

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

RISING GROUND)	
)	
Employer,)	
)	
and)	Case No. 02-RC-264192
)	
WAREHOUSE PRODUCTION SALES)	
AND ALLIED SERVICE EMPLOYEES)	
UNION LOCAL 811 AFL-CIO)	
)	
Petitioner.)	
)	

EMPLOYER’S EMERGENCY MOTION TO STAY MAIL BALLOT ELECTION

David R. Broderdorf
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Telephone: (202) 739-5817
david.broderdorf@morganlewis.com

Dated: August 31, 2020

Counsel for Employer Rising Ground

Rising Ground (“Employer”) files this Emergency Motion to Stay Mail Ballot Election, pursuant to Section 102.67(j) of the National Labor Relation Board’s (“NLRB” or “Board”) Rules and Regulations, in response to the Regional Director’s Order Directing Mail Ballot Election dated August 26, 2020 (“Order”). Mail ballots are scheduled for distribution on September 8, 2020. Rising Ground has concurrently filed a Request for Review.

FACTUAL BACKGROUND

On August 6, 2020, the Petitioner, Warehouse Production Sales and Allied Service Employees Union Local 811 AFL-CIO (the “Union”), filed a representation petition for a small unit of direct support professionals employed at 1035 East 233rd Street, Bronx, NY. On August 18, 2020, the Regional Director approved a Stipulated Election Agreement, but left open the issue of a manual versus mail election *despite* both the Employer and Union finding a manual election appropriate.

Rising Ground submitted a statement of position on the issue on August 21, 2020, which argued that a manual election should occur and then explained in detail the grounds for which a safe election could occur among the 10 potential voters. On August 26, 2020, the Regional Director issued his Order Directing Mail Ballot Election despite the Employer’s statement of position and facts/representation contained therein. Under his reasoning, one can only conclude there are effectively *no circumstances* in which a manual election will occur within Region 2 despite the Board’s presumption in favor of manual elections.

ARGUMENT

Section 102.67(j) allows a party requesting review to also move to stay the election and move to impound some or all of the ballots. To obtain extraordinary relief, the moving party

must make “a clear showing that it is necessary under the particular circumstances of the case.” § 102.67(j)(2).

For the reasons set forth in the Employer’s Request for Review, which demonstrate the Regional Director’s abuse of discretion in ordering a mail ballot election, and the relatively short timeframe the Regional Director imposed on the Parties prior to the start of the mail-ballot election on September 8, the circumstances of this particular election warrant a stay of the scheduled election.

For these reasons, Rising Ground respectfully requests that the Board stay the pending mail ballot election, scheduled to begin on September 8, 2020, in conjunction with granting the Employer’s Request for Review of the Regional Director’s Order Directing Mail Ballot election dated August 26, 2020. At a minimum, the Board should ensure that the ballots are impounded until such time as the Board can decide the Employer’s Request for Review.

Dated: August 31, 2020

Respectfully submitted,



David R. Broderdorf
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541
Telephone: (202) 739-5817
david.broderdorf@morganlewis.com

Counsel for Employer Rising Ground

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Employer's Emergency Motion to Stay Mail Election was filed today, August 31, 2020, using the NLRB's e-Filing system and was served by email upon the following:

Kevin Merced
Petitioner Representative
kevinmerced811@gmail.com

Warren Mangan
Attorney for Petitioner
ocmlawyers@aol.com

John J. Walsh, Jr.
Regional Director, Region 12
Jack.Walsh@nlrb.gov

Tanya Khan
Field Attorney, Region 12
Tanya.Khan@nlrb.gov

/s/ David R. Broderdorf
David R. Broderdorf