UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the matter of:

GERALEX, INC. d/b/a	)	
GERALEX JANITORIAL SERVICES	)	
	)	
Employer,	)	
	)	
and	)	**Case 13-RC-106888**
	)	
SERVICE EMPLOYEES INTERNATIONAL	)	
UNION, LOCAL 1,	)	
	)	
Petitioner.	)	

PETITIONER'S STATEMENT IN OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW

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Employer Geralex, Inc. d/b/a Geralex Janitorial Services ("Geralex" or "Employer") seeks review of the Regional Director's Decision and Direction of Election, presumably based on the following permissible grounds set forth in the Board's Rules and Regulations, Secs. 102.67(c)(1), (2) and (4):

1. That the Regional Director engaged in a departure from officially reported Board precedent (Geralex Argument A);

2. That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects its rights (Geralex Arguments C, D); and

3. There are compelling reasons for reconsideration of an important Board rule or policy (Geralex Argument B)

There are no compelling reasons present to grant review. The Employer's request for review should be denied because the Regional Director's decision falls squarely within controlling precedent, his findings of a clear and unequivocal disclaimer and a substantial and representative complement of employees are correct, and there is no compelling reason to reconsider the Board's pre-election discovery processes.

STATEMENT OF FACTS

In December 2012, United Maintenance was awarded a contract for janitorial and window washing services at O'Hare International Airport (UM, 17-18). [1] United Maintenance

[1] At the pre-election hearing in this matter, the Regional Director took administrative notice of the hearing record in United Maintenance Company, Inc., Case 13-RC-106926, a closely related matter whose hearing was conducted the day following the June 24, 2013 hearing concerning Geralex (Gx, 182). Accordingly, references to the hearing record for the Geralex hearing are designated "Gx" and references to the record for the United Maintenance hearing are designated "UM." The Regional Director's Decision in the United Maintenance proceeding is also the subject of a pending Request for Review.

works at all three domestic terminals at O'Hare (UM, 17). United Maintenance subcontracted a 10% portion of the cleaning work to Geralex as its minority woman-owned enterprise (Gx, 65, 69). As of the hearing date in this matter, Geralex performed the janitorial work at O'Hare Airport Terminal 1 for the second shift (Gx, 14) but no window washing (Gx, 75).

Facts pertaining to the asserted contract bar and Local 727's disclaimer

The Employer signed its first labor contract with Teamsters Local 727 ("Local 727") on April 29, 2013, [2] which became effective on that date (Gx, 54, 74; Gx Emp. Exh. 5). The labor contract established virtually no new terms and conditions of employment that were not already in effect before Local 727 first attempted to organize Geralex. [3] Within days of signing the contract, Local 727 determined to disclaim interest in representing Geralex's employees, and ceased all representational activity at Geralex, though due to an administrative oversight it neglected to send a disclaimer letter to Geralex until June 21.

The Petitioner has represented private sector janitors since its founding 93 years ago. Janitors are its largest craft, and it currently represents 30,000 janitors (Gx. 168). It has also represented private sector janitors working at O'Hare airport continuously since the airport began subcontracting this work in 2004 (Gx, 168, 179; UM, 108). When United Maintenance and its subcontractor Geralex took over the janitorial contract at O'Hare, they hired some incumbent employees but not enough to confer bargaining rights on Petitioner (Gx, 170). Petitioner's

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[2] All dates hereafter are in 2013 unless otherwise indicated.

[3] The only differences contained in the labor contract were to establish a probationary period and to establish the minimum hours (30) per week for payment of insurance premium on an employee's behalf. Otherwise, every other term and condition of employment for Geralex employees covered under the labor contract were already in effect (Gx, 147-49; Gx. Emp. Exh. 5).

President Thomas Balanoff directed his staff to seek representation rights for all janitors employed at O'Hare airport (Gx, 179-80).

Local 727's jurisdiction, though eclectic and broad, does not include janitors or window washers (Gx 110; Gx Union Exh. 1). [4] Petitioner's President learned that Local 727 had initiated organizational activities at United Maintenance in early April (Gx, 171). It did not know then that United Maintenance had subcontracted some of its work to Geralex (Gx, 170).

Local 727 is an affiliate of the International Brotherhood of Teamsters ("IBT"), and Petitioner Local 1 is an affiliate of the Service Employees International Union ("SEIU"). Both international unions are affiliates of the labor federation Change to Win (Gx, 92-93, 171).

Petitioner's President learned in early April that Local 727 had initiated organizational activities at O'Hare Airport (Gx, 171). Petitioner caused a jurisdictional complaint to be initiated by the SEIU with Change to Win pursuant to its constitutional jurisdictional dispute resolution procedure (UM, 76; Gx, 171-72, 93; UM Board Exh. 3). Such complaints must be brought by the International affiliates and not by local unions (Gx, 172). The complaint concerned all privatized janitors working at O'Hare Airport (Gx, 173).

As the Regional Director found, the Change to Win Constitution provides for voluntary adjustment of disputes concerning organizing rights (Article XIII) or established bargaining relationships (Article XIV) by the affiliated International Unions under Article XV Sections 1 and 4(a) (UM Board Exh. 3). Though no formal proceedings ensued on the Petitioner's

[4] Local 727's jurisdiction is described on its letterhead: Auto Livery Chauffeurs, Embalmers, Funeral Directors, Apprentices, Ambulance Drivers & Helpers, Taxicab Drivers, Miscellaneous Garage Employees, Car Washers, Greasers, Polishers & Wash Rack Attendants, Motion Picture, Theatrical, Exposition, Convention & Trade Show Employees, Pharmacists, Bus Drivers, Parking Lot Attendants & Hikers, and Hotel Industry & Racetrack Industry Employees.

complaint (UM, 73), and the local unions weren't directly involved in the proceedings (UM, 72; Gx, 174), the matter was resolved voluntarily by the international unions without a hearing (Gx, 93-94; UM, 77), and on May 3 the IBT by letter directed Local 727 to disclaim representation of O'Hare airport workers. The letter concerned: Chicago O'Hare Airport Workers/United Maintenance, and stated in relevant part:

> The Teamsters and SEIU, by virtue of our membership in Change to Win, are bound to the jurisdictional dispute mechanisms and procedures in the Change to Win Constitution.
>
> In resolution of the dispute between SEIU and the Teamsters in the above-referenced matter, I am hereby instructing Local 727 to immediately disclaim interest in the unit of airport workers at Chicago-O'Hare Airport that was recently represented by SEIU Local 1.

(Gx Ptr. Exh. 2). The letter was written by IBT General President Hoffa and was addressed to Local 727 principal officer John T. Coli (Gx, 93-94). Local 727's only labor agreements at O'Hare airport were made with United Maintenance and Geralex. Local 727 understood the IBT letter to pertain both to United Maintenance and its subcontractor Geralex (Gx, 97, 107).

John Coli announced at a May 6 meeting of the Chicago Federation of Labor that, as a result of the Change to Win processes, Local 727 would be "disclaiming interests" (Gx, 173). The SEIU subsequently confirmed to Petitioner that Local 727 was to disclaim interest in the entire janitorial unit at O'Hare airport (Gx, 178-79).

Local 727 intended to disclaim representation rights with both Geralex and United Maintenance, but through administrative oversight sent a disclaimer letter only to United Maintenance (Gx, 96-97). Petitioner learned only recently that Local 727 had a labor contract with Geralex and had not yet disclaimed there, and so notified Local 727 (Gx, 175, 177). When this oversight was brought to Local 727's attention, Local 727 promptly sent a disclaimer letter

to Geralex, which was both dated and received on June 21 (Gx, 97, 84, 63; Gx Ptr. Exh. 1). The letter stated, in relevant part:

> Please be advised that Teamsters Local Union No. 727 hereby disclaim any and all representational interest in the previously recognized unit of airport workers located at Chicago-O'Hare Airport.

(Gx Ptr. Exh. 3). Geralex principal Alejandro Alvarado understood the disclaimer letter to mean that Local 727 no longer wished to represent Geralex employees at O'Hare Airport (Gx, 85). As Local 727 General Counsel Brinson affirmed at the hearing, Local 727's disclaimer is unconditional, and it has no intention ever to represent Geralex employees in the future (Gx, 99).

Local 727 disclaimed interest in both Geralex and United Maintenance employees solely because it was directed to do so by the IBT in resolution of jurisdictional dispute claims brought by the SEIU (Gx, 98). There was never any agreement between Petitioner and Local 727 pertaining to Geralex, including any agreement that Local 727 would disclaim in order that Petitioner could renegotiate an agreement with Geralex (Gx, 175; UM, 78). There was no sham or act of bad faith between Petitioner and Local 727 (Gx, 176). Petitioner sought Local 727's removal in order to protect and preserve Petitioner's bargaining rights in the privatized janitorial industry and the standards it had established through collective bargaining (Gx, 176).

Local 727 has taken no action inconsistent with its disclaimer. It is undisputed that Local 727 ceased all contact with Geralex and all representation functions at Geralex as of May 6, shortly after receipt of the May 3 IBT letter, notwithstanding Local 727's delay in sending the disclaimer letter to Geralex until June 21 (Gx, 99). After May 6, Union never engaged in any activities of any kind at O'Hare (Gx, 99-100). It filed no grievances (Gx, 84). No union dues were deducted at any time prior to or after the Local 727 disclaimer (Gx, 59-60). Local 727 has since engaged in no picketing, handbilling or other organizational activity there (Gx, 180-81;

UM, 79). Local 727 was notified of the hearing in this matter and specifically declined to intervene because it had disclaimed any representational interest in the unit (Gx, 109; Gx Board Exh. 3).

Local 727 business agent Nicholas Micaletti had the exclusive responsibility to administer the Local 727 labor contracts with both Geralex and United Maintenance at O'Hare (Gx, 150, 154). He had dropped off a petition seeking representation rights and draft labor contract at Geralex's offices in early April (Gx, 48-51; Gx Emp. Exh. 3). Micaletti was present at O'Hare six days per week from April 4 through May 3 (Gx, 150), though he met with the Geralex employees twice per week during that period (Gx, 151-52). It is undisputed that after May 6 he never appeared at O'Hare airport again (Gx, 83, 153-54), never spoke to Geralex representatives again, and never spoke to Geralex employees again (Gx, 154, 136-37). Prior to May 6, Micaletti had been engaged in dealing with a possible shift change issue affecting Geralex employees (Gx, 158-59). If he hadn't been instructed to "walk away" from Geralex on May 6 Micaletti would have continued to visit the facility (Gx, 164).

Facts relating to alleged expanding unit

The Employer contended at hearing that the petitioned for unit was undergoing a "definite and immediate expansion" (Gx, 9), but the record shows that Geralex maintains a substantial and representative complement of employees, that any expansion is purely speculative, and the hoped-for expansion would not materially change the character of the petitioned-for unit.

The Employer commenced working at O'Hare Airport in mid-December 2012 (Gx, 13). Initially, it faced a small time window to complete a complex hiring process (Gx, 125-27). However, within three weeks of its first day on the job, Geralex had hired 45 employees and admittedly was "at full strength" (Gx, 137). It has added a few more employees since then, but basically has had a stable workforce since early January 2013.

The Employer offered much testimony about a planned increase in its workload and workforce at O'Hare Airport, but the record demonstrates that no commitments have been made to Geralex as to when, if ever, it will obtain the work.

Geralex principal Alejandra Alvarado testified that Geralex is a 10% WBE subcontractor to United Maintenance at the airport (Gx, 65) and it performs janitorial work at Terminal 1, second shift from 2:00 to 10:30 p.m. (Gx, 14, 16). Geralex currently employs 50 janitors and two lead janitors in the petitioned-for unit, for a total of 52 employees. 33 Janitors are required per shift, seven days per week, and the larger complement assures that all seven days are covered, plus time off (20-21, 30).

Alvarado further testified that in March, 2013 United Maintenance promised to double her work (Gx, 20). Alvarado directed her Human Resources Director to prepare to hire double the employees, and the HR Director set about finding job applicants (Gx, 23-24). Though Alvarado claimed the work was to be provided to Geralex in early May, the effective date was moved to June 1, then it was delayed again. "So, it keeps postponing for some reason," she testified, then acknowledged that no firm date has been set: "Right now they haven't told me anything" (Gx, 26). She acknowledges that United Maintenance has told her only to be ready because she "*might* be receiving additional work" (Gx, 70. emphasis supplied).

The record shows that no commitments have been made to Geralex regarding an increase in its work at O'Hare. Geralex has a signed contract with the City of Chicago for its current work, but it has received no written commitments either from the City or United Maintenance that it will get the additional work (Gx, 70). Geralex has not hired any more employees, promised any employees a job or even committed to make a decision regarding hiring by a certain date (Gx, 138-39). It admittedly will not hire employees until it has the commitment from United Maintenance to take additional work (Gx, 31). Alvarado testified that another minority subcontractor would have to be removed in order for her company to get more work, but she admittedly didn't know whether United Maintenance was failing to meet its minority contractor requirements at O'Hare Airport (Gx, 72-73).

The record was not clear as to the number of additional employees Geralex would hire if it gets the additional 10% work it says was promised (Gx, 10). At one time, Alvarado said the employee complement would "double" (Gx, 23). At another time, she said Geralex would hire 62 – 72 more employees if the additional work is procured (Gs, 31). However, on several occasions Alvarado made clear that Geralex would not increase the number of job classifications, but would continue to utilize the same job classifications currently in use (Gx, 30, 64, 89-90).

ARGUMENT

1. The Regional Director did not depart from officially reported Board precedent

The Employer argues that the Regional Director has departed from officially reported Board precedent based on the questionable claim that the Board's contract bar doctrine prohibits recognition of a union's disclaimer. However, in the end, it simply asks that the Board return to

the *Mack Truck* and *East Manufacturing Corp.* decisions, and subsequent dissenting opinions, which have been supplanted by *American Sunroof* and *VFL Technologies*. (Req. Rev at 7-10).

The Employer does not in fact dispute that resolution of this matter is governed under *American Sunroof Corp*., 243 NLRB 1128 (1979) and *VFL Technology Corporation*, 332 NLRB 1443 (2000), which hold that "[i]t is well settled that a contract does not bar an election when the contracting union has validly disclaimed interest in representing the employees covered by the agreement." The only permissible inquiry as to the validity of the disclaimer is whether the disclaimer is clear and unequivocal and made in good faith. *Id.*, citing *American Sunroof*, 243 NLRB 1128 (1979).

Further, there is no basis to conclude, as the Employer claims, that the Board in *American Sunroof* and *VFL Technologies* failed to reconcile competing precedent regarding contract bar rules. In *American Sunroof*, as affirmed in *VFL Technologies*, the Board explained that *Mack Trucks* and *Gate City Optical* present "special circumstances" in the analysis of disclaimers, either due to collusion between the unions or the defunctness of a union. *American Sunroof*, 243 NLRB at 1129; *VFL Technologies*, 332 NLRB at 1144. The collusive agreement between unions rendered disclaimer ineffective in *Mack Trucks*, and no such collusion was present in the latter decisions, or here.

Though it won't expressly acknowledge it, the Employer simply wants the Board to abandon its recognition of Union disclaimers as an exception to the contract bar rule. It complains that the Regional Director's decision "allows a viable bargaining representative to evade its contractual obligations by simply stating that it no longer has interest in representing the bargaining unit" (Req. Rev. at 9). It cites *East Manufacturing Corp.*, 242 NLRB 5 (1979) for the proposition that bargaining relationship stability must be protected by refusing to give effect

to union disclaimers (Req. Rev. at 8-10). But *East Manufacturing Corp.* presented an unusual situation where the union consisted only of the employees of one employer, and it sought to disclaim in order to avoid its obligations under the labor contract. But this decision was effectively overruled in *Production and Maintenance Union, Local 101*, 329 N.L.R.B. 247, 248 (1999), [5] and did not merit even a mention in the Board's majority opinions in *American Sunroof* or *VFL Technologies*. The Employer presents no compelling reason to reject the Board's observation in *American Sunroof* that "the purposes of the Act are not served by a result which would, in fact, leave the employees with no representation at all for the remainder of the term of [the incumbent union's] contract." 243 NLRB at 1129, fn 3.

2. There is no compelling reason to establish trial court pre-hearing discovery procedures in pre-election proceedings.

The Employer in its Argument B apparently seeks reconsideration of the Board's pre-election hearing procedures under Rule 102.67(c)(4) in order to facilitate it proving the existence of a collusive agreement between Petitioner and Local 727. But it fails to provide any valid reasons to support this request, and certainly not compelling ones.

The Employer argues that the Board's pre-election processes give it "no mechanism to detect collusion between labor organizations" other than subpoena power (Req. Rev. at 10). Presumably, the Employer seeks to overturn or amend Sections 102.63-67 of the Board's Rules and Regulations, and would prefer to establish the full panoply of discovery rules available under

[5] The Board there ruled that "a union may disclaim its role as a collective-bargaining representative and may do so even in apparent response to the employees' filing of a deauthorization petition or the loss of a deauthorization election. We further hold that a union may so inform employees without providing them with objective evidence that its continued representation of them would be infeasible."

the Federal Rules of Civil Procedure, including depositions, interrogatories, and other pre-hearing discovery production in which to establish its case.

The problem, of course, is the Employer's proposal would so unreasonably delay the pre-election hearing that employees could not reasonably express their preference, which the employer claims it seeks to protect. Would it allow 6 months for this pre-hearing discovery, 12 months, or perhaps more? Moreover, the Employer has not demonstrated why the Board's existing tools to prepare evidentiary records as established under Rule 102.66 are insufficient.

The record here does not, in any event, present even a hint of collusion between the two local unions, but rather an adversarial dispute over jurisdiction that was resolved between the international unions to which the local unions are affiliated. The Employer presents no valid reason why it should be allowed the full panoply of time consuming and expensive pre-hearing discovery techniques to pursue a theory for which it lacks even a scintilla of evidence.

3. The Regional Director's finding that Local 727 clearly and unequivocally disclaimed interest is not clearly erroneous on the record.

Though the Employer claims in its Argument C to argue that Teamsters Local 727 didn't clearly and unequivocally disclaim interest in representing Geralex's janitors at O'Hare Airport, in fact it makes a different argument: that Local 727's disclaimer was not made in good faith and is therefore ineffective. But its argument lacks support from the record.

The Employer makes no effort to demonstrate that Local 727's June 21, 2013 disclaimer wasn't clear and unequivocal, nor does it contend that Local 727 engaged in any activity inconsistent with the disclaimer. Indeed, the record is clear that Local 727's disclaimer on June 21, as reaffirmed at the hearing, satisfies the Board's standards for a valid disclaimer. The plain

language of Local 727's disclaimer was clear and unequivocal, stating that Local 727 disclaimed "any and all representational interest in the previously recognized unit of airport workers located at Chicago-O'Hare Airport" (Gx Ptr. Exh. 3). The Employer's principal Alvarado understood exactly what the disclaimer meant, that Local 727 "no longer wished to represent the employees of Geralex at O'Hare Airport." Local 727 affirmed at the hearing that its disclaimer is unconditional, and it further disclaimed any future representational interest in Geralex employees.

Local 727's contemporaneous and subsequent conduct were fully consistent with its disclaimer. After spending regular time at the O'Hare facility from April 4 to May 3, Local 727 abruptly and permanently ceased engaging in any representational functions at Geralex as of May 6, but through an administrative oversight it neglected to send the disclaimer notice to Geralex until June 21. Local 727 has engaged in no representational functions since its disclaimer, and it refused even to intervene in this proceeding because it had disclaimed all representational interest in Geralex employees. The record is absolutely devoid of any evidence that Local 727 has engaged in any conduct inconsistent with its clear and unequivocal disclaimer.

Though it can cite *no evidence* of collusion or improper motive, the Employer chooses instead to draw tortured and unreasonable inferences from the record to claim that the Regional Director's findings that the Local 727 disclaimer was in good faith to be "clearly erroneous."

No such collusive agreement, false claim of defunctness, or any other improper motive is present here. The record amply demonstrates that the Petitioner, which has principally represented private janitorial employees for almost a century, initiated through the SEIU a jurisdictional dispute against Local 727 through the IBT under the jurisdictional dispute

mechanisms of the Change to Win constitution. Local 727 has no historic claim to represent janitors. Through an agreement negotiated by the International Unions, Local 727 was directed by its parent organization IBT to disclaim any representation interest in O'Hare Airport employees, over which the Petitioner had previously established bargaining rights. The record shows there was no direct agreement between Local 727 and the Petitioner and no intent to evade the terms of the labor contract previously negotiated by Local 727. Local 727 disclaimed only because it was directed to do so by its International Union. Petitioner sought Local 727's disclaimer solely to protect its historic jurisdiction over private janitorial work.

The Employer now claims there couldn't have been a valid disclaimer based on the parties' jurisdictional dispute "when no such jurisdictional dispute or disclaimer of interest was communicated to Geralex until June 24, 2013" (Req. Rev at 14). Of course the evidence is uncontroverted that the disclaimer was received on June 21, 3 days prior to the hearing. More important, the record evidence is also uncontroverted that Local 727 intended to disclaim representation rights with both Geralex and United Maintenance as of May 6, but through administrative oversight sent a disclaimer letter only to United Maintenance. When the Petitioner later learned that Local 727 had a labor contract with Geralex and had not yet disclaimed there, this oversight was brought to Local 727's attention, and Local 727 promptly sent a disclaimer letter to Geralex, which was both dated and received on June 21. So the timing of the disclaimer is fully explained in the record and does not, as Geralex seems to hope, prove that the disclaimer was in bad faith.

The Employer next claims that, since Petitioner didn't learn that Geralex had signed a labor contract with Local 727 until mid-June, the week before the hearing, it is impossible that the jurisdictional complaint Petitioner previously caused to be filed in April against Local 727

could have encompassed Geralex (Req. Rev. at 15). But the Employer's argument presupposes that no jurisdictional complaint could be made except over entering into a labor contract. This is plainly not the case. The record shows that the Petitioner's jurisdictional complaint pertained to "all privatized janitors at O'Hare airport" (Gx, 173). Local 727's organizational activities at O'Hare were the subject of Petitioner's complaint, and the record does not suggest that jurisdictional complaints can only be initiated against another labor organization once it has entered into a labor contract.

Furthermore, the record is again uncontroverted that Local 727 understood the May 3, 2013 direction from its international union to be that, as a result of the jurisdictional settlement, it must abandon all recognitional activities at O'Hare Airport, and in fact, Local 727 ceased all representation activities at O'Hare – for both United Maintenance and Geralex – as of May 6. That the SEIU jurisdictional dispute encompassed all efforts by Local 727 to organize janitors at O'Hare Airport is both unrefuted and makes logical sense, since Geralex subcontracted the janitorial work at O'Hare directly from United Maintenance, and literally stands in United Maintenance's shoes as the entity performing janitorial work at O'Hare on United Maintenance's behalf.

4. The Regional Director's finding that the Petitioned-for Unit is a substantial and representative complement is not clearly erroneous on the record.

The Employer's final argument, that it lacked a substantial and representative complement of employees due to its claimed expansion, is based on pure conjecture since the record shows it had no definite commitment to assume additional work. Further, since the petitioned-for unit includes more than 50% of the employees and 100% of the classifications in

the projected expanded unit, it must be found to be substantial and representative regardless of the ultimate changes to the unit.

The Employer's claim to be undergoing a "definite and immediate expansion" of the bargaining unit is flatly belied by the hearing record. Though Geralex made much of indefinite promises by United Maintenance for future additional subcontracted janitorial work at O'Hare, and it arranged for numerous job applicants to be available for possible jobs, Geralex produced no written commitment to give it additional work and could not identify any specific promise or any specific date for additional work to be subcontracted to it. The only developments Geralex witnesses could specifically identify were numerous and indefinite postponements of any additional work. It is noteworthy that United Maintenance, which produced witnesses for the June 25 hearing, offered no testimony or other evidence to confirm Geralex's claim to be receiving additional work. [6] It further acknowledges that it would not be adding new classifications.

The Board has ruled under similar circumstances that the speculative nature of the Employer's predicted expansion and the fact that all of its job classifications are already in place precludes any finding that the unit is expanding and there is not currently a representative complement of employees warranting an election. *Laurel Associates, Inc., d/b/a Jersey Shore Nursing Center,* 325 NLRB 603 (1998).

Though it knows better, Geralex brazenly attempts to supplement the record with the non-evidentiary assertion that it hired 40 employees to perform custodial services on July 14

[6] Geralex witnesses claimed to be dealing with United Maintenance agent Mark Boatwright (Gx 33-34; Gx Emp. Exh. 2). Boatwright appeared and testified at the June 25 hearing, of which the Region has taken administrative notice in this proceeding, and he gave no testimony supporting any of Geralex's claims.

(Req. Rev. at 19). This attempt to assert facts outside the hearing record is flatly prohibited by the Board's Rules and Regulations, Secs. 102.68 and 102.67(d). [7]

Assuming for sake of argument that Geralex's bald claim to have hired 40 janitors on July 14 were a matter of record – Geralex admittedly would not be creating any new job classifications for the work but would simply be hiring additional individuals to occupy the current job classifications it already maintains. Geralex has been operating with over 50 employees at "full strength" since January 2013 and would simply be increasing the size of its workforce should its subcontracted share of work increase.

In general, the Board finds an existing complement of employees substantial and representative when at least 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Shares, Inc.*, 343 NLRB 455 fn. 2 (2004). [8] Assuming that Geralex had proven at hearing its contention that it hired 40 additional janitors, the pre-existing unit of 52 employees constitutes about 57 percent of the combined group, and 100 percent of the anticipated job classifications. Thus, the additional employees would not render the existing employee complement less than substantial and representative.

Geralex presents no compelling reason to overturn the Regional Director's findings.

[7] Sec. 102.67(d) requires that the request for review be "a self-contained document enabling the Board to rule on the basis of its contents without recourse to the record." Geralex's request for review utterly fails to conform to this requirement, but this rule certainly does not mean that Geralex can simply assert new facts without evidentiary foundation in its request for review.

[8] See also, *See* NLRB Outline of Law and Procedure in Representation Cases, Sec. 10-600 (Expanding Unit).

CONCLUSION

Under Rule 102.67(c), the Board will grant a request for review only where compelling reasons exist for review. For the foregoing reasons, the Petitioner respectfully requests that the Employer's Request for Review be denied.

Respectfully submitted,

/s/ Robert E. Bloch
Attorney for Petitioner

CERTIFICATE OF SERVICE

The undersigned caused a copy of the Petitioner's Statement in Opposition to Employer's Request for Review to be served on August 6, 2013, by electronic means, on:

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