

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

PAC TELL GROUP, INC.,)
d/b/a U.S. FIBERS,)
)
Employer,)
)
and)
)
)
UNITED STEEL, PAPER AND FORESTRY,)
RUBBER, MANUFACTURING, ENERGY,)
ALLIED INDUSTRIAL AND SERVICE)
WORKERS INTERNATIONAL UNION,)
LOCAL 7898,)
)
Petitioner.)
_____)

Case 10-RC-101166

EMPLOYER'S MOTION FOR RECONSIDERATION
OF ORDER ON REQUEST FOR REVIEW

Jonathan P. Pearson, Esquire
Santiago Alaniz, Esquire
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: 803.255.0000
Facsimile: 803.255.0202
jpearson@laborlawyers.com
salaniz@laborlawyers.com
Attorneys for Employer

June 14, 2013

I. INTRODUCTION

Pursuant to Section 102.65(e)(1) of the Board's Rules and Regulations, the Employer Pac Tell Group, Inc. d/b/a U.S. Fibers (US Fibers or the Employer), by and through the undersigned counsel, hereby files this motion for reconsideration of the Board's May 31, 2013¹ Order denying the Employer's request for review of the Acting Regional Director's Decision and Direction of Election.² The Board should reconsider its order and grant the request for review because the "substantial issue" the Board acknowledged the Employer raised regarding the supervisory status of Eduardo Sanchez, Aduaco Torres, Jose Lal, and David Martinez was not resolved by the challenge procedure as contemplated by the Board. Further, the existence of new evidence that was not available at the time of the hearing also justifies granting the Employer's request for review.

II. BACKGROUND

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898 (the Union), filed a petition on March 26 seeking to represent "all production, janitorial, warehousemen, shipping, and maintenance workers at the Trenton, South Carolina plant, but excluding all managers and supervisors as defined under the Act." The Employer challenged the Union's attempt to carve out the Trenton facility of its South Carolina operations and sought to add its facility at 1100 Church Street, Laurens, South Carolina, to any bargaining unit. The Employer also sought to exclude from the

¹All dates referenced herein are to 2013, unless otherwise indicated.

²Given the current and pending issues regarding the ability of the Board to enter final orders and judgments, see *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), the Employer respectfully requests that the Board consider holding any final decision on this matter in abeyance until the Board's status to render final orders and judgments is resolved. While the Employer understands the Board's position that it is constitutionally assembled and has authority to issue final orders and judgment, significant authority exists to the contrary. For this reason, the Employer, like all other employers with matters pending before the Board, is forced to take definitive actions to preserve its rights related to the *Noel Canning* decision. For the sake of judicial efficiency and to avoid unnecessary litigation, holding this matter in abeyance rather than issuing a final order would ultimately benefit the best interest of all parties.

unit Sanchez, Torres, Lal, and Martinez on the ground that they are “supervisors” as defined by Section 2(11) of the Act.

A hearing was held in Aiken, South Carolina, on April 18. On May 3, the Acting Regional Director issued her decision rejecting the Employer’s arguments concerning the scope and composition of the unit and directing an election in the petitioned-for unit. On May 16, the Employer filed a request for review of the Acting Regional Director’s decision to exclude the putative supervisors from the unit.

An election was conducted on May 29-30. The tally of ballots showed 71 votes for and 59 against the Union, with 7 challenged ballots. Sanchez, Lal, Martinez, and Torres were all challenged by the Employer’s observer during the election.

On May 31, the Board issued its order acknowledging that the Employer’s request for review “raises a substantial issue with respect to the supervisory status of Eduardo Sanchez, Jose Lal, David Martinez, and Aduaco Torres,” but concluding that the issue “may best be resolved through the use of the Board’s challenge procedure.” Consequently, the Board denied the Employer’s request for review.

On June 6, the Employer filed objections to conduct affecting the results of the election. The objections allege, inter alia, that the prounion conduct of the putative supervisors during the critical period and on the day of the election coerced and interfered with employees’ free choice in the election thereby tainting the process and warranting dismissal of the petition or, in the alternative, a rerun election in an environment free from supervisor coercion and interference.³

³Such conduct includes putative supervisors actively soliciting union authorization cards from employees; threatening employees with discipline/discharge if they voted for the Employer and/or if they exercised their right to participate in the election; attending and speaking on behalf of the Union at Union meetings; making misrepresentations about Employer wages/benefits in an effort to influence employees’ votes in the election; asking employees who they intend to vote for in a threatening and intimidating manner; telling employees they are “crazy” if they vote for the Employer; telling employees they (the supervisors) will be union leaders and would fire those supporting the Employer; telling employees to “think hard” before voting for the Employer while said employees

On June 13, the Employer submitted its evidence supporting the objections to the Region pursuant to Section 102.69(a).

III. GROUNDS FOR RECONSIDERATION

Section 102.65(e)(1) provides, in pertinent part, that “[a] party to a proceeding may, because of extraordinary circumstances, move . . . after the decision or report for reconsideration, for rehearing, or to reopen the record” Here, “extraordinary circumstances” plainly exist for the Board to reconsider its initial denial of the Employer’s request for review because, although the number of challenged ballots cast by the putative supervisors is insufficient to affect the results of the election, substantial evidence demonstrates that these individuals, acting on behalf of the Union and/or with its implied endorsement, coerced and interfered with employees’ free choice in the election and thereby destroyed the necessary laboratory conditions.

In *Harborside Healthcare, Inc.*, 343 NLRB 906, 909 (2004), the Board set forth a two-prong test to determine whether the prounion activity of a supervisor will be held to constitute objectionable conduct. The first prong of the test requires “consideration of the nature and degree of supervisory authority possessed by those who engage in the prounion conduct.” *Id.* Thus, a crucial issue in resolving the Employer’s objections under *Harborside* is whether Sanchez, Torres, Lal, and Martinez are statutory supervisors.⁴

Because the Board found that a “substantial issue” exists with respect to the supervisory status of Sanchez, Torres, Lal, and Martinez, and because the issue was not resolved through the challenge procedure, the Board should reconsider its decision to deny the Employer’s request for

were on a “line of march” to the polling place to vote; exercising their supervisory responsibilities and assigning new/different duties to employees because they did not support the Union; admitting at the polling location that they are a supervisor when questioned about their job duties by the Board agent; and threatening employees that the Union would send all signed authorization cards to the Employer if the Union did not win the election. This evidence was not available or known at the time of the April 18 hearing.

⁴The supervisory status of these individuals is also an issue in the pending investigations of the unfair labor practice charges filed by the Union and the Employer.

review. Upon reconsideration, the Board should grant the Employer's request for review for the reasons stated therein and reverse the Acting Regional Director's determination that the individuals in questions are not supervisors under Section 2(11) of the Act.⁵

s/ Jonathan P. Pearson, Esquire
Jonathan P. Pearson, Esquire
Santiago Alaniz, Esquire
1320 Main Street, Suite 750
Columbia, South Carolina 29201
Telephone: 803.255.0000
Facsimile: 803.255.0202
jpearson@laborlawyers.com
salaniz@laborlawyers.com
Attorneys for Employer

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⁵In the event the Board grants the Employer's request for review but determines that the record below is insufficient to warrant reversing the Acting Regional Director's decision, the Board should, pursuant to Sec. 102.65(e)(1), reopen the record or grant a rehearing to allow the Employer to present newly discovered evidence as to supervisory status that was not available at the April 18 hearing. Such evidence includes, but is not necessarily limited to, testimony and documentation that putative supervisors have, since the April 18 hearing, exercised their supervisory authority using independent judgment in the interest of the Employer to discipline employees, assign overtime, approve time off, assign and direct employees in their work, and evaluate employee performance. Evidence also exists that putative supervisors have admitted under oath and to Board officials to being supervisors. This evidence was not presented at the hearing because it did not exist at that time.

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CERTIFICATE OF SERVICE

I, Jonathan P. Pearson, do hereby certify that I have on this 14th day of June, 2013, served a copy of the Employer's Motion for Reconsideration of Order on Request for Review upon the following by email:

James E. Sanderson, Jr.
President-USW Local 7898
United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and
Service Workers International Union, Local 7898
PO Box 777
Georgetown, SC 29442-0777
uswa7898@gmail.com

Dionisio Gonzalez, Organizer
United Steelworkers
International Union
111 Plaza Dr
Harrisburg, NC 28075-8441
dgonzalez@usw.org

Norman J. Slawsky, Esquire
Quinn, Connor, Weaver, Davies & Rouco, LLP
3516 Covington Hwy
Decatur, GA 30032-1850
nslawsky@gmail.com

s/Jonathan P. Pearson
Jonathan P. Pearson