

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

TROUTBROOK COMPANY LLC D/B/A
BROOKLYN 181 HOSPITALITY LLC

Employer,

and

Case No. 29-RC-216327

NEW YORK HOTEL & MOTEL TRADES
COUNCIL, AFL-CIO (HTC)

Intervenor-Cross Petitioner.

**EMPLOYER TROUTBROOK COMPANY LLC'S REQUEST FOR
REVIEW AND STAY OF THE REGIONAL DIRECTOR'S
DECISION ON OBJECTIONS TO RERUN ELECTION AND
CERTIFICATION OF REPRESENTATIVE**

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EMPLOYER'S REQUEST FOR REVIEW

Pursuant to Sections 102.69(c)(2) and 102.67 of the Board's Rules and Regulations, Troutbrook Company LLC ("Employer" or "Troutbrook") respectfully submits this Request for Review and Stay of the Decision on Objections to Rerun Election and Certification of Representative (the "Certification Decision") in the above-referenced matter, and submits that the Certification Decision should be overturned.

Specifically, the Certification Decision effectively endorses the Intervenor's unremedied and unlawful misconduct in this proceeding; including but not limited to the Intervenor: (1) threatening employees that they would be terminated if they did not vote for the Intervenor; (2) threatening employees that they would receive no strike benefits if they did not vote for Intervenor while other employees would receive those benefits; (3) lying about the bargaining process and unlawfully promising employees \$800 per week if they were to go out on strike. The failure to consider this misconduct, which was never remedied and continued to interfere with employee free choice through the Rerun Election, is inconsistent with Board law regarding free choice in an election, and should therefore be overturned.

The Regional Director also erred in denying a hearing for the Employer's objection to: (1) the Board's 2015 Representation Election Rules, and (2) the Board's practice of deferring to the internal politics and procedures of the AFL-CIO in election petitions instead of the Section 7 right of employees to select their representative. Finally, the Regional Director erred in refusing to consider Board misconduct that went unremedied and created the impression that the Intervenor was controlling the Board's processes, including misconduct occurring on the election date of June 26, 2018.

As set forth in more detail below, this Request for Review is warranted under three of the four grounds set forth in 29 CFR § 102.67(d), because these errors: (1) involve a

departure/misapplication of Board precedent; (2) ignore factual evidence that shows the continuing impact of this misconduct through the Rerun Election; and (3) resulted in denial of a hearing, which is prejudicial error. In the alternative, to the extent that the Certification Decision is considered to be consistent with Board law, there are compelling reasons to reconsider Board law, which is the fourth basis for a proper Request for Review.

I. Factual Background and Procedural History

On March 12, 2018, Petitioner, Warehouse Production Sales & Allied Service Employees Union Local 811 (“Petitioner” or “Local 811”) filed a petition with Region 29 to represent certain employees at the Employer’s 181 3rd Avenue, Brooklyn, New York location.

Four days later, on March 16, New York Hotel & Motel Trades Council, AFL-CIO (“Intervenor” or “HTC”) sought to intervene. The Regional Director for Region 29 scheduled a pre-election hearing for March 24, 2018.

The Regional Director for Region 29 then waited until seven days after HTC’s intervention, and more specifically until after 12:00 Noon on March 23, 2018, before issuing a last-minute cancellation of the hearing, coupled with an order holding the case in abeyance for an extended period of time despite the Board’s policy favoring expeditious elections.

The Employer filed and served its Statement of Position, including mandatory disclosure of the names, titles, and job classifications of all employees in the proposed unit, just before 12:00 Noon on March 23, 2018.

At 1:49 p.m. a Representative for Region 29 advised the Employer that an Order would issue cancelling the March 24 hearing and holding the petition in abeyance in light of a request from the President of the AFL-CIO. The Region 29 Regional Director’s Order issued shortly

thereafter. After a lengthy adjournment, the Regional Director for Region 29 reactivated the case and scheduled an election for May 31, 2018.

Once again, the Employer provided a statement of position, and a voter list, including the contact information of all employees in the proposed unit. However, due to a change in the employing entity (the Employer is the successor entity), on May 30, 2018, the Regional Director for Region 29 cancelled the election scheduled for the next day. Rather than simply amending the name of the employing entity and holding the election, consistent with existing Board authority, the election was cancelled, resulting in additional significant delay.

Thereafter the election was rescheduled and held on June 26, 2018. The Intervenor and Petitioner participated. There were 30 eligible voters. There were 8 votes for the Intervenor, 19 for Petitioner, and 1 vote against representation. However, there was: (1) significant misconduct by the Intervenor leading up to the election that interfered with employees' rights to an election free from interference; (2) the Board's policies and processes, as well as the Region 29 Regional's Director's actions detailed above, created the impression that the Intervenor was allowed to dictate the Board's processes; and (3) Region 29 made certain errors with the Notice of Election that warranted overturning the election.

In light of this, on July 3, the Employer filed 12 objections to the conduct of the election. Specifically, the Employer set forth, with supporting proof:

- Significant misconduct by the Intervenor, including unlawful threats, deliberate false claims regarding the law, and unlawful promises of strike benefits and unlawful withholding of those benefits for employees who voted against the Intervenor (Objections 1-5).

- An objection to the NLRB's policy of adjourning representation cases when rival unions who belong to the AFL-CIO file Article XXI proceedings under the AFL-CIO's constitution (Objections 6-8, 10-11).
- An objection to the cancellation of the May 31, 2018 Election (Objections 9, 10-11).
- That the Board's 2014 Election Rules violate the NLRA, are impermissibly arbitrary and deny an employer's free speech and due process rights, both on their face and as applied to the Employer, and ultimately resulted in the Intervenor having premature access to employee unit and contact information (Objection 11).
- That the Region issued an incorrect Notice of Election and failed to mail the Employer a Corrected Notice of Election which did not allow the Employer to post the Corrected Notice within the Three (Objection 12).
- That the Corrected Notice of Election contained the wrong voting times and on June 26, 2018, the Board Agent conformed the election times to the incorrect times on the corrected Notice of Election after it was pointed out by the Intervenor (Objection 12).

Thereafter, the case was transferred from Region 29 to Region 22.

On August 3, 2018, Regional Director for Region 22, without holding a hearing, issued a Decision finding that the failure to timely post the Corrected Notice of Election (which constituted half of the grounds for Objection 12), constituted objectionable conduct, and ordered a Rerun Election. (August 3, 2018 Post-Election RD Decision on Objections). The Notice for the Rerun Election was to contain the following language:

NOTICE TO ALL VOTERS

The election conducted on June 26, 2018 was set aside because the National Labor Relations Board found that the Board issued an incorrect Notice of Election and failed to provide the Employer a correct Notice of Election and this interfered with the employees' exercise of a free and reasoned choice. Therefore, a new election will be held in accordance with the terms of this Notice of Second Election.

Significantly, in addressing only a portion of Objection 12 and finding it sufficient to overturn the election, in his August 3, 2018 Decision, the Region 22 Regional Director stated, "I further find that it is unnecessary to consider the issues raised by the Employer's remaining objections at this time." (August 3, 2018 Post-Election RD Decision on Objections, p. 4).

A Notice of Election was ultimately issued containing the language above that solely addressed the error in the posting of the Notice of Election, and the election was scheduled for September 6, 2018.

On August 23, after being forced to endure the actions of the Intervenor, the AFL-CIO, the prejudicial actions of the Regional Director for Region 29, and the prejudicial actions of the Regional Director for Region 22, and the NLRB's countenance of this conduct, the Petitioner requested to withdraw from participating in the Rerun Election.

Accordingly, an election was held on September 6, 2018 with only the Intervenor participating. At the election, there were approximately 29 eligible voters. 18 employees voted for the Intervenor and 8 employees voted against the Intervenor.

In light of the Intervenor's conduct, and Board policies, and the abuse of discretion by the Regional Directors for both Regions, culminating in the Petitioner's decision to withdraw from the Rerun Election, the Employer again filed Objections to the Election (and supporting proof) on September 13, 2018.

The Employer's Objections once again challenged the Intervenor's misconduct, which was never addressed, and that likely resulted in the Petitioner withdrawing from the Rerun Election and therefore impacted the election held on September 6, 2018 (Objections 1-5).

The Employer's Objections also challenged the Board's policy relating to Article XXI of the AFL-CIO proceedings, the cancellation of the May 31, 2018 election, and the Board's 2014 Election Rules (Objections 6-11). Finally, the Employer challenged the Board Agent's conduct on June 26, 2018 in amending the election times on the spot after it was noted by the Intervenor. (Objection 12).

On September 24, 2018, the Regional Director issued the Certification Decision that is challenged here, and refused to provide a hearing on any of the above-issues, relying primarily on the contention that any conduct that may have occurred prior to the date of the first election on June 26, 2018 could not be considered, despite the fact that: (1) the conduct was never addressed or remedied and therefore continued to impact the Rerun Election; (2) the Regional Director chose to address only the Board's 2015 Representation Case Rules and not the remaining Board policies which were challenged and remained in effect after June 26, 2018; and (3) at least one of the Objections, Objection 12, occurred on June 26, 2018.

ARGUMENT

POINT I

THE REGIONAL DIRECTOR ERRED IN OVERRULING THE EMPLOYER'S OBJECTIONS RELATING TO THE INTERVENOR'S UNLAWFUL CONDUCT

The Intervenor engaged in misconduct that inhibited the free choice of voters and such misconduct was never remedied by the Regional Director. Such behavior warrants the Certification Decision being overturned. The Employer's Request for Review should be granted because: (1) the Certification Decision is inconsistent with Board law and policy; (2) ignores

facts showing the unlawful misconduct impacted the Rerun Election; and (3) the failure to allow a hearing was prejudicial.

Specifically, the Intervenor engaged in the following improper conduct, for which the Employer submitted proof: (1) advising employees that strike benefits would only be given to employees who voted for the Intervenor; (2) threatening employees with termination if they did not support the Intervenor; and (3) deliberately making false claims regarding the law and the Board's longstanding principles pertaining to the bargaining process (Employer Objections 1-5). There should be no legitimate dispute, that, if found to be true, this conduct impacts employee free choice and warrants overturning the election. *See Savair Mfg., Co.*, 414 U.S. 270, 277 (1973) (finding union promises of benefits before representation election unlawful if the benefit is not offered across the board to all potential unit employees); *United Broad Co. of N.Y.*, 248 NLRB 403, 403-404 (1980) (unlawful threats by union warranted overturning the election); *Claussen Baking, Co.*, 134 NLRB 111, 112 (1961).

Because this misconduct, if found to be true, interfered with employee free choice, the Regional Director's failure to order a hearing on this misconduct is inconsistent with Board precedent, and the Board's longstanding policy that elections be conducted in an atmosphere allowing for freedom of choice. *See General Shoe Corp.*, 77 NLRB 124, 126 (1948).

A. The Regional Director Refused to Investigate or Remedy this Behavior, and Therefore, The Conduct Continued to Interfere with Employee Free Choice

In the Certification Decision, the Regional Director attempts to disregard the Intervenor's misconduct on the basis that it occurred prior to the June 26 election, citing to *Star Kist Caribe, Inc.*, 325 NLRB 304 (1998) (citing *Times Wire & Cable Co.*, 280 NLRB 19, 20 fn. 10 (1986)). However, reliance on this line of cases ignores the Regional Director's choice not to address and/or remedy this misconduct in any way from the date of the initial petition (March 12, 2018)

through the date of the Rerun Election. *Star Kist* stands for the proposition that generally, the critical period for a rerun election begins on the date of the first election.

However, the facts here support an exception to this general proposition. After the election conducted on June 26, 2018, the Regional Director specifically avoided an investigation that would have potentially remedied the Intervenor's unlawful misconduct. Therefore, the unlawful misconduct was never remedied, and its impact continued through the Rerun Election. As set forth above, in the Region 22 Regional Director's August 3, 2018 Decision ordering the Rerun Election, the Regional Director stated "I find that it is unnecessary to consider the issues raised by the Employer's remaining objections at this time." (August 3, 2018 Post-Election RD Decision on Objections, p. 4). In evaluating the 12 filed objections, the Regional Director chose to investigate and to address just one portion of one of those objections.

There are two aspects to relief in a rerun election: the first is the rerun election itself, and the second is a notice to employees explaining the unlawful/improper conduct that made the rerun election necessary. In fact, in many cases, parties are forced to read such remedial notices aloud in order to effectively remedy the unlawful conduct that resulted in the rerun election. This notice to employees is necessary to avoid its continued interference with the free choice of employees.

Here, because the Regional Director refused to investigate the filed objections, and instead, addressed only one portion of one objection, the resulting remedial notice explained to employees that the only improper conduct that resulted in the Rerun Election was the improper posting of the Notice of Election. Allowing the Intervenor's behavior to now go unchallenged and unremedied, despite its continuing and clear impact on employee free choice through the

Rerun Election, is inconsistent with Board law and policy that ensures employee free choice in representation elections.

Significantly, in the Certification Decision, the Regional Director writes that “the only remedy once one or more of the Employer’s July 3 objections was found to have raised issues affecting the June 26 election was to rerun that election. Once remedied in this manner, the same allegations of objectionable conduct may not form the basis for overturning a subsequent and otherwise valid election.” (Decision, p. 4). This statement is clear error. A rerun election is irrelevant in ensuring free choice if employees are not provided with notice and explanation as to the unlawful conduct that resulted in the rerun election. This notice is what effectively remedies the unlawful conduct and ensures that employee free choice will not continue to be impacted by this same conduct.

Because the Intervenor’s conduct was never addressed or remedied, its impact on free choice continued through the Rerun Election, and the Regional Director’s Certification Decision should be overturned.

B. Assuming *Arguendo* that Board Law Supports the Regional’s Director’s Decision (Which it Does Not), the Board Should Reconsider and/or Clarify Existing Law

To the extent that the Board finds that the Regional Director’s decision is consistent with existing Board law, the Board should clarify that when a Region explicitly refuses to fully investigate all objections filed by a party, and therefore fails to meaningfully remedy any unlawful conduct, such conduct, even if occurring before the date of the first election, may constitute grounds to overturn a rerun election. This shall apply where the Region explicitly refuses, despite having the evidence before it, to address alleged unlawful conduct, and therefore, never evaluates whether this conduct must be remedied. There is no legitimate policy reason for

refusing to consider uninvestigated and unremedied misconduct where the employer timely filed such objections, but the Region refused to perform a full investigation and remedy this misconduct. A rerun election is irrelevant if the employees are not advised of the unlawful/improper conduct that resulted in the rerun election, and without a notice advising employees of unlawful conduct, such conduct continues to impact employee free choice. Where the Region fails to properly investigate all of the alleged unlawful conduct, and instead, focuses on only one objection to overturn the election, there is no legitimate basis for foreclosing future consideration of the impact of the other filed objections. In these circumstances, such conduct should be considered in a rerun election.

POINT II

THE REGIONAL DIRECTOR ERRED IN REFUSING TO ORDER A HEARING RELATING TO THE BOARD'S 2015 REPRESENTATION CASE RULES AND THE BOARD'S POLICY IN DEFERRING TO THE AFL-CIO INTERNAL PROCEDURES

In his Certification Decision, the Regional Director addressed the merits of only one of the twelve objections – Objection 11. This Objection challenged the Board's 2015 Representation Case Procedure Rules, and their application in this proceeding, as impermissibly arbitrary, violating due process, and infringing on an employee's free speech rights. The Regional Director's failure to order a hearing on this objection is prejudicial, and to the extent such a finding may be consistent with Board law, the Board should reconsider its policy for the compelling reasons set forth by the dissenters in the Board's rulemaking process for the 2015 rules.

In addition, the Regional Director failed to address the Employer's challenge to the Board's policy of abandoning its statutory duties and deferring to the AFL-CIO's internal dispute resolution procedures for petitioning unions. (Objections 6-8, 10-11). Such a policy is

inconsistent with employees' Section 7 rights to select a representative of their own choosing, and should be rejected. As applied here, the policy resulted in a significant hiatus that allowed the Intervenor access to employee information it would not have been otherwise entitled to, and assisted in creating the impression that the Intervenor controlled the Board's processes, which the Intervenor exploited in its campaign by claiming the Petitioner was the weak union. The Board should review its policy relating to the AFL-CIO as it clearly places the rights of a union over Section 7 employee rights, and therefore directly conflicts with the purpose of NLRA. Moreover, the Board should overturn Certification Decision as the application of the AFL-CIO policy in this proceeding interfered with employee free choice in the election.

A. The Board Should Overturn the Certification Decision Regarding the Lawfulness of the Board's Representation Case Rules

The Regional Director dismissed the need for a hearing on the lawfulness and impact of the 2015 Representation Case Rules on the basis that the "Employer's general contentions were fully answered in the Board's justification for the Rules as set forth in the Federal Register." (Certification Decision, p. 5). However, this statement ignores the strong dissents on these points by then-Board Members Miscimarra and Johnson. *See* 79 Fed.Reg. 74308, at 74430-74460 (Dec. 15, 2014) (dissenting views of Members Miscimarra and Johnson).

The newly constituted Board has not ruled on the propriety of the Board's 2015 Representation Case Rules, and the concerns raised by the Employer warrant overturning the Certification Decision. The failure to provide the Employer with an opportunity for a hearing was prejudicial and the Request for Review should be granted. As applied to this proceeding, the Representation Case rules required voluminous information on extremely short timelines, and the Rules ultimately forced the Employer to prematurely divulge information required in its Statement of Position and Voter Lists that the Intervenor was able to exploit after it was provided

with lengthy hiatuses after obtaining this information (*See* Objections 4 & 11). Accordingly, contrary to the Regional Director's contention, the application of the 2015 Representation Rules directly impacted free choice in this election, and the Certification Decision should be overturned.

B. The Regional Director Erred in Refusing to Consider the Employer's Challenge to the Board's Article XXI AFL-CIO Internal Dispute Mechanism

The Regional Director failed to address the Employer's objections to the Board's policy of abandoning its statutory duties and deferring to the AFL-CIO in representation proceedings involving two AFL-CIO affiliates.¹ (Objections 6-8, 10).

The Board's policy directly interferes with employee free choice and subjugates the NLRB's statutory duties to the AFL-CIO, and should be overturned. In 1989, the Acting Associate General Counsel, William Stack, unilaterally took the position, without any supporting case law or statutory basis, that when rival unions who are affiliated with the AFL-CIO seek to represent the same group of employees, the NLRB should put its statutory duties aside for 40 days and defer to the AFL-CIO and its internal procedures for these 40 days. *See* NLRB Memorandum, OM-89-61. This policy has not been reviewed by any Board decision, but remains the policy set forth in the NLRB Representation Manual.

Effectively, this policy allows the AFL-CIO to decide which union is best for the employees. This procedure places the rights of unions above the Section 7 rights of employees, and perhaps most significantly, creates the impression that the NLRB itself is inferior to the AFL-CIO. This policy is an abdication of statutory responsibilities, and should be expressly overturned.

¹ To the extent the Regional Director may contend that the impact of the Article XXI AFL-CIO procedure was felt before the "second" critical period, this argument should be rejected for the same reasons set forth above. This improper conduct was never remedied, and it continued to impact the free choice in the election through the date of the Rerun Election.

In this case, the application of this policy interfered with employee free choice. One hour after the Employer was forced to turn over employee information in its Statement of Position, Region 29 issued a lengthy adjournment at the request of the AFL-CIO President to engage in these Article XXI AFL-CIO proceedings. This allowed the Intervenor access to employee information over the lengthy hiatus period, and the Intervenor took advantage of the impression this created – that it had the power to suspend the NLRB’s processes – by campaigning on the position that it was the strong union while Petitioner was weak. The NLRB’s conduct in deferring to the AFL-CIO while simultaneously allowing the Intervenor to access employee lists had the effect of creating the impression among bargaining unit employees that the Intervenor had the power to manipulate Board processes (Objections 6-8). As noted, the Intervenor deliberately fostered this impression by campaigning on the argument that Petitioner was the weak union, while Intervenor was the powerful union (Objection 8), all of which impacted employee free choice and was never remedied.

In short, the Board’s policy on deferring to Article XXI AFL-CIO proceedings should be rejected. The policy itself directly interferes with employee free choice and the NLRB’s statutory duty to process petitions, and it similarly interfered with employee free choice in this proceeding. Accordingly, the Board should grant the Employer’s Request for Review and overturn the Certification Decision.

POINT III

The Regional Director’s Failure to Consider and/or Address the Regional Director’s Cancellation of the May 31, 2018 Election Warrants Overturning the Certification Decision

The Region 29 Regional Director’s cancellation of the May 31, 2018 was unsupported by Board law, and resulted in an additional delay of nearly one month. This cancellation further contributed to the impression among employees that the Intervenor was controlling the process;

created confusion among employees; fueled Intervenor's false claims regarding the Employer delaying the process; and gave the Intervenor additional time after receipt of the Voter List to pursue its campaign of unlawful threats, intimidation, and false claims about the law and the Board's processes (*See Employer Objections 4, 9-11*).

Significantly, at the time the Regional Director cancelled the election, the Petitioner had regained majority support, as reflected by a demand for recognition which the Employer did not act upon, because the election was upcoming (Objection 9). The Regional Director's stated reason for cancelling the May 31, 2018 was a change in the entity employing the petitioned-for unit. However, it is well-established that when a successor employer continues to employ the same group of employees at the same terms and conditions of employment, the original petition is construed as providing for an election among the employees of the successor. *See Barker Automation*, 132 NLRB 794, 796 (1961); *see also New Laxton Coal Co.*, 134 NLRB 927, 929 (1961); *Texas Eastman Co.*, 175 NLRB 626 (1969); *Pacific Tankers, Inc.*, 84 NLRB 965 (1949); *Allan W. Fleming, Inc.*, 91 NLRB 612, 614 (1950); *Georgia Creosoting*, 133 NLRB 349 (1961); *Sindicato Puertorriqueno De Trabajadores*, 184 NLRB 538, fn. 3 (1970).

Accordingly, the Regional Director's decision to cancel the election at a time when the Petitioner had evidence of majority support further interfered with employee free choice. The proper course of action was to merely substitute the name of the successor company for that of the predecessor and move forward with the election. This cancellation, which resulted in additional significant delay and the continued impression that the Intervenor controlled Board

processes and fueled the Intervenor's campaign of misinformation, threats, and other unlawful conduct, interfered with employee free choice, warrants overturning the Certification Decision.²

POINT IV

The Regional Director Failed to Address the Claim in Objection 12 that the Board Agent Conformed the Time of the June 26, 2018 Election After Being Notified of the Error By the Intervenor's Representative

In his August 3, 2018 Decision, the Regional Director addressed and issued a remedial notice for only one portion of the Employer's original Objection 12. The finding and remedial notice addressed only the NLRB's failure to provide an accurate Notice of Election and the Employer's corresponding failure to post an accurate Corrected Notice of Election.

This Decision did not address the Employer's further contention that at the June 26, 2018 election, the Corrected Notice of Election misstated the voting times that were set forth in the Stipulated Election Agreement; when such additional error was noted by a representative of the Intervenor on the day of the election, the Board Agent in charge of the election changed the voting hours on the spot to conform to the erroneous notice and in contravention of the Stipulated Election Agreement, thus fostering further confusion among employees and yet again creating the appearance that the Intervenor was controlling the process rather than the Board. (Objection 12).

In its new Objection 12³, the Employer further clarifies its objection to the conduct of the Board Agent at the June 26, 2018. Because the Regional Director failed to address the conduct –

² Once again, for the reasons set forth in Point I(A), the Regional Director explicitly refused to investigate this objection after the first election, and the interference with free choice went unremedied and therefore continued through the Rerun Election.

³ The Regional Director improperly contends that the Employer's objections were identical after the first and Rerun Election. This is not accurate. Objection 12 is a revised and new objection and all Objections were revised to clarify that the conduct at issue also impacted the Rerun Election.

and even under the *Star Kist Caribe* line of cases, it falls within the critical period – such conduct constitutes grounds for a rerun election. Thus, the Certification Decision should be overturned.

POINT V

A Stay is Warranted Under Section 102.67(j) of the Board's Rules

Pursuant to Section 102.67(j) of the Board's Rules and Regulations, the Employer respectfully requests a stay of the Certification Decision until the Board makes its final ruling⁴ on this Request for Review. If the Board fails to intervene and grant a stay, the parties would be required to engage in meaningless bargaining, the result of which is likely to be overturned by the Board's subsequent decision. Significantly, it was the Board's 2015 Representation Case Rules that created the rule that a request for review would not operate as a stay unless specifically ordered by the Board. The current Board is currently in the process of reviewing and likely revising those procedures, which provides another basis for issuance of the stay while the Request for Review is pending, as this rule may potentially be revoked and/or significantly revised.

Finally, the merits warrant a stay. As set forth above, it is likely that the Board's disposition of the Request for Review would overturn the Certification Decision, rendering any bargaining or other interactions between the parties in the interim futile. Accordingly, the Employer respectfully requests a stay.

CONCLUSION

Because the Certification Decision contains legal and factual errors that prejudiced the Employer, the Board should grant review and set aside the Certification Decision, and order any

⁴ A final ruling for these purposes would be the Board's (1) denial of the Request; or (2) grant of the Request for Review and subsequent decision on the merits.

other relief it deems appropriate. In the interim, while this Request for Review is decided, a stay is warranted.

Dated: October 9, 2018

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Request for Review was e-filed in accordance with NLRB requirements and served via electronic mail, this October 9, 2018, upon:

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