

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

QUEEN OF THE VALLEY MEDICAL CENTER
Employer

and

Case 20-RC-185503

NATIONAL UNION OF HEALTHCARE WORKERS
(NUHW)
Petitioner

ORDER

The Employer's Request for Review of the Order by Acting Regional Director under NLRB Rule 102.66(c) Concerning Issues to be Litigated at Hearing, the Acting Regional Director's Decision and Direction of Election, and the Acting Regional Director's Report¹ Regarding Objections to Election and Certification of Representative is denied as it raises no substantial issues warranting review.²

¹ We have treated the Acting Regional Director's "Report Regarding Objections" as a Decision on Objections. See 79 Fed. Reg. 74412 fn. 464 (Dec. 15, 2014).

² In finding that the Acting Regional Director did not abuse her discretion by directing a mail ballot election, we do not rely on the Acting Regional Director's finding that the eligible employees are "scattered geographically." In this regard, we observe that their job duties are not scattered over a wide geographic area. See *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998) (one type of situation that "normally suggest[s] the propriety of using mail ballots" is "where eligible employees are 'scattered' because of their job duties over a wide geographic area"). In making this finding, the Acting Regional Director was apparently referring to the substantial distances that many off duty employees would have to drive in the event of a manual election, which we agree is a relevant consideration that supports a mail ballot election due to the employees' "scattered" schedules, along with the other considerations cited by the Acting Regional Director. See, e.g., *California Pacific Medical Center*, 357 NLRB 197, 198 (2011) (no abuse of discretion for Regional Director to order mail-ballot election in part due to "the scattered nature of the employees' work schedules"); *GPS Terminal Services*, 326 NLRB 839, 839 (1998) (same).

This case involves the Board's Final Rule on representation case procedures, with which Acting Chairman Miscimarra disagrees for the reasons expressed in his dissenting views in the Final Rule. 79 Fed. Reg. 74308, at 174430-174460 (December 15, 2014) (dissenting views of Members Miscimarra and Johnson). In the instant case, Acting Chairman Miscimarra dissents from the Board majority's denial of review because he believes substantial questions are presented regarding the appropriateness of the Regional Director's use of a mail ballot election, since (i) eligible employees were not "scattered geographically" (see majority's finding above), (ii) the parties mutually favored a manual election, (iii) the Board adheres to a rule that favors manual elections, and (iv) the Employer's proposed two-day election (involving a total of six polling sessions) would reasonably have permitted participation by eligible voters, 90 percent of which would have been scheduled to work on the two election dates. Acting Chairman Miscimarra agrees with denying the Employer's request for review as to the unit and eligibility issues addressed by the Regional Director.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., February 28, 2017.