

Hertz Equipment Rental Corporation and Troy Daugherty, Petitioner and Operating Engineers Local Union No. 103, International Union of Operating Engineers, AFL-CIO. Case 25-RD-1337

April 9, 1999

ORDER AFFIRMING DISMISSAL

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND
BROME

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's administrative dismissal. (Relevant portions of the Regional Director's dismissal letter are attached.) The request for review raises no substantial issues warranting reversal of the Regional Director's action. In affirming the dismissal, we note that the petition was filed during the posting period of the settlement agreement resolving Cases 25-CA-25900 and 25-CA-26059, during which no question concerning representation can be raised. See *Freedom WLNE-TV, Inc.*, 295 NLRB 634 (1989). Accordingly, the Regional Director's action is affirmed.

MEMBER BROME, dissenting.

I would grant review because I disagree with the automatic dismissal rule imposed by the Board's deci-

sions in *Freedom-WLNE TV*, 295 NLRB 634 (1989), and *Douglas-Randall*, 320 NLRB 431 (1995). The automatic dismissal fails to consider the Section 7 rights of the employees. Thus, instead of applying this "bright-line" rule, I join Member Hurtgen in endorsing a case-by-case analysis of the effect of the alleged employer misconduct in situations involving the filing of a decertification petition in the face of a settlement of pending unfair labor practices. See Member Hurtgen's dissent in *Liberty Fabrics, Inc.*, 327 NLRB 38, 39 (1998). Having a case-by-case determination whether to process the decertification petition better serves the interest of all parties in each case by more effectively promoting the Board's statutory policy of protecting the Section 7 rights of employees to retain or reject a bargaining representative.

APPENDIX

REGIONAL DIRECTOR'S DISMISSAL LETTER

The above case, petitioning for investigation and determination of representatives under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that by reason of my approval of a settlement agreement on August 26, 1998, in Cases 25-CA-25900 and 25-CA-26059 amended, providing, for, among other things, bargaining with respect to the employees involved in this petition, further proceedings are not warranted at this time. I am, therefore, dismissing the petition. *Douglas-Randall, Inc.*, 320 NLRB 431 (1995); *Freedom WLNE-TV*, 295 NLRB 634 (1989).