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April 19, 2017

The Hon. Gary Shinnars
Executive Secretary
Office of Executive Secretary
National Labor Relations Board
1015 Half St. SE
Washington, DC 20570-0001

Re: Manor Care of Allentown PA, LLC d/b/a ManorCare Health Services -Allentown
NLRB Case No. 06-RC-186558

Dear Mr. Shinnars:

This firm represents the Employer in the above case, which currently has pending a Request for Review. This letter is to call the attention of the Board to its April 4, 2017 Decision and Order of the Board in *Cytec Process Materials (CA), Inc.*, Case 21-RC-185937, which the Employer believes has bearing on the issues of the Employer's pending Request for Review. Consistent with the *Cytec* decision, the Employer contends that employees voting in an election should be provided with accurate Board notices of election, sufficiently informing them of the type of election occurring. In the current case, the Employer contends that the employees were not provided with an accurate notice of the election because the notice indicated that the election was essentially a re-run election -- but it was not a re-run election -- and if it had been a re-run election employees would have been informed on a notice of the reason for the re-run. Here, the Region effectively and inaccurately labelled the election as a re-run election without providing employees with any notice of why a re-run, "effectively," was taking place.

We respectfully request that the *Cytec* decision be considered by the Board in connection with the Request for Review. A copy of the decision is attached.

Your attention to this request is much appreciated.

Very truly yours,

A handwritten signature in black ink, appearing to read "Clifford H. Nelson, Jr." with a stylized flourish at the end.

Clifford H. Nelson, Jr.

CHN/dhp

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cc: Counsel for Petitioner, Larry Cary, Esq.
Regional Director for Region 6, Nancy Wilson

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CYTEC PROCESS MATERIALS (CA), INC./
SOURCE ONE STAFFING, LLC
Employer

and

Case 21-RC-185937

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
AFL-CIO, DISTRICT LODGE 725

Petitioner

DECISION AND ORDER REMANDING

Pursuant to a Stipulated Election Agreement, a self-determination election was held on October 27, 2016, in which the Petitioner received a majority of the votes cast. On November 14, 2016, the Acting Regional Director issued a Certification of Representative. Subsequently, on December 16, 2016, the Regional Director issued a Corrected Certification of Representative. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, as amended, the Employer filed this request for review. The Petitioner filed an opposition.

The dispute in this case involves whether an *Armour-Globe*¹ self-determination election requires that the eligible voters in the voting unit be apprised that they are voting to be added to an existing unit, rather than voting to be represented in their own unit. The Employer argues that the election must be overturned because, inter alia, the Regional Director improperly certified the voting unit as being added to one of the existing units rather than as its own unit, without notice to the voters.

For the reasons stated below, the Employer's Request for Review of the Regional Director's Corrected Certification of Representative is granted as it raises a substantial issue warranting review, and on review, we find that the election must be vacated and a second election directed.

Following a petition filed to represent joint employees of Cytec Process Materials (CA) Inc. and Source One Staffing, LLC assigned to work at Cytec's Santa Fe Springs facility, the parties entered into a Stipulated Election Agreement clarifying that the election would not establish a separate unit, but would instead allow voting employees to determine for themselves whether they desired to join an existing unit of Cytec employees represented by the Petitioner. Specifically, the Stipulated Election Agreement provided that if the employees vote for

¹ *Armour & Co.*, 40 NLRB 1332 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

representation, “they will be taken to have indicated the employees’ desire to be included in the existing unit of all full-time and regular part-time machine operators in the Technology Department currently represented by [the Petitioner].” When parties so stipulate, the Board’s Casehandling Manual (Part Two) Representation Proceedings Section 11314.5 provides that for the Notice of Election, “[a]ppropriate insertions should be made for self-determination elections.” This means that after describing the voting unit, the Notice of Election should have stated, consistent with the stipulation, that the employees would be added to the existing Technology Department unit if they chose representation by the Petitioner. Such notice language is critical in *Armour-Globe* self-determination elections, because the question on the ballot simply asks whether the employees “wish to be represented for purposes of collective bargaining” by the Petitioner without describing the unit.

In this case, however, the Notice of Election produced by the Region did not advise the employees that they were voting in an *Armour-Globe* self-determination election. Further, there is no other evidence—or even a contention—before us that the employees were in fact aware that the election was an *Armour-Globe* election, or to which of the four existing units of Cytex employees currently represented by the Petitioner they were to be added. Accordingly, the voting employees were not sufficiently notified that the consequence of what turned out to be a unanimous vote in favor of union representation would be to place them in the existing Technology Department unit.

The Employer also contends that its agreement, through legal counsel, to the self-determination language in the Stipulated Election Agreement was mistaken, and that it did not intend to agree to a self-determination election. Thus, the Employer asks that we direct the Regional Director to withdraw his Corrected Certification of Representative adding the employees to the Technology Department unit, and instead certify the voting employees as a separate unit. We find this argument to be unavailing. The parties’ Stipulated Election Agreement unambiguously provides for a self-determination election and we reject any implication that the Employer should be released from the Stipulated Election Agreement due to its purported ignorance of the provision for a self-determination election.

In sum, although the employees voted unanimously for representation by the Petitioner, we cannot, under the circumstances present herein, presume that the employees were aware they were voting to join an existing unit, as opposed to voting for separate representation. Accordingly, in order to enforce the parties’ Stipulated Election Agreement, and to ensure that the vote accurately reflects the desire of the unit employees, we vacate the results of the election and remand this case to the Regional Director to conduct a second election, with the Notice of Election containing the appropriate *Armour-Globe* self-determination language.

Dated, Washington, D.C. April 4, 2017.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

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