

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

METALSA CORPORATION

and

Case 25-CA-165965

UNITED STEEL, PAPER AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY, ALLIED  
INDUSTRIAL & SERVICE WORKERS  
INTERNATIONAL UNION, AFL-CIO, CLC

GENERAL COUNSEL'S OPPOSITION TO  
RESPONDENT'S MOTION TO POSTPONE HEARING

Comes now Counsel for the General Counsel and submits this Opposition to Respondent's Motion to Postpone Hearing. A Complaint and Notice of Hearing issued in this matter on February 26, 2016. The hearing in this matter is currently scheduled to commence on May 24, 2016. On May 3, 2016 Respondent filed a Motion to Postpone Hearing in this matter seeking a 45 day postponement of the hearing to allow the Board additional time to rule on Respondent's Request for Review in Case 25-RC-164832. Respondent argues that the Board's ruling in that matter will affect the disposition of the instant case. The General Counsel opposes Respondent's motion to postpone, and as grounds therefore, the General Counsel states as follows:

1. There is no guarantee that the Board will review Respondent's request for expedited review in Case 25-RC-164832 within 45 days of the May 24, 2016, hearing date. If the postponement is granted, and the Board does not rule in Case 25-RC-164832, the only result of said postponement will be a delay in the resolution of the instant case.

2. Delaying the instant hearing in order to wait for the Board's ruling in Case 25-RC-164832 would only affect the disposition of this case in the event that the Board finds that

the Regional Director erred in continuing to hold the processing of the petition in Case 25-RC-164832 in abeyance pending the resolution of the instant case. The General Counsel does not believe that such a ruling by the Board will occur. The Region's decision to conduct the election but impound the ballots and to subsequently not count those impounded ballots is based on its view that the alleged unfair labor practice conduct in the instant case would have a tendency to interfere with the free and fair election atmosphere in which the Board desires to conduct elections, which is consistent with the Board's blocking policy. See CHM, Representation Proceedings, Sections 11730-11733. The circumstances here are different from *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961), which is cited by Respondent as this is not a postelection objectionable conduct consideration. The General Counsel is also confident that the Board will deny Respondent's Request for Review of the Regional Director's decision based on the Board's previous decision to block the processing of a petition until resolution of unfair labor practice charges which were based on pre-petition conduct. See *Mas Tec North America, Inc.*, 2015 WL 3761245 (unpublished decision, June 16, 2015); *Mark Burnett Productions*, 349 NLRB No. 68 (2007).

In the event the postponement is granted, and the Board rules, as the general Counsel believes it will, that the Region has acted properly in continuing to hold the processing of the petition in Case 25-RC-164832 in abeyance, Respondent has given no indication that it would then be willing to settle the instant matter. Such a ruling by the Board would put the parties back in the exact same position they currently occupy except that resolution of the instant case and of Case 25-RC-164832 would have been delayed by an additional 45 days.

3. Based on the forgoing, the General Counsel opposes any postponement of this matter. A postponement will result in an unnecessary delay of the resolution of the unfair labor practices given that there is no guarantee that the Board will review Respondent's request for

expedited review in Case 25-RC-164832 within 45 days of the scheduled May 24, 2016 hearing date. Even if the Board does issue a decision in in Case 25-RC-164832, the General Counsel contends that the Board will find that the Regional Director did not err in her decision to continue to impound the ballots, and the parties will be in the same position requiring the resolution of the unfair labor practices.

SIGNED at Indianapolis, Indiana, this 4<sup>th</sup> day of May 2016.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Beck". The signature is written in a cursive style with a large initial "M" and "B".

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Michael T. Beck  
Counsel for the General Counsel  
National Labor Relations Board  
Region Twenty-Five  
Minton-Capehart Federal Building, Room 238  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204  
Phone: (317) 226-5216  
Fax: (317) 226-5103  
E-mail: [michael.beck@nlrb.gov](mailto:michael.beck@nlrb.gov)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of General Counsel's opposition to Respondent's Motion to Postpone Hearing was served on the following individuals by electronic transmission on May 4, 2016.

Reyburn Lominack, III, Esq.  
Counsel for Respondent  
rlominack@laborlawyers.com

Benjamin Brandon  
Charging Party Representative  
bbrandon@usw.org

A handwritten signature in black ink that reads "Michael Beck". The signature is written in a cursive style with a large, looped "M" and a long, sweeping "B".

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Michael T. Beck  
Counsel for General Counsel