

March 10, 2017

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BY EMAIL

Gary Shinnars, Esq.
Executive Secretary
National Labor Relations Board
1015 Half Street SE
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Re: Yale University
Case No. 01-RC-183014, et al.

Dear Mr. Shinnars:

We write in reply to Petitioner's response to Yale's March 9, 2017 request for a one week extension to file its Request for Review of the Regional Director's erroneous determination that its Teaching Fellows are employees as defined in Section 2(3) of the Act.

First, Petitioner misconstrues Yale's request to extend the due date on its Request for Review of the Section 2(3) issue as a "letter requesting permission from the Office of the Executive Secretary to file a second Request for Review of the Regional Director's January 25, 2017 Decision and Direction of Election ("DDE") in the above-captioned action." Board permission is not required to file a Request for Review and none was requested here. Rather, the University simply seeks additional time to prepare and file its Request for Review, the reasons for which are not questioned in Local 33's purported opposition.

Second, Petitioner misreads the Board's February 22 Order, which merely denied expedited consideration of Yale's Request for Review of the erroneous unit determination and the other extraordinary relief sought on February 15. Contrary to Petitioner's claim, there was no final decision on the merits of that request. That is not a reasonable reading of the Board's Order, and that is plainly not how the majority's action was interpreted by Acting Chairman Miscimarra in his dissent, where he stated that "[m]y colleagues deny the Employer's request for *expedited consideration of its request for review* and to stay the elections (or, in the alternative, to impound the ballots while seeking expedited review)" 365 NLRB No. 40, slip op. at 1-2 (emphasis added); see also n.6 where acting Chairman Miscimarra observed that "[i]f the Board majority decides *not* to grant review in the instant case, the only guaranteed evaluation of relevant issues would take place in proceedings before a court of appeals if the Union prevails in the election and the Employer commits a technical refusal to bargain to obtain court review" (emphasis in original). Plainly, Acting Chairman Miscimarra did not

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view the Order as a denial of review and an affirmance of the DDE. Had the majority disagreed with his interpretation, as clearly articulated in the dissenting opinion, the Order surely would have reflected that disagreement in a footnote or otherwise.

Third, the pre-election filing of Yale's Request for Expedited Review and other extraordinary relief does not preclude the filing of a post-election Request for Review on issues, including the Section 2(3) issue, on which expedited consideration prior to an election was neither requested nor required. Furthermore, the procedure followed here by the University is fully consistent with the intent of revised Section 102.67 of the Board's Rules and Regulations, *i.e.*, to reserve issues for post-election consideration except where, as here, the issue is appropriate for determination prior to the election. Moreover, Yale expressly reserved the right in its February 15 Request for Expedited Review to file a post-election Request for Review of the Regional Director's erroneous determination that the petitioned-for Teaching Fellows are statutory employees, and nowhere in Petitioner's "Opposition to Employer's Request for Extraordinary Relief Under 29 C.F.R. §102.67(j)" did Local 33 take issue with that proposed course of action.

Accordingly, we respectfully submit that the University's request for an extension of time to file its Request for Review should be granted to March 24, 2017. Petitioner's arguments can and should be reserved for its statement in opposition to the Request for Review; they are premature here, where the only question is whether good cause has been shown for a modest extension of time.

Respectfully submitted,

Proskauer Rose LLP

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cc: John J. Walsh, Jr., Regional Director
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