

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**CLERAC, LLC d/b/a
NATIONAL CAR RENTAL and
ALAMA RENT-A-CAR,**

Employer,

**TEAMSTERS LOCAL UNION
NO. 293 affiliated with International
Brotherhood of Teamsters,**

Case No. 08-RD-160148

Incumbent Union

and

Andrew Lawrence Cole,

Petitioner.

**CLERAC, LLC d/b/a NATIONAL CAR RENTAL AND ALAMO RENT-A-CAR'S
REQUEST FOR REVIEW**

COMES NOW CLERAC, LLC d/b/a National Car Rental and Alamo Rent-A-Car (herein simply the "Employer"), by its attorneys, pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, and submits this Request for Review of the Regional Director's dismissal of the Decertification Petition in the above-captioned case and, in support thereof, states as follows:

A. FACTUAL BACKGROUND

1. On or about September 17, 2015 a Decertification Petition was filed in Case 08-RD-160148 (Attachment 1).
2. By correspondence dated June 21, 2016, the Regional Director determined that further proceedings were unwarranted with respect to Case 08-RD-160148 and, accordingly,

dismissed the Petition (Attachment 2). Despite the lack of a hearing, the Regional Director concluded that the Employer “unlawfully provided assistance to bargaining unit employees’ efforts to file and/or process a petition to decertify the Union.”

3. The Employer emphatically denies that it provided unlawful assistance to bargaining unit employees’ efforts to file and/or process a petition to decertify the Union.

4. As even a charitable reading of Attachment 2 illustrates, the Regional Director’s decision to dismiss was not based on facts developed in an evidentiary hearing; is based solely on conclusory language; and cites no facts supportive of those conclusions set forth within the June 21, 2016 dismissal letter.

B. GROUNDS FOR REQUEST FOR REVIEW

The Board should grant the Employer’s Request For Review on either of the following grounds:

1. A substantial question of law or policy is raised given the absence of, or departure from, officially reported Board precedent.

2. The Regional Director’s decision to dismiss the decertification petition is based on substantial questions of fact that are clearly erroneous and/or not supported by an evidentiary hearing.

3. There are compelling reasons for reconsideration of Board policy relied upon by the Regional Director in issuing the June 21, 2016 dismissal letter.

**C. THE IDENTIFIED GROUNDS FOR GRANTING THE
EMPLOYER'S REQUEST FOR REVIEW, WHETHER CONSIDERED,
INDIVIDUALLY OR COLLECTIVELY, WARRANT THE GRANTING OF
THE EMPLOYER'S REQUEST FOR REVIEW.**

In Saint Gobain Abrasives, Inc., 342 NLRB 434 (2004), the Board concluded that the Regional Director's dismissal of a decertification petition, based upon the Regional Director's conclusion that "causation" existed between alleged unfair labor practices and the employee's rejection of the union, was improper. In so concluding, the Board placed particular emphasis on the Regional Director's use of a "causal nexus analysis," despite the lack of an evidentiary hearing. That exact evil is presented in the instant case. It cannot be ignored that:

- a. No evidentiary hearing has been conducted in Case No. 08-RD-160148.
- b. Similarly, no evidentiary hearing has been conducted in the unfair labor practice case cited by the Regional Director (i.e., Case No. 08-CA-160588).
- c. The Employer emphatically denies that it provided unlawful assistance to bargaining unit employees' efforts to file and/or process a petition to decertify the Union.
- d. The Regional Director's June 21, 2016 Dismissal Letter (Attachment 2) is conclusory only and cites no facts or evidence supportive of the conclusion that the "Employer unlawfully provided assistance to bargaining unit employees' efforts to file and/or process a petition to decertify the Union."
- e. The Regional Director's June 21, 2016 dismissal Letter (Attachment 2) acknowledges that the "allegations" referenced in subparagraph d, above, "will be subject of a complaint, absent settlement." (Attachment 2). A Complaint and Notice of Hearing did issue on June 29, 2016 and establishes a hearing beginning on September 27, 2016.

In short, the undeniable facts illustrate that no hearing has occurred with respect to the bare allegation that the Employer unlawfully provided acceptance to the efforts of bargaining

unit employees to file and/or process a petition to decertify the Union. Given the lack of a hearing, it is not surprising that the Regional Director has not identified any facts or evidence supportive of his conclusion that the Employer engaged in “unlawful assistance to bargaining unit employee’s efforts to file and/or process a petition to decertify the Union.”

As the Board noted in Saint Gobain Abrasives, supra, “genuine factual issues require a hearing.” Such is precisely the point in this case. The Regional Director’s conclusions are subject to “significant factual issues” as to the Employer’s conduct and whether that conduct did or did not constitute unlawful assistance. Such determinations cannot be reached without an evidentiary hearing. Those factual issues are the subject to the Complaint and Notice of Hearing which issued on June 29, 2016 and which will be the subject of a hearing in the near future. Only after such a hearing can a determination be made as to whether the Petition in Case No. 08-RD-160148 should be dismissed and/or fully processed.

The Board’s ruling in Saint Gobain Abrasives, Inc., supra, is instructive as to how this matter should be processed.

1. The Employer’s Request for Review should be granted;
2. Case No. 08-RD-160148 should be processed and an election should be conducted forthwith;
3. Given the pendency of those allegations in Case No. 08-CA-160588, the ballots should be impounded pending disposition of 08-CA-160588;
4. Once a final decision issues, after an evidentiary hearing, one (1) of two (2) alternative dispositions of Case 08-RD-160148 would then be appropriate;
 - (i) If the final decision concludes that the Employer did not unlawfully provide assistance to employees’ efforts to file and/or process a Petition, the impounded ballots

should then be opened; a Tally of Ballots should be served on each party; and the Petition should then be processed to closure; or

(ii) If the final decision concludes that the Employer did unlawfully provide assistance to employees' efforts to file and/or process the Petition in Case 08-RD-160148, the impounded ballots should not be counted and, only then, would Case 08-RD-160148 be subject to dismissal.

5. Alternatively, the granting of the Request for Review should result in the reinstatement of Case 08-RD-160148, with instructions to the Regional Director that it be held in abeyance and, thereafter, processed in a manner consistent with the final decision in Case 08-CA-160588.

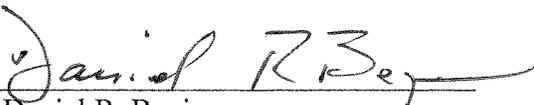
The procedure outlined above is consistent with the Section 7 rights of employees; the Board's preference that legal conclusions be based on facts developed via an evidentiary hearing; and the Board's decision in Saint Gobain Abrasives, Inc., 342 NLRB 434 (2004).

D. CONCLUSION

For those reasons outlined above, the Employer respectfully requests that this Request for Review be granted.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

By: 
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Attorneys for Employer

CERTIFICATE OF SERVICE

I hereby certify that I have on July 5, 2016 served a true and correct copy of the foregoing via Email, upon the following:

Allen Binstock
Regional Director
Via email: allen.binstock@nlrb.gov

Tom Tyrrell
IBT Local No. 293
Via email: tomt293@sbcglobal.net

John R. Doll, Esq.
Counsel for IBT 293
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Andrew Lawrence Cole
Petitioner – Case 08-RD-160148
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Daniel R. Begian

25313712.1

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE
Case No. 08-RD-160148 Date Filed 9-16-15

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer Clerac LLC 2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 8249 Mohawk Dr., Strongsville, OH 44136

3a. Employer Representative - Name and Title Robert McRae, Group HR Manager 3b. Address (If same as 2b - state same) same as above

3c. Tel. No. 440-345-3999 3d. Cell No. 440-343-7030 3e. Fax No. 866-255-9918 3f. E-Mail Address robert.r.mcrae@ehi.com

4a. Type of Establishment (Factory, mine, wholesaler, etc.) rental car facility 4b. Principal product or service vehical rental 5a. City and State where unit is located: Cleveland, OH

5b. Description of Unit Involved
Included: see attached sheet
Excluded: see attached sheet
6a. No. of Employees in Unit: 51
6b. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes No



Check One: 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).
 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent Teamsters Local 293 8b. Address 5505 Valley Belt Road, Ste D., Independence, OH 44131

8c. Tel No. 216-739-9489 8d Cell No. N/A 8e. Fax No. 216-739-9245 8f. E-Mail Address tomt293@sbcglobal.net

8g. Affiliation, if any Teamsters 8h. Date of Recognition or Certification unknown 8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year) September 8, 2014

9. Is there now a strike or picketing at the Employer's establishment(s) involved? no If so, approximately how many employees are participating? _____ (Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____

10. Organizations or individuals other than those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name 10b. Address 10c. Tel. No. 10d. Cell No.
10e. Fax No. 10f. E-Mail Address

11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election. 11a. Election Type: Manual Mail Mixed Manual/Mail
11b. Election Date(s): October 9, 2015 11c. Election Time(s): 11d. Election Location(s): Employer's facility

12a. Full Name of Petitioner Andrew Lawrence Cole 12b. Address (street and number, city, state, and ZIP code) 3273 W. 130th Street, Cleveland, OH 44111

12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) none

12d. Tel No. 216-609-6948 12e. Cell No. 216-906-0281 12f. Fax No. 12g. E-Mail Address coleandrew73@yahoo.com

13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

13a. Name and Title Andrew Lawrence Cole 13b. Address (street and number, city, state, and ZIP code) 3273 W. 130th Street, Cleveland, OH 44111

13c. Tel No. 216-609-6948 13d. Cell No. 216-906-0281 13e. Fax No. 13f. E-Mail Address coleandrew73@yahoo.com

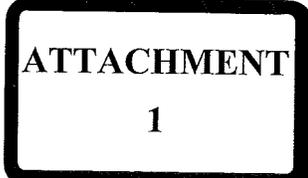
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) Andrew Lawrence Cole Signature [Signature] Title Lead Service Agent Date 9/16/15

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



Attached Sheet to RD Petition

Section 5b. Description of Unit Involved

Included: All full-time and regular part-time rental agents, service agents, mechanics, and clerks including but not limited to job titles currently listed as rental agents, exit booth agents, return agents, administrative assistants, Emerald Club Service specialists, Alamo Greeter, maintenance technician, automotive technicians and service agents employed by National Car Rental and/or Alamo Rental Car at Cleveland Hopkins Airport

Excluded: all shuttlers and all professional employees, guards and supervisors as defined in the Act and all other employees.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 8
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086

Agency Website: www.nlr.gov
Telephone: (216)522-3715
Fax: (216)522-2418

June 21, 2016

Andrew Lawrence Cole
3273 W 130th St
Cleveland, OH 44111-2506

Re: Clerac, LLC d/b/a/ National Car Rental and
Alamo Rent-a-Car
Case 08-RD-160148

Dear Mr. Cole:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation of the unfair labor practice charge in Case No. 08-CA-160588, I find that further proceedings on the petition are unwarranted. On May 25, 2016, I found merit to the Union's allegation in Case No. 08-CA-160588 that the Employer unlawfully provided assistance to bargaining unit employees' efforts to file and/or process a petition to decertify the Union. This allegation will be subject of a complaint, absent settlement.

Accordingly, I am dismissing the petition in this matter. The petition is subject to reinstatement, if appropriate, after final disposition of the charge in Case **08-CA-160588**.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **July 5, 2016**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on July 5, 2016**.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

ATTACHMENT

June 21, 2016

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



Allen Binstock
Regional Director

AB:cj

cc: Office of the Executive Secretary (by e-mail)

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