

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

NORTHWESTERN UNIVERSITY,)	
)	
Employer,)	
)	
and)	
)	Case No. 13-RC-177943
SERVICE EMPLOYEES INTERNATIONAL)	
UNION LOCAL 73, CLC/CTW,)	
)	
Petitioner.)	

**PETITIONER’S STATEMENT IN OPPOSITION TO NORTHWESTERN
UNIVERSITY’S EXPEDITED REQUEST FOR REVIEW AND MOTION FOR STAY OF
REGIONAL DIRECTOR’S SUPPLEMENTAL DECISION AND CERTIFICATION OF
REPRESENTATIVE**

Service Employees International Union, Local 73 (“Union” or “SEIU”) opposes the Expedited Request for Review and Motion for Stay of Regional Director’s Supplemental Decision and Certification of Representative (“Expedited Request for Review”) filed by the Employer, Northwestern University (“University” or “Northwestern”), on May 26, 2017. Per 102.67 of the Board’s Rules and Regulations, the Acting Regional Director’s (“ARD”) January 05, 2017 Decision and Order (“D&O”) is not stayed by Northwestern’s January 19, 2017 Request for Review (“January 19, 2017 Request for Review”). As such, the Acting Regional Director was within his authority when he issued his May 26, 2017 Supplemental Decision and Certification of Representative (“Supplemental Decision and Certification”). The University now requests review of the Acting Regional Director’s Supplemental Decision and Certification

under Section 102.67(d)¹ of the Board's Rules and Regulations. However, Northwestern's Expedited Request for Review does not establish a "compelling" basis for review under Section 102.67(d). Nor has Northwestern demonstrated that there is a clear showing that a stay is necessary when the ARD acted within the authority delegated to him. Accordingly, the Board should deny the request for review and affirm the Acting Regional Director's Supplemental Decision and Certification.

I. Background

The Union filed a petition seeking to represent a bargaining unit of non-tenure track faculty members who teach credit bearing courses in degree granting programs in any of the following schools at Northwestern: Weinberg College of Arts and Sciences; Medill School of Journalism; McCormick School of Engineering and Applied Science; Bienen School of Music; the School of Education and Social Policy; the School of Communications; and the Graduate School. (Hearing Officer's Report at pp 4-5.) On June 20, 2016, the Parties agreed on a Stipulated Election Agreement. (Hearing Officer's Report at p. 4.) On July 19, 2016, the ballots were counted and the tally of ballots was as follows: 210 "Yes" to Union votes; 146 "No" to Union votes; and 134 challenged ballots. (Hearing Officer's Report at pp. 5-6.) The parties subsequently agreed to resolve several challenges with five challenges being sustained and the parties agreeing to open 58 of the challenged ballots. (Hearing Officer's Report at p. 6.) The revised tally with the new ballots opened read as follows: 223 "Yes" to Union votes; 191 "No" to Union votes; and 71 challenged ballots remaining. (Hearing Officer's Report at p. 6.)

¹ Northwestern's Expedited Request for Review cites the rules as Section 102.67(c)(2) and (3). However, the Union notes that the regulations changed effective April 14, 2015. As such, the Union refers to 102.67(d).

A hearing was held from August 23, 2016 to August 25, 2016 to resolve the challenged ballots. (Hearing Officer's Report at 6.) The tally of ballots at the beginning of the hearing was as follows: 223 "Yes" to Union votes; 191 "No" to Union votes; and 71 challenged ballots. (Hearing Officer's Report at p. 6.) At the hearing, the Employer conceded that one of the individuals that Union had challenged was not eligible to vote; thus, reducing the number of challenged ballots to 70. (Hearing Officer's Report at p. 6.) The majority of the challenged ballots addressed at the hearing were challenged by the Union on the basis that the voters held "not in unit titles." In its post hearing brief, the Union withdrew fourteen of its sixty-four challenges. (Hearing Officer's Report at p. 7.) However, the Union still argued that 41 of its challenged ballots were from votes who were ineligible to vote on the basis that the voters held "not in unit titles" such as director, associate chair, coordinator, or advisor. (Hearing Officer's Report at pp. 7, 10, 12-51.)

On November 22, 2016, the Hearing Officer issued her report ("Hearing Officer's Report") on the 56 remaining challenges in which she recommended that the Union's post-hearing request to withdraw 14 of its challenges be approved, the Union's challenges to 11 ballots be sustained, the Employer's challenges to six ballots be sustained, and the Union's challenges to the remaining 39 ballots be overruled, including the ballots of 21 voters the Union challenged on the basis of holding an out of unit title. (Hearing Officer's Report at p. 4, 7; D&O at p. 1.) On December 06, 2016, the Employer filed exceptions to the Hearing Officer's report. (D&O at p. 2.)

On January 05, 2017, the Acting Regional Director issued his Decision and Order, in which he determined that the Hearing Officer erred in her findings. (D&O at p. 3-4.) In doing so, the ARD sustained challenges to 36 ballots, finding that 25 of the challenged ballots held out

of unit titles such as advisor, director, associate chair, and assistant chair; the ARD based his finding on the evidence of Northwestern's own documents and own witnesses who testified that such voters held out of unit titles. (D&O at pp. 7-15.) Ultimately, the ARD ordered that 34 ballots be opened and counted and that a revised tally of ballots issue. (D&O at p. 16.)

On January 19, 2017, Northwestern filed its Request for Review in regard to the 25 challenged ballots that the ARD had found were cast by voters who held out of unit titles. (Req. for Rev., Jan. 19, 2017.) On January 26, 2017, the Union filed its Statement in Opposition to Northwestern's Request for Review. (Opp. Req. for Rev., Jan. 26, 2017.) To date, the Board has yet to make a determination on whether it will grant or deny Northwestern's Request for Review.

On May 2, 2017, the Region notified the Union that it was going to open and count the 34 ballots the ARD had ordered to be counted in his January 05, 2017 Decision and Order. (Exhibit A.) On May 12, 2017, the Union and the University met at the Region's office and signed the stipulation entitled "STIPULATION AS TO CHALLENGED BALLOTS NOT PENDING REQUEST FOR REVIEW." (Exhibit B.) In this document, the parties agreed to open and count the 34 ballots the ARD had ordered to be counted in his January 05, 2017 Decision and Order. (Exhibit B.) However, the document makes no reference to the 25 ballots that Northwestern had filed a request for review on. (Exhibit B.) Further, and contrary to the University's mistaken understanding in its Expedited Request for Review, at no point did the Region's representative state or otherwise indicate to the parties that the Union would not be certified if the valid votes counted favored representation. On the same day, after the Union and the University signed the Stipulation as to Challenged Ballots Not Pending Request for Review, the Region opened and counted the 34 ballots the ARD had ordered in his January 5, 2017 Decision and Order. (Supp. Dec. and Cert. of Rep at p. 2.) A second revised tally of ballots issued, showing that 229 ballots

were cast for the Union and 219 ballots were cast against representation. (Supp. Dec. and Cert. of Rep. at p. 2.) No objections were filed to the second revised tally of ballots. (Supp. Dec. and Cert. of Rep. at p. 2.) On May 26, 2017, based on the count of the 34 ballots and the ARD's Decision and Order, in which the ARD determined that the 25 ballots Northwestern subsequently filed a Request for Review on were ineligible, the ARD certified the Union as the exclusive collective-bargaining representative of the petitioned-for unit. (Supp. Dec. and Cert. of Rep. at p. 2.) On May 26, 2017, Northwestern filed the instant Expedited Request for Review.

II. Northwestern's Expedited Request For Review Must Be Denied Because A Request For Review Does Not Act As A Stay Of A Regional Director's Action.

Northwestern's May 26, 2017 Expedited Request for Review must be denied because the Acting Regional Director did not abuse his authority and because a request for review does not act as a stay of a regional director's actions. Section 3(b) of the NLRA authorizes the Board to delegate its power to determine the appropriateness of a unit, investigate and provide for hearings, to direct an election, and to certify the results of such elections to regional directors. 29 U.S.C.A. § 153(b). Section 102.67(c) of the Board's Rules and Regulations allows for Board review of regional director actions. 29 C.F.R. § 102.67(c) (2015). However, the Board's Rules and Regulations proceed to clarify that "such a [request for] review shall not, unless specifically ordered by the Board, operate as a stay of any action by the regional director." *Id.*

Here, Northwestern alleges that the Acting Regional Director abused his authority by issuing a certification of representative in the instant case despite "knowing full well that the University has a pending Request for Review with the Board..." However, this allegation is clearly without merit. The Board's Rules and Regulations unambiguously state that requests for review do not act as a stay, unless they are specifically ordered by the Board. Here, the Board has not made a determination on Northwestern's January 19, 2017 Request for Review, and the

Board has not ordered any stay on the Acting Regional Director's January 05, 2017 Decision and Order. As such, Northwestern's January 19, 2017 Request for Review cannot act as a stay to block the Acting Regional Director's January 05, 2017 Decision and Order.

Moreover, Section 102.69(c)(2) states that Regional Director decisions on challenges may include a certification of the results of the election, including a certification of representative, and shall be final unless a request for review is granted. 29 C.F.R. § 102.69(c)(2). Accordingly, the Acting Regional Director acted within his authority when he issued his Supplemental Decision and Certification following the ballot count ordered per the January 05, 2017 Decision and Order. Specifically, the January 05, 2017 Decision and Order ordered that 34 challenged ballots be opened and counted, and that challenges to 36 ballots be sustained.² After the 34 ballots were counted, there were 229 "Yes" ballots and 219 "No" ballots. As such, since there were no other valid ballots per the ARD's January 05, 2017 Decision and Order and because the Board has not stayed the ARD's January 05, 2017 Decision and Order, the Acting Regional Director acted appropriately when he certified the Union as the representative of the petitioned-for unit.

Further, the Acting Regional Director did not abuse his authority or prejudice Northwestern by issuing the Supplemental Decision and Certification on May 26, 2017. In contrast, the Acting Regional Director again followed the Board's Rules and Regulations. Per Section 102.69(e) of the Board's Rules and Regulations, where the regional director,

upon a ruling on challenged ballots, has directed that such ballots be opened and counted and a revised tally of ballots issued, and no objection to such revised tally is filed by any party within 7 days after the revised tally of ballots has been made available, the regional director shall forthwith issue to the parties certification of

² Again, Northwestern's January 19, 2017 Request for Review concerns 25 of the 36 ballots that the ARD found were not eligible voters. However, Northwestern's Request for Review does not act as a stay on the January 05, 2017 Decision and Order.

the results of the election, including certifications of representative where appropriate...

29 C.F.R. § 102.69(e) (2015).

Here, no party filed objections to the conduct of the election or to conduct affecting the results of the election within the seven day window. Hence, the Regional Director was required to issue to the parties certification of the results of the election after the seven day window had expired. The seven day window expired on May 19, 2017, and the Acting Regional Director issued the Supplemental Decision and Certification promptly on May 26, 2017, which in this case certified the Union as the collective bargaining representative of the petitioned-for unit.

As seen above, the Board's Rules and Regulations make clear that a request for review does not stay a regional director's decision and that a certification shall be issued after a regional director issues a ruling on challenged ballots. Northwestern's misguided and incorrect belief that its January 19, 2017 Request for Review prevented the Acting Regional Director from certifying the Union is not a compelling reason to grant review. Hence, Northwestern's Expedited Request for Review must be denied.

III. Northwestern's Expedited Request For Review Must Be Denied When Prejudice Has Not Resulted.

Northwestern's Request for Review must be denied when prejudice has not resulted. As stated above, the Acting Regional Director followed the Board's Rules and Regulations in issuing the Supplemental Decision and Certification. Northwestern's claim for prejudice has its basis in its incorrect belief that its January 19, 2017 Request for Review would stay the Acting Regional Director's January 05, 2017 Decision and Order. However, that is not the case, and it is undeniable that the majority of valid votes counted favored the Union. What Northwestern is asking for is ludicrous; that the Board deny a majority of valid voters the right to be certified

with the union of their choosing. Thus, Northwestern's Expedited Request for Review must be denied.

Lastly, the Board should deny the instant Expedited Request for Review and Northwestern's January 19, 2017 Request for Review for all the reasons set forth in the Union's January 26, 2017 Statement in Opposition to Northwestern's Request for Review.

IV. Northwestern's Request For Staying the Regional Director's Supplemental Decision And Certification Must Be Denied Because There Is No Clear Showing That A Stay Is Necessary.

Northwestern's request for staying the Regional Director's Supplemental Decision and Certification must be denied. There is no clear showing that a stay is necessary because the Acting Regional Director did not abuse his authority in certifying the Union. Section 102.67(j) allows for a party to request a stay but such "relief will be granted only upon a clear showing that it is necessary under the particular circumstances of the case." 29 C.F.R. § 102.67(j) (2015).

Here, there is no such showing when the Board's Rules and Regulations unambiguously state that request for reviews do not stay the actions of a regional director, unless specifically ordered by the Board. In its Expedited Request for Review, Northwestern incorrectly argues that it will be faced with a Hobson's choice of either refusing to bargain or bargaining without truly knowing if the unit was correctly certified. This is hogwash. The ARD correctly followed the Board's Rules and Regulations and correctly certified the Union. Northwestern cannot point to its own misunderstanding of the Board's rules as a basis for staying the ARD's Supplemental Decision and Certification. Accordingly, Northwestern's request for staying the Regional Director's Supplemental Decision and Certification must be denied

V. Conclusion

Northwestern has failed to demonstrate any compelling reason for reviewing the Acting Regional Director's Supplemental Decision and Certification. Further, Northwestern has failed to demonstrate that a stay is necessary in this matter. For the reasons described above, the Union requests that the Board deny Northwestern's Expedited Request for Review and affirm the Acting Regional Director's Supplemental Decision and Certification of Representative.

Respectfully submitted,

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