UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:	:	
REED COLLEGE	:	
Employer,	:	
and	:	Case No. 19-RC-213177
STUDENT WORKERS COALITION LOCAL 1, HOUSING ADVISERS	:	
Petitioner.	:	April 19, 2018

PETITIONER'S OBJECTION TO THE EMPLOYER'S APRIL 13, 2018 REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION TO THE NATIONAL LABOR RELATIONS BOARD

Preliminary Statement

Student Workers Coalition, Local 1 Housing Advisers ("Petitioner") hereby opposes Reed College's ("Employer's") April 13, 2018 request for review by the Board of the Regional Director's March 2, 2018 Decision and Direction of Election ("DDE") in this case. The Petitioner's opposition rests on two independent bases: (1) the DDE has already been affirmed; and (2) the Board's rules prohibit the filing of separate Requests for Review before and after an election.

Argument

First, on March 22, 2018, the Board already affirmed the DDE. On March 9, 2018, the Employer filed a Request for Review ("March RFR") under section 102.67(j) of the Board's Rules and Regulations, primarily based on its argument that the standard voter eligibility formula applied by the Regional Director in the DDE was improper, and should have been based upon the bargaining unit proposed by the Employer in its Statement of Position. In justifying these claims, the Employer claimed the Regional Directors DDE was "clearly erroneous on the substantial factual issues." The Employer further claimed it had been prejudiced against by the Regional Director in not being allowed to litigate this issue. (March RFR, pp. 2-3.)

The Board denied the March RFR on March 22, 2018, stating: “The Employer’s Request for Review of the Regional Director’s Decision and Direction of Election is denied…” (“March RFR Denial”). The Board’s Rules expressly provide that the denial of the March RFR constituted an affirmance of the DDE of which the March RFR was seeking review. Section 102.67(g) of the Board’s Rules make this clear: “Denial of a request for review shall constitute an affirmance of the regional director's action.” The Board has thus affirmed the Regional Director’s March 2, 2018 DDE.

Second, the Rules prohibit serial, piecemeal requests for review of a decision and direction of election—especially when a party seeks to file separate requests before and after an election. Section 102.67(i)(1) of the Rules and Regulations 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 March RFR were still pending before the Board, which it is not, the Employer would not be permitted to file any second, third, or fourth request post-election.

The Employer’s piecemeal tactics should be rejected. Allowing this 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. Indeed, the Rules forbid such multiple bites at the apple.

The Employer’s contention that its second Request for Review would be on different “issues” than its first—namely, that the Regional Director’s DDE improperly applied *Columbia University,* improperly determined the most appropriate bargaining unit under *PCC Structurals,* and that *Columbia University* should be reversed—is simply pretext for more chances to reverse or amend the Regional Director’s DDE. Separating a DDE into separate “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 public’s faith in the Board where, as here, the only supposedly separate “issue” raised in each serial request is that a different Board precedent or policy should be abandoned- the standard eligibility formula in the March RFR, and now these separate “issues” here.

Both the March RFR and the Employer’s latest request depend on the Employer’s argument that the Regional Director’s DDE is “erroneous on the substantial factual issues.” This claim is, plainly, untrue, but the relevant fact remains that if the Employer wishes to object to aspects of the DDE it believes are misrepresentations of the record or otherwise counterfactual, it may not carve those supposed factual errors up into serial briefs. Yet that is precisely what it seeks to do now. Furthermore, in its latest brief, the Employer alleges that in its March RFR it had in mind an entirely new voter eligibility formula that it did not raise in that filing or in its Statement of Position, but that it “would have” contested if it had only had the chance. (April 13th RFR, page 3) The Employer’s

desired voter eligibility formula, as it noted in its Statement of Position, and reiterated in the March RFR, (March RFR, page 2) was based upon its desired bargaining unit, and upon this alone. Hypothetical, thoroughly unprovable assertions of what the Employer "would have" done aside, this remains the only ascertainable basis of any discrepancy between the eligibility formula imposed by the Regional Director's DDE and the Employer's complaints in its March RFR. Despite explicitly acknowledging this, the Employer declined the opportunity in its March RFR to request that the Board review the composition of the unit under *PCC Structurals* or any other Board precedent. Having once declined to pursue this issue, the Employer now dedicates the entirety of section "III" of its latest brief to this precise question. The Employer should not now be permitted in a second request to put an issue before the Board it consciously declined to put forward previously, yet which it had claimed was also the basis of its previous arguments on voter eligibility. This amounts to little more than an attempt to use the Board's processes to offer multiple different arguments on the same issue at different times because past arguments made by the Employer have been shown to be thoroughly incoherent. The Rules and Regulations are clear that the Employer should not be allowed to shift its position on this issue from day to day as it pleases, nor to file serial, piecemeal requests that carve out only minute differences in its exact claims from one request to another.

The Employer should not be rewarded for its tactic of limiting its argument regarding *Columbia University* or *PCC Structurals* in its March RFR, nor for fragmenting the aspects of the Record it wishes to contest. That was the Employer's choice. It knew the arguments it wanted to make. As the Employer's March RFR makes clear, the objections it makes here it also held at the time of the March RFR, and it declined to act upon them. (March RFR, p. 2) Section 102.67(i)(1) of the Rules and Regulations required it to include all of those arguments in one brief. That assures the Petitioner is not kept in suspense regarding when or how many new briefs will be filed. Otherwise, the Petitioner is forced to react at the whim of the Employer, and to respond to serial briefs tracked to the Employer's tactical timeline of stretching out its opportunities for the Board to reverse itself. This is an *abuse* of the process, not a fair and allowable *use* of the Board's resources, and it is an undue burden upon the resources of the Petitioner. It is an abuse that unfairly submits the Petitioner to uncertainty, disrupts and delegitimizes the process in the eyes of employees, and discourages parties from coming to agreement. The disruptive timing of the Employer's first Request for Review—less than two weeks before the scheduled election— demonstrates the constant anxiety to which petitioners in representation cases will be subjected if employer proclivities go unchecked. That the Employer reiterates its previous claims on the factuality of the Regional Director's DDE here, and now sees fit to put before the Board issues it had previously declined the opportunity to do so, only highlights the extent to which the Employer seeks to abuse the processes of the Board contrary to the Rules and Regulations.

In a pattern that has become disappointingly familiar, the Employer inaccurately asserts in its latest brief of April 13th that the Petitioner has agreed to its right to file serial, piecemeal briefs. The Petitioner has offered no such agreement. In its March 19th

opposition to the Employer's March RFR ("March opposition"), the Petitioner specified that its opposition was made narrowly, in relation to the Employer's contention that pre-election litigation was required over the voter eligibility formula, and that the Petitioner retained *its own* right to file a request for review under the Rules and Regulations of the Board. This is obviously not an endorsement of the Employer's supposed right- a right it has entirely manufactured contrary to the Rules and Regulations of the Board- to file continual piecemeal requests. Even were that not the case, it is not incumbent upon the Petitioner to aggressively contest every transgression of the Rules that the Employer pursues in order for the Rules to be binding upon the Employer. The Rules are equally binding upon all parties. It is vital to the neutrality of the Board, and to employees' faith in its processes, that this remain the case.

Even assuming that the Petitioner *had* agreed to the Employer's "right" to separate its arguments into staggered requests, this would still be irrelevant. Despite what it may wish, neither the Employer, nor the Petitioner- either independently or in tandem- determine what the Rules and Regulations of the Board allow. The Employer may not "reserve" for itself a right which the Board's Rules and Regulations clearly preclude, and the Petitioner may not agree to it, nor vice versa. Noting that at the time, the Employer had merely stated its intention to file another request, Member McFerran found it "unnecessary at this time to decide whether such a request would be proper under Sec. 102.67(i)(1) of the Board's Rules and Regulations." (NLRB's March RFR Denial, p. 1) The Board has not granted the Employer the "right" it so dearly wishes to claim. That right does not exist.

The Rules provide that a party may file one request for review of a Regional Director's 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 April 13th request, 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 April 13th request for review on the grounds that the Board affirmed the DDE in its March 22, 2018 order and the Board's Rules prohibit multiple requests for review of a single decision and direction of election.

Respectfully submitted this 19th day of April, 2018.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **PETITIONER'S OBJECTION TO THE EMPLOYER'S APRIL 13, 2018 REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION TO THE NATIONAL LABOR RELATIONS BOARD** was sent via email, on this 19th day of April, 2018, to the following:

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