

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

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| AIRGAS USA, LLC | Cases 31-CA-226568 |
| and | 31-CA-231728 |
| INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WHOLESALE DELIVERY DRIVERS, GENERAL TRUCK DRIVERS, CHAUFFEURS, SALES, INDUSTRIAL AND ALLIED WORKERS, LOCAL 848 | 31-CA-250429 31-CA-258850 31-CA-260893 31-CA-260895 |
| and | |
| JUAN BARRAGAN-SOLIS, an Individual | 31-CA-234473 |
| and | |
| FERNANDO CARDONA, an Individual | 31-CA-234642 |

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 February 1, 2021, in Los Angeles, California (by Zoom), to begin once the medical oxygen shortage has been abated and the mandatory travel ban in Los Angeles County has been lifted.

Respondent seeks a continuance of the hearing due to California’s ongoing emergency shortage of medical oxygen¹ and the Los Angeles County’s Mandatory Directive on Travel,

¹ The shortage of medical oxygen has been caused by aging infrastructure and hospital piping distribution systems that are unable to maintain the high rates of flow required by a surging COVID-19 patient populations. See, <https://www.latimes.com/california/story/2021-01-11/covid-19-hospitals-running-low-oxygen>. The situation originally 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-

issued December 30, 2020 (“LA County Directive”).² As an essential supplier of medical oxygen, Airgas has not only increased medical oxygen cylinder deliveries, but has been coordinating daily with the U.S. Army Corps of Engineers and the State of California Office of Emergency Service to assess eleven (11) aging hospital delivery systems.³ The U.S. Army Corps of Engineers selected five (5) of the eleven (11) aging hospitals for the immediate construction of outdoor tents and additional onsite bulk gases distribution systems, and four (4) of these five (5) are Airgas customers, serviced primarily from our Burbank, CA facility. As Airgas’ point person on this project (and the ongoing government coordination effort), Airgas’ West Region President cannot fulfil this essential role and serve as the Respondent’s party representative and witness in early February.

Furthermore, the COVID-19 surge in California has continued to diminish Airgas’ driver and production operator workforce; as a result, 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 Respondent’s counsel from traveling to California to prepare witnesses and represent Respondent in the matter.

Finally, Respondent and the General Counsel are currently pursuing settlement discussions on the only remaining Ventura allegation (2018 wage adjustments). Settlement of this allegation would prevent any witnesses (drivers, fillers, management) from having to

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>.

² http://publichealth.lacounty.gov/media/coronavirus/docs/protocols/Directive_Travel.pdf. Rather than regurgitate its arguments about the Travel Directive in this motion, Airgas incorporates by reference its arguments from its January 6, 2021, Motion for Continuance.

³ See, <https://www.latimes.com/california/story/2021-01-11/covid-19-hospitals-running-low-oxygen>.

testify during the hearing. This would help with the need to keep drivers on the road delivering critical gases, and would further decrease the length of the hearing. The supply challenges in the Los Angeles area have reached a critical level due to aging hospital infrastructure (medical gas piping systems, etc.), and the high volumes of medical-grade oxygen consumption. Airgas is an essential partner in the coordinated effort to ensure the ongoing distribution of medical oxygen to Los Angeles area hospitals. 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. Because 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 infections. This matter has largely been settled, and only small allegations remain to be heard before the Administrative Law Judge.⁴ A continuance based on mandatory travel bans will not harm any party in this matter.

On January 19, 2021, undersigned counsel contacted both the General Counsel and Union's Counsel. At the time of this filing, the General Counsel had not provided its position, and the Union objected to any additional continuance.

⁴ 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. And, as stated above, General Counsel and Airgas are currently negotiating potential settlement over the 2018 wage increases in Ventura.

Accordingly, the Respondent asks that this Hearing to be continued until the medical oxygen shortage is abated, COVID-19 infections decrease, and the travel ban in Los Angeles County allows for Respondent's Counsel to travel to the County. Respondent proposes a confer 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 19th day of January, 2021.

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AIRGAS USA, LLC,

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**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS WHOLESALE DELIVERY
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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 this 19th day of January, 2021.

I further certify that on January 19, 2021 a copy of the foregoing Motion for Continuance was served via electronic mail on the following:

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