

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FLEX-N-GATE CHICAGO, LLC
Employer

and

Case 13-RC-265966

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA-UAW
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

On November 9, 2020, the Board issued its decision in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), which sets forth the guidelines and parameters applicable to determining the propriety of a mail-ballot election under the current circumstances of the Covid-19 pandemic.

In denying review, we note that the direction of a mail-ballot election was consistent with the concerns articulated in *Aspirus Keweenaw*. Moreover, the election has been held and setting it aside would result in waste of resources and delay and would be a disservice to the employees who cast their ballots in good faith. Denying review is also warranted because the current trend in new cases in the City of Chicago, where the Employer's facility is located, would support a mail-ballot election under *Aspirus Keweenaw* if this election were set aside and a new determination were to be made now.² Under all of the foregoing circumstances, we find no reason to overturn the Regional Director's determination.

JOHN F. RING,

CHAIRMAN

¹ We also deny the Employer's Emergency Motion to Stay the Election as moot.

² As of the date of this Order, the 14-day trend in the number of new cases in the City of Chicago is increasing, and the 14-day testing positivity rate has remained at a sustained rate of over 10.0%. <https://www.chicago.gov/city/en/sites/covid-19/home/covid-dashboard.html>.

Member McFerran agrees to deny review of the Regional Director's Decision and Direction of Election for the reasons given in her separate opinion in *Aspirus*. She further agrees, however, that setting aside the election at this point would be inefficient and unfair to the unit employees, and that, even under the majority opinion in *Aspirus*, the Regional Director's decision should be affirmed based on the recent positivity rate statistics set out above.

WILLIAM J. EMANUEL, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., November 23, 2020.