

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

**CLARKWESTERN DIETRICH BUILDING  
SYSTEMS, LLC**

**EMPLOYER**

**and**

**Case No. 01-RC-264014**

**UNITED STEEL, PAPER AND  
FORESTRY, RUBBER, MANUFACTURING,  
ENERGY, ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
AFL-CIO-CLC**

**PETITIONER**

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**CLARKWESTERN DIETRICH BUILDING SYSTEMS, LLC'S  
EMERGENCY MOTION TO STAY THE ELECTION**

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Pursuant to Section 102.67(j) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or “Board”), ClarkWestern Dietrich Building Systems, LLC (“ClarkDietrich”), by and through its undersigned counsel, hereby submits this Emergency Motion to Stay the Election as directed by the Acting Regional Director’s August 31, 2020 Decision and Direction of Election. A mail ballot election in this case is currently scheduled to begin on September 16, 2020.

**I. BACKGROUND**

On August 3, 2020, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied & Industrial Service Workers International Union, AFL-CIO, CLC (“USW” or “Union”) filed an RC petition requesting a mail ballot at ClarkDietrich’s Bristol Connecticut facility. (Exhibit 2). ClarkDietrich filed its Statement of Position on August 14, 2020 and requested a manual election. (Exhibit 3). On August 31, 2020, one week after the pre-election hearing, the

Acting Regional Director issued his Decision and Direction of Election (“Order”) which ordered that the election be conducted entirely by United States mail.

## **II. CIRCUMSTANCES OF ABUSE OF DISCRETION CALLS FOR STAY.**

The Order rests its mail ballot mandate on an historic accumulation of coronavirus cases dating back to March. Under this approach, Connecticut’s COVID-19 situation worsens with each new case regardless of how low *current* rates of coronavirus infection become. This approach guarantees that conditions will *never* become appropriate for a manual ballot election – no matter how low *current* rates of coronavirus drop or how much time passes - unless and until the coronavirus is entirely eradicated.

Connecticut currently enjoys one of the lowest rates of coronavirus infection in the nation – less than one percent. The worksite that is the subject of this election practices rigorous social distancing and workplace hygiene. Not a single case of COVID-19 has occurred there since April 24. It is undisputed that a manual ballot election at the worksite will meet and exceed all the requirements of General Counsel Memo 20-10.

The Acting Regional Director clearly abused his discretion in ordering a mail ballot election. This abuse of discretion calls for extraordinary relief in the form of a stay of the scheduled mail ballot election pending the Board’s ruling on ClarkDietrich’s Request for Review. Otherwise, the Order will enforce a *de facto* rule that NLRB manual ballot elections will not be held in Region 1, and by extension nationally, as long as the coronavirus exists in this country – no matter how low rates of infection fall or how safe the worksite.

## **III. ARGUMENT.**

Section 102.67(j) of the Board’s Rules and Regulations allows a party requesting review to also move to stay some or all of the proceedings, including the election. 29 CFR 102.67(j).

“Relief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case.” *Id.* For the reasons set forth in ClarkDietrich’s Request for Review, a stay of the proceedings is required. The Acting Regional Director abused his discretion in ordering a mail ballot election. The Acting Regional Director also rushed the date for mailing ballots rendering the need for a stay pending the Board’s decision more urgent.

ClarkDietrich will not consume the Board’s precious time by duplicating the statements of fact and argument found in its Request for Review. Several impacts of the Acting Regional Director’s mail ballot mandate, however, need to be highlighted as the Board considers this request for a stay.

The Acting Regional Director’s Decision and Direction for Election rests its mail ballot order on grounds that will prohibit manual ballots in all NLRB elections no matter how much coronavirus infection rates improve, or how safe the conditions in the workplace subject to the election. This contradicts the direction of the General Counsel who has thoughtfully set out in GC Memo 20-10 how manual ballot elections *can* be safely conducted.

The Order’s focus on historic and cumulative, rather than current, numbers of infections, deaths, etc. creates a false narrative and misleading standard for evaluating when and where manual ballot elections may be held. The Order’s reliance upon past government and health agency warnings about the danger of the virus, rather than current assessments, creates the same effect.

In this way, the Acting Regional Director guarantees manual ballot elections will be unavailable unless and until the coronavirus completely disappears from concern. This approach is fundamentally flawed and pernicious. It must be corrected now. Failure to stay this election to restore the manual ballot will act to reinforce rather than correct this Order’s flawed approach.

In addition, Connecticut's coronavirus infection rate is low *now*. There is no immediate sign of it raising. In fact, all current indications are that it will continue to decline. This is why Connecticut's children are returning to in-class instruction and non-essential businesses are open, as authenticated in the Request for Review. Nevertheless, there is no guarantee these trends will continue indefinitely. The window for a safe manual ballot election for the petitioned-for employees may close in the future. If employees must wait for a post-election NLRB review of the Acting Regional Director's flawed decision, their opportunity may be gone.

Finally, holding a mail ballot election on the foundation of such an obviously erroneous and prejudicial decision by the Acting Regional Director will be a waste of Board resources and exasperation to the employees subject to this election. It will be a "fool's errand" under the circumstances of this case. The Acting Regional Director's abuse of discretion, as detailed in ClarkDietrich's Request for Review, requires an immediate stay of the election pending the Board's ruling on the Request for Review.

#### **IV. CONCLUSION**

For the foregoing reasons, the Board should grant ClarkDietrich's Emergency Motion to Stay the mail ballot election scheduled for September 16, 2020, pending the Board's decision on ClarkDietrich's Request for Review and ultimate judgment on the mail ballot election determination.

Respectfully submitted,

FROST BROWN TODD LLC

/s/ Richard Cleary

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