SPFPA’S OPPOSITION TO MOTION FOR STAY OF ELECTION AND EXPEDITED CONSIDERATION

Respondent MVM, Inc. ("MVM" or "Employer") has filed a Request for Review of the Regional Director’s Decision and Direction of Election (“DDE”). It has simultaneously filed a Motion for Stay of Election and Expedited Consideration. MVM has not established that this form of “extraordinary relief” is warranted under Sections 102.67(c) or 102.67(j) of the Board’s Rules and Regulations. On the contrary, the Employer has failed to establish any grounds for review of the DDE, and the Request for Review should be denied, along with its Motion.

I. RELEVANT FACTS AND PROCEDURAL HISTORY

On January 13, 2022, the International Union, Security, Police and Fire Professionals of America (SPFPA) (hereinafter “SPFPA” or “the Union”) petitioned for recognition at the
Employer’s Phoenix, Arizona worksite. The parties entered into a stipulated election agreement on February 2, 2022. In the agreement, the Employer agreed to the following:

Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters.

(Emphasis added.)

This is consistent with the Employer’s obligation under Board Rule 102.62(d), which states:

Absent agreement of the parties to the contrary specified in the election agreement or extraordinary circumstances specified in the direction of election, within 5 business days after the approval of an election agreement pursuant to paragraph (a) or (b) of this section, or issuance of a direction of election pursuant to paragraph (c) of this section, the employer shall provide to the Regional Director and the parties named in the agreement or direction a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular “cell” telephone numbers) of all eligible voters.

(Emphasis added.)

Notwithstanding its commitments under both the Stipulated Election Agreement and Board Rule 102.62(d), the Employer submitted a voter list to the SPFPA in which it completely omitted the column for eligible voters’ home telephone numbers, although it had collected this information and, as noted in the Employer’s Request for Review of Regional Director’s Decision and Direction of Second Election, some voters had different home and cellular telephone numbers.

MVM’s Program Manager, Joseph Arabit, testified at the objections hearing that MVM “did not include a home phone column on the voter list ‘because the numbers were the same.’” DDE, p. 6. Arabit testified that the Employer subsequently learned that five employees had an additional home telephone number when reviewing the data. The Regional Director wrote: “The
Employer has not provided any legally sufficient justification for its omission of an entire category/column of contact information. Furthermore, the record does not show that the Employer notified the Union prior to the election that the numbers were the same for 87 of the 92 eligible voters.” DDE, p. 6

Between February 15, 2022 and March 2, 2022, a mail ballot election was conducted at the Employer’s Phoenix, Arizona worksite. The ballot count took place on March 10, 2022. The SPFPA lost the election, with 34 employees voting against Union representation and 15 voting in favor of it.

The Union filed timely Objections to the Election on March 17, 2022, in which it objected to the Employer’s failure to include home telephone numbers on the voter list. The Hearing Officer recommended that the RD overrule the objection as to the voter list, finding that the Employer had “substantially complied” with its obligations pursuant to Rule 102.62(d). The SPFPA filed Exceptions to the Hearing Officer’s Report and Recommendation.

The RD sustained the Union’s objection, writing:

In both Telonic Instruments and General Time Corp., the employer inadvertently omitted the information on the Excelsior list. Conversely, in the instant case, the Employer’s omission was not inadvertent or unintentional. The Employer may have believed removing the home phone column was inconsequential or harmless, but the Employer’s omission of the entire column on the voter list was nonetheless intentional. Furthermore, the Board has been clear about what “available” information needs to be produced and nowhere in the Rules and Regulations or case law does the Board grant discretion to an employer to pick and choose which contact information to include on the voter list. Section 102.62(d) and the Stipulated Election Agreement signed by the parties in this matter both unambiguously state that available home and personal telephone numbers are to be included on the voter list. Like the Board in Automatic Fire Systems, 357 NLRB 2340, 2341 (2012), I find the Employer’s intentional omission of information on the voter list, at the least, constitutes gross negligence and precludes me from finding that the Employer substantially complied with voter list requirements set forth in Section

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1 It also filed another objection, in which it asserted that the Employer improperly polled employees as to how they planned to vote in the election. It did not appeal the Hearing Officer’s recommendation that that objection be overruled. Accordingly, that objection was not before either the Regional Director or the Board at this stage of the proceedings.
102.62(d). In addition, the Board specifically noted in *Woodman’s Food Markets, Inc.*, 332 NLRB 503, 504-505 (2000) that “if the employer acted in bad faith, that is the end of the inquiry, and the election will be set aside.”

DDE, pp. 6-7.

The Employer has filed a Request for Review of the Regional Director’s Decision and Direction of Second Election, as well as a Motion for Stay of Election and Expedited Consideration. The SPFPA opposes both.

II. ARGUMENT

Expedited consideration and a stay are not appropriate because the DDE was based upon sound application of law and precedent, and thus there was no departure from precedent.

Board Rule 102.67(j) sets forth the “extraordinary” circumstances under which a stay may be granted:

*Requests for extraordinary relief.*

(1) A party requesting review may also move in writing to the Board for one or more of the following forms of relief:

(i) Expedited consideration of the request;

(ii) A stay of some or all of the proceedings, including the election; or

(iii) Impoundment and/or segregation of some or all of the ballots.

(2) Relief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case. The pendency of a motion does not entitle a party to interim relief, and an affirmative ruling by the Board granting relief is required before the action of the Regional Director will be altered in any fashion.

(Emphasis added.)
The Employer has essentially argued that the DDE was incorrectly decided, and that other parties will experience the impact of that DDE, and for these reasons, a stay should be granted.

As discussed more fully in the SPFPA’s Opposition to Request for Review of the Regional Director’s DDE, the DDE considered both the clear language of the Board Rules with respect to voters’ lists, as well as applicable law interpreting these Rules. It found that, unlike the cases that the Employer has cited, MVM’s failure to include home telephone numbers on the voter’s list was not a clerical error, typo, or some other form of mistake. On the contrary, MVM simply decided that it was not necessary to provide this entire category of information. Accordingly, its conduct amounted to at least “gross negligence” and possibly “bad faith”. Under Woodman’s, supra, that was the end of the inquiry and the election was set aside.

As to the assertion that the RD’s decision may impact parties other than MVM, this is false. Both before and after the RD’s DDE in this case, employers had an obligation to provide voters’ lists to unions that contained the voters’ home telephone numbers. Employers have never been free to pick and choose which categories of information they will provide to unions. This is especially true when employers enter into a stipulated election agreement in which they have contracted to provide this information.

There is no extraordinary circumstance present in this case that would justify a stay of the election. Accordingly, the SPFPA respectfully requests that the Board deny MVM’s Motion for Stay of Election and Expedited Consideration.
III. CONCLUSION

The SPFPA respectfully requests that the Board deny MVM’s Motion for Stay of Election and Expedited Consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that she electronically served a copy of these objections on July 7, 2022 upon the following:

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/s/ Rachel N. Helton
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