

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNION TANK CAR COMPANY
Employer

and

Case 12-RC-221465

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

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Second Election by Mail Ballot is denied as it raises no substantial issues warranting review.¹ The Employer's Emergency Motion to Stay Mail-Ballot Election is denied as moot.

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
LAUREN McFERRAN,	MEMBER

¹ Applying the factors set forth in *Aspirus Keweenaw*, 370 NLRB No. 45 (November 9, 2020), to the conditions prevailing at the time the Regional Director made his determination, we are satisfied that the Regional Director did not abuse his discretion in ordering a mail-ballot election here. Under *Aspirus Keweenaw*, it is not an abuse of discretion for a regional director to direct a mail-ballot election where either 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. *Id.*, slip op. at 5-6. In his supplement to the Decision and Direction of Second Election, the Regional Director cites to data from the Georgia Department of Public Health website in which the 14-day testing positivity rate in the county where the facility is located was 10.6 percent leading up to the issuance of the Decision and Direction of Election, therefore meeting factor two of *Aspirus Keweenaw*, *supra*.

Member McFerran agrees to deny the Employer's Request for Review and Motion to Stay for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that even under the majority opinion in *Aspirus* the request and motion should be denied based on the recent positivity rate statistics set out above.

Dated, Washington, D.C., November 18, 2020.