

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

THE RIVERVIEW CARE CENTER

Respondent,

and

Case No: 14-RC-265356

**SEIU HEALTHCARE MISSOURI-KANSAS,
A DIVISION OF SEIU HEALTHCARE
ILLINOIS/INDIANA**

Petitioner.

EMERGENCY MOTION TO STAY MAIL-BALLOT ELECTION

Comes now Respondent, The Riverview Care Center (“Riverview”), by its attorneys, pursuant to Section 102.67(j) of the National Labor Relations Board’s (NLRB or Board) Rules and Regulations, and respectfully requests that the Board grant this emergency motion to stay the mail-ballot election as directed by the Regional Director’s September 24, 2020 Decision and Direction of Election. A mail ballot election in this case is currently set to begin at 3:00 p.m. on Friday, October 16, 2020.

Riverview is filing concurrently herewith its Request for Board Review of Acting Regional Director’s Order for Mail-Ballot Election (“Request for Review”), with exhibits.

I. BACKGROUND

The Riverview Care Center is a facility in St. Louis, Missouri which provides residential, assisted living, rehabilitation and skilled nursing for senior, sick or disabled residents. Since the beginning of the coronavirus pandemic, it has instituted advanced virus control protocols at its facility to ensure the safety of its residents and employees. It has also provided a plan to the Acting

Regional Director to implement all the recommended measures of General Counsel Memorandum 20-10.

On August 28, 2020, SEIU Healthcare Missouri-Kansas, a Division of SEIU Healthcare Illinois/Indiana (“Union”) filed an RC petition seeking to represent all full-time and regular part-time cooks, activity assistants, dietary aides, licensed practical nurses, graduate practical nurses, certified medication technicians, restorative aides, certified nursing assistants, housekeepers, laundry aides, and maintenance employee employed by Riverview at its facility in St. Louis. The parties entered into a Stipulation of Record on September 17, 2020, and on September 18, 2020, Riverview filed its Memorandum in Support of Manual Election. (Request for Review, Exhibits 2 and 3). On the same day, the Union filed its Position Statement on Method of Election. (Request for Review, Exhibit 4). The Acting Regional Director issued his Decision and Direction of Election (“Decision”) (Request for Review, Exhibit 4), directing a mail-ballot election, to begin on October 16, 2020 and to end on November 13, 2020. (Request for Review, Exhibit 5).

II. ARGUMENT

Section 102.67(j) of the Board’s Rules and Regulations allows a party requesting review to also move to stay some or all of the proceedings, including the election. 29 C.F.R. § 102.67(j)(1). To obtain extraordinary relief, the party requesting a stay must make “a clear showing that it is necessary under the particular circumstances of the case.” 29 C.F.R. § 102.67(j)(2).

The Acting Regional Director abused his discretion in ordering a mail-ballot election in this matter. He misinterpreted and misrepresented critical COVID-19 data, disregarded Riverview’s safety protocols in place since the beginning of the pandemic, and ignored Riverview’s reasonable plan to hold a safe manual election on site pursuant to the guidelines set

forth in GC Memo 20-10. The Acting Regional Director's substantial departure from Board precedent and abuse of discretion, as well as his rush in ordering the mailing of ballots make the need for a stay pending the Board's decision urgent.

The Acting Regional Director ignored Board precedent which favors a manual election. The Decision's emphasis on national data, as well as outdated COVID-19 numbers from Missouri and areas surrounding St. Louis, rather than current numbers of infection and deaths in St. Louis City, was an inappropriate standard for evaluating whether a manual ballot election should be held in this case. Additionally, the Acting Regional Director abused his discretion in refusing to consider the facts specific to Riverview's facility, and ignored evidence that contradicted his conclusion that the pandemic was an "extraordinary circumstance" warranting a manual ballot election. The Acting Regional Director also failed to take into account evidence regarding problems and delays of a mail-ballot election held over the same time period as the United States general election during a time when mail delays are inevitable. The Decision's failure to take into account evidence contradicting the conclusion that the pandemic is an "extraordinary circumstance" indicates an abuse of discretion.

Riverview has maintained enhanced virus control throughout the pandemic and, as demonstrated in its Memorandum in Support of Manual Election, is fully able to conduct an in-person election compliant with the requirements of GC Memo 20-10. For the reasons set forth in Riverview's Request for Review, which demonstrates the Acting Regional Director's clear abuse of discretion in ordering a mail-in ballot election, and the short time frame the Acting Regional Director imposed on the Parties prior to the start of the mail-ballot election, the circumstances of this election warrant the stay of the scheduled mail-ballot election.

III. CONCLUSION

For the foregoing reasons, as well as the reasons set forth in Riverview's Request for Review, the Board should grant The Riverview Care Center's Emergency Motion to Stay the mail ballot election scheduled for October 16, 2020, pending the Board's decision on Riverview's Request for Review and ultimate judgment on the mail-ballot election determination because extraordinary relief is required in view of the Acting Regional Director's abuse of discretion in ordering a mail-ballot election.

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

Respectfully submitted,

McMAHON BERGER P.C.

/s/ James N. Foster, Jr.

James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350 – Telephone
(314) 567-5968 – Facsimile
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2020, a true and correct copy of the above document was filed via electronically on the Board's website with the following individual:

Roxanne L. Rothchild
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

/s/ James N. Foster, Jr. _____

I further certify that on the 6th day of October, 2020, a true and correct copy of the above document was served via email, upon:

William B. Cowen
Acting Regional Director
National Labor Relations Board
Region 14
1222 Spruce Street
Room 8.302
St. Louis, MO 63103-2829

Amanda K. Hansen
Schuchat, Cook & Werner
555 Washington Avenue, Suite 520
St. Louis, Missouri 63103
akh@schuchatew.com

Attorney for Union

/s/ James N. Foster, Jr. _____