

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WEST VIRGINIA AMERICAN WATER CO.
Employer

and

Case 09-RC-219179

UTILITY WORKERS UNITED ASSOCIATION,
LOCAL 537
Petitioner

and

UTILITY WORKERS UNION OF AMERICA,
AFL-CIO, CLC, AND ITS LOCAL 537
Intervenor

ORDER

The Employer's and Intervenor's Requests for Review of the Regional Director's Decision and Direction of Election are denied as they raise no substantial issues warranting review.¹ We direct the Regional Director to open and count the impounded ballots.

¹ In requesting review, the Employer and Intervenor primarily contend that the Regional Director's direction of an election interferes with the adjudication of the federal district court action brought by the Utility Workers Union of America, AFL-CIO (the Intervenor) against its Local 537 and five former officers of Local 537 seeking to enforce the Intervenor's trusteeship imposed on Local 537 under Title III of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §§ 461-466. *Utility Workers Union of America, AFL-CIO v. Booth et al*, No. 2:18-CV-00398-DSC (W.D.Pa. 2018, filed March 28, 2018). Neither request for review raises a substantial issue with respect to the Regional Director's finding that a question concerning representation exists here. In this regard, the Regional Director applied longstanding precedent to determine that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. See *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851 (1962) (labor organization status established upon showing employees participate in the organization, and that it exists at least in part for the purpose of dealing with employers concerning wages, hours, and other terms and conditions of employment). The requests for review do not dispute this analysis; instead, the Intervenor contends that the true issue here is whether the Petitioner's purported disaffiliation from the Intervenor was effective; the Employer agrees, and adds that one of the issues the district court will need to resolve is whether the Petitioner is a "labor organization." In similar contexts, however, the Board has refused to entertain arguments that allegedly improper disaffiliations precluded a question concerning representation. See, e.g., *Sperry Gyroscope Co.*, 88 NLRB 907, 908-909 (1950) (rejecting argument union was not a labor organization based on

JOHN F. RING,

CHAIRMAN

MARVIN E. KAPLAN,

MEMBER

Dated, Washington, D.C., August 20, 2018

Member Pearce, dissenting.

I dissent from my colleagues' denial of the requests for view in this case. I would hold this case in abeyance pending resolution of the trusteeship issue by the United States District Court for the Western District of Pennsylvania.

The parties to the trusteeship litigation disagree whether the trusteeship is invalid or whether it is the disaffiliation that is invalid. In my view, the legality of the disaffiliation may be dispositive of whether there is a question of representation, which is a prerequisite for the Board to conduct an election. See *NLRB v. Financial Institution Employees of America, Local 1182*, 475 U.S. 192, 203-204, 205-206, 209 (1986) (the Board has no authority to conduct an election in the absence of a question of representation); *Raymond F. Kravis Center for the Performing Arts*, 351 NLRB 143, 146-147 (2007) enfd, 550 F.3d 1183 (D.C. Cir. 2008).

alleged violations of former parent constitutions in disaffiliation maneuvers); *Sylvania Electric Products, Inc.*, 89 NLRB 398, 398 fn. 1 (1950) (denying motion to dismiss petition on ground that disaffiliation procedures leading to establishment of petitioner were invalid and ineffective). More importantly, Section 603(b) of the LMRDA provides that: “. . . nor shall anything contained in [titles I through VI] . . . of this Act be construed to confer any rights, privileges, immunities or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.” 29 U.S.C. 523(b). The Board has stated that in this provision, “Congress gave very explicit expression in the law to its intent that the Board should not withhold its procedures or remedies where unions or employers, or their officers or agents, breached the obligations laid down in titles I through VI of the LMRDA.” *Alto Plastics*, supra at 854. There is accordingly no basis for dismissing or staying the petition merely because of the pendency of trusteeship litigation. Cf. *Boilermakers v. Olympic Plating Industries, Inc.*, 870 F.2d 1085, 1089 (6th Cir. 1989) (distinguishing between trusteeship issues, which are matters for a court to decide, and representational issues, which are for the Board to decide).

For these same reasons, we do not share our dissenting colleague's concerns either that the outcome of the federal litigation will affect whether there is a question concerning representation or that the Petitioner (rather than its officers) violated the consent decree by filing the instant petition. Further, we disagree that the postponement of RC petitions in Region 6 warrants holding the instant petition in abeyance, as such inter-regional coordination is not required by the Board's rules. See Sec. 102.72(a)(3) & (c).

I also note that the district court issued a consent order granting a preliminary injunction prior to the filing of the instant petition by the Association's attorney. That order, which remains in effect, requires Mr. Booth, the former president of the historical representative and the current president of the Association, (and other named individuals)--and each and every other person acting at the direction of or in concert with them--to cease and desist from representing themselves as officers of the Association, to refrain from acting as a collective-bargaining representative at any of the worksites represented by Local 537 unless requested by the trustee, and to refrain from interfering in any manner with Local 537's collective-bargaining relationships with any employer that employs Local 537 members. The instant petition appears to directly contravene the court-ordered consent decree, which, by definition, was voluntarily entered into by the Association's president. Holding the case in abeyance will account for the court's order to the extent it is deemed warranted.

Finally, I note that Region 6 previously postponed indefinitely the processing of RC petitions that had been filed in that region which appear to involve similar issues. In my view, holding the instant petition in abeyance pending resolution of the trusteeship issue by the district court will also help ensure that the instant petition and the Region 6 petitions are treated similarly to the extent that is appropriate.

For all these reasons, I respectfully dissent from the Majority's decision to deny the requests for review and from its order directing the Regional Director to open and count the impounded ballots.

MARK GASTON PEARCE,

MEMBER

Dated, Washington D.C. August 20, 2018