International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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April 27, 2009

Lester A. Heltzer
Executive Secretary
National Labor Relations Board
Washington DC 20570

RE: Hanson Aggregates, BMC and International Union of Operating Engineers, Local 542
Cases 4-RD-2048 and 4-RD-2055

Dear Mr. Heltzer:

The undersigned represents the International Union of Operating Engineers, Local 542. Please accept this letter as the Union's Request for Review of the Regional Director's decision to reinstate 4-RD-2048 and to fail to dismiss 4-RD-2055. The Union believes that both petitions should be dismissed in their entirety. At this juncture both petitions are being held in abeyance pending compliance with the decision of the Board in ***Hanson Aggregates BMC, Inc.,*** 353 NLRB No. 28 (2008). This letter is in response to the Regional Director'

There were two Decertification Petitions filed at this Employer. The first, 4-RD-2048 on September 14, 2004. The second, 4-RD-2055 was filed on December 9, 2005.

The Regional Director initially dismissed the petitions yet inexplicably on March 17th, changed her mind and reinstated both petitions. These petitions are both being held in abeyance pending compliance with the Board's Order in Cases 4-CA-33330, 33508, 33547, 34290, 34362, 34363 and 34378. In addition the Region has found merit in ***eighteen*** additional cases and is investigating one more. All of these cases that have been found to be both meritorious and under

investigation are allegations of unilateral changes in conditions of employment and failure to bargain with the Union. As such all of these cases are a continuing pattern of stonewalling and failing to bargain with the Union. (A copy of the letter from the Regional Director reinstating the two Decertification petitions is attached hereto).

In addition to the cases set forth above, in Case No. 4-CA-34646, an Administrative Law Judge found the Employer violated the Act by failing to provide information to the Union. This occurred almost immediately following the first Decertification Petition was filed. Additionally the Board held, reversing the ALJ, that the Employer violated the Act in July 2005, by failing to provide the Union with information regarding its Blue Cross health plan. This was two months before the first Decertification Petition was filed.

For the purposes of the request for this review the changes in conditions of employment without bargaining with the certified representative was a direct attack on the Union's ability to negotiate a contract. As such, since the Union was unable to negotiate a contract and prove to the employees what the Union could accomplish. Any chance of the employees forming a reasonable and fair decision regarding the efficacy of unionization and whether the Union should continue as the collective bargaining representative is so clouded as to make a fair election impossible. Accordingly both the decertification petitions should be dismissed

The history of this Employer's recalcitrant and recidivist violations of the National Labor Relations Act are lengthy. The most recent episode concerns the National Labor Relations Board decision order in Cases 4-CA3330, 33508, 33547, 34290,34362, 34363, and 34378. In that Case the Administrative Law Judge found, and the Board affirmed, that the Employer, Hanson Aggregates BMC, Inc. Penns Park, PA violated the Act by:

1. failure to bargain with the Union, by failing and refusing to furnish relevant information requested by the Union

2. interrogating employees concerning their Union sympathies, soliciting employees complaints and grievances and promising employees improved conditions of employment and threatening employees with reprisals

3. unilaterally changing terms and conditions of employment

4. changing the attendance policy

5. changing the benefit package, so that it's a detriment to employees

Some of these violations of the Act occurred prior to the first decertification Petition being filed, in the interim period between the first and second Decertification Petitions being filed, after the filing of the second Decertification Petition, and continue up to the present date. There has never been a time since the Union was certified as the Bargaining Agent that no Unfair Labor Practices were pending. In essence the Union has never had a chance to effectively bargain due to the continuous and unabating Unfair Labor Practices by the Employer.

The issue of whether, when and if, a Decertification Petition should be dismissed because unfair labor practices have either been filed, committed or settled has been going back and forth at the Board for over twenty years. Starting with ***Pasavent Health Center*** 278 NLRB 483 (1986) through to ***Truserv Corporation*** 349 NLRB 227 (2007) the Board has both dismissed decertification petitions because of unfair labor practices and held in abeyance those petitions.

What all of the cases have in common in which the Board dismissed the decertification petitions was those unfair labor practices cases were subjects of a ***settlement***. Such is not the case in the present matter. The Board in ***TruServ*** held that:

> …we conclude that, ***absent a finding of a violation of the Act, or an admission by the employer of such a violation***, there is no basis for dismissing a petition based on a settlement of alleged but unproven unfair labor practices. To do so would unfairly give determinative weight to allegations of unlawful conduct and be in derogation of employee rights under Section 7 of the Act. (emphasis supplied)

Truserv at 228.

It is obvious from this language that the Board, while not dismissing a petition based on a settlement, would dismiss a petition based on a finding of a violation of the Act by an Employer. Accordingly this petition should be dismissed, as that is what has occurred here.

For the above cited reasons and precedent, the International Union of Operating Engineers avers that the Employer's violations have destroyed the Union's bargaining position and make it impossible for the Union to demonstrate to the employees the benefits of unionization. In addition, Board precedent states that a finding of a violation should direct the Regional Director to dismiss the petition. These unfair labor practices were committed both post and pre filing of the decertification petition(s). Accordingly they have an impact on both whether a showing of interest was untainted as well as any further election could be untainted.

Very truly yours,

Louis Agre

Cc: Dorothy Moore-Duncan, Regional Director, via fax
Jonathan Nadler, Esquire via e-mail
Frede Klaus-Juergen, VIA hand delivery