STEPHEN A. WATRING
GARY W. AUMAN
RICHARD L. CARR, JR.
DONALD B. RINEER*
AMY C. MITCHELL
DOUGLAS S. JENKS
ABIGAIL K. WHITE

* ALSO ADMITTED IN INDIANA

Auman Mahan + Furry
ATTORNEYS

DAVID M. RICKERT
MATTHEW J. BAKOTA **

CHARLES W. MAHAN
(INACTIVE)

RICHARD L. FURRY
(1926–2014)

**ALSO ADMITTED IN KENTUCKY

Direct Dial: (937) 281-2630
Email: saw@amfdayton.com

July 16, 2020

VIA EMAIL (Matthew.Denholm@nlrb.gov)
AND ORDINARY MAIL

Matthew T. Denholm, Regional Director
National Labor Relations Board
Regional Office 09
550 Main Street
Room 3-111
Cincinnati, OH 45202-3271

Re: Smyrna Ready Mix Concrete, LLC / General Drivers, Warehousemen and Helpers, Local Union No. 89, Affiliated with The International Brotherhood Of Teamsters

Cases: 09-CA-251578
09-CA-252487
09-CA-255573
09-CA-258273

RULE 11 NOTIFICATION—PLEASE REVIEW PROMPTLY

Dear Mr. Denholm:

I am one of the counsel for Respondent Smyrna Ready Mix Concrete, LLC.

A seven-day evidentiary hearing was conducted on the above referenced matters before Deputy Chief Administrative Law Judge Arthur J. Amchan on June 29, June 30, July 1, July 2, July 13, July 14 and July 15. That hearing has now been completed and the record closed other than the submission of briefs.

It is my understanding that during the course of such hearing, and without the benefit of the evidence adduced at such hearing, at Region 9's request the General Counsel sought Board approval to pursue Section 10(j) relief in this matter. It is also my understanding that the Board then, again during the course of the hearing and without having the benefit of the evidence adduced at hearing, approved the pursuit of 10(j) relief.

ATTACHMENT 1

Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:

> "By presenting to the court a pleading, written motion, or other paper – whether by signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery * * *."

I respectfully suggest to you that both the Board and any attorney signing any 10(j) Petition and related documents in this case without undertaking a review of the evidence as presented at the recently concluded hearing, including the hearing transcript and all exhibits, will be acting in direct violation of Rule 11. As a result, they will be subjecting themselves to sanctions, including monetary sanctions as to any allegation or claim that does not have substantial evidentiary support from the record taken as a whole. This includes but is not limited to any representation or claim as to the probability of success on the merits and other elements for injunctive relief. Therefore, I respectfully suggest that you share this letter with any attorney who is asked to place their Rule 11 certification on the 10(j) petition or other papers on behalf of the Board.

Since the hearing transcript and other evidence is readily available to you and any attorney you may delegate to certify compliance with Rule 11 by their signature, it should be unnecessary for me to provide further detail. Nonetheless, as a matter of courtesy, I will inform you that at such hearing, many of the allegations were not supported by any evidence whatsoever. Indeed, in some instances the allegations were specifically refuted by one or more of the General Counsel's own witnesses. Most notably, the evidence reflects a lack of any alleged unfair labor practices, or protected concerted activity occurring for a period of eight weeks prior to the closing of the plant at issue in this case. The lone exception is that Respondent voluntarily brought forth testimony that one employee wore a Teamsters' shirt one time during this eight week period, without adverse consequences.

Indeed, this later turned out to be the only employee that Respondent offered to transfer to another facility, refuting any suggestion of union animus in the decision to deny transfer to others. Furthermore, Respondent presented substantial other evidence refuting any suggestion of anti-union animus, including the testimony of one former Teamster that in 2018 Respondent hired him and other Teamsters off of a picket line, including the known union steward. This hiring occurred in the same region by the same company representative accused of discriminatory practices in this case. Furthermore, Respondent provided unrefuted evidence that in 2018 it acquired the assets of an Ohio company represented by Teamsters Local 957, followed by the recognition of that Teamsters local, adoption of the sellers' collective bargaining agreement, and successful negotiation of another agreement when that agreement expired. I can only wonder if these and other facts were ever shared with you.

This letter is being sent without regard to other defenses and arguments that will be raised at the appropriate time, including but not limited to the inexplicable delay of over sixth months in seeking 10(j) relief, the suspect timing of the request, the presence of a settlement bar, and after acquired evidence barring reinstatement of one individual.

I take no pleasure in pursuing Rule 11 sanctions relief against another attorney and hope that it does not become necessary in this case. But I have pursued such sanctions before and will again if I deem it to be in my client's best interest to do so. The law is abundantly clear that Rule 11 applies equally to government attorneys that place their names on pleadings and other papers, and thereby certify compliance with the mandates of Rule 11. I respectfully suggest that you and the attorneys assigned to this case take this letter into consideration before acting further in this matter.

Thank you for your time and attention. On a personal note, I remember interacting with you decades ago when I was a young attorney and you were new to the Board. I remember you as being very thorough and fair at that time. I can only hope that remains true today. I do want to congratulate you to your recent appointment to Regional Director, and wish that this letter were not necessary.

Sincerely yours,

Stephen A. Watring

CC: Eric Oliver, via email (Eric.Oliver@nlrb.gov) and ordinary mail
Eric Taylor, via email (Eric.Taylor.@nlrb.gov) and ordinary mail
Zuzana Murarova, via email (Zuzana.Murarova@nlrb.gov) and ordinary mail