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**Aspirus Keweenaw and Michigan Nurses Association,
Petitioner.** Case 18–RC–263185

August 25, 2020

ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN, EMANUEL,
AND MCFERRAN

The Employer’s Emergency Motion to Stay Mail-Ballot Election is granted. The Employer’s request for review of the Regional Director’s Decision and Direction of Election also is granted, as it raises substantial issues warranting review.

Dated, Washington, D.C. August 25, 2020

John F. Ring, Chairman

Marvin E. Kaplan Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MCFERRAN, dissenting.

There is no basis for even suggesting, let alone concluding, that the Regional Director abused her discretion in ordering a mail-ballot election based on the threats posed by the COVID-19 pandemic. Accordingly, the Board should deny both the Employer’s Emergency Motion to Stay Mail-Ballot Election and its request for review of the Regional Director’s Decision and Direction of Election.

The Regional Director clearly and rationally weighed all the relevant factors in deciding whether to order a manual or mail-ballot election. Thus, she expressly considered the current infection rate of the virus nationally, in the relevant States of Wisconsin (where the subregional Office is located) and Michigan (where the Employer resides), and in the locality of the Employer’s facility—Houghton County in the Upper Peninsula of Michigan. The Regional Director observed that both Wisconsin and Michigan had recently experienced significant increases

in the number of COVID-19 cases. Moreover, she noted specifically that the Upper Peninsula of Michigan had recently seen a surge of COVID-19 cases beginning in July and continuing through August, and that as recently as late July the area had experienced its highest daily number of new cases to date. Likewise, the Regional Director cited a recent increase in the number of cases in Houghton County itself.

In addition to those circumstances, the Regional Director took into account national and state-level guidance discouraging unnecessary in-person contact and encouraging the remote completion of work whenever possible. Further, the Regional Director weighed the heightened risks to the assigned Board agent—who would be required to travel to and spend at least 2 nights in a hotel near the facility. She also carefully considered the risk profile of the Employer’s employees—who, as front-line healthcare workers, are already at greater risk of contracting the virus, and who certainly should not be exposed to still further risk unnecessarily. Finally, the Regional Director appropriately considered how best to maximize the Section 7 rights of all bargaining unit employees, noting that a manual election could actually disenfranchise employees who have or may have symptoms of COVID-19 and would thus be unable to participate the day of a manual election. By contrast, a mail-ballot election would give all employees, even those quarantining, an opportunity to express their desires regarding union representation.

Based on all of those circumstances, the Regional Director exercised her discretion to order a mail-ballot election, and in my view the Board should respect her judgment. Significantly, the Board has denied review in a series of cases in which other Regional Directors have similarly directed mail-ballot elections based on the risks presented by the COVID-19 pandemic.¹ I see no reason for treating this case differently. The Employer certainly has not met the high bar of demonstrating that the Re-

¹ See, e.g., *Antioch Tire, Inc., d/b/a TredRoc Tire Service*, Case 13–RC–263043, rev. denied 8/19/20; *Daylight Transport, LLC*, rev. denied 8/19/20; *PACE Southeast Michigan*, Cases 07–RC–257046 and -257047, rev. denied 8/7/20; *SunSteel, LLC*, 19–RC–261739, rev. denied 8/4/20; *Brink’s Global Services USA, Inc.*, 29–RC–260269, rev. and request denied 7/14/20; *Roseland Community Hospital*, 13–RC–259788, rev. and request denied 6/25/20; *TDS Metrocom, LLC*, 18–RC–260318, rev. denied 6/23/20; *Vistar Transportation, LLC*, 09–RC–260125, rev. denied 6/12/20; *Twinbrook Health & Rehabilitation Center*, 06–RC–257382, rev. denied 6/5/20; *Seminole Electric Cooperative, Inc.*, 12–RC–256815, rev. denied 5/28/20; *2101 LLC d/b/a Intercontinental Truck Body*, 19–RC–258144, rev. denied 5/28/20; *Roseland Community Hospital*, 13–RC–256995, rev. denied 5/26/20; *Johnson Controls*, 16–RC–256972, rev. denied 5/18/20; *Touchpoint Support Services*, 07–RC–258867, rev. denied 5/18/20; and *Atlas Pacific*, 27–RC–258742, rev. denied 5/8/20.

gional Director's thoughtful conclusions about how to best preserve public safety constituted an abuse of discretion. See *National Van Lines*, 120 NLRB 1343, 1346 (1956) (emphasizing that the Board has invested Regional Directors with broad discretion to determine the manner of conducting elections, and in the case presented refusing to nullify the Regional Director's decision to conduct a mail-ballot election absent an affirmative showing of clear abuse). Accordingly, I would deny the

Employer's requests for a stay and review in their entirety.

Dated, Washington, D.C., August 25, 2020

Lauren McFerran, Member

NATIONAL LABOR RELATIONS BOARD