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May 14, 2018

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Mr. Gary Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

Re: Inwood Material Terminal, LLC, Employer; and
Carlos Castellon, Petitioner; and
United Plant & Production Workers Local 175 P, Intervenor;
Case No 29 RD 206581

Dear Mr. Shinners:

The United Plant & Production Workers Local 175 P, pursuant to Section 102.69(c)(2) and Section 102.67(e) and (i)(1) of the Board's Rules and Regulations, requests Review of the Regional Director's Decision On Objections and Certification of Results in a Decertification Election held in this matter when there exists an outstanding Request for Review alleging the existence of a Contract Bar to this Decertification Petition that was **granted** by the NLRB in this very Case No. 29 RD 206581.

The status of the matter is that the NLRB is reviewing the issue of whether there was a contract bar to this decertification petition, (which would have required the dismissal of the Decertification Petition; at the same time that the Regional Director permitted the Petition to be processed, the election held, the ballots opened and a Decision and Certification of Results to be issued. In order to preserve rights of Local 175 P to its claim that a contract bar existed that prevented the election from happening at this time we ask that the NLRB direct the Region to hold its Decision on Objections and Certification of Results in abeyance until such time as the granted Request for Review on the contract bar issue is resolved.

Failure to hold the Certification of Results in abeyance could ultimately conflict with a decision of the NLRB should it ultimately be determined that a contract bar existed that should have required the instant Petition to be dismissed.

Moreover, the Regional Director made several substantial factual errors in the Decision on Objections. They are:

1. Robert Horwatt was unquestionably a bargaining unit member during the months of July 2017 thru January, 2018. His dues were deducted from his payroll and contributions were made on his behalf in all relevant months except that stopped in February 2018. Local 175 P asserted that he was observed doing bargaining unit work on the day of the election, in the yard of the Employer. The bargaining unit included "all full-time and regular part-time, drivers, machine operators, mechanics and laborers employed by the Employer and working at or out of its facility located at 1 Sheridan Boulevard, Inwood, NY... ."

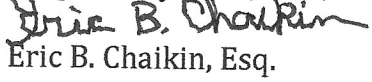
The Employer, per the Regional Director's decision, page 4, stated that IMT contended Horwatt was an employee of Grace Industries at that time working on Grace's equipment, some of which is located at the IMT lot. There appears to be an admission that Horwatt was present, working at the yard covered by 175 P's collective agreement, working on equipment; which was potentially covered work. Although, as the Regional Director found, this deviation only represented 7.69% of potential voters, it follows the same anti-union philosophy used by IMT in reneging on its commitment when it agreed to the terms and conditions of a full contract; which issue is essentially before the NLRB review. IMT has proven that it will say and do anything to show its employees that it can get away with whatever it wants to in relationship to the certified representative of its employees; including without notice simply moving a person off payroll onto a related company's payroll which the person performs the same work, at the same location as he did before; simply to avoid having to make contributions on his behalf or deduct dues from his payroll.

A hearing should have been held on the issue of whether Horwatt was performing unit work in February 2018 such that he should have been listed on the Excelsior List.

2. The Regional Director overruled the objection that asserted that IMT intimidated employees into filing a Petition for Decertification by isolating their work assignments and directing them to file a decertification petition. As far as facts go the Region already had an affidavit from an employee that supported this view. That affidavit described how Mr. Castellon, the person who signed the original Petition to Elect 175 P their bargaining representative, was isolated from the other workers. Mr. Castellon, in the hearing on the contract bar issue, when questioning Mr. Clemenza, asked him why did you not protect me, protect the workers. At the time no one understood what he was referencing; or why he needed protection. With the information from a co-worker that came out in the referenced affidavit it now is abundantly clear that Mr. Castellon's reference to needing protection was because he had been isolated and intimidated. And out of fear of losing his job he headed the employer's request, which was also made to the witness who provided the affidavit; to actually file the decertification petition (having been the worker who first brought the union into the yard).

As for the issue of an employer supervisor asking a bargaining unit employee if the worker would travel to the Region with other workers to file a decertification there was ample evidence presented to support that event. But the Regional Director then stated that neither witness' testimony indicated that the Employer provided employees time off with pay to file the petition. To the contrary, it is clear from the time stamp on the decertification petition itself that it was filed in person at the Region in the morning during working hours. It would have been a simple task to request the payroll for that day of Mr. Castellon to see if he was paid for that time in the morning when he was scheduled to work.

Respectfully submitted,



Eric B. Chaikin, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 14, 2018 he e-mailed a true and correct copy of this Request for Review to Aislinn McGuire, Esq. at her e-mail address amcguire@kmm.com and mailed a true and correct copy of this Request for Review to Carlos Castellon at his home address of 1231 Burlington Place, Valley Stream, New York 11580.

Eric B. Chaikin, Esq.