

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

**Newburg Egg Corp.,**

**Employer,**

**– and –**

**United Food and Commercial Workers Local 342,**

**Petitioner.**

**Case 03-RC-267766**

**Request for Review**

1. Newburg Egg Corp., the Employer in this matter (“Employer”), by and through its attorneys, Zabell & Collotta, P.C., hereby requests a review of the Supplemental Regional Director Decision on Challenged Ballots, dated March 11, 2021.

2. This request for review is made pursuant to Section 102.69(c)(2) of the National Labor Relations Board’s (the “Board”) Rules and Regulations and is made in accordance with the requirements set forth in Section 102.67(e) and (i)(1).

3. By way of background, over the Employer’s written objection, dated November 13, 2020, a mail-ballot election commenced on December 8, 2020 and ballots were counted on January 13, 2021.

4. The Regional Director issued a Supplemental Regional Director Decision on Challenged Ballots on March 11, 2021.

5. Employer requests review of the decision of the Regional Director to open and count the following: ballots that arrived unsealed (those bearing key numbers 14, 55, 135) and unsigned ballot (bearing key number 106).

**The Employer's Request for Review is Proper and should be Granted Regarding Unsealed Ballots**

6. Following collection of the ballots, the Employer challenged ballots bearing Key No.14; Bonilla, Brenda, Key No. 55; Flores, Oscar Armando, and Key No. 135; Ramos, Cindy because each of these ballot envelopes arrived unsealed. The Employer argued specifically that in such a circumstance it is impossible to determine if the ballots were actually cast by the employees. Further, unsealed ballots call into question who actually completed the ballot form and/or whether the vote has, in any way, been disturbed and/or altered.

7. The Regional Director overruled the Employer's challenge finding, "in examining the photos of the unsealed envelopes, I note that there is no sign of ripping, tearing or damage to the envelopes ... Rather, it appears that the seal/glue on the return envelopes simply loosened and the flaps failed to seal properly." Ultimately, he found "I am disinclined to disenfranchise voters due to inadequate envelope sealing, when there is no evidence of tampering, fraud, or irregularity in the manner in which the ballots were processed."

8. The Regional Director's decision represents an impermissible factual determination since the envelopes just as likely arrived unsealed for a nefarious reason. This decision is also a departure from officially reported Board precedent and review should therefore be granted under section 102.67(d)(1)(ii) of the Board's Rules and Regulations.

9. The Regional Director based his holding upon the notion that "instances of abuse in Board mail-ballot elections [are] almost non-existent." *Fessler & Bowman*,

*Inc.*, 241 NLRB 932, 934 (2004), citing *London's Farm Dairy*, 323 NLRB 1057, 1058 (1997).

10. Notwithstanding this general premise, “the Board has stated that election conditions must approach, as nearly as possible ideal ‘laboratory’ condition, so as to facilitate expression of the uninhibited wishes of the employees.” *Fessler & Bowman, Inc.*, 241 NLRB 932, 933 (2004) citing *General Shoe Corp.*, 77 NLRB 124, 127 (1948). Indeed, the “Board goes to great lengths to ensure that the manner in which an election was conducted raises no reasonable doubt as to the fairness and validity of the election.” *Id.*, quoting *Jakel, Inc.*, 293 NLRB 615, 616 (1989) (internal quotation marks omitted).

11. Further, relative to a manual election, the Board has stated that “whenever there is an appearance of irregularity in the handling of ballots... the Board has not hesitated to find the conduct objectionable.” *Id.*

12. However, “in mail-ballot elections, the Board agent is not present when the ballots are marked and returned by mail.” *Id.* The Board has found that it is reason why “mail ballots are accompanied by election kits that clearly specify the precise procedure for casting and returning the ballot. Where (like here) such procedures are not followed...the integrity of the election process are called into question.” *Id.*

13. Here, as acknowledged by the Regional Director, there is no dispute the return envelopes for the above-identified key numbers arrived unsealed. Moreover, the instructions indicate the envelopes are to be sealed. Notwithstanding these instructions, each identified voter failed to seal the envelope, which calls into question

whether they cast the ballots ultimately received by the Board Agent and whether the ballots were altered in any way prior to arrival.

14. The Regional Director's rationale that "instances of abuse in mail-ballot elections are almost non-existent" fails to adequately address the concerns raised by the Employer and does not comport with the Board's overall stated goal when conducting elections.

15. Accordingly, ballots bearing Key No. 14; Bonilla, Brenda, Key No. 55; Flores, Oscar Armando, and Key No. 135; Ramos, Cindy should not be counted.

**The Employer's Request for Review is Proper and should be Granted Regarding Unsigned Ballot**

16. Following the collection of ballots, the Employer also challenged Ballot bearing Key No. 106; Menjivar, Belkis based upon the ballot envelope being unsigned. The Employer specifically argued that absent a signature, the validity of the ballot cast cannot be determined.

17. The Regional Director overruled the Employer's challenge to No. 106 Menjivar, Belkis. The Regional Director held: "I have examined the return envelope and find, as the instructions provide, it bears a signature on the back side of the envelope. Although the signature is below the exact designated spot, which is across the back flap of the envelope, the envelope nevertheless clearly contains a signature on the back side of the envelope that identifies the voter assigned #106. Thus, as I have determined that this return ballot envelope contains a clear signature of the voter, I overrule the Employer's challenge and the ballot of #106 will be opened and

counted.”

18. Regional Director’s decision on a substantial factual issue is clearly erroneous. The existence of such an error is prejudicial to the rights of the Employer. Review should therefore be granted under section 102.67(d)(2) of the Board’s Rules and Regulations.

19. The Employer maintains that the unsigned envelope violates the instructions contained on the ballot envelope. *See* Photo of the back side of envelope for Eligibility Key Number 106 (Duplicate), attached hereto as Exhibit A.

20. As seen in Exhibit A – the instructions on the ballot return envelope state: “Seal Envelope. Sign Your Name Across the Flap. DO NOT PRINT.” (emphasis added). Below these instructions, there is a signature line, where the voter has been instructed to sign, which states: “I BELIEVE I AM AN ELIGIBLE VOTER. I PERSONALLY VOTED THE WITHIN BALLOT.” Below this certification is the case and ballot information including the Case Number, and the Eligibility Key Number. *See* Exhibit A.

21. The instructions do not simply provide to sign the backside of the envelope as found by the Regional Director in overruling the Employer’s challenge.

22. There is a handwritten notation between the typeface “Eligibility Key Number” and “106” which reads: “Belkis M”. *See* Exhibit A.

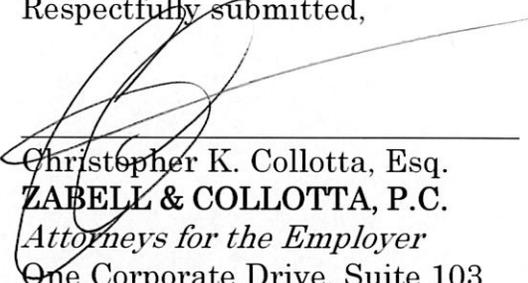
23. This ballot, bearing Key No. 106, with an incomplete signature, written in the wrong location, despite clear instructions, should not be opened or counted.

24. Accordingly, the Employer's request for review should be granted in its entirety.

Dated: Bohemia, New York  
March 25, 2021

Respectfully submitted,

By:



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# Exhibit A

**IDENTIFICATION STUB**

Seal Envelope. Sign Your Name Across the Flap. DO NOT PRINT.

I BELIEVE I AM AN ELIGIBLE VOTER.  
I PERSONALLY VOTED THE WITHIN BALLOT.

CASE NUMBER 03-RC-267766  
ELIGIBILITY KEY NUMBER *Belkiaz m*<sup>106</sup> (Duplicate)

JAN - 3 2021

Challenged by  
Employer  
Reasons:  
- duplicate  
- unsigned envelope



STATE OF CALIFORNIA DEPARTMENT OF STATE