

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

BRADKEN, INC.¹

Employer

and

Case 19-RD-112390

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
DISTRICT W24, AFL-CIO

Incumbent Union

and

JONATHAN DAVID FULLER

Petitioner

DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (“Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (“Act”), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.²

I. SUMMARY

The Employer is a State of Delaware corporation operating a steel manufacturing facility in Chehalis, Washington (“facility”), the only facility at issue herein.³ The Employer currently employs about 98 production and maintenance employees (“Unit”)

¹ The names of the Employer and Incumbent Union appear as stipulated at hearing.

² The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

³ At hearing, the parties stipulated that the Employer is engaged in commerce within the meaning of §§ (6) and (7) of the Act. The parties further stipulated that the Employer, a Delaware corporation with offices in Tacoma and Chehalis, Washington, is engaged in the manufacture of steel products. The parties further stipulated that within the past 12 months, a representative period, the Employer sold and shipped from the facility, goods valued in excess of \$50,000 directly to points outside the State of Washington. In light of the foregoing and the record as a whole, I find that it will effectuate the purposes of the Act to assert jurisdiction herein.

at the facility who are represented by the Incumbent Union ("Union").⁴ Petitioner filed the instant petition seeking an election to determine whether the Union should remain the exclusive collective-bargaining representative of Unit employees. No party contests the appropriateness of the Unit as described below.

The Union argues that the petition should be dismissed because it was filed after the Union had filed an unfair labor practice charge alleging that the Employer had engaged in regressive and surface bargaining with the Union in connection with negotiations for an initial labor agreement. However, the Union later withdrew that charge when it and the Employer negotiated an initial agreement. To give effect to its argument, the Union recognizes that I must overrule *Truserv Corp.*, 349 NLRB 227 (2007). In the alternative, the Union contends that despite the withdrawal of its charge, it is entitled to a full evidentiary hearing or Regional investigation regarding whether the Employer's bargaining conduct underlying the withdrawn charge warrants dismissal of the petition. The Union further argues that I should transfer this representation case to the Board instead of issuing a decision. Conversely, the Employer argues that I should process the instant petition and immediately issue a decision and direction of election under existing Board precedent, including *Truserv*.

I have carefully reviewed and considered the record evidence and the arguments made by the parties both at the hearing and in their post-hearing briefs.⁵ Because I am bound to follow existing Board precedent, including *Truserv*, I find that it is appropriate to direct an election in the Unit in the circumstances of this case.

Below, I have set forth the record evidence; an analysis of the Board's current precedent, as applied to the record evidence and the parties' arguments, and my conclusions in that regard; and the details of the directed election and the procedures for requesting review of this decision.

II. RECORD EVIDENCE⁶

On August 16, 2013, the Union filed the charge in Case 19-CA-111486, alleging the Employer engaged in regressive and surface bargaining in violation of §§ 8(a)(1) and (5) of the Act. On August 30, 2013, Petitioner filed the instant petition, which was immediately placed in abeyance pending the investigation of Case 19-CA-111486. Following an investigation of Case 19-CA-111486, I issued a Complaint and Notice of Hearing ("Complaint") in that matter on February 27, 2014. Also on February 27, 2014, I issued an Order Consolidating Cases and Notice of Hearing that consolidated the instant petition with Case 19-CA-111486 for a hearing before an administrative law judge to determine whether the unfair labor practices alleged in the Complaint occurred and whether the alleged unfair labor practices bore a causal relationship to the

⁴ At hearing, the parties stipulated that the Union is a labor organization within the meaning of § 2(5) of the Act.

⁵ The Employer and the Union timely filed their respective briefs. Petitioner did not file a brief.

⁶ The Union called Union business representatives Joe Kear and Britt Cornman as witnesses. Neither the Employer nor the Petitioner called any witnesses.

employee disaffection reflected in the filing of the instant decertification, thereby warranting dismissal of the petition.⁷

However, on April 23, 2014, I issued an Order (“Order”) approving the Union’s request to conditionally withdraw the charge in Case 19-CA-111486. In my Order, I referenced the fact that the Union and the Employer had adjusted the matters raised in the Complaint by, on April 21, 2014, negotiating an initial collective bargaining agreement. My Order approved the Union’s request to withdraw the charge in Case 19-CA-111486, conditioned upon the Employer’s compliance in executing the new agreement upon its ratification. On that basis, my Order dismissed the Complaint and withdrew the Notice of Hearing.

Thereafter, the Union and the Employer executed the initial agreement, effective by its terms from April 27, 2014, to April 26, 2015. The agreement was signed by the Employer on May 6, 2014, and by the Union on May 9, 2014. At no time relevant herein has Petitioner agreed to withdraw his petition. Further, the Employer has never admitted to engaging in any conduct violative of the Act as alleged in Case 19-CA-111486.

III. ANALYSIS

A. Application of Existing Board Precedent

In *Truserv Corp.*, the Board overruled *Douglas-Randall, Inc.*, 320 NLRB 431 (1995); *Liberty Fabrics, Inc.*, 327 NLRB 38 (1998); and *Supershuttle of Orange County*, 330 NLRB 1016 (2000), when it reversed an Acting Regional Director’s dismissal of a decertification petition, reinstated that petition, and remanded it to the Regional Director for further action. Specifically, the incumbent union in *Truserv* filed an unfair labor practice charge against the employer alleging multiple unilateral changes. Subsequently, a decertification petition was filed, which was “blocked” pending the disposition of the unfair labor practice charge. Thereafter, the employer and the union reached a non-Board settlement of the unfair labor practice charge whereby the employer agreed to bargain and the union agreed to withdraw the pending unfair labor practice charge. The decertification case petitioner was not a party to the settlement agreement and did not agree to withdraw the petition. Following approval of the union’s withdrawal request, the Acting Regional Director dismissed the “blocked” decertification petition under *Douglas-Randall*, *Liberty Fabrics*, and *Supershuttle of Orange County*.

However, the *Truserv* Board reversed the Acting Regional Director’s dismissal, finding that “there was no basis for dismissing a petition based on a settlement of alleged but unproven unfair labor practices.” *Id.* at page 228. Furthermore, the Board noted that under the precedent to which it was returning, the absence of a non-admission clause would not have warranted a contrary result. *Id.* at page 229. The Board did, however, note that a decertification case may not be processed, if (1) the

⁷ I take administrative notice of the procedural documents (charge, complaint, orders, the Union’s withdrawal, etc.) referred to herein from Case 19-CA-111486.

execution of the settlement of the unfair labor practice charge precedes the filing of the petition pursuant to *Poole Foundry & Machine Co.*, 95 NLRB 34 (1951), enfd. 192 F.2d 740 (4th Cir. 1951), (2) the Regional Director finds that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer, or (3) the settlement of the unfair labor practice charge includes an agreement by the decertification petitioner to withdraw the petition. Here, there is no contention that those three conditions exist.

In *Truserv*, the Board indicated that *City Markets*, 273 NLRB 469 (1984) was part of the line of precedent to which the Board was returning. In *City Markets*, the Board reinstated four decertification petitions, after the withdrawal of unfair labor practice charges, which served as the basis for the issuance of a complaint. The petitions had been dismissed, subject to reinstatement, because, as the complaint alleged, the employer had violated § 8(a)(5) of the Act. Thereafter, the union and the employer in *City Markets* reached agreement on new collective-bargaining contracts covering the involved units, and the charges were withdrawn. The petitioners then requested reinstatement of the decertification petitions. The union argued that the petitions were barred by the new contracts. However, the Board held that a contract entered into during a period when a decertification petition is blocked by charges will not bar the processing of an otherwise timely filed petition when the charges are withdrawn, as were the circumstances in *City Markets*. Thus, as the considerations that caused the dismissal of the four petitions were no longer present, the Board reinstated the petitions despite the execution of the new contracts.

In light of the above and the record as a whole, I am bound to follow existing Board precedent as set forth in *Truserv* and *City Markets*.

B. Union's Request for Hearing Concerning Effect of Employer Misconduct on the Petition

The Union argues that it should be allowed to establish, at hearing or by proffer to me, the existence of facts sufficient to justify dismissal of the instant petition. The parties recognize here that "[e]vidence of unfair labor practices, as such, is not admissible in a representation hearing." *NLRB Casehandling Manual (Part Two) Representation Proceedings* § 11228. However, the Union further argues that the evidence it proffered at hearing, which was rejected by the hearing officer, was not presented to establish the existence of "unfair labor practices, as such," but instead to demonstrate that the circumstances surrounding the petition involve a degree of employer misconduct sufficient to warrant dismissal of this petition.

As noted above, the Union's charge in Case 19-CA-111486, as well as this representation case, were proceeding at one point to a hearing before an administrative law judge who would address, among other things, whether the Employer's alleged unfair labor practices bore a causal relationship to the employee disaffection reflected in the filing of the instant decertification petition. However, as in *City Markets*, *supra*, the Union withdrew its charge in Case 19-CA-111486, which led to the dismissal of the

related Complaint and withdrawal of the Notice of Hearing. In short, the Union cannot at this juncture undo its voluntary withdrawal of the charge in Case 19-CA-111486 and once again proceed to a hearing or administrative investigation that would be equivalent to the consolidated proceeding that I had previously ordered in this representation case and in Case 19-CA-111486.

The Union cites *Canter's Fairfax Restaurant, Inc.*, 309 NLRB 883, 884, (1992) in support of its request here. However, that case is distinguishable in that it involved allegations that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer. Here, the Union never filed such a charge or timely alleged such conduct by the Employer.

Based on the foregoing and the record as a whole, I deny the Union's request in this regard.

C. Union's Motion to Transfer Case to Board

The Union additionally requests that I transfer this case to the Board under § 102.67 of the Board's Rules and Regulations, which states in pertinent part:

(h) In any case in which it appears to the Regional Director that the proceeding raises questions which should be decided by the Board, he may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Board for decision. Such an order may be served on the parties upon the record of the hearing.

The Employer opposes this motion and requests that I immediately issue a decision and direction of election.

NLRB Casehandling Manual (Part Two) Representation Proceedings at § 11273 addresses my authority under § 102.67(h) as follows:

The Regional Director may transfer a case to the Board for decision pursuant to Sec. 102.67(h) of the Rules and Regulations. Ordinarily, however, the Regional Director should decide a case, rather than transfer it to the Board, even in cases of first impression or involving novel issues. A Regional Director's decision in such a case provides the Board with the benefit of the Regional Director's analysis of the questions raised. Further, when the Regional Director issues a decision, the parties will be better informed as to the questions presented by the matter. As a result, the issues that remain in dispute for the parties' requests for review may be reduced and the remaining issues may be presented more clearly to the Board.

Here, the Union is requesting that I overrule *Truserv*, which does not even raise issues of first impression or that are novel. Rather, the Board has addressed the issues raised in *Truserv*, which continues to be binding precedent in cases such as this one before me.

In light of the foregoing and the record as a whole, I decline to transfer this case to the Board and instead shall issue a decision applying current Board precedent and shall direct an election for the reasons noted herein.

IV. CONCLUSION

Based on the record as a whole and the above, I find that a question concerning representation exists within the meaning of § 9(c)(1). Specifically, the parties stipulated that the Employer's operations fall under the Board's jurisdiction and they do not raise any additional bars to further processing of the instant petition that have not been addressed above. Additionally, the parties stipulated to the Unit description as described below. Accordingly, I shall direct an election in the following Unit:

All full-time and regular part-time production and maintenance employees, including welding, quality, inspection, shakeout, melt, grinding, burn/arc, expediter, heat treat, molding, sand, core room, pattern shop, pattern storage, blast, shipping/receiving, finishing employees, and department leads employed by the Employer at its Chehalis, Washington facility; excluding all other employees, engineers, sales employees, office clerical employees, professional employees, managerial employees, and guards and supervisors as defined in the Act.

There are approximately 98 employees in the Unit found appropriate.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Region among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before

the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Association of Machinists and Aerospace Workers, District W24, AFL-CIO**.

A. LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with me within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional office, Jackson Federal Building, 915 Second Ave., Room 2948, Seattle, WA 98174, on or before **June 12, 2014**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Because the list is to be made available to all parties to the election, please furnish a total of four (4) copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. NOTICE POSTING OBLIGATIONS

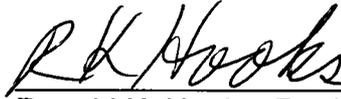
According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

C. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570.

This request must be received by the Board in Washington, DC by **5:00 p.m. (ET) on June 19, 2014**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.⁸

DATED at Seattle, Washington on the 5th day of June, 2014.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

⁸ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Region's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab.