

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

**GUARDSMARK'S REQUEST FOR REVIEW OF
MARCH 19, 2015 REPORT ON OBJECTIONS BY REGION 5**

For the reasons stated below, Guardsmark, LLC ("Guardsmark") requests that the Board review Region 5's report on Guardsmark's objections to conduct affecting the election held in this matter between January 28, 2015 and February 11, 2015, among the full-time and regular part-time security officers employed by Guardsmark at Providence Hospital in Washington, D.C.

Summary

This election was fraught with errors and problems that cumulatively led to the disenfranchisement of almost 40% of the eligible voters:

1. The Regional Director improperly insisted upon a mail ballot over the request of Guardsmark for a manual ballot;
2. The Regional Director improperly refused Guardsmark's request to hold a mass meeting with the employees in the hours prior to the ballots being mailed (thus limiting notice to employees about the election);
3. One third, eleven out of thirty-three, eligible voters did not receive ballots timely;
4. Two out of the fifteen voters who did submit ballots failed to sign the identification stub and the Region did not provide them new ballots;

5. Thirteen out of thirty-three (about 40%) of eligible voters were disenfranchised; and
6. The notice of election did not identify a Board Agent for the voters to speak with in case of problems, thus exacerbating the prior errors.

The Board has consistently held that “the primary consideration in the conduct of any election is whether the *employees* are given adequate notice and sufficient opportunity to vote.” *Cities Service Oil Co. of Pennsylvania*, 87 NLRB 324, 328 (1949) (emphasis in original). Yet, the overall effect of the election procedure employed here has resulted in inadequate notice to eligible voters and an insufficient opportunity to vote. Several errors have cumulatively resulted in an unfair election in which approximately 40% of eligible voters were disenfranchised.

Guardsmark objected to the conduct of this election in totality and requested that it be set aside because of the cumulative effect all of the errors had on the election. (*See* Exhibit A, Guardsmark’s Objections; Exhibit B, Guardsmark’s Evidence in Support of Objections.) Yet, Region 5 instead considered each error individually and dismissed them one by one without considering the overall effect the errors had on the voters in this election. (Exhibit C, Region 5 Report on Objections and Notice of Hearing.) Each of the failures in this case, taken together, caused approximately 40% of eligible voters to be completely disenfranchised. The Region ought to have set the election aside and Guardsmark now requests that the Board do so.

Regional Director Abused His Discretion by Insisting on Mail Balloting

Guardsmark’s first ground for objection was to the Regional Director requiring a mail ballot. (*See* Exhibit A, pp. 2–4.) The Regional Director does have discretion to require mail balloting, but that discretion “is not unfettered”. In *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998), the Board held that a manual election is the general rule; not a mail election.

A Regional Director’s discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election, the Board’s long-standing policy, to which we adhere, has been that

representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.

Because a manual election is the general rule, the Regional Director must consider the following when determining whether to hold a mail ballot:

When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (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. 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.

See id. at 1145.

Here, the Regional Director only considered the cost to the Board for the election and did not consider the interests of the voters. Guardsmark requested a manual election and informed the Board Agent that its client (Providence Hospital) would not permit a poll to be on the hospital property, but that Guardsmark was searching for an off-site location near the hospital to hold the election. Guardsmark also requested two different time blocks for the poll to be open, so that all unit members could vote either before or after their shifts ended. Two blocks were necessary since the unit works three different shifts. (Exhibit B, App. A, Glazek Aff., ¶ 6.) The Board Agent indicated that given the small size of the unit and the number of hours the voting poll would have to be open to cover all three shifts, the Regional Director would not agree to a manual election and that the election would have to be completed by mail balloting. (*Id.* at ¶ 7.) The principle reason given was that the size of the unit did not justify the cost of keeping the polls open—the Board did not want to pay to keep the polls open long enough to allow all three shifts to vote before and after work. (*Id.* at ¶ 8.) As a result of the Regional Director’s insistence

on mail balloting (and discretion in ultimately determining the manner by which the voting would occur), Guardsmark moved forward with the stipulated election agreement, including mail balloting. (*Id.* at ¶ 9.)

The Regional Director's sole consideration of the economic interests of the Board did not take into consideration that the voters were not scattered, nor picketing. As evidenced by the fact that only fifteen out of thirty-three eligible voters attempted to vote and only thirteen out of thirty-three were able to submit valid ballots, mail balloting was not calculated to allow all eligible voters to vote. This election cannot be considered indicative of the will of the unit members as a determinative number were disenfranchised. It was an abuse of discretion to force a mail ballot election here.

The Region stated that Guardsmark was estopped from raising the grounds that the Regional Director insisted on a mail ballot in this election because Guardsmark entered a stipulated agreement to hold the election. (Exhibit C, p. 2.) The Region held that Guardsmark "had a right to make a statement at a hearing that the mail ballot was inappropriate". (*Id.*) However, it is undisputed that whether to hold a mail or manual ballot was in the sole discretion of the Regional Director; not Guardsmark. *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). Making a statement at a hearing would have been a waste of resources considering the decision-maker (the Region) had already indicated it would not spend the money on a manual election in this case. This objection ought to be considered along with the rest as contributing to the disenfranchisement of 40% of the eligible voters due to the mail ballots not reaching them or reaching them too late to vote.

**The Region Improperly Prohibited Guardsmark From Holding Mass Meeting
with Employees on the Morning Ballots were Scheduled to be Mailed**

Guardsmark's second ground for objection was to the Regional Director's decision to prohibit Guardsmark from holding a mass meeting with employees the morning of the day the ballots were scheduled to be mailed at 3:00 p.m. (*See* Exhibit A, pp. 4–5.) It is undisputed that the parties were provided notice well in advance that the mail ballots would be mailed at 3:00 p.m. on January 28, 2015. (*See* Exhibit D, Stipulated Election Agreement, ¶ 4.) Guardsmark intended to hold its final meeting with all of its security officers on the morning of January 28, 2015, to let them know the ballots would be mailed that day. (Exhibit B, App. A, Glazek Aff., ¶ 11.)

Prior to the ballots being mailed, Guardsmark contacted the Board Agent to clarify that the Region would permit Guardsmark to hold its last mass meeting with employees the morning of January 28, 2015 (a couple hours before ballots were to be mailed). On January 21, 2015, the Board Agent indicated in a telephone call that Guardsmark was prohibited from conducting a mass meeting with employees twenty-four hours before the ballots were mailed. (Exhibit B, App. A, Glazek Aff., ¶ 12.) In response, Guardsmark emailed the Board Agent legal authority by which it had claimed a right to conduct the last mass meeting on the morning of the day ballots were to be mailed. (*Id.* at ¶ 13, Ex. 1.) On January 23, 2015, Guardsmark again requested clarification of the Board's position. (*Id.* at Ex. 2.) Then on the morning of January 26, 2015, the Board Agent confirmed during a telephone conference that mass meetings with employees would not be permitted within twenty-four hours prior to the ballots being mailed. (*Id.* at ¶ 15.) At 1:02 p.m. that same day, the Region faxed a letter to Guardsmark, in which it contradicted the Board Agent's directions from that morning, stating that Guardsmark could hold a mass meeting up until the time the ballots were scheduled to be mailed, citing the same law

Guardsmark had previously provided to the Board Agent. (*Id.* at ¶ 16, Ex. 3.) When Guardsmark contacted the Board Agent again for clarification (*Id.* at ¶ 17, Ex. 4), Guardsmark was told to ignore the written directions and not hold any mass meetings with employees within twenty-four hours before the ballots were scheduled to be mailed. (*Id.* at ¶ 18.)

In an abundance of caution, Guardsmark did not hold any mass meetings with employees within twenty-four hours prior to the time set for the ballots to be mailed. (*Id.* at ¶ 19.) However, Guardsmark had wanted to hold such a meeting on the morning of the day ballots were to be mailed (at 3:00 p.m.) in order to remind employees to look for ballots. As a result of this error, along with the rest of the errors in conducting this election, a large number of eligible voters were disenfranchised. At a hearing held in front of an NLRB Hearing Officer on March 30, 2015, eligible voters testified that they did not know when the ballots were going to be mailed.¹

Guardsmark objected to the Region not permitting Guardsmark to hold a mass meeting with employees a couple hours before the ballots were mailed because the employers are only prohibited from making speeches on company time to massed assemblies of employees from *the time* and date the ballots are scheduled to be sent out by the Region until the time and date set for the ballots to return. *See San Diego Gas & Electric*, 325 NLRB 1143 (1998); *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959). However, in this election, the Region improperly prohibited Guardsmark from conducting a speech to an assembly of its employees a couple of hours before ballots were scheduled to be mailed.

¹ This hearing was held in accordance with the Region's Report and Order regarding Guardsmark's fifth objection. A report has not yet been issued by the Hearing Officer. *See* Exhibit C, pp. 4–9, 11–12.

In overruling Guardsmark's objection, the Region held that Guardsmark had notice of when the ballots were being mailed. (*See* Exhibit C, pp. 3–4.) However, that misses the point of Guardsmark's objection. Guardsmark knew exactly when the Region intended to mail the ballots—3:00 p.m. on January 28, 2015. Guardsmark wanted to hold a mass meeting with employees on the morning of January 28, 2015 to remind them the ballots were coming and to watch for the ballots. The Region improperly denied that request, thus removing another opportunity to provide notice to the eligible voters that the mail ballots would be coming. Taken along with the rest of Guardsmark's objections, this error resulted in approximately 40% of the voters being disenfranchised.

Region Failed to Mail Duplicate Ballot Kits to Voters Who Did Not Sign Identification Stub

Guardsmark's third ground for objection was to the Region's failure to send duplicate ballot kits to employees who submitted ballots without signing the identification stub. (*See* Exhibit A, pp. 5–6.) The Region admitted that it improperly failed to mail the duplicate mail ballot kits. (Exhibit C, pp. 4–5.) However, it overruled Guardsmark's objection unless and until Guardsmark could establish that the two ballots were determinative of the election. *Id.*; *Davis & Newcomer Elevator Co.*, 315 NLRB 715, 715 (1994).

Guardsmark does not believe that the position taken by the Region is appropriate in this situation. The Region insisted on a mail ballot, refused to allow Guardsmark to remind employees that mail ballots would be sent on the day the ballots were sent, eleven employees did not receive ballots in time to vote, then the Region did not follow proper procedure to mail out duplicate ballots to employees who *did* vote for some unexplained reason. All of these errors taken together evidence a failure of the mail ballot system in this election. These employees and all of the others ought to have had the opportunity to have their voice heard in this election. Guardsmark considers this failure of the Region to provide duplicate mail ballot kits

determinative of the election because it is further evidence of errors that led to approximately 40% of the voters being disenfranchised through no fault of their own. *Davis & Newcomer Elevator Co.*, 315 NLRB 715, 715 (1994) (votes from voters who fail to sign the identification stub can be grounds for setting aside an election where the votes may be determinative). Additionally, these two votes, taken in consideration with the eleven other voters who never received ballots are determinative of the election, which was 11 in favor of the union and 2 against. The election ought to be set aside.

One Third of Eligible Voters Did Not Receive Ballots

Guardsmark's fourth ground for objection was to the Region failing to mail ballots to eleven of the eligible voters. (*See Exhibit A*, pp. 6–7.) It is the responsibility of the Board to establish the proper procedure for the conduct of its elections so that all eligible voters be given an opportunity to vote. *See Yerges Van Liners*, 162 NLRB 1259, 1260 (1967); *Alterman-Big Apple, Inc.*, 116 NLRB 1078 (1956).

The Board is responsible for establishing the proper procedure for the conduct of its elections. In carrying out this responsibility, a primary concern of the Board is whether employees are given a sufficient opportunity to vote. While the Board is not required to guarantee that every voter is able to get to the polls, when it is alleged that numerous employees were prevented from voting, the Board must assess whether the particular circumstances so affected a sufficient number of ballots as to destroy the requisite laboratory conditions under which elections must be conducted. If there is a reasonable possibility that this occurred and a determinative number of votes are called into question, to maintain the Board's high standards, the election must be set aside.

Baker Victory Services, Inc., 331 NLRB 1068, 1069–1070 (2000), *quoting* V.I.P. Limousine, Inc., 274 NLRB 641 (1985) (holding that an election ought to be set aside where a massive snow storm prevented a sufficient number of voters to vote).

Here, eleven out of the thirty-three eligible voters, *one-third of the eligible voters*, did not receive a ballot in the mail from the Region. (Exhibit B, App. B, Johnson Aff., ¶ 6; Exhibit

B, App. C, Covington Aff., ¶ 9.) As a result, these eleven eligible voters were denied the opportunity to vote through no fault of their own. There is no question that these eleven ballots are determinative of the election since the vote was eleven in favor of the union and two against. This is not the situation where one or two ballots out of hundreds were not sent to voters. The failure here is material. The requisite laboratory conditions under which elections must be conducted were destroyed because one third of eligible voters were not provided ballots. The election ought to be set aside.

The Region did not overrule this objection completely, but held that there appeared to be “substantial and material issues” raised and ordered a hearing. (*See* Exhibit C, p. 9.) However, the Region did limit the considerations merely to whether eleven employees received ballots and if they did not receive ballots, whether they requested duplicate ballots. (*See id.*, pp. 6–9, 11–12.) The report from the hearing has not yet issued, so this issue is not completely here because Guardsmark is waiting to review the final report.

Guardsmark’s objection is more than simply whether the employees received ballots and had an opportunity call. The Region found the notice of the telephone number to call for a duplicate ballot was adequate to make this election satisfactory. (*See* Exhibit C, p. 8.) However, ballots were not sent to one third of the voters. Something happened to cause ballots to not be received (testimony at the hearing indicated several things may have happened to cause that). The Region’s holding that the employees were responsible for calling to receive duplicate copies of the ballots places the responsibility of conducting the election on the employees rather than the Board. In this situation, we do not know whether it was the Region’s error that caused one third of the voters to not receive ballots, but the Region’s logic here suggests that it need not mail any ballots during an election, but simply require the employees to call the Region to request a

ballot be mailed. That should not be tolerated. Yet that is what the Region's ruling does here. Taking into consideration that one third of the eligible voters did not receive ballots in the mail for some reason along with all of the other errors, this mail ballot election ought to be set aside and a manual election held.

The Election Notice Did Not Provide Adequate Notice to Eligible Voters

Guardsmark's fifth ground for objection was that the Region failed to provide proper notice to voters about whom to contact should they not receive ballots. (*See* Exhibit A, pp. 7–8.) The NLRB Case Handling Manual, § 11336.3, provides that the notice to employees requires the name of a person to contact when ballots do not arrive on time for voting:

The following language should appear on the notice of election:

Voting will be by mail. If you believe you are an eligible voter and you do not receive a ballot in the mail by [date—2 or 3 days after the last date any ballots should have been received], communicate immediately with [designated Regional Office employee, Regional Office address, and designated Regional Office employee's telephone number].

As indicated in Sec. 11336.2(c), the designated Regional Office employee named on the notice of election as the contact person should be an individual who is readily available in the event voters attempt to contact him/her. If foreign language voters are involved and translations are being provided (Sec. 11315.2), sufficient arrangements should also be made to deal appropriately with foreign language inquiries (Sec. 11315.3).

(Emphasis supplied.)

The notice here did not designate a Regional Office employee to be contacted should ballots not arrive. (*See* Exhibit E, Notice of Election.) Instead, the employees were provided the phone number to an automated line where they could not speak with a real person. *Id.* The Region did not agree that the telephone number was automated, but did not deny that no person was identified for the employees to talk with in case of problems with their ballots. (*See* Exhibit C, pp. 9–10.) Guardsmark subpoenaed this election specialist who was allegedly available to

talk with employees, but both the Regional Director and General Counsel refused to provide information related to how this election was actually conducted.

Guardsmark continues to object to the notice in this case because the failure to provide an identified person with whom the eligible voters could speak exacerbated the problem of one-third of the eligible voters not receiving their ballots. Even if they had called the automated line, without a real person to talk with and verify they are following the proper process, the system was set up against providing ballots to all eligible voters. There was no contact person readily available to assist eligible voters. Moreover, the testimony of the employees at the hearing on March 30, 2015, suggested that including a telephone number in small print in the middle of three legal-size pages legalese was utterly inadequate to provide the employees with actual notice of how to request a mail ballot.

As a result of the election notice failing to conform to the requirements of the Case Handling Manual, eligible voters were not truly provided notice. In line with Rule 103.2(d), the election ought to be set aside because the eligible employees were not provided proper notice. *See also Terrace Gardens Plaza, Inc.*, 313 NLRB 571, 572 (1993) (“We also note that the notice-posting requirement in a mail ballot election serves an important purpose in that if for any reason an employee does not receive the mailing, the posted notice will inform the employee of the election and instruct that person to contact the Region to procure a ballot.”) This error coupled with the other errors discussed above caused a material failure in the conduct of this election. It ought to be set aside.

Conclusion

The cumulative effect of all the errors in the conduct of this election resulted in the disenfranchisement of approximately 40% of the eligible voters. Thirteen voters did not get an

opportunity to vote. Where only eleven people voted in favor of the Union and two voted against the Union, those thirteen disenfranchised voters are key to the outcome of the election.

The Board is responsible for assuring properly conducted elections and its role in the conduct of elections must not be open to question. Where . . . the irregularity concerns an essential condition of an election, and such irregularity exposes to question a sufficient number of ballots to affect the outcome of the election, in the interest of maintaining our standards there appears no alternative but to set this election aside and to direct a new election.

New York Telephone Co., 109 NLRB 788, 790–791 (1954). Several irregularities in the conduct of this election resulted in a sufficient number of ballots not being considered. The Region erred in not looking at all of these errors taken together. The mail ballot election here ought to be set aside and a manual ballot election ought to be ordered.

Respectfully submitted,

BARRIS, SOTT, DENN & DRIKER, PLLC



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Dated: April 2, 2015

PROOF OF SERVICE

I hereby certify that on April 2, 2015, GUARDSMARK'S REQUEST FOR REVIEW OF MARCH 19, 2015 REPORT ON OBJECTIONS BY REGION 5, dated April 2, 2015, were served upon the following persons, addressed to them at the following addresses:

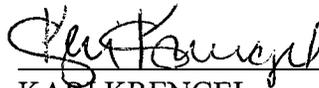
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via e-file. I declare that the statements above are true to the best of my information, knowledge, and belief.



KARI KRENGEL

EXHIBIT A

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

GUARDSMARK'S OBJECTIONS TO THE CONDUCT OF THE ELECTION

For the reasons stated below, Guardsmark, LLC ("Guardsmark") objects to conduct affecting the election held in this matter between January 28, 2015 and February 11, 2015, among the full-time and regular part-time security officers employed by Guardsmark at Providence Hospital in Washington, D.C. Guardsmark reserves its right to fully document the basis for its Objections through evidentiary submissions and any investigation or evidentiary hearing conducted by the Board.

Summary

This election was fraught with errors and problems that cumulatively led to the disenfranchisement of almost 40% of the eligible voters:

1. The Regional Director improperly insisted upon a mail ballot over the request of Guardsmark for a manual ballot;
2. The Regional Director improperly refused the Guardsmark's request to hold a mass meeting with the employees in the hours prior to the ballots being mailed (thus limiting notice to employees about the election);
3. One third, eleven out of thirty-three, eligible voters did not receive ballots;

4. Two out of the fifteen voters who did submit ballots failed to sign the identification stub and the Region did not provide them new ballots;
5. Thirteen out of thirty-three (about 40%) of eligible voters were disenfranchised; and
6. The notice of election did not identify a Board Agent for the voters to speak with in case of problems, thus exacerbating the prior errors.

The Board has consistently held that “the primary consideration in the conduct of any election is whether the *employees* are given adequate notice and sufficient opportunity to vote.” *Cities Service Oil Co. of Pennsylvania*, 87 NLRB 324, 328 (1949) (emphasis in original). Yet, the overall effect of the election procedure employed here has resulted in inadequate notice to eligible voters and an insufficient opportunity to vote. Several errors have cumulatively resulted in an unfair election in which approximately 40% of eligible voters were disenfranchised. Guardsmark objects to the conduct of this election and requests that it be set aside because of the cumulative effect the errors had on the election.

Regional Director Abused His Discretion by Insisting on Mail Balloting

Guardsmark’s first objection is to the Regional Director requiring a mail ballot. The Regional Director does have discretion to require mail balloting, but that discretion “is not unfettered”. In *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998), the Board held that a manual election is the general rule; not a mail election.

A Regional Director’s discretion, however, is not unfettered and is to be exercised within certain guidelines. Because of the value of having a Board agent present at the election, the Board’s long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.

Because a manual election is the general rule, the Regional Director must consider the following when determining whether to hold a mail ballot:

When deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration

at least the following situations that normally suggest the propriety of using mail ballots: (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. 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.

See id. at 1145.

Here, the Regional Director only considered the cost to the Board for the election and did not consider the interests of the voters. Guardsmark requested a manual election and informed the Board Agent that its client (Providence Hospital) would not permit a poll to be on the hospital property, but that Guardsmark was searching for an off-site location near the hospital to hold the election. Guardsmark also requested two different time blocks for the poll to be open, so that all unit members could vote either before or after their shifts ended. Two blocks were necessary since the unit works three different shifts. (Witness Stephen Glazek.) The Board Agent indicated that given the small size of the unit and the number of hours the voting poll would have to be open to cover all three shifts, the Regional Director would not agree to a manual election and that the election would have to be completed by mail balloting. The principle reason given was that the size of the unit did not justify the cost of keeping the polls open—the Board did not want to pay to keep the polls open long enough to allow all three shifts to vote before and after work. (Witness Stephen Glazek.) As a result of the Regional Director’s insistence on mail balloting (and discretion in ultimately determining the manner by which the voting would occur), Guardsmark moved forward with the stipulated election agreement, including mail balloting.

The Regional Director's sole consideration of the economic interests of the Board did not take into consideration that the voters were not scattered, nor picketing. As evidenced by the fact that only fifteen out of thirty-three eligible voters attempted to vote and only thirteen out of thirty-three were able to submit valid ballots, mail balloting was not calculated to allow all eligible voters to vote. This election cannot be considered indicative of the will of the unit members as a determinative number were disenfranchised. It was an abuse of discretion to force a mail ballot election here.

The Board Improperly Prohibited Guardsmark From Holding Mass Meeting with Employees on the Morning Ballots were Scheduled to be Mailed

Guardsmark's second objection is to the Regional Director's decision to prohibit Guardsmark from holding a mass meeting with employees the morning of the day the ballots were scheduled to be mailed at 3:00 p.m.. Where an election is conducted by mail, employers are prohibited from making speeches on company time to massed assemblies of employees from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for the ballots to return. *See San Diego Gas & Electric*, 325 NLRB 1143 (1998); *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959). However, in this election, the Region improperly prohibited Guardsmark from conducting a speech to an assembly of its employees a couple of hours before ballots were scheduled to be mailed.

Prior to the balloting, Guardsmark contacted the Board Agent to clarify that the Board would permit Guardsmark to hold its last mass meeting with employees earlier in the day prior to ballots being mailed to eligible voters. On January 21, 2015, the Board Agent indicated in a telephone call that Guardsmark was prohibited from conducting a mass meeting with employees twenty-four hours before the ballots were mailed. (Witness Stephen Glazek.) In response, Guardsmark emailed the Board Agent legal authority by which it had claimed a right to conduct

the last mass meeting on the morning of the day ballots were to be mailed. (Emails between S. Glazek and Board Agent). On January 23, 2015, Guardsmark again requested clarification of the Board's position. (Emails between S. Glazek and Board Agent). Then on the morning of January 26, 2015, the Board Agent confirmed that mass meetings with employees would not be permitted within twenty-four hours prior to the ballots being mailed. (Witness Stephen Glazek.) At 1:02 p.m. that same day, the Board faxed a letter to Guardsmark, in which it contradicted the Board Agent's directions from that morning, stating that Guardsmark could hold a mass meeting up until the time the ballots were scheduled to be mailed, citing the same law Guardsmark had previously provided to the Board Agent. (NLRB Facsimile, dated January 26, 2015.) When Guardsmark contacted the Board Agent again for clarification (Emails between S. Glazek and Board Agent), Guardsmark was told to ignore the written directions and not hold any mass meetings with employees within twenty-four hours before the ballots were scheduled to be mailed. (Witness Stephen Glazek.)

In an abundance of caution, Guardsmark did not hold any mass meetings with employees within twenty-four hours prior to the time set for the ballots to be mailed. However, Guardsmark had wanted to hold such a meeting on the morning of the day ballots were to be mailed (at 3:00 p.m.) in order to remind employees to look for ballots. As a result of this error, along with the rest of the errors in conducting this election, a large number of eligible voters were disenfranchised and the election out to be set aside.

Board Failed to Mail Duplicate Ballot Kits to Voters Who Did Not Sign Identification Stub

Guardsmark's third objection is to the Region failing to send duplicate ballot kits to employees who submitted ballots without signing the identification stub. Failure of the Region to provide duplicate mail ballot kits to voters who fail to sign the identification stub can be grounds for setting aside an election where the votes may be determinative. *Davis & Newcomer*

Elevator Co., 315 NLRB 715, 715 (1994). Here, two of the fifteen ballots that were returned to the Region were declared void by the Board Agent because they did not have signatures on the identification stub. However, neither of the two voters were sent duplicate ballot kits from the Region. (Witness Erika Johnson.) These votes, taken in consideration with the eleven other voters who never received ballots are determinative of the election. The election ought to be set aside.

One Third of Eligible Voters Did Not Receive Ballots

Guardsmark's fourth objection is to the Region failing to mail ballots to eleven of the eligible voters. It is the responsibility of the Board to establish the proper procedure for the conduct of its elections so that all eligible voters be given an opportunity to vote. *See Yerges Van Liners*, 162 NLRB 1259, 1260 (1967); *Alterman-Big Apple, Inc.*, 116 NLRB 1078 (1956).

The Board is responsible for establishing the proper procedure for the conduct of its elections. In carrying out this responsibility, a primary concern of the Board is whether employees are given a sufficient opportunity to vote. While the Board is not required to guarantee that every voter is able to get to the polls, when it is alleged that numerous employees were prevented from voting, the Board must assess whether the particular circumstances so affected a sufficient number of ballots as to destroy the requisite laboratory conditions under which elections must be conducted. If there is a reasonable possibility that this occurred and a determinative number of votes are called into question, to maintain the Board's high standards, the election must be set aside.

Baker Victory Services, Inc., 331 NLRB 1068, 1069–1070 (2000), *quoting* V.I.P. Limousine, Inc., 274 NLRB 641 (1985) (holding that an election ought to be set aside where a massive snow storm prevented a sufficient number of voters to vote).

Here, eleven out of the thirty-three eligible voters, *one-third of the eligible voters*, did not receive a ballot in the mail from the Region. (Witnesses Erika Johnson and Larry Covington.) As a result, these eleven eligible voters were denied the opportunity to vote through no fault of their own. There is no question that these eleven ballots are determinative of the

election since the vote was eleven in favor of the union and two against. This is not the situation where one or two ballots out of hundreds were not sent to voters. The failure here is material. The requisite laboratory conditions under which elections must be conducted were destroyed because one third of eligible voters were not provided ballots. The election ought to be set aside.

The Election Notice Did Not Provide Adequate Notice to Eligible Voters

Guardsmark's fifth objection is that the Region failed to provide proper notice to voters about whom to contact should they not receive ballots. The NLRB Case Handling Manual, § 11336.3, provides that the notice to employees requires the name of a person to contact when ballots do not arrive on time for voting:

The following language should appear on the notice of election:

Voting will be by mail. If you believe you are an eligible voter and you do not receive a ballot in the mail by [date—2 or 3 days after the last date any ballots should have been received], communicate immediately with [designated Regional Office employee, Regional Office address, and designated Regional Office employee's telephone number].

As indicated in Sec. 11336.2(c), the designated Regional Office employee named on the notice of election as the contact person should be an individual who is readily available in the event voters attempt to contact him/her. If foreign language voters are involved and translations are being provided (Sec. 11315.2), sufficient arrangements should also be made to deal appropriately with foreign language inquiries (Sec. 11315.3).

(Emphasis supplied.)

The notice here did not designate a Regional Office employee to be contacted should ballots not arrive. *See* Notice. Instead, the employees were provided the phone number to an automated line where they could not speak with a real person. *Id.* This failure to provide an identified person with whom the eligible voters could speak exacerbated the problem of one-third of the eligible voters not receiving their ballots. Even if they had called the automated line, without a real person to talk with and verify they are following the proper process, the system

was set up against providing ballots to all eligible voters. There was no contact person readily available to assist eligible voters.

As a result of the election notice failing to conform to the requirements of the Case Handling Manual, eligible voters were not truly provided notice. In line with Rule 103.2(d), the election ought to be set aside because the eligible employees were not provided proper notice. *See also Terrace Gardens Plaza, Inc.*, 313 NLRB 571, 572 (1993) (“We also note that the notice-posting requirement in a mail ballot election serves an important purpose in that if for any reason an employee does not receive the mailing, the posted notice will inform the employee of the election and instruct that person to contact the Region to procure a ballot.”)

Conclusion

The cumulative effect of all the errors in the conduct of this election has resulted in the disenfranchisement of approximately 40% of the eligible voters. Thirteen voters did not get an opportunity to vote. Where only eleven people voted in favor of the Union and two voted against the Union, those thirteen disenfranchised voters are key to the outcome of the election.

The Board is responsible for assuring properly conducted elections and its role in the conduct of elections must not be open to question. Where . . . the irregularity concerns an essential condition of an election, and such irregularity exposes to question a sufficient number of ballots to affect the outcome of the election, in the interest of maintaining our standards there appears no alternative but to set this election aside and to direct a new election.

New York Telephone Co., 109 NLRB 788, 790–791 (1954). Several irregularities in the conduct of this election resulted in a sufficient number of ballots not being considered. The election here ought to be set aside.

Respectfully submitted,

BARRIS, SOTT, DENN & DRIKER, PLLC



By: /s/ Melonie L.M. Stothers

Stephen E. Glazek (P23186)

Melonie L.M. Stothers (P65344)

Attorneys for Employer, Guardsmark, LLC

211 W. Fort Street, 15th Floor

Detroit, MI 48226

(313) 965-9725

sglazek@bsdd.com, mstothers@bsdd.com

Dated: February 18, 2015

PROOF OF SERVICE

I hereby certify that on February 18, 2015, GUARDSMARK'S OBJECTIONS TO THE CONDUCT OF THE ELECTION, dated February 18, 2015, were served upon the following persons, addressed to them at the following addresses:

Mr. Joe McCray, Director
The International Union, Security, Police and Fire Professionals of America (SPFPA), Local 287
25510 Kelly Road
Roseville, MI 48066-4932
Fax: (586) 772-9644

Gordon A. Gregory, Esq.
Gregory, Moore, Jeakle & Brooks, P.C.
65 Cadillac Square
Suite 3727
Detroit, MI 48226-2893
Fax: (313) 964-2125

via facsimile and regular mail. I declare that the statements above are true to the best of my information, knowledge, and belief.



JANICE A. MICHAELS

447751v1

EXHIBIT B

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

**EVIDENCE IN SUPPORT OF GUARDSMARK'S OBJECTIONS
TO THE CONDUCT OF THE ELECTION**

Guardsmark, LLC ("Guardsmark") provides the following evidence in support of its objections to conduct affecting the election held in this matter between January 28, 2015 and February 11, 2015, among the full-time and regular part-time security officers employed by Guardsmark at Providence Hospital in Washington, D.C.

In support of Guardsmark's first objection, Guardsmark submits the statement of Stephen Glazek, dated February 24, 2015. Guardsmark also relies upon the tally of votes conducted by the Board on February 11, 2015.

In support of Guardsmark's second objection, Guardsmark submits the statement of Stephen Glazek, dated February 24, 2015, and the exhibits attached thereto.

In support of Guardsmark's third objection, Guardsmark submits the statement of Erika Johnson, dated February 25, 2015. Guardsmark also relies upon the tally of votes conducted by the Board on February 11, 2015.

In support of Guardsmark's fourth objection, Guardsmark submits the statement of Erika Johnson, dated February 25, 2015, and the statement of Larry Covington, dated February 25,

2015. Guardsmark also relies upon the tally of votes conducted by the Board on February 11, 2015.

In support of Guardsmark's fifth objection, Guardsmark relies upon the notice of election created by the NLRB and provided to Guardsmark to post in this matter.

Respectfully submitted,

BARRIS, SOTT, DENN & DRIKER, PLLC



By: /s/ Melonie L.M. Stothers

Stephen E. Glazek (P23186)

Melonie L.M. Stothers (P65344)

Attorneys for Employer, Guardsmark, LLC

211 W. Fort Street, 15th Floor

Detroit, MI 48226

(313) 965-9725

sglazek@bsdd.com, mstothers@bsdd.com

Dated: February 25, 2015

Appendices Included with this Submission

- A. Statement of Stephen Glazek, with exhibits 1 through 4
- B. Statement of Erika Johnson
- C. Statement of Larry Covington
- D. Notice of Election

4479881v1

APPENDIX A

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

CONFIDENTIAL WITNESS STATEMENT OF STEPHEN GLAZEK

Stephen E. Glazek, being first duly sworn, states as follows:

1. I have personal knowledge of the facts set forth in this Statement and I am competent and available to testify if called upon in this matter.
2. I am an attorney with Barris, Sott, Denn & Driker, PLLC in Detroit, Michigan (“BSDD”) and have been an attorney for over forty years.
3. In December 2014, BSDD was engaged by Guardsmark, LLC (“Guardsmark”) to represent Guardsmark in front of the NLRB in Case No. 05-RC-143199.
4. I appeared in Case No. 05-RC-143199 on behalf of Guardsmark on December 23, 2014.
5. On December 29, 2014, I had a telephone conversation with board agent David Colangelo (“Board Agent”), that included a discussion of the possibility of the parties entering an agreement to govern the election.
6. During that telephone call, I told the Board Agent that Guardsmark was seeking a manual election and that Guardsmark’s client, Providence Hospital, would not permit a poll to be

on the hospital property. I also indicated that Guardsmark was currently searching for an off-site location near the hospital to hold the election. I also requested two different time blocks for the poll to be open, so that all unit members could vote either before or after their shifts ended. I also informed the Board Agent that two time blocks for voting were necessary since the unit works three different shifts. Guardsmark proposed an election date of January 28, 2015.

7. On the morning of December 30, 2014, I had another telephone call with the Board Agent. During that telephone call, the Board Agent indicated that given the small size of the unit and the number of hours the voting poll would have to be open to cover all three shifts, the Regional Director would not agree to a manual election and that the election would have to be completed by mail balloting.

8. The principle reason given to me for a mail ballot was that the size of the unit did not justify the cost of keeping the polls open—the Regional Director did not want to pay to keep the pools open long enough to allow all three shifts to vote before and after work.

9. As a result of the Regional Director's insistence on mail balloting (and discretion in ultimately determining the manner by which the voting would occur), Guardsmark moved forward with the stipulated election agreement, including mail balloting, on December 31, 2014.

10. In that stipulated election agreement, the mail ballots were scheduled to be mailed on or about 3:00 p.m. on January 28, 2015.

11. Guardsmark wanted to hold its last mass meeting with employees on the morning of January 28, 2015, several hours before the ballot kits were scheduled to be mailed. Amongst other reasons for the meeting, Guardsmark wanted to remind employees to look for ballots in the mail.

12. On the morning of January 21, 2015, I had a telephone call with the Board Agent in which I requested clarification as to the Board's position with respect to mass meetings with the employees prior to a mail ballot election. The Board Agent indicated during that telephone call that Guardsmark was prohibited from conducting a mass meeting with employees within twenty-four hours before the ballots were scheduled to be mailed.

13. In response, I emailed the Board Agent legal authority by which Guardsmark had claimed a right to conduct the last mass meeting any time prior to the time the ballots were scheduled to be mailed. That email is attached here as Exhibit 1.

14. On January 23, 2015, I emailed the Board Agent again, requesting clarification of the Board's position regarding the timing of mass meetings before mail ballots. That email is attached here as Exhibit 2.

15. During a telephone conversation on the morning of January 26, 2015, the Board Agent confirmed to me that mass meetings with employees would not be permitted within twenty-four hours prior to the ballots being mailed.

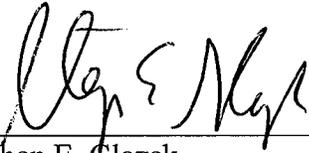
16. At 1:02 p.m. that same day (January 26, 2015), the Region faxed a letter to myself, my clients, and the SPFPA and its attorneys, signed by the Board Agent. The letter expressly contradicted the Board Agent's directions from that morning, stating that Guardsmark could hold a mass meeting up until the time the ballots were scheduled to be mailed, citing the same law Guardsmark had previously provided to the Board Agent. The fax is attached here as Exhibit 3.

17. Shortly thereafter, I sent another email to the Board Agent requesting clarification regarding mass meetings with employees. The email is attached here as Exhibit 4.

18. Later that afternoon, I had another telephone conversation with the Board Agent. During that call, the Board Agent instructed me that Guardsmark was to ignore the written directions and was not to hold any mass meetings with employees within twenty-four hours before the ballots were scheduled to be mailed.

19. In an abundance of caution, Guardsmark did not hold any mass meetings with employees within twenty-four hours prior to the time set for the ballots to be mailed.

20. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.



Stephen E. Glazek
Dated: February 24, 2015

EXHIBIT 1

From: SGlazek
Sent: Wednesday, January 21, 2015 11:08 AM
To: 'David.Colangelo2@nlrb.com'
Cc: MStothers
Subject: SPFPA/ Guardsmark

Dave, I would like to clarify our discussion this morning regarding the prohibition against employer mass meetings on company time where voting is by mail.. You indicated this morning that the prohibition begins 24 hours prior to the date the ballots are scheduled to be mailed. In our case since the ballots are to be mailed at 3:00 pm on January 28th, the ban would begin at 3:00 pm on January 27th. However, our research seems to indicate that the ban begins when the ballots are mailed, not 24 hrs. before they are mailed. See *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959), *San Diego Gas & Electric*, 325 NLRB 1143 (1998) and *American Red Cross Blood Services*, 322 NLRB 401 (1996). Could you please check this again and let me know which date is correct? Thanks, Steve.

BARRIS | SOTT | DENN | DRIKER | PLLC

Stephen E. Glazek

Barris, Sott, Denn & Driker, P.L.L.C.
211 W. Fort St. 15th Floor
Detroit, MI 48226-3281
Tel: (313) 965-9725
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Direct: (313) 596-9305
e-mail: sglazek@bsdd.com
web: www.bsdd.com

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EXHIBIT 2

From: SGlazek
Sent: Friday, January 23, 2015 1:30 PM
To: 'David.Colangelo2@nlrb.com'
Cc: MStothers
Subject: FW: SPFPA/ Guardsmark

David, are you able to clarify whether the mass meeting ban starts at the time the ballots are scheduled to be sent out or 24hrs. prior? Please let me know. Thanks, Steve.

BARRIS | SOTT | DENN | DRIKER | PLLC

Stephen E. Glazek

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From: SGlazek
Sent: Wednesday, January 21, 2015 11:08 AM
To: 'David.Colangelo2@nlrb.com'
Cc: MStothers
Subject: SPFPA/ Guardsmark

Dave, I would like to clarify our discussion this morning regarding the prohibition against employer mass meetings on company time where voting is by mail.. You indicated this morning that the prohibition begins 24 hours prior to the date the ballots are scheduled to be mailed. In our case since the ballots are to be mailed at 3:00 pm on January 28th, the ban would begin at 3:00 pm on January 27th. However, our research seems to indicate that the ban begins when the ballots are mailed, not 24 hrs. before they are mailed. See *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959), *San Diego Gas & Electric*, 325 NLRB 1143 (1998) and *American Red Cross Blood Services*, 322 NLRB 401 (1996). Could you please check this again and let me know which date is correct? Thanks, Steve.

BARRIS | SOTT | DENN | DRIKER | PLLC

Stephen E. Glazek

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EXHIBIT 3



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

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

January 26, 2015

Gareth C. Leviton, Esq.
Guardsmark, Inc.
22 S 2nd St.
Memphis, TN 38103-2695

Melonie M. Stothers, Esq.
Barris, Sott, Denn & Driker, P.L.L.C.
211 W Fort St. Fl. 15
Detroit, MI 48226-3269

Stephen E. Glazek, Esq.
Barris, Sott, Denn & Driker, P.L.L.C.
211 W Fort St. Fl. 15
Detroit, MI 48226-3269

Gordon A. Gregory, Esq.
Gregory, Moore, Jeakle & Brooks, P.C.
65 Cadillac Square Suite 3727
Detroit, MI 48226-2893

Re: Guardsmark, Inc.
Case 05-RC-143199

Dear Mr. Leviton, Ms. Stothers, Mr. Glazek, and Mr. Gregory:

This letter is to notify you that mail ballot kits will be forwarded to the eligible mail ballot voters at 3:00 p.m., on January 28, 2015. In order for their mail ballots to be counted, the employees should deposit their ballot in the United States mail so that it is received in the Regional Office no later than 3:30 p.m., on February 11, 2015.

Employers and unions are prohibited from making speeches on company time to massed assemblies from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return. *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959); *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

Enclosed is a copy of Form NLRB-4175 Instructions to Eligible Employees Voting by United States Mail, which will be sent to voters with their mail ballot packet.

Guardsmark, Inc.
Case 05-RC-143199

- 2 -

January 26, 2015

If you have any questions, please contact Supervisory Field Examiner DAVID A. COLANGELO at telephone number (410)962-0180 or by email at david.colangelo2@nrb.gov.

Very truly yours,

/s/ David A. Colangelo

DAVID A. COLANGELO
Supervisory Field Examiner

Enclosure: Form NLRB-4175

FORM NLRB-4175
(3-05)United States of America
National Labor Relations Board**Instructions to Eligible Employees Voting By
United States Mail****INSTRUCTIONS**

1. MARK YOUR BALLOT IN SECRET BY PLACING AN **X** IN THE APPROPRIATE BOX. MAKE NO OTHER MARKS ON YOUR BALLOT.
2. IT IS IMPORTANT TO MAINTAIN THE SECRECY OF YOUR BALLOT. DO NOT SHOW YOUR BALLOT TO ANYONE AFTER YOU HAVE MARKED IT.
3. PUT YOUR BALLOT IN THE BLUE ENVELOPE AND SEAL THE ENVELOPE.
4. PUT BLUE ENVELOPE CONTAINING THE BALLOT INTO THE YELLOW ADDRESSED RETURN ENVELOPE.
5. SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED.
6. DO NOT PERMIT ANY PARTY – THE EMPLOYER, THE UNION(S), OR THEIR REPRESENTATIVES, OR AN EMPLOYEE-PETITIONER – TO HANDLE, COLLECT, OR MAIL YOUR BALLOT.
7. MAIL THE BALLOT IMMEDIATELY. NO POSTAGE IS NECESSARY.

For further information, call the Regional Office at:

410-962-2822

TO BE COUNTED, YOUR BALLOT MUST REACH THE REGIONAL OFFICEBY 02/11/2015

EXHIBIT 4

From: SGlazek
Sent: Monday, January 26, 2015 1:18 PM
To: 'David.Colangelo2@nlrb.com'
Cc: MStothers
Subject: FW: Fax Received: 410 962 2198
Attachments: Document.PDF

David, this letter is inconsistent with what you told me in our telephone conversation this morning. You told me that the bar began 24hours prior to the time the ballots were scheduled to be sent, which would be Jan 27 at 3:00 pm, not Jan 28 at 3:00 pm. Could you please clarify this. Thanks, Steve.

BARRIS | SOTT | DENN | DRIKER | P.L.L.C.

Stephen E. Glazek

Barris, Sott, Denn & Driker, P.L.L.C.
211 W. Fort St. 15th Floor
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Tel: (313) 965-9725
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From: efax@bsdd.com [<mailto:efax@bsdd.com>]
Sent: Monday, January 26, 2015 12:59 PM
To: SGlazek
Subject: Fax Received: 410 962 2198

Delivery Information:

Message #: 2881695
Local Number: 3139833323
Remote CSID: 410 962 2198
Total Pages: 4
Receive Time: 1/26/2015 12:59:09 PM
Transmit Time: 1 min 43.000 sec



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

FAX NO.: (410)962-2198

FAX TRANSMISSION COVER SHEET

DATE: January 26, 2015

TO: Larry Covington Fax: (202)833-9478
Guardsmark, Inc.

GARETH C. LEVITON, ESQ. Fax: (901)522-7911
GUARDSMARK, INC.

Melonie M. Stothers Fax: (313)983-3359
BARRIS, SOTT, DENN & DRIKER, P.L.L.C.

STEPHEN E. GLAZEK Fax: (313)983-3323
BARRIS, SOTT, DENN & DRIKER, P.L.L.C.

Joe McCray Fax: (586)772-9644
The International Union, Security, Police and Fire
Professionals of America (SPFPA), Local 287

Gordon A. Gregory, ESQ. Fax: (313)964-2125
Gregory, Moore, Jeakle & Brooks, P.C.

FROM: DAVID A. COLANGELO, Supervisory Field Examiner
Telephone: (410)962-0180

NUMBER OF PAGES INCLUDING THIS PAGE: 4

Original will NOT follow Original WILL follow

RE: Guardsmark, Inc.
Case 05-RC-143199

Attached is Mail Ballot Election Details Letter

CONFIDENTIALITY NOTICE: OFFICIAL GOVERNMENT BUSINESS

This communication is intended for the sole use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify me immediately by telephone, and return communication to me at the address above via united states postal service. Thank you.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410)962-2822
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January 26, 2015

Gareth C. Leviton, Esq.
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22 S 2nd St.
Memphis, TN 38103-2695

Melonie M. Stothers, Esq.
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Detroit, MI 48226-3269

Stephen E. Glazek, Esq.
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Gordon A. Gregory, Esq.
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65 Cadillac Square Suite 3727
Detroit, MI 48226-2893

Re: Guardsmark, Inc.
Case 05-RC-143199

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Employers and unions are prohibited from making speeches on company time to massed assemblies from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return. *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959); *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

Enclosed is a copy of Form NLRB-4175 Instructions to Eligible Employees Voting by United States Mail, which will be sent to voters with their mail ballot packet.

Guardsmark, Inc.
Case 05-RC-143199

- 2 -

January 26, 2015

If you have any questions, please contact Supervisory Field Examiner DAVID A. COLANGELO at telephone number (410)962-0180 or by email at david.colangelo2@nrb.gov.

Very truly yours,

/s/ David A. Colangelo

DAVID A. COLANGELO
Supervisory Field Examiner

Enclosure: Form NLRB-4175

APPENDIX B

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

CONFIDENTIAL WITNESS STATEMENT OF ERIKA JOHNSON

Erika Johnson, being first duly sworn, states as follows:

1. I have personal knowledge of the facts set forth in this Statement and I am competent and available to testify if called upon in this matter.

2. I am an employee of Guardsmark, LLC ("Guardsmark") and have been since 08/14/2009. My title is Administrator, Head of Human Resources for Guardsmark's Washington, D.C. Branch.

3. I am responsible for human resource for the Guardsmark security officers assigned to Providence Hospital in Washington, D.C.

4. I was a witness to the NLRB Board Agent counting of ballots following the mail election in case 05-RC-143199 on Wednesday, February 11, 2015.

5. During the counting of ballots, I noted the names of all Guardsmark employees who had been named eligible to vote in the union election, but who did not submit ballots and who had their ballots voided.

6. On Tuesday, February 17, 2015, I telephoned each of the employees I had previously noted as not having voted to determine whether they received a ballot. As listed below, 11 of the 18 employees who did not vote told me that they never received ballots in the mail from the NLRB:

DID NOT RECEIVE A BALLOT

- a. Anthony Adkinson / 1977 Rochelle Ave, District Heights, MD 20747 told me he did not receive a ballot in the mail from the NLRB;
- b. Chimere Bryant / 5350 B. Street SE. Washington, DC 20019 told me she did not receive a ballot in the mail from the NLRB;
- c. Taniecia Byrd / 1255 Stevens Rd. Washington, DC 20020 told me she did not receive a ballot in the mail from the NLRB;
- d. Andre Dawkins / 3821 2nd St. Apt. B, Washington, DC 20032 told me he did not receive a ballot in the mail from the NLRB;
- e. Julius Donaldson / 5001 Box Turtle Court, Indian Head, MD 20640 told me he did not receive a ballot in the mail from the NLRB;
- f. Donald Hines / 721 Congress Street SE, Washington, DC 20032 told me he did not receive a ballot in the mail from the NLRB;
- g. Darren Jones / 4700 Martin Luther King Jr. Ave. SE Apt. 102, Washington, DC 20032 told me he did not receive a ballot in the mail from the NLRB;
- h. Dontae Mitchell / 4725 Leroy Gorham Dr., Capitol Heights, MD 20743 told me he did not receive a ballot in the mail from the NLRB;
- i. Kevin Pate / 5600 Cypress Creek Dr., Apt. 003, Hyattsville, MD 20782 told me he did not receive a ballot in the mail from the NLRB;

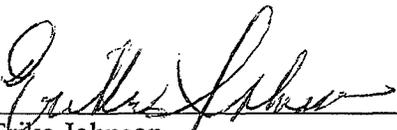
- j. Inetta Whitfield / 1920 Varnum Street NE, Washington, DC 20018 told me she did not receive a ballot in the mail from the NLRB; and
- k. Antonine Wern / 8605 Powhatan Street, New Carrollton, MD 20784 told me he did not receive a ballot in the mail from the NLRB;

RECEIVED A BALLOT/DID NOT VOTE

- l. Jamal Evans / 836 Bal Boa Ave, Capitol Heights, MD 20743 told me he received a ballot from the NLRB, but did not vote;
 - m. Lewis Kerry / 7830 Contee Rd. Apt. 466, Laurel MD 20707 told me he received a ballot from the NLRB, but did not vote;
 - n. Dalonte Mceachin / 5826 Lamont Dr., New Carrollton, MD 20784 told me he received a ballot from the NLRB, but did not vote;
 - o. Wayne Mclauren / 3224 32nd Ave. Apt. D, Temple Hills, MD 20748 told me he received a ballot from the NLRB, but did not vote;
 - p. Louis Simms / 1538 Addison Rd. South, Dirstrict Heights, MD 20747 told me he received a ballot from the NLRB, but did not vote;
 - q. Romonto Washington / 137 Forrester Street SW. Apt. 2, Washington, DC 20032 told me he received a ballot from the NLRB, but did not vote;
 - r. Erik White / 4003 Parkwood Court, Cottage City, MD 20722 told me he received a ballot from the NLRB, but did not vote;
7. On Tuesday, February 17, 2015, I also telephoned the two employees I had previously noted as having the ballots voided because they did not sign the outside envelope to determine whether they received a replacement ballot. Both Gloria Street and Tonya Carter told

me that they did not receive a duplicate ballot from the NLRB nor were they notified that the ballots they returned to the NLRB were deficient.

8. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.



Erika Johnson
Dated: February 25, 2015

447979

APPENDIX C

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

Guardsmark, LLC,

Petitioner-Employer,

and

**International Union, Security, Police, and
Fire Professionals of America (SPFPA),**

Labor Organization.

Case 05-RC-143199

CONFIDENTIAL WITNESS STATEMENT OF LARRY COVINGTON

Larry Covington, being first duly sworn, states as follows:

1. I have personal knowledge of the facts set forth in this Statement and I am competent and available to testify if called upon in this matter.
2. I am an employee of Guardsmark, LLC ("Guardsmark") and have been since 2013. My title is Site Manager for Guardsmark at Providence Hospital in Washington, D.C.
3. I was a witness to the NLRB Board Agent counting of ballots following the mail election in case 05-RC-143199 on Wednesday, February 11, 2015.
4. During the counting of ballots, I noted the names of all Guardsmark employees who had been named eligible to vote in the union election, but who did not submit ballots and who had their ballots voided.
5. After the vote on February 11, 2015, I was approached by Anthony Adkinson, a Guardsmark employee assigned to Providence Hospital.
6. Mr. Adkinson was an eligible voter for the election to determine if the SPFPA would represent the Guardsmark security officers assigned to Providence Hospital.

7. Mr. Adkinson told me on the evening of February 11, 2015, that he never received a ballot from the NLRB.

8. As a result of the information received from Mr. Adkinson, I started talking to the other Guardsmark employees I had previously noted as not having voted to determine whether they received a ballot. As listed below, 11 of the 18 employees who did not vote told me that they never received ballots in the mail from the NLRB.

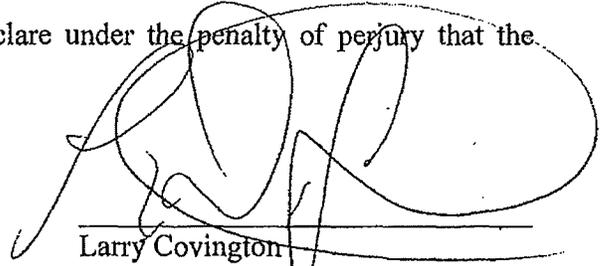
9. Between February 12, 2015 and February 15, 2015, I spoke in person with the following employees, who indicated that they did not receive a ballot from the NLRB:

- Adkinson, Anthony D. / 1977 Rochelle Ave, District Heights, MD 20747
- Bryant, Chimere N. / 5350 B. Street SE. Washington, DC 20019
- Byrd, Taniecia T. / 1255 Stevens Rd. Washington, DC 20020
- Dawkins, Andre M. / 3821 2nd St. Apt. B, Washington, DC 20032
- Donaldson, Julius E. / 5001 Box Turtle Court, Indian Head, MD 20640
- Hines, Donald / 721 Congress Street SE, Washington, DC 20032
- Jones, Darren M. / 4700 Martin Luther King Jr. Ave. SE Apt. 102, Washington, DC 20032
- Mitchell, Dontae D. / 4725 Leroy Gorham Dr., Capitol Heights, MD 20743
- Pate, Kevin M. / 205 Harry S. Truman Dr. Apt. 22, Upper Marlboro, MD 20774
- Whitfield, Inetta B. / 1920 Varnum Street NE, Washington, DC 20018
- Wern, Antonine K. / 8605 Powhatan Street, New Carrollton, MD 20784

10. Between February 12, 2015 and February 15, 2015, I spoke in person with the following employees, who indicated that they did receive ballots from the NLRB, but did not vote:

- Evans, Jamal K. / 836 Bal Boa Ave, Capitol Heights, MD 20743
- Kerry, Lewis L. / 7830 Contee Rd. Apt. 466, Laurel MD 20707
- Mceachin, Dalonte J. / 5826 Lamont Dr., New Carrollton, MD 20784
- Mclauren, Wayne D. / 3224 32nd Ave. Apt. D, Temple Hills, MD 20748
- Simms, Louis M. / 1538 Addison Rd. South, District Heights, MD 20747
- Washington, Romonto X. / 137 Forrester Street SW. Apt. 2, Washington, DC 20032
- White, Erik T. / 4003 Parkwood Court, Cottage City, MD 20722

11. Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Larry Covington', is written over a horizontal line. The signature is somewhat stylized and loops back.

Larry Covington
Dated: February 25, 2015

447976

APPENDIX D

 **NOTICE OF ELECTION** 
INSTRUCTIONS TO ELIGIBLE EMPLOYEES VOTING BY UNITED STATES MAIL

PURPOSE OF THIS ELECTION

This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their Employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election.

SECRET BALLOT

The election will be by SECRET ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board. Voters will be allowed to vote without interference, restraint, or coercion.

Employees eligible to vote will receive in the mail Instructions to Eligible Employees Voting By United States Mail, a ballot, a blue envelope, and a yellow self-addressed mail-ballot envelope needing no postage.

A sample of the official ballot is shown at the center of this Notice.

ELIGIBILITY RULES

Employees eligible to vote are those described under VOTING UNIT in this Notice of Election, including employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS

An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge MUST be made at the time the ballots are counted.

AUTHORIZED OBSERVERS

Each of the interested parties may designate an equal number of observers, this number to be determined by the Regional Director or agent in charge of the election. These observers act as checkers at the counting of ballots, challenge ballots, and otherwise assist the Regional Director or agent.

INFORMATION CONCERNING ELECTION

The Act provides that only one valid representation election may be held in a 12-month period. Any employee who desires to obtain any further information concerning the terms and conditions under which this election is to be held, or who desires to raise any question concerning the holding of an election, the voting unit, or eligibility rules, may do so by communicating with the Regional Director or agent in charge of the election.



NOTICE OF ELECTION



INSTRUCTIONS TO ELIGIBLE EMPLOYEES VOTING BY UNITED STATES MAIL

05-RC-143199

N.L.R.B./410-962-2822

05-RC-143199

VOTING UNIT-For Certain Employees of- Guardsmark, LLC

EMPLOYEES ELIGIBLE TO VOTE: All full-time and regular part-time security officers employed by the Employer at Providence Hospital in Washington, DC, who were employed by the Employer during the payroll period ending December 27, 2014.

EMPLOYEES NOT ELIGIBLE TO VOTE: Office clericals, professional employees, managerial employees, and supervisors as defined in the Act.

DATE, TIME, AND PLACE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Wednesday, January 28, 2015, ballots will be mailed to eligible voters from the National Labor Relations Board, Region Five, Bank of America Center, Tower II, 100 South Charles Street, Suite 600, Baltimore, MD 21201. 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 Wednesday, February 4, 2015, should communicate immediately with the National Labor Relations Board by calling the Baltimore Regional Office collect at (410) 962-2219.

All ballots will be commingled and counted at the Baltimore Regional Office on Wednesday, February 11, 2015, at 3:30 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.

	UNITED STATES OF AMERICA National Labor Relations Board 05-RC-143199	
OFFICIAL SECRET BALLOT For certain employees of GUARDSMARK, LLC		
Do you wish to be represented for purposes of collective bargaining by INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (IUPFPA)?		
MARK AN "X" IN THE SQUARE OF YOUR CHOICE		
YES <input type="checkbox"/>	NO <input type="checkbox"/>	
DO NOT SIGN THIS BALLOT. See enclosed instructions. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.		

WARNING: THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT OR ANYWHERE ON THIS NOTICE HAVE BEEN MADE BY SOMEONE OTHER THAN THE NATIONAL LABOR RELATIONS BOARD, AND HAVE NOT BEEN PUT THERE BY THE NATIONAL LABOR RELATIONS BOARD. THE NATIONAL LABOR RELATIONS BOARD IS AN AGENCY OF THE UNITED STATES GOVERNMENT, AND DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.



NOTICE OF ELECTION



INSTRUCTIONS TO ELIGIBLE EMPLOYEES VOTING BY UNITED STATES MAIL

RIGHTS OF EMPLOYEES

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election. If agents of either Unions or Employers interfere with your right to a free, fair, and honest election, the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interferes with the rights of employees and may result in the setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time after ballots are scheduled to be dispatched by the regional office
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes.

The National Labor Relations Board protects your right to a free choice

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law. The National Labor Relations Board as an agency of the United States Government does not endorse any choice in the election.



NATIONAL LABOR RELATIONS BOARD
an agency of the
UNITED STATES GOVERNMENT

The National Labor Relations Board is an independent federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office. You may also obtain information from the Board's website: www.nlr.gov.

WARNING: THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT OR ANYWHERE ON THIS NOTICE HAVE BEEN MADE BY SOMEONE OTHER THAN THE NATIONAL LABOR RELATIONS BOARD, AND HAVE NOT BEEN PUT THERE BY THE NATIONAL LABOR RELATIONS BOARD. THE NATIONAL LABOR RELATIONS BOARD IS AN AGENCY OF THE UNITED STATES GOVERNMENT, AND DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.

EXHIBIT C

BALTIMORE REGIONAL OFFICE
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street
Baltimore, Maryland 21202-4061

To:	1) Gareth Leviton, Esq. 2) Melonie Stother, Esq. and Stephen Glazek, Esq. 3) Gordon Gregory, Esq.
Company:	1) Guardsmark, Inc. 2) Barris, Sott, Denn & Driker, PLLC 3) Gregory, Moore, Jeakle & Brooks, P.C.
Fax	1) (901) 522-7911 2) (313) 983-3323 3) (313) 964-2125
From:	VIVIAN BROWN
Phone:	(410) 962-3159
Fax:	(410) 962-2198
Company:	National Labor Relations Board, Reg. 5
Date:	March 19, 2015
Pages including this cover page:	

Comments: Guardsmark, Inc.:

CASE: 05-RC-143199

Included: Documents Issued: letter, hearing and petition

THIS COMMUNICATION IS INTENDED FOR THE SOLE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. THIS MESSAGE MAY ALSO BE ATTORNEY-CLIENT COMMUNICATION OR WORK PRODUCT AND, AS SUCH, IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT OR AN AGENT OF THE INTENDED RECIPIENT, OR HAVE RECEIVED THIS FACSIMILE IN ERROR, DO NOT DISSEMINATE, DISTRIBUTE, COPY OR TAKE ANY ACTION IN RELIANCE ON THESE DOCUMENTS. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE COMMUNICATION, VIA US POSTAL SERVICE. RETURN THE FAX TO THE NATIONAL LABOR RELATIONS BOARD, REGION 5, 103 S. GAY STREET, 8TH FLOOR, BALTIMORE, MD 21202. THANK YOU.

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

GUARDSMARK, LLC,

Employer

and

Case 05-RC-143199

**INTERNATIONAL UNION, SECURITY, POLICE,
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)**

Petitioner

**REPORT ON OBJECTIONS
AND
NOTICE OF HEARING**

Pursuant to a Stipulated Election Agreement¹ approved by the undersigned on December 31, 2014, an election by mail-ballot was conducted. Under the Region’s supervision, ballots were mailed at 3:00 p.m. on Wednesday, January 28, 2015, and the Tally of Ballots was issued on Wednesday, February 11, 2015 with the following results:

Approximate number of eligible voters.....	33
Number of void ballots.....	2
Number of votes cast for Petitioner.....	11
Number of votes cast against participating labor organization.....	2
Number of valid votes counted.....	13
Number of challenged ballots.....	0
Number of valid votes counted plus challenged ballots.....	13

On February 18, 2015 the Employer timely filed objections to the conduct of the election², a copy of which is attached as Exhibit A.

¹ All full-time and regular part-time security officers employed by the Employer at Providence Hospital in Washington, DC, but excluding office clericals, professional employees, managerial employees, and supervisors as defined by the Act.

²The petition was filed on December 19, 2014. I will consider on its merits only the alleged interference which occurred during the critical period which begins on and includes the date of the filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

THE OBJECTIONS

Objection 1

The Regional Director Abused His Discretion by Insisting on Mail Balloting.

In support of its first objection, the Employer relied upon the Tally of Ballots in the instant case and the statement of Stephen Glazek, attorney on behalf of the Employer throughout the election proceedings. Glazek's statement was intended to provide an explanation of the circumstances surrounding the approval of the Stipulated Election Agreement (the Agreement) in this case. Within the statement, Glazek principally asserts the Employer desired to pursue a manual election; however, it elected to enter into the Agreement as a result of the Region's insistence on a mail-ballot election.

Analysis

On December 31, 2014, the Employer and Petitioner entered into the Agreement which provided that the election would be conducted by United States Mail. I subsequently approved the Agreement on January 8, 2015. By entering into the Agreement, and the terms contained therein, the Employer waived its right to object to the method of election defined in the document.³ In short, the Employer agreed to hold a mail-ballot election. Before entering into the Agreement, the Employer had a right to make a statement at a hearing that a mail ballot was inappropriate; however, it elected not to exercise this right.

For the reasons discussed above, the Employer is estopped from raising the method of election as grounds for setting aside the results of the election. Accordingly, Objection No. 1 is overruled.

³ In *Premier Living Center*, 331 NLRB 123 (2000), the employer stipulated to an LPN unit and then filed objections claiming the LPNs were supervisors. The Board subsequently adhered to the Hearing Officer's recommendation dismissing the objections because the Employer was bound to the Stipulated Election Agreement.

Objection 2

The Board Improperly Prohibited Guardsmark from Holding Mass Meeting with Employees on the Morning Ballots were Scheduled to be Mailed.

In support of its second objection, the Employer again relied upon the statement of Stephen Glazek. The Employer also provided (1) emails that Glazek maintains were sent to the Board agent handling the election, and (2) a copy of a January 26, 2015 letter from the Region which detailed the prohibition on speeches on company time to massed assemblies in advance of the election.⁴ The Employer claims the Region's communications regarding the prohibition were, at times, contradictory; and, it asserts that ultimately the Region wrongly instructed the Employer that it was prohibited from making speeches on company time to massed assemblies after 3:00 p.m. on Tuesday, January 27, 2015. Relying upon *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959), the Employer maintains it should have been permitted to hold mass meetings until 3:00 p.m. on Wednesday, January 28, 2015 when the ballots were mailed from the Baltimore Regional Office.

Analysis

There is a 24-hour prohibition against mass meetings by employers prior to the start of a manual election as established in *Peerless Plywood Co.*, 107 NLRB 427 (1953). This prohibition is explicitly extended to mail-ballot elections with stipulated election agreements by *American Red Cross*, 322 NLRB 401 (1996).

The Employer's reliance on *Oregon Washington Telephone Co.* is not appropriate in the instant case. In *Oregon Washington Telephone Co.*, the Board held that a mass meeting conducted within 24-hours of the election did not violate the Act because the Employer was not put on notice about the time and date for sending mail ballots. *Id at 341*. The Board in

⁴ It should be noted that the emails in question were sent to an incorrect email address, as they included the tail @nrlb.com instead of @nrlb.gov.

American Red Cross, narrowed the holding of *Oregon Washington Telephone Co.*, explaining that a Region's failure to send a formal notice of the date and time was immaterial where the employer entered into a stipulated election agreement that included the date. *Id* at 401. Here, it is undisputed that the Employer had the requisite notification, as the date and time of the mailing was included in the Agreement, as well as the Notice of Election. Furthermore, during the January 26, 2015 pre-election conference call and in an email that followed the conference call, the Region advised the parties to the election that the prohibition on mass meetings would begin at 3:00 p.m. on Tuesday, January 27, 2015.⁵

Based on the foregoing, Objection No. 2 is overruled.

Objection 3

Board Failed to Mail Duplicate Ballot Kits to Voters Who Did Not Sign Identification Stub

In support of its third objection, the Employer submitted the statement of Erika Johnson, Head of Human Resources for the Employer's Washington D.C. branch. The Employer contends Johnson contacted the two employees in the instant case who submitted void ballots to inquire as to whether they received a duplicate ballot kit. According to Johnson, the employees informed her they did not receive a duplicate ballot from the NLRB, nor were they notified of the deficiencies in the original ballots they returned to the NLRB.

Analysis

Pursuant to *Davis & Newcomer Elevator*, an election can be set aside if duplicate ballot kits are not sent to those voters who submitted deficient ballots only if (1) there is sufficient time remaining before the deadline, and (2) the void ballots would prove determinative of the election. 315 NLRB 715 (1995); See also *Oneida County Community*

⁵ A copy of the January 26, 2015 email is attached hereto as Exhibit B.

Action Agency, 317 NLRB 852 (1995). Accordingly, if the ballots are not determinative of the election then a failure to send duplicate kits would not require a rerun of the election, regardless of any timeliness issue. *Id.*

In the instant case, the Region received the void ballots on or about February 5, 2015; and, duplicate kits were not sent to the two employees who submitted the void ballots. While duplicate kits could have been sent to the voters, the fact remains the void ballots were not determinative of the election. As noted above, the Tally of Ballots included 13 valid votes; 11 favored the Petitioner and 2 voted against the Petitioner. Given the nine vote margin, the two void ballots were not determinative. Since the ballots had no determinative weight, this argument fails under the two-prong analysis described above.

The Employer contends the two void ballots should be weighed along with 11 other employees who did not submit ballots.⁶ The Employer argues that the aggregation of these ballots would go to show total disenfranchisement.

Standing alone, Objection No. 3 is overruled. However, as will be discussed in greater detail below, Objection 4 appears to raise substantial and material issues that can best be resolved by record testimony and evidence. When Objection No. 3 is examined in conjunction with Objection No. 4, the combined number of ballots alleged to be at issue may become determinative.

Accordingly, I hereby direct that the facts in Objection 3 – two employees who submitted void ballots were not sent duplicate kits – be analyzed at a hearing, but only to the limited extent of whether the two void ballots would become determinative.

⁶ The Employer also cites these eleven employees in its fourth Objection.

Objection 4

One Third of Eligible Voters Did Not Receive Ballots

In support of its fourth objection, the Employer submitted the statements of Erika Johnson, and Larry Covington, Site Manager for the Employer at Providence Hospital in Washington, D.C. Both witnesses claim that following the February 11, 2015 ballot count in the instant case, they polled a total of 18 Unit employees. According to the witnesses, 11 of the 18 employees indicated they never received ballots from the NLRB. The seven remaining employees informed the witnesses that they received ballots, but did not vote in the election. The Employer maintains the Board has held that elections should be set aside under such circumstances. *Yerges Van Liners, Inc.*, 162 NLRB 1259 (1967); *Alterman-Big Apple, Inc.*, 116 NLRB 1078 (1956); and *Baker Victory Services*, 331 NLRB 1068 (2000), quoting *V.I.P. Limousine, Inc.*, 274 NLRB 641 (1985).

Analysis

The Board possesses a wide authority to set aside election results when a significant number of employees have not had the opportunity to vote. *Pepsi-Cola Bottling Co. of Princeton, Inc.*, 176 NLRB 716, 729 (1969). “Such discretion includes the determination of whether or not the opportunity afforded all eligible voters to exercise their rights was sufficiently ‘adequate’ or ‘equal’ as to reflect accurately the ‘majority’ required by the statute.” *International Telephone & Telegraph Corp.*, 129 NLRB 221 (1960). The Board has delegated broad authority to the Regional Director to conduct and supervise elections, *See* 29 C.F.R. § 101.21; thus he or she is vested with the same discretion.

The Employer’s reliance on *Yerges Van Liners, Inc.* and *Alterman-Big Apple, Inc.* is misplaced. In both cases, the Board elucidated its own authority, vested in the Regional

Director, to set aside elections at its discretion based on evidence that tends to show that a significant number of employees have not had the opportunity to vote. While this line of cases established the Regional Director's authority to set aside elections, it established no factual situation in which the Regional Director must set aside an election.

The Employer's other citations – *Baker Victory Services* and *V.I.P. Limousine, Inc.* – purported to show a requirement to set aside elections, however the situations presented in these cases are not analogous to the instant case. In the aforementioned cases, the elections were set aside for inclement weather events which prevented a significant amount of voters from casting ballots.

The Board in *Glass Depot*, declared that when faced with having to decide whether an act or unexpected event constitutes “extraordinary circumstances” justifying a new election, it would examine both the event itself and whether it resulted in less than a representative complement of voters casting ballots. 318 NLRB 766 (1995), *reaffirmed in Baker Victory Services*, 331 NLRB 1068 (2000). It declined to give a precise percentage figure, stating that the representative complement test represents a balance between the value of employee opportunity to vote and the values of finality and economy. Nevertheless, it stated that if the participation rate dropped below 50 percent, a “substantial cause of concern” would exist, if there were an “event” that restricted voting. The Board in *Sitka Sound Seafoods, Inc.*, 325 NLRB 685, 686 (1998) found that since no such “event” occurred, then an examination under *Glass Depot* was inappropriate, and accordingly overruled the objection. Here, there is no asserted event that is alleged to have occurred that reduced the number of eligible voters from casting ballots.

The Employer is implicitly alluding that a numerical deficiency is evidence that employees did not vote, which led them to collect more evidence. In *Lemco Construction*, the Board overruled prior precedent which allowed a numerical test to determine the validity of a representation election. 283 NLRB 459 (1987). Further, throughout this same line of cases, a standard emerged to analyze if a complement of voters had participated in the election. *Sitka Sound Seafoods, Inc.*, Supra. A representative complement has voted if (1) all employees have received adequate notice of the election; (2) all employees have been given adequate opportunity to vote; and (3) employees are not prevented from voting by the conduct of one of the parties or by unfairness in the scheduling or mechanics of the election. *Id.*

Here, adequate notice was given to employees by the Employer's posting of the Notices of Election. This notice advised employees who did not receive ballots to contact the Region; and, the eligibility list in the instant case, which was signed by both of the Employer's observers, confirms that the Region provided duplicate ballot kits to two employees who timely requested them. With respect to the second point listed above, the mail ballot process impliedly affords employees the adequate opportunity to vote. *Nat'l Van Lines*, 120 NLRB 1343, 1346 (1958) (Regional Director's decision to conduct a mail ballot was designed to afford an adequate opportunity for all eligible voters to cast a ballot). Additionally, the ballots were mailed in accordance with the addresses supplied by the Employer; and, only one ballot was returned to the Region.⁷ Finally, no party has alleged that it was the conduct of either party that caused the low voter turnout.

⁷ The lone returned ballot included a Return to Sender notification dated February 26, 2015; and, it cited insufficient address as the reason for the return.

Despite the aforementioned caselaw and facts, the Employer has still presented evidence that may show a determinative number of employees did not receive ballots. As noted above, the statements provided by the Employer suggest approximately 11 employees may not have received ballots. There are inconsistencies in the claims of the employees listed in the statements, as the Region received three ballots from employees who the Employer maintains never received a ballot.⁸ Even if these three ballots are removed from consideration, the remaining eight ballots combined with the void ballots described above in Objection 3 may show a determinative number of employees did not receive ballots.

As it appears substantial and material issues have been raised that can best be resolved by record testimony and evidence, I hereby direct that a hearing be held with respect to the issues raised by Objection 4.

Objection 5

The Election Notice Did Not Provide Adequate Notice to Eligible Voters

In support of its fifth objection, the Employer relies upon the Notice of Election in the instant case. The Employer maintains that (1) no designated Board agent was specifically named on the Notice, and (2) the phone number listed on the Notice connected callers with an automated answering machine.

Analysis

With respect to the Employer's first assertion, the Region has long maintained a policy of refraining from listing individual Board agents on Notices of Election. The Region's policy is permitted by NLRB Casehandling Manual (Part Two) Representation

⁸ The Region received these ballots on February 12, 2015, February 19, 2015 and March 4, 2015.

Proceedings Sections 11336.3 which does not explicitly require that a designated employee's name be listed on the Notice of Election.⁹

Regarding the second assertion, the Employer incorrectly states that the number provided on the Notice of Election directed callers to an automated line. The number provided on the Notice of Election, which was posted by the Employer and included in the ballot kits, is the direct line for the Region's Election Specialist. Though no name is explicitly provided, the Election Specialist is a full-time employee who answers phone calls concerning election-specific questions and is specially trained to resolve any election-related problems. The Region does list its main number on the Instructions to Eligible Employees; and, outside of normal business hours, this line is automated. During the course of normal business hours, administrative personnel answer and direct calls received on the main number. Contrary to the Employer's claim, the Region's aim in listing the main number is to provide employees with as many options as possible to contact the Region should they have questions regarding the election. Significantly, the Employer has not asserted that any employee, Employer representative, or Petitioner representative attempted to reach the Region unsuccessfully through the numbers provided on the Notice of Election and Instructions to Eligible Employees.

Based on the foregoing, Objection No. 5 is overruled.

⁹ Moreover, while the Region's position is that all procedural requirements have been met, the Casehandling Manual, by its own terms, is not intended to be binding authority or rules of procedure. *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988), *enfd. mem.* 902 F.2d 40, 41 (9th Cir. 1990).

SUMMARY

In summary, I am overruling Objections 1, 2 and 5 in their entirety. I am also overruling Objection 3; however, my decision to overrule includes the caveat that the facts in Objection 3 – two employees who submitted void ballots were not sent duplicate kits – will be analyzed at a hearing, but only to the limited extent of whether the two void ballots would become determinative. Finally, substantial and material issues have been raised by evidence provided in support of Objection 4. Thus, it is the opinion of the undersigned that those issues can best be resolved on the basis of record testimony and/or other evidence developed at a hearing.

NOTICE OF HEARING

IT IS HEREBY DIRECTED, pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that a hearing be held in, **THE DIVISION OF JUDGES HEARING ROOM, NATIONAL LABOR RELATIONS BOARD, 1099 14th STREET, N.W., 5th FLOOR, WASHINGTON, DC**, on **March 30, 2015** beginning at **10:00 a.m.**, and continuing on consecutive days thereafter until completed, before a Hearing Officer of the National Labor Relations Board, who will take testimony for the purpose of resolving the issues raised by the Petitioner's Objections herein, at which the parties have the right to appear in person, or otherwise, and give testimony. The Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within 14 days from the issuance of such report, any party may file with the Board in Washington, DC, an original and seven copies of exceptions thereto. Immediately upon filing such exceptions, the party filing the same shall serve a copy thereof on

the other parties and shall file a copy with the undersigned. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or make other dispositions of the case.

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 **April 2, 2015, 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.¹⁰ 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.

¹⁰ 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.

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 the E-Gov tab and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under the Board/Office of the Executive Secretary and then follow the directions. 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 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.

Dated at Baltimore, Maryland, this 19th day of March 2015.

(SEAL)

1st Charles L. Posner

Charles L. Posner, Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

EXHIBIT D

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

Guardsmark, LLC

Case 05-RC-143199

The parties **AGREE AS FOLLOWS:**

1. PROCEDURAL MATTERS. The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

The Employer, Guardsmark, LLC, a limited liability company, with an office and place of business in Washington, DC, is engaged in the business of providing security services and asset protection to various firms and institutions, including Providence Hospital in Washington, DC, the only location involved in these proceedings. During the preceding 12 months, a representative period, the Employer, in conducting its business operations, performed services valued in excess of \$50,000 in States outside the District of Columbia.

3. LABOR ORGANIZATION. The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

The Petitioner is qualified to represent the unit within the meaning of Section 9(b)(3) of the Act.

4. ELECTION. The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Wednesday, January 28, 2015, ballots will be mailed to eligible voters from the National Labor Relations Board, Region Five, Bank of America Center, Tower II, 100 South Charles Street, Suite 600, Baltimore, MD 21201. 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 Wednesday, February 4, 2015, should communicate immediately with the National Labor Relations Board by calling the Baltimore Regional Office collect at (410) 962-2219.

All ballots will be commingled and counted at the Baltimore Regional Office on Wednesday, February 11, 2015, at 3:30 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.

5. UNIT AND ELIGIBLE VOTERS. The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed by the Employer at Providence Hospital in Washington, DC, but excluding office clericals,

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professional employees, managerial employees, and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending Saturday, December 27, 2014**, including employees who did not work during that period because they were ill, on vacation, or were 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, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are 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 after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. ELECTION ELIGIBILITY LIST. Within seven (7) days after the Regional Director has approved this Agreement, the Employer shall provide to the Regional Director an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by International Union, Security, Police and Fire Professionals of America (SPFPA)?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer will post copies of the Notice of Election in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

10. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

11. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

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12. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

<u>Guardsmark, LLC</u> (Employer)	<u>International Union, Security, Police and Fire Professionals of America (SPFPA)</u> (Petitioner)
By <u><i>[Signature]</i></u> (Name) <u>12/31/14</u> (Date)	By _____ (Name) (Date)

Recommended: _____
David A. Colangelo, Board Agent (Date)

Date approved: _____

Regional Director, Region 5
National Labor Relations Board