

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 REPLY TO PETITIONER'S OPPOSITION**  
**TO MOTION FOR RECONSIDERATION**

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June 24, 2013

## **I. BACKGROUND**

On June 14, 2013,<sup>1</sup> the Employer Pac Tell Group, Inc. d/b/a U.S. Fibers (US Fibers or the Employer) filed a motion for reconsideration of the Board's Order denying the Employer's request for review of the Acting Regional Director's Decision and Direction of Election in this case because the "substantial issue" the Board acknowledged in its Order the Employer raised regarding the supervisory status of certain individuals was not resolved by the challenge procedure as contemplated by the Board. On June 17, the Union filed an opposition to the Employer's motion in which it argued (1) the motion was improperly filed; (2) the issue was resolved through the challenge procedure; and (3) the Employer has suffered no prejudice by the ruling inasmuch as it can relitigate the supervisory status issue during the upcoming July 1 hearing on the Employer's objections. The Employer submits this reply to address the Union's first and third arguments.<sup>2</sup>

## **II. REPLY**

### **A. The Employer's motion for reconsideration was properly filed.**

The Union argues the Employer's motion for reconsideration of the Board's denial of the request for review was not properly filed because the Board's Rules and Regulations do not provide a basis for such a motion. According to the Union, Section 102.65(e) "does not create a pathway for the appeal of the Board's denial of a Request for Review." Of course, if the Union's argument were correct, there should be no precedent for the Board entertaining a motion to reconsider the denial of a request for review. A cursory review of Board jurisprudence, however, reveals otherwise.

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<sup>1</sup>All dates referenced herein are to 2013, unless otherwise indicated.

<sup>2</sup>The Union's second argument is thoroughly addressed in the Employer's motion for reconsideration.

In *Solartec, Inc.*, 352 NLRB 331 (2008), for example, the Board not only considered the employer's motion for reconsideration of its denial of a request for review on the issue of supervisory status, it granted the motion. See *id.* at 332 (“[T]he Employer filed a motion for reconsideration of the Board’s Order denying review of the Decision and Direction of Elections. In its . . . Supplemental Decision, the Board remanded the proceeding to the Regional Director . . . for further consideration and to reopen the record to take additional evidence on the issue of whether the Employer’s production leaders “assign” and “responsibly direct” other employees and on the scope or degree of “independent judgment” used in the exercise of such authority.”).

The Board has recognized the right of a party to file a motion for reconsideration of its denial of a request for review under Section 102.65(e) in other cases as well. See, e.g., *AGI Klearfold, Inc.*, 350 NLRB 538, 538 fn. 2 (2007) (granting employer’s motion for reconsideration of Board’s denial of employer’s request for review of acting regional director’s decision and direction of election); *Fall River Savings Bank*, 250 NLRB 935, 937 fn. 12 (1980) (“[A]fter the Board issued its . . . Supplemental Decision and Direction . . . Respondent could have filed a motion for reconsideration of that decision pursuant to Sec. 102.65(e.)”; *American Standard, Inc.*, 237 NLRB 45 (1978) (“The Employer’s request for reconsideration of the Board’s denial of its request for review of the Regional Director’s determination to exclude office clerical employees from the unit is denied as raising no matter not previously considered.”); *Ard Drilling Co.*, 174 NLRB 35 (1969) (“[T]he Employer filed a motion for reconsideration of the Board’s earlier denial of its request for review . . .”).

In light of the above authority, and in the absence of any controlling rule to the contrary, the Employer’s motion for reconsideration is properly before the Board.

**B. The Employer's motion for reconsideration is not rendered moot simply because a new hearing has been granted to resolve the Employer's objections.**

The Union argues the Employer is not prejudiced by the Board's denial of its request for review because the objections hearing will provide a sufficient process through which the Employer may assert its allegations concerning supervisory status. The fallacy of the Union's argument is that it presupposes the Board will not, upon reconsideration, reverse the Acting Regional Director's initial decision on the supervisor issue *on the basis of the existing record*.

If the Board grants the Employer's motion for reconsideration and subsequently grants the Employer's request for review and reverses the Acting Regional Director's determination on the supervisory status of Eduardo Sanchez, Aduaco Torres, Jose Lal, and David Martinez, the upcoming July 1 hearing on the Employer's objections will focus exclusively on the conduct of the supervisors in coercing and interfering with their subordinates' free choice in the election, rather than also on their supervisory status. If, as the Union contends, the Board denies the Employer's motion for reconsideration because the Employer can simply "relitigate" the issue at the objections hearing, substantial Board and party resources will be unnecessarily wasted.

First and foremost, administrative resources would be wasted because the hearing will necessarily last much longer than it otherwise would if no evidence regarding supervisory status were presented. This is of particular concern in this case, where, due to significant language barriers, translators are required for witnesses to testify at the hearing.

Moreover, it is likely that the Employer would seek review of any unfavorable determination of the supervisory status issue by the Regional Director following the objections hearing, in which case the issue would once again be squarely before the Board for resolution. If the Board determines the individuals are supervisors based on the existing record, needless delay in resolving an important question concerning representation will be avoided.

### **III. CONCLUSION**

For the foregoing reasons, as well as those set forth in the Employer's motion for reconsideration, the Board should reconsider its decision to deny the Employer's request for review. Upon reconsideration, the Board should grant the 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.

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**CERTIFICATE OF SERVICE**

I, Jonathan P. Pearson, do hereby certify that I have on this 24th day of June, 2013, served a copy of the Employer's Reply to Petitioner's Opposition to Motion for Reconsideration upon the following by email:

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