

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

CLERAC, LLC D/B/A	:	
NATIONAL CAR RENTAL AND	:	
ALAMO RENT-A-CAR,	:	
	:	
Employer,	:	CASE NO. 8-RD-160148
	:	
and	:	
	:	<u>MEMORANDUM OF TEAMSTERS</u>
	:	<u>LOCAL UNION No. 293 IN</u>
TEAMSTERS LOCAL UNION NO. 293,	:	<u>OPPOSITION TO EMPLOYER'S</u>
a/w INTERNATIONAL BROTHERHOOD	:	<u>REQUEST FOR REVIEW</u>
OF TEAMSTERS,	:	
	:	
Union	:	
	:	
And	:	
	:	
ANDREW LAWRENCE COLE,	:	
	:	
Petitioner.	:	

I. INTRODUCTION

Pursuant to Section 102.67 of the Board's Rules and Regulations, Teamsters Local Union No. 293 ("Local 293" or "the Union") hereby submits its Memorandum in Opposition to the Employer's Request for Review of the Regional Director's dismissal of the Decertification Petition in the above-captioned case. Because the Employer has not provided a sufficient basis for reversal of the Regional Director's decision, the request for review should be denied.

II. STATEMENT OF FACTS

This matter came before the Regional Director on the filing of a decertification petition by Andrew Cole, an employee of Clerac, LLC. ("Clerac" or "the Employer"). In the related unfair labor practice case, Case No. 08-CA-160588, the Union alleged, among other things, that

the Employer had unlawfully assisted in the processing of the petition. The Regional Director found merit in the allegations in that case, and issued a dismissal of the petition subject to reinstatement after final disposition of the unfair labor practice charge. Mr. Cole filed a request for review, which the Board found failed to satisfy any of the requirements of Sections 102.7(c), (d), and/or (e) and therefore was not considered by the Board. The Employer filed a request for review on July 5, 2016, alleging, among other things, that a hearing was required in this matter, even though a hearing has already been scheduled in the unfair labor practice case.

III. LAW AND ARGUMENT

Sections 102.67(c) and (d) of the Board's rules and regulations only allow for granting a request for review upon the following grounds:

- (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.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

None of these factors are present in this case. The Employer filed its request for review asserting that since no hearing has been held on the decertification petition, the Regional Director's decision to dismiss the decertification petition was not "based hearing on facts developed in an evidentiary hearing; is based solely on conclusory language; and cites no facts supportive of

those conclusions” citing Saint Gobain Abrasives, Inc., 342 NLRB 434 (2004). (Employer’s Request for Review, page 2, hereinafter Req. for Rev.) (emphasis in original)

The Employer’s reliance on Saint Gobain is misplaced. In Saint Gobain the employer made a unilateral change in terms and conditions of employment by implementing an interim health plan, resulting in the filing of an unfair labor practice charge by the union. The decertification petition was filed soon after the employer’s unilateral change. Approximately nine months later the Regional Director, after investigating the unfair labor practice charge and finding the charge had merit, dismissed the decertification petition, concluding that the alleged unilateral change *caused* employees to reject the union.

In the instant case, the Regional Director did not rely on any “causal connection analysis” in his determination to dismiss the pending decertification petition. Instead, the Region Director stated that he found merit to the Union’s allegations that the Employer unlawfully provided assistance to the effort to file and process the decertification petition and that the Union’s allegations will be subject to a complaint, absent settlement. There is no “casual connection analysis” in the Regional Director’s decision to dismiss the decertification petition, only the recognition of his merit determination of the allegations made by the Union in its unfair labor practice charge in Case No. 08-CA-160588.

The Employer will obviously have a full opportunity in the unfair labor practice trial to defend its position that it did not provide in any unlawful assistance to the efforts of bargaining unit employees to file and process the decertification petition. If the Employer is successful in its defense, the Regional Director indicated that the decertification petition is subject to reinstatement, if appropriate, after the disposition of the unfair labor practice charge.

Additionally, in Saint Gobain, the alleged unfair labor practice charge involved a single unilateral change in terms and conditions of employment on a single issue. Here, the allegations of Employer unlawful assistance to the effort to file and process a decertification petition include multiple allegations of encouraging the initiation and circulation, unlawful interrogation of employees, coercion of employees, and the promise of benefits to employees. These multiple allegations will be heard by an Administrative Law Judge who will decide if the allegations have been proven thereby protecting the rights of all of the bargaining unit employees.

The Board in Master Slack Corp., 271 NLRB 78 (1984) identified several factors by which to determine whether a causal relationship exists between unfair labor practices and a decertification petition. These include “(1) the length of time between the unfair labor practices and the withdrawal of recognition or filing of the petition; (2) the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; (3) any possible tendency to cause employee disaffection from the union; and (4) the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union.” Overnite Transportation, Co., 333 NLRB 1392 (2001), citing Master Slack at 84.

In Overnite, the Board applied these factors to dismiss a decertification petition without a hearing, and the same reasoning applies to this case. This case is not the type of case that Saint Gobain addressed, i.e., a case of “hallmark” violations of the Act, similar to the violations in Overnite. Id. at 1394. For these reasons, Saint Gobain does not require a hearing in this matter and the request for review should be denied.

Even if the Saint Gobain decision is determined to be applicable to the facts of this case, a hearing under Saint Gobain is unnecessary in this case because the Regional Director specifically included in the dismissal letter of June 21, 2016 that the petition is “subject to

reinstatement, if appropriate, after final disposition of the charge in Case 08-CA-160588.” A hearing is scheduled to begin in that case on September 27, 2016.

Action in that case may render a hearing in this matter completely unnecessary and minimize potentially considerable expense to the Region and the parties. The Employer admits that a hearing in the unfair labor practice proceeding will occur “in the near future.” Because the Employer cannot demonstrate any error, let alone one that has resulted in prejudice to its rights, the request should be denied.

As Members Liebman and Walsh indicated in their dissent in Saint Gobain, the significant interests in efficiency call for the hearing in the unfair labor practice case to proceed before determining whether a hearing in this case is necessary. The Employer’s request seeks a hearing that would in all likelihood be duplicative of much of the testimony and evidence to be taken at the hearing in Case 08-CA-160588. Neither Saint Gobain nor any other Board precedent requires such a result. Rather, this Board has found it significant where the Regional Director has allowed for later action to be taken on a petition based on a subsequent Board order in a pending related unfair labor practice case. Wellington Industries, Inc., 359 NLRB No. 18 (2012). For this reason alone, the Board should dismiss the Employer’s Request for Review.

IV. CONCLUSION

For the foregoing reasons, the Union respectfully requests that the Board deny the Employer’s Request for Review and confirm the Regional Director’s decision to dismiss, subject to reinstatement, if appropriate, after the final disposition of the charge in Case 08-CA-160588.

Respectfully submitted,

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ATTORNEYS FOR TEAMSTERS
LOCAL UNION NO. 293

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served upon Allen Binstock, Regional Director, NLRB Region 8, allen.binstock@nlrb.gov, and Daniel R. Began, Attorney for the Employer, dan.began@ogletreedeakins.com, and upon Petitioner Andrew Lawrence Cole, at coleandrew73@yahoo.com, by email on this 12th day of July, 2016.

