

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIRGAS USA, LLC
Employer

and

Case 16-RC-262896

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 745
Petitioner

ORDER

The Employer's Emergency Motion to Stay Mail Ballot Election is granted. The Employer's Request for Review of the Regional Director's Decision and Direction of Election is granted in part, as his direction of a mail-ballot election raises substantial issues warranting review.¹

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., September 24, 2020.

MEMBER McFERRAN, dissenting in part.

I would deny the Employer's requests for a stay and review of the Regional Director's decision to order a mail-ballot election due to the threat posed by the COVID-19 pandemic.² The mechanics of an election, including whether it is to be conducted by mail ballot, lie within the discretion of the Regional Director. See *San Diego Gas & Electric*, 325 NLRB 1143, 1144 (1998). Here, the Regional Director clearly and rationally considered all the relevant circumstances, including those supporting the Employer's argument for a manual election, but on balance concluded that a mail-ballot election was warranted in this case. Although individual Board Members might themselves have struck the balance differently were they deciding the case in the first instance, that is not the applicable standard. Applying the correct standard, there

¹ We are not ruling, at this time, on the Employer's request for review of the Regional Director's appropriate-unit determination.

² I do not object to my colleagues' decision to defer ruling on the Employer's request for review of the Regional Director's appropriate-unit determination.

is no basis to conclude that the Regional Director “clearly abused” his discretion. *National Van Lines*, 120 NLRB 1343, 1346 (1958). Accordingly, I dissent.

Dated, Washington, D.C., September 24, 2020.

Lauren McFerran, Member

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