

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

In the Matter of:

EIHAB HUMAN SERVICES, INC.,

Case No. 29-RC-245133

Employer,

and

**LOCAL 215, DISTRICT COUNCIL 1707,
AFSCME, AFL-CIO**

Petitioner.

EMPLOYER'S REQUEST FOR REVIEW

I. INTRODUCTION

The Petitioner, Local 215, District Council 1707, AFSCME, AFL-CIO (“Union”) petitioned for a *manual ballot* election for a unit comprised of employees working at 16 of EIHAB Human Services’ (“Employer”) locations solely within the confines of two of New York City’s boroughs: Queens and Brooklyn. However, during negotiations for a stipulated election agreement, the Union, ostensibly prompted by the Region’s suggestion of a mail ballot election, changed course and sought a mail ballot election. On August 13, 2019, the Regional Director of Region 29 issued a Decision and Direction of Election (the “Decision”), incorrectly determining that the election should be held by mail ballot. Contrary to what the Regional Director found, eligible employees were not at all “scattered” geographically or by work schedule that would have made a manual election unfeasible or even impractical.

The result was purely predictable and demonstrates an absolute disservice to the National Labor Relations Board’s (“Board”) processes. Of the 168 eligible voters, only 69 cast

valid counted ballots, a 41 percent turnout amongst a group of employees who are well known for being participatory in Company events. Moreover, the Regional Director deprived the Employer of due process by not holding a hearing on its timely-filed objections regarding the appropriateness of a mail ballot election, particularly in light of incontrovertible evidence that the Regional Office had ongoing issues with the United States Postal Service which could have impacted the outcome of the election.

Pursuant to Sections 102.67 and 102.69 of the Rules and Regulations of the National Labor Relations Board (the “Board”), the Employer, by and through its undersigned counsel, hereby submits this Request for Review as compelling reasons exist for the Board’s intervention on the following grounds:

1. A substantial question of law and policy is raised because of the Regional Director’s departure from officially reported Board and judicial precedent in directing a mail ballot election, which constituted an abuse of discretion; and
2. The Regional Director’s refusal to convene a hearing concerning the Employer’s timely-filed objections prejudicially affects the Employer’s due process rights.

II. STATEMENT OF THE CASE AND SUMMARY OF EVIDENCE

On July 19, 2019, the Union filed a petition for an election seeking to represent certain employees of the Employer, assigned to work at 16 different locations in Brooklyn and Queens, New York. (Board Exhibit 1(a)). The Union’s petition stated that it sought a manual ballot election, with polling locations at each of the 16 sites. (Board Exhibit 1(a)).

The Union, after suggestions were made by the Region to hold an election by mail ballot, subsequently reversed course and indicated its preference for a mail ballot election. (Tr. 23-

25). After negotiations for a stipulated election agreement stalled, on August 6, 2019, a pre-election hearing before Hearing Officer Francisco Guzman (who also had served as the assigned Board agent) was convened. Exhibits were introduced, but no witness testimony was taken concerning the appropriateness of a mail ballot election. Instead, counsel for the Union and Employer verbally submitted their positions to the Hearing Officer.

In both its Statement of Position, and at the Hearing, the Employer proposed polling places at either one or two sites: (1) its main facility at 168-18 South Conduit Avenue, Springfield Gardens; or (2) the facilities at (i) 168-18 South Conduit Avenue, Springfield Gardens and (ii) 3210 Atlantic Avenue in Brooklyn. (Board Exhibit 3). Significantly, none of the other 14 sites were any further than eight miles from either of these locations. (Employer Exhibit 1, Tr. 15-16).¹ Additionally, in an effort to boost voter participation, the Employer offered to arrange for eligible voters to be transported to polling locations, either by public transportation, shuttle vans, or car service. (Tr. 20, 27), although employees would not have been mandated to avail themselves of this option. (Tr. 29).

The Employer also proposed that the manual ballot election be scheduled from 7:30 a.m. to 5:00 p.m. on Friday, August 23. (Board Exhibit 3). The Employer proposed a Friday because, in its view, 90 percent of employees would be working that day. (Tr. 30). At the hearing, the Union contended that the Employer's Statement of Position indicated that fewer than 90 percent of voters were scheduled to work on Fridays. (Tr. 31). However, the Employer's Statement of Position did not include the fact that employees often worked overtime on Fridays, as noted at the hearing. (Tr. 31).

¹ Although the Union intimated that it could not confirm the accuracy of the times between locations the Employer listed in Employer Exhibit 1, it did not submit evidence to refute the Employer's calculations. (Tr. 17).

On August 13, 2019, the Regional Director issued her Decision, directing a mail ballot election. Relying on San Diego Gas and Electric, 325 NLRB 1143 (1998), the Regional Director found that “[i]n this matter, given the number of locations at which employees work and their diverse work schedules, the voters are scattered and I find that a mail ballot election is appropriate.” (Decision, at 3, n.3). The Regional Director ordered that voters return their mail ballots so that they would be received by the Regional Office by September 20, 2019. (Decision, at 3). The Decision explained that, to be counted, the ballot would need to be postmarked by September 20, 2019. (Decision, at 3). The ballots were scheduled to be counted on September 25, 2019. (Decision, at 3).

On September 25, 2019, the Employer’s undersigned counsel spoke, via telephone, with Mr. Guzman. Mr. Guzman suggested that the close of the balloting period be extended because of ongoing difficulties the Regional Office was having with United States Postal Service mail delivery. The Employer did not consent to an adjournment.² As a result, later that day, the Regional Office prepared a tally of ballots. Of approximately 168 eligible voters, 46 cast votes for the Union and 23 against the Union. Four ballots were challenged and eight ballots were deemed void. (Decision on Objections and Certification of Representative (“Objections Decision”), at 1). Accordingly, some 41 percent of eligible voters cast valid ballots in this election.

On October 2, 2019, the Employer timely filed three objections to the conduct of the election: Objection 1 challenged the Regional Director’s Decision to direct a mail ballot election when a manual election was accessible and achievable and would have fostered greater voter turnout. Objection 2 also challenged the Regional Director’s mail ballot directive on the grounds it disenfranchised voters, particularly given the low voter turnout. Objection 3 contested

² This conversation forms the basis of the offer of proof concerning the Employer’s Objection #3.

the Regional Director's decision to count the ballots in light of the Board's and Region's failure and inability to assure timely and effective delivery of ballots mailed to the Region's office because of documented, admitted, ongoing problems with the United States Postal Service, apparently due to non-payment/late payment of postal bills.

On November 14, 2019, the Regional Director issued her Objections Decision. Critically, the Regional Director did not convene a hearing on the Employer's Objections before issuing her Objections Decision. In dismissing the Employer's Objections 1 and 2, the Regional Director simply reaffirmed her patently incorrect and unwarranted earlier findings in the Decision that a mail ballot election was appropriate based on the (also patently incorrect and unwarranted) "fact" that employees were geographically scattered and had diverse schedules. (Objections Decision, at 4-5). The Regional Director ruled the Employer's claim that a mail ballot election disenfranchised employees to be speculative. (Objections Decision, at 4-5).

The Regional Director also dismissed Objection 3. The Objections Decision acknowledged that "[t]he Region recently experienced a situation where the United States Postal Service held mail ballots in a different representation case due to the Agency's failure to make timely payment on the Region's postal bill." (Objections Decision, at 5). In the Region's eyes, postponing the count was the appropriate remedy to ensure all ballots were counted. The Objections Decision also noted that "there is no evidence that any other ballots were cast but not counted or not received by the Region." (Objections Decision, at 6). The Regional Director's conclusion was predicated upon the fact that "the United States Postal Service has advised the Region that it is not currently holding any of the Region's mail." (Objections Decision, at 6). Thus, according to the Objections Decision, "there is no evidence that an outcome determinative number

of voters could have been disenfranchised due to the Region's difficulties with the United States Postal Service." (Objections Decision, at 6).

This Request for Review ensued.

III. SUMMARY OF ARGUMENT – THE REGIONAL DIRECTOR ABUSED HER DISCRETION IN DIRECTING A MAIL BALLOT ELECTION AND ERRED IN FAILING TO CONVENE A HEARING CONCERNING THE EMPLOYER'S OBJECTIONS

As discussed below, the Regional Director abused her discretion by directing a mail ballot election despite the fact the evidence clearly demonstrates a manual ballot election would have been perfectly feasible, and clearly was more appropriate under the Board's Rules. The Region's purported desire to avoid expending resources at the expense of ensuring workplace democracy is antithetical to the salutary purposes of the National Labor Relations Act. Moreover, the Region deprived the Employer of its due process rights by refusing to convene a formal hearing, especially because the Objections Decision relied upon evidence the Employer never had a chance to assess.

A. The Regional Director Disregarded Controlling Authority In Directing A Mail Ballot Election

The Board grants the Regional Director with a certain amount of discretion to decide whether to conduct an election manually or by mail ballot. Nouveau Elevator Industries, 326 NLRB 470, 471 (1998). Within that discretion, and under prevailing Board precedent and policy, exists the presumption that manual ballot elections are generally, normally most appropriate, and are favored over mail ballot elections. Id. (finding that a manual ballot election is presumptively appropriate); citing San Diego Gas & Electric, 325 NLRB 1143 (1998); see also NLRB Casehandling Manual (Part Two), Manual or Mail Ballot Election: Determination, § 11301.2 ("The Board's longstanding policy is that representation elections should, as a general

rule, be conducted manually.”); Willamette Industries, Inc., 322 NLRB 151 (1997) (reversing Acting Regional Director’s directing of a mail ballot election and ordering a manual ballot election where the argument supporting a mail ballot election was insufficient to justify departing from normal manual ballot election procedure). The presumption favoring manual ballot elections is clear through reading and understanding Board precedent, considering public policy concerns and interpreting empirical voter data. Further, none of the unique circumstances are present here that would warrant a departure from the favored norm of manual ballot election.

The Board has also found that public policy considerations support the presumption favoring manual ballot elections. Specifically, “mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual ballots because of the absence of direct Board supervision over the employees’ voting.” Thompson Roofing, Inc., 291 NLRB 743, n. 1 (1988). Additionally, in 2 Sisters Food Group, the Board recognized that the “ease of voting and cost are obvious factors weighing in favor of voting in the workplace.” 357 NLRB 1816, 1819 (2011).

Manual elections afford employees the best opportunity to participate in the process. This concept was specifically identified by NLRB General Counsel Fred Feinstein who noted in a June 2, 1994 Memorandum to NLRB Chairman William B. Gould IV, that a study showed 87.9 percent of eligible voters participated in manual elections compared to 68.14 percent who participated in mail ballot elections. See San Diego Gas & Electric, 325 NLRB at 1151, n.4. Conversely, as noted, voter turnout in manual ballot elections is substantially higher. See Nouveau Elevator Indus., Inc., 326 NLRB at 470-71 (“[i]t is well known that voter turnout is considerably higher in manual as opposed to mail ballot elections, and maximizing voter turnout is a legitimate objective in all elections.”). Thus, it is clear that empirical data, longstanding Board precedent and Board policy all support and demonstrate that manual ballot elections better effectuate the purposes

of the Act. Specifically, manual ballot elections afford employees the greatest opportunity to express whether they wish to be represented by a union and participate in the collective bargaining process.

The Board, in San Diego Gas & Electric, provided guidelines for the limited, specific circumstances in which the Regional Director should direct the use of mail ballots over manual ballots. 325 NLRB at 1145. It held that a Regional Director should consider ordering the use of mail ballots in the following circumstances: “(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.” Id. Employees can be considered “scattered” when they work in different areas, travel on the road, work different shifts or work both full-time and part time schedules. NLRB Casehandling Manual (Part Two), Manual or Mail Ballot Election: Determination, § 11301.2.

The Board is clear that in the “absence of good cause to the contrary,” the election should be held on the employer’s premises. 2 Sisters Food Group, Inc., 357 NLRB at 1819. The use of mail balloting, “at least in situations where any party is not agreeable to the use of mail ballots, should be *limited* to those circumstances that clearly indicate the *infeasibility* of a manual election.” Shepard Convention Servs. v. NLRB, 85 F.3d 671, 673 (D.C. Cir. 1996) (emphasis added).

In Nouveau Elevator Industries, the Regional Director ordered a manual election in three separate units of elevator operators at a central location (not the Employer’s facility) over the course of two days. The Petitioner filed a Special Request for Leave to Appeal from the Regional

Director's Decision to Refuse to Conduct a Mail Ballot Election. In his memorandum filed with the Board, the Regional Director observed that:

[B]ecause about 75% of the eligible voters work in Manhattan, the polls are open for 2 days for 9 hours a day, longer than the normal work days of the unit employees, and since the polling place is centrally located in Manhattan and readily accessible by numerous forms of transportation to the entire unit, including those who do not work in Manhattan, it is well within the discretion of the undersigned to direct a manual election.

Id. at 470.

The Regional Director went on to point out the high costs to the Region of conducting a mail ballot and noted the fact that voter turnout in manual ballots is considerably higher than mail ballots and "maximizing voter turnout is a legitimate objective in all elections." Id. at 470. The Board upheld the Regional Director's decision. Significantly, Chairman Gould's dissent related to the difficulties that certain employees might face in getting to the polls, and to the "attendant inconvenience" (as to family responsibilities or plans) that would befall those who would be on their normal off-worktime. The Board, in addressing this claim, noted there was simply no evidence to support this concern. The Board further noted that the employers "indicated that they would allow employees to vote on company time, and most employees are accustomed to traveling during the course of their work duties." Id. at 471.

As described below, this well-settled legal framework demonstrates the Regional Director erred by directing a mail ballot election in this case.

1. The Union Unjustifiably Changed Its Position Concerning A Mail Ballot Election

As a threshold matter, in its Petition, the Union specifically requested a manual election *at all 16 locations*. (Board Exhibit 1(a)). Section 102.61(a)(12) of the Rules require that a petitioner state its position with regard to the type of election, dates and times. Insofar as the Petition is the document to which the Employer is obliged to respond in full in its Statement of

Position, missing or inaccurate statements on the Petition serve to frustrate both the Employer's ability to fully articulate a responding position and the very scheme of the 2015 rules to eliminate delays and unnecessary litigation. Just two business days before the scheduled Hearing and one business day before the Statement of Position was due, the Union asserted that it no longer wanted a manual ballot and requested a mail ballot election. It is noteworthy that on August 1, 2019 at 5:18 p.m. Board Agent Francisco Guzman emailed the attorney for the Employer, Robert Ufberg, stating that although he had not heard yet from Union counsel Murray, he "went ahead and mapped out the locations that were included with the petition. (See attached) Are there any other locations that the Employer believes should be included?", continuing that "we may need 8-9 polls". A copy of the email from Mr. Guzman to Mr. Ufberg is attached hereto as Exhibit 1, along with the map which he attached to his email. The Employer's Position Statement was filed at 12:16:55 p.m. the next day, August 2, 2019, as the Board's record in this case will confirm. A copy of the Position Statement was served on the Union at 2:07 p.m. that day, as shown on the email sent from Employer's counsel to Attorney Murray with a copy to Board Agent Guzman (attached hereto as Exhibit 2). Later that day, at 3:57 p.m., Union counsel Murray proposed six locations, as shown on the attached email from Mr. Murray to Employer Counsel Ufberg, copy to Board Agent Guzman (see Exhibit 3 attached hereto). That same Exhibit shows, above Mr. Murray's email, that Board Agent Guzman closed out the communications by stating that "The Assistant Regional Director considered the Union's proposal for 6 locations but the Region wouldn't be able to conduct that election." He went on to note the Employer's offer to do what might be necessary to facilitate employee voting, such as covering travel costs, running vans to voting locations and coordinating with public transportation, but ended by stating that "If the parties can't come to an agreement, as I mentioned to you both, the Region will likely direct a mail ballot election." While

it is true the *Region* indicated it would have had difficulty accommodating six polling places (for unspecified reasons), the Union is bound to its representations in its petition and estopped from changing its position absent extraordinary circumstances.³

2. Eligible Voters Were Not Scattered Geographically

Under the Employer's one or two-polling site proposal, the short distance eligible voters would have needed to travel in order to vote was far less than the distances in the typical cases in which the Board has directed mail ballot elections. By way of example, in San Diego Gas & Electric, the Board found a mail ballot-only election appropriate where employees were required to travel more than 120 miles round-trip in order to vote manually. San Diego Gas & Electric, 325 NLRB at 1144. Likewise, the Board permitted a mail ballot election in Masiongale Electrical-Mechanical, Inc., since the geographic distance between the proposed voting sites was up to 70 miles. 326 NLRB 493 (1998).

In contrast, here, the overwhelming majority of EIHAB employees would have had very short trips between their workplaces or homes and the centralized proposed voting sites. To put things in perspective, Montauk, New York (which is at the eastern border of Region 29's geographic jurisdiction), is 111 miles from the Employer's site at 3210 Atlantic Avenue in Brooklyn. Similarly, Kingston, New York is 116 miles (and seven counties) away from that same location. Mount Pocono, Pennsylvania, two states away, is also 116 miles from the site. Each of these trips would take an eligible voter up to three hours to complete, in one direction. Critically, in the present case, no employee would have been required to travel more than eight miles from

³ This assertion is based upon an August 2, 2019 e-mail from the Hearing Officer to the Employer's counsel. Because the Regional Director issued the Objections Decision without convening a hearing, the Employer did not have an opportunity to introduce this e-mail after the tally of ballots. The Region never suggested the infeasibility of holding an election at one or two of the Employer's sites (nor would there be any basis to do so).

any worksite to the two proposed centralized polling sites (and, none, more than 30 minutes by vehicle, in many instances even less by local train or bus).

Also, unlike San Diego, California or Muncie, Indiana (where San Diego Gas & Electric and Masiongale Electrical-Mechanical were located), New York City has a fantastic public transportation system, with 25 subway lines, hundreds of bus routes, and two commuter railroads. For example, the Employer's first proposed polling location, 3210 Atlantic Avenue, is located on one of Brooklyn's and Queens' most celebrated public thoroughfares and is in close proximity to the A, C, J, and Z subway trains. Similarly, the Employer's other proposed centralized voting location, 168-18 South Conduit Avenue in Jamaica, is very close to a major intersection, at Rockaway Boulevard, which is served by several bus lines, including the Q6, Q111, and Q114. Moreover, as noted during the August 6, 2019 hearing, the Employer was even willing to arrange for eligible voters to be transported by car, which it would have paid for, to polling sites if employees wished to elect that option. (Tr. 20, 27, 29).⁴

It is clear the Employer's proposed polling places had the Board's guidance from Nouveau Elevators in mind (e.g. a centralized polling location in New York City to allow voters to easily travel back and forth using public transportation). The Regional Director did not consider - at least not seriously - these factors. Instead, she placed a premium on preserving Agency resources, favoring that over ensuring maximum voter participation. The latter is, literally, her and the Board's job. What she did qualifies as an abuse of discretion which not just warrants, but requires, a re-run election.

⁴ Notably, in Sunrise Rehabilitation Hospital, 320 NLRB 212 (1995), the Board held that monetary payments offered to employees as a reward for coming to a Board election that exceed actual transportation expenses is objectionable. See also Good Shepard Home, 321 NLRB 426 (1996) (payments amounted to actual expenses). In the present case, the Employer would exclusively bear transportation costs and would not provide any additional benefit to employees as an inducement to participate in the vote.

3. Eligible Voters Were Not Scattered By Varying Work Schedules

In addition to not being “scattered” geographically, eligible voters were not “scattered” by varying work schedules. This was a fallacy invented by the Regional Director to bootstrap her way into justifying the result she selected. Though the Employer’s employees do work varying shifts, “[t]he mere fact that employees may work multiple shifts, thereby necessitating more than one voting session during the course of the workday, is not in and of itself a sufficient basis for directing a mail ballot election.” San Diego Gas & Electric, 325 NLRB at 1145, n.7. To this end, the Employer proposed a manual ballot election at two centralized sites from 7:30 a.m. to 5:00 p.m. continuously. That proposed voting schedule would have allowed eligible voters ample time to vote either before or after their work shifts, and the Employer would have ensured employees had ample opportunity to vote during their shifts. As significant alterations of the work schedules of a substantial proportion of employees would not have been necessary to assure the enfranchisement of unit members, a manual election was appropriate. GPS Terminal Services, Inc., 326 NLRB 839 (1998). Rather, as noted originally to the Region and reiterated here, 90 percent of the eligible voters would have been working on Friday, August 23, 2019. Even though the attachment to the Employer’s Statement of Position did not clearly reflect employees working on a Friday, the Employer clarified at the hearing that the Statement of Position did not account for overtime opportunities. (Tr. 31). Accordingly, there was no basis for the Regional Director to conclude a mail ballot election was appropriate in this case.

* * *

The mail ballot election here failed to effectuate, and in fact abused, the purposes of the Act, which, in this context, is to maximize eligible voter participation to determine whether or not they want a particular labor organization to serve as their certified bargaining representative.

Here, only forty-one percent of eligible voters cast counted ballots. That figure is astoundingly low in light of the fact the Union needed only thirty percent of the unit to even demonstrate a showing of interest. In this case, the mail ballot evinced a race to the bottom and should be set aside.

B. The Regional Director Denied The Employer Due Process By Refusing To Convene A Hearing Concerning How Postal Service Irregularities Could Have Affected The Outcome of the Election

Incredibly, the Objections Decision acknowledged that the Postal Service held mail ballots in a different representation case because the Agency had failed to make timely payment on the Region's postal bill. However, the Employer was never afforded an opportunity to inquire when the Postal Service held such mail and *whether the Region was aware of the issue at the time the Regional Director directed a mail ballot election in this case*. Although no case law has been found on this unique set of facts, it is beyond cavil that a Regional Director abuse his/her discretion in directing a mail ballot election if he/she had knowledge that there were potential impediments to ensuring proper delivery and receipt of ballots. The Objections Decision did not provide any guidance on this issue, leaving the Employer guessing on this point.

Because a post-election hearing was never convened, the Employer did not have an opportunity to question Regional personnel about this issue or about the Region's efforts with the Postal Service about the withholding of its mail. Thus, at the very least, the Board should require the Regional Director to convene a hearing to allow the Employer to explore this issue further to ensure that the improperly-directed mail ballot election was fairly administered. Anything less denies the Employer due process.

CONCLUSION

For the foregoing reasons, the Board should grant the Employer's Request for Review and summarily direct that a re-run election be held.

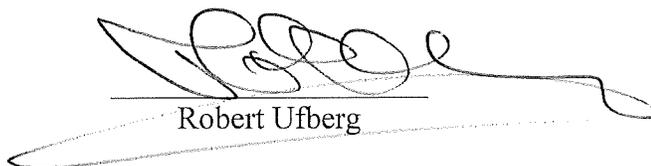
Respectfully submitted,

UFBERG & ASSOCIATES LLP
310 Penn Avenue
Scranton, Pennsylvania 18503
Robert Ufberg

-and-

JACKSON LEWIS P.C.

666 Third Avenue
New York, New York 10017
Daniel D. Schudroff



Robert Ufberg

ATTORNEYS FOR EI HAB HUMAN SERVICES

Dated: December 18, 2019

Robert Ufberg

From: Guzman, Francisco <Francisco.Guzman@nlrb.gov>
Sent: Thursday, August 1, 2019 5:18 PM
To: Robert Ufberg
Cc: Amanda Russell
Subject: RE: EI HAB Human Services, Case 29-RC-245133
Attachments: EI HAB Human Services Petitioned Locations 29-RC-245133.pdf

I have not heard from Mr. Murray, but I went ahead and mapped out the locations that were included with the petition. (See attached) Are there any other locations that the Employer believes should be included?

From the looks of things we may need 8-9 polls.

Francisco Guzmán
National Labor Relations Board, Region 29
Tel. (718) 765-6198

From: Guzman, Francisco
Sent: Thursday, August 1, 2019 10:58 AM
To: Robert Ufberg <rufberg@ufberglaw.com>
Cc: Amanda Russell <arussell@ufberglaw.com>
Subject: RE: EI HAB Human Services, Case 29-RC-245133

Mr. Ufberg:

I got your voice message. I called your cellphone but your voice mailbox is full so I could not leave a message.

Attached is a copy of the Order that issued yesterday.

Fell free to call me back at your earlier convenience, or email me here.

Francisco Guzmán
National Labor Relations Board, Region 29
Tel. (718) 765-6198

From: Guzman, Francisco
Sent: Wednesday, July 31, 2019 11:53 AM
To: Robert Ufberg <rufberg@ufberglaw.com>
Cc: Amanda Russell <arussell@ufberglaw.com>
Subject: RE: EI HAB Human Services, Case 29-RC-245133

Mr. Ufberg:

The Acting Regional Director approved your request to postpone the hearing until August 6, 2019 and the SOP due on August 2, 2019 at noon. AN order will issue later today.

Francisco Guzmán
National Labor Relations Board, Region 29
Tel. (718) 765-6198

Robert Ufberg

From: Amanda Russell
Sent: Friday, August 2, 2019 2:07 PM
To: tmurray@dc1707.net
Cc: Robert Ufberg; francisco.guzman@nlrb.gov
Subject: EI HAB, Case 29-RC-245133
Attachments: 8.2.18 murray ltr.pdf; 8.2.19 Aff of Serv and Stm of Pos with atch.pdf

Good Afternoon Mr. Murray,

Attached is a copy of Attorney Ufberg's 8/2/19 letter, with the Employer's Statement of Position and attachments, which was filed with the NLRB today. A hard copy will follow via regular mail.

Thank you.

Amanda D. Russell, Paralegal
Ufberg & Associates, LLP
310 Penn Avenue, Scranton, PA 18503
Phone: (570) 341-8800 Fax: (570) 341-8801

Robert Ufberg

From: Guzman, Francisco <Francisco.Guzman@nlrb.gov>
Sent: Friday, August 2, 2019 6:56 PM
To: Thomas Murray; Robert Ufberg
Subject: Re: EI HAB, Case 29-RC-245133

The Assistant Regional Director considered the Union's proposal for 6 locations but the Region wouldn't be able to conduct that election.

The Employer has agreed to cover the travel costs for employees to travel from the facilities they work at to the 2 proposed facilities to vote. As per Mr. Ufberg's message, the employer may also consider running vans to the voting locations in addition to providing public transportation. The parties should communicate directly about how to announce this to the employees so there is no confusion or that's it's not understood to be some sort of benefit.

If the parties can't come to an agreement, as I mentioned to you both, the Region will likely direct a mail ballot election.

From: Thomas Murray <tmurray@dc1707.net>
Sent: Friday, August 2, 2019 3:57 PM
To: Robert Ufberg; Guzman, Francisco
Subject: RE: EI HAB, Case 29-RC-245133

Proposed locations

- 1 - 3021 Atlantic ave Brooklyn 8am to 12noon (dayhab)
 - 2- 1574 E 95th street Brooklyn 7am to 10am
and 2pm to 430pm
 - 3- 222-40 96th ave Queen village 8am to 12noon (dayhab)
 - 4-7490 Rockaway Blvd Woodhaven 7am to 10am and 2pm to 430pm
 - 5- 177-50 S Conduit ave Springfield 8am to 12noon (dayhab)
 - 6- 170 -27 172nd street Tiff court 8am to 12noon and 430pm
- Polls in basement at all residents and Nurse room in all day habilitation.

From: Robert Ufberg <rufberg@ufberglaw.com>

Sent: Tuesday, July 30, 2019 5:30 PM

To: Reibstein, Nancy K. <Nancy.Reibstein@nlrb.gov>

Cc: Guzman, Francisco <Francisco.Guzman@nlrb.gov>; Lipin, Nancy <Nancy.Lipin@nlrb.gov>; tmurray@dc1707.net; imohan@dc1707.net; Joshua Thomas <joshua.thomas@eihab.org>; Rodney Brown <Rodney.Brown@eihab.org>; Amanda Russell <arussell@ufberglaw.com>

Subject: EI HAB Human Services, Case 29-RC-245133

Dear Acting Regional Director Reibstein –

I am e-mailing you the attached letter requesting a postponement of the hearing and the date for filing our Position Statement in the above case because of my receipt of Regional Director Drew-King's automatic 'out-of-office' reply directing recipients to contact you, if necessary. I thought it prudent if not necessary to do so.

FYI, our e-filing of this postponement request today occurred much later in the day than expected because just as we were in the process of e-filing, my computer shut down completely... which I assumed meant that we had somehow contracted a virus from EI HAB's problematic computer system (the reason for our postponement request). Actually, my backup battery system died at just that moment, and it took over an hour for it to be diagnosed, restored, and the letter e-filed.

Please feel free to contact me if you have any questions about the request. Thank you.

Best,
Bob Ufberg

Robert Ufberg
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Paralegal: Amanda Russell
arussell@ufberglaw.com

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

In the Matter of:

EIHAB HUMAN SERVICES, INC.,

Case No. 29-RC-245133

Employer,

and

**LOCAL 215, DISTRICT COUNCIL 1707,
AFSCME, AFL-CIO**

Petitioner.

AFFIDAVIT OF SERVICE OF: Employer's Request for Review

I, the undersigned, counsel for Employer, being duly sworn, say that on December 18, 2019, I served the above-entitled document by regular mail and e-mail upon the following persons, addressed to them at the following addresses:

Seth York, Esquire, Assistant General Counsel
District Council 37, AFSCME, AFL-CIO
125 Barclay St., 5th Fl.
New York, NY 10007
(Counsel for Petitioner)

Kathy Drew-King, Regional Director
NLRB – Region 29
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838

DATE: December 18, 2019

Robert Ufberg, Esq.



Counsel for Employer