

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 04

THE NEWS JOURNAL (WILMINGTON))	
a division of Gannett Satellite Information Network,)	
LLC, a subsidiary of Gannett Media Corp)	Case 04-RC-57224
)	
and)	
)	
THE NEWSGUILD OF GREATER PHILADELPHIA)	
Communication Workers of America Local 38010)	
)	
Petitioner)	

RESPONSE IN OPPOSITION TO MOTION TO ORDER MAIL BALLOT ELECTION

Through its attorneys, The News Journal (Wilmington), a division of Gannett Satellite Information Network, LLC, a subsidiary of Gannett Media Corp., (the “Employer”), submits this opposition to the motion for the Regional Director to order a mail ballot election in this case.

FACTS & BACKGROUND

Stemming the spread of COVID-19 has upended workplaces across the Country. Closures abound, government shelter-in-place orders are being issued daily, and restrictions are consistently being placed upon all activity. The Board has closed many of its regional offices, and its headquarters in Washington, D.C., and announced on March 20, 2020 that all representation elections, including mail ballot elections, are suspended through April 3, 2020 as a result of the pandemic. The Governor of Florida has restricted travel within the state and has asked that the President declare the entire state a “disaster area.” The fluidity response to the pandemic has given rise to numerous uncertainties, and as a result, it is premature to address the appropriate terms for an election in this matter.

It its Motion, the Guild urges the Regional Director to order a mail ballot election as early as April 6, 2020, even though no one can be sure if the Board's offices will be open on that date. The Board has not articulated any rules that would apply to ensure that all ballots are counted in the event of a mail stoppage or slowdown. There is likewise no protocol for employees who may be ill and unable to timely return a ballot, no date can be provided that the ballots could be counted, and no protocol to ensure the safety of observers should a mail ballot occur. *Given the above considerations, no one can ensure that the pandemic will not substantively interfere with the voting rights of each voter.* Without the assurance that voting right will not be impeded, a mail ballot election cannot be directed. Instead, when the Board determines that current events allow for a safe election where every vote is protected, then it should, consistent with the current Stipulated Election Agreement, reschedule the date, time and place of the election.

ARGUMENT

In addition to the above, and contrary to the assertion by the Petitioner, the Regional Director does not have the authority to order a mail ballot under these circumstances. The Petitioner's reliance on *Ceva Logistics, U.S. Inc.*, 357 NLRB 628, 628 (2011) is misplaced. There, the election was pursuant to a Decision and Direction of Election whereas here, the election was scheduled pursuant to a stipulated election agreement. The Board has long held that election agreements, unlike directed elections, are binding "contracts," between the parties and, therefore, may be set aside only in limited circumstances¹ that do not exist here.

The Petitioner's assertion that the Regional Director's authority is not dependent on the provisions of the March 2, 2020 stipulated election agreement is wrong and simply ignores clear and long standing precedent to the contrary. Indeed, the Board has specifically held that a Regional

¹ *Barceloneta Shoe Corp.*, 171 NLRB 1333, 1343 (1968); *M.W. Breman Steel Co.*, 115 NLRB 247 (1956).

Director does not have the authority to direct a mail ballot election if the parties pursuant to a stipulated election agreement had agreed to a manual election *T & L Leasing*, 318 NLRB 324, 326–327 (1995) (setting election aside where regional director approved an election agreement for a manual election but then directed mail ballot election); *KCRA-TV*, 271 NLRB 1288 (1984) (Board set aside an election because two (2) employees were sent mail ballots notwithstanding that pursuant to the election agreement both were to vote manually stating that a party “is entitled to expect that other parties and agents of the Board will diligently uphold provisions of the agreement that are consistent with Board policy ...”).

Further, the Petitioner out of whole cloth asserts that the NLRB will begin conducting mail ballot elections before it will begin conducting manual elections. It is submitted that, at this point in time, no one knows what procedures the NLRB will implement or when those procedures will be implemented. Importantly, depending on when the NLRB begins to conduct elections, regardless of type, there may be other issues that will need to be resolved, such as eligibility cutoff date.

The Employer believes that it is premature to determine the appropriate terms for an election in this matter. The NLRB is not conducting either manual or mail ballot elections at this time. When the NLRB issues additional guidance with regard to how elections will be conducted in the face of health concerns surrounding COVID-19, the Employer will assess its position but certainly will not insist on election arrangements that could jeopardize the health of its employees.

CONCLUSION


To be clear, the Employer is not taking a definitive and final position with regard to the potential use of a mail ballot in this matter and is willing to follow the guidance of the Board at the appropriate time, but that time is not now. The Employer, however, does take the position that

the Regional Director, for the reasons set forth above, does not have the authority to direct a mail ballot election.

Dated: March 26, 2020

Respectfully submitted,

~~SEYFARTH SHAW LLP,
Attorneys for Respondent~~


By: _____

John J. Toner
Seyfarth Shaw LLP
975 F Street N.W.
Washington, DC 20004
P: (202) 828-3575
F: (202) 828-5393
jtoner@seyfarth.com