

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRINK'S GLOBAL SERVICES USA, INC.  
Employer

and

Case 29-RC-260969

LAW ENFORCEMENT OFFICERS  
SECURITY UNIONS (LEOSU),  
LAW ENFORCEMENT OFFICERS  
SECURITY AND POLICE BENEVOLENT  
ASSOCIATION (LEOS-PBA)<sup>1</sup>  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Order Denying Motion to Reopen the Hearing and Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>2</sup> The Employer's request for extraordinary relief is denied as moot.

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<sup>1</sup> The Regional Director inadvertently identified the Petitioner as "Law Enforcement Security Officers Unions (LEOSU) Law Enforcement and Police Benevolent Association (LEOS-PBA)." We have amended the caption to correct this error, which does not affect our decision.

<sup>2</sup> 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. 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 finding that a mail-ballot election is warranted in this case, we rely on the extraordinary circumstances resulting from the Covid-19 pandemic. The Board will continue to consider whether manual elections should be directed based on the circumstances then prevailing in the region charged with conducting the election, including the applicability to such a determination of the suggested protocols set forth in GC Memorandum 20-10. Under the circumstances present in this case, however, we are satisfied that the Regional Director did not abuse her discretion in ordering a mail-ballot election here.

The Employer contends that the Petitioner requested a manual election in its statement of position but sought a mail ballot election at the hearing, and that the hearing officer then

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

Dated, Washington, D.C., July 14, 2020.

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requested detailed information about the Employer's operations and denied the Employer's request for a continuance to provide the information through witness testimony. 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. Further, the Employer's subsequent motion to reopen the record was limited to "data regarding New York City's entering into Phase 2 of New York Forward..." The Regional Director considered these circumstances, which are a matter of public record, in her Decision and Direction of Election. See <https://forward.ny.gov/reopening-new-york-city> (last visited 7/9/2020). Under the foregoing circumstances, the Employer's contention that it was denied due process in the conduct of the hearing is rejected.

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