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**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

FIRST STUDENT,

Employer,

And

ANDRIN J. MITCHELL, an Individual,

Case No. 19-UD-077098

Petitioner,

And

TEAMSTERS LOCAL 959,

Union.

UNION'S OPPOSITION TO REQUEST FOR REVIEW

On March 20, 2012, Andrin J. Mitchell filed a petition to withdraw union shop authority for a bargaining unit of drivers, attendants and technicians employed by First Student Inc. at Fairbanks, Alaska. Upon receiving information from the Alaska Teamsters Local that the Fairbanks/Moose Creek bargaining unit was merged into a single national bargaining unit of First Student employees, the Regional Director for Region 19 issued an Order to Show Cause why the petition should not be dismissed. Briefs and exhibits were submitted by the petitioner and the Teamsters local and the Regional Director dismissed the petition. Petitioner, now represented by the National Right to Work Legal Defense Foundation, Inc., has requested review of the Regional Director's Order.

Decision of the Regional Director

The Regional Director made findings as follows:

Similarly, in this instance, the Fairbanks/Moose Creek bargaining unit was merged into the national bargaining unit when the members ratified the National Agreement. Because the agreement specifies that the employees covered by the National Agreement and the various local agreements constitute one bargaining unit, the petitioned for separate unit is not appropriate.

Short Statement of the Case

On May 7, 2009, Teamsters Local 959 was certified the exclusive collective bargaining representative of the drivers, attendants, monitors, and mechanics working for First Student in the Fairbanks/Moose Creek, Alaska area. In the ensuing months, the Teamsters Local negotiated a collective bargaining agreement, and the agreement was signed by the employer and union representatives on April 23, 2010.

Concurrently, First Student and the International Brotherhood of Teamsters were taking steps to negotiate a national agreement covering separately certified First Student bargaining units. On May 15, 2009, the Secretary-Treasurer for Teamsters Local 959, and other officers of other locals that represented First Student units, voted to participate in company-wide bargaining with First Student. This procedure is consistent with provisions of the Constitution of the International Brotherhood of Teamsters. The Secretary-Treasurer's written authorization included the express understanding that, upon a majority vote of the locals having First Student units, "all IBT affiliated Local Unions [would] comprise a multi-union bargaining unit . . . and . . . be bound by any collective bargaining agreement reached during such bargaining." A majority of the Local Unions voted in favor of bargaining toward a national master agreement with First Student, bargaining took place, and an agreement was reached. The agreement included a provision that incorporated the local units into a single national bargaining unit. The contract's language from Article 2 follows:

Section 4. Single Bargaining Unit

It is the intent of the parties that each of the groups of represented employees referenced in Appendix A will be governed by this National Agreement and applicable local agreements, supplements, and/or riders.

All employees covered by this National Agreement and the various local agreements, supplements, and/or riders shall constitute one (1) bargaining unit. The printing of this National Agreement and the various local agreements, supplements and/or riders in separate agreements is for convenience only and is not intended to create separate bargaining units.

The First Student bargaining unit for Fairbanks/Moose Creek, Alaska was listed in Appendix A.

The National Master Agreement established uniform minimum standards on issues such as union security, dues checkoff, discipline, shop stewards, union access, bulletin boards, safety, family and medical leave, and seniority. It provides for a dispute resolution mechanism for resolution of disputes relating to the application of the provisions of the national master agreement.

The IBT communicated directly with the members working for First Student about ratification of the agreement and, in newsletters and in the ballot packet, prominently advised that the National Master Agreement would create a single national bargaining unit. Notice that consummation of the national agreement would create a single national bargaining unit was the first item in a flyer mailed with the ballots.

Summary of Tentative Agreement

...

Here is how it will work.

Overlay Existing Local Agreements: If ratified by a majority of members employed at First Student, this new National Agreement will overlay existing local agreements, creating a single national bargaining unit for a four-year term. . .

Ballot packets included full copies of the agreement. The contract was ratified by the membership. The National Master Agreement was signed June 28, 2011 to cover a contract term from June 1, 2011 through March 31, 2015.

Deauthorization Petition

The deauthorization petition sought a vote on withdrawal of union shop authority among the bargaining unit members in Fairbanks/Moose Creek alone. The Regional Director dismissed the petition, finding that “the Fairbanks/Moose Creek bargaining unit was merged into the national bargaining unit when the members ratified the National Agreement”. The Regional Director’s decision is in line with a decision of the Regional Director for Region 4 in Case 4-RD-066924, who concluded that the merger of the bargaining units precluded processing of an RD petition seeking a vote in a single local First Student bargaining unit.

Request for Review

The Regional Director summarized the arguments made by Petitioner in proceedings before the Region on the first and second pages of the Order.

The Petitioner argues that the petition should not be dismissed as the Local Union collective bargaining agreement which includes a union security clause, is valid; that the union security clause at the national level does not apply as only a small portion of the Local Union members were aware of and/or voted for ratification of the national agreement; non-Union members were not allowed to vote for ratification; and the Local Union is the only union negotiating with the Employer.

The arguments made today are entirely different. The Request for Review should be denied as well because the Petitioner waived or simply did not raise today’s claims below.

In her Request for Review, Petitioner disputes the merger of the First Student bargaining units, although she acknowledges that the Board recognizes the validity of merger of separately-certified bargaining units. She cites, in support of her argument, the short period of time between the certification of the Fairbanks unit and the ratification of the National Master Agreement, a period she describes as “only days”. But Petitioner has it backward. In *West Lawrence Care Center*, 305 NLRB 212 (1991), the case cited by Petitioner, the Board was concerned to protect the interests of a bargaining unit with a *long-established* separate bargaining history from some of the consequences of merger,

suggesting that a bargaining unit with a short bargaining history, such as this one, can be successfully merged without the same concern for rights to file representation petitions in the original bargaining unit.

In the present case, as in *Miron*, the Employer's unit employees have had a distinct identity in a single-employer unit for a significant period of time (approximately 15 years). The period between the unequivocal appearance of a multiemployer unit (October 18, 1988) and the filing of the election petitions (July 1989) was of "brief duration," i.e., less than a year.^[FN24] In these circumstances, we will not apply the Board's unit merger doctrine to block an election in the single-employer unit. In so doing, we are not abandoning our concern for avoiding disruption of established bargaining relationships. As the Board held in *Gibbs & Cox*, 280 NLRB 953, 954-955 (1986), we must weigh the interest in the stability of collective-bargaining relationships against the interest in assuring employees' freedom of choice. The longer the history of bargaining in a broader unit, the greater the weight of that history in the balance. Also relevant is the extent to which the less comprehensive unit has had separate collective-bargaining identity prior to the time that the employer and union undertook to merge it into a broader unit.

West Lawrence Care Center, 305 NLRB at 217.

Petitioner also suggests that the Board's decision on her request for review might turn on an alleged absence of bargaining. At page 6 of the Request for Review, she makes this factual claim:

First, there is no "history" of any bargaining here, whether "local" or "multi-location." Indeed, the history is precisely the opposite: this was a brand-new unit, with **no** history of bargaining. [Case citation omitted.]

And again at page 8:

Here, there has been no history of multi-location bargaining, and less than a year's history prior to the filing of the Petitioner.

But, as we have set out in our "short history" above, the union formed a national bargaining committee, negotiated an agreement, submitted the agreement to the members for ratification, and signed an agreement in June 2011. One of the problems noted by the Board in *West Lawrence Care Center* was that multi-employer bargaining for the consolidated bargaining unit never seemed to get off the ground and the parties continued deal with each other separately, as if the merger had not effectively taken place.

Oddly, the petitioner quotes from a decision of the Board that holds that the Board will not disturb a consolidated unit even after a fairly short history of bargaining.

In *Met Electrical Testing Co.*, 331 NLRB 872 (2000), the Board indicated it “normally will not disturb an historical, multilocation unit absent compelling circumstances. . . . In balancing the goals of employee free choice and bargaining stability, the Board has determined that even a 1-year bargaining history on a multi-plant basis can be sufficient to bar a petition seeking an election in a segment of that unit.”

Request for Review at p. 8.

Petitioner cites *Utah Power & Light Co.*, 258 NLRB 1059 (1981) for the proposition that “there are many circumstances in which an election will be ordered in a unit that is not coextensive with a recognized unit”. But *Utah Power & Light* was a case in which professional employees in a multi-specialty bargaining unit had never been afforded a vote on whether to be included in a unit with nonprofessional employees. In *Utah Power & Light*, the Board affirmed its customary position that decertification elections will not be allowed in subgroups of bargaining units, granting an election to these professional employees only because they’d not earlier been accorded their rights under Section 9(b)(1).

The instant case is clearly distinguishable in that the professional engineers here were never afforded an opportunity to vote whether to be included in the unit, as required by 9(b)(1).

We reaffirm the policies set forth in *Campbell Soup* and *Westinghouse Electric, supra*, and will continue to require that the unit for decertification be coextensive with the existing unit. However, since in this unique situation the professional employees seeking decertification have never had an opportunity to vote in a self-determination election, the policies inherent in Section 9(b)(1) require that we make an exception herein. Accordingly, we conclude that the unit petitioned for is not inappropriate and that an election should be directed as requested by the Petitioners.

Utah Power & Light, 258 NLRB at 1061.

Finally, petitioner offers a string of citations for the proposition that deauthorization elections should be allowed except during the one year “election bar” period. This argument misses the thrust of the Regional Director’s order. The Regional Director’s Order does not address the timeliness of the petition.

Conclusion

Review should not be granted because the arguments of petitioner are based upon mistaken statements of fact and case law that does not support her position. The current arguments were not

made below. Even were the arguments to have some basis in fact, the petitioner has not raised questions of law sufficient to warrant review under 29 CFR 102.67(c).

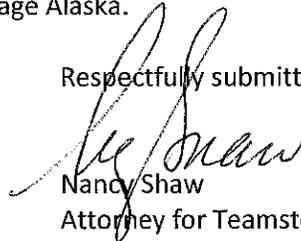
§102.67(c) The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Petitioner has made no claim that the Board has departed from precedent or that the regional director's decision on a factual issue is erroneous. She has not disputed a ruling made in connection with proceedings at the regional level, and no hearing was conducted. She has departed from the arguments made to the regional director. The request should be denied.

Dated this 14th day of May 2012 at Anchorage Alaska.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I sent copies of the Union's Opposition to Request for Review to the Regional Director for Region 19, to the employer, and to the attorney for petitioner addressed as follows:

By mail addressed as follows and by fax to 206-220-6305:

Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
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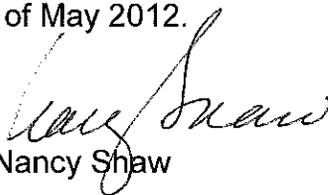
By mail addressed as follows and by email to thomas.parry@firstgroup.com:

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By mail addressed as follows and by email to wjy@nrtw.org:

W. James Young
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160

Dated at Anchorage, Alaska this 14th day of May 2012.


Nancy Shaw