Michigan had recently experienced significant increases the number of COVID-19 cases. Moreover, she noted specifically that the Upper Peninsula of Michigan had recently seen a surge of COVID-19 cases beginning in July and continuing through August, and that as recently as late July the area had experienced its highest daily number of new cases to date. Likewise, the Regional Director cited a recent increase in the number of cases in Houghton County itself.

In addition to those circumstances, the Regional Director took into account national and state-level guidance discouraging unnecessary in-person contact and encouraging the remote completion of work whenever possible. Further, the Regional Director weighed the heightened risks to the assigned Board agent—who would be required to travel to and spend at least 2 nights in a hotel near the facility. She also carefully considered the risk profile of the Employer’s employees—who, as front-line healthcare workers, are already at greater risk of contracting the virus, and who certainly should not be exposed to still further risk unnecessarily. Finally, the Regional Director appropriately considered how best to maximize the Section 7 rights of all bargaining unit employees, noting that a manual election could actually disenfranchise employees who have or may have symptoms of COVID-19 and would thus be unable to participate the day of a manual election. By contrast, a mail-ballot election would give all employees, even those quarantining, an opportunity to express their desires regarding union representation.

gional Director’s thoughtful conclusions about how to best preserve public safety constituted an abuse of discretion. See National Van Lines, 120 NLRB 1343, 1346 (1956) (emphasizing that the Board has invested Regional Directors with broad discretion to determine the manner of conducting elections, and in the case presented refusing to nullify the Regional Director’s decision to conduct a mail-ballot election absent an affirmative showing of clear abuse). Accordingly, I would deny the Employer’s requests for a stay and review in their entirety.

Dated, Washington, D.C., August 25, 2020

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD