

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
UNIVERSAL LUBRICANTS, LLC)	
Employer,)	
)	
And)	Case No. 14-RC-105696
)	
UNITED STEELWORKERS)	
AFL-CIO, CLC)	
Petitioner.)	

MOTION TO STAY ELECTION

COMES NOW, Universal Lubricants, LLC (“Universal”), by and through its attorneys of record, hereby moves that the National Labor Relations Board (the “Board”) direct the Regional Director of Region 14 to stay the election currently scheduled for July 14 and 15, 2013 pending resolution of the Request for Review filed on June 25, 2013.

SPENCER FANE BRITT & BROWNE, LLP

/s/ David M. Kight
David Wing, Esq.
David Kight, Esq.
Denise Portnoy, Esq.
1000 Walnut – Suite 1400
Kansas City, Missouri 64106
(816) 474-8100 Telephone
(816) 474-3216 Fax
dwing@spencerfane.com
dkight@spencerfane.com
dportnoy@spencerfane.com

Attorneys for Universal Lubricants, LLC

I. THE BOARD MUST GRANT A STAY OF THE ELECTION

Section 11302.1(a) of the NLRB Case handling Manual (Part Two) Representation states: “If the Board does not rule on a request for review before the election, the Regional Director should proceed to conduct the election and segregate and impound the ballots, **unless the Board specifically directs otherwise.**” (Emphasis added). That Section also requires: “When the Board has not ruled on a pending request for review, **the election should be conducted in such a manner as to preserve all contested issues for Board determination . . .**” (Emphasis added). In this unique case, it would be impossible to preserve the most critical contested issue while conducting an election.

The Decision and Direction of Election in this case makes alleged “factual findings” with no citation to the record, are over-simplified, taken out of context, and are simply erroneous. These factual errors have materially prejudiced Universal by forcing an election to proceed with improperly included members. To include Universal’s Lead Operators in the petitioned-for bargaining unit given their authority puts them in a position to impose unlawful pressure on rank-and-file employees to support the Union, a clear violation of the Act. Here, no legally constituted Board exists and thus, it is impossible for Universal to have a complete and proper adjudication of its Request for Review.

As noted in its Request for Review, the National Labor Relations Act provides that in order for the Board to take any action, it must have a quorum consisting of at least three legitimately appointed members at all times. *See* 29 U.S.C. § 153(b); *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469, 473-475 (D.C. Cir. 2009), *aff’d sub nom. New Process Steel v. NLRB*, 130 S. Ct. 2635, 2644-45 (2010); *Noel Canning v. NLRB*, 705 F.3d 490, 499 (D.C. Cir. 2013). The three-member-composition requirement is “a threshold limitation” on

the scope of the power delegated to the Board by the Act: the Board cannot exercise its power through a delegee group if that group has fewer than three members. *NLRB v. New Vista Nursing & Rehab.*, No. 11-3440, 2013 WL 2099742 (3d Cir. May 16, 2013). This statutory mandate is therefore jurisdictional. *Id.* (citing *Arbaugh*, 546 U.S. at 515 (explaining that “threshold limitation[s] on a statute’s scope” imposed by Congress are jurisdictional); *Teamsters Local Union No. 523*, 624 F.3d at 1322 (holding that a “two-member NLRB group that issued the order in this case lacked statutory authority to act “ (emphasis added)). By explaining that three members are required “in order to exercise the delegated authority of the Board,” the Supreme Court has in essence declared that the three-member-composition requirement goes directly to the board’s “power to hear a case.” *New Process Steel*, 130 S.Ct. at 2644, *United States v. Cotton*, 122 S.Ct. 1781 (2002); see also *Noel Canning v. NLRB*, 705 F.3d 490, 497 (D.C. Cir. 2013) (“[T]he objections before us concerning lack of a quorum raise questions that go to the very power of the Board to act.”).

Currently, the Board has only one legitimately appointed member: Chairman Mark G. Pearce. Chairman Mark Pearce was appointed by President Obama and confirmed by the Senate on June 22, 2010, in accordance with the statutory requirements of 29 U.S.C. § 153(a). The recess appointments of Sharon Block and Richard Griffin were declared unconstitutional by the U.S. Court of Appeals for the District of Columbia. *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). The D.C. Circuit ruled that intra-session Presidential recess appointments to the NLRB are invalid because they exceed the scope of the President’s authority under the Recess Appointments Clause of the U.S. Constitution. *Id.* at 498, 514. Under that decision, the NLRB has been acting without a quorum since January 4, 2012. *Id.*

The Board has the authority to delegate its responsibility to make initial determinations of the appropriateness of bargaining units, including the determination of the status of supervisors to its Regional Directors, but the source of that authority is, at all times, with the Board. See 29 U.S.C. 154(a). During periods when the Board is unable to act, including periods when it lacks a quorum required by law, delegations to Regional Directors are inoperative. *Laurel Baye*, 564 F.3d at 473-475. Thus, the Acting Regional Director lacks the authority to order or to certify the result of any representation election absent authority. In *Noel Canning*, the court noted the employer had no obligation to ask the Board to decide issues it lacked the power to adjudicate. 705 F.3d 490. Additionally, the consolidation of Regions 14 and 17 and the appointment of the Regional Director of these consolidated regions were approved by the Board on or about December 6, 2012, when the Board did not have authority to act. 77 Fed. Reg. No. 235 pp. 72886-72889 (Dec. 6, 2012).

Moreover, in connection with directing elections or certifying election results, actions taken by a Regional Director pursuant to a delegation of authority may be appealed to the Board. See 29 U.S.C. § 153(b). Given that the Board lacks a valid quorum, the Board cannot rule on any appeal of a Regional Director's decision. This renders the ARD's Decision and Direction of Election void ab initio.

No legally constituted Board exists to hear Universal's Request for Review. Until such time as the U.S. Supreme Court rules upon the constitutional issues in *Noel Canning*, and further until such time as a validly appointed Board exists and hears the Request for Review, the Board should stay this election.

II. CONCLUSION

Universal moves that the Board direct the Regional Director of Region 14 to stay the election currently scheduled for July 14 and 15, 2013 pending a review of Universal's Request for Review filed on June 25, 2013 until such time as a validly existing Board can consider Universal's Request for Review.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE, LLP

/s/ David M. Kight

David Wing, Esq.

David Kight, Esq.

Denise Portnoy, Esq.

1000 Walnut – Suite 1400

Kansas City, Missouri 64106

(816) 474-8100 Telephone

(816) 474-3216 Fax

dwing@spencerfane.com

dkight@spencerfane.com

dportnoy@spencerfane.com

Attorneys for Universal Lubricants, LLC

CERTIFICATE OF SERVICE

The undersigned states that he filed a copy of the above and foregoing with the National Labor Relations Board via its E-File service and further e-mailed a copy on this 25th day of June, 2013 to:

Daniel L. Hubbel, Regional Director
National Labor Relations Board - Region 14
1222 Spruce Street - Room 8.302
St. Louis, MO 63103-2829
Daniel.hubbel@nlrb.gov

Jerry M. Perpich, Staff Organizer
United Steelworkers, AFL-CIO, CLC
2929 University Avenue, SE
Suite 150
Minneapolis, MN 55414
jperpich@usw.org

SPENCER FANE BRITT & BROWNE, LLP

_____/s/ David M. Kight
David Wing, Esq.
David Kight, Esq.
Denise Portnoy, Esq.
1000 Walnut – Suite 1400
Kansas City, Missouri 64106
(816) 474-8100 Telephone
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