UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED MAINTENANCE COMPANY, INC.
Employer

and Case 13-RC-106926

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1
Petitioner

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 727
Intervenor

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review. The Regional Director's determination that Intervenor Local 727's collective-bargaining agreement does not operate as a bar to Petitioner Local 1's representation petition, because Local 727 effectively disclaimed interest in representing the Employer's employees, is consistent with applicable precedent. See *VFL Technology Corp.*, 332 NLRB 1443, 1443 (2000).

We grant the Employer's request for special permission to appeal[1] from the Regional Director's determination to conduct the election by mail ballot, and, contrary to our dissenting colleague, deny the appeal on the merits.[2] We find, for the reasons stated by the Regional

[1] We have treated the Employer's "request for review" of the Regional Director's mail ballot determination as a request for special permission to appeal.
[2] Member Miscimarra joins in the decision to grant the Employer's request for special permission to appeal from the Regional Director's decision to conduct a mail-ballot election, and would grant the appeal on the merits. He would find that a mail ballot election is inappropriate because this case does not involve the considerations necessary to permit the Regional Director to exercise his discretion to order a mail-ballot election. See *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998) (holding that discretion to order a mail-ballot election may be exercised only if eligible voters are "scattered" over "a wide geographic area" or "in the sense

Director in his July 24, 2013 letter to the parties, that he did not abuse his discretion in deciding to conduct the election by mail ballot. Appropriately applying the test set forth in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), the Regional Director observed that the Employer operates three shifts, that the employees on those shifts are dispersed across the three terminals at O'Hare International Airport, and that, on any given day, a large number of employees do not work any shift. Having determined that the employees are "scattered" (id. at 1145) over space and time, the Regional Director then reasonably considered the efficient use of Board resources, in particular, that a manual ballot election would necessitate multiple voting sessions and locations and, in addition, translators in at least two languages at each location. Finally, the Regional Director reasonably took account of the difficulties Board agents would face trying to access restricted areas at the airport.

In our view, the evidence of dispersal satisfied the *San Diego Gas & Electric* standard, and the Regional Director's ultimate direction of a mail ballot election was within his discretion. See, e.g., *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998) (regional directors retain broad discretion to choose between manual and mail ballot elections).

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

Dated, Washington, D.C., September 12, 2013

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that their work schedules vary significantly, so they are not present at a common location at common times," or "where . . . a strike, a lockout or picketing [is] in progress"). This case involves no strike, lockout or picketing; the Regional Director found that employee "work schedules do not vary"; and the eligible voters are not scattered over "a wide geographic area." Absent these considerations, administrative considerations (e.g., the potential need for translators, multiple election locations, and security clearances for Board personnel) do not warrant deviating from the Board's longstanding preference for conventional workplace elections. Id. at 1156 fn. 8. More generally, for the reasons stated by Members Hurtgen and Schaumber in *VFL Technology Corp.*, 332 NLRB 1443, 1444-1445 (2000), and *Garden Manor Farms, Inc.*, 341 NLRB 192, 192-194 (2004), respectively, Member Miscimarra would grant review and find that Intervenor Local 727's collective-bargaining agreement operated as a bar to Petitioner Local 1's representation petition notwithstanding Local 727's disclaimer of interest.