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RisingGround.org

August 21, 2020

John J. Walsh, Jr.
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Suite 3614
New York, NY 10278-3699

Re: Employer Position Statement for Manual Election, Case No. 02-RC-264192

Dear Regional Director Walsh:

I am the General Counsel of Rising Ground, Inc. (the “Employer”). The Employer and Union in this representation case both support a traditional, manual election. In the parties’ August 18, 2020 stipulated election agreement, we agreed to submit to you the question of whether to conduct a manual versus mail ballot election. For the reasons set forth below, the Employer respectfully submits that a manual election should be conducted, in alignment with the Board’s long-standing preference for manual elections, as the below summarized arrangements and low COVID-19 infections in the area confirm that this election can be conducted safely under the guidance set forth in the General Counsel’s Memorandum 20-10.

Specifically, Memorandum GC 20-10 encourages review of numerous factors, including the size of the proposed bargaining unit, the election location, required staffing, the pandemic status at the election location, and appropriate arrangements to minimize or eliminate the possibility of virus transmission.

Here, the Employer proposes that the election take place **outside** the property at 1035 E. 233rd Street in the Bronx, New York. This address is a residential program with an accessible lawn and sizeable outside patio. The patio is 30 feet by 25 feet (750 square feet). The Employer would provide a table(s), chair(s), and tent or canopy for the comfort of the voters, observers and board agent. Attached as Exhibit 1 is a photograph of the proposed location.

No residents of the Employer’s group home nor staff other than voters would access the voting area, although the Employer notes that there are no confirmed or suspected cases of COVID-19 within the location’s staff or residents. Moreover, the Employer’s staff review and complete the health certification attached here as Exhibit 2 *each day* before starting their shifts. Residents have their temperatures taken daily, and they are constantly monitored for any COVID symptoms. In addition, the residence itself is cleaned at every shift (every eight hours) in a manner that exceeds CDC guidance and is in accordance with the program’s oversight body, the New York State Office for People with Developmental Disabilities.

In this case, the number of agreed-to eligible voters is nine, and with one additional employee subject to vote by challenge under the terms of the election agreement. We note that the employees voting in this election all work on site where the election would take place and have

continued to work throughout the COVID pandemic given the nature of our business and need to service the residents. The Employer would release the employee voters *one at a time* to ensure that only one voter would be present in the voting area. The parties would each have an observer and the Board Agent would be the fourth person in the area – all of whom, along with voters, could remain at a safe physical distance from each other and wear masks throughout the election. For example, each person would have at least six feet of distance between them and the next person and the Employer would provide markings to show the appropriate distance. The Employer also would construct plexiglass dividers for each station. The Employer has experience in creating these kinds of barriers. The Employer also would provide necessary supplies such as tape, eraser-less pencils, masks, gloves, sanitizer and wipes.

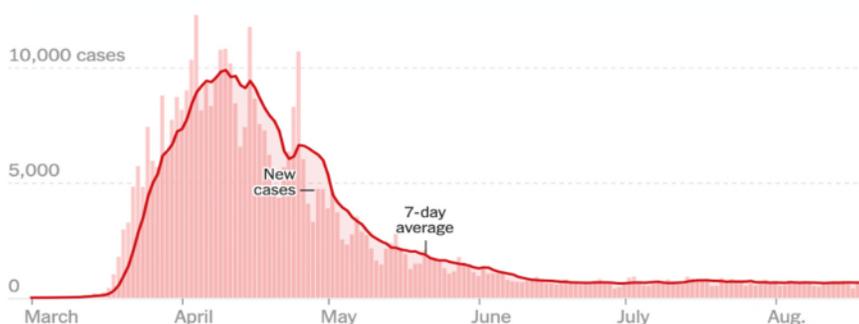
Voters would be able to enter the voting area one at a time, vote, and then exit without having to retrace their steps. Signage and/or ground markings would direct the voters' flow of traffic. And, as mentioned, this would occur entirely **outside** and next to the home under our proposal, where the constant airflow would further reduce any possible and minimal risk of virus exposure. The time of year – end of summer – likely will result in the temperature being within a comfortable range (as compared to mid-summer or winter).

Given these precautions, the Employer feels confident that a manual election could proceed safely. Based on current staff schedules, the election could take place during two brief periods, one on a Wednesday at 3 p.m., another on a Thursday at 9 a.m., with the week of August 31 or September 7 being possible weeks for the manual election.

The Employer also notes that as of August 21, 2020, across all of New York City on average only 300 new COVID-19 cases have been reported each day – out of approximately 8 million residents. <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html#county>. New York State as a whole currently has a new infection rate in all tests taken of less than 1 percent. <https://www.governor.ny.gov/news/governor-cuomo-announces-new-record-high-number-covid-19-tests-reported-and-lowest>.

Indeed, cases across all of New York have been very low and steady for the past few weeks -- around 600 new cases per day out of almost 20 million people -- with no sign of flare-ups or increases, including in this specific area.

New reported cases by day in New York



Note: The seven-day average is the average of a day and the previous six days of data.

In addition, New York has implemented one of the most aggressive restrictions on travel into and out of New York State to limit sources of new infections, which provides yet another reason to conclude that this geographic location is amenable to a manual election held outdoors.

Given the current state of the pandemic in the region and the precautions cited above, the risks of a manual election would be, at most, *de minimis*. The Employer would note that if this particular case is not amenable to a manual election conducted outdoors, it would appear that under no circumstances, including those with protocols meeting or exceeding the standards in GC Memorandum 20-10, and in areas of the country with robust COVID-19 precautions, minimal infection rates, and no signs of increasing infection, will manual elections ever occur until COVID-19 cases drop to a handful or zero out of millions of residents, or there is widespread, effective use of a vaccine for tens or hundreds of millions of Americans, which will not occur for at least another 6-12 months and may never occur.

Finally, given the small size of the bargaining unit here, even one or two mail ballots being “lost” or not timely delivered to voters or received by the NLRB could significantly impact the election outcome. The recent controversies over the U.S. Postal Service exacerbate this real concern. *See, e.g.*, <https://www.nytimes.com/2020/08/18/us/politics/postal-service-suspends-changes.html>.

For all of these reasons, the Employer respectfully requests that the Region conduct a traditional, manual election under the above-stated protocols and any other relevant guidelines to effectuate the policies and purposes of Memorandum GC 20-10.

Sincerely,

/s/ *Elise S. Zealand*

Elise S. Zealand, Esq.
Executive Vice President and General Counsel

cc: David R. Broderdorf









COVID-19 SCREENING QUESTIONNAIRE

Person's Name: _____ Program: _____

As the Covid-19 pandemic is still present, we continue to follow CDC and DOH guidance in order to prevent the spread of the virus and to reduce the potential risk of exposure in our employees and Persons Supported. For this reason, anyone coming into the program/office space must complete and submit this questionnaire prior to initiating his/her/their work. You are encouraged to take your temperature at home prior to coming to work. If you prefer to take your temperature at work, we encourage you to use the contactless thermometer provided. If the answer to any of the questions below is YES, and/or your temperature is above 100.0°F, we ask you to please immediately leave the office/premises, contact your supervisor via phone or text and go home.

The information on this form will be maintained as confidential. Any questions should be directed to Human Resources.

For the week of _____:

1	Are you currently experiencing, or have you experienced in the past 24 hours, any of the following symptoms? (Write Y for Yes and N for No)							
		Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Fever (100.0° F)							
	Cough							
	Shortness of breath							
	Sore Throat							
	New Loss of taste or smell							
	Chills							
	Head or muscle aches							
Nausea/Diarrhea/ vomiting								
2	In the past 14 days, have you sustained contact to anyone who has tested positive for Covid-19 or who has or had symptoms? Sustained contact means a contact of 15 minutes or more without social distancing of 6 feet or more and/or without wearing PPE. (Check box)							
		Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Yes							
No								
3	In the past 14 days, have you tested positive for COVID-19? (Check box)							
		Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Yes							
No								
4	Have you traveled to/returned from one of the designated states with significant community spread (Restricted States List)? (Check box)							
		Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Yes							
No								

Please note that this questionnaire will be updated as the CDC and DOH guidance on COVID-19 continues to change.

I hereby certify that the responses provided above are true and accurate to the best of my knowledge.

Signature: _____

Date: _____