

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

**CABLEVISION SYSTEMS CORP.,**

**Employer,**

**and**

**TIFFANY OLIVER,**

**Petitioner,**

**Case 29-RD-138839**

**and**

**LOCAL 1109, COMMUNICATIONS  
WORKERS OF AMERICA, AFL-CIO,**

**Union.**

**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE OPPOSITION TO  
THE REQUEST FOR REVIEW OR, IN THE ALTERNATIVE, IN FURTHER  
SUPPORT OF THE REQUEST FOR REVIEW**

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The Employer, Cablevision Systems Corporation (the “Employer” or “Cablevision”), hereby moves to strike the purported “Statement in Opposition to Employer’s Request for Review of Regional Director’s Order Denying Reinstatement of Petition,” dated January 17, 2017, filed by the Communications Workers of America, AFL-CIO (the “CWA Statement”), because no such opposition is authorized by the Board’s Rules and Regulations. In the alternative, in the event the Board accepts the CWA Statement, the Employer respectfully requests that the Board also consider the instant Memorandum as a reply in further support of the Request for Review.

**A. CWA’s Statement Opposing the Request for Review Is Not Authorized by Board Rules and Should Be Stricken.**

The CWA’s Statement should be stricken because its submission is not authorized under the rules of the Board.

The Employer’s Request for Review (“Req. Rev.”) was filed pursuant to, and correctly cited, Section 102.71 of the Board’s Rules as the basis for its Request. That Section applies where, as here, a representation petition has been dismissed without a hearing having been conducted, and it permits any party to request review of the dismissal. Notably, however, that Section does not authorize any other party to submit an *opposition* to a Request for Review.

It is not a mere oversight that Section 102.71 omits any right to submit an opposition to a Request for Review of a dismissal issued without a hearing. In fact, dismissal of a petition *following* a hearing is governed by a different rule, Section 102.67, which provides for both a Request for Review *and* an opposition by any other party. Clearly, opposition to a Request for Review is permitted under Section 102.67

where a representation petition is dismissed following a hearing; but in the instant case, governed by Section 102.71, there is no right to file opposition.<sup>1</sup>

Accordingly, CWA's Statement should be stricken and should not be considered by the Board. Alternatively, in the Board chooses to accept CWA's Statement, the Employer respectfully requests that the Board consider this Memorandum in reply to certain points raised in the Statement.

**B. CWA's "Standing" Argument is Specious.**

CWA's contention that the Employer lacks "standing" to seek review of the Regional Director's Order is both unsupported by any authority and has no factual basis.

CWA attempts to avoid Board review by asserting that the Employer, Cablevision Systems Corporation, "no longer exists." CWA Statement, at 8. In support of that contention CWA offers nothing more than what purports to be a random, unauthenticated article off the internet stating that the Cablevision name has been "retired." It is, of course, undisputed, as CWA states, that the Employer was acquired by Altice N.V., pursuant to an agreement of merger entered into on or about September 16, 2015. Notwithstanding the use or non-use of the Cablevision name, the fact is that a subsidiary of Altice acquired and has retained "Cablevision Systems Corporation" as a subsidiary after the acquisition. *See* Securities and Exchange Commission Form 8-K, Item 1.01, dated September 16, 2015, attached hereto.

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<sup>1</sup> As demonstrated in the Employer's Request for Review, among the Regional Director's errors was her decision to refuse to reinstate the Petition without conducting a hearing. Req. Rev. at 27 ff. The Regional Director then compounded that error: in describing the parties' right to request review, the Regional Director erroneously cited Section 102.67 of the Board rules (November 23 Order, at 10), which is manifestly inapplicable where no hearing has been conducted.

In short, CWA's claim that Cablevision Systems Corporation, named in the Regional Director's Order under review and in all of the Board proceedings to date, "no longer exists," is simply wrong. Moreover, even if that entity had been dissolved, CWA acknowledges, and it is undisputed, that Altice USA succeeded to the recognition of CWA and bargained changes to the collective bargaining agreement (CWA Statement, at 5), so the acquisition is of no moment whatsoever *vis-à-vis* the instant proceeding. Accordingly, CWA's "standing" argument is frivolous and should not in any manner interfere with the Board's review of the Regional Director's Order.

**C. CWA'S Arguments Do Not Support the Regional Director's Refusal to Reinstate the Petition**

In its ongoing and stubborn attempt to prevent the bargaining unit employees from exercising their right to vote pursuant to the Petition on continued representation by the CWA – a right they have been denied for well over two years – CWA, like the Regional Director, ignores settled principles of Board law.

First, CWA's reliance on various unfair labor practices *allegedly* committed by the Employer is seriously misplaced. Significantly, and what CWA fails to admit, *none* of the cases cited by CWA involve decisions of the Board finding that unfair labor practices were committed. They involve, at most, unreviewed decisions of Administrative Law Judges. And as discussed in the Employer's Request for Review (Req. Rev., at 17-27), CWA's reliance on these cases is unavailing because an unreviewed decision of an Administrative Law Judge "is not binding authority." *St. Vincent Medical Center*, 339 NLRB 888, 888 (2003), *remanded on other grounds*, 463 F.3d 909 (9<sup>th</sup> Cir. 2006); *HealthBridge Management, LLC*, 362 NLRB No. 33, slip op. at

1, fn. 3 (2015); see also *Caterpillar, Inc.*, 332 NLRB 1116, 1116 (2000); *Associated Builders and Contractors, Inc.*, 333 NLRB 955, 955, fn. 3 (2001) (“When the Board vacates a decision or portion of a decision pursuant to a settlement, ... the vacated portion of the decision has no preclusive effect on the parties”; citing *Caterpillar, Inc.*).

Thus, when CWA agreed to withdraw all of the allegations underlying the ALJ decisions it cites, it did indeed vitiate the recommended conclusions and the factual findings upon which those recommendations were based. CWA’s recitation of the “serious unfair labor practices” committed by the Employer, therefore, is entirely unavailing.

Additionally, contrary to CWA’s assertion, applying these settled principles of Board law to negate the Regional Director’s reliance on these withdrawn unfair labor practice allegations works no “unfairness” whatsoever to CWA. The Board made clear in *TruServ Corp.*, 349 NLRB 227, 232 (2007) that “after the unfair labor practice case [on the basis of which the decertification petition was dismissed] has been settled, the decertification petition can be processed and an election can be held.” *Id.* In view of the clarity of the Board’s holding in *TruServ*, CWA’s “fairness” argument amounts to nothing more than an “ignorance of the law” excuse. Surely one of the largest and most sophisticated labor organizations in the country, represented by highly experienced labor counsel, knew or should have known, before entering into the settlement of the unfair labor practice charges, that *TruServ* would allow the Petition to be reinstated.<sup>2</sup> To carry out the mandate of *TruServ* may not be to CWA’s liking, but is

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<sup>2</sup> Indeed counsel for CWA trumpets her experience, in CWA’s desperate attempt to distinguish *TruServ*, when she urges the Board to rely upon her own self-serving description of what she claims to be Board practice. (CWA Statement, at 12 fn. 10).

not unfair in any respect.

**D. CONCLUSION**

For the forgoing reasons, and based on the entire record in this case, the CWA's Statement in Opposition to the Employer's Request for Review of the Regional Director's November 23 Order and Decision denying reinstatement of the Petition should be stricken. Alternatively, the Request for Review should be granted and the Regional Director's Order and Decision should be overturned.

Dated: January 31, 2017 at  
New York, New York

Respectfully submitted,

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**CERTIFICATION OF SERVICE BY E-FILING & ELECTRONIC MAIL**

The undersigned, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury, that, on January 31, 2017, he caused a true and correct copy of the attached Motion to Strike Opposition to Request for Review on Behalf of Cablevision Systems Corp. to be served upon the Regional Director, counsel for the Communication Workers of America, and Petitioner, by electronic mail, pursuant to the Board's e-filing rules at the following addresses designated by each party for this purpose, respectively:

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