

Case No. 21-RC-176174

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WILLIAMS-SONOMA DIRECT, INC.,
Employer,

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 63,
Petitioner.

**PETITIONER'S REQUEST FOR REVIEW OF ORDER
DISMISSING PETITION FOR ELECTION**

Dennis J. Hayes (SBN 123576)
Tracy J. Jones (SBN 263632)
Hayes & Ortega, LLP
5925 Kearny Villa Road, Suite 201
San Diego, California 92123
Telephone: (619) 297-6900
E-mail: djh@sdlaborlaw.com
tjj@sdlaborlaw.com

Attorneys for Petitioner

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF EVIDENCE AND RULINGS 1

1. The Employer Untimely Files Its Statement of Position 1

2. Summary of the Hearing – May 24, 2016 – Day One 3

3. Summary of the Hearing – May 25, 2016 – Day Two 6

4. The Regional Director Dismisses the Petition 11

**III. THE BOARD SHOULD REVIEW THE DECISION TO DISMISS
THE RC PETITION 12**

**1. Substantial Questions of Law or Policy are Raised Because of a
Departure from Officially Reported Board Precedent 12**

**2. The Regional Director’s Decision That There Was Not Enough
Evidence to Find Distinction Is Erroneous and Prejudicial. 13**

3. The Conduct of the Hearing Resulted in Prejudicial Error 14

**4. There are Compelling Reasons for Reconsideration of Board
Policy 15**

IV. CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Am. Hos. Ass’n v. NLRB
499 U.S. 606 (1991)..... 12

Blue Man Vegas
LLC v. NLRB, 529 F.3d 417, 421 (D.C. Cir. 2008) 13

Specialty Healthcare
357 NLRB No. 83 (2011) 12

REGULATIONS

29 C.F.R. 102.67(d)..... 12

I. INTRODUCTION

Pursuant to 29 C.F.R. section 102.67, Petitioner International Brotherhood of Teamsters, Local 63 files this Request for Review of the Decision and Order issued on June 7, 2016 by the Regional Director for Region 21, Olivia Garcia. This Request should be granted based on the following grounds:

(1) The Regional Director's decision disregards Board precedent in by dismissing a petition where the Regional Director concluded that there was a community of interest among the proposed bargaining unit.

(2) The Regional Director prejudicially relied upon evidence that was not properly part of the record and disregarded relevant testimony in prejudicially concluding there was insufficient evidence distinguishing members of the proposed bargaining unit from other employees.

(3) The Hearing Officer prejudicially conducted the hearing by telling Petitioner that the hearing would be limited in scope than allowing further testimony than indicated at the outset.

(4) The Regional Director's decision has profound policy implication in that it endorses an Employer's efforts to scramble the workforce to defeat unionization.

Any of these four grounds is sufficient to warrant Board review. Petitioner respectfully requests that the Board grant this request.

II. SUMMARY OF EVIDENCE AND RULINGS

1. The Employer Untimely Files Its Statement of Position

On February 12, 2016, Petitioner filed an RC Petition requesting an election on behalf of a proposed bargaining unit of all "pickers and runners" at the Employer's Walnut, California facility. Region 21 scheduled the RC Petition hearing for February 24, 2016. After three days

of testimony, the Petitioner requested withdrawal of its RC Petition, which the Regional Director approved on February 29, 2016.

On May 12, 2016, Petitioner filed another RC Petition requesting an election on behalf of proposed bargaining unit of all “merchandise processors, merchandise processors – forklift, lead merchandise processors in Departments 3149, 3205, 3206, 3208, 3212, 3234, 3236, 3237, 3238, and 3239” at the Employer’s Walnut, California facility. Almost all of the the new proposed bargaining unit consists of “pickers and runners” that were part of the February 2016 proposed bargaining unit. Region 21 scheduled the RC Petition hearing for May 23, 2016, but the Employer successfully requested a one-day continuance of the hearing. However, under 29 C.F.R. section 102.63(b)(1), the hearing officer did not continue the deadline for the Employer to file and serve the Statement of Position. This was confirmed in an e-mail to both parties on May 19, 2016, when the Board Agent reiterated that the Employer’s Statement of Position was still due Friday, May 20, 2016 by noon.

By noon on May 23, 2016, the Employer had not served Petitioner with the Statement of Position, despite Petitioner e-mailing the Employer early that morning regarding lack of service. Petitioner was finally served with the Statement of Position at 1:30 p.m. via e-mail. (RT 18:4-16.) Petitioner informed the Board Agent of the untimely service that afternoon.

Petitioner demonstrated the prejudice caused by the Employer’s delay. (RT 18:4-20:4.) Because Petitioner’s counsel was driving to meet witnesses when the Statement of Position was served via e-mail, it was not until around 3:30 p.m. that the Petitioner was able to even review it. (*Id.*) Then, Petitioner’s counsel had to spend the first 45-minutes of the witness preparation meeting determining whether the Statement of Position was different than the February 2014 Statement. (*Id.*) Several of the witnesses who showed up to the preparation meeting had to leave the meeting to

attend to family commitments before Petitioner's counsel even got to go over testimony with them. (*Id.*) Had Petitioner been able to spend an additional 45 minutes with them, that may not have been the case.

Before the hearing, it was determined that the Employer would be precluded from making any arguments because of its untimely service. That included the Employer's being prevented from arguing, as it did in its untimely Statement of Position, that the bargaining unit needed to include other departments, facilities or job descriptions. The Board Agent told Petitioner that, at most, at the hearing the next day, because the Board could rely upon the February 2014 hearing transcript, Petitioner may need to present testimony on labor organization status and commerce issues only. The Board Agent communicated similar information to the Employer (RT 15:14-16:14.) As a result of that representation, Petitioner told five of its six witnesses they did not need to appear.

2. Summary of the Hearing – May 24, 2016 – Day One

On May 24, 2016, the Parties appeared at the RC Petition Hearing before Hearing Officer John Hatem, who also presided over the February 2016 RC Petition hearing. A majority of the proceedings that day were off the record and concerned the issue of preclusion under 29 C.F.R. section 102.63 and the hearing officer's decision to exclude from the record the February 2016 transcripts. None of the off-record discussions changed the Hearing Officer's position on either issue.

Finally, at 2:02 p.m. Hearing Officer John Hatem began the formal hearing. (RT 4:1.) Despite knowing it was precluded from arguing about the appropriateness of the bargaining unit, the Employer made arguments. For example, when the Hearing Officer asked whether there are any other labor employers or organizations interested in the proceedings, the Employer went on an exposition about how the employees of another

company called Sutter Street should be part of the bargaining unit. (*See* RT 5:24-7:1.)

At the outset of the hearing, the Employer made several motions and requests. The Employer first made two motions: (1) a motion for permission to appeal the decision regarding preclusion to the Regional Director and to adjourn the hearing to allow the Employer to do so and (2) a motion to allow the Employer to make a written offer of proof under 29 C.F.R. section 102.66(c) and postpone the conclusion of the hearing to allow that to occur. (RT 9:20-10:12, 10:19-11:24.) The Employer also asked for briefing prior to the conclusion of the hearing. (RT 15:5-19.) The Employer argued against its being precluded from offering evidence because of its untimely Statement of Position. (RT 11:25-15:2.) The Employer also argued that Regional Director should take administrative notice of the February 2014 transcript and exhibits. (RT 15:20-16:14.) Petitioner was permitted to respond to all of the Employer's requests. (RT 17:2-22:8.) The Employer was also permitted rebuttal. (RT 23:10-27:16.)

Then, the Hearing Officer asked the parties to stipulate to the meeting the commerce and labor organization requirements, but the Employer refused to stipulate even though there is no reasonable dispute about those facts and the Employer previously stipulated to them in the February 2016 proceedings. (RT 27:17-31:6.) The Hearing Officer refused to accept the Parties stipulation to have the February 2016 transcript as part of the record, and the Employer refused to stipulate in an effort to leverage the Hearing Officer to include the February 2016 transcript in the record. (RT 31:18-24, 32:2-33:16.)

The Hearing Officer justified his refusal to take administrative notice of the February 2016 transcripts:

...there's no dispute that the statement of position was not served on the Petitioner by 12 noon local time on Friday May

20, 2016. That being the case, the Regional Director has at this point instructed that the issues raised in that statement of position, should not be litigated and the Employer should at this point, because of failure of proper service, be precluded from litigating those issues. That being the case, I don't see the need to take notice of any other matter that deals with the unit issues in as much as it's unit issues that are raised by the Employer in its statement of position..."

(36:1-11.) The Hearing Officer also agreed that as a courtesy to the Employer, it would have an opportunity to make an offer of proof regarding issues raised in its Statement of Position. (37:10-16.) The Employer's offer of proof was originally limited to a 10-minute oral statement. (44:4-11.)

The Hearing Officer permitted the Petitioner to clarify the proposed bargaining unit, which was:

All full and regular part-time merchandise processors, merchandise processors (s), forklift, and merchandise processors lead at the Williams-Sonoma Direct, Inc. facility located in the City of Industry in departments 3149 (hub), 3205 (returns), 3206 (receiving), 3208 (picking), 3212 (shipping), 3234 (running), 3236 (picking), 3237 (running), 3210 (cross-dock), and 3239 (shipping).

(RT 45:22-46:3.) The bargaining unit specifically excluded all other employees, office and clerical employees, professional employees, managerial employees, guards and supervisors, as defined in the Act. (RT 46:12-16.) The Employer objected to the clarification because it was an amendment to the petition, which would then permit the Employer to litigate the appropriateness of the unit. (RT 47:1-20.) The Hearing Officer overruled the objection. (RT 47:22-48:10.) Petitioner then stipulated that if the Regional Director exercised authority to direct election of a different unit, Petitioner would still wish to proceed to election. (RT 50:22-51:11.)

Because the Employer refused to stipulate to labor organization status, the Hearing Officer asked Petitioner to call a witness to establish that element. (RT 33:22-24.) Petitioner called Scott Berghoeffler, a organizer with Teamsters Joint Council 42 and a representative of Petitioner whose testimony easily met the labor organization status requirements. (RT 59:9-68:7.) The Hearing Officer refused to let the Employer question Mr. Berghoeffler because the record was sufficiently developed with respect to labor organization status. (RT 69:8-70:3.)

3. Summary of the Hearing – May 25, 2016 – Day Two

At the beginning of the second day of the hearing, the Hearing Officer clarified what the Regional Director ruled with respect to the Employers motions.

- The Regional Director precluded Employer from presenting evidence concerning unit issues because of failure to properly serve the statement of position
- The Regional Director refused to take administrative notice of the February 2014 proceedings
- The Regional Director determined no post-hearing briefs were warranted.
- As a courtesy, the Regional Director permitted the Employer to make an offer of proof limited to a 10-minute oral statement.

(RT 89:11-91:13.) The Employer again argued at about the rulings. (90:25-93:18.)

During the second day of the hearing, the Employer filed a request for permission to specially appeal to the Regional Director concerning the Petitioner's clarification of the bargaining unit. (RT 93:20-25.) While the Regional Director considered the Employer's special appeal, Petitioner called witness Jesus Garcia. (RT 95:25.)

The Employer objected to his being called before Petitioner was required to address the issues raised in the Employer's untimely Statement of Position. (RT 96:1-25.) The Employer argued that since the Statement of Position was entered into evidence, the Hearing Officer was obligated to make Petitioner respond before any other evidence was elicited. (RT 97:19-98:13.) When the Hearing Officer overruled the objection, the Employer sought permission to specially appeal the ruling. (99:8-100:7.) The Regional Director denied permission to specially appeal. (RT 126:1-19.)

Mr. Garcia testified that he has been employed by Williams-Sonoma since December 2011 and he currently works as a picker in department 3208. (RT 101:17-22.) Mr. Garcia is the employee who first tried to organize the pickers and runners at Employer's facility in Walnut, California. The Employer calls Mr. Garcia a picker, but after efforts to organize began, he learned the Employer changed his classification to "merchandise processor." (RT 102:1-9.) During the hearing, the Employer produced documents showing Mr. Garcia is classified as a "Merchandise Processor (s)," though Mr. Garcia does not know what the "(s)" means and his job duties have not changed. (RT 102:10-24.)

Mr. Garcia is certified to handle equipment though the Employer's training processes and to certify others to handle equipment. (RT 103:4-14.) A high school education is required for his position. (RT 103:15-17.)

Before he starts his day, he punches in for the day using a time-clock and his ID badge. (RT 103:18-23, 104:18-20.) After he clocks in, he attends a "stretch and flex" meeting with other employees to stretch and discuss the day. (*Id.*) He makes sure his machine is in working order, then he goes about picking. (*Id.*)

As a picker, Mr. Garcia's main task is to use a computer attached to his machine to receive a location in the warehouse, with a task number and

a SKU number, take down the product from the shelves and put it at the end of the aisle for the runners to pick up and move. (RT 103:24-104:7.) Pickers are the first step in the process to move products from warehouse shelves to the trucks that ultimately ship the goods.

Mr. Garcia works first shift. He takes a 10-minute break at 7:00 a.m., a 30-minute lunch at 9:30 a.m., and another 10-minute break around noon. (RT 104:11-27.) He takes his lunch with other pickers and runners from the 950 building¹ in the west-main side lunchroom. (RT 104:15-17.)

Mr. Garcia is the lead employee-organizer. (RT 105:3-17.) He approached Petitioner in October 2015 to discuss the prospect of unionizing. (RT 105:14-20.) Initially, Mr. Garcia and Petitioner only focused on including pickers and runners in the bargaining unit. (RT 106:15-17.) A runner is an employee that picks up the product that the pickers leave at the end of the aisles using machinery, and who then drops it off at its destination within the warehouse. (RT 106:18-22.) Both pickers and runners physically transport product within the facility. (RT 106:23-25.)

After learning through the February 2014 RC Petition proceedings that the pickers and runners were actually “merchandise processors” according to the Employer, Mr. Garcia assisted in selecting the merchandise processors that belonged in the bargaining unit. (RT 107:1-12.) He selected the employees in the proposed bargaining unit because they work side-by-side and perform tasks together, because they are all

¹ There are two buildings at the Williams-Sonoma Walnut, California facility—the 950 building, which is a 950,000 square foot warehouse and the 230 building which is the other 230,000 square foot warehouse. (RT 108:23-109:7.)

involved in physically moving product within the facility, usually using machinery that they are required to be certified to use. (RT 110:10-15.)

Mr. Garcia spoke with as many as 85% of the 160 employees comprising the proposed bargaining unit. (RT 112:20-25.) He discussed with them the departments they are in and the tasks that they perform. (*Id.*) He and the other members of the bargaining unit work in the same physical locations to complete tasks regarding the same products using the same machinery. (RT 113:25-114:8.)

Mr. Garcia excluded other departments including maintenance, quality assurance (“QA”), and “ICC” which is also known as “the boneyard” because they do not do the same tasks in the same location. (*See* RT 114:20; 164:8-11.) For example, ICC takes excess inventory that was picked by pickers and run by runners to a location then enters it back into the system once it is determined it is unneeded. (RT 116:8-22.) The ICC merchandise processors do not physically move product using machinery. (*Id.*) The Maintenance department fixes the building. (RT 166:1-18.) The repack department takes one product out of a package that has been picked then repacks the remaining product to be put back in the warehouse. (RT 166:19-167:18.) The QA department opens boxes that are picked and run to check and inspects the product for defects. (*Id.*) These individuals do not physically move product using machinery. (RT 167:19-168:20.) The bargaining unit, which is primarily made up of pickers and runners, is not asked to perform any similar task to any of merchandise processors in excluded departments. (*Id.*)

Mr. Garcia also testified specifically about each of the ten departments included in the proposed bargaining unit. (RT 127:15-157:11.) 80 percent of the proposed bargaining unit are pickers and runners. (RT 141:19-23.) The remaining departments all perform similar tasks. Mr. Garcia testified that all of the members of the proposed bargaining unit

perform tasks side-by-side involving physically moving product, usually with equipment requiring certifications. (*See e.g., Id.*; RT 113:25-114:8.)

Also, most of the proposed bargaining unit takes lunch breaks in the same location around the same time. (154:13-22.) The pickers and runners have meetings together. (177:21-178:21.) They are all paid hourly on the same payroll period schedule and have the same benefits. (RT 160:14-161:11; 162:22-163:8.) They are all required to have the same education level and equipment certifications. (RT 161:17-24.) There is no promotion between bargaining and non-bargaining unit departments. (RT 175:1-4.)

In the middle of Mr. Garcia's testimony, Petitioner made a motion to amend the bargaining unit as it was clarified during the first day of the hearing, which was granted. (RT 120:6-121:14; 122:15-123:15, 124:22-23.) As a result, the Employer's special appeal concerning the clarification issues was denied. (*Id.*)

At the conclusion of Mr. Garcia's testimony, the Employer filed a 33-page Offer of Proof containing a summary of the testimony they had planned to offer concerning unit issues. That offer of proof was marked as Exhibit 4. In addition, the Employer was permitted fifteen minutes to make an oral offer of proof, during which the Employer repeatedly referenced the February 2014 transcript. (RT 196:18-203:16.) The Regional Director received the offer of proof, but the evidence proffered was rejected. (RT 205:20-22.) The Parties were also permitted ten minutes to make a closing argument.

Throughout the hearing, even though it knew that it was precluded from litigating unit issues, the Employer took the opportunity to make arguments against the unit's appropriateness every chance it had despite objections from the Hearing Officer and Petitioner. The Employer poorly camouflaged its comments as speaking objections. (*See e.g.,* RT 116:23-117:7; 123:17-124:20; 148:19-150:2-153:3; 163:9-23; 182:11-23.)

4. The Regional Director Dismisses the Petition

In the Decision and Order, the Regional Director affirmed her ruling under 29 C.F.R. section 102.66(d) to preclude the Employer from litigating unit issues because of its failure to timely serve the Statement of Position. (Order, p. 2.) The Regional Director also determined: (1) the commerce requirement was met; (2) the labor organization status requirement was met; and (3) the offer of proof and evidence proffered thereby were properly excluded. (Order, p. 2-3.)

The Regional Director concluded based on the law and the record that the petitioned-for unit “share[s] some community of interest with each other.” (*Id.*) However, the Regional Director concluded the bargaining unit was not appropriate because:

...employees in the petitioned-for unit form the requisite readily identifiable group separate from the rest of the Employer’s workforce. Notably, the record fails to establish whether they have, or do not have, conditions of employment in common with the other employees who are not part of the petitioned-for unit.

For example, the record contains evidence that employees in the petitioned-for unit are paid by the hour, but fails to establish how other employees at the facility are paid and whether they are paid at the same rate. Similarly, while the record contains evidence that employees in ten enumerate departments pick orders and move product to trucks and back, it fails to establish whether employees in the petitioned-for unit are the only employees who perform that function and what work is performed by other employees in the ten departments included in the petitioned-for unit.

Like the proposed unit in *Bergdorf Goodman*, the petitioned-for unit does not seem to follow the Employer’s organizational structure. Rather, it appears that there are employees other than employees in the petitioned-for unit who work in the departments listed in the petition.

(Order, p. 5-6.) Ultimately, the Regional Director found that there was insufficient evidence to find that the petitioned-for bargaining unit was appropriate. (Order, p. 1.) She dismissed the Petition. (*Id.*)

III. THE BOARD SHOULD REVIEW THE DECISION TO DISMISS THE RC PETITION

Under 29 C.F.R. section 102.67(c), the Board has inherent jurisdiction to review the Regional Director's Order. The Board grants review where compelling grounds exist for one of the following reasons:

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

29 C.F.R. 102.67(d). All four grounds exist here.

1. Substantial Questions of Law or Policy are Raised Because of a Departure from Officially Reported Board Precedent

It is well settled that employees who seek to organize need to select an appropriate unit, not necessarily the most appropriate unit. *Am. Hos. Ass'n v. NLRB*, 499 U.S. 606 (1991). In *Specialty Healthcare*, 357 NLRB No. 83 (2011), the Board clarified principles that apply in cases, such as this one, where the employer contends that the smallest appropriate bargaining unit must include additional employees beyond those in the petitioned-for unit. All that is necessary to find an appropriate bargaining unit is a community of interest according to traditional criteria—job

classifications, departments, functions, work locations, skills, or similar factors. *Id* at 17.

“If employees in a propose unit share a community of interest, then the unit is *prima facie* appropriate and the employer bears the burden of showing that it is truly inappropriate.” *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421 (D.C. Cir. 2008).

In her Opinion, the Regional Director specifically found that the proposed bargaining unit shares a community of interest. Therefore, unit is *prima facie* appropriate and the employer bore the burden of showing it was inappropriate. The Employer here was precluded from doing so because of 29 C.F.R. section 102.66 preclusion. Thus, the Regional Director’s finding that there is both a community of interest and that the unit is inappropriate is illogical and a troubling departure from NLRB precedent. This alone is grounds for review.

2. The Regional Director’s Decision That There Was Not Enough Evidence to Find Distinction Is Erroneous and Prejudicial.

The Regional Director’s Opinion was based on the erroneous conclusion that there was not enough factual evidence concerning how the proposed bargaining unit differed from other employees in the facility. However, there was substantial evidence that other employees in the facility were distinct from the proposed bargaining unit.

Mr. Garcia specifically discussed how merchandise processors in other departments, including specifically QA, ICC, Maintenance, and Repack, differed significantly from the members of the bargaining unit because they do not physically move product, are usually not certified to operate machinery, do not interact frequently with the members of the bargaining unit, and do not cross-task or cross-promote with any segment

of the bargaining unit. (*See e.g.*, RT 114:20; 164:8-11; 116:8-22; 166:1-18; 166:19-167:18; 167:19-168:20.)

It is clear from the Opinion that the Regional Director did not consider these facts in concluding the Petition should be dismissed. There are enough differences between the proposed bargaining unit and the other facility employees to find that a community of interest exists and that the bargaining unit is appropriate.

3. The Conduct of the Hearing Resulted in Prejudicial Error

When the Petitioner informed the Board Agent that it had not been timely served, the Board Agent told the Petitioner that the Employer would be precluded from making any arguments at the hearing the next day. The Board Agent also told Petitioner that, at most, at the hearing, because the Board could rely upon the February 2014 hearing transcript, Petitioner may need to present testimony on union suitability and commerce issues only. The Employer confirmed that the Board Agent communicated similar information to it. (RT 15:14-16:14 (confirming that Employer believed the prior record would be part of this proceeding).) As a result of that representation, Petitioner told five of its six witnesses they did not need to appear.

Furthermore, because Petitioner believed that it did not have to prove how all of the other employees did not have a community of interest with the proposed bargaining unit members, it did not call witnesses from excluded departments or job titles. Had Petitioner known that the Regional Director planned to depart from the NLRB community of interest standard rules, it would have subpoenaed and prepared additional witnesses.

Finally, there was no evidence presented properly before the Regional Director that supports the proposed bargaining unit being integrated into the workforce. The only parts of the record that discuss that—the Employer’s Offer of Proof and Employer’s speaking objections—

cannot be relied upon as evidence. To the extent that the Regional Director considered this part of the record, the Board should review the decision. The conduct of this hearing was prejudicial such that review by the Board is appropriate.

4. There are Compelling Reasons for Reconsideration of Board Policy

This case exemplifies a distributing new trend among employers who are hoping to defeat organization efforts post-*Macy's* by trying to defeat commonality by changing job titles, scrambling employees among departments, or doing away with organizational markers all together. When Petitioner began its organizing efforts in October 2015, he believed he was a picker, because that was the job title he applied for in 2011 and that is what his employer always called him in documents and verbally. (See RT 102:1-24.) When Petitioner filed an RC Petition for “pickers and runners,” for the first time, the employees learned they were all merchandise processors spread out over various departments. (*Id.*) There is evidence that the Employer manipulated its workforce to defeat the RC Petition. Had the February 2014 transcript been admitted to the record, that would be evident.

It is harder to hit a moving target. However, Petitioner tried to play the game and filed this RC Petition using the Employer’s new job titles and specified department numbers. Not surprisingly, when Petitioner filed this RC Petition, the Employer argued that there was a new job description “Merchandise Processor (s).” They tried to use this argument to defeat commonality, and in part, succeeded.

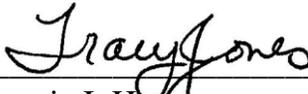
One of the reasons cited by the Regional Director for not finding the bargaining unit appropriate is that it does not seem to conform to the Employer’s job classifications. The reason that the proposed bargaining unit does not conform to the Employer’s classifications is because the

Employer changes the classifications. The Board should review this decision in order to prevent endorsing Employers being able to undermine organization efforts by scrambling its workforce.

IV. CONCLUSION

For any of the four reasons above, Board review is warranted. Petitioner respectfully requests that review be granted.

HAYES & ORTEGA, LLP

By: 
Dennis J. Hayes
Tracy J. Jones

Attorneys for Petitioner
Teamsters Local No. 63