

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

DECISION ON REVIEW AND ORDER REMANDING

On September 24, 2020, the Board granted the Employer's Emergency Motion to Stay Mail Ballot Election and granted in part the Employer's Request for Review of the Regional Director's Decision and Direction of Election, finding that the Regional Director's direction of a mail-ballot election raised substantial issues warranting review. The Board did not rule at that time on the Employer's request for review of the Regional Director's unit determination.

With respect to the unit determination issue, the Employer's Request for Review is denied, as it raises no substantial issues warranting review.¹

¹ In denying review, we find that the Regional Director properly concluded that the Employer failed to carry its burden of rebutting the single-facility presumption in favor of a unit comprising the Employer's production and distribution facilities in Dallas, Fort Worth, and Grand Prairie, Texas. In so finding, however, we (1) do not rely on his determination that two of the community-of-interest factors – similarity of skills, functions, and working conditions, and geographic proximity – weigh against rebutting the single-facility presumption; and (2) additionally rely on the absence of sufficient functional integration among the facilities in their production and delivery of gases. Further, we agree with the Regional Director's conclusion that the petitioned-for unit is appropriate despite including only the drivers at the Employer's Grand Prairie facility while excluding the production employees at that facility. However, in that regard, we do not rely on the Regional Director's finding that the included and excluded employees do not share similar terms and conditions of employment. We also do not rely on the Regional Director's inadvertent reference to the single-facility presumption in his discussion of the degree of functional integration between the drivers and the production employees at Grand Prairie. Finally, we find the Regional Director's analysis to be consistent with the first two steps of the test set out in *The Boeing Company*, 368 NLRB No. 67 (2019). And, with regard to the third step of that test, we find that there are no industry-specific guidelines applicable to the Employer's workplace. *Id.* at slip op. 4.

Member McFerran dissented from the Board's decision in *The Boeing Company*, above. Although she adheres to the views in that dissent, she agrees that the Regional Director correctly analyzed the petitioned-for unit and found it appropriate, regardless of whether the *Boeing* test or the Board's traditional community-of-interest standard is applied.

With respect to the mail-ballot determination, on November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which set forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic. Accordingly, the Board remands this proceeding to the Regional Director in order to reconsider his mail-ballot determination based on the guidelines set forth in *Aspirus Keweenaw* and in light of any changed circumstances.²

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

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

² The Board's September 24, 2020 stay is lifted as of today's order.

Member McFerran dissented from the Board's grant of a stay and review because the Employer did not establish that the Regional Director abused his discretion in directing a mail-ballot election. Nevertheless, and although she adheres to the views expressed in her separate opinion in *Aspirus Keweenaw*, she agrees this case should be remanded to the Regional Director to once again exercise his discretion to determine the appropriate manner of conducting the election.