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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

LORI'S DINER INTERNATIONAL, INC.,

Employer,

and

FRANK PARK, an individual,

and

UNITE-HERE LOCAL 2,

Union.

Case No. 20-RD-2477

**UNITE-HERE LOCAL 2's OPPOSITION
TO EMPLOYER'S REQUEST FOR
REVIEW OF REGIONAL DIRECTOR'S
DISMISSAL OF PETITION**

I. INTRODUCTION

Pursuant to NLRB Rules and Regulations Section 102.67(e), UNITE-HERE Local 2 submits the following opposition to Lori's Diner International's and Petitioner Frank Park's requests for review of the Region 20 Regional Director's dismissal of the decertification petition herein.¹ The requests should be denied because there are no "compelling reasons" for the Board to review the dismissal. *See* NLRB Rules & Regulations § 102.67(c). As reflected in its thorough analysis and discussion, the Regional Director's decision is entirely consistent with governing Board law, and neither the Employer nor the Petitioner have shown any reason for review to be granted. *See id.* at § 102.67(c)(1)-(4).

II. ARGUMENT

Lost in the rhetorical sound and fury of the Employer's request for review is the key and undisputed procedural fact of the case. The settlement agreement into which the Employer entered on the eve of trial did not merely provide for the posting of a notice, but also included numerous detailed admissions of fact, wherein the Employer specifically admitted to the factual allegations of the consolidated complaint. (*See* Dismissal Letter at 2-3.) Predictably, the Employer studiously ignores this critical fact, and throughout its request for review blandly (and misleadingly) omits all reference to its many binding admissions of fact. As the Regional Director quite correctly held, however, the inclusion of these many, detailed factual admissions in the settlement agreement is *the* critical factor warranting administrative dismissal of the decertification petition. This factor distinguishes both of the cases on which the Employer relies, *Truserv Corp.*, 349 NLRB 227 (2007) and *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

¹ Petitioner Park does not contend that any of the grounds for review set forth in Section 102.67(c) of the NLRB Rules and Regulations are present here. For that reason, this opposition primarily addresses the Employer's request for review. The Union objects, however, to Petitioner Park's bald and inadmissible assertion that his coworkers who signed the decertification petition were not affected by the Employer's admitted conduct. (*See* Park Request for Review at 2.)

The Employer contends that dismissal of the decertification petition was inappropriate under *Truserv* because there has been neither a finding nor an admission of a violation of the Act. *Truserv*, however, merely holds that the General Counsel should not administratively dismiss a decertification petition based on nothing more than the settlement of “alleged but unproven unfair labor practices.” *Id.* at 228. As *Truserv* explains, this is because the garden-variety settlement of an unfair labor practice charge does not prove that the alleged conduct actually occurred. As the Board explained:

[W]e find that the Board’s decision in *Douglas-Randall* wrongly gives determinative effect to unproved allegations. Indeed, an employer in this circumstance is merely agreeing to take certain actions to secure a dismissal of pending unfair labor practice chargers – nothing more and nothing less.

Id. at 232.

The concerns that animated the Board in *Truserv* are simply not present in the instant case because there *was* something more – much more – than a bald settlement. Here, the settlement agreement included detailed admissions of *all* of the factual allegations in the complaint. There was no dispute as to what had occurred. That the Employer refused to admit that these undisputed facts constituted a violation of the Act is immaterial; as the Regional Director explained, this was merely a refusal to acknowledge “the ultimate legal conclusions that almost necessarily flowed from those facts...” (*See* Dismissal Letter at 6.)

For much the same reason, the Employer is incorrect in contending that *Saint Gobain* requires a hearing on the question whether the Employer’s conduct caused employee disaffection. As the Board emphasized in *Saint Gobain*, that case involved only a single unilateral change on a single subject, and presented numerous unresolved factual issues. *Id.* at 434. Here, by contrast, the factual issues are undisputed, and the admitted conduct involves

multiple unilateral changes on a range of economic terms, as well as repeated management threats, interrogations, solicitation of grievances and promises of benefits, and the discriminatory imposition of discipline on a known Union supporter. (See Dismissal Letter at 2-3.) Whatever factual uncertainty may have warranted a hearing in *Saint Gobain*, the Regional Director was correct in concluding that there is none here.

For these reasons, the Regional Director quite properly analyzed the undisputed operative facts under the governing factors set forth in *Master Slack Corp.*, 271 NLRB 78 (1984). Doing so administratively was wholly consistent with Board case law and due process. And, tellingly, neither the Employer nor the Petitioner take issue with the Regional Director's conclusion that the Employer's admitted conduct was of the type that has a "clear detrimental effect on employee support for the union." (See Dismissal Letter at 7.)

III. CONCLUSION

The Regional Director's dismissal of the decertification petition was careful, well-reasoned, and entirely consistent with governing Board law. None of the grounds for review set forth in Section 102.67(c) of the Board's Rules and Regulations are present here, and neither the Employer nor the Petitioner have shown otherwise. For these reasons, the requests for review should be denied.

DATED: April 7, 2011

Respectfully submitted,

LEONARD CARDER, LLP

By: s/ Jacob F. Rukeyser
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CERTIFICATE OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years old and not a party to the within action; my business address is 1188 Franklin Street, Suite 201, San Francisco, CA, 94109.

On April 8, 2011, I served a true and accurate copy of the following document(s):

**UNITE-HERE LOCAL 2's OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW
OF REGIONAL DIRECTOR'S DISMISSAL OF PETITION**

on all interested parties in this action as follows:

**Regional Director Joseph Frankl
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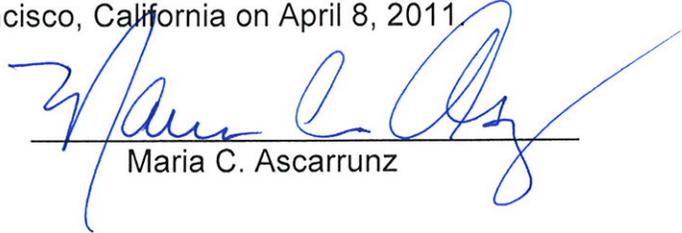
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- [XX] BY MAIL: I enclosed the document(s) above in a sealed envelope or package addressed to the persons at the addresses above. Following ordinary business practices, the envelope was sealed with postage fully prepaid and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date at San Francisco, CA.
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Executed at San Francisco, California on April 8, 2011.



Maria C. Ascarrunz