

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS PACIFIC ENGINEERING COMPANY
Employer

and

27-RC-258742

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION AFL-CIO
Petitioner

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.¹

¹ The Board's May 1, 2020 stay is lifted as of today's order. The Regional Director shall, as needed, issue a new Notice of Election providing an updated mail-balloting schedule.

In denying review, we note that the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998), recognizes that Board elections should, as a general rule, be conducted manually and specifies well-settled guidelines for determining whether a mail-ballot election would normally be appropriate. We agree with the Regional Director that, under normal circumstances, this would almost certainly not be an election where a mail ballot would be considered. But in *San Diego Gas & Electric*, the Board also recognized that "there may be other relevant factors that the Regional Director may consider in making this decision" and that "extraordinary circumstances" could permit a Regional Director to exercise his or her discretion outside of the guidelines set forth in that decision. *Id.*

In determining whether, on these facts, the Covid-19 pandemic constitutes an extraordinary circumstance, the Regional Director properly considered the detailed plan for conducting a manual election in a safe manner proposed by the Employer. Unit employees continue to report for work because the Employer's facility has been designated an essential business as part of the food supply chain. Ultimately, the Regional Director's principle concern over a manual ballot appears to be the safety of NLRB personnel.

While we certainly share this concern and it certainly is the Agency's responsibility to ensure the safety of NLRB personnel, the Board has not previously found, under *San Diego Gas & Electric*, that internal Agency considerations constitute extraordinary circumstances that would warrant conducting a mail-ballot election outside of the guidelines specified therein. In finding that a mail-ballot election is warranted in this case, we rely on the extraordinary federal, state, and local government directives that have limited nonessential travel, required the closure of nonessential businesses, and resulted in a determination that the regional office charged with conducting this election should remain on mandatory telework. Mandatory telework in the regional office is based on the Agency's assessment of current Covid-19 pandemic conditions in the local area. Under all of the foregoing circumstances, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., May 8, 2020.

Pursuant to Sec. 102.66(g)(1) of the Board’s Rules and Regulations, a hearing officer is required to solicit the parties’ positions regarding the type of election “but shall not permit litigation of those issues.” This provision is consistent with longstanding Board precedent holding that election details — including the type of election to be held — are nonlitigable matters left to the discretion of the Regional Director. See *Representation-Case Procedures*, 84 Fed. Reg. 69524, 69544 fn. 82 (Dec. 18, 2019) (citing *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1367 (1954)). As such, there is no merit to the Employer’s contention that the Regional Director improperly denied the parties the opportunity to present evidence on the propriety of a manual election, nor is there any merit to the assertion that the Regional Director inappropriately considered government orders and resources that are not contained in the record.

The Board is open to addressing the normal criteria for mail balloting in a future appropriate proceeding.