Perdue Foods LLC d/b/a Draper Valley Farms and Teamsters Local Union No. 252 Affiliated with the International Brotherhood of Teamsters. Case 19–RC–263822
September 9, 2020
ORDER
BY CHAIRMAN RING AND MEMBERS KAPLAN, EMANUEL AND MCFERRAN

The Employer’s Request for Immediate Stay of Mail Ballot Election is granted. The Employer’s request for review of the Regional Director’s Decision and Direction of Election also is granted, as it raises substantial issues warranting review.

Dated, Washington, D.C. September 9, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

It is well established that the mechanics of an election, including whether it is to be conducted by mail ballot, are within the discretion of the Regional Director. See San Diego Gas & Electric, 325 NLRB 1143, 1144 (1998). The Board affords Regional Directors broad discretion to determine the manner of conducting an election because factors relating to the site and timing of the election are “peculiarly within the Regional Director’s knowledge.” Manchester Knitted Fashions, Inc., 108 NLRB 1366, 1367 (1954). A Regional Director’s particular awareness of local matters bearing upon the administration of an election is especially relevant during this unprecedented public health crisis. COVID-19 has affected localities with varying infection rates and trends, and it has led to the curtailment of numerous social and commercial activities that vary greatly depending upon local conditions.

In this case, there is absolutely no basis to question the Regional Director’s careful recitation and weighing of concerns related to the spread of COVID-19 in the geographic area of the Employer’s site, and certainly no basis to conclude that he abused his discretion, in either his assessment of the seriousness of local health considerations—a matter over which the Board can claim no expertise—or his implementation of a mail ballot as an appropriate means to effectuate Section 7 rights while minimizing safety risks.

Specifically, the Regional Director examined state and local infection rates, as well as the articulated concerns of state and local officials with respect to infection trends. He considered state and local recommendations to limit travel and other public activities. The Regional Director further took into account the travel and personal interactions that necessarily occur during a manual election, even with safety protocols in place. He also observed that the Employer had not indicated whether it regularly requires employees to wear face coverings or maintain social distancing while working. Based on all of these considerations, the Regional Director rationally concluded that an election would be best conducted by mail balloting, for the safety of both the voting participants and—just as important, in my view—for the safety of the Board employee(s) involved.

While individual Board Members might themselves have reached a different conclusion, were they on the ground and immersed in the local conditions in the affected area, that is not the standard we should apply in
reviewing the Regional Director’s determination. Applying the correct standard, there is simply no basis to conclude that the Regional Director “clearly abused” his discretion. National Van Lines, above, 120 NLRB at 1346. Accordingly, I dissent.

Dated, Washington, D.C. September 9, 2020

Lauren McFerran, Member

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