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

SEATTLE TIMES COMPANY,  
  
Employer,  
  
and  
  
PACIFIC NORTHWEST NEWSPAPER  
GUILD, COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL 37082,  
  
Petitioner.

No. 19-RC-261015  
  
SEATTLE TIMES COMPANY'S  
MOTION TO IMPOUND  
BALLOTS  
  
Ballot Count Scheduled:  
September 25, 2020, 1:00 pm

1 Pursuant to § 102.67(j) of the National Labor Relations Board’s (“Board” or “NLRB”)  
2 Rules and Regulations, The Seattle Times Company (“The Times”) requests that the Board  
3 impound the ballots in the election being held in the above-captioned matter. This Motion is  
4 necessitated by the Regional Director (“RD”) for Region 19’s Decision and Direction of Election  
5 (“DD&E”) in the above-captioned matter, which is based on incorrect findings of fact and law.  
6 This Motion is filed contemporaneously with The Times’ separately filed Request for Review of  
7 the DD&E under 29 C.F.R. § 102.67(d).<sup>1</sup>

8 **I. PROCEDURAL HISTORY<sup>2</sup>**

9 On May 29, 2020, the Petitioner, Pacific Northwest Newspaper Guild (the “Guild”),<sup>3</sup>  
10 filed a representation petition (“RC Petition” or “RC Case”) in the above-captioned matter  
11 seeking to represent Digital Journalists at The Times, and also seeking a self-determination  
12 election in which the proposed voting unit of Digital Journalists would be joined to an existing  
13 bargaining unit at The Times that includes Print Journalists (the “Main Bargaining Unit”). On  
14 May 31, 2020, The Times filed an unfair labor practice charge (“ULP”) with Region 19  
15 concerning the Guild’s repudiation of the New Media Agreement (“NMA” or “Agreement”), an  
16 addendum to the Parties’ collective bargaining agreement (“CBA”).<sup>4</sup> Ultimately, by email on  
17 July 1, 2020, the Region informed The Times that it was holding the ULP Case in abeyance and  
18 setting the RC Case for hearing. Thereafter, the Region held a virtual hearing in the RC Case on  
19 July 16 and 17, 2020 and, on August 20, 2020, the RD determined that that the NMA does not  
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22  
23 <sup>1</sup> The Times proceeds under the representation case procedures found in the Rules and Regulations promulgated by  
24 the Board in 2014 (the “Old Rules”) rather than those announced in 2019 (the “New Rules”). The instant RC  
25 Petition was filed with Region 19 on May 29, 2020 yet the New Rules “are applicable to all petitions filed on or  
26 after May 31, 2020.” See Memorandum GC 20-07 (June 1, 2020). As impoundment is not automatic under the Old  
27 Rules, the Times has filed this separate motion requesting extraordinary relief under 29 C.F.R. § 102.67(j).

<sup>2</sup> The procedural history, facts, and relevant exhibits of this matter are set forth in full in The Times’ Request for Review, submitted contemporaneously with this Motion. Only that information necessary to an understanding of The Times’ Motion are repeated herein.

<sup>3</sup> The Times and the Guild will be referred to collectively, herein, as the “Parties.”

<sup>4</sup> Case No. 19-CB-261080. On June 1, 2020, The Times requested that the processing of the RC Petition be blocked pending resolution of the ULP matter. The Times’ Request to Block the RC Petition was denied on July 1, 2020.

1 bar the Guild’s RC Petition and directed a mail-ballot election set to commence on August 27,  
2 2020. *See* DD&E 5-6, 24-28.<sup>5</sup>

3 The Times now seeks review of the DD&E under 29 C.F.R. § 102.67(d) and moves to  
4 impound all of the ballots in the directed mail-ballot election under 29 C.F.R. § 102.67(j).<sup>6</sup>

## 5 II. FACT SUMMARY

6 In his decision, the RD failed to properly consider whether the Guild’s express promise in  
7 the NMA to not attempt to represent the Digital Journalists bars the instant RC Petition. By its  
8 terms, the Guild and The Times agreed not to disturb the scope of the Guild’s Main Bargaining  
9 Unit for the term of the NMA. Thus, the Guild promised that it “will not use th[e New Media]  
10 Agreement, work assignments, or products resulting from this Agreement as a means *to attempt*  
11 *to represent* or claim jurisdiction over any unaffiliated employee(s) from a non-Guild home  
12 department or sub-department through accretion, unit clarification procedures or contract  
13 grievance procedures.” *See* ER Exh. 1, p. 74 (¶ D) (emphasis added). The Guild honored its  
14 commitment in the NMA until it filed an RC Petition seeking to represent the Digital Journalists  
15 and began relying upon the cross-jurisdictional work assignments between the Print and Digital  
16 Journalists in its attempts to represent the latter employees.

17 The Times seeks preliminary relief from the Board prior to its decision on the Request for  
18 Review of whether the RC Petition must be dismissed.

## 19 III. ARGUMENT

20 Section 102.67(j)(1)(iii) of the Board’s Rules and Regulations provides that “[a] party  
21 requesting review may also move in writing to the Board for ... relief [by i]mpoundment and/or  
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24 <sup>5</sup> The RD issued an amendment to the DD&E on August 25, 2020, replacing the section entitled “Right to Request  
25 Review,” which previously advised the Parties they could request review consistent with the New Rules, with  
standard provisions from the Old Rules.

26 Additionally, this Motion relies on the exhibits and transcript from the RC Case hearing. The Employer  
Exhibits are referred to as “ER Exh,” the transcript is referred to as “Tr.,” followed by the relevant page and line  
27 number(s), and the RD’s DD&E is referred to as “DD&E,” followed by the relevant page number(s).

<sup>6</sup> *See* fn. 1, *supra*.

1 segregation of some or all of the ballots.” The Board will grant relief “upon a clear showing that  
2 it is necessary under the particular circumstances of the case.” *See* 29 USC § 102.67(j)(2).<sup>7</sup>

3 The RD’s scant analysis of the significant issues presented in this case necessitates  
4 extraordinary relief by the Board. Specifically, as detailed in The Times’ Request for Review,  
5 the RD has failed to properly analyze whether the Guild has made an “express promise” to  
6 refrain from seeking to represent The Times’ Digital Journalists for the duration of the NMA.  
7 The Board has long held that such a promise is enforceable and requires dismissal of a  
8 representation petition. *See, e.g., Briggs Indiana*, 63 NLRB 1270 (1945); *Lexington Health Care*  
9 *Group, LLC d/b/a Lexington House*, 328 NLRB 894 (1999). By improperly analyzing the  
10 Board’s “express promise” precedent and selectively considering certain facts of record, the RD  
11 disregarded clear evidence that the Guild has affirmatively agreed not to attempt to represent the  
12 Digital Journalists for the term of the NMA and that its RC Petition must therefore be  
13 dismissed.<sup>8</sup> Standing alone, the RD’s flawed legal analysis is sufficient grounds to justify  
14 impounding the ballots in the upcoming mail-ballot election.

15 At least three other arguments further support such extraordinary relief in above-  
16 captioned matter. First, this is not a situation where the Request for Review challenges only a  
17 subset of potential voters. Instead, the Request for Review seeks dismissal of the RC Petition. If  
18 it is successful, the Board will have pronounced that the election should not be held at all  
19 because of the Guild’s express promise in the NMA. Where there is a chance that the election  
20 should not be held at all, it would be more prudent to impound the ballots and count them only if  
21 the election is determined to be proper.

22 Second, this is a small voting group, with only eleven potential voters.<sup>9</sup> Accordingly, if  
23 the ballots are counted and then it is determined that the RC Petition should be dismissed, the

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24 <sup>7</sup> To the extent the Board wishes to thoroughly analyze this unique issue of contract interpretation in the context of a  
25 representation matter, The Times notes that prior Board Members have signaled the value of extraordinary relief  
26 where “important election-related questions will likely require many months and possibly years to resolve.” *See,*  
27 *e.g., Yale Univ.*, 365 NLRB No. 40 (2017) (former Acting Chairman Miscimarra, dissenting).

<sup>8</sup> The Times refers the Board to its Request for Review for the entirety of its argument on this point.

<sup>9</sup> An additional employee—the Editorial Engagement Editor—is also permitted to vote subject to challenge. *See*  
DD&E 26. Thus, it is already the case that her ballot will not automatically be counted in this matter.

1 sentiments of the voters would likely be revealed for no purpose. These voters deserve as much  
2 confidentiality about their ballots as is practicable. Revealing their votes without certainty that  
3 they will be used does not adequately protect their interests.

4 Third, there is no prejudice in waiting to count the ballots. If the Request for Review is  
5 denied, or if the Board grants the Request for Review but upholds the DD&E, the election will  
6 have been held on the date ordered by the RD and there need not be any undue delay in counting  
7 the ballots.

8 **IV. CONCLUSION**

9 In light of the foregoing, the Employer respectfully requests that the Board order all  
10 ballots cast in the Thursday, August 27, 2020 election be impounded pending the Board's  
11 determination of The Times' contemporaneous Request for Review of the DD&E.

12 DATED this 28th day of August, 2020.

13  
14 Davis Wright Tremaine LLP  
15 Attorneys for The Seattle Times Company

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17 By \_\_\_\_\_  
18 Henry E. Farber  
19 Nicole Mormilo

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12 PACIFIC NORTHWEST NEWSPAPER )  
13 GUILD, COMMUNICATION WORKERS OF )  
14 AMERICA, LOCAL 37982, )  
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16 Petitioner. )  
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CASE NO: 19-RC-261015  
CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served via the method(s) listed below a copy of the foregoing SEATTLE TIMES COMPANY'S MOTION TO IMPOUND BALLOTS, upon the following:

Ronald K. Hooks, Regional Director  
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6 DATED this 28th day of August, 2020.

7 *Claire D. Tollfeldt*

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9 Claire D. Tollfeldt  
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