

UNITED STATES OF AMERICA
BEFORE REGION SEVEN OF THE
NATIONAL LABOR RELATIONS BOARD

RIETH-RILEY CONSTRUCTION CO.,)	
INC,)	
)	
Employer,)	
)	
and)	Case No. 07-RD-264330
)	
LOCAL 324, INTERNATIONAL UNION)	
OF OPERATING ENGINEERS (IUOE),)	
AFL-CIO,)	
)	
Respondent.)	

**RIETH-RILEY CONSTRUCTION CO., INC’S OPPOSITION TO LOCAL 324’S
REQUEST FOR POSTPONEMENT OF THE PRE-ELECTION HEARING**

Rieth-Riley Construction Co., Inc. (“Rieth-Riley”) hereby opposes Local 324, International Union of Operating Engineers (IUOE), AFL-CIO (“Local 324”)’s request for a postponement of the pre-election hearing based on the Regional Director’s investigation of the effect of pending unfair labor practice charges on the pending decertification petition. In support thereof, Rieth-Riley states as follows:

Local 324’s postponement request fails the “good cause” requirement of NLRB Rules and Regulations (“Rule”) 102.63(a)(1) for at least three reasons. First, the NLRB’s blocking charge policy currently in effect, Rule 103.20, does not permit any delay to an election based on pending unfair labor practice charges. At *most*, if there are charges relating *specifically* to the manner in which the petition was filed (and here, there are none), the final certification of results or certification of representation cannot be issued until the charges are resolved, per Rule 103.20(d). Accordingly, it likewise cannot serve as a basis to delay a pre-election hearing; to hold otherwise would be to improperly re-invigorate the now-expired version of the blocking

charge policy, and hold this petition in *de facto* abeyance against the explicit will of the Board, which finished promulgating the current blocking charge rule not even a month ago.

Second, to the extent the adequacy of the showing of interest is the underlying substantive issue (as was communicated to Rieth-Riley’s counsel by Field Examiner Andrew Hampton), the appropriate time frame for conducting this investigation has already expired. NLRB Casehandling Manual Part Two (CHM) (“R-Case Manual”) Section 11020 expressly notes: “[I]t is essential that a check of the adequacy of the showing of interest (Sec. 11030) be performed in every case shortly after the filing of the petition, in order that issues concerning the showing of interest will be resolved before the case progresses beyond the initial stages.” Indeed, Section 11028.1 further requires that the Union (as the party alleging misconduct) “must take early action on raising such allegations, in a timely manner relative to gaining knowledge of the alleged conduct In the event a party fails to promptly present such evidence after raising the allegations, the regional director may regard the evidence as untimely filed and is not required to consider it, absent unusual circumstances.” Yet here, this issue is being raised just three days before the pre-election hearing, as to the *second sequential* decertification petition by the same Rieth-Riley employee. If the Union wanted to timely allege taint, it should have done so “shortly after” March 10, 2020, when the Petitioner first filed a decertification petition for this bargaining unit (presumably using the same showing of interest now at issue). This is therefore not an appropriate consideration at this time, especially with respect to further delaying the proceedings.

Third, NLRB guidance is *profuse* in its instructions that concerns regarding the adequacy of a showing of interest are irrelevant to the pre-election hearing process. *See, e.g.*, R-Case Manual Section 11021 (“While any information offered by a party bearing on the validity and

authenticity of the showing should be considered, no party has a right to litigate the subject, either directly or collaterally, including during any representation hearing that may be held.”); *Id.* at Section 11028.3 (“A challenge to the validity or authenticity of the showing of interest may not be litigated at a hearing”); *Id.* at Section 11184 (“This should be made clear to any party at a hearing that seeks to attack the interest showing of any involved union, whether petitioner or intervenor. Argument at the hearing on the adequacy of the interest is not permitted . . . Evidence of interest (or of revocation) should never be introduced or received in evidence.”); *Id.* at Section 11184.1 (“If a party seeks at the hearing to introduce evidence of alleged fraud, misconduct, supervisory taint, or forgery in obtaining the showing of interest, the line of questioning should not be permitted. . . . **The hearing should not be interrupted.**) (emphasis added); *accord* NLRB Outline of Law and Procedure In Representation Cases (“R-Case Outline”) Section 5-900. Considering that this investigation thus has no place within the pre-election hearing, it also cannot serve as a basis to postpone it.

In short, there is no Board law or Agency guidance supporting a postponement of the pre-election hearing on the basis of this investigation. Should the Regional Director determine, despite this total lack of authority, to nonetheless postpone the election beyond August 28, 2020, Rieth-Riley shall motion for the General Counsel’s office to assume direct oversight of this petition pursuant to Rule 102.72, on the grounds that such intervention is “necessary in order to effectuate the purposes of the Act.”

Respectfully submitted,

FAEGRE DRINKER RIDDLE & REATH LLP

By: 

Stuart R. Buttrick

Ryan J. Funk

Alexander E. Preller

300 N. Meridian Street, Suite 2500

Indianapolis, IN 46204

Telephone: 317-237-0300

stuart.buttrick@faegredrinker.com

ryan.funk@faegredrinker.com

alex.preller@faegredrinker.com

Counsel for Rieth-Riley Construction Co.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion has been served by electronic mail on this 25th day of August, 2020, upon the following:

Amy Bachelder, Esq.
Nickelhoff & Widick, PLLC
333 W. Fort Street, Suite 1400
Detroit, MI 48226
abachelder@michlabor.legal

Amanda K. Freeman
National Right to Work
8001 Braddock Road, Suite 600
Springfield, VA 22160
akf@nrtw.org,



Stuart R. Buttrick