

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMAZON.COM SERVICES LLC
Employer

and

Case 10-RC-269250

RETAIL, WHOLESALE AND DEPARTMENT
STORE UNION

Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review. The Employer's Motion to Stay the Election Pending Review is also denied as moot.¹

¹ Chairman McFerran agrees to deny the Employer's Request for Review for the reasons given in her separate opinion in *Aspirus Keweenaw*, 370 NLRB No. 45 (2020), and to deny the Employer's Motion to Stay the Election as moot. She agrees that, even under the majority opinion in *Aspirus*, the Acting Regional Director's decision should be affirmed for the reasons stated in the Acting Regional Director's Decision and Direction of Election.

In denying review, Members Kaplan and Ring note that the Employer has certified that 218, or 2.88 percent, of the 7,500 individuals present at the facility have tested positive for COVID-19, are self-reported confirmed positives, or presumptive positives (COVID-positive individuals). This rate is considerably lower than the 14-day testing positivity rate for Jefferson County, Alabama, where the facility is located. Nevertheless, they find that the Acting Regional Director did not abuse her discretion in directing a mail ballot election pursuant to our recent decision in *Aspirus Keweenaw*, supra, because the Jefferson County 14-day testing positivity rate remains above the 5 percent level specified in *Aspirus Keweenaw*. Members Kaplan and Ring also agree with the Acting Regional Director's finding that the number of COVID-positive individuals at the facility reported by the Employer supports a mail ballot election as well, under factor 5 of *Aspirus Keweenaw* (current COVID-19 outbreak at the facility). They do not rely on the Acting Regional Director's finding that the 14-day testing positivity rate for Jefferson County, Alabama, was increasing, or on her statement that "any presence of Covid-19 in an employer's facility" favors conducting a mail ballot election under factor 5. Members Kaplan and Ring also find it unnecessary to pass on the Petitioner's contention that the 2.88 percent rate cited by the Employer understates the true rate of infection at the facility.

Although Members Kaplan and Ring acknowledge that the employees comprising this unit currently report to work – and have reported to work throughout the COVID-19 pandemic – at the Employer's Alabama facility, the factors specified in *Aspirus Keweenaw* are based on the Board's determination that the public interest and safety of all involved in the election is best served, at this time, by avoiding the type of in-person gatherings that a manual election entails in

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

Dated, Washington, D.C., February 5, 2021.

circumstances where the risk of additional spread of infection could not be reasonably denied. In finding that those concerns are implicated here, Members Kaplan and Ring note that the Employer's proposed manual election plan, which would require approximately 6,000 employees to vote in person over the course of four days, would necessarily involve gatherings of employees, party representatives, and Board personnel for a significant period of time.

Finally, Members Kaplan and Ring observe that the Employer's Request for Review raises concerns about potential disenfranchisement of voters resulting from the use of a mail ballot election here. While such concerns could be relevant to whether a mail-ballot election is appropriate, the circumstances presented here fail to establish that the Acting Regional Director abused her discretion. Any party is free to present evidence of any actual disenfranchisement of voters, if applicable, in post-election objections.