

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

UNION TANK CAR COMPANY

Employer

and

Case 12-RC-221465

INTERNATIONAL ASSOCIATION OF SHEET
METAL, AIR, RAIL TRANSPORTATION
WORKERS (SMART)

Petitioner

**SUPPLEMENT TO REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF SECOND ELECTION BY MAIL BALLOT**

The Regional Director's Decision and Direction of Second Election by Mail Ballot in the above case, issued on October 30, 2020, and corrected on November 3, 2020, is supplemented with the following information in light of the National Labor Relations Board Decision and Order issued on November 9, 2020, in *Aspirus Keweenaw*, 370 NLRB No. 45, wherein the Board provided guidance to Regional Directors for use in determining the method of voting during the Covid-19 pandemic, to be applied retroactively.¹ Among the situations which the Board determined to warrant a Regional Director's decision to conduct a mail ballot is when "[e]ither the 14-day trend in the number of new confirmed cases of Covid-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher." 370 NLRB No. 45, slip op. at 5. As of October 30,

¹ On November 3, 2020, the Employer filed a request for review of the Order Revoking Approval of Stipulated Election Agreement issued on October 13, 2020, and the Decision and Direction of Second Election by Mail Ballot issued on October 30, 2020. On the same date the Employer filed an Emergency Motion to Stay Mail Ballot Election. On November 10, 2020, the Petitioner filed an opposition to the Employer's request for review and emergency motion.

2020, the date of the Decision and Direction of Second Election by Mail Ballot, according to the Georgia Department of Public Health website, the 14-day positivity rate for Lowndes County, Georgia, which includes Valdosta, the city in which the Employer's facility is located and the site of the proposed manual election, was 10.6 percent.² The latest available 14-day positivity rate for Lowndes County reported by the Georgia Department of Public Health, as of the 14-day period ending November 6, 2020, was 9.3 percent.³ This evidence further establishes the propriety of a mail ballot second election, as found in the Decision and Direction of Second Election by Mail Ballot issued on October 30.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Supplement to Regional Director's Decision and Direction of Second Election by Mail Ballot until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied

² https://countyindicatorreport.s3.amazonaws.com/county_indicator_report_20201102.html#laboratory-tests

³ https://countyindicatorreport.s3.amazonaws.com/county_indicator_report_20201109_updated.html#laboratory-tests

by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: November 12, 2020.



David Cohen, Regional Director
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