

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

ASPIRUS KEWEENAW

Employer,

Case No. 18-RC-263185

and

MICHIGAN NURSES ASSOCIATION

Petitioner

EMERGENCY MOTION TO STAY MAIL-BALLOT ELECTION

NOW COMES the Respondent, Aspirus Keweenaw Hospital (“Aspirus”), by its attorneys, Michael Best & Friedrich LLP, pursuant to Section 102.67(j) of the National Labor Relation Board’s (NLRB or “Board”) Rules and Regulations, and respectfully requests the Board grant this emergency motion to stay the mail-ballot election ordered by the Regional Director, currently set to begin on August 24, 2020 at 4:30 p.m. pending the Board’s ruling on Aspirus’ Request for Review and ultimate decision on the mail-ballot election determination.

Alternatively, Aspirus requests the Board to impound the ballots pending the Board’s ruling on Aspirus’ Request for Review and ultimate decision on the mail-ballot election determination.

FACTUAL BACKGROUND

On August 17, 2020, Regional Director Jennifer A. Hadsall issued a Decision and Direction of a Mail-Ballot Election (“Order”) to begin on August 24, 2020 at 4:30 p.m. (Exhibit 1 to Request to Review). The Regional Director ordered a mail-ballot election despite the Parties’ mutual request to hold a manual election at Aspirus, an acute care hospital with advanced virus control protocols in place and with the capacity to implement all the recommended measures in GC Memo 20-10.

In arriving at her decision, the Regional Director misinterpreted and misrepresented critical COVID-19 data and applicable government orders and displayed a lack of thoughtful consideration of Aspirus’ reasonable plan to hold a safe manual election on-site. (Exhibit 5 to Request to Review). The

Regional Director's failure (and, in some cases, her plain refusal) to consider carefully critical data and alternatives to holding a mail-ballot election, coupled with her rigid and inaccurate analysis of relevant COVID-19 data and Governor Whitmer's executive orders, shows an abuse of discretion.

Consequently, the Regional Director's abuse of discretion has resulted in the scheduling of a mail-ballot election to begin a scarce week after she issued the Order and only 4 days from the filing of this Motion. In light of the particular circumstances of this election, the Regional Director's abuse of discretion calls for extraordinary relief in the form of a stay of the scheduled mail-ballot election pending the Board's ruling on Aspirus' Request for Review and, if granted, the Board's ultimate decision on the mail-ballot election determination.

ARGUMENT

Section 102.67(j)(1) allows a party requesting review to also move to stay the election and move to impound some or all of the ballots. To obtain extraordinary relief, the moving party must make "a clear showing that it is necessary under the particular circumstances of the case." § 102.67(j)(2).

For the reasons set forth in Aspirus' Request for Review, which demonstrate the Regional Director's clear abuse of discretion in ordering a mail-ballot election, and the extremely short timeframe the Regional Director imposed on the Parties prior to the start of the mail-ballot election, the circumstances of this particular election warrant a stay of the scheduled election.

In short, the present case involves an acute care hospital with enhanced virus control protocols presently in place, located in a region which the state of Michigan considers to be low risk for transmission and positivity rates, and one which is capable of implementing all of the additional recommendations for a safe manual election in GC Memo 20-10. If ever an opportunity for a safe manual election existed during COVID-19 pandemic, it is in this case. The Regional Director's clear abuse of discretion, as fully explained in Aspirus Request for Review, and tight timeline before the election begins, warrants an immediate stay.

CONCLUSION

For the foregoing reasons, the Board should grant Aspirus' Emergency Motion to Stay the presently scheduled mail-ballot election pending the Board's decision on Aspirus' Request for Review and ultimate

judgment on the mail-ballot election determination because extraordinary relief is required in view of the Regional Director's abuse of discretion in ordering a mail-ballot election and extremely short time frame before the mail-ballot election is to begin.

In the alternative, the Board should impound the ballots until the Board has considered Aspirus' Request for Review and reached an ultimate judgment on the mail-ballot election determination.

Dated this 19th day of August, 2020.

MICHAEL BEST & FRIEDRICH LLP

Electronically Signed By:

s/ Kevin Terry

Scott C. Beightol, SBN 1006422

Kevin Terry, SBN 1070488

Samuel M. Mitchell, SBN 1093820

790 N. Water St., Ste. 2500

Milwaukee, WI 53202-3509

Telephone: 414-271-6560

Facsimile: 414-277-0656

E-mail: scbeightol@michaelbest.com

E-mail: kterry@michaelbest.com

E-mail: smmitchell@michaelbest.com

Attorneys for Employer