UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TULANE UNIVERSITY
Employer

and Case 15-RC-396064

WORKERS UNITED, SOUTHWEST
REGIONAL JOINT BOARD
Petitioner

ORDER

The Employer's "Request for Review, Motion to Stay October 29, 2026 Hearing, and Motion For Expedited Consideration" is denied.[1]

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[1] Although the filing in question is styled as a "Request for Review," the text of the document makes clear that the Employer has filed it in advance of a request for review that will articulate the merits of its arguments in more detail. We are accordingly treating this filing as a request for extraordinary relief filed pursuant to Sec. 102.67(j) of the Board's Rules and Regulations, not as a request for review filed pursuant to Sec. 102.67.

In denying the Employer's request for extraordinary relief, we find that the Employer has not satisfied Sec. 102.67(j)'s requirement that it make a "clear showing" that a stay is "necessary" in this case, particularly where the Regional Director has already twice postponed the preelection hearing in response to the Employer's previous requests, the Hearing Officer has preliminarily ruled on the Employer's petitions to revoke the Petitioner's subpoenas, and the Employer voluntarily chose to retain new counsel following the start of the preelection hearing. Finally, we note that Sec. 102.66(d) of the Board's Rules and Regulations does not afford regional directors discretion to excuse a party's failure to timely file and serve its Statement of Position "based on [a] finding that no party [was] prejudiced by the delay." *Brunswick Bowling Products, LLC*, 364 NLRB 1233, 1234 (2016).

Member Mayer and Member Macy believe that the policies of the Act would be better served by amending the Board's rules to allow regional directors some discretion to accept late-filed SOPs in cases where no prejudice has been shown. See, e.g., *Paolicelli*, 335 NLRB 881, 882 (2001) (recognizing that the Board's established policy favors determinations on the merits rather than by default). They reject the view that a party suffers cognizable prejudice any time a missed deadline is excused, a position that cannot be reconciled with the standard the Board applies in other contexts in determining whether a late-filed document should nevertheless be accepted. *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993) (in determining *whether* a missed deadline is excusable, relevant factors include the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.)

DAVID M. PROUTY, MEMBER

SCOTT A. MAYER MEMBER

JAMES R. MACY MEMBER

Dated, Washington, D.C., November 20, 2026.

This is especially true in representation cases, which are investigative in nature and where, "[o]nce a petition is filed, the regional director is charged with the responsibility to investigate the petition and ultimately to determine whether a question concerning representation exists. These are the regional director's statutory responsibilities under Section 3(b) of the Act; [Sec. 102.66] did not—and could not—change them." *Brunswick Bowling,* 364 NLRB at 1234. See also *Ikea Distribution Services*, 370 NLRB No. 109, slip op. at 1 (2021) (recognizing that, "absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit" even if an SOP is untimely filed). In any event, "it is employee free choice that is at issue, not the victory or loss of any particular party." *SNE Enterprises*, 344 NLRB 673, 674 (2005). For these and other reasons, it cannot fairly be said that a party in a representation case is entitled to avoid litigating an issue simply because an SOP is untimely filed or would invariably be prejudiced if a late-filed SOP were accepted. They recognize, however, that the Board's current Rules and Regulations do not afford regional directors with that discretion.

In agreeing with his colleagues to deny the Employer's request for extraordinary relief to excuse its late-filed statement of position, Member Prouty notes the salutary benefits of the longstanding bright-line rule set forth in Sec. 102.66(d) and *Brunswick Bowling Products.* When a rule is clear, and one side follows the rule but the other does not, Member Prouty suggests that the party following the rule does suffer an inherent prejudice: if the offending party is excused, the non-offending party then must expend resources to answer an argument (or arguments) that —by the rules—it should not have had to answer. That is by definition a prejudice that it has suffered. Rules such as strict filing deadlines were promulgated in the first place, and continue to exist, to ensure that all parties who practice before the Board know where the line is. When that line is crossed—even inadvertently—there must be consequences. Otherwise, the rules lose their force and effect.