

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

European Imports, Inc.

and

Teamsters Local 703

Case Nos. 13-RC-192428

EMPLOYER'S EMERGENCY REQUEST FOR REVIEW

European Imports, Inc. ("Employer"), under Section 102.67 of the Board's Rules and Regulations, files this Emergency Request for Review of the Regional Director's decision to schedule a representation election just 5 business days after his Decision and Direction of Election. For the reasons set forth below, Employer submits the Region failed to comply with due process and fundamental fairness in announcing on February 16, 2017 that the election in this case will be held on February 23, 2017.

On Monday, February 13, 2017, the hearing officer opened the hearing to receive the parties' offers of proof on the date the election should be held. No other issue was raised or presented at the hearing. Among the concerns the Employer raised at the hearing about the Union's proposed election date, February 23, 2017, was that the Employer's inventory control and production employees were not identified in the initial petition filed by the Union, were not included in the original Notice of Petition for Election, and they would not know whether they were eligible to vote until the formal notice was posted following the Regional Director's issuance of the Decision and Direction of Election (D&DE). We argued setting the election on February 23 would not provide the employees (and the inventory control and production

employees in particular) adequate time and opportunity to consider and decide on the question concerning representation, and would even interfere with their ability to ensure they are present and available to vote on election day. (Attachment A, Declaration of Timothy S. Kamin). In addition, the Union would not receive the *Excelsior* list at least 10 days before the election, as specified in the Board's rules.

The Employer, and likely also the Union, expected to receive the D&DE if not by the afternoon of February 13, by no later than Tuesday, February 14. This was anticipated not only because that would be the ordinary timing on a D&DE following a "no issue" hearing, but also because if the election were to be held on February 23, just 10 days after the hearing, the parties needed ample time/notice to ensure the employees were well-informed on the parties' positions on the question concerning representation. The D&DE did not, however, issue.

On Tuesday morning, February 14, Timothy S. Kamin, Attorney for European Imports, checked the Board's website and saw a docket entry concerning the election, which set out the particulars that had been agreed to by the parties as to the unit, polling times, and location, and stating the election was set for February 23. The parties had not, however, received any notice from the Region that a D&DE had issued or an election date set. Consequently, Timothy S. Kamin contacted the Hearing Officer, Andrew Hampton, who confirmed the D&DE had not issued and the website posting was "inadvertent." (Attachment A, Declaration of Timothy S. Kamin).

The D&DE did not issue on Tuesday, nor did it issue on Wednesday. Instead, the Regional Director did not issue it until yesterday afternoon, Thursday, February 16. The D&DE set the election for February 23, which is exactly what the NLRB website "inadvertently"

indicated on Monday, February 13. Thus, the *Excelsior* list is not due to the Union, until Monday February 20, just three days before the polling is set to begin. No explanation has been provided as to why the Region did not issue the D&DE on Monday when the “inadvertent” website posting appeared, but rather waited three full days to issue the D&DE. Nothing has changed since the close of the hearing on Monday morning, or since the NLRB “inadvertently” posted the election date on the website on Monday. (Attachment A, Declaration of Timothy S. Kamin).

For the reasons specified in the Employer’s offer of proof at the February 13 hearing, and as further highlighted above, the Board should order the Regional Director to rescind the D&DE and set the election for March 1, 2017.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, LLC**

By: /s/ Brian E. Hayes
Brian E. Hayes
Attorney for European Imports, Inc.

Dated: February 17, 2017

ATTACHMENT A

DECLARATION

I, Timothy S. Kamin, declare under penalty of perjury that the following facts are true and accurate to the best of my knowledge:

1. I am a Shareholder employed by Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel to European Imports in case 13-RC-192428.
2. On Monday, February 13, 2017, the hearing officer opened the hearing to receive the parties' offers of proof on the date the election should be held. No other issue was raised or presented at the hearing.
3. Among the concerns the Employer raised at the hearing about the Union's proposed election date, February 23, 2017, was that the Employer's inventory control and production employees were not identified in the initial petition filed by the Union, were not included in the original Notice of Petition for Election, and they would not know whether they were eligible to vote until the formal notice was posted following the Regional Director's issuance of the Decision and Direction of Election (D&DE).
4. We argued setting the election on February 23 would not provide the employees (and the inventory control and production employees in particular) adequate time and opportunity to consider and decide on the question concerning representation, and would even interfere with their ability to ensure they are present and available to vote on election day. In addition, the Union would not receive the *Excelsior* list at least 10 days before the election, as specified in the Board's rules.
5. On Tuesday morning, February 14, I checked the Board's website and saw a docket entry concerning the election, which set out the particulars that had been agreed to by

the parties as to the unit, polling times, and location, and stating the election was set for February 23. The parties had not, however, received any notice from the Region that a D&DE had issued or an election date set. Consequently, I contacted the Hearing Officer, Andrew Hampton, who confirmed the D&DE had not issued and the website posting was “inadvertent.”

6. The D&DE did not issue on Tuesday, nor did it issue on Wednesday. Instead, the Regional Director did not issue it until yesterday afternoon, Thursday, February 16. The D&DE set the election for February 23, which is exactly what the NLRB website “inadvertently” indicated on Monday, February 13.
7. No explanation has been provided as to why the Region did not issue the D&DE on Monday when the “inadvertent” website posting appeared, but rather waited three full days to issue the D&DE.

In accordance with 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of February, 2017.

A handwritten signature in black ink, appearing to be 'T. W. J.', written over a horizontal line.

SIGNATURE

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Emergency Request for Review of the Regional Director's Decision has been served via email on the following on the date below by European Imports, Inc.:

Peter Sung Ohr
Regional Director
National Labor Relations Board, Region 13
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Chicago, IL 60604
peter.ohr@nllrb.gov

Robert Cervone
Dowd, Bloch, Bennett, Cervone, Auerbach, & Yokich
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Dated this 17th day of February, 2017.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: 
Andrew D. Frederick
Attorney for European Imports, Inc.