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January 14, 2021

*ADMITTED IN ILLINOIS
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Michael Gans
Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street
St. Louis, Missouri 63102

Re: Transdev Services, Inc. v. National Labor Relations Board
Case Nos. 19-3570, 20-1057
Our File No. VTC-1476

Dear Mr. Gans:

Pursuant to Rule 28(j) of the Federal Rules of Civil Procedure, Petitioner Transdev Services, Inc. herewith submits pertinent authority regarding the issue of the supervisory status of Transdev's Road Supervisors in the above-captioned case which was not available at the time Transdev filed its Initial and Reply Briefs. Copies of the two cases, *STP Nuclear Operating Co. v. NLRB*, 975 F.3d 507 (5th Cir. Sept. 16, 2020), and *Int'l Brotherhood of Electrical Workers v. NLRB*, 973 F.3d 451 (5th Cir. Sept. 2, 2020), are attached hereto.

In *STP Nuclear Operating Co.*, the Fifth Circuit denied enforcement of an NLRB order on the grounds that a nuclear operating company's unit supervisors and plant maintenance supervisors were supervisors under Section 2(11) of the National Labor Relations Act. 975 F.3d at 515, 523. The Fifth Circuit determined that the employees responsibly directed and assigned work, and that the Board's conclusions "suffer[ed]

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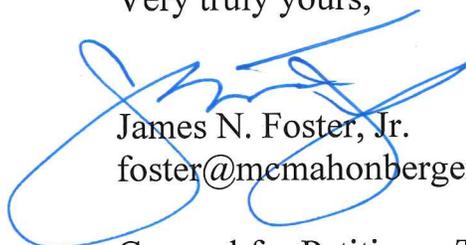
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from notable errors and deficiencies in reading the record,” just as Transdev has argued in its brief and at oral argument that the Board’s conclusions in this case did. *Id.* at 515.

In *Int’l Brotherhood of Electrical Workers*, the Fifth Circuit also held that dispatchers at a utility company were statutory supervisors under Section 2(11) because they exercised independent judgment in assigning employees. 973 F.3d at 462. The Fifth Circuit also noted that the question of whether an employee meets the statutory definition of a supervisor was a question of fact. *Id.* at 457. The Fifth’s Circuit’s statement makes clear that the Union’s recitation of the history of road supervisors and reliance on the decisions of Regional Directors in other regions in its brief and at oral argument is irrelevant and immaterial because the issue of supervisory status should be determined solely by the facts of this case and the evidence adduced at the hearing in this matter, not by generalized statements having no basis in the record.

We would appreciate it if you would forward this letter to Judges Colloton, Shepherd and Wollman, who are the panel members deciding the case. Thank you.

Very truly yours,



James N. Foster, Jr.
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Counsel for Petitioner Transdev
Services, Inc.

CERTIFICATE OF COMPLIANCE

This letter complies with the type-volume limitations of Federal Rules of Civil Procedure 32(a)(7)(B) and 28(j) in that it contains 342 words, excluding the parts of the letter exempted by Fed. R. App. P. 28(j), and has been prepared in proportionally spaced 14-point font. This letter has been scanned for viruses and the brief is virus-free.

/s/ Michelle M. Cain _____

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ James N. Foster, Jr.