

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DENNIS MACLEOD,
Petitioner,

and

THUNDER VALLEY CASINO,
Employer,

Case No. 20-RD-2488

and

UNITE HERE LOCAL 49,
(Union).

UNITE HERE LOCAL 49'S OPPOSITION TO PETITIONER DENNIS MACLEOD'S
REQUEST FOR REVIEW

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There are only three facts that matter to the disposition of this case, and all of them are undisputed. First, the Dana notice was posted for a 45-day period ending on Sunday, June 13, 2010. Second, the Petitioner's showing of interest did not arrive in the Region's office until Tuesday, June 15. Third, the envelope in which the showing of interest was sent to the Region bore a postmark of Monday, June 14.

Petitioner complains that it was unfair that the Dana period ended on a Sunday when the Region was closed. This argument might make sense if Petitioner had delivered the showing of interest to the Region on Monday, June 14. He did not deliver until June 15. As a result, there is no need to consider whether, when a Dana period ends on a Sunday, the petitioner has until Monday to file a petition and submit a showing of interest. This brief will assume, solely for the sake of argument, that the Petitioner's showing of interest would have been timely if he had delivered it to the Region on Monday, June 14.

The Board's Rules provide that if a document is mailed, it must be postmarked the day before it is due:

[T]he Board will accept as timely filed any document which is hand delivered to the Board on or before the official closing time of the receiving office on the due date or post-marked on the date before (or earlier than) the due date; documents which are postmarked on or after the due dates are untimely. "Postmarking" shall include timely depositing the document with a delivery service that will provide a record showing that the document was tendered to the delivery service in sufficient time for delivery by the due date.

29 C.F.R. § 102.111(b). Thus, there were three methods which the Petitioner could have used to deliver the showing of interest. The Petitioner chose to mail the documents. Under Section 102.111(b), the showing of interest had to be "postmarked" no later than Sunday, June 13.

Petitioner asserts that his failure to timely submit the showing of interest to the Region should be excused because he delivered the showing of interest to a postal center in a grocery store on Saturday, June 12.¹ There are two problems with this argument.

First, Section 102.111(b) requires that the documents be “postmarked,” not merely deposited in the mail. There is an important difference. The Region can efficiently investigate and administer a postmark rule. All that a post mark rule requires that the Region do is look at an envelope. The Petitioner advocates for an alternative “deposit” rule. Such a rule would force the Region to conduct a detailed investigation whenever a showing of interest is untimely to determine when the document was deposited with the U.S. Postal Service. It would necessarily open the door to fraud. Avoiding that is particularly important since the showing of interest is a matter that may not be litigated. NLRB Casehandling Manual, ¶ 11021 (stating that “[t]he determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency” and “no party has a right to litigate the subject.”).

Second, the Board’s rules provide for late filing of certain documents in cases where “excusable neglect” can be demonstrated. 29 C.F.R. § 102.111(c). A showing of interest is not among the listed documents.

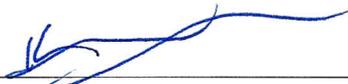
There is also no ground for review. A request for review will be granted only upon one of four grounds specified in the Board’s rules. 29 C.F.R. § 102.67(c). The petitioner asserts that review is warranted here because the case presents “substantial questions of law and public

¹ It is likely that Petitioner did not deposit the envelope until after 5:00 p.m. The postal center in the Rocklin Bel Aire Supermarket is not an official United States Post Office; it is staffed by supermarket employees. The postal center is open until 9:00 p.m. on Saturday evenings, but that the last pickup of mail by the United States Postal Service is at 5:00 p.m. Any mail that the supermarket’s postal center receives after 5:00 p.m. will be postmarked the following Monday. There is a United States Postal Service mailbox in front of the postal center and that mailbox bears a notice stating that the last pickup time is 5:00 p.m. See Dec. of Kristin L. Martin

policy.” But under Section 102.67(c)(1), review may only be granted if “a substantial question of law and public policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.” The Region applied the Board’s clearly-stated regulations in dismissing the petition, and the Region did not depart from Board precedent.

For all the foregoing reasons, the request for review should be denied.

Dated: February 9, 2011



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 years, and am not a party to the within action; my business address is 595 Market Street, Suite 1400, San Francisco, CA 94105.

On February 9, 2011, I served the following document(s) described as **UNITE HERE LOCAL 49'S Opposition to Petitioner Dennis MacLeod's Request for Review; and Declaration of Kristin L. Martin in Support of UNITE HERE LOCAL 49's Opposition to Petitioner Dennis MacLeod's Request for Review (Case No. 20-RD-2488)** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

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E-filed

- (BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at San Francisco, California.
- (By E-Mail)** I transmitted a copy of the foregoing document(s) via e-mail to the addressee(s)
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 9, 2011 at San Francisco, California.



Jamie Cantwell