

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

**THE NEWS JOURNAL (WILMINGTON), a
division of GARNETT SATELLITE
INFORMATION NETWORK, LLC, a subsidiary of
GARNETT MEDIA CORP.**

and

Case 04-RC-257224

**NEWSGUILD OF GREATER PHILADELPHIA,
COMMUNICATIONS WORKERS OF AMERICA
LOCAL 38010**

ORDER DENYING PETITIONER'S MOTION FOR MAIL BALLOT ELECTION

On March 19, 2020, NewsGuild of Greater Philadelphia, Communications Workers of America Local 38010 (Petitioner) filed a motion requesting that Region Four of the National Labor Relations Board schedule a mail ballot election in this case, in which the parties had previously stipulated to a manual election. Petitioner's Motion was prompted by the Board's recent administrative decision to postpone all pending hearings and elections until at least April 3, 2020, in response to local, state, and federal guidelines promoting and requiring social distancing to stem the spread of the novel coronavirus. For the reasons set forth below, Petitioner's Motion is denied.

I. PROCEDURAL HISTORY

On March 2, 2020,¹ Petitioner filed a representation petition seeking to represent a bargaining unit of certain employees employed by the News Journal (Wilmington), a division of Garnett Satellite Information Network, LLC, a subsidiary of Garnett Media Corp (the Employer). On March 9, prior to a scheduled pre-election hearing, the parties reached an agreement on the terms

¹ All dates are in 2020, unless otherwise noted.

of an election for the petitioned-for bargaining unit (the Agreement). On March 10, I approved the Agreement and scheduled a manual election to take place on March 31 at the Employer's place of business.

On March 17, I informed the parties that the March 31 election was being postponed indefinitely due to public health and safety concerns. The parties were also informed that the election would be rescheduled when a manual election could be safely conducted, but they could, alternatively, voluntarily agree to conduct the election by mail ballot. The Employer declined to agree to a mail ballot election.

On March 19, the Board announced that it was suspending all elections, including mail ballot elections, until at least April 3, due to "the extraordinary circumstances related to the COVID-19 pandemic." Later the same day, Petitioner filed the instant Motion for Mail Ballot Election (Motion) requesting the Region to order a mail ballot election. On March 26, the Employer filed a response to Petitioner's Motion.

II. THE STIPULATED ELECTION AGREEMENT

Pursuant to the Agreement, the parties waived their right to a hearing and stipulated to various items including, *inter alia*, that: the Employer meets the Board's standard for jurisdiction; Petitioner is a labor organization; and the bargaining unit set forth in the Agreement is appropriate for the purposes of collective bargaining. The Agreement provides that the election should be conducted manually, during a one-hour session scheduled for March 31. Notably, the Agreement also includes a provision that: "If the election is postponed, the Regional Director, in his or her discretion, may reschedule the date, time and place of the election."

III. PETITIONER'S POSITION

Petitioner contends that the Agreement and longstanding Board law grant the Regional Director the authority unilaterally to order a mail ballot election in this matter. Petitioner further argues that because the coronavirus pandemic could prevent holding a manual election for months, the best way to implement the parties' agreement is by honoring, to the extent possible, their expressed preference for an election in the immediate future. For this reason, Petitioner argues, the Regional Director should order a mail ballot election commencing on April 6.

IV. THE REGIONAL DIRECTOR DOES NOT HAVE DISCRETION TO ALTER THE PARTIES' STIPULATED ELECTION AGREEMENT

It is the Board's longstanding policy that, "representation elections should, as a general rule, be conducted manually." *NLRB Casehandling Manual (Part Two) Representation Proceedings*, Sec.11301.2. However, the Board has also recognized that where conducting an election manually is "impractical or not easily done," a regional director may use his or her discretion to order a mail ballot election. *Id.* Circumstances favoring mail ballot elections include circumstances where eligible voters are "scattered," geographically or as to their work schedules, or where there is a strike, lockout, or picketing in progress. See *San Diego Gas and Electric*, 325 NLRB 1143 (1998).

This case, however, does not involve a regional director's initial determination as to how best to conduct an election. Rather, the parties have entered into a Stipulated Election Agreement providing that an election be conducted manually. In the event the election is postponed, as in the instant case, the Agreement provides the Regional Director the discretion to reschedule the "date, time, and place" of the election. The Agreement does not give the Regional Director the authority to change the manner in which the election is conducted.

The Board has long held that stipulated election agreements are “contracts” binding on the parties that execute them. *T & L Leasing*, 318 NLRB 324, 325 (1995); citing *Barceloneta Shoe Corp.*, 171 NLRB 1333, 1343 (1968). A regional director is therefore bound to the terms of these agreements upon approving them. *T & L Leasing*, 318 NLRB at 325, n. 6. Agents of the Board are expected to “diligently uphold provisions of the agreement that are consistent with Board policy and are calculated to promote fairness in the election.” *Id.* at 325. The importance of upholding the terms of the parties’ agreement is paramount, in part because parties often negotiate strenuously about the material terms of an election, including its date and method, *id.* at 326, and the results of these negotiations should be effectuated to the greatest extent possible. Here, while the parties’ Agreement foresaw the possibility that the election could be postponed and provided contingencies for that prospect, the Agreement did not foresee the possibility that a manual election could be rendered unfeasible and permit the method of conducting the election to be changed.

In *T & L Leasing*, the Board set aside an election where a regional director ordered a mail ballot election, contrary to the parties’ stipulation that the election be conducted manually. *Id.* at 324. While a regional director exercises broad discretion in directing the date, time, place, and method of representation elections, the Board held that this discretion is “circumscribed where elections have been negotiated by the parties and approved by Regional Directors in Stipulated Election Agreements.” *Id.* at 326, fn 13. In the instant case, my authority to direct whether an election is held manually or by mail is limited by the parties’ Stipulated Election Agreement. Because current Board law does not authorize me to alter the method of conducting the election in contravention of the parties’ Agreement, I do not have discretion to order a mail ballot election as requested.

According to Petitioner, the Employer's facility has been temporarily closed, and bargaining unit employees are currently performing their duties remotely from their homes. Thus, the bargaining unit at the present time is, arguably, geographically scattered, within the meaning of Casehandling Manual Sec. 11301.2 and *San Diego Electric*, supra. But this scattering is not expected to be permanent, and when Respondent resumes its normal operations, there is no reason why a manual election may not be conducted.

V. CONCLUSION

For the reasons stated above, Petitioner's Motion is denied. In accordance with my letter of March 17 and the Board's March 19 statement, the scheduled election remains postponed until the Board resumes the scheduling of elections.²

I am cognizant that this Order will result in an unfortunate delay in granting Unit employees the opportunity to exercise their Section 7 right to vote as to whether they wish to be represented by Petitioner, and I do not wish to appear to minimize the importance of a prompt election. Sadly, during these extraordinary times, in an effort to limit the spread of the coronavirus, many consequential proceedings and activities have been delayed or canceled, including important proceedings before courts and administrative agencies. The delay of this election, regrettably, is among the many significant consequences of the current crisis.

For the above reasons, the Petitioner's motion is denied.

² Notably, in the Board's March 19 statement suspending elections, the Board did not suggest that scheduled manual elections should be conducted by mail ballot at one party's request.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board’s Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board’s Rules and must be filed by April 10, 2020.

A request for review must be E-Filed through the agency’s website. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the request for review rests exclusively upon the sender. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: March 27, 2020.



Richard P. Heller, Acting Regional Director
National Labor Relations Board, Region 4