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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of: WILLIAMS-SONOMA DIRECT, INC., Employer, and INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 63, Petitioner	Case No. 21-RC-176174 WILLIAMS-SONOMA DIRECT, INC.'S CONDITIONAL REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION

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Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board, Williams-Sonoma Direct, Inc. ("WSI" or the "Employer") submits this Conditional Request for Review of the Decision and Order Dismissing Petition ("Decision") issued by the Regional Director, Region 21, on June 7, 2016. WSI does not request review of the Decision insofar as it dismisses the petition filed by International Brotherhood Of Teamsters Local 63 (the "Union" or "Petitioner") in accordance with *Bergdorf Goodman*, 361 NLRB No. 11 (2014) ("*Bergdorf Goodman*"). However, in the event that the Board grants the Union's request for review of the Decision, WSI requests that the Board also review and reverse the Decision insofar as it affirmed the ruling precluding WSI from litigating issues contained in its Statement of Position. Further, WSI requests that the Board review and reverse the consequential decisions of the Regional Director refusing to: (1) accept the joint stipulation to take notice of the administrative record in the prior proceeding involving WSI and the Union; (2) require the Union to respond to the Statement of Position after it was admitted into evidence by the Hearing Officer as required by Section 102.66(b); and (3) permit WSI to timely amend its Statement of Position after the Union amended its Petition at the hearing to eliminate one department, include an entirely new department, and add a new classification of employee in the petitioned-for unit.[1]

Review is warranted because the Regional Director's ruling on preclusion was contrary to long-standing Board precedent regarding service of documents and Board policy underlying the purpose of the preclusionary rule. Moreover, the Regional Director's consequential decisions to refuse the parties' joint stipulation, depart from the requirements of Section 102.66(b), and preclude a timely amendment of the Statement of Position were erroneous and resulted in prejudicial error. These consequential decisions are error even if the Regional Director's preclusion determination is ultimately deemed proper.

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[1] WSI is filing this Conditional Request for Review out of an abundance of caution to preserve its objections to the Regional Director's rulings, as detailed herein.

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

A. The First Petition

On February 12, 2016, the Union filed a petition (the "First Petition"), Case No. 21-RC-169662, seeking to designate a unit of "Pickers and Runners Only" working at WSI's West Coast Distribution Center in Walnut, California (the "Facility"), and excluding "All other employees". (1. Bd. Ex. 1(a).)[2] WSI timely filed and served its Statement of Position, along with a fully compliant list of employees.[3] (1. Bd. Ex. 1(d).) On February 24, 25, and 26, 2016, Region 21 of the National Labor Relations Board ("the Region") held a hearing in Los Angeles, California to consider the First Petition. (1. Tr.) At that hearing, WSI and the Union stipulated to permit the Union to amend the First Petition to describe the unit as "the merchandise processors -- merchandise processors, forklift, and lead merchandise processors in Department [sic] 3208, 3234, 3236, and 3237." (1. Tr. 62:10-12.) On February 26, 2016, in the middle of the hearing and after hearing substantial evidence demonstrating that the only unit appropriate under Board precedent was one that included employees in all hourly, non-office clerical classifications throughout the Distribution Center, the Union abruptly withdrew the First Petition. (1.Tr. 569:14) After consulting with the Hearing Officer and after the withdrawal of the petition had been accepted by the Regional Director, WSI and the Union proceeded to enter into several joint stipulations, including submitting a three-page, 42-point joint exhibit regarding the fact that hourly employees across classifications and departments shared the same terms and conditions of employment at the Facility. (1. Tr. 569:16-17, 24-25, 571:13-18, 1. Jt. Ex. 1.) These stipulations were entered into because of the parties' joint

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[2] The transcript of the hearing on the First Petition is referred to herein as "1. Tr. __". WSI's exhibits in the First Petition are referred to herein as "1. Er. Ex. __". The Union's exhibits in the First Petition are referred to herein as "1. Un. Ex. __". Board exhibits in the First Petition are referred to herein "1. Bd. Ex. __". Joint exhibits of WSI and the Union in the First Petition are referred to herein as "1. Jt. Ex. __".

[3] WSI's list of employees, served with its First Statement of Position listed employees by name, location, shift and job classification (i.e., "Merch Processor", "Merch Processor(s)", "Merch Proc Forklift – DC", etc.)

understanding that the prior record would be used in any future proceeding. (1. Tr. 569:16-21.)

B. The Second Petition

On May 12, 2016, the Union filed another petition for certification (the "Second Petition"), Case 21-RC-176174, to designate a unit consisting of "Merchandise Processors, merchandise processors – forklift, lead merchandise processors in Departments 3149, 3205, 3206, 3212, 3234, 3236, 3237, 3238, 3239" working at the Facility and excluding all other employees.[4] (2. Bd. Ex. 1 [Second Petition].)[5]

WSI timely filed its Second Statement of Position, along with a fully compliant list of employees, with the Region on Friday, May 20, 2016.[6] The Second Statement of Position included arguments nearly identical to those made in response to the First Statement of Position and were consistent with discussions counsel for WSI had with counsel for the Union. That same day, the Region granted WSI's request to postpone the noticed hearing on the Second Petition to May 24, 2016. Due to an inadvertent clerical error by the secretary of counsel for WSI, the Second Statement of Position was not served on the Union until approximately 1:40 p.m. on Monday, May 23, 2016. At no point prior to 1:00 p.m. on May 23, 2016, did the Union alert WSI to its non-receipt of the Second Statement of Position despite several communications between counsel for WSI and counsel for the Union, including on the afternoon of May 20, 2016.

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[4] Essentially, the Union sought the exact same classifications of employees as in the First Petition (merchandise processors, merchandise processors – forklift, lead merchandise processors), in six additional departments (3149, 3205, 3206, 3212, 3238, and 3239).

[5] References to the transcript of the hearing on the Second Petition will be referred to as "2. Tr. __". WSI's exhibits in the Second Petition will be referred to as "2. Er. Ex. __". The Union's exhibits in the Second Petition will be referred to as "2. Un. Ex. __". Board exhibits in the Second Petition will be referred to as "2. Bd. Ex. __".

[6] WSI's list of employees, served with its Second Statement of Position also listed employees by name, location, shift and job classification.

C. Evidentiary Rulings

At the hearing, the Union offered no demonstrable prejudice due to the delayed service of the Second Statement of Position, and declined WSI's offer to delay the hearing a day to ameliorate any possible prejudice. Nonetheless, the Regional Director precluded WSI from offering witnesses and testimony, and from cross examining witnesses regarding the appropriateness of the unit pursuant to Section 102.66(d). (Decision, 2.) Pursuant to the applicable Rules, WSI was only permitted to make objections to impermissible testimony and evidence offered by the Union, submit an offer of proof, and make a closing argument. [7]

Even though the Regional Director made her preclusion decision prior to the hearing, on May 24, 2016, the Hearing Officer, as part of the Region's formal papers, admitted the Second Statement of Position into evidence and made it a Board Exhibit. (*Id.*) The Hearing Officer refused to require the Union to respond to the Statement of Position, as required by Section 102.66(b), because of the "untimely" service of the Second Statement of Position. (2. Tr. 96:1-98:21.) WSI and the Union submitted a joint stipulation to take administrative notice of the record in the First Petition, consistent with their prior understanding. (Decision, 3 at fn. 5.) The Regional Director refused the joint stipulation and refused to consider prior record evidence which indisputably demonstrated that the petitioned-for unit was not appropriate, including evidence regarding the functional integration of the Facility and job classifications. (*Id.*)

Without a pending motion to amend, in the middle of the pre-election hearing, the Hearing Officer solicited a "clarification" from the Union regarding its Petition. In response the Union amended its Petition to: (1) eliminate Department 3238 (incorrect unused pay code) from the petitioned-for unit; (2) add Department 3210 (Cross Dock) into the petitioned-for unit; and (3) add the Merchandise Processor(s) classification to the employees sought. However, the Regional Director refused to permit WSI to amend

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[7] WSI's offer of proof was subsequently heard, but ultimately rejected by the Regional Director. (Decision, 3.)

WSI's Statement of Position and denied its Request for Special Appeal, ruling that even though the amended petition substantially changed the unit sought and impacted the legal question as to whether that unit was appropriate (which WSI has a right to litigate), WSI was precluded from amending its Statement of Position due to its untimely service of the Statement of Position on the Union. (Decision, 2 at fn. 4.)

Instead of complying with Board rules and procedure, the Hearing Officer directed the Union to introduce evidence. The Union's only evidence consisted of calling Jesus Garcia as a witness.[8] Mr. Garcia also testified under oath previously in the First Petition. Consistent with the Regional Director's ruling on preclusion, WSI was not permitted to cross-examine Mr. Garcia regarding his hearsay testimony about other employees in different departments and shifts, introduce any evidence, or make any argument regarding any of the issues contained in WSI's Statement of Position. Further, the Hearing Officer, in contravention to his fact-finding responsibility, refused to consider Mr. Garcia's prior testimony at the first hearing, which if considered, would have seriously undermined the contradictory testimony Mr. Garcia presented when he testified.

D. The Regional Director's Decision

On June 7, 2016, the Regional Director issued a decision dismissing the Petition pursuant to *Bergdorf Goodman*. The Regional Director also affirmed her ruling precluding WSI from "litigating the unit issue based on its failure to timely serve its Position Statement on the Petitioner." (Decision, at 2.) The Regional Director's preclusion was not only erroneous, but it led the Regional Director to make further erroneous, illogical, and prejudicial rulings as a consequence.

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[8] After Mr. Garcia was excused, the Union informed the Hearing Officer that it had no further witnesses to call, at which point the Hearing Officer also stated that he did not have any witnesses to call. The parties then proceeded to discuss WSI's offer of proof. (2. Tr. 181:9-182:5.)

II. ARGUMENT

A. The Ruling on Preclusion was Contrary to Board Law and Policy

1. Board Precedent Requires Showing of Prejudice Before Rejection of Untimely Served Documents

The Board has a long-standing precedent that it "generally will not reject an improperly served document absent a showing of prejudice to a party." (*Paolicelli*, 335 NLRB 881, 882 (2001) [internal quotations omitted].) As the Board succinctly stated in *Alfred Nickles Bakery*, 209 NLRB 1058, 1059 (1974):

> In order to maintain the orderly processing of these cases, there must be adherence to the Board's Rules and Regulations. We do not say that there will be a "slavish" adherence to form rather than substance. What we do say, however, is that in order to support a variance or deviation from the clear requirements of the Board's Rules, there must be some showing that there has been an honest attempt to substantially comply with the requirements of the Rules, or, alternatively, a valid and compelling reason why compliance was not possible within the time required by the Rules."

Indeed, reliance on strict adherence to the Rules has been roundly rejected. (*See, e.g.*, *TGC, LLC*, 2015 NLRB Reg. Dir. Dec. LEXIS 124, *11-12 (2015) ["The Union ... asserts the petition should be dismissed because the Petitioner did not ... serve all of the required documents on the parties. While conceding it subsequently received all the required documents from the Region and had no evidence that it was prejudiced, it argues a rule is a rule and therefore the petition must be dismissed. I disagree."].)

2. The Purpose of the Preclusionary Rule is to Encourage Information Sharing to Streamline Hearings, Not Punish All Violations

The Board's stated purposed in implementing Section 102.66(d) was to cut down on delay and improper posturing, and to enable parties to better prepare for hearings by requiring information sharing by the employer as to what issues would be litigated at the hearing. (79 Fed. Reg. 74308, 74394 [Statement of Position requirement "substantially improves the Board's procedures by saving the parties and the Board the time and expense of wasteful litigation."].) The Board believed that requiring parties to share information

was necessary because previously "in some cases hearing officers have permitted parties to remain silent on their position or to take shifting positions during the hearing, unnecessarily impeding the litigation. Finally, our experience has demonstrated that clear communication about the specific employees involved generally facilitates election agreements or results in more orderly litigation." (79 Fed. Reg. 74308, 74309.) Other Regional Directors have discerned the non-punitive origins of the preclusionary rule when confronted with similar situations: "Thus, it appears the main goal of the 'Statement of Position' was to require parties to take a position in advance, and give the other parties a chance to prepare a response, so that the issue(s) being litigated were clear, and to avoid shifting positions by parties or silence as to a parties' position. As with all other parts of the new Rules, the goal was to try to avoid typical problems that had been arising, which tended to impede litigation and delay case processing." (*Brunswick Bowling Products, LLC*, 2016 NLRB Reg. Dir. Dec. LEXIS 27, 88-9 [intent of new rules to provide notice to other parties and make clear before the hearing the issue at hand].)

3. WSI Substantially Complied with the Rule Requiring Filing and Service of the Statement of Position

The notice contemplated by NLRB Rules and Regulation, Section 102.63(b)(1) is receipt of the Statement of Position by all other parties by noon the business day before the hearing. (29 C.F.R. § 102.63(b)(1) ["[T]he employer shall … serve on the parties … its Statement of Position such that it is received by … the parties … [by] noon on the business day before the opening of the hearing."])

While WSI recognizes the Region's directive to file and serve the Second Statement of Position by noon on May 20, 2016, here, the Union received WSI's Statement of Position at approximately 1:40 p.m. the day before the hearing, as soon as WSI was notified that the Statement of Position was not properly served on the Union. As a result, WSI substantially complied with the purpose and spirit of the rule, which is to provide detailed information regarding the position it intends to take on the proposed unit prior to the hearing.

Moreover, WSI demonstrated that it made an honest attempt to substantially comply with the requirements of the Rules throughout the litigation of the First and Second Petitions. WSI timely filed and served the First Statement of Position, with a fully compliant list of employees, on February 23, 2016. (1. Bd. 1(d).) WSI timely filed the Second Statement of Position, with a fully compliant list of employees, on May 20, 2016. (2. Bd. 1 [Second Statement of Position].) Other than an inadvertent secretarial mistake in effecting timely service of the Second Statement of Position on the Union, WSI complied in all other respects with the requirements of Section 102.63(b), (2. Bd. Ex. 1 [Second Statement of Position]). Because of the above, WSI's late service is an insufficient basis to determine the Union was prejudiced and to preclude WSI from presenting evidence at the hearing.

4. The Union Has Not Suffered Prejudice.

WSI's inadvertent mistake in serving the Union a day late, but still a day prior to the opening of the hearing, did not prejudice the Union. The Union knew the names of employees and departments in which they were coded from its involvement in the hearing on the First Petition, as well as through pre-hearing discussions with counsel for WSI. (1. Er. Ex. 6 & 7, 2. Bd. Ex. 1.) Further, the Union failed to mention its non-receipt of the Second Statement of Position. At 3:00 p.m. on Friday, May 20, counsel for WSI called counsel for the Union to discuss the release of subpoenaed witnesses from work to testify in the instant proceeding. The Union's counsel conveniently failed to mention that it had not received service of the Second Statement of Position during that conversation, even though it took place three hours after the Union should have been served. Instead, the Union did not notify WSI's counsel until 1:00 p.m. on Monday, May 23 – the day before the hearing – at which point WSI immediately provided the Second Statement of Position to the Union's counsel.

There was no surprise or delaying tactics involved, contrary to the concerns that motivated the Board to enact Section 102.66(d). In fact, prior to the hearing and prior to when WSI's Statement of Position was due, WSI learned that the Union was proposing to

call the same witnesses as it planned to at the first hearing. At the hearing, the Union's lead organizer as well as employee Jesus Garcia were the only witnesses. Neither witness testified in any way that the Union was prejudiced by the late service of the Statement of Position. Indeed, Mr. Garcia – subpoenaed before the May 20, noon deadline – was the only witness the Union called in the hearing on the First Petition and expected to testify in the hearing on the Second Petition. In addition, the Hearing Officer was prepared to permit the Union to call additional witnesses before closing the record but counsel for the Union rested, believing she had made her case. Clearly, the Union knew the issues well before the Statement of Position was served on it – and its preparation did not change in any way from the evidence it put on in the hearing on the First Petition.

5. *WSI was Unduly Prejudiced by the Regional Director's Blind Application of the Preclusionary Rule.*

In light of the above, the Regional Director's blind application of Section 102.66(d) in the instant hearing was prejudicial and erroneous. As the Board itself has maintained, the purpose of a pre-election hearing is "to adduce record evidence on the basis of which the Board may discharge its duties under Section 9 of the Act. As such, it is investigatory, intended to make a full record and nonadversarial." (NLRB Casehandling Manual, Section 11181.) Here, WSI substantially complied with the timely filing and service requirements of a Statement of Position substantially identical to one it timely served on the Union in the proceedings in First Petition. Moreover, WSI offered to postpone the hearing to ameliorate any undue prejudice, and no prejudice accrued to the Union in any event. In spite of this, the Regional Director precluded WSI from litigating the appropriateness of the petitioned-for unit.

Beyond the prejudice WSI suffered as a result of the Regional Director's erroneous ruling precluding WSI from litigating the appropriateness of the petitioned-for unit, WSI also suffered prejudice because the Regional Director used the preclusion rule to guide its other rulings, which go well beyond the scope of Section 102.66(d). The result of these

consequential rulings was to prevent relevant evidence (from sources other than WSI) from being admitted into the record in contravention of Board policy and law.

B. Application of Section 102.66(d) Does Not Extend to Preclude the Admission of All Evidence

1. Preclusion Does Not Affect Administrative Notice of Testimony and Evidence from the Prior Hearing

At the hearing, WSI and the Union jointly stipulated to administrative notice being taken of the record from the hearing on the First Petition. (2. Tr. 30:21-31:3.) That record contained, among other things, the hearing transcript from three days of hearings, including sworn testimony from Jesus Garcia, Petitioner's only witness in both hearings, and from numerous WSI employees regarding the terms and conditions of employees both within and without the petitioned-for unit. The record from the First Petition also included numerous exhibits from both WSI and the Union, as well as a three page, 42-point Joint Exhibit regarding further terms and conditions of employment at the Facility.

The Regional Director's sole basis for refusing to take administrative notice of the entire record of the proceeding on the First Petition pursuant to the joint stipulation was her initial ruling precluding WSI from litigating any unit issues. (2. Tr. 34:18-21, 41:19-24.) This consequential ruling was erroneous for numerous reasons.

First, Section 102.66(d) only precludes a party "from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response." (29 C.F.R. § 102.66(d).) A joint request to the Hearing Officer to take administrative notice of a record is not encompassed within the actions precluded under Section 102.66(d).

Second, refusal to take administrative notice of a record of a petition and hearing involving the same employer, petitioner, facility, witnesses, issues **and** Hearing Officer is in direct contravention of the entire point of the hearing. As the Board itself has maintained, the purpose of a pre-election hearing is "to adduce record evidence on the

basis of which the Board may discharge its duties under Section 9 of the Act. As such, it is investigatory, intended to make a full record and nonadversarial." (NLRB Casehandling Manual, Section 11181.) Indeed, determining the appropriate unit is an obligation of the Board, necessary to protect and effectuate the Section 7 rights of all potential employee voters.

Third, the Union, WSI, and the Region all clearly contemplated that when the Second Petition was filed, it would incorporate the entire record in the First Petition. (*See, e.g.*, 1.Tr. 569:16-21 [Hearing Officer states that "it's my understanding that *if there is a hearing* in the near future on a refiled petition that the Region will take administrative notice of the record in this proceeding, the exhibits and transcripts to be made part of that proceeding."].) In fact, WSI and the Union worked to finalize stipulations after the Union withdrew the First Petition but before the record was closed, including submission of Joint Exhibit 1. (1. Tr. 570:1-16, 1. Jt. Ex. 1.)

Finally, the Region demonstrated its consent to this understanding when Board Agent Danielle Giever sent an email to counsel for WSI and the Union on May 19, 2016, informing them that "The Region intends to take administrative notice of the hearing record in Case 21-RC-169662" and soliciting the positions of WSI and the Union on what was covered in the previous hearing and what remained to be covered to "complete the hearing record in Case 21-RC-176174". Board Agent Giever's email was sent on May 19, 2016, before the Second Statement of Position was due. If nothing else, WSI was entitled to rely on the Board Agent's statement when it was preparing its Second Statement of Position, given that the entire purpose of the Statement of Position form (and the implied purposed of Giever's email) was to streamline the hearing on the Second Petition down to only those issues in dispute.

2. The Failure to Require the Union to Respond to the Statement of Position was Erroneous and Prejudicial

On May 24, 2016, the Hearing Officer received WSI's Statement of Position into evidence as part of Board Exhibit 1. (2. Bd. Ex. 1.) The Hearing Officer did this on his

own motion and as part of the "formal papers." Section 102.66(b) requires that "[a]fter a Statement of Position is received in evidence and prior to the introduction of further evidence, all other parties shall respond on the record to each issue raised in the Statement." Nowhere in the rule or in the Board's rationale for the rule does it require that the Statement of Position placed into evidence be timely in order to trigger the obligation of 102.66(b). Nonetheless, the Hearing Officer refused to follow Section 102.66(b) and concluded, without regard to the plain language of the rule, that because the Regional Director had determined that the Statement of Position was not timely filed, the fact that it was introduced into evidence should not trigger the requirements of the rule. The Regional Director's decision on this point is erroneous.

Here, WSI took absolutely no action to introduce its Statement of Position into evidence. Rather, the Hearing Officer, at the outset of the hearing, introduced and admitted the Statement of Position into evidence as part of Board Exhibit 1. At that point, 102.66(b) required the Union to respond to the issues raised by the Statement of Position prior to the introduction of further evidence. This requirement was not met, and the Union proceeded to introduce evidence in the form of testimony by Jesus Garcia. Not only should the Union have been required to respond to the Statement of Position after it was received into evidence by the Hearing Officer, pursuant to Section 102.66(b), but the Union should have been precluded from introducing evidence after the Union failed to respond to the Statement of Position, pursuant to Section 102.66(d). Preclusion under Section 102.66(d) applies to any party to the litigation: "A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or **to place in dispute in response to another party's Statement of Position**". (29 C.F.R. § 102.66(d) [emphasis added].) In fact, the Board has stated that "[a]t the start of the hearing, the petitioner is required to respond on the record to the issues raised by the other parties in their statements of

position. Litigation inconsistent with the response will not be permitted." (79 Fed. Reg. 74308, 74309.)

Section 102.66(d), which had been applied with rigid harshness against WSI, should also have been equally applied to the Union. The Regional Officer's failure to do so was erroneous and prejudicial.

3. The Regional Director's Denial of WSI's Request to Amend its Statement of Position after the Union Amended its Petition to Add an Entirely New Department was Erroneous and Prejudicial

In the middle of the hearing, the Union was allowed to amend its Petition to delete an entire department (3238), add another department (3210), and include an entirely new classification of employee (Merchandise Processor(s)). Adding a new department and a new classification substantially changed arguments that WSI would have presented at the hearing regarding the appropriateness of the unit. For this reason, as a procedural matter alone, the Hearing Officer should have solicited withdrawal of the petition subject to refiling, dismissed the petition, or afforded WSI the right to respond to the new petition without the preclusive effect of 29 C.F.R. 102.66.

Moreover, the fact that the amendment of the Petition was permitted after WSI was precluded from litigating unit issues sets a terrible precedent. As stated above, the purpose of a Statement of Position is to encourage the parties to take positions with regard to the issues that still need to be litigated. If a party is precluded from litigating an issue, either through untimely service or failure to raise the issue in its Statement of Position, the Regional Director's ruling in this regard rewards post-Statement maneuvering. Of course, the Board's new Rules and Regulations contemplate that "the regional director may permit the Statement of Position to be amended in a timely manner for good cause, in which event the other parties shall respond to each amended position." (29 C.F.R. § 102.66(b); *see also Oldcastle Precast, Inc.,* 32-RD-141418, 2015 NLRB Reg. Dir. Dec. LEXIS 28, *30 [The Regional Director re-opened the record after the close of the hearing, to permit the Union to amend its petition, and accordingly permitted the Union the opportunity to proffer additional relevant evidence].) In this case, the Regional Director punished WSI for a

clerical error while allowing the Union to amend it Petition with impunity. This was error and contrary to the Board's independent Section 9 obligations to develop a full and complete record.

III. CONCLUSION

In the event the Board grants review of the Regional Director's Decision and Order Dismissing the Petition to reconsider the Regional Director's decision dismissing the Petition, Williams-Sonoma Direct, Inc. respectfully requests that the Board also review and reverse the Decision insofar as it affirmed the Regional Director's rulings: (1) precluding WSI from litigating issues contained in its Statement of Position; (2) refusing to accept the joint stipulation to take notice of the administrative record in the prior proceeding involving WSI and the Union; (3) refusing to require the Union to respond to the Statement of Position after it was admitted into evidence by the Hearing Officer , as required by Section 102.66(b); and (4) refusing to permit WSI to amend its Statement of Position after the Union amended its Petition at the hearing to delete one department, and to include a new department and a new classification of employee.

Dated: June 21, 2016

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

RONALD J. HOULAND
ELLEN M. BRONCHETTI

Attorneys for Employer WILLIAMS-SONOMA DIRECT, INC. incorrectly named herein as WILLIAMS SONOMA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is Four Embarcadero Center, 17th Floor, San Francisco, CA 94111-4109.

On June 21, 2016, I served true copies of the following document(s) described as

WILLIAMS-SONOMA DIRECT, INC.'S CONDITIONAL REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION

on the interested parties in this action as follows:

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BY E-MAIL, E-FILING OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address kdavis@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2016, at San Francisco, California.

Karen D. Davis