

No.

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED SCRAP METAL PA, LLC,
Applicant,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

LABORERS INTERNATIONAL UNION OF NORTH
AMERICA LOCAL 57,
Intervenor.

**Emergency Application For Extension Of Time To File A Petition For A
Writ Of Certiorari To The United States Court Of Appeals For The Third
Circuit**

**APPLICATION TO THE HONORABLE
JUSTICE SAMUEL A. ALITO, JR. AS CIRCUIT JUSTICE**

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CORPORATE DISCLOSURE STATEMENT

Applicant United Scrap Metal PA LLC is a private entity and not publicly traded. Applicant's parent corporation is United Scrap Metal Holdings, Inc. There is no publicly held company owning 10% or more of Applicant's stock.

APPLICATION FOR EXTENSION OF TIME

In accordance with Rules 13.5, 22, and 30.3 of the Rules of this Court, Applicant United Scrap Metal PA LLC respectfully requests emergency consideration of a 60-day extension of time, to and including August 29, 2025, within which to decide to file, and file if it so chooses, a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case. The court of appeals entered its judgment on September 16, 2024, and denied rehearing en banc on March 31, 2025. The time within which to file a petition for a writ of certiorari will expire within 3 days, on June 30, 2025, unless extended. Extraordinary circumstances support an extension because one a key decisionmaker for Applicant's decision whether to file a petition has been unable to participate in the decision-making process due to illness. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1). The opinion of the court of appeals (attached as Exhibit A) is reported at 116 F.4th 194. The order denying rehearing (attached as Exhibit B) is unreported.

1. Laborers' International Union of North America, Local 57 petitioned Respondent National Labor Relations Board on October 15, 2020 to conduct a secret ballot union representation election among a group of workers employed by Applicant. Respondent conducted that election on November 20, 2020. The result of that vote showed that the Union had won a narrow majority of the votes cast. As a result of the underlying administrative process, the Union was certified as the collective bargaining representative of those employees on February 8, 2023.

2. This case involves Respondent's adjudication of several objections to certification and allegations of unfair labor practices stemming from a union election.

In the decision below, a Third Circuit panel granted petitions for enforcement by Respondent and denied Applicant's cross-petitions for review. Two holdings of the Third Circuit are particularly relevant to Applicant's potential petition for a writ of certiorari.

3. *First*, courts of appeals, including the Third Circuit have held that for a union election to be free and fair, Respondent must essentially "provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." *Med. Ctr., Inc. v. NLRB*, 716 F.2d 995, 999 (CA3 1983) (citations omitted). When considering if the laboratory environment was maintained in light of allegations of improper union and union-supporter conduct, courts consider the "cumulative impact of the alleged episodes." *Swing Staging, Inc. v. NLRB*, 994 F.2d 859, 863 (CA10 1993); *accord NLRB v. Van Gorp Corp.*, 615 F.2d 759, 765 (CA8 1980) ("It is the totality of the circumstances in any particular case that determines whether a free and fair election was held.") (citation omitted); *NLRB v. Browning-Ferris Indus., Inc.*, 803 F.3d 345, 349–50 (CA7 1986) (Board should consider any evidence of a "pattern of conduct that could have influenced the vote" to determine if "the cumulative impact of the conduct" jeopardized the fairness of the election). Respondents and the Third Circuit failed to do so here. Instead, they relied on a single alleged threat by a union supporter against another employee in isolation and ignored "totality of the circumstances," surrounding both that threat and other threats made by the same individual.

4. *Second*, the Third Circuit applied an improper standard of review when evaluating Respondent’s decision to discredit one of Applicant’s witnesses. Specifically, the Third Circuit held that the administrative law judge did not have to provide a valid reason to discredit the witness so long as the ALJ “implicitly resolved conflicts in the testimony by accepting and relying on the testimony of one party’s witnesses.” Ex. A at 9 n.3. But even the deferential “substantial evidence” standard requires that the Court discern some reason for the agency’s factual and credibility determinations. *See Biestek v. Berryhill*, 587 U.S. 97, 102 (2019). The Third Circuit’s reliance on implicit reasoning that it did not identify was erroneous even under this deferential standard.

5. Applicant respectfully request a 60-day of extension of time to consider whether to file, and file if it so chooses a petition for writ of certiorari. Moreover, “extraordinary circumstances” are present and support granting an extension even though it is requested within 10 days of the petition’s current due date. Specifically, Marsha E. Serlin, Applicant’s Chief Executive Officer, founder, and majority shareholder—one of Applicant’s key decisionmakers whose role is crucial for determining whether to file a petition—has a serious medical condition. Ms. Serlin has received and will continue to receive in July and August treatments for this condition. These treatments have negatively impacted Ms. Serlin’s mental acuity and ability to focus on important matters impacting Applicant’s business. These treatments have resulted in a longer and more significant impact than Applicant anticipated and their impact has not given Ms. Serlin sufficient time or focus to weigh in on the decision-

making process. The requested extension of time would allow Ms. Serlin an opportunity to participate in the decision-making process while preserving Applicant's ability to file a petition if it chooses to do so.

6. For all these reasons, Applicant respectfully requests emergency consideration and that the due date for their petition for writ of certiorari be extended by 60 days, to and including August 29, 2025.

Respectfully submitted,

/s/ Stephanie Schuster

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