

No. \_\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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UNION PACIFIC RAILROAD COMPANY,

*Applicant,*

v.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN,

*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**PARTIES TO THE PROCEEDING AND  
CORPORATE DISCLOSURE STATEMENT**

1. Applicant Union Pacific Railroad Company was the defendant in the district court and the appellant before the court of appeals. Respondent Brotherhood of Locomotive Engineers and Trainmen was the plaintiff in the district court and the appellee before the court of appeals.

2. Union Pacific Railroad Company is a wholly owned subsidiary of Union Pacific Corporation, a publicly traded company. No publicly traded corporation is known to own 10% of the stock of Union Pacific Corporation.

## APPLICATION FOR AN EXTENSION OF TIME

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rules 13.5, 22, and 30.3, applicant Union Pacific Railroad Company ("Union Pacific") respectfully requests a 30-day extension of time—to and including September 7, 2022—within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

The district court entered a preliminary injunction in favor of respondent Brotherhood of Locomotive Engineers and Trainmen ("BLET"). On appeal, a panel of the Fifth Circuit affirmed. Its opinion, reported at 31 F.4th 337, is attached as Exhibit A. The court of appeals denied Union Pacific's petition for rehearing en banc on May 10, 2022. The order denying rehearing is not reported and is attached as Exhibit B. Unless extended, the deadline to file a petition for a writ of certiorari is August 8, 2022. This application is timely. *See* Sup. Ct. R. 30.2. And this Court's jurisdiction will be invoked under 28 U.S.C. § 1254(1).

1. This case presents important questions concerning the scope of federal jurisdiction over otherwise arbitrable disputes under the Railway Labor Act ("RLA"), 45 U.S.C. § 151, *et seq.* Under the RLA, "minor disputes"—i.e., those that involve "the interpretation or application of agreements concerning rates of pay, rules, or working conditions"—are subject to the exclusive jurisdiction of arbitration panels called Adjustment Boards. *Conrail v. Railway Labor Executives' Ass'n*, 491 U.S. 299, 303-04 (1989); 45 U.S.C. § 153. It is well established that "controversies involving

disciplinary matters are ‘minor disputes’ within the exclusive jurisdiction of the Adjustment Boards.” *Nat’l R.R. Passenger Corp. v. Int’l Ass’n of Machinists & Aerospace Workers*, 915 F.2d 43, 50 (1st Cir. 1990); *Thacker v. St. Louis Sw. Ry. Co.*, 257 F.3d 922, 924 (8th Cir. 2001). However, some courts, including the court below, have recognized an “antiunion animus exception” to that general limitation that allows federal courts to exercise jurisdiction over certain minor disputes arising from antiunion animus by the carrier. The exception rests on the theory that Section 2 of the RLA—which provides that no carrier “shall in any way interfere with, influence, or coerce” their employees in their “choice of representatives,” 45 U.S.C. § 152—is “judicially enforceable because noninterference with employees’ chosen representation is a statutory right crucial to the Act’s functioning.” Ex. A at 7.

2. This case arises from a fistfight among Union Pacific employees in a parking lot in El Paso, Texas. BLET filed the instant lawsuit in the United States District Court for the Western District of Texas, seeking to enjoin Union Pacific from proceeding with disciplinary investigations into six employees involved in the fight, five of whom held offices in the BLET local division in El Paso. BLET alleged that Union Pacific violated Sections 2 Third and 2 Fourth of the RLA by issuing notices of investigation to the employees and removing them from service pending an investigation. BLET claimed that Union Pacific took these actions with antiunion animus in an effort to undermine the functioning of the BLET local division. The district court denied Union Pacific’s motion to dismiss for lack of jurisdiction and granted a preliminary injunction in BLET’s favor.

3. The Fifth Circuit affirmed. *See* Ex. A. The court concluded that the district court properly exercised jurisdiction under the antiunion animus exception to the RLA. The court held that “[f]ederal courts have jurisdiction over postcertification disputes alleging that railroad conduct motivated by antiunion animus is interfering with the employees’ ‘choice of representatives.’” Ex. A at 12 (quoting 45 U.S.C. § 152). The court noted that “[t]he suspended employees are elected officers of their local union division,” and “the union alleges that the charges are pretext for a plot to inhibit the employees’ ability to act as union representatives and thereby weaken the union.” *Id.* at 8. The court denied Union Pacific’s petition for rehearing en banc on May 10, 2022. Ex. B.

4. On June 1, 2022, the district court granted the parties’ joint motion to suspend all district court proceedings pending the disposition of a petition for a writ of certiorari.

5. Union Pacific anticipates seeking this Court’s review on the basis that the Fifth Circuit’s decision conflicts with decisions from this and other courts. The Fifth Circuit’s sweeping approach to the antiunion animus exception conflicts with the far narrower approach followed by other circuits, which either have not recognized the exception or have held that a carrier’s antiunion conduct must be so extreme as to amount to an attack on the existence of the union itself as a bargaining representative, or so disruptive to the functioning of the union as to render the arbitration process meaningless. *See, e.g., Bhd. of Maint. of Way Emps. Div. /IBT v. BNSF Ry. Co.*, 834 F.3d 1071, 1077 (9th Cir. 2016); *United Transp. Union v. Nat’l*

*R.R. Passenger Corp.*, 588 F.3d 805, 813-14 (2d Cir. 2009); *Indep. Union of Flight Attendants v. Pan Am. World Airways, Inc.*, 789 F.2d 139, 141-42 (2d Cir. 1986); *International Ass'n of Machinists & Aerospace Workers v. Northwest Airlines, Inc.*, 673 F.2d 700, 712 (3d Cir. 1982). The Fifth Circuit's decision is also in tension with *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 489 U.S. 426 (1989), where this Court explained that the RLA's prohibition against interference with employees' designation of a union representative applies "primarily to the precertification rights and freedoms of unorganized employees." *Id.* at 440. This case, of course, involves a postcertification dispute. The Fifth Circuit's broad interpretation of an antiunion animus exception will give rise to federal jurisdiction in any case where the plaintiff merely alleges the carrier was motivated by antiunion animus.

6. "For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days." Sup. Ct. R. 13.5. Additional time is necessary to allow counsel to prepare and file a petition on this important question of federal law. Undersigned counsel was recently retained and has had no prior involvement in this case. Undersigned counsel also has significant professional obligations during the period in which the petition would otherwise need to be prepared, including briefing deadlines in cases pending in the U.S. Court of Appeals for the Fifth Circuit and the U.S. Court of Appeals for the Seventh Circuit. Union Pacific is not aware of any party that would be prejudiced by a 30-day extension.

Accordingly, good cause exists for this application, and Union Pacific respectfully requests a 30-day extension of time within which to file a petition for a writ of certiorari, to and including September 7, 2022.

Dated: June 29, 2022

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Respectfully submitted,

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