

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

Heartland Human Services,)	
)	
Employer,)	
)	
and)	Case No. 14-RD-063069
)	
Cody Phillips,)	
)	
Petitioner,)	
)	
and)	
)	
American Federation of State, County and Municipal Employees (AFSCME), Council 31, AFL-CIO,)	
)	
Union.)	

UNION'S RESPONSE TO EMPLOYER'S REQUEST FOR REVIEW

Introduction

The Employer has filed a Request for Review of the Regional Director's decision, set forth in his letter of July 16, 2014, approving the withdrawal of the decertification petition in this case. The Regional Director properly exercised his discretion in approving the withdrawal of the petition, and the Employer has set forth no substantial reasons for review by the Board. The Request for Review should therefore be denied.

Statement of Facts

The decertification petition in this case was filed on August 11, 2011. An election was conducted on June 4, 2012. The tally of ballots showed 19 votes for Union representation, 18 votes against Union representation and one challenged ballot. The Union filed objections to the election. On July 18, 2012, a hearing officer appointed by the Regional Director recommended that the challenged ballot be counted and that, if the revised tally of ballots showed a majority of valid ballots had been cast for Union representation, then a certification of representative should issue, and that, if a revised tally of ballots did not show a majority of valid ballots cast for Union representation, the results of the election should be set aside and a rerun election should be conducted, based on the hearing officer's finding that three of the Union's objections should be sustained. Following issuance of the hearing officer's report, Heartland withdrew recognition of the Union and also filed exceptions with the Board. On September 28, 2012, the Board issued a decision and direction, adopting the hearing officer's report and recommendations. On October 9, 2012, a revised tally of ballots was issued showing 19 votes for Union representation and 19 votes against Union representation.

On March 18, 2013, the Board issued a decision and order finding that Heartland had unlawfully withdrawn recognition, failed to provide the Union with information, failed to provide dates for bargaining, and failed to attend scheduled labor management meetings, in violation of Section 8(a)(5) and (1) of the Act, and had unlawfully informed employees that it was withdrawing recognition to effectuate employee desires, in violation of Section 8(a)(1) of the Act. *Heartland Human Services*, 359 NLRB No. 76 (Case 14-CA-087886). The Board's order was enforced by the United States Court of Appeals for the Seventh Circuit on March 14, 2014. *Heartland Human Services v. NLRB*, 746 F. 3d 802. On October 31, 2013, the Board issued a decision and order

finding that Heartland had unlawfully failed to pay employees anniversary increases, changed the 401(k) plan and provider, and increased the premium for family and dependant health insurance without notice and bargaining with the Union, in violation of Section 8(a)(5) of the Act. *Heartland Human Services*, 360 NLRB No. 8 (Case 14-CA-096323). The Board's order was enforced by the Seventh Circuit Court of Appeals on April 28, 2014. (Case Nos. 13-3886 and 13-3706.) On February 20, 2014, the Board issued an order finding that Heartland had unlawfully increased the health insurance deductible without prior notice or bargaining with the Union and dealt directly with employees with respect to an employee rewards program, in violation of Section 8(a)(5) of the Act. *Heartland Human Services*, 360 NLRB No. 47 (Case 14-CA-113519). The Board's order was enforced by the Seventh Circuit Court of Appeals on April 28, 2014. (Case No. 14-1593.) On May 15, 2014, the Board issued a decision and order finding that Heartland had unlawfully instituted a policy requiring drug testing of employees who experienced on-the-job injuries without prior notice or bargaining with the Union, in violation of Section 8(a)(5) of the Act. 360 NLRB No. 101 (Case 14-CA-118716).

In July 2014, the Petitioner requested to withdraw the petition in this case. On July 16, 2014, the Regional Director by letter approved such request.

Argument

Section 11110 of the Board's Casehandling Manual states that "the Regional Director's general policy should favor the effectuation of a petitioner's genuine voluntary desire to terminate the proceeding." The Board has previously rejected an employer argument that it would be inequitable to approve a petitioner's request to withdraw a decertification petition after an election

has been held but prior to certification of the results of the election. *Transportation Maintenance Services*, 328 NLRB No. 93 (1999). See also *Battle Creek Health System*, 341 NLRB No. 119, fn. 1 (2004) (noting that the Board had granted the request of a decertification petitioner to withdraw her petition after the election had been set aside on the basis of election objections and a new election had been directed).

Heartland has presented no basis for the Board to review the Regional Director's decision here to approve the Petitioner's request to withdraw the decertification petition. Heartland suggests that there are unique circumstances in this case because the parties were engaged in litigation for two years following the June 2012 decertification election.¹ However, the two years of litigation resulted from Heartland's multiple unfair labor practices, including its unlawful withdrawal of recognition. That there was delay in the scheduling of a rerun election as a result of such unfair labor practices, and that in the interim the Petitioner decided that he desired to withdraw his petition, does not provide any basis to depart from the Board's policy of giving effect to a petitioner's genuine desire to voluntarily withdraw his petition and thereby terminate the proceedings.

Heartland has presented no substantial reasons for review by the Board in this case. The request for review should therefore be denied.

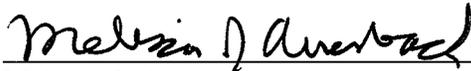
1 Heartland incorrectly asserts that the Board's rerun order was affirmed by the Court of Appeals. The Court held that it did not have jurisdiction to review the Board's order setting aside the election. *Heartland Human Services v. NLRB*, 746 F.3d at 807.

Conclusion

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

Respectfully submitted,

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Dated: July 29, 2014

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CERTIFICATE OF SERVICE

I, Melissa J. Auerbach, an attorney, hereby certify that on July 29, 2014, I caused the foregoing **Union's Response to Employer's Request for Review** to be served upon the following by email:

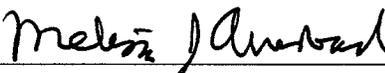
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