UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

YALE UNIVERSITY	**Case Numbers**
	01-RC-183014
	01-RC-183016
	01-RC-183022
	01-RC-183025
and	**01-RC-183031**
	01-RC-183038
	01-RC-183039
	01-RC-183043
UNITE HERE LOCAL 33	**01-RC-183050**

PETITIONER'S OPPOSITION TO THE EMPLOYER'S MARCH 10, 2017 MOTION

UNITE HERE Local 33 ("Petitioner") hereby opposes Yale University's ("Employer's") March 10, 2017 motion ("Motion") requesting permission 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 cases. The Employer's Motion is slyly styled as a request for additional pages, but each of two different Board regulations independently forbids the Employer from filing a second request for review (of any length whatsoever).

ARGUMENT

For two separately dispositive reasons, the Employer lacks the right to file a second request for review: (1) the DDE has already been affirmed (*see* 29 CFR § 102.67(g)); and (2) the Board's rules prohibit the filing of serial requests for review (*see* § 102.67(i)(1)). Thus, the affidavit attached to the Motion ("Affidavit") is incorrect where it states that the Employer supposedly "reserved its right" to file a second request for review. Affidavit ¶ 7. The Employer

had no such right to reserve. It cannot have reserved the "right" to do something that—on two different bases—it is prohibited from doing.

First, on February 22, 2017, the Board already affirmed the DDE. On February 15, the Employer filed a request for review of the DDE ("February RFR") under 29 CFR § 102.67(d), primarily based on its argument that *Specialty Healthcare* was wrongly decided. *See* February RFR, p. 3. It also argued, however, that its February RFR "encompass[es] all issues raised below as to the employee status of the Teaching Fellows," including its contention that "the Board should reconsider and reverse *Columbia University*" or distinguish that case. *Id.*, p. 3 n. 1.

The Board denied the February RFR on February 22, 2017, stating: "The Employer's request for expedited review of the Regional Director's Decision and Direction of Election . . . is denied." The Board's Rules expressly provide that the denial of the February RFR constituted an affirmance of the DDE of which the February RFR was seeking review: "Denial of a request for review shall constitute an affirmance of the regional director's action." § 102.67(g).

If the rules were otherwise, in *every election* the employer would seek pre-election "expedited" review based on a request for review and later seek to append additional argument. An employer loses nothing by this tactic, even where there is no irreparable harm necessitating expedition.[1] But the employer forces the Union—days before the election, during pre-election arrangements and organizing—to respond to an eleventh-hour filing. Where the employer submits such a filing, it chooses to subject the DDE to Board review and live with the consequences. Were the rules otherwise, the Employer could style each successive request for review as an "expedited" request and thereby evade compliance with the rules.

[1] Indeed, here the Employer did not even cite the standard for expedited review; it structured its February RFR as a non-expedited request under § 102.67(d) [February RFR, p. 3], and even in its Motion here recognizes that the February RFR counted as a non-expedited request for review.

Second, the Rules prohibit serial, piecemeal requests for review of a decision and direction of election. Section 102.67(i)(1) provides that "[a] party may combine a request for review of the regional director's decision and direction of election with a request for review of a regional director's post-election decision, if the party has not previously filed a request for review of the pre-election decision. Repetitive requests will not be considered." Thus, even if the pre-election February RFR were still pending before the Board, which it is not, the Employer still would not be permitted to file any second, third, or fourth request post-election.

The Rules forbid such multiple bites at the apple. §§ 102.67(g), (i)(1). Indeed, permitting the Employer's piecemeal tactic would undermine the primary goal of the Board's rules: to ensure an orderly, efficient election process in which the parties can confide. Employees will not petition for Board elections if they cannot rely on the process. The Employer's tactics undermine faith in that process. A petitioner should not be forced to contend with multiple appeals to the Board at multiple times about a single decision and direction of election.

The Employer's contention that its second request for review would be on a different "issue" than its first—namely, that *Columbia University* should be reversed or distinguished—is simply pretext for more chances to reverse the Regional Director's DDE. Separating a DDE into "issues" does not permit a party to submit a separate request for review on each one. Such a piecemeal approach is especially offensive to the Board's integrity where, as here, the only separate "issue" raised in each request is that a different Board precedent should be scrapped.

The Employer should not be rewarded for its tactic of limiting its argument regarding *Columbia University* in its February RFR. That was the Employer's choice. It knew the arguments it wanted to make. Section 102.67(i)(1) required it to include all of those arguments in one brief. That ensures the Petitioner is not kept in suspense regarding when or how many new

briefs will be filed, forced to jump to attention according to the Employer's tactical timeline of stretching out its opportunities for the Board to reverse itself. The timing of the Employer's first request for review—just days before an election it had been pretending for three weeks to be planning with the Petitioner and the Region—shows the constant anxiety to which petitioners in representation cases will be subjected if employers are allowed to file serial such requests.

The Board's rules provide that a party may file one request for review of a single decision and direction of election, and denial of that one-and-only request affirms the Regional Director's decision. *See, e.g.,* §§ 102.67(g), (i)(1). The Petitioner and the public should be able to rely on those rules. The Employer's Motion, which would evade and abuse them, should be denied.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests an order denying as moot the Employer's March 10 request for extra pages on a second request for review on the grounds that the Board already affirmed the DDE on February 22, 2017 and the Board's rules prohibit multiple requests for review of a single decision and direction of election.

Respectfully submitted this 10th day of March, 2017.

/s/ Yuval Miller

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PROOF OF SERVICE
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I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled PETITIONER'S OPPOSITION TO THE EMPLOYER'S MARCH 10, 2017 MOTION was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 10th day of March, 2017 as follows:

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

Executed on March 10, 2017 at San Francisco, California.

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