UNITED STATES OF AMERICA

BEFORE

THE NATIONAL LABOR RELATIONS BOARD,
REGION 28

NV Energy, Inc.,	)	
	)	
Employer	)	
	)	28 UC 243
	)	
	)	
	)	POSITION STATEMENT
	)	OF PETITIONER RE
INTERNATIONAL BROTHERHOOD OF	)	COMPANY MOTION TO
ELECTRICAL WORKERS, AFL-CIO,	)	STAY PROCEEDINGS
LOCAL 396	)	
Petitioner	)	
	)	

The Company has filed a Motion to Stay Proceedings with respect to the Regional Director's Decision and Order pertaining to a UC petition filed January 26, 2009 seeking to add 15 positions to the 1150 person bargaining unit the Union presently represents at the company. Those positions exist because NVE hired 15 people to operate, maintain and stock materials and supplies at the Higgins generating plant acquired October, 2008. They are the plant operator, maintenance specialist and materialman/warehouseman positions. The individuals sought were hired directly by NVE and assigned to work at the Higgins Generating Plant in Clark County, Nevada. They perform the same, or substantially similar work as existing employees of the employer working in Clark

County, all of which are bargaining unit under the present CBA[1]. Emp. Ex. 1. If the employees are not included in the existing bargaining unit, they will be the only non bargaining unit craft employees employed by NV Energy in Southern Nevada.

Although the Union recognizes that the National Labor Relations Board has the discretion whether to grant a stay or not, a stay is not appropriate under the circumstances. Accordingly, the Union objects to the entry of a stay of proceedings.

The Company motion is quite simplistic, and shows no compelling reason to issue a stay. Essentially, it claims that it will be a waste of its time to move forward. This argument could be made by every single company who does not get its way before the Regional Director. Had the Board wanted proceedings to be stayed pending review, its regulations would have made a stay automatic. Instead, the regulations state just the opposite. Stays should only be given in the most compelling of situations, where irreversible harm will occur if it is not. In the case at bar, the company has put forth no compelling evidence that it will suffer any harm, reversible or otherwise.

The company claims that the Union requested to negotiate with the Company regarding the terms and conditions of employment regarding the accreted employees[2].

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[1] During the hearing, NVE attempted to point out differences between what the new employees did and what existing employees covered by the existing CBA did, however, it failed to show any substantive difference. Essentially, NVE added functions performed by bargaining unit "leads" to the basic functions performed by various employees in existing CBA classifications.

[2] The Union demanded that the CBA be applied to these employees prior to filing the UC Petition. The company refused. The Union filed unfair labor practice charges as a result. The charges are being held in abeyance by the Board, pending the outcome of the UC proceedings. It has always been the position of the Union that when the company hired the new employees, it was duty bound to apply the CBA (not negotiate anything new). The company's attempt to side step that obligation is what lead to filing the UC Petition.

When the company took over the Silverhawk plant several years ago it hired employees doing the same basic tasks as those at the Higgins plant at issue in this case under similar circumstances. When it did so, it recognized that the employees were properly part of the existing bargaining unit. As such, it met with the Union to discuss the proper way to merge the newly hired workers into the existing work force. At that time, the parties reworked the plant operator and maintenance specialist classifications so that the positions were properly described, and worked out the details for the workers' incorporation into the existing system. The descriptions and details apply equally in the Higgins situation. See CBA Emp. Ex. 1. There is really nothing left to do. So, although it is technically correct that the Union requested to get together with the company to move forward, negotiations are not required. The present CBA clearly sets forth the terms and conditions that pertain to the positions in question. To the extent a meeting is desired, it is for the purpose of assuring that the CBA is properly applied. The Union does not desire to meet to change contract language. It simply wants to meet to assure that the company properly applies the CBA and that no employee suffers ill effects as a result of the merging of his/her position; things such as making sure that proper placement is made for seniority purposes, PTO and vacation schedules are properly accommodated and the like. This would only take a few hours.

The company also claims that it might moot the issues under review by proceeding, and that the Union will claim that it *waived* the points it is raising in the

pending Request for Review. It cites no case authority for this novel, but unfounded idea. Moreover, the crystal ball into which it peered to determine what the Union will and won't claim was not introduced as evidence. It is pure speculation. Waiver occurs when one *knowingly relinquishes* a right. In this case, the Decision and Order of the Regional Director is valid and remains in effect. Thus, the company has no right not to proceed. It is compelled by law. Moreover, it can protect its position by clearly pointing out that it reserves its rights, and is proceeding only because compelled to do so.

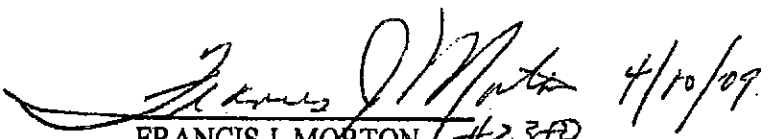
The employees in question should rightfully have been covered under the existing CBA from the day they were hired. Yet, from the outset, the company has denied them proper coverage under the CBA and engaged in dilatory tactics intent on undermining the Union and negating the Union's support amongst employees. Its request for a stay is simply another attempt at delay. Its claim that it is worried about a waste of time is disingenuous. The company has refused to allow the Union to have access to the employees[3] because it is worried that, through contact with the employees, the Union will gain support and it will be less likely to win should the Board order an election[4]. It is seeking to use the Board to gain tactical advantage. The fact is that there is little likelihood that the company will be successful in challenging the decision of the Regional Director, and, even if it is, no irreparable harm will occur as a result of being required to

[3] The company has also refused the Union's request for access to the plant to conduct a safety assessment.
[4] The company motion also mentions the Union's request to grieve a matter. The grievance in question is a grievance filed prior to the filing of the UC Petition regarding a safety matter involving an employee. The company refused to proceed on that grievance prior to filing the petition.

move forward under the Decision and Order in the interim. In fact, by denying a stay, someone's life might be saved if the Union is afforded access and can conduct a proper safety assessment.

Petitioner requests that the Company's Motion to Stay be denied.

Respectfully submitted,



FRANCIS J. MORTON #2380
FOR IBEW LOCAL 396

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury, that on 10th day of April, 2009, he/she served Petitioner's Position Statement Re Company's Motion To Stay upon the parties hereto as hereafter set forth:

1. National Labor Relations Board, Executive Secretary, 1099 14th Street, N.W., Washington, C.C. 20570 by electronic filing in accordance with E-Gov on the NLRB website @ www.nlrb.gov.

2. Respondent employer, NV Energy, Inc. by service upon its legal counsel David Lonergran, Esq., Hunton & Williams LLP, 1445 Ross Ave. Ste 3700, Dallar, Texas 75202 by electronic service to dlonergan@hunton.com. A copy was also sent by first class mail, postage prepaid, to the address set forth above.

Dated this 11 day of April, 2009.