

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**STP NUCLEAR OPERATING
COMPANY**

Employer,

Case 16-RC-214839

and

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL 66.**

Petitioner.

**STP NUCLEAR OPERATING
COMPANY'S EMERGENCY MOTION TO IMPOUND BALLOTS**

Pursuant to the National Labor Relations Board Rules and Regulations §102.67(j), the Employer, STP Nuclear Operating Company (“STP” or “Employer”), by and through undersigned counsel, hereby files this Emergency Motion to Impound Ballots and requests that the Board consider its Motion by 9:00 P.M. tonight, March 13, 2018. This Motion is necessitated by the Regional Director’s Decision and Direction of Election in the above-captioned case which raises significant and substantial questions of law, and is based on incorrect findings of fact and conclusions of law.

I. BACKGROUND AND BASIC OVERVIEW

International Brotherhood of Electrical Workers, AFL-CIO Local 66 filed its Petition in the above captioned matter on February 14, 2018. The Union sought an election in the following unit:

Included: All full time Senior Reactor Operators at STPNOC (South Texas Project Nuclear Operating Company).

Excluded: All other employees, supervisors, and guards as defined in the National Labor Relations Act.

A hearing officer of the Board held a hearing in this matter on February 26, 2018 to determine the scope of the unit sought by the Union. The Employer challenged the petitioned-for unit. At the hearing, STP presented evidence through testimony and documents to establish that the petitioned for Senior Reactor Operators/Unit Supervisors (hereinafter, “Unit Supervisors”) met the definition of supervisors under Section 2(11) of the Act. Notwithstanding, in his March 7, 2018 Decision, the Regional Director concluded that none of the members of the petitioned-for unit met the definition of statutory supervisors and ordered an election, which is scheduled to be held on March 14, 2018 from 5:00 a.m. to 9:00 a.m. and 5:00 p.m. to 7:00 p.m. at the Employer’s Joint Information Center located on Highway 60 in Bay City, Texas. In his decision, the Regional Director failed to consider the significant evidentiary record and Board precedent related to the supervisory status of the entire unit. The Regional Director also ignored that similar Unit Supervisors at nuclear facilities across the United States are bound by the same regulations and protocols as the petitioned-for individuals and the lack of precedent for defining these control room supervisors as covered by the Act. STP intends to file a Request for Review to the Board in response to the Regional Director’s Decision but is filing this Motion to Impound Ballots to seek immediate relief from the Board prior to the election scheduled on March 14, 2018.

II. BALLOT IMPOUNDING STANDARD

Section 102.67(j) of the Board’s Rules and Regulations provides that “a party requesting review may also move in writing to the Board for one or more the following forms of relief: (i) Expedited Consideration of the request, (ii) A stay of all of the proceedings, including the election; or (iii) Impoundment and/or segregation of all of the ballots.” Section 102.67(j) goes on to say that “[r]elief will be granted only upon a clear showing that it is necessary under the

particular circumstances of the case.” For example, Former Acting Chairman Miscimarra stated that the aforementioned “extraordinary relief” exists when important election-related questions will likely require many months and possibly years to resolve. *Yale Univ.*, 365 NLRB No. 40 (Feb. 22, 2017) (Miscimarra, P., dissenting).

III. ANALYSIS

The circumstances surrounding the Regional Director’s determination of the supervisory status of STP’s Unit Supervisors necessitates extraordinary relief by the Board because it raises important legal and jurisdictional issues surrounding the Regional Director’s failure to consider STP Unit Supervisors as supervisors under Section 2(11) of the Act, and, more generally, the Board’s jurisdiction over Unit Supervisors across the nuclear power industry.

Based on the undisputed evidence presented at the hearing, the Unit Supervisors possess multiple indicia of supervisory authority as defined in the Act. Specifically, they are vested with the authority to assign and responsibly direct the employees on their shifts based on their own judgment as to priority, skill, and workload. Unit Supervisors also have the authority to recommend discipline be issued to employees and recommend the severity of discipline, as well as reward employees for good job performance. Accordingly, because Unit Supervisors should not be included in the election scheduled for March 14, 2018, the ballots cast should be impounded pending the Board’s final disposition of this matter.

Even more compelling is the broader issue regarding the Board’s jurisdiction over Unit Supervisors at nuclear power facilities across the country raised by the Regional Director’s decision. Due to the heavy regulation in the industry, the operations at nuclear power facilities and the duties and positions of employees at these facilities are distinctly uniform from nuclear power company to nuclear power company. This uniformity is evidenced by the fact that the

duties of Senior Reactor Operators (a title this is a required for the position of Unit Supervisor) are explicitly defined by a federal regulation. Specifically, the regulation states that a “*Senior operator* means any individual licensed under this part to manipulate the controls of a facility and to direct the licensed activities of licensed operators.” 10 CFR § 55.4. It follows that the position and duties of Unit Supervisors are not distinct to STP, but rather all nuclear power facilities have employees with similar titles and identical duties as the petitioned-for employees in this matter. Accordingly, the Board’s determination of the supervisory status of the Unit Supervisors at STP would likely be dispositive of the supervisory status of Unit Supervisors across the nuclear power industry. Therefore, the precedential impact of the Board’s final decision in this case warrants the impounding of the ballots cast in the March 14, 2018 election.

IV. CONCLUSION

In light of the foregoing, STP respectfully requests that the Board order all ballots cast in the March 14, 2018 election be impounded pending the Board’s determination of STP’s forthcoming Request for Review of the Regional Director’s Decision and Direction of Election.

HUNTON & WILLIAMS LLP

/s/ Alan J. Marcuis

Alan J. Marcuis
Fountain Place
1445 Ross Avenue, Suite 3700
Telephone: 214-979-3000
Facsimile: 214-880-0011
Email: amarcuis@hunton.com

Amber M. Rogers
Fountain Place, Suite 3700
1445 Ross Avenue
Dallas, Texas 75202-2799
Telephone: 214-979-3000
Email: arogers@hunton.com

Attorneys for Employer

CERTIFICATE OF SERVICE

I certify that on the 13th day of March, 2018, I caused the foregoing to be electronically filed with the National Labor Relations Board at <http://nlrb.gov> and a copy of same to be served on the following parties of record via e-mail:

Margret E. Lecoche
Williams Kherkher
8441 Gulf Freeway, Suite 500
Houston, Texas 77017-5051
Phone: (713) 230-2200
mlecoche@williamsherkher.com

/s/ Alan J. Marcuis

Alan J. Marcuis