

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

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Roseland Community Hospital,	)	
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Employer,	)	
	)	Case 13-RC-259788
and	)	
	)	
Service Employees International Union	)	
(SEIU) Healthcare Illinois & Indiana,	)	
	)	
Petitioner.	)	
	)	

**PETITIONER’S RESPONSE IN OPPOSITION TO EMPLOYER’S REQUEST FOR  
REVIEW AND EMERGENCY MOTION TO STAY THE ELECTION**

Petitioner Service Employees International Union (SEIU) Healthcare Illinois & Indiana respectfully submits this consolidated response in opposition to both the “Employer’s Request for Review of Regional Director of Region 13’s Decision and Direction of Exclusive Mail Ballot Disregarding the Stipulation of Petitioner and Respondent for a Manual Ballot Election,” filed June 14, 2020 (the “Req. for Rev.”) and the “Employer’s Emergency Motion to Stay the Election,” filed June 14, 2020 (the “Stay Mot.”).

Because the Regional Director’s decision in this case to order a mail-ballot election was well within his discretion and well supported by longstanding and recent Board authority, the Employer raises no substantial issues warranting review under 29 CFR 102.67(d). The Employer’s emergency motion for a stay of election and request for review should, therefore, be denied. Only three weeks ago, the Board approved the Regional Director’s order of a mail-ballot election in a case involving a different bargaining unit at the same acute-care hospital employer.

*See Roseland Community Hosp.*, 13-RC-256995 (Unpublished Order, May 26, 2020).

As to the Employer's request for a stay of the election, there is no basis for such "extraordinary relief" as the Employer has not, and cannot, make "a clear showing" that a stay "is necessary under the particular circumstances of the case." 29 CFR § 102.67(j)(2). The Employer's only claimed necessity for such relief is that any errors in the Regional Director's decision "cannot be remedied in post-election proceedings as the election already will be complete." (Stay Mot. at 2.) That, however, is not a basis for granting the extraordinary relief of staying an election, because the Board's rules expressly provide that the Employer may raise all of its arguments after the election. *See* 29 CFR 102.67(c) ("No party shall be precluded from filing a request for review of the direction of election within the time provided in this paragraph because it did not file a request for review of the direction of election prior to the election.").

Moreover, there is no basis for the Employer's request for a stay because the Employer's request for review is meritless. Regardless of the parties' agreement to participate in a manual election on June 11, 2020—a date that is now past, it was within the Regional Director's discretion to order a mail-ballot election, and he well-explained his logical, considered judgment in his decision, attached as Exhibit A.

The Regional Director correctly considered and applied the controlling authority from *San Diego Gas & Electric*, 325 NLRB 1143 (1998). *See* Ex. A, at 3-4. As the Regional Director correctly explained, the position of the parties is not controlling, but rather is only one factor that he is required to consider. *See* Ex. A., at 3 (citing *San Diego Gas & Elec.*, 325 NLRB at 1145).

Here, the Regional Director considered the position of the parties in detail, including the proposals for protocols the Employer claimed it was willing to provide to increase the safety of a manual vote. (Ex. A, at p. 3-4.) The Regional Director succinctly summarized his disagreement

as follows: “Certain safety measures, if obeyed by everyone and carried out to perfection, might limit some close interaction and mitigate some of [the] unnecessary risks associated with conducting a manual election here, but the Board’s mail ballot process all but eliminates the safety risks and equally ensures that employees can freely exercise their right to vote.” (Ex. A, at 3.)

Moreover, the Regional Director considered the current status of the governmental orders currently covering Chicago, Illinois in response to the continuing public health threat of the coronavirus. (Ex. A, at 2.) As the Regional Director correctly noted, “The State of Illinois has now entered Phase Three of reopening which still limits gatherings to 10 people or fewer.” (Ex. A, at 2.) And, “[t]he guidelines set forth for health care providers and facilities by the State of Illinois note that health care workers face a higher risk of acquiring COVID-19 due to their increased exposure. The State recommends providers take all efforts to minimize possible exposure to all healthcare workers, patients, and the public and to reduce the demand for personal protective equipment.” (Ex. A, at 2.)

The Employer disputes the Regional Director’s assessment of these facts, but that is not a valid basis for overturning the Regional Director’s decision. The Employer has presented nothing to establish that the Regional Director’s decision was either contrary to law or irrational so as to amount to an abuse of discretion.

The Employer also appears to again take issue with the Regional Director’s refusal to take formal testimony on the question of the manner of election, manual vs. mail-ballot. That argument, too, is still meritless. As the Board held in a case last month dealing with the same Employer, “there is no merit to the Employer’s contention that the Regional Director improperly denied the parties the opportunity to present evidence on the propriety of a manual election.” *See*

*Roseland Community Hosp.*, 13-RC-256995 (Unpublished Order, May 26, 2020) (citing 29 CFR 102.66(g)(1); *See Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954))). Notably, as the record here shows, the Employer had ample opportunity to present information and its position regarding method of election to the Regional Director during the administrative investigation.

Finally, the Employer's contention that the U.S. mail is currently too unreliable to be a valid method of election is also meritless. The Board has at least twice rejected similar arguments from Employers in recent days. *See Vistar Transp. LLC*, 9-RC-260125 (Unpublished Order, June 12, 2020); *Intercontinental Truck Body*, 19-RC-258144 (Unpublished Order, May 28, 2020).

In sum, the Regional Director's order of a mail-ballot election in this case was consistent with precedent, well reasoned, and well within his discretion and authority.

### **Conclusion**

The Employer has failed to establish that compelling reasons for granting review exist in this case. The request for review and emergency motion for stay of the election should, therefore, be denied.

Dated: June 15, 2020

Respectfully submitted,

/s/ George A. Luscombe III

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# Exhibit A



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June 10, 2020

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Re: Roseland Community Hospital  
Case 13-RC-259788

Dear Mr. Furlane and Mr. Luscombe:

Upon an administrative investigation and after careful consideration of the circumstances in the above-captioned case where the Region has directed an election, I have determined that a secret ballot election be conducted by U.S. mail.

On April 1, 2020<sup>1</sup> the NLRB announced that it would not extend the suspension of elections past April 3 and would “permit elections to resume in a safe and effective manner, which will be determined by the Regional Directors.” The Petitioner and the Employer agree that a manual ballot election should be held at the Employer’s facility on June 11, 2020. They proposed two options for possible polling locations as well as procedures for how to maintain social distancing during the election. One proposed location was a tent outside of the hospital which is adjacent to the testing site. They also proposed several possible safety protocols designed to limit possible spread of the virus. Despite this agreement, a review of the facts demonstrates that a mail ballot election is appropriate.

The pandemic health situation that exists in the United States affects the way that individuals, businesses, organizations and governments conduct their daily operations. The virus that causes COVID-19 is infecting people and spreading easily from person-to-person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. The Center for Disease Control (CDC) has also issued guidelines to help respond to this emerging public health threat. This situation poses serious health risks.

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<sup>1</sup> All dates hereafter are in 2020.

On March 9, Governor JB Pritzker declared all counties in the State of Illinois disaster areas due to the outbreak of COVID-19. On March 20, in response to the rapid spread of COVID-19 throughout Illinois and for the preservation of public health and safety, Governor Pritzker issued Executive Order 2020-10 directing individuals to stay at home and imposing social distancing requirements. On April 1, Governor Pritzker issued Executive Order 2020-18 extending Executive Order 2020-10 through April 30. On April 23, Governor Pritzker announced the extension of the Stay at Home order, with some modifications, through May 30. The State of Illinois has now entered Phase Three of reopening which still limits gatherings to 10 people or fewer.

At the time of issuance of the Direction of Election there had been 129,212 positive tests for COVID-19 in the State of Illinois and 6,018 related deaths with these numbers continuing to rise daily. In the zip code where the Employer is located, there have been 1,072 people who have tested positive for COVID-19. (<http://dph.illinois.gov/covid19/covid19-statistics>). Over the last four-week period, the number of positive test results in the State of Illinois increased by 61%, COVID-19 related deaths increased by 57%, and the number of positive test results in the Employer's zip code increased by 72%.<sup>2</sup> These numbers may not be fully representative of the extent of those infected due to known limited testing for the virus.

The guidelines set forth for health care providers and facilities by the State of Illinois note that health care workers face a higher risk of acquiring COVID-19 due to their increased exposure. The State recommends providers take all efforts to minimize possible exposure to all healthcare workers, patients, and the public and to reduce the demand for personal protective equipment. Thus, it encourages providers to strongly discourage persons who do not require medical care from visiting a healthcare facility. (<http://dph.illinois.gov/topics-services/diseases-and-conditions/diseases-a-z-list/coronavirus/health-care-providers>).

The Employer is an acute care hospital. It is currently a testing site for COVID-19 and provides life-saving treatment to COVID-19 patients at its facility during this pandemic. A tent has been erected outside of the facility where patients can drive up to be administered a test for the virus. There is another tent outside of the facility which is used for Emergency Department (ED) triage.

The petitioned-for unit consists of approximately 18 employees who work at the Employer's facility in the Adolescent Psych Unit. Children who require psychiatric care are placed in the Unit for short periods of time before they are released or transferred elsewhere. The periods typically last a few days to a few weeks. As healthcare professionals, the employees regularly interact with members of the public, including those who have tested positive for COVID-19. There is also the concern about employees who either are currently or in the future could be quarantined due to health concerns about contracting COVID-19. While the Employer

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<sup>2</sup> The percentage increase is based on the number of cases at the time a Decision and Direction of Election issued for the same Employer and location but different bargaining unit and the number of cases today. See, *Roseland Community Hospital*, 13-RC-256995.

asserts an employee who goes on emergency leave at the time of a manual election could have a ballot sent to their home, currently no procedure exists whereby those employees could vote in a manual election.

The parties propose holding a manual ballot election with certain safety protocols, however, at this time a manual ballot election cannot be safely held given the status of the Pandemic and the nature of the Employer's business. Certain safety measures, if obeyed by everyone and carried out to perfection, might limit some close interaction and mitigate some of unnecessary risks associated with conducting a manual election here, but the Board's mail ballot process all but eliminates the safety risks and equally ensures that employees can freely exercise their right to vote.

A manual election at the Employer's facility would require the participation of up to 18 voters, observers, the parties' representatives and at least one Board agent. Even the proposed voting area is near public areas which are likely to contain individuals who are carriers of the virus. Indeed, many of the employees' duties require them to regularly interact with members of the public. The Employer cannot know of or control for every member of the public who may be a carrier of the COVID-19 virus, and with whom the voters interact. Manual election procedures inherently require substantial interaction. Observers share the same list in marking off voters, and voters share the same voting booth in addition to depositing ballots in the same cardboard box. The parties propose that the Observers and Board Agent could all be seated six feet apart, but this ignores the fact that the Observers and the Board Agent must all check the same voter list. That cannot be done while simultaneously maintaining proper social distancing. The Board agent hands ballots to each voter and at the conclusion of voting, the Board agent conducts the count which requires the agent to handle each of the paper ballots previously handled by the voters.

In *San Diego Gas & Electric*, the Board noted that it had invested its Regional Directors with broad discretion to determine the method by which elections are conducted. *San Diego Gas & Electric*, 325 NLRB at 1144. However, the Board recognized that such discretion was not unfettered, and it set forth certain guidelines over that discretion. *Id.* In doing so, the Board stated that its policy was that elections should, generally, be conducted manually, but that there were some instances in which a mail ballot would be appropriate because "of circumstances that would tend to make it difficult for eligible employees to vote in a manual election." *Id.* In clarifying the guidelines for a Regional Director's discretion to order a mail ballot election, the Board directed that a Regional Director should consider "at least" where employees are geographically or temporally scattered, or where there is a strike, lockout, or picketing in progress. *Id.* at 1145. In those cases, the Board found that a Regional Director should also consider the positions of the parties, the ability of the unit employees to read and understand a mail ballot, the availability of addresses for employees, and the most efficient use of Board resources. The Board also recognized that there may be other relevant factors to consider, and that extraordinary circumstances may warrant a departure from the stated guidelines in the exercise of discretion. *Id.* at 1145. We are currently in a time of extraordinary circumstances.

Further, the efforts to slow the spread of COVID-19 have been engaged at all levels of society, and that includes the NLRB itself. Thus, I favor the method of election that avoids the risks or minimizes the potential to all parties of getting infected and/or spreading COVID-19. If a manual election were conducted, as the parties propose, at least one Board agent would be required to commute to the Employer's facility, thus increasing the probability of exposure for the agent, eligible voters, Employer representatives and Petitioner representatives. The Board Agent would be required to use scarce personal protective equipment. The majority of unit employees also have significant potential exposure to COVID-19 based on their regular contact with members of the public and commuting to and from work every day. As noted above, the entire State of Illinois is designated a disaster area with significant infection and death rates, particularly in and around the Chicagoland area. The threat of COVID-19 requires the use of discretion to protect the health and safety of all involved.

While the parties have agreed to a manual ballot election, the facts still show that an in-person election carries the risk of infection for all involved. Neither party has raised any argument that the petitioned-for employees would be unable to understand the mail balloting procedure. There is no contention that the addresses of the eligible employees are not known and up to date. Any mail ballot election, held at any time under any circumstances, includes procedures by which an employee who has not received a ballot in a timely manner may receive a duplicate. The mail ballot procedure would allow each eligible employee equal opportunity to vote even if they are quarantined due to exposure to COVID-19.

The most responsible measure to ensure a safe election is to conduct a mail ballot election, which will minimize the risk of exposing employees, Board agents, Employer and Union representatives, their families, and the public to this virus. Additionally, given the current rapidity of changes to both recommended and mandatory virus-countermeasures, a manual ballot election would be fraught with uncertainty and subject to unpredictable changes. It is not feasible at this time to conduct a manual election, as it is unknown when it would be safe to do so, especially in the healthcare field in which these unit employees work. A mail ballot election will provide the certainty of process and procedure to conduct an election within a reasonably prompt period and in an effective manner. The Board recently denied an Employer's request for review of the Regional Director ordering a mail ballot election for the same Employer and location but different bargaining unit. See, *Roseland Community Hospital*, 13-RC-256995 (Unpublished Order, May 26, 2020)

Pursuant to the Direction of Election in this matter, please be advised that a mail ballot election will be conducted in the following manner:

Those eligible to vote are:

**Included:** All full-time and regular part-time mental health associates and intake coordinators.

**Excluded:** All confidential employees, managerial employees, guards, and supervisors as defined by the Act.

The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 13, on Tuesday, June 16, 2020. Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 13 office by close of business on Monday, July 6, 2020. The mail ballots will be counted by via electronic means at 10:00 a.m. on Monday, July 13, 2020 with party representatives participating remotely.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 13 office by Monday, June 22, 2020 in order to arrange for another mail ballot kit to be sent to that employee.

Very truly yours,

*/s/Peter Sung Ohr*

Peter Sung Ohr  
Regional Director

cc:

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