

Executive Secretary

December 5, 2012

National Labor Relations Board

1099 14th Street NW

Washington DC 20570-0001

Mr. Secretary,

Pursuant to 102.67 of the NLRB Rules and regulations, the NLJSP (Petitioner/Appellant) requests an expedited review and offers a prayer for an Order for an immediate directed election in a remand to Region Five in case 05-RC-092557 **First Coast Security**..

The Petitioner/Appellant believes there is a substantial question of law or policy inherent in the practice of the RD of Region Five in disregarding UGL-UNICCO and overt evidence of the defunct status of the Incumbent UNION as evidenced by the criminal arrest of it's sole executive . the failure of the Incumbent Union to provide the required annual reports to the OLMS and the de facto abandonment of it's CBA and the concept of just cause as enshrined in it's un-ratified CBA. The Petitioner/Appellant holds that the nature of the Employer's business as a Contract Security Provider whose contract to provide services using the petitioned for unit was awarded during an insulated period deprives the bargaining unit an inherent right to select a viable 9(a) representative in a representation election. The Petitioner/Appellant concedes that the Board's reversal of **MV Transportation** and the Burns case **406 US 272** would seem to make the Intervener the clear Successor with an un rebuttable presumption of majority except for the facts in the instant case.

The Intervener's previous CBA is no longer valid except for certain economic provisions related to the Service Contract Act as amended in that the predecessor Contractor (The Whitestone Group) was out of the facility in the instant case on October 1,2012 and the Successor received a two month contract from October 1 until November 30, 2012. There was no CBA executed between the Intervener and First Coast between October 1, 2012 and November 30, 2012. On

December 1, 2012 First Coast became the Successor to its own two month contract with the Department of Homeland Security beginning a series of one year option years that are presumed to run the next five years. An argument can be made that the Intervener was a Successor Union October 1, 2012 but not December 1, 2012

There is a compelling reason to believe that the Region Five decision dismissing the instant petition was based on a substantial factual issue that was erroneous. The combination of two contracts, a flawed and un-ratified CBA imposed by an arguably defunct Union on an abandoned bargaining unit grossly harmed by the action of the Federal government militates for a re-examination of Board Policy. The fact that the RD of Region Five felt no reason to have these issues examined at Hearing militates for direct action by the Board and an immediate order for an election in the petitioned for unit in a remand to Region Five

The Petitioner/Appellant, the National League of Justice and Security Professionals, (NLJSP) maintains as we did in our proffer to Region Five a belief that the RD should have looked to a much more recent ruling of the BOARD particularly UGL-UNICCO where the Board said **Second, we modify the “contract bar” doctrine to address a prospect raised in *MV Transportation*: that a challenge to the incumbent union’s majority status by employees or by a rival union might be precluded for an unduly long period, should insulated periods based on the successor bar and the contract-bar doctrines run together.**

The Petitioner/Appellant (NLJSP) offers several points upon which the Board should ponder and base a clearly well founded reversal of the Regional Director’s decision to dismiss without processing the instant case.

The first item being that as alluded to in the proffer on timeliness to Region Five; the 800 K Street site was included as one of four buildings in DHS solicitation HSHQEC-12-R-00009. That solicitation was awarded to First Coast Security of Jacksonville Fla.) on August 14, 2012, The Predecessor (The Whitestone Group) was out of the building on September 30, 2012 and that was

the last day of the Intervener's CBA. The employees represented by the incumbent are now only one small part of a community of interest that includes other buildings all represented by different International Unions and employed by one small start-up firm with common supervision.

The second item where Region Five failed to give due deference is the argument the Petitioner/Appellant makes about the defunct status of the Incumbent NASPSO and its sole employee Caleb Gray-Burriss(CGB). CGB is out on bond on federal felony charges for misusing the pension funds he had a fiduciary responsibility for as a representative of Guards in units that belong to NASPSO. The Board of NASPSO is clearly defunct and operating in the throes of a schism when volunteer Board members who are employed as contract guards meeting strict standards of suitability could be deemed unsuitable and hence unemployable by merely associating with him. Even if that never happened, CGB as the sole employee and sole executive exercises absolute authority over the board and the direction of NASPSO. The fact that NASPSO has filed only three required annual reports with Department of Labor Office of Labor and Management Standards (DOL/OLMS) in this century shows a total breakdown of the administrative apparatus. NASPSO has effected a *de facto* abandoning of interest if not an overt *de jure* claim of disinterest. The only attempt to show any interest in this unit is an attempt to seek recognition the third week of October 2012 by certified mail to First Coast Employer representative Earle Ginn. The incumbent/Intervener failed to make any attempt to safeguard the reemployment rights of any of the predecessor's incumbents under EO 13495 as he failed to defend just cause under his predecessor CBA.

The arrest of CGB for defrauding the pension funds of people he represents is a reasonable disclosure never made to the affected members in the petitioned for unit. The ratification of a CBA by an affected membership is only a right if found in the Union Constitution or expressly agreed to at the table with the Employer. The NASPSO Constitution as filed in 1993 has no right of ratification by affected units. It is really impossible to determine if a right of ratification was enshrined in later documents because of the routine failure of NASPSO to file required annual reports and serious doubt as to the accuracy of any report filed.

The reports that are filed indicate the NASPSO merged with a larger Union the International Union of Security Police and Fire Professionals in 2003 (SPFPA) and then later restarted itself. The fact that NASPSO roused itself to keep this unit and made no disclaimer of interest is germane. However, that is of less import than CGB and NASPSO's failure to litigate with DOL The Predecessor Company's failure to pay the proper Health and Welfare monies or to represent with a grievance two stewards discharged and then suspended for approximately two weeks with no just cause. This unwillingness of CGB and NASPSO to defend the last CBA and the rights of the affected members has sparked the current revolt and the instant petition in the petitioned for unit. This revolt is forcefully demonstrated in an unsolicited unanimous petition directly from the affected unit members which rejects the Intervener and seeks only a representative election. This petition (unsolicited by the petitioner) is appended as an attachment to this appeal.

The third item where the Regional Director failed to give due deference to is to the impact of the actions of the Federal government particularly the Department of Homeland Security(DHS). The actions of DHS in contract solicitation initially and later in the implementation would if they were a private Employer clearly make them subject to the Joint-Employer Doctrine. Contracting agencies of the Federal Government have already been found to be Co-Employers as noted in a law memo dated 6/6/2011 by the Bryan Schwartz Law Firm detailing when the Government "has retained for itself sufficient control of the terms and conditions of employment of the employees who are employed by the other employer." *Lopez v. Johnson*, 333 F.3d 959, 963 (9th Cir. 2003) (citing *Redd v. Summers*, 232 F.3d 933 (D.C. Cir. 2000) (internal citations omitted)); *Strolberg v. Akal Sec. Co.*, 2005 WL 5629026, at *6 (D. Idaho Jan. 19, 2005). (In *Strolberg v. Akal Sec. Co.*, the court found employees of Akal Security Co., a private security company, to also be government employees of the United States Marshal Service...).

The RD of Region Five does not understand that the Employer in the instant case is working on a one-year contract with a series of option years providing his services to the DHS which then provides those same services to another agency. The DHS can as they have done in the petitioned for unit terminate the Employer's contract at the beginning of an option year or upon a decision to terminate in the "best interests of

the government' during an option year. This leads to a volatile labor situation with bargaining units combined or broken up by a party with no "skin in the game". The DHS takes only such notice of a CBA as it is required by law under 29 CFR chapter 4 which governs compensation standards for Service Contract Act Employees. The Contracting Agency, DHS, takes no other notice of terms and duration of units with collective bargaining agreements. The un-ratified CBA of the incumbent is one of three in the mega-solicitation HSHQEC-12-R-00009. Each CBA has a separate International Union, a separate expiration date, with separate open and insulated periods. It is clearly in the best interests of the affected employees in all three units to combine efforts in a new and expanded community of interest.

The incumbent Union (NASPSO) has benefited unfairly when the RD failed to give due deference to the Petitioner/Appellants arguments regarding (1) Nature of Employer's business (2) Defunct status of Incumbent and inherent schism of his organization (3) the major restructuring of no less than three unionized bargaining units and a fourth with no union under four separate Employers into one unit under one common Employer with common supervision. The incumbent (NASPSO) with no support in the petitioned for unit will also benefit unfairly from the newly restored Successor Bar barring any petition. The narrow view of the RD and the Successor Bar will give the Incumbent a protection long past the time he has lost majority support and will probably trigger a quick CBA to lock down the unhappy employees of the petitioned for unit for another three year contract they will not be allowed to vote on.

The Contract Bar rule is a Board construct the purpose of which is to prevent industrial chaos and promote industrial peace and democracy. It is not a bright line rule but best serves as a strong guideline. As such there are cases and valid reasons to depart from it. The best reason for doing so is that representation elections are the best way to allow the majority to identify their preferred 9(a) representative in the petitioned for unit when their Employer has changed. In the particular field of Service Contract Act employees, there is no period more critical than Contract Changeover. The implementation of the Non-Displacement of Qualified Workers Executive Order EO 13495 signed 1/30/2009 and the impact of the AHCA of 2010 were not in the calculus of the Incumbent (NASPSO) during Predecessor negotiations that were perfunctory at best. These

crucial items will clearly be uppermost in the minds of the members of the petitioned for unit in the next negotiations.. EO 13495 guarantees continued employment with the Successor Employer and the impact of AHCA works against the retention of Health and Welfare Benefits as a cash option, eliminating 12-15 per cent of the current gross pay of employees in the petitioned for unit. These are weighty issues best negotiated by a representative with a clear majority.

The nature and facts of this case (1) Government Action that has changed the bargaining unit by merging three clear communities of interest (2) an indicted defendant in a defunct labor organization posing as a labor leader hiding behind an un-ratified CBA with no majority support and (3) an Employer that has received two separate contracts in the petitioned for unit, a two month contract from October 1 to November 30,2012 and another longer contract after December 1, 2012 urge a departure from what is a reasonable period to maintain majority status for the Intervener. The Petitioner/Appellant urges the standards of UGL-UNICCO where an unreasonable application of the contract bar followed by the successor bar would enslave the affected unit to a problematic incumbent Union with no majority support for a period of as much as four years during which the most important issues of wage ,benefits and the implications of the AHCA of 2010 must be negotiated..

The actions of the DHS have made a Successor bar to an RC election against the best interests of the members of the petitioned for unit and repugnant to the concepts of union democracy and industrial peace. It is clear to the Petitioner/Appellant and we hope to the Board that if government action can because of National Security bar an election as in **Aerojet-General Corp. 144 NLRB 42 (1963)**. Then it can as the result of Homeland Security foster an election in the instant case. The action of the DHS in the instant case (1) cancelling the Whitestone group contract and (2) blending the community of interest in three separate certified bargaining units merits lifting any Successor bar in the instant case.

The Petitioner/Appellant prays for an expedited Review and an order directing the Regional Director to conduct an immediate election in the instant case.

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I do swear I have served by email of this request for review on all parties at interest save only the Executive Secretary of the NLRB where the required copies were served personally by NLRB e-filing on that Office.

Ronald A, Mikell ,affiant *Ronald A. Mikell*

December 5th ,2012