

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

<b>UNION TANK CAR COMPANY</b>	)	
	)	
<b>and</b>	)	<b>Case 12-RC-221465</b>
	)	
<b>INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS (SMART)</b>	)	

**EMERGENCY MOTION TO STAY MAIL-BALLOT ELECTION**

COMES NOW Union Tank Car Company (“UTLX” or “Company”) by its attorneys, Thompson Coburn LLP, pursuant to Section 102.67 of the National Labor Relation Board’s (“NLRB” or “Board”) Rules and Regulations, and respectfully requests the Board grant this Emergency Motion to Stay Mail-Ballot Election as ordered by the Regional Director, currently set to begin on November 16, 2020 at 9:30 a.m. pending the Board’s ruling on UTLX’ Request for Review and ultimate decision on the mail-ballot election determination.

Alternatively, UTLX requests the Board to impound the ballots pending the Board’s ruling on UTLX’s Request for Review and ultimate decision on the mail-ballot election determination.

**FACTUAL BACKGROUND**

On June 8, 2018, the Regional Director approved a Stipulated Election Agreement between UTLX (the employer) and International Association of Sheet Metal, Air, Rail, And Transportation Workers (SMART), providing for a Board-conducted manual election to be held on June 22, 2018, at UTLX’s facility located at 400 S. Blanchard Street, Valdosta, Georgia.<sup>1</sup>

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<sup>1</sup> The representative group includes production and maintenance employees, including leadmen, employed by UTLX at that facility but excluding all other employees, office clerical employees, confidential employees, managerial employees, quality control inspectors, engineering personnel, write-up men, guards, and supervisors as defined in the Act.

A manual election was conducted as scheduled on June 22, 2018, in which 54 unit employees voted for representation by SMART and 55 voted against SMART. SMART then filed objections to the election. Following a hearing on the objections filed by SMART against UTLX, an Administrative Law Judge's Decision, and the filing of exceptions and cross-exemptions with the National Labor Relations Board, on June 17, 2020, the Board issued a Decision, Order, and Direction of Second Election, reported at 369 NLRB No. 120. The Board determined that UTLX engaged in objectional conduct and set aside the election held on June 22, 2018, and remanded Case 12-RC-221465 to the Regional Director to conduct a second election.<sup>2</sup>

On October 13, 2020, the Regional Director issued an Order Revoking Approval of Stipulated Election Agreement and Notice of Hearing about Method of Second Election (Exhibit A to Request to Review). The Regional Director's stated reason for issuing that order was because conducting a manual election would pose a significant risk to election participants and observers and "the COVID-19 cases among [UTLX]'s workforce constituted extraordinary circumstances and are cause to revoke [] approval of the Stipulated Election Agreement." This decision ignores the clear mandate from the Board that Regional Directors may only set aside agreed-upon terms of an election agreement if they are "impossible to perform." T & L Leasing, 318 NLRB 324, 326 (1995). Such a refusal to comply with Board precedent was an abuse of discretion.

Then, on October 30, 2020, Regional Director David Cohen issued a Decision and Direction of a Mail-Ballot Election ("Order") to begin on November 16, 2020 at 9:30 a.m. (Exhibit B to Request to Review). In arriving at his decision, the Regional Director displayed a lack of thoughtful consideration of UTLX's reasonable plan to hold a safe manual election on-site as well as Guidance from the General Counsel for Regional Directors to conduct manual votes when

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<sup>2</sup> UTLX respectfully maintains its position that SMART did not timely file an objection with respect to the Second Amended Charge No. 12-CA-222661.

possible with the proper protocols. The Regional Director's failure (and, in some cases, his plain refusal) to consider alternatives to holding a mail-ballot election, coupled with his disregard for the reasons that the Board prefers manual elections (e.g., encouraging employee participation) shows an abuse of discretion.

Consequently, the Regional Director's abuses of discretion have resulted in the scheduling of a mail-ballot election to begin less than two (2) weeks from the filing of this Motion. In light of the particular circumstances of this election, the Regional Director's 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 UTLX's Request for Review and, if granted, the Board's ultimate decision on the mail-ballot election determination.

### **ARGUMENT**

Section 102.67(j)(1) 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 UTLX's Request for Review, which demonstrate the Regional Director's clear abuses of discretion in revoking his approval of the Parties' Stipulated Election Agreement and his ordering a mail-ballot election, and the short timeframe the Regional Director imposed on the Parties prior to the start of the mail-ballot election, the circumstances of this particular election warrant a stay of the scheduled election.

In short, the present case involves an essential business with heightened and effective virus control protocols presently in place and one which is capable of implementing all of the additional recommendations for a safe manual election in GC Memo 20-10. UTLX has the ability to ensure

a safe manual election during the COVID-19 pandemic. The Regional Director's clear abuse of discretion, as fully explained in UTLX's Request for Review, and tight timeline before the election begins, warrants an immediate stay.

**CONCLUSION**

The Board should grant UTLX's Emergency Motion to Stay the presently scheduled mail-ballot election pending the Board's decision on UTLX's Request for Review and ultimate judgment on the mail-ballot election determination because extraordinary relief is required in view of the Regional Director's abuse of discretion in revoking approval of the Parties' Stipulated Election Agreement and ordering a mail-ballot election.

In the alternative, the Board should impound the ballots until the Board has considered UTLX's Request for Review and reached an ultimate judgment on the mail-ballot election determination.

Respectfully submitted,

THOMPSON COBURN LLP

By:  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2020, the foregoing has been served, as indicated, simultaneously upon the following via U.S. Mail, postage prepaid, electronic mail, and the National Labor Relations Board Online Portal:

Thomas Eugene Fisher (Mail and E-mail)  
International Representative / Organizer  
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