

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

CORDOVA DREDGE, a division of)	
RIVERSTONE GROUP, INC.)	
Employer,)	
)	
and)	Case 25-RD-138605
)	
NICHOLAS ALLEN BROLINE,)	
Petitioner,)	
)	
and)	
)	
INTERNATIONAL UNION OF OPERATING)	
ENGINEERS, LOCAL NO. 150,)	
)	
Union)	

EMPLOYER’S STATEMENT OF OPPOSITION TO
LOCAL 150’S REQUEST FOR REVIEW

NOW COMES CORDOVA DREDGE, a division of RIVERSTONE GROUP, INC. (“Employer”) by and through its attorneys, Califf & Harper, P.C., and for its Statement of Opposition to Local 150’s Request for Review, states as follows:

I. THE REQUEST FOR REVIEW STANDARD

“The Board’s regulations strictly limit its interlocutory review of a regional director’s decisions.” *Shepard Convention Servs. v. NLRB*, 85 F.3d 671, 674 (D.C. Cir. 1996). In other words, before the Board may grant a request for review, a party must meet a high threshold. International Union of Operating Engineers, Local No. 150 (“Local 150”) has failed in this regard. Pursuant to 29 C.F.R. 102.67, the Board may only grant a request for review “when compelling reasons exist therefor,” upon a showing of one of the four enumerated bases: (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; or (4) that there are compelling reasons for reconsideration of an important Board rule or policy. 29 C.F.R. 102.67(c). Local 150's Request for Review falls short of meeting the high standard of Section 102.67(c), and accordingly the Board should deny Local 150's Request for Review.

II. NO COMPELLING REASON EXISTS TO REVIEW THE REGIONAL DIRECTOR'S DECISION

A. The Regional Director Correctly Determined the Bargaining Unit

Local 150 states a request for review is appropriate pursuant to Section 102.67(c)(1), arguing a substantial question of law exists because of a departure from Board precedent, and Section 102.67(c)(2), arguing a substantial fact issue exists which is clearly erroneous and prejudicially affected its rights. Neither argument is availing. Instead, Local 150's Request for Review is simply a rehash of its previous, unsuccessful arguments in its Post-Hearing Brief.

The Regional Director correctly cited and followed the controlling Board precedent applicable to this case: "It is well established Board policy that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit." (Decision at 5; citations omitted). There is no question this is an established and controlling legal principle. *See, e.g. Fast Food Merchandisers, Inc.*, 242 NLRB 8, 8 (1979). The Regional Director's Decision was clearly not a departure from Board precedent.

The Regional Director determined "[t]he evidence in the instan[t] case clearly supports the position that the recognized unit is all employees employed at the Employer's facility." (Decision at 5). This determination was based upon the parties' recognition of the employees as a single unit, the parties' bargaining history, and the recognized unit being an appropriate unit.

(Decision at 5). In this case, the CBA is between “Cordova Dredge, a Division of RiverStone Group, Inc.” and the Union and covers the following employees:

Recognition:

Section 1: The Company recognizes the Union as the exclusive bargaining agency for all production, service and maintenance employees used in the operation of power driven equipment, which is recognized as being within the jurisdiction of the I.U.O.E., but excluding office clerical, guards, supervisors and professionals as defined in the National Labor Relations Act, as amended.

(Joint Ex. 1). This recognition clause extends coverage to employees working at both MC-14 and MC-17. It does not distinguish between the two locations in any manner whatsoever in terms of wages, terms, or benefits, and it does not identify each location separately. Local 150 does not dispute there is one collective bargaining agreement covering both MC-14 and MC-17 employees. (Request for Review at 12). The current CBA, which has a start date of May 3, 2010, was negotiated and became effective after the MC-17 site was constructed and opened in 2009. (Tr. at 15; 31). There is no evidence that during those 2010 negotiations, either party proposed that MC-14 employees should receive different wages, terms, or conditions of employment from those working at MC-17. (Tr. at 16). Similarly there was nothing in Local 150’s testimony concerning bargaining for the current CBA, or the ratification process, that otherwise indicated the existence of two separate units. (See generally Tr. at 31-43). Thus, the bargaining history indicates that there is a single bargaining unit for both locations.

Local 150’s arguments turned largely on the introduction of factors which could be relevant to a “community of interest” analysis. Local 150’s arguments are wrong. With respect to determining the scope of a bargaining unit in a decertification context, community-of-interest factors which would be considered in making an initial appropriate unit determination are not relevant. *Fast Food Merchandisers, Inc.*, 242 NLRB at 8.

Although such community of interest factors are irrelevant, the Regional Director did not dismiss this part of Local 150's argument without consideration. Instead, the Regional Director first distinguished the cases and circumstances cited by Local 150, and then determined based upon the facts presented at the hearing that "a unit comprised of employees working at the MC-14 and the MC-17 worksites is an appropriate unit and contrary to the Union's contentions is not one which the Board would *not* certify." (Decision at 7). Simply put, "there is no basis to disturb the recognized unit and such unit would otherwise be an appropriate unit." (Decision at 7). The Regional Director's Decision was not clearly erroneous on the record, and there was no error prejudicially affecting the rights of any party.

There is simply no compelling reason to review the Regional Director's Decision, and Local 150's Request for Review should accordingly be denied.

B. As the Board has Already Found, No Compelling Reason Exists To Depart From the Well-Established Three-Year Contract Bar Rule

Local 150 lastly states a request for review is appropriate pursuant to Section 102.67(c)(4), arguing the Board should extend the well-established three-year contract bar rule to a five-year contract bar when the contract is agreed upon by the parties and ratified by the membership. This is not an unfamiliar argument advanced by Local 150.

Local 150 previously unsuccessfully attempted to overturn the three-year rule in favor of a five-year rule in two previous cases involving the Employer; once during the Cleveland Quarry decertification proceeding, Case No. 25-RD-105145, and once during the Allied Stone decertification proceeding, Case No. 25-RD-131754. In both cases, the Regional Director declined to depart from "what even the Intervenor concedes is clear Board precedent." (*See* Regional Director's Decision and Direction of Election, Case No. 25-RD-105145, at p. 5). Also in both cases, the Union requested Board review of the Regional Director's Decision and

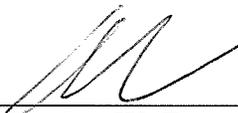
Direction of Election on this question, but the NLRB agreed with the Employer that the parties' contract barred the election for only three years.

This is simply another rehash of the same arguments Local 150 has advanced numerous times. As the Board will note, aside from factual differences, the legal arguments in Local 150's post-hearing brief and Request for Review in this case, as well as the Request for Review filed in Case No. 25-RD-105145 and Case No. 25-RD-131754, are basically stated verbatim. The Board should dispose of Local 150's argument for the same reason as the Regional Director in this case, and the Regional Director and the Board in the previous decertification proceedings did: there is simply no good reason to overturn the contract bar rule which is supported by over fifty years of legal precedent. Local 150's arguments for reversing such precedent have not changed and the results (denial of the Request for Review) should not change either.

III. CONCLUSION

For the foregoing reasons, Local 150's Request for Review should be denied.

RIVERSTONE GROUP, INC., Employer,

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of December, 2014, Employer's Statement in Opposition to Local 150's Request for Review was electronically filed with the Executive Secretary via the National Labor Relations Board's website, and in addition, served via email upon the following:

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A handwritten signature in black ink, appearing to be 'S.A. Davidson', written over a horizontal line.