UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LAMONS GASKET COMPANY,
A DIVISION OF TRIMAS CORPORATION,
Employer,

and

Case 16-RD-1597

MICHAEL E. LOPEZ,
Petitioner,

and

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION,
Union.

LAMONS GASKET COMPANY'S RESPONSE TO UNITED STEELWORKERS' BRIEF IN OPPOSITION TO THE REGIONAL DIRECTOR'S DECISION & DIRECTION OF ELECTION AND IN SUPPORT OF OVERTURNING *DANA*

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I. INTRODUCTION

The Board should grant Lamons' Brief in Support of the Regional Director's Decision and Direction of Election ("Lamons' Brief"). Within its Brief, Lamons sets forth its position in regard to the voluntary recognition of the Union, its support for *Dana*, and the many compelling reasons that any change to *Dana* should be applied prospectively, with great specificity. Lamons painstakingly provided the Board with a detailed analysis with legal authority to corroborate that analysis. As such, Lamons will not rehash its position here, but will simply address the few cognizable arguments raised in the Union's Brief in Opposition to the Regional Director's Decision and Direction of Election and In Support of Overturning *Dana* ("Union's Brief"). Specifically, the Union advances a cacophony of unfounded allegations which are outside of the record and then relies upon these allegations to arrive at far-reaching conclusions well beyond the stipulated record in this case. Essentially, the Union relies upon these unsupported allegations to accuse the Regional Director either of improper conduct and/or incompetence. Ultimately, the Union's actions fail to provide any basis in the current case to support overturning *Dana*, and provide absolutely no evidence that any change in *Dana* should be applied retroactively. Accordingly, Lamons respectfully requests that the Board grant all of the relief sought in its Brief.

II. ARGUMENT AND AUTHORITY

A. The Union Advances a Myriad of Unfounded Allegations Outside of the Stipulated Record.

On July 9, 2010, Lamons, the Union, and the Petitioner ("the Parties") entered into a Joint Stipulation of all relevant facts which comprised the record for this case ("Stipulated Record"). To date, the Stipulated Record has not been revised or amended. Moreover, while Board Rules provide an avenue for reopening the record, no party to this case has filed a Motion

to Reopen the Record to include additional facts. *See* 29 C.F.R. § 102.65, *et seq.* ("A party to a proceeding may, because of extraordinary circumstances, move . . . to reopen the record."). In fact, even if the Union had moved to reopen the record, prevailing law demonstrates that such a motion would be denied because the newfound allegations occurred ***before*** the Regional Director's Decision and Direction of Election ("Decision"). *See Electric Workers (IBEW) Local 48 (Kingston Constructors, Inc)*, 332 N.L.R.B. 1492 (2000) (disallowing General Counsel from reopening the record to introduce documents that predated the hearing where no explanation was offered as to why they were not introduced at the hearing or showing that they would require a different result), *order modified by* 333 N.L.R.B. 963 (2001), *enforced*, 345 F.3d 1049 (9th Cir. 2003); *Labor Ready, Inc.*, 330 N.L.R.B. 1024 (2000) (denying motion to reopen the record where evidence was not previously unavailable or newly discovered); *Fitel/Lucent Techs., Inc.*, 326 N.L.R.B. 46 (1998) (finding that the movant had not made the requisite showing where it failed to find a document within its sole possession and control until after the hearing, despite a search of its records). As such, the record is the Stipulated Record agreed upon by the Parties, and the Board's decision should rely upon these stipulated facts.

The Union blatantly disregards its own stipulation and – for the first time – makes a mountain of unfounded and, more importantly, unsupported factual allegations in its Brief. Additionally, the Union attaches various exhibits to its Brief which are not included in the Stipulated Record. The purpose of the Stipulated Record is to anchor the case in a specific set of facts – upon which the parties have agreed – so that all arguments can be rooted in those facts. Put simply, it puts the Parties at the same starting line. Unfortunately, the Union has disregarded this purpose and the Board Rules. In doing so, the Union has blindsided Lamons and the Petitioner with utterly unsubstantiated allegations.

Based upon these unfounded factual assertions and exhibits, the Union makes far-reaching conclusions that go far beyond the facts of this case and the Board's Invitation to File Briefs. A nonexhaustive list of these unsupported factual assertions is set forth below:

- Lamons and the Union have had a rocky relationship from the start. [Union Brief, p. 19]
- Lamons actively instigated employee support for the decertification petition shortly after voluntary recognition. [Union Brief, p. 3];
- Lamons acted unlawfully after the filing of the decertification petition. [Union Brief, p. 3];
- Lamons settled ULP Charges to avoid a complaint from Region 16. [Union Brief, p. 3]; *see also* settlement agreement between Lamons and Union. [Union Brief, p. 20; Ex. E];
- Lamons disciplined an employee for supporting the Union. [Union Brief, p. 3];
- Lamons threatened employees with termination for supporting the Union. [Union Brief, p. 3];
- Lamons promised benefits to employees who opposed the Union. [Union Brief, p. 3];
- Lamons supported employee efforts to decertify the Union. [Union Brief, p. 19];
- Employee witnesses would not provide testimony to Region 16 for fear of their jobs. [Union Brief, p. 20];
- Lamons dragged their feet in negotiations. [Union Brief, p. 20];
- Lamons strengthened its bargaining position through unfair labor practices. [Union Brief, p. 20]; and
- Lamons campaigned for decertification by stating that the collective bargaining agreement reached by the parties is inferior. [Union Brief, p. 20].

These allegations have ***no foundation*** in the record and therefore must be disregarded. Indeed, if this laundry list of improprieties occurred, why would the Regional Director have issued a Decision and Direction of Election? Moreover, if these events took place, why did the Union choose not to raise these alleged improprieties in its Request for Review?

The truth is that these unfounded allegations are nothing more than revisionist history. In fact, it seems that the Union has manufactured allegations to align this case with the scenarios predicted in the *Dana* dissent. It seems that the Union's blueprint is as follows:

Cite Dana dissent incessantly[1] *+ create unfounded allegations (see above) = Overturn Dana.*

[1] The Union deferentially cites to the *Dana* dissenting opinion no less than twenty-two (22) times. The Union substitutes actual analysis of the facts with countless cites to the *Dana* dissent, presumably in the hopes of appeasing the *Dana* dissenters on the Board. Lamons is confident that the Board will take a careful and evaluative look at the

Unfortunately for the Union, the doomsday scenario that they were hoping for did not happen at the Lamons facility (which is presumably why the Union spends so much ink discussing experiences at other locations).[2] As set forth in Lamons' Brief, and also reflected in the Regional Director's Decision, the Parties relied upon the *Dana* paradigm, worked through the decertification petition, had numerous productive collective bargaining sessions, and reached a collective bargaining agreement. The record in this case shows that *Dana* worked. For all of the foregoing reasons, the unfounded allegations purported by the Union in its Brief must be disregarded.

B. The Union Accuses Region 16 of Improper Conduct; Provides No Evidence to Overturn *Dana*.

As outline above, the Union relies upon numerous unfounded allegations outside of the record to contend that the time period following the filing of the decertification petition was rife with unlawful activity perpetuated by Lamons. Despite the Union's numerous damning and completely unfounded allegations against Lamons, the Regional Director ordered a decertification election.

In its Brief, the Union seems to argue that the Regional Director's Decision was either incompetent or the result of improper conduct. The Union suggests a litany of transgressions by Lamons (none of which are in the record) and then says that the Regional Director ordered an election anyway thus creating the appearance of improper conduct or incompetence by the Regional Director. This is false. The Regional Director weighed the facts provided by the Parties in the Stipulated Record and based upon her lengthy investigation, an election was

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facts of this case (not the unfounded allegations not contained in the record) when making its determination relative to the Lamons facility.

[2] The Union also spends an inordinate amount of its Brief defending the lawfulness of voluntary recognition. This issue is not in dispute. Indeed, Lamons voluntarily recognized the Union in this case.

ordered. The Decision was proper and the Board should not stand for the Union's self-serving allegations insinuating (without factual support) improper or incompetent action by the Board's Regional Director.

Moreover, to the extent that the Union argues undue delay in conducting the election, it should look no further than its own actions. The Union filed numerous ULP Charges following the decertification petition. The Regional Director's office was forced to investigate all of these Charges before it could order an election. Notwithstanding their own actions, the Union's Brief alleges that Lamons has delayed the process. Plainly stated, it is nothing short of disingenuous for the Union to stall the election process and then cry "foul" at the delay that it created through its numerous blocking charges.

When all of the unfounded allegations, hyperbole, and alleged facts regarding experiences at other facilities are stripped away, it becomes readily apparent that the *Dana* paradigm has worked at the Lamons facility. In fact, the Union cannot point to any basis in the record to show otherwise. Accordingly, *Dana* should be affirmed, and at the very minimum, any change in the *Dana* rule should be applied prospectively to justify the Parties' reliance on the rule.

III. CONCLUSION

For the foregoing reasons, the Board should affirm the *Dana* rule. However, if the rule in *Dana* is modified or overturned, the effects of such change should be applied prospectively to avoid inequitable results.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing Lamons Gasket Company's Response to United Steelworkers' Brief in Opposition to the Regional Director's Decision and Direction of Election and In Support of Overturning Dana was made on the following via electronic mail on this 15th day of November, 2010:

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