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Fax Number . . . . . 220536948915136123166  
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Name . . . . . George E. Yund  
Fax Number . . . . .  
Voice Number . . . . . 513-651-6824

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Brown Todd<sup>LLC</sup>**  
ATTORNEYS

OHIO · KENTUCKY · INDIANA · TENNESSEE

George E. Yund  
(513) 651-6824  
GYUND@FBTLAW.COM

July 6, 2006

**VIA HAND DELIVERY**

Gary W. Muffley  
Regional Director  
NLRB Region 9  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, OH 45202-3271

Re: AK Steel Corporation  
Case 9-RC-18072

Dear Mr. Muffley:

We represent the Employer, AK Steel Corporation, in the above-referenced matter. Following the issuance on June 30, 2006 of the Decision and Direction of Election ("D&D"), we were contacted by agents of the Regional Office who advised us that you have determined that a manual ballot is appropriate in this case, despite the fact that the over 2000 eligible voters will have been locked out for almost five months by the time any election is held, and despite the Board's decision in *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

AK Steel renews the objections to a manual ballot that it attempted to present at the hearing, and advises that the specific location that has been proposed for an election only exacerbates the problems associated with manual balloting to the point where an election under these circumstances will be nothing short of a travesty, as far removed from the required "laboratory conditions"<sup>1</sup> as is possible to imagine.

An election held at a bar/meeting hall, that is used by one of the parties for its meetings on a regular basis, will chill voter turnout and result in objectionable conduct affecting the outcome of this election, which in turn will result in additional waste of Board resources all without "effectuating the purposes of the Act." In view of the circumstances presented by this petition, a hearing could have and should have included the taking of evidence on the issue of the manner of balloting. The failure to do so was itself an abuse of discretion, and the ordering of a

<sup>1</sup> *General Shoe Corp.*, 77 NLRB 124 (1978).

Gary W. Muffley  
July 6, 2006  
Page 2

manual ballot (with or without a hearing on the issue) in these circumstances constitutes an abuse of discretion.

The Required "Laboratory Conditions" Cannot Be Achieved In An Election Held As Currently Contemplated. This case involves a ballot with four choices. The petition was filed by the IAM, and supported by the incumbent AEIF, which has nevertheless elected to appear on the ballot. The USW has intervened. The election will occur in the context of an almost five month lockout of over 2000 employees. Only locked-out employees are eligible to vote. The AEIF and IAM thus are aligned against the Employer and the challenging USW. Campaigning has begun and, not unexpectedly in such a situation, emotions are beginning to boil before the election dates and arrangements have been announced.

The Regional Office has proposed to conduct manual balloting at a location closely associated with the AEIF, that has inadequate parking, some of which will be used during voting hours by those who will fuel their emotions at the bar that is part of the facility.

The abuse of discretion in ordering a manual ballot under circumstances where none of the eligible voters has a reason to drive to the place of balloting other than to vote, and almost five months into a lockout after many are engaged in other matters, is compounded by the choice of the VFW Hall as the polling place. Rather than preserving the necessary "laboratory conditions," the VFW Hall is so closely associated with the AEIF (and derivatively, the IAM), that it "tilts the scale" far in favor of the AEIF/IAM. The election might as well be held at the AEIF union hall, where AEIF officers are able to exclude anyone but members from voting.

The VFW Hall where the vote is contemplated is one of two structures that sits on the same land and shares a common parking area. The other structure is the "VFW Canteen," a "members and guests" bar that serves alcoholic beverages at discount prices. In the investigation that the Employer has been able to conduct in this compressed timeframe, there is overlap between the officers of the VFW and the AEIF. Donny Hamilton is the "Quartermaster" of the VFW. He is the former Contracting Out Committee Chairman of the AEIF. Mike Stoops is the "Commander" of the VFW. He is a retired AK Steel employee and a retired member of the AEIF.

Furthermore, the AEIF is a regular tenant or customer of the VFW. Although the AEIF has its own union hall, it holds its regular membership meetings at the VFW Hall for the additional space, presumably either paying rent or relying on the close ties between the membership of the two organizations. We understand that part of the Board's rationale for considering the VFW Hall is its belief that the AEIF has held its meetings at other locations. That is only true since the lockout began, because of the unusually large attendance generated by membership meetings during the lockout. In other words, when a large number of locked out employees of AK Steel chooses to attend an AEIF meeting, the VFW Hall offers insufficient parking and space. This, of course, is an additional reason why manual balloting at the VFW Hall is certain to reduce voter turnout.

Gary W. Muffley  
July 6, 2006  
Page 3

Because the voters are not at work and cannot be released in an orderly way with a controlled flow, it is likely that hundreds of people will attempt to vote at the same time; for example, when the polls are first proposed to open at 3:00 p.m. on July 26, or at 5:00 to 6:00 p.m. the same day during the rush hour and just prior to the dinner hour, or at 7:00 a.m. the next morning when the voters begin their day. This will inevitably create overflow parking problems at a facility that has only 110 parking spaces.

Inadequate Parking. There are approximately 110 total parking spaces at the facility, approximately 70 of which are in the area surrounding the bar, with the remaining 40 in the area surrounding the "Social Center" which is proposed as the polling place. In preliminary discussions with the Regional Office, it has been acknowledged that when the polls are open each of the four parties to the election will be permitted one observer at each of the four tables that will be used to check in voters. Depending on whether the 16 total observers carpool, 8 to 16 cars will be parked at the polls the entire time they are open. Added to that are the vehicles necessary to transport the 15 Board agents that will be needed to cover this election. The available parking places thus could be reduced by 20, assuming that none of the bar's regular customers takes up an additional parking space. It is safe to assume just the opposite, based upon observations at 3:00 p.m. and 5:30 p.m. yesterday, Wednesday, July 5, the date exactly three weeks prior to the proposed opening of the polls. On Wednesday, July 5 at 3:00 p.m. and 5:30 p.m. there were 25 cars parked in the VFW lot. Thus, it is reasonable to assume that there could be as few as 60 parking places available for voters on Wednesday, July 26.<sup>2</sup>

When advised of the likelihood of parking problems, the Regional Office responded that there is a bowling alley with a parking lot across the street. That doesn't mean that the bowling alley wants the parking places it owns used for this election. That doesn't mean that the bowling alley operator won't police its parking lot or call the police about trespassing. Even if the bowling alley operator cooperates (which we understand that it has not done in the past when the AEIF had overflow crowds at its meetings), the manner that the Board has chosen to conduct this election will result in the dangerous condition of voters having to cross a busy street to get to the polling place.

Electioneering. The Regional Office informed the undersigned that it was asked by one of the union parties to this election whether electioneering could be conducted in the parking lot, and that the Regional Office responded that it could. It was explained this way. The interior of the VFW Social Center would be considered as the polling place. The parking area and other grounds surrounding the facility would not. Handbilling would be permitted. Signs would be permitted. Bullhorns would be permitted. All this in a situation where emotions are running high and the polling place and surrounding parking lot is closely associated with the AEIF.

In response to these concerns, the Regional Office informed the undersigned that the Middletown Police would be alerted. This overlooks the fact that the VFW Hall is outside the

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<sup>2</sup> Although there is an unpaved and unmarked area between the bar and an adjoining gas station in which cars could park, it is not clear who owns that area, or how many cars it could accommodate safely even if it could be used for parking.

Gary W. Muffley  
July 6, 2006  
Page 4

city limits of Middletown, and not in the same county in which the Employer's facility is located. The VFW Hall is just across the county line in Warren County, Ohio, outside the jurisdiction of the Middletown Police.

In any event, to contemplate balloting in a situation where the Board acknowledges that there may be a need for police presence itself speaks volumes about why manual balloting is not consistent with the purpose of achieving maximum opportunity for voter turnout. The only way that these circumstances will not turn into a virtual powder keg is if those persons who support the intervenor union, or no union at all, decide to stay away from the polls altogether. They must know that the area surrounding the polling place will be overrun by AEIF/IAM supporters, given the close historical and membership association between the VFW and the AEIF.

Alcohol. The bar and Social Center share a common liquor license. While the bar is open for discount drinking on a regular schedule, the same liquor license allows the VFW to serve alcohol at events for which the Social Center is booked (e.g., wedding receptions). As noted above, the bar area regularly has patrons on Wednesday afternoon and evening, who regularly take up a significant number of parking spaces. On the evening of the first day the polls are open from 3:00 to 8:00 p.m., it is logical to assume that AEIF supporters, accustomed to gathering at the VFW Hall and adjoining bar, will park their cars, vote, keep their parked cars there, have a few drinks, perhaps be persuaded to move their cars if other known AEIF supporters are looking for parking spaces, and probably engage in electioneering activities fueled by alcohol consumption. When advised of these concerns, the Regional Office responded by saying that, despite the fact that it considered only the interior of the building as the polling place, it would instruct voters to remove their cars, and that if bullhorns could be heard inside the building they would be instructed not to use them.

The Other Reasons Why Manual Balloting Is Inappropriate. There are additional concerns associated with holding a manual election in this case, concerns which are not unique to the VFW Hall. Had the parties been permitted to present these concerns at the representation hearing, they would have demonstrated that a mail ballot election is the only viable option in this case. There are simply too many logistical problems with conducting a manual election during a protracted lockout where thousands of eligible voters are scattered for miles around. The conventional theory that manual elections produce greater participation simply does not apply here.

As already established in the exhibits attached to the Employer's brief, and which we attempted to proffer at the hearing, 65% of the eligible employees do not live in the City of Middletown, and 36% live more than ten miles away. The D&D replies to this fact only by saying that the voters do not need to drive any farther to the polling place than they did to come to work. That misses the point almost entirely. Employees who are driving to work are driving not just for the purpose of voting but to spend eight to sixteen hours at work and earn a paycheck. That is why on-site elections among an actively employed workforce are best designed to maximize the opportunity to vote. And that is exactly why the election arrangements contemplated are designed not to maximize the opportunity to vote.

Gary W. Muffley  
July 6, 2006  
Page 5

A fair election compatible with the Board's well-established standard of "laboratory conditions" is unlikely if this election is conducted by manual ballot. Instead of being released from duty in an orderly fashion, hundreds of voters could arrive at the polling place from various locations at the same time. This will create an unmanageable situation in the parking lot, in the voting lines, and at the ballot box. Long lines also will increase the likelihood for electioneering, which decreases the chance for a fair election. Managing voter flow and preventing electioneering also will require expending significant Board resources.

The large number of ineligible voters on the Excelsior list will also create a problem at the polls. The parties tried to establish at the hearing that several hundred individuals, who will be included on the Excelsior list, are in fact no longer eligible to vote. Many people in the appropriate unit have resigned or retired since the last pay period prior to the lockout. The parties' need to challenge such a large number of voters will further complicate the manual election.

These concerns demonstrate the propriety of conducting this election by mail ballot. Eligible voters could vote from their homes at times that are convenient to them. A fair election is more likely because voters will not be subject to the same electioneering pressures. Moreover, a mail ballot election will require far fewer board resources. The influx of voters and the ability to challenge ineligible voters can be managed more efficiently at significantly less cost to the Board. The Board has instructed that all of these factors weigh in favor of a mail ballot. *San Diego Gas & Electric, supra.*

The Regional Director should conduct the election by mail ballot. Such a decision would ensure the Regional Director has not abused his discretion, would demonstrate the impartiality of these proceedings, and would – most importantly – provide the greatest opportunity for eligible voters to vote.

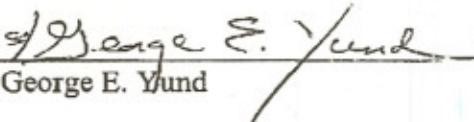
Conclusion. Before the Regional Office announced its contemplated use of the VFW Hall, the factors prescribed for consideration by the Board militated in favor of a mail ballot. The choice of the VFW Hall makes it even more apparent that use of manual balloting in this situation would be an abuse of discretion. The VFW Hall is closely aligned with one of the parties to the election, has limited parking, and will almost certainly involve consumption of alcohol in an affiliated facility after – if not before – voting occurs. Nothing could be further

Gary W. Muffley  
July 6, 2006  
Page 6

from the assurance of the necessary "laboratory conditions." The plan to conduct a manual ballot, especially one at the VFW Hall, should be changed and a mail ballot should be ordered.

Very truly yours,

FROST BROWN TODD LLC

By   
George E. Yund

GEY/rdt

cc: Robert H. Mitchell, Esq., AEIF (via facsimile)  
Mr. Shane Carlin, USW (via facsimile)  
Mr. Raymond Briggs, IAM (via facsimile)

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