17 miles from the Regional Office is also an insufficient reason to abandon the procedure for manual elections traditionally favored by the Board. The copying and postage costs for conducting a mail ballot election would likely exceed the cost of having a manual election, even if Board agents were required travel a maximum of 34 miles, round trip.

II. MAIL BALLOTS ARE NOT “SECRET BALLOTS” AND, FURTHER, HISTORICALLY DISENFRANCHISE EMPLOYEES.

A. The Mail Ballot Election Procedure is Not Authorized by the Act.

The *only* type of Board-supervised election provided under the Act is a “secret ballot of the employees.” 29 USC § 159(e). Where a question of representation exists, the Act requires that a Regional Director “...shall direct an election by *secret ballot* and shall certify the results thereof” 29 USC § 159(c)(1)(B) (emphasis supplied). In addition, the applicable regulation is unambiguous in this regard : “...all elections shall be *by secret ballot*.” 29 CFR §102.69 (emphasis supplied). While the original language of the National Labor Relations Act allowed representation to be determined either by “a secret ballot of employees, or [the use of] any other suitable method to ascertain such representatives,” (*See* National Labor Relations (Wagner) Act, Pub. L. No. 198, 49 Stat. 449, 453 (1935)), this changed after the passage of the Labor-Management (Taft-Hartley) Relations Act, 29 USC § 159 (1947), which altered the language of 29 USC §159(c)(1)(B) to say “[i]f...a question of representation exists, [the Board] shall direct an election by secret ballot and shall certify the results thereof.” Thus, because the “other suitable

method” language was removed from Act by Taft-Hartley, the legislative history of the Act makes clear that secret ballots are the only acceptable method for ascertaining whether a union has majority support.

The leading treatise on the Act states: “Voting is by secret ballot and takes place in voting booths because of the necessity that the employees be furnished a place where they can vote in absolute secrecy.” John E. Higgins, Jr., et al, *The Developing Labor Law* 612 (5th ed. 2002). Similarly, the Seventh Circuit has held that “the Board’s requirement of complete secrecy of the ballot cannot be waived.” *Magic Pan, Inc., v. NLRB* 627 F.2d 105 (7th Cir. 1980) (citing *I. Brenner & Sons, Inc.*, 154 NLRB 656, 659 n.4 (1965)). No less authority than the U.S. Supreme Court declared that the “privacy and independence of the voting booth” provide “safeguards of voluntary choice” to employees in Board-supervised elections. *See Brooks v. NLRB*, 348 U.S. 96, 99 (1954) (justifying election bar based on parties’ prior Board-supervised, secret-ballot election)). Mail ballots are plainly not *secret ballots* as they do not provide the privacy of the voting booth or the protection provided by Board agents who assure that voters will be able to cast their votes in privacy and will not be coerced by others *while filling out their ballots*. Consequently, a mail ballot procedure does not as a matter of law provide for the secret ballot election procedure required by the Act.

In 1994, when then-Chairman William Gould proposed that the NLRB expand the situations in which mail ballots were to be used, many of the strongest comments in opposition were filed by NLRB regional office officials who noted, among other things:

1. The presence of a Board agent at an election gives employees a greater

- sense of security that their rights are being preserved,³
2. The potential for interference by either party increases the likelihood of a second election having to be conducted because of misconduct;⁴
 3. By including ballots with other “junk mail” that employees typically receive, it “dilutes the seriousness of the process;”⁵
 4. If the voter is confused or uncertain about the process, there is no official agent available to answer their questions, increasing the likelihood that he or she will procrastinate and “find it easier not to vote;”⁶

As the Board has long acknowledged, the danger that laboratory conditions will be destroyed is greater in mail ballot elections than in manual ones because the Board does not directly supervise voting. *Brink’s Armored Car*, 278 NLRB 141 (1986). A mail ballot election does not effectuate the purposes of the Act and does nothing to promote employees’ free choice. Mail ballots raise the impermissible and inevitable likelihood that misconduct will occur to prevent employees from making their choices voluntarily. They provide no assurance that employees will be able to cast their vote freely, without the coercive pressure from powerful organizers. Mail ballots do not provide the privacy and *secrecy* of a manual election in a private booth, under the scrutiny of Board officials. Rather, under a mail ballot procedure employees will likely have to make their “choice” in the presence of coworkers and partisan organizers. The integrity of mail ballots is always questionable as there is no assurance that the employee herself will even be the one to cast the vote.

The use of mail ballots dramatically increases the risk of union coercion of employees.

³ Daniel V. Yager, *NLRB Agency in Crisis*, 46 (1996) (quoting Richard J. Roth, then-Assistant Director of NLRB Region 29).

⁴ *Id.*

⁵ *Id.* (quoting Nina Rzymiski, NLRB Region 6, Election Specialist).

⁶ *Id.*

For example, while employers are forbidden to campaign against union representation by making home visits (*see Peoria Plastic Co.*, 117 NLRB 545 (1957)), unions are under no such restriction. Unions can and do pay frequent visits to eligible voters, often to the point of harassment. These visits will take on a troubling significance in the context of a mail ballot election. A Board agent cannot be present in every home to guard against coercion and safeguard ballot integrity. Precedent shows that mail ballots have occasioned improper conduct that would not be possible in a manual election. *See, e.g., Fessler & Bowman, Inc.*, 341 NLRB 932 (2004) (union collected ballots for mailing to the Board); *Space Mark, Inc.*, 325 NLRB 1140 (1998) (eligible voter permitted his wife to mark ballot)).

In addition, merely receiving an envelope containing a ballot in the mail does not adequately convey to employees the significance of representation elections or the importance of the employee's timely participation in the process. The presence of government officials on the Employer's premises, monitoring all election day activities, unquestionably conveys to employees the significance and gravity of a representation election. All employees, including CSC's employees, deserve the opportunity to participate in an in-person, manual election. Manual elections, with the presence of a Board Agent, are the best way encourage and enhance the opportunity for all employees to participate freely in an important process that has dramatic consequences for their livelihoods. Indeed, the in-person manual election continues to be the primary means by which our country's political elections are determined. Having a national election, such as a presidential election, by mail ballot would obviously be unpalatable to the public at large and contrary to our country's democratic traditions because of the lack of secrecy provided by mail ballots and the inevitable voter fraud that would ensue due to their use. Similar

concerns should persuade the Board to abandon the mail ballot procedure.

B. Even if Mail Ballots Were Permissible Under the Act, Overwhelming Policy Considerations Demand the Extreme Limitation On Their Use.

1. *Longstanding Board policy disfavors the use of mail ballots.*

Even if mail ballot elections were permissible under the Act, CSC employees should not be relegated to an inferior procedure used only in unusual circumstances that are not present here. The statutory requirement of a secret ballot election underlies the reasons why “under existing Board precedent and policy the applicable presumption favors a manual election, not a mail-ballot election.” *Willamette Industries, Inc.*, 322 NLRB 856 (1997). Long-standing Board policy favors the use of in-person manual elections. *San Diego*, 325 NLRB at 1144 (1998). As the Board has explained, “the value of having a Board agent present at the election” is so significant that “representation elections should as a general rule be conducted manually.” *Id.* at 1144. The NLRB’s own *Case Handling Manual (Part Two) Representation Proceedings* confirms that “[t]he Board’s longstanding policy is that representation elections should, as a general rule, be conducted manually.” *Id.* at § 11301.2. (Emphasis supplied). As the Board has noted: “[m]ail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over employees’ voting.” *Thompson Roofing, Inc.*, 291 NLRB 743 at fn. 1 (1998). The Board agent, in a manual election, monitors closely the entire balloting procedure and ensures the integrity of the election process. The agent is on site to guard against improprieties and observe and report any that occur. With a mail ballot procedure, there is no such guardian and thus the secrecy and integrity of the ballots are placed in peril.

2. *Mail ballot elections result in lower voter-turnouts and it is exceedingly likely that this would occur at CSC.*

While Board statistics on mail-in election participation rates are not generally available to the public, in a memo dated April 17, 2008, the NLRB General Counsel reported that for FY 2006 and FY 2007, manual elections had an 81.57% participation rate whereas mail or mixed manual/mail elections had a participation rate of only 65%. *Memorandum GC 08-05: Report on the Midwinter Meeting of the ABA Practice and Procedure Committee of the Labor and Employment Law Section*. 2008 WL 2484199 (N.L.R.B.G.C. 2008).

Shepard Convention Services, supra, illustrates the significant participation rate problem with mail ballot elections. 85 F.3d 671. In that case, after the Board ordered a mail ballot election, out of 438 eligible voters, only 77 cast ballots (40 for the union, 23 for an alternative union and 5 for no union). *Id.* at 673. Even though only 9 percent of the total unit had voted for the union – with only 17.5% voting – the Board sought to certify the union but was ultimately overturned by the D.C. Circuit Court which observed:

Had the Board left the [Regional Director's] decision intact, voter turnout might well have been higher. It could hardly have been lower.

Id. at 675.

In addition, as noted by the dissent in *San Diego*, a study had demonstrated that while 87.9 percent of eligible voters participated in manual elections, only 68.13 percent participated in mail ballot elections. *San Diego*. 325 NLRB at 1151. Indeed, the majority in that case acknowledged that voter turnout is lower in mail ballot elections, but accepted these unpalatable consequences only because mail ballot elections were to be confined to situations in which voter turnout at a

manual election would have been even lower (because of long distances, a strike, picket or lockout.) (*Id* at 1146). There is absolutely no basis in the record⁷ to suggest that voter turnout would be low in a manual election at CSC, and so the lower voter turnout that is exceedingly likely to occur with the mail ballot election ordered by the Regional Director would unjustifiably disenfranchise CSC employees.

Where, as here, employees work in close geographic proximity to the polling locations and regularly visit those sites for training and staff meetings and the vast majority of employees would be able to vote either before or after their shifts in a manner that only requires two polling sessions, voter turnout will undoubtedly be higher in a manual election than in a mail ballot election. For this reason alone, the Regional Director abused his discretion in ordering a mail ballot and his decision should be overturned.

V. CONCLUSION

For the foregoing reasons, the Employer respectfully requests that the Board reverse the Regional Director's Letter Decision order the Regional Director to conduct a manual ballot election. The Regional Director's order of a mail ballot election is a radical departure from well-established Board precedent and policy. Moreover, there are compelling reasons for the Board to abandon the use of the mail ballot procedure in its entirety, as it is contrary to the express language, policy and purposes of the Act.

Respectfully submitted,

⁷The Union failed - through one rejected hearsay exhibit and vague testimony lacking foundation - to establish that employees' second jobs and familial obligations would depress voter participation in a manual election.



Neal Serotte



Christopher M. Feldenzer



Nicholas C. Sokolow

SEROTTE, ROCKMAN & WESCOTT, P.A.
409 Washington Avenue, Suite 610
Baltimore, Maryland 21204
410-825-7900

Attorneys for Center for Social Change, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of October, 2011, copies of the foregoing Request for Review and attached exhibit were e-mailed to Wayne R. Gold, Regional Director, Region 5, wayne.gold@nlrb.gov, The Appraisers Store Building, 103 S. Gay Street - 8th Floor, Baltimore, MD 21202; and Steve Schwartz, Attorney for Service Employees International Union, schwartzs@seiu500.org, Local 500, 901 Russell Avenue, Suite 300, Gaithersburg, MD 20879.



Nicholas C. Sokolow

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CENTER FOR SOCIAL CHANGE, INC.
Employer

and

Case 05-RC-065270

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500
Petitioner

ORDER

Employer's request for special permission to appeal¹ the Regional Director's determination to conduct the election by mail ballot is granted, and the appeal is denied inasmuch as there is no showing that the Regional Director abused his discretion.

MARK GASTON PEARCE	CHAIRMAN
CRAIG BECKER,	MEMBER
BRIAN E. HAYES,	MEMBER

Dated, Washington, D.C., November 18, 2011.

¹ We have treated the Employer's "request for review" of the Regional Director's mail ballot determination as a request for special permission to appeal.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed

Sep 23, 2011

Case No. 5-RC-65270

Date Issued November 21 1, 2011

City Baltimore

State MD

Type of Election:
(Check one:)

(If applicable check either or both:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction
Incumbent Union (Code)

- 8(b) (7)
- Mail Ballot

CENTER FOR SOCIAL CHANGE, INC.
Employer
and
SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500
Petitioner

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- | | | |
|------------------------------------------------------------------------------------------------------------------|-------|------------|
| 1. Approximate number of eligible voters | _____ | <u>229</u> |
| 2. Number of Void ballots | _____ | <u>2</u> |
| 3. Number of Votes cast for
PETITIONER | _____ | <u>103</u> |
| 4. Number of Votes cast for | _____ | <u>—</u> |
| 5. Number of Votes cast for | _____ | <u>—</u> |
| 6. Number of Votes cast against participating labor organization(s) | _____ | <u>6</u> |
| 7. Number of Valid votes counted (sum 3, 4, 5, and 6) | _____ | <u>109</u> |
| 8. Number of challenged ballots | _____ | <u>26</u> |
| 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) | _____ | <u>135</u> |
| 10. Challenges are (not) sufficient in number to affect the results of the election. | | |
| 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for
PETITIONER | _____ | |

For the Regional Director -Region 5

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

For

CENTER FOR SOCIAL CHANGE, INC.

Employer

And

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

Petitioner

TYPE OF ELECTION

(CHECK ONE)

CONSENT

STIPULATED

X RD DIRECTED

BOARD DIRECTED

(ALSO CHECK BOX BELOW
WHEN APPROPRIATE)

8(b)(7)

CASE 5-RC-065270

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500

And that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, and direct care-week-end, job coach, and maintenance associates employed by the Employer at its facilities in Maryland, but excluding office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

Signed at Baltimore, MD

On the 1ST

day of December 2011

Wayne R Gold
Regional Director, Region 5
National Labor Relations Board
Baltimore, MD



Service Employees International Union, Local 500, CTW, CLC

Merle Cuttitta, President

901 Russell Avenue, Suite 300, Gaithersburg, MD 20879

301.740.7100 Fax: 301.740.7139

Toll Free: 888.871.8659

Joseph Mathew
Center for Social Change Inc.
6600 Amberton Drive
Elkridge, MD 21075-6216

December 16, 2011

Dear Sir;

This letter will serve to notify the Center for Social Change Inc. that as the duly elected employee representative, the Service Employees International Union Local 500 is requesting negotiations commence for a collective bargaining agreement.

Please contact me to arrange mutually agreeable times, dates, and locations. We look forward to a productive and mutually beneficial process.

Thank you.

Diane Rigotti
Director, Representation Programs
901 Russell Ave., Suite 300
Gaithersburg, MD 20879
rigottid@seiu500.org
(301) 740-7100

Betty Montgomery
Executive Vice President

Joseph Hallowell
Secretary

Ruth Musicante
Treasurer

David Rodich
Executive Director

www.seiu500.org





TO:	Diane Rigotti
COMPANY:	Seiu
BUSINESS #:	
FAX #:	301 740 7139
FROM:	
DATE:	1/6/12
PAGES:	2 (including cover page)
MESSAGE:	

CALL TO CONFIRM: _____ YES NO

CONFIDENTIALITY NOTICE:

The information in this facsimile is confidential. The information is intended only for the use of the individual entity to which it is addressed. If you are not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone and return the original to the address below. The U.S. Postal Service return postage is guaranteed. Thank you.

If you did not receive all pages, please call (410) 579-6789.

6600 Amberton Drive~Elkridge, Maryland~21075
 Office: 410-579-6789~Fax: 410-796-1201~Toll Free: 1-800-269-0383~TTY: 410-579-6913
www.centerforsocialchange.org

FAX COVER SHEET

Center for Social Change

Change Lives!

January 5, 2012

Ms. Diane Rigotti, Director
Representation Programs
Service Employees International Union
Local 500, CTW, CLC
901 Russell Avenue, Suite 300
Gaithersburg, Maryland 20879

Re: Request for Negotiations

Dear Ms. Rigotti:

This letter responds to your letter requesting to begin negotiations on behalf of the Service Employees International Union (SEIU), Local 500. The Center for Social Change has decided to test the certification of representative issued by the National Labor Relations Board. We therefore decline to recognize and bargain with SEIU, Local 500.

Sincerely,



Joseph Mathew, Ph.D.
President and CEO



6600 Amberton Drive, Elkridge, Maryland 21075

Telephone: 410.579.6789 | Fax: 410.796.1201 | Toll-free: 1.800.269.0383 | TTY: 410.579.6813

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 5-CA-72211	Date Filed 1/9/12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Center for Social Change, Inc.	b. Tel. No. 410-579-6789
	c. Cell No.
	f. Fax No. 410-796-1201
d. Address (Street, city, state, and ZIP code) 6600 Amberton Drive Elkridge, Maryland 21075	e. Employer Representative Joseph Mathew, Ph.D
	g. e-Mail
	h. Number of workers employed 200+
i. Type of Establishment (factory, mine, wholesaler, etc.) Non-profit Community Residential	j. Identify principal product or service Developmental Disabilities Services
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) The Employer, Center for Social Change, Inc.(CSC), did violate the rights of Service Employees International Union, Local 500, by expressly refusing to recognize or bargain with the certified representative, Service Employees International Union Local 500 (Local 500), by its letter, dated January 5, 2012, from Joseph Mathew, President and CEO of CSC, to Ms. Diane Rigotti, Director of Representation Programs for Service Employees International Union Local 500. This was in response to Local 500's request to bargain, sent to CSC in a letter dated December 16, 2011.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Service Employees International Union, Local 500	
4a. Address (Street and number, city, state, and ZIP code) 901 Russell Avenue Suite 300 Gaithersburg, Maryland 20879	4b. Tel. No. 301-740-7100
	4c. Cell No.
	4d. Fax No. 301-740-7139
	4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) Service Employees International Union, CtW, CLC	
6. DECLARATION	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Steve Schwartz, Counsel (Print/type name and title or office, if any)
901 Russell Ave, Suite 300, Gaithersburg, MD 20879	
01/06/12 (date)	
Address	
Tel. No. 301-740-7104	
Office, if any, Cell No. 301-385-7873	
Fax No. 301-740-7139	
e-Mail schwartzs@seiu500.org	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
103 S GAY ST
8TH FLOOR
BALTIMORE, MD 21202-7500

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

January 11, 2012

Mr. Joseph Mathew
Center for Social Change, Inc.
6600 Amberton Dr.
Elkridge, MD 21075-6216

Re: Center for Social Change Inc.
Case 05-CA-072211

Dear Mr. Mathew:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Attorney Matthew Turner whose telephone number is (410) 962-2200. If Matthew Turner is not available, you may contact Deputy Regional Attorney John Doyle whose telephone number is (410) 962-3156.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

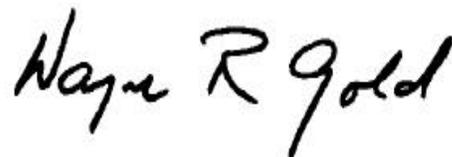
We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink that reads "Wayne R Gold". The signature is written in a cursive, slightly slanted style.

Wayne R. Gold
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

Revised 3/21/2011

NATIONAL LABOR RELATIONS BOARD

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

Center for Social Change Inc.

CASE NUMBER

05-CA-072211

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)**2. TYPE OF ENTITY** CORPORATION LLC LLP PARTNERSHIP SOLE PROPRIETORSHIP OTHER (Specify)**3. IF A CORPORATION or LLC**A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS**5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR****6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).****7. A. PRINCIPAL LOCATION:****B. BRANCH LOCATIONS:****8. NUMBER OF PEOPLE PRESENTLY EMPLOYED**

A. Total:

B. At the address involved in this matter:

9. DURING THE MOST RECENT (Check appropriate box): CALENDAR YR 12 MONTHS or FISCAL YR (FY dates)**YES NO**A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$ _____B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided.
\$ _____C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount.
\$ _____F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____H. **Gross Revenues** from all sales or performance of services (**Check the largest amount**):
 \$100,000 \$250,000 \$500,000 \$1,000,000 or more If less than \$100,000, indicate amount.I. **Did you begin operations within the last 12 months?** If yes, specify date: _____**10 ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?** YES NO (If yes, name and address of association or group).**11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS**

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CENTER FOR SOCIAL CHANGE, INC.

Charged Party

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500**

Charging Party

Case 05-CA-072211

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on January 11, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Mr. Joseph Mathew
Center for Social Change, Inc.
6600 Amberton Dr.
Elkridge, MD 21075-6216

January 11, 2012

Date

Lalitta Gillis, Designated Agent of NLRB

Name

/s/ Lalitta Gillis

Signature

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

CENTER FOR SOCIAL CHANGE, INC.

and

Case 5-CA-72211

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

COMPLAINT AND NOTICE OF HEARING

Service Employees International Union, Local 500, herein called the Union, has charged that Center for Social Change, Inc., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. § 151 et seq., herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by the Union on January 9, 2012, and a copy was served by mail on Respondent on January 11, 2012.

2. (a) At all material times, Respondent, a Maryland not-for-profit corporation with its principle headquarters in Elkridge, Maryland, and places of business located in Baltimore and Howard Counties, Maryland, has been engaged in providing in-patient residential services for adult individuals and children, adult day care services, and supported employment programs for individuals with developmental disabilities and disorders.

(b) During the preceding twelve months, a representative period, Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$250,000.

(c) During the period of time described above in paragraph 2(b), Respondent, in conducting its business operations described above in paragraph 2(a), purchased and received at its

Maryland facilities products, goods and materials valued in excess of \$5,000 directly from points located outside the State of Maryland.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, Joseph Mathew has held the positions of President and CEO and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, and direct care-week-end, job coach, and maintenance associates employed by the Employer at its facilities in Maryland, but excluding office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

(b) On December 1, 2011, the Union was certified as the exclusive, collective-bargaining representative of the Unit. The Decision and Certification of Representative is attached hereto as Attachment A.

(c) At all times since December 1, 2011, based on Section 9(a) of the Act, the Union has been the exclusive, collective-bargaining representative of the Unit.

6. On or about December 16, 2011, the Union requested that Respondent bargain with it as the exclusive, collective-bargaining representative of the Unit.

7. Since on or about January 5, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive, collective-bargaining representative of the employees in the Unit.

8. By the conduct described above in paragraph 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive, collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

9. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations; it must file an answer to the complaint. The answer must be **received by this office on or before February 1, 2012, or postmarked on or before January 31, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov tab**, select **E-Filing** and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Sections 102.21. If an answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the

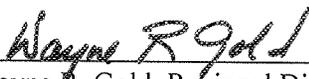
E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 26th day of March 2012, in the John A. Penello Memorial Hearing Room, 7th Floor, 103 South Gay Street, Baltimore, Maryland, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 18th day of January 2012.



Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 South Gay Street, 8th Floor
Baltimore, Maryland 21202

Attachments

CENTER FOR SOCIAL CHANGE, INC.

Employer

And

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

Petitioner

TYPE OF ELECTION

(CHECK ONE)

CONSENT

STIPULATED

RD DIRECTED

BOARD DIRECTED

(ALSO CHECK BOX BELOW
WHEN APPROPRIATE)

8(b)(7)

CASE 5-RC-065270

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 500

And that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, and direct care-week-end, job coach, and maintenance associates employed by the Employer at its facilities in Maryland, but excluding office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

Signed at Baltimore, MD

On the 1ST

day of December

2011

Wayne R Gold
Regional Director, Region 5
National Labor Relations Board
Baltimore, MD

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

CENTER FOR SOCIAL CHANGE, INC.

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 500

Case 5-CA-72211

DATE OF MAILING January 18, 2012

AFFIDAVIT OF SERVICE OF Complaint and Notice of Hearing

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

7010 0780 0000 3626 3917

CHRISTOPHER M. FELDENZER, ESQ.
SEROTTE, ROCKMAN & WESCOTT, P.A.
409 WASHINGTON AVE., SUITE 610
BALTIMORE, MD 21204-4920

MR. JOSEPH MATTHEW
CENTER FOR SOCIAL CHANGE, INC.
6600 AMBERTON DRIVE
ELKRIDGE, MD 21075-6216

STEVE SCHWARTZ, ESQ.
SERVICE EMPLOYEES INTERNATIONAL
UNION
901 RUSSELL AVE., SUITE 300
GAITHERSBURG, MD 20879-3281

Signed in Baltimore, Maryland this 18th day of

January 2012

DESIGNATED AGENT

/s/ Monica Graves

NATIONAL LABOR RELATIONS BOARD

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

CENTER FOR SOCIAL
CHANGE, INC.,

Respondent,

and

SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 500.

Charging Party

CASE 5-CA-72211

ANSWER

Now comes Respondent, Center for Social Change (“CSC” or “Respondent”), by their undersigned attorneys, and pursuant to Sections 102.20 and 102.21 of the National Labor Relations Board’s (“NLRB”) Rules and Regulations makes answer to the Complaint and Notice of Hearing (“Complaint”) issued on the “30th day of November 2011” and states as follows:

DEFENSES

Without assuming any burden of proof, persuasion or production not otherwise legally assigned to it as to any element of the claims alleged in the Complaint, CSC asserts the following defenses:

1. The Complaint fails to allege facts sufficient to state a claim upon which relief may be granted.

2. The Complaint is *ultra vires* because the Acting General Counsel of the NLRB did not lawfully hold the office of Acting General Counsel at the time he directed that the Complaint be filed.

3. The Complaint is dated November 30, 2011 but alleges that CSC engaged in conduct which allegedly violated the Act in December 2011 and January 2012. Thus, to the extent the Complaint predates the unfair labor practice charge, it is impermissibly based on *anticipated* violations of the Act, not *actual* violations.

4. CSC has not violated Section 8(a)(1) of the Act as it has not interfered with, restrained, or coerced employees purportedly represented by Service Employees International Union, Local 500 ("Local 500" or the "Union") in the exercise of their rights protected under the Act.

5. CSC has not violated Section 8(a)(5) of the Act as it has not refused to bargain collectively with properly certified representatives of its employees, subject to the provisions of Section 9(a) of the Act.

6. Local 500 has never been lawfully certified as the exclusive bargaining representative of the employees described in Paragraph 5(a) of the Complaint and hence CSC has never been under any legal obligation to bargain with Local 500.

7. Local 500 was not lawfully certified as the collective-bargaining representative of the employees described in Paragraph 5(a) of the Complaint because the Regional Director's direction of the election by mail ballot was an abuse of discretion since the record evidence

established that those employees were not sufficiently “scattered” so as to justify a mail ballot procedure under established NLRB precedent and long standing NLRB policy.

8. Local 500 was not lawfully certified as the collective-bargaining representative of the employees described in Paragraph 5(a) of the Complaint because the Regional Director’s direction of election by a mail ballot procedure was an abuse of discretion to the extent the decision to utilize a mail ballot procedure was based solely on budgetary concerns, which is impermissible under NLRB precedent and policy.

9. Local 500 was not lawfully certified as the collective-bargaining representative of the employees described in Paragraph 5(a) of the Complaint because the Regional Director’s direction of election by mail ballot was not authorized under the Act since only secret ballot elections are authorized by the Act and a mail ballot procedure does not ensure the secret ballot election required by the Act.

10. Paragraph 9 of the Complaint, in terms of its reliance on disputed facts contained in Paragraphs 7 and 8 of the Complaint, fails to describe with specificity the acts which allegedly constitute the unfair labor practice charges in question.

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

AND NOW, incorporating the foregoing, CSC states as follows in response to the specific allegations of the Complaint:

Preamble: CSC denies all the allegations contained in the preamble except to admit that Local 500 has alleged in its unfair labor practice charge (“the Charge”) in Case 5-CA-72211 that CSC has engaged in certain unfair labor practices prohibited by the Act, and that the Acting General Counsel of the NLRB has issued this Complaint and Notice of Hearing based upon the

Charge. The allegation that the Acting General Counsel, through the Regional Director is acting pursuant to Section 10(b) of the Act and section 102.15 of the Rules and Regulations of the National Labor Relations Board is not an allegation of fact that requires CSC to admit or deny but rather is a statement of law. However, to the extent this allegation requires that CSC admit or deny, CSC denies the allegation.

1. CSC lacks information and knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1.

2. (a) CSC admits the allegations contained in Paragraph 2(a).

(b) CSC admits the allegations contained in Paragraph 2(b)

(c) CSC admits the allegations contained in Paragraph 2(c)

(d) Paragraph 2(d) states legal conclusions for which no answer is required; but to the extent a response is required, CSC admits that it is and has been an employer engaged in commerce.

3. Paragraph 3 states legal conclusions for which no answer is required; but to the extent a response is required, CSC denies all the allegations contained in Paragraph 3.

4. Paragraph 4 states legal conclusions for which no answer is required with respect to Joseph Matthew's alleged status as a supervisor and an agent within the meaning of the Act; but to the extent a response is required, CSC denies all the allegations contained in Paragraph 4.

5. (a) Paragraph 5(a) states legal conclusions for which no answer is required, but to the extent a response is required, CSC admits the allegations contained in Paragraph 5(a).

(b) CSC admits the Regional Director issued a form designated as "Certification of Representative" attached as Exhibit A.

(c) CSC denies all the allegations contained in Paragraph 5(c).

6. CSC denies the allegations in Paragraph 6 that Local 500 is the exclusive, collective-bargaining representative of the of the employees described in Paragraph 5(a). CSC admits that the Union requested to bargain on or about December 16, 2011; CSC denies all the remaining allegations contained in Paragraph 6.

7. CSC denies that the Union is the exclusive, collective bargaining representative of the Unit but admits that it refused to recognize and bargain with the Union.

8. Paragraph 8 states legal conclusions for which no answer is required, but to the extent a response is required, CSC denies all the allegations contained in Paragraph 8.

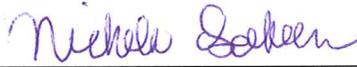
9. Paragraph 9 states legal conclusions for which no answer is required, but to the extent a response is required, CSC denies all the allegations contained in Paragraph 9.

CSC reserves the right to raise any additional defense not asserted herein of which it may become aware through investigation, as may be appropriate at a later time.

WHEREFORE, Respondent, having fully answered, respectfully moves that the Complaint be dismissed in its entirety

Respectfully submitted,


Christopher M. Feldenzer


Nicholas C. Sokolow

Serotte, Rockman & Wescott, P.A.
409 Washington Avenue, Suite 610
Baltimore, MD 21204-4903
Phone: (410) 825-7900;
Fax: (410) 825-7913

Attorneys for Respondent Center for Social Change,
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2012, a copy of Respondent's Answer was e-filed and e-mailed to Wayne R. Gold, Regional Director, Region 5, wayne.gold@nlrb.gov, The Appraisers Store Building, 103 S. Gay Street - 8th Floor, Baltimore, MD 21202; and e-mailed to Matthew Turner, Counsel for the Acting General Counsel, matthew.turner@nlrb.gov, The Appraisers Store Building, 103 S. Gay Street - 8th Floor, Baltimore, MD 21202, and Steve Schwartz, Attorney for Service Employees International Union, schwartzs@seiu500.org, Local 500, 901 Russell Avenue, Suite 300, Gaithersburg, MD 20879.



Nicholas C. Sokolow

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

Correct Name of Employer: Center for Social Change, Inc.
Case No. 05-RC-065270
Correct Name of Petitioner: Service Employees International Union, Local 500

STIPULATION

We stipulate and agree that:

1. We have been informed of the procedures at formal hearings before the National Labor Relations Board by service of the Statement of Standard Procedures with the Notice of Hearing. The Hearing Officer has offered to us additional copies of the Statement of Standard Procedures.

2. To the extent the formal documents in this proceeding do not correctly reflect the names of the parties, the formal documents are amended to correctly reflect the names as set forth above.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

4. The Petitioner claims to represent the employees in the unit described in the petition herein and the Employer declines to recognize the Petitioner.

5. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein and there is no contract bar to this proceeding.

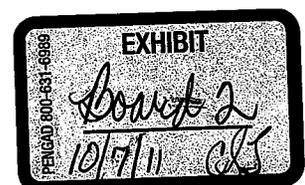
6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

Commerce facts:

Center for Social Change, Inc., a Maryland not for profit corporation with its principle headquarters in Elkridge, Maryland, and places of business located in Baltimore and Howard Counties, Maryland, is engaged in providing in-patient residential services for adult individuals and children, adult day care services, and supported employment programs for individuals with developmental disabilities and related disorders.

During the preceding twelve-month period, Center for Social Change, Inc., in conducting its operations described above, derived gross revenues in excess of \$250,000. During the same period, the Employer purchased and received, at its Maryland facilities, products, goods, and materials valued in excess of \$5,000 directly from points outside the state of Maryland.

7. The following unit is an appropriate unit within the meaning of Section 9(b) of the Act:



Included: All full-time, regular part-time and on-call/relief employees who provide direct care, direct care awake-overnight, direct care-week-end; job coach and maintenance associates employed by the Employer at its facilities in Maryland.

Excluded: Office clerical employees, coordinators, managerial employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act, as amended.

Upon receipt of this Stipulation by the hearing officer it may be admitted, without objection, as a Board exhibit in this proceeding.



For the Employer



For the Petitioner

RECEIVED:



Hearing Officer

Date: 10-07-2011

Board Exhibit No. 2