

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

**AIRGAS USA, LLC,**

**and**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS WHOLESALE DELIVERY  
DRIVERS, GENERAL TRUCK DRIVERS,  
CHAUFFEURS, SALES, INDUSTRIAL AND  
ALLIED WORKERS LOCAL 848**

**and**

**JUAN BARRAGAN-SOLIS, an Individual**

**and**

**FERNANDO CARDONA, an Individual**

**Case Nos. 31-CA-226568  
31-CA-231728  
31-CA-250429  
31-CA-260893  
31-CA-260895**

**31-CA-234473**

**31-CA-234642**

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**MOTION FOR CONTINUANCE**

Pursuant to Sections 102.16(a-b) and 102.24(a) of the Rules and Regulations of the National Labor Relations Board, Respondent Airgas USA, LLC (“Airgas” or “Respondent”) moves to continue the hearing in the above-captioned matter, which is currently scheduled to begin on January 11, 2021 in Los Angeles, California (over zoom), to begin once the mandatory travel ban in Los Angeles County has been lifted. For the reasons set forth below, Respondent’s Motion should be granted.

Respondent seeks a continuance of the hearing due to California’s emergency shortage of medical oxygen<sup>1</sup>, the Hospital Surge State Public Health Officer Order of January 5, 2021<sup>2</sup>, and the Los Angeles County’s Mandatory Directive on Travel, issued December 30, 2020 (LA County Directive).<sup>3</sup> Due to the medical oxygen shortage, the Respondent’s party representative is unable to attend the hearing and testify because he must communicate daily with the State of California Office of Emergency Services, the Office of Statewide Health Planning and Development, and the LA County Emergency Medical Services Agency. And because the current COVID-19 surge in California has diminished Airgas’s driver and production operator workforce, the Respondent anticipates that the loss of any additional drivers due to subpoenas will interfere with its ability to maintain the uninterrupted distribution of medical gases to Los Angeles area hospitals. Moreover, the LA County Directive’s requirement that all individuals traveling to Los Angeles County must quarantine for at least ten (10) days after arrival prevents both Respondent’s lead counsel and Respondent’s Vice President and Labor Counsel from traveling to California to prepare witnesses and represent Respondent in the matter.

As a result of the medical oxygen shortage, Airgas is unable to balance its obligations to the medical community and the American public with its obligations to provide witnesses in the

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<sup>1</sup> The shortage of medical oxygen prompted the medical director for Los Angeles County’s E.M.S. agency to issue guidelines on January 3, 2021 directing the administration of the “minimum amount of oxygen necessary” to treat patients with COVID-19-related diminished blood-oxygen saturation levels. *See*, <https://www.nytimes.com/2021/01/05/us/running-low-on-oxygen-emergency-workers-in-los-angeles-county-are-told-to-administer-the-minimum-necessary.html>.

<sup>2</sup> *See*, [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Hospital-Surge\\_1-5-2021.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Hospital-Surge_1-5-2021.aspx),

<sup>3</sup> [http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Directive\\_Travel.pdf](http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Directive_Travel.pdf)

scheduled hearing. Due to the LA County Directive, Respondent's counsel is unable to effectively represent the Company for several reasons. First, some of Respondent's witnesses have never testified in any capacity, and prefer to prepare for the hearing in person and have counsel present for advice in the event an issue arises. Second, allowing Respondent's counsel to be in the state of California (instead of in South Carolina and Illinois) allows the Respondent to quickly gather information on site rather than delaying the proceeding waiting on documentation or witnesses. Finally, the inability of Respondent's counsel to be present in Los Angeles with Respondent's representatives compromises the ability and legal right to fully and effectively present evidence and cross-examine witnesses.

As mentioned above, the drastic surge of COVID-19 hospitalizations in the Los Angeles Region has caused Respondent to operate in dire conditions. The distribution challenges faced by Airgas have reached a critical level due to aging hospital infrastructure (medical gas piping systems, etc.), high volumes of medical-grade oxygen consumption, and unprecedented levels of employee absenteeism (due to COVID-19 positive tests, and COVID-19 symptom checks) at Los Angeles area Airgas facilities. Respondent's West Region executives are coordinating with multiple government agencies on a daily basis to ensure uninterrupted supply of medical oxygen to all of Airgas's Los Angeles area hospitals and other medical customers., Respondent's priority at this time must remain on ensuring the ongoing supply of life-saving medical gases to ensure that none of the Airgas-supplied institutions suffer run-outs. For example, yesterday, January 5, 2021,<sup>4</sup> a nation news headline ran that a hospital in California ran out of oxygen. This hospital was not a

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<sup>4</sup> <https://www.washingtonpost.com/health/2021/01/05/covid-hospitalizations-los-angeles-oxygen/>

customer of Respondent, but Respondent must ensure the health and safety of its customers' patients through uninterrupted distribution of medical gases; the anticipated number of subpoena requests to testify in this matter threatens Respondent's ability to maintain its current level of distribution. During the last hearing, Respondent failed to meet deliveries due to the number of delivery drivers and production employees who were subpoenaed to participate in the hearing. Therefore, the risk of disrupting Airgas business and the safety of the community is serious and real. A continuance of the hearing is necessary so that Respondent's Counsel can adequately represent it, and for Respondent's employees to provide urgent gases to hospitals, centers, and the like during the recent surge of COVID-19 cases in the Los Angeles County.

By contrast, there is no compelling need for the hearing to proceed until these concerns are resolved with the lifting of the travel ban, and a slow in the rapidly increasing numbers of COVID-19. This matter has largely been settled, and only small allegations remain to be heard before the Administrative Law Judge.<sup>5</sup> A delay based on mandatory travel bans will not harm any party in this matter.

The undersigned counsel was contacted by the General Counsel about the directive, and subsequently reached out to Union's Counsel.<sup>6</sup> General Counsel stated it would not oppose any motion based on a mandatory travel ban. The Union stated it would also not oppose a request to postpone through the month of January 2021.<sup>7</sup>

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<sup>5</sup> Specifically, the only remaining allegations include (1) 2018 wage increases in Ventura; (2) 2018 wage increases in Burbank; and (3) COVID-19 Changes in Burbank.

<sup>6</sup> Respondent did not reach out to Counsel for Juan Barragan and Fernando Cardona because the ULPs related to their allegations were settled.

<sup>7</sup> The Union stated it would not oppose a request to postpone through January but wanted an agreement to move forward in February. Based on the current travel ban not having an

Accordingly, the Respondent asks that this Hearing to be continued until the travel ban in Los Angeles County allows for Respondent's Counsel to travel to the County. Respondent proposes a confer in with the parties in two (2) weeks to assess the current pandemic situation in Los Angeles County, assess whether the ban has been lifted or modified, and determine how to proceed with the hearing.

For these reasons constituting good cause, Respondent respectfully requests that its Motion be granted and the hearing in this matter be continued.

Dated this 6th day of January, 2021.

OGLETREE, DEAKINS, NASH  
SMOAK & STEWART, P.C.



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expiration, the Respondent would ask that it is not limited to the Union's request, as Respondent has no control over COVID-19 and how Los Angeles County dictates its restrictions.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion for Continuance was electronically filed with the Division of Judges at [www.nlr.gov](http://www.nlr.gov) this 6th day of January, 2021.

I further certify that on January 6, 2021 a copy of the foregoing Motion to Postpone/Reschedule Hearing was served via electronic mail on the following:

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