UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
09-RC-358016

BLUE OVAL SK,

EMPLOYER

and

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

PETITIONER

BLUE OVAL SK'S REQUEST TO UNBLOCK THE ELECTION AND, IF NECESSARY, IMPOUND THE BALLOTS

Blue Oval SK ("BOSK"), by and through its undersigned counsel, hereby submits this Request to Unblock the Election and, If Necessary, Impound the Ballots. The United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW" or "Union") has not filed any unfair labor practice charge that requires the election be blocked, and the Union's attempt to block the election at this late stage is a blatant misuse of the Board's blocking charge policy.

I. BACKGROUND

On January 7, 2024, the Union filed an RC petition requesting an election at BOSK's Glendale, KY facility. BOSK filed its Statement of Position on January 17, 2025, arguing that an election was premature. A hearing was held on January 28, 2025, as to whether BOSK employed a substantial and representative complement of employees sufficient to hold an election. The Regional Director issued his decision and direction of election on June 25, 2025, directing BOSK to file the required voter list by June 30, 2025. The Regional Director ordered the parties to confer

to set the exact dates for the election. The next day, the Region emailed the parties inquiring about an election on either July 16-17 or July 23-24.

On Monday, June 30, 2025, the Region held a conference with the parties to finalize details for the imminent election. At that conference, the Union suddenly informed BOSK that it intended to convert unfair practice charges filed months earlier into blocking charges. Thereafter, the Union submitted a courtesy copy of partially completed Form NLRB-5546, identifying unfair labor practice charges "9-CA-354419, 09-CA-360080, and 9-CA-360080 (sic)" as the basis for requesting the petition be blocked. BOSK was later informed that the Regional Director had reviewed the Union's blocking charges and had blocked the election.

The Union recited only two charges in support of its request to block the election, and BOSK is aware of only four unfair labor practice charges filed against it by the Union during BOSK's history:

- 09-CA-354419 (filed November 5, 2024) – 8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))
- 09-CA-359631 (filed January 31, 2025) - 8(a)(1) Interrogation (including Polling); 8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline); 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
- 09-CA-360080 (filed February 10, 2025) - 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.); 8(a)(1) Coercive Actions (Surveillance, etc.)
- 09-CA-361418 (filed March 5, 2025, Amended May 8, 2025) - 8(a)(4) Discharge (including Layoff and Refusal to Hire); 8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))

BOSK has not received a request for evidence letter for *any* of the above charges. For the reasons set forth below, none of these Charges should be used to block the election, and the election should be allowed to proceed.

II. ARGUMENT

a. Legal Background.

The Board's Casehandling Manual, Part 2, Representation Proceedings, provides in relevant part:

> 11730 Blocking Charge Policy—Generally
> ***
> The exceptions to the blocking charge policy are set forth in detail in Sec. 11731. Where the Regional Director is giving consideration to these exceptions while implementing the blocking charge policy, **it should be recognized that the policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition**. Rather, the blocking charge policy is premised solely on the Agency's intention to protect the free choice of employees in the election process.

(The Board's Casehandling Manual, Part 2, Representation Proceedings) (emphasis added).

One of the exceptions for a blocking charge listed in the Casehandling Manual is:

> 11731.6 Exception 6: Scheduled Election
>
> In situations where a party files a Type I or Type II unfair labor practice charge and requests that the ULP charge block an election that is scheduled too soon in time to allow for a determination of possible merit of the charge, the Regional Director may, in their discretion:
>
> > a. Postpone the election pending disposition of the charge; or
> > b. **Hold the election as scheduled and impound the ballots until after disposition of the charge; or**
> > c. **Conduct the election, issue the tally of ballots and, in the absence of objections, issue a certification; and then proceed to investigate the charge.**
>
> Factors: The following are among the factors to be considered under this exception:
>
> > 1. The strength of the evidence described in the offer of proof in support of the allegations, submitted with the request to block.
> > 2. The passage of time between the alleged conduct and the filing date of the charge.
> > 3. The seriousness of the allegations and the evidence submitted with the charge as to its dissemination.

> Relevant factors recited in Exception 2 (Sec. 11730.2) may also be considered. If as a result of the determination a scheduled election is postponed,

(The Board's Casehandling Manual, Part 2, Representation Proceedings) (emphasis added).

b. The Union is Misusing the Blocking Charge Process.

It is clear the Union is attempting to misuse the blocking policy as a tactic to delay the election and deprive employees of their opportunity to vote whether they desire to be represented by the Union. "The potential for abuse inherent in the blocking charge procedure has been noted before" by the Board. *Outokumpu Stainless Usa, LLC*, 365 NLRB 1248, 1258 fn 10 (2017)(*citing Bally's Atlantic City*, 338 NLRB 443, 443 (2002) (Member Cowen, dissenting) (noting that the blocking charge doctrine can be used to "manipulate and compromise the election process")). There is "no justification for allowing a party to dictate whether a tally of ballots will issue simply by choosing to file an unfair labor practice charge[.]" *Bally's Atlantic City*, 338 NLRB 443 (Member Cowen, dissenting). "To do so permits a party to manipulate and compromise the election process." *Id.*

Assuming the Union relied on either the same two unfair labor practice Charges in the Form submitted to the Region as in the draft form or, at most, the four unfair labor practice Charges currently pending before the Region, none of the Charges is sufficient to block the election.

At the outset, Charge 09-CA-354419 was filed pre-petition and cannot be used to block the election. Charge 09-CA-359631 (not listed in the draft Form sent to BOSK) was filed on January 31, 2025: *three days after* the hearing in this matter and *seven days before* the parties submitted their post-hearing briefs. When the Union filed its post-hearing brief, it had knowledge of the allegations underpinning the January 31, 2025, Charge and still emphatically believed an election should be directed. Charge 09-CA-359631, then, shouldn't be used to block the election.

That leaves only two Charges: 09-CA-360080, which was filed on February 10, 2025, related to allegedly coercive statements and actions, and 09-CA-361418 (not listed in the draft Form sent to BOSK), filed on March 5, 2025, related to an allegedly unlawful discharge. If the Union believed either Charge 09-CA-360080 or 09-CA-361418 were sufficient to block the election, it could have indicated either (or both) was a blocking charge in the intervening 3.5-4.5 **months** since they were filed. It did not. Indeed, to date, BOSK has yet to receive a request for evidence letter relating to either charge.

Instead, the Union permitted the Region to continue evaluating and deciding the issue presented at Hearing – whether there was a substantial and representative complement of employees – when, according to the Union, it believed *months ago* that a free and fair election could not be held. The Union's disingenuous action represents a blatant disregard for the Region's time and efforts. It is telling that the Union's first indication that the Company had allegedly done anything to jeopardize a free and fair election was *after* the Regional Director's Decision and Direction and subsequent email indicating an election was imminent. Such tactics constitute mere gamesmanship and misuse. They undermine rather than vindicate the Act. Accordingly, the election should be permitted to proceed and, if deemed necessary, the ballots be impounded pending resolution of the Charges.

c. The Regional Director has Discretion to Have the Election and, if Necessary, Impound the Ballots.

Exception 6 of the Board's Blocking Charge Policy indicates that when a Charge is filed too soon in time of a scheduled election to allow for a determination on the merits, the election can be held as scheduled with the ballots impounded. (The Board's Casehandling Manual, Part 2, Sec. 11731.6, Representation Proceedings). In evaluating Exception 6, the Region is directed to review the strength of the evidence, the passage of time, and the seriousness of the allegations

and evidence submitted. As noted above, the only two possibly relevant Charges were filed in February and March 2025. While the Union may now claim to have sufficient evidence in support of those Charges, neither that evidence nor the specific allegations have ever been shared with BOSK and presumably wasn't shared with the Region between November 2024 and June 30, 2025.

Moreover, the Union's current claim that an election should not proceed is directly at odds with its public statements since January. Indeed, after the filing of both Charge 09-CA-360080 and Charge 09-CA-361418, the Union has spoken out repeatedly demanding an election and accusing BOSK of unnecessary delay. For example:

- On 6,7(C) 2025, the Union posted a video 6,7(C) asking BOSK to let the employees vote. 6,7(C) 6,7(C) 6,7(C) .
- A similar video was posted on 6,7(C) 2025, asking that employees be permitted to vote. 6,7(C)
- On 6,7(C) 2025, the Union indicated 6,7(C) at BlueOval SK in Kentucky 6,7(C) 6,7(C) 6,7(C)
- On 6,7(C) 2025, the Union, again 6,7(C) asked that [presumably BOSK] 6,7(C) 6,7(C) 6,7(C)
- Similar videos and messages were shared via 6,7(C) and 6,7(C) See e.g. 6,7(C)

After months of demanding employees be permitted to vote, the same months that the alleged blocking Charges were pending, it was only upon being given what they had been demanding – the opportunity for employees to vote – that the Union discovered that that the months-old Charges were actually blocking charges. This passage of time and the Union's own

messages belie any allegation that either the strength of the evidence or the seriousness of the allegations should block this election from proceeding. Instead, the Region should schedule the election and, if necessary, impound the ballots pending resolution of the Union's Charges.

III. REQUEST FOR HEARING

Given the importance of this election and the timing of the Union's blocking Charge(s), as well as the apparent intent of the Union to misuse the blocking-charge procedure, BOSK requests a hearing regarding whether the election should be blocked so that the matter may be fully considered.

IV. CONCLUSION

For the foregoing reasons, the Region should unblock the election, schedule the election, and, if deemed necessary, impound the ballots pending resolution of the Charges.

Respectfully submitted,

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/s/ Catherine F. Burgett

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CERTIFICATE OF SERVICE

I certify that BlueOval SK's Request to Unblock the Election and, If Necessary, Impound the Ballots, electronically filed with the National Labor Relations Board on July 2, 2025, was emailed to: (1) UAW Associate General Counsel Lisa Harrison at lharrison@uaw.net and (2) Counsel for the Union, Aaron Gladstone, Eisner Dictor & Lamadrid, P.C. at aaron@eisnerdictor.com on June 30, 2025.

Respectfully submitted,

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