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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

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TOP GRADE EXCAVATING, INC.,

Employer,

and

RUSSELL J. HORSFIELD,

Petitioner,

and

INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL  
UNION NO. 150,

Union.

CASE NO. 25-RD-124878

**TOP GRADE EXCAVATING, INC.'S  
REQUEST FOR REVIEW OF DECISION  
AND ORDER OF REGIONAL  
DIRECTOR**

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Top Grade Excavating, Inc. ("Top Grade") hereby files a request for review of the decision and order of the regional director, dated May 5, 2014, and respectfully states as follows:

1. Top Grade respectfully requests that the National Labor Relations Board (the "NLRB" or the "Board") review the Decision and Order Dismissing Petition entered by Regional Director Rik Lineback (the "Regional Director") on May 5, 2014, in which the Regional Director dismissed the petition filed by Petitioner Russell J. Horsfield ("Petitioner") that had requested an election to decertify International Union of Operating Engineers, Local Union No. 150 ("Local 150") as the certified or currently recognized bargaining representative of all full-time and regular part-time operators employed by Top Grade.

2. Section 102.67 of the Board's Rules and Regulations sets forth the standard for the Board to apply when determining whether to grant a request for review of a decision of a regional director. See 29 C.F.R. 102.67. That section provides:

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) departure from, officially reported Board precedent.
- ...
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

29 C.F.R. 102.67(c).

3. In the instant case, substantial questions of law and policy are raised because of the absence of or departure from officially reported Board precedent in the following regards:

- (a) the Regional Director considered and ruled upon issues advanced by Local 150 in its post hearing brief which were different from the issue stipulated to by Local 150 as the issue for the Hearing;
- (b) the Regional Director conflated the determination of eligible voters under Daniel Construction Co. with geographic limitations ostensibly relevant to the determination of the members of the collective bargaining unit but in no way relevant to the application of Daniel Construction Co.;

- (c) the Regional Director erroneously concluded that the relationship between Top Grade and Local 150 is governed by Section 9(a) rather than Section 8(f) of the NLRA;
- (d) the Regional Director incorrectly determined that the jurisdiction statements in the master agreements set forth the appropriate collective bargaining units for purposes of the representation election; and
- (e) the Regional Director incorrectly interpreted the jurisdiction statements in the master agreements to impose a geographic limitation on the collective bargaining unit narrower than that purportedly recognized by Top Grade in the memorandums of agreement;

In addition to the foregoing, there are compelling reasons for reconsideration of an important Board rule or policy because the Decision and Order Dismissing Petition deprives Top Grade's operators of their rights under Section VII of the National Labor Relations Act (the "NLRA or the "Act").

4. Top Grade files contemporaneously herewith and incorporates herein Top Grade Excavating, Inc.'s Brief in Support of Request for Review of Decision and Order of Regional Director.

WHEREFORE, Top Grade Excavating, Inc. respectfully requests that the Board grant Top Grade Excavating, Inc.'s request for review of the Decision and Order Dismissing Petition entered by Regional Director Rik Lineback on May 5, 2014, and, upon such review, enter an order reversing the decision of the Regional Director and directing the petitioned for election based on the petitioned for collective bargaining unit. In the alternative, Top Grade Excavating, Inc. respectfully requests that the Board grant Top

Grade Excavating, Inc.'s request for review of the Decision and Order Dismissing Petition entered by Regional Director Rik Lineback on May 5, 2014, and, upon such review, enter an order reversing the decision of the Regional Director and dismissing the petition solely on the grounds that there is no agreement in effect between Top Grade Excavating, Inc. and the International Union of Operating Engineers, Local No. 150 and the International Union of Operating Engineers, Local No. 150 is not the sole and exclusive bargaining representative of any of the employees of Top Grade Excavating, Inc. and for such other relief as the Board deems just and appropriate under the circumstances.

Date: May 19, 2014

Respectfully submitted,

/s/ Robert E. Konchar  
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Attorneys for Top Grade Excavating, Inc.

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on May 19, 2014, he caused the foregoing to be electronically filed with:

National Labor Relations Board  
Office of the Executive Secretary  
1099 14<sup>th</sup> Street N.W.  
Washington, D.C. 20570-0001  
202-273-3737

In addition, the undersigned certifies that on May 19, 2014, he caused the foregoing to be served upon the following:

*Via E-Mail and UPS Overnight Delivery:*

Dale D. Pierson  
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*Via UPS Overnight Delivery:*

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Rik Lineback  
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