

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.

ADAM BEATY

Petitioner,

and

Case No. 16-RD-232491

L&L FABRICATION, LLC,

Employer,

and

SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION  
LOCAL 68,

Union.

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**SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 68'S  
OPPOSITION TO PETITIONER'S AND EMPLOYER'S REQUESTS FOR  
REVIEW**

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## INTRODUCTION

Sheet Metal Workers International Association, Local 68 (“Union”) hereby responds in opposition to the requests for review filed by Adam Beaty (“Petitioner”) and by L&L Fabrication, LLC (“Employer”). Neither petition presents a compelling reason for the reconsideration of the voluntary recognition bar. The Petitioner’s proposal that the Board abandon the voluntary recognition bar altogether is odds with decades of settled Board policy that has appropriately balanced the Section 7 interest of employees to designate a bargaining agent that enjoys a reasonable period to produce results against the Section 7 interest of employees to test their union’s majority status at reasonable intervals. The Board should reject the Petitioner’s request to discard this policy based upon the demonstrably false premise that the National Labor Relations Act disfavors voluntary recognition as a means to establish bargaining relationships. Meanwhile, the Employer’s proposal that the Board modify the recognition bar to the extent that it defines a reasonable period as lasting at least six months from the commencement of bargaining is also unwarranted. As articulated in *Lamons Gasket* 357 NLRB 739 (2011) and *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), the Board’s definition of a reasonable minimum yardstick for bargaining is soundly based upon the agency’s experience and empirical data showing that first-contract bargaining poses challenges that long-time bargaining relationships usually do not encounter. The fact that the Employer argues that it has indeed encountered challenges in bargaining this first contract only confirms that the Board’s approach is the right one. The Employer presents no compelling reason to review this important Board policy.

## **ISSUES PRESENTED**

### **I. Issue Presented by the Petitioner's Request for Review**

Since 1966, the Board has applied the voluntary recognition bar as a means of balancing both the Section 7 right of employees to designate a collective bargaining representative, protecting that choice from a decertification challenge for a reasonable period of time, and the Section 7 right of employees to elect whether they desire continued representation by that representative at reasonable intervals. The Petitioner urges the Board to abandon the voluntary recognition bar in favor of allowing employees to file decertification petitions whenever they want, hypothesizing that employees' asserted Section 7 interest in seeking to decertify a union at any time should prevail over employees' Section 7 interest in designating a bargaining agent that can negotiate for a reasonable time before such a petition may be processed. Should the Board deny the Petitioner's request for review, hewing instead to longstanding principles that have successfully balanced employee statutory rights for over five decades?

### **II. Issue Presented by the Employer's Request for Review**

In *Lamons Gasket Co.*, *supra*, the NLRB defined the length of a reasonable period for recognition bar purposes as being no less than six months after the parties' first bargaining session and no more than 1 year based on its experience that six months constitutes a minimum reasonable period for a union to be expected to achieve results and to safeguard against the risk of employer foot-dragging. The Employer proposes that the six-month minimum be abandoned, conjecturing that the Regional Director would have found that the reasonable period here had elapsed because the Union's economic

demands are “unworkable” and made in bad faith. Should the Board continue to adhere to the balanced policy it announced in *Lamons Gasket* because the policy fully contemplates that first-time bargaining will encounter the kinds of difficulties the Employer describes?

### **STATEMENT OF THE FACTS**

On August 15, 2018<sup>1</sup>, L&L Fabrication (“Employer”) voluntarily recognized the Union based upon a showing of majority employee support. On September 4, the Employer and the Union commenced bargaining towards a collective bargaining agreement. On December 10, the Petitioner filed the decertification petition in this case.

The Regional Director dismissed the petition, stating that:

Under Board law, the parties must be afforded a reasonable time to bargain and to execute the contracts resulting from such bargaining before the Union’s majority status may be properly challenged. The Board has found that a recognition bar will apply for a reasonable time period of no less than six (6) months from the date of the parties’ first bargaining session. Here, the Employer and the Union met for their first bargaining session on or about September 4, 2018.

(Decision to Dismiss, P. 1).

Documents presented by the Employer in support of its petition for review indicate that the parties engaged in bargaining on October 2 and again on October 5, and possibly at other times. Employer’s Request for Review, Exhs. A & B. At the October 5 session,

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<sup>1</sup> All dates are 2018 unless otherwise indicated.

the Union modified its wage proposal and produced information that the Employer had requested. The parties agreed to proceed via email with “final” and “counter” proposals. Accordingly, the Union presented what it called a “revised copy of the proposed wage increases.” *Id.*, Exh. B, p. 1. The Employer refused to respond and the Union was forced to inquire again. *Id.*, p. 3. The Employer stated that it would pursue unfair labor practice charges instead of engaging in further bargaining. *Id.*

## **ARGUMENT**

Neither the Petitioner nor the Employer’s request for review presents a compelling reason to alter the Board’s established recognition bar policy. The Petitioner’s argument that the Board should abandon the policy altogether would constitute an unprecedented departure from an approach that has been accepted at a basic level by the Board across every presidential administration since the mid-1960s. The Board should reject the Petitioner’s invitation to discard a policy that properly balances the Section 7 interest of employees to designate a bargaining agent that can effectively negotiate for a reasonable period with the Section 7 interest of employees to seek to decertify that agent at reasonable intervals. Meanwhile, the Employer’s argument that *Lamons Gasket* should be overruled to the limited extent that it defined a reasonable bar period to constitute at least six months and no more than one year from the date bargaining commenced also fails to present a compelling reason to grant review. The fact that the Employer here contends that the Union is intransigent and that its economic demands are “unworkable” provides no reason to revisit Board policy. Indeed, the Employer’s argument that initial

bargaining has been difficult only demonstrates the soundness of the Board's policy in setting a six-month yardstick, which was premised on the understanding that initial bargaining can in fact be difficult.

Neither the Petitioner's nor the Employer's Request for Review offers a compelling argument to revisit the Board's established recognition bar policy. The Union will address their major arguments in turn.

**I. The Petitioner's request that the Board abandon the voluntary recognition bar altogether presents no compelling reason to grant review.**

**A. Congress and the courts have made clear that voluntary recognition is a legitimate component of the NLRA.**

The Petitioner's attack on the voluntary recognition bar is fueled by a deep hostility to voluntary recognition itself as a valid means for establishing representative status within the framework of the NLRA. Because that hostility animates the speculative insinuations that he offers about the motives of employers and unions in reaching voluntary recognition agreements, we will start by reviewing the legitimate role that Congress gave voluntary bargaining relationships within the structure of the Act.

The Petitioner posits that a union's status as exclusive bargaining agent is inherently untrustworthy when bestowed voluntarily by the employer instead of through a secret ballot election because employers and unions cannot be trusted to abide by the law. He labels as "suspect" all bargaining relationships that are reached voluntarily and posits that [t]here exists a long and sordid history of employers and favored unions making backrooms deals that disregard employee free choice." Petitioner's Request for Review,

pp. 7-8. Indeed, he calls the present recognition “suspect,” although there is not a semblance of evidence to support that claim. *Id.* at p. 14.

The Petitioner’s ideological opposition to voluntary recognition stands in stark contrast to Congress’ explicit *approval* of it as a valid means to establish Section 9(a) status under the National Labor Relations Act. Congress recognized voluntary recognition in two parts of the Act. First, Section 9(c)(1)(A) states “[w]henever a petition shall have been filed . . . by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees [ ] wish to be represented for collective bargaining and *that their employer declines to recognize their representative* as the representative defined in section 9(a),” the Board shall investigate and conduct a secret ballot election as appropriate. 29 U.S.C. §159(c)(1)(A) (emphasis added). Thus, within the statutory scheme, a secret ballot election is warranted as a recourse where the employer refuses in the first instance to voluntarily recognize employee’s designated representative.<sup>2</sup>

Second, Section 9(a) of the Act places bargaining representatives on equal footing regardless whether they are “designated” by employees through non-Board processes or “selected” by employees through Board-conducted elections. 29 U.S.C. § 159(a). The U.S. Supreme Court recognized this in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575

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<sup>2</sup> The Board has not interpreted the cited language to require employer refusal to bargain as a jurisdictional prerequisite to conducting an election. *See Lamons Gasket*, 357 NLRB at n. 6; *Advance Pattern Co.*, 80 NLRB 29, 29-35 (1948). But the plain language of the statute makes clear that Congress considered elections to be a necessary recourse only when the employer has refused to recognize the union voluntarily.

(1969) where it reasoned that “[s]ince s 9(a) in both the Wagner Act and the present Act, refers to the representative as the one ‘designated or selected’ by a majority of the employees without specifying precisely how that representative is to be chosen, it was early recognized that an employer had a duty to bargain whenever the union representative presented ‘convincing evidence of majority support.’” *Id.* at 596.

The courts have long recognized that voluntary recognition serves a valid function within the statutory scheme enacted by Congress. In *United Mine Workers v. Arkansas Flooring Co.*, 351 U.S. 62 (1956), the Supreme Court acknowledged that a “Board election is not the only method by which an employer may satisfy itself as to the union’s majority status,” and that Section 9(a), “which deals expressly with employee representation, says nothing as to how the employee’s representative shall be chosen.” *Id.* at 71, 72. In *ILGWU v. N.L.R.B. (Bernhard-Altman Texas Corp.)*, 366 U.S. 731 (1961), the Court affirmed that a union must demonstrate actual majority support before it may be recognized as the exclusive representative, but this can be accomplished if “an employer takes reasonable steps to verify union claims [of majority status] . . . by cross checking, for example, well-analyzed employer records with union listings or authorization cards.” *Id.* at 738. In *Gissel Packing Co., supra*, 395 U.S. 575, the Court analyzed and rejected the Fourth Circuit’s ruling that the Taft-Hartley Amendments had rendered authorization cards inoperative as a means to determine majority support, concluding that “the 1947 amendments did not restrict an employer’s duty to bargain under Section 8(a)(5) solely to those unions whose representative status is certified after a Board election.” *Id.* at 595-600 & n.17. *See also N.L.R.B. v. Broad Street Hosp. & Med.*

*Ctr.*, 452 F.2d 302, 305 (3rd Cir. 1971) (“Voluntary recognition by employers of bargaining units would be discouraged, and the objectives of our national labor policy thwarted, if recognition were to be limited to Board-certified elections. . . .”); *N.L.R.B. v. Lyon & Ryan Ford, Inc.*, 647 F.2d 745, 750 (7th Cir. 1981) (“An employer’s voluntary recognition of a majority union remains ‘a favored element of national labor policy.’”) (internal citation omitted), *cert. denied* 102 S.Ct. 391 (1981).

Indeed, as far back as 1948, Republican Senator Fred Hartley, one of the authors of the Taft-Hartley Act, recognized the legitimacy of voluntary recognition and rejected the notion that the Board should shape policy based upon a presumption that such relationships are suspect:

When approached by a union organizer with a demand for recognition, would it not be logical to suppose that [management] would first demand proof of a majority organization and recognize the union as the collective bargaining representative of his employees only when furnished with such proof?

Why should it be necessary to continue the elaborate, costly, and confusing processes of the National Labor Relations Board, with its thousands of employees both in Washington and throughout the country, in examining, questioning, and determining in each instance which labor organizer has the confidence of a majority of the employees of every individual plant in the nation?

Sometime, somewhere, our Federal government must make a start at retrenching.

Fred A. Hartley, *OUR NEW NATIONAL LABOR POLICY*, 188 (1948).

Whether or not one agrees that permitting Section 9(a) status to arise based on

voluntary recognition was a wise policy choice for Congress to make in 1935, it cannot be seriously questioned that voluntary recognition is engrained in both the express terms and the underlying policy of the Act as it stands today. While the Petitioner may presume that employers and unions are prone out of self-interest to strike “backroom deals,” and while he may argue that the Board should fashion its policies around such presumptions, these are clearly not presumptions that *Congress* shared when it enacted the statute. Nor are they presumptions that successive complements of the NLRB have entertained for over five decades in determining that the voluntary recognition bar legitimately advances the purposes of the Act.

The recognition bar strikes a proper balance between voluntary recognition as a legitimate means by which employees may designate their representatives for purposes of collective bargaining and the need to ensure that employees are afforded reasonable opportunities to choose whether they still wish to be represented by a union at all. Without offering empirical evidence or even persuasive argument, the Petitioner contends that the voluntary recognition bar interferes with the statutory rights of employees who want to decertify their union, and that it affords too much deference to the statutory rights of employees who desire their union to be able to negotiate for a reasonable period of time unfettered by challenges to its majority status. As we now show, the Petitioner presents no compelling reason for review of the Board’s sound and longstanding practice.

**B. *Lamons Gasket* was based on decades of Board law recognizing the valid role that the recognition bar plays in effectuating the purpose of the Act, and should not be disturbed.**

In *Lamons Gasket*, the Board affirmed the voluntary recognition bar, and reversed

the Board's determination in *Dana Corp.*, 351 NLRB 434 (2000), that the voluntary recognition bar should be suspended until after the posting for 45 days of a notice advising employees of their right to seek the union's decertification upon a 30 percent showing of interest. To be sure, the Board in *Dana* did not do what the Petitioner asks it to do here: to gut the voluntary recognition bar entirely. To the contrary, the *Dana* majority stated that "[w]e continue to support voluntary recognition, and thereby encourage the stability of collective-bargaining relationships established on that basis, by continuing to apply the recognition bar." *See Dana Corp.*, *supra*, 351 NLRB at 438. Far from throwing the bar out with the bathwater, as it were, the *Dana* majority only modified the policy in order to effectuate what it considered to be a "'finer balance' of interests that better protects employee free choice." *Id.* at 434.

By all appearances, the Petitioner's counsel (whose organization represented the petitioner in one of the consolidated *Dana* cases) now believes that *Dana* did not have the desired effect of having enough newly recognized units decertified. Instead of asking the Board to revert to *Dana*'s modification of the voluntary recognition bar (itself an unwarranted innovation), the Petitioner proposes that the Board discard the bar altogether. In this sense at least, the Petitioner tacitly concedes that the Board was correct in *Lamons Gasket* when it concluded that the *Dana* procedures resulted in only a small handful of voluntary recognitions being dissolved through decertification proceedings; the overwhelming majority of such relationships remained in effect either because employees were not interested in their opportunity to decertify the union or because they affirmed their choice of representation during the election. *See* 357 NLRB

at 742-743. The *Lamons Gasket* majority concluded from this data that the *Dana* majority's presumption that authorization cards do not constitute reliable evidence of majority support was not borne out by the evidence. But the Petitioner would draw a different conclusion: he would have the Board conclude that the lesson to be drawn is that the procedures adopted in *Dana* simply did not give employees *enough* opportunity to decertify their recognized union. He argues that the Board should forgo the notion of striking a "finer balance" of interests, and simply get rid of the bar altogether.

The Board should reject the Petitioner's invitation to experiment with longstanding policies based on nothing more than evidentiary speculation spiked with a transparent opposition to the very idea of collective bargaining. The voluntary recognition bar is soundly based upon the important proposition that "a bargaining relationship once rightfully established must be permitted to exist and function for a reasonable period in which it can be given a fair chance to succeed." *Franks Bros. Co. v. NLRB*, 321 NLRB U.S. 702, 705 (1944). Underlying this principle is the recognition that "[a] union should be given ample time for carrying out its mandate on behalf of its members, and should not be under exigent pressure to produce hot-house results or be turned out." *Brooks v. NLRB*, 348 U.S. 96, 100 (1954). Except for the brief detour under *Dana*, the Board has applied this principle to voluntary recognition arrangements without fanfare since 1966. See *Keller Plastic Eastern Inc.*, 157 NLRB 583 (1966) (ruling that the employer could not withdraw recognition, even if it had a good faith doubt about the union's continued majority support, for a reasonable period of time); *Sound Contractors Ass'n*, 162 NLRB 364-365 (1966) (ruling that a petition seeking to challenge the

recognized union's status is barred for a reasonable period of time following the recognition); *see also Universal Gear Service Corp.*, 157 NLRB 1169, 1171 (1966), *enfd.* 394 F.2d 396 (6th Cir. 1968); *Blue Valley Machine & Mfg. Co.*, 180 NLRB 298, 304 (1969), *enfd. in relevant part* 436 F.2d 649 (8th Cir. 1971); *Mont Ward & Co.*, 162 NLRB 294, 297 (1966), *enfd.* 399 F.2d 409 (7th Cir. 1968); *Broad Street Hospital & Medical Center*, 182 NLRB 302 (1970), *enfd.* 452 F.2d 302, 306-307 (3d Cir. 1971); *Timbalier Towing Co.*, 208 NLRB 613, 613-614 (1974); *Whitemarsh Nursing Center*, 209 NLRB 873, 873 (1974); *Brown & Connolly, Inc.*, 237 NLRB 271, 275 (1978), *enfd.* 593 F.2d 1373 (1st Cir. 1979); *Rockwell International Corp.*, 220 NLRB 1262, 1263 (1975); *Ford Center for the Performing Arts*, 328 NLRB 1, 1-2 (1999); *MGM Grand Hotel, Inc.*, 329 NLRB 464, 464-465 (1999); *Seattle Mariners*, 335 NLRB 563, 565-567 (2001). And as stated above, even when the *Dana* majority modified the bar in 2007, it explicitly affirmed the policy's importance and did not entertain the extreme notion that it should be discarded altogether. *See Dana Corp.*, *supra*, 351 NLRB at 438.

Nor should the Board do so now. As the Board observed in *Lamons Gasket*, several aspects of voluntary recognition serve to safeguard the statutory rights of employees, even as it advances the Act's stated purpose of "encouraging the practice and procedure of collective bargaining." 29 U.S.C. § 151; *Lamons Gasket*, 357 NLRB at 746-747. In fact, discarding the voluntary recognition bar is more likely to hinder than advance the interest of free employee choice that the Petitioner champions as the basis for her petition. If one borrows from the Petitioner's playbook of viewing unions as motivated by interests different than those of the employees whom they represent, then

one should logically expect newly-formed unions to find it in their own self-interest to reach hot-house collective bargaining agreements quickly and on terms less advantageous than they might otherwise reach owing to the need to gain the protection of a contract bar against a possible decertification petition. Under this scenario, not only would collective bargaining as a process for balancing the interests of employers and employees suffer detriment, but employees opposed to that process would be barred from seeking to challenge their bargaining representative for up to three years under the Board's contract bar doctrine, as opposed to just a reasonable period of time under the voluntary recognition bar. Creating incentives for unions to reach inferior agreements lest they be turned out could easily create consequences that are contrary to those that the Petitioner professes to value. But that is often the result of taking a scorched-earth approach to years of settled policy.

In sum, the Petitioner's theory that the Board should abandon the voluntary recognition bar presents no issue warranting review. The request should be denied.

**II. The Employer's request that the Board modify the voluntary recognition bar to eliminate the six-month minimum period for bargaining presents no compelling reason to grant review.**

The Employer urges the Board to modify its current policy defining a reasonable period for purpose of the recognition bar to constitute a minimum of six months from the date that bargaining commenced. The Employer argues that this policy should be abandoned either as a general matter or at least in this particular case because it is frustrated with what it describes as the Union's bad faith bargaining tactics.

The Employer presents no compelling reason to grant review of established Board

policy. Indeed, the Employer's arguments only demonstrate why the Board's current approach is sound. To show why this is the case, the Union will first review the Board's reasonable period policy and its empirical underpinnings under the law as it currently stands. The Union will then explain why the Employer's interest in seeking the Union's decertification provides no reason to modify that policy.

In *Lamons Gasket*, the Board provided guidance as to what constitutes a reasonable period for purposes of applying the voluntary recognition bar, explaining that the bar should last no less than six months from the commencement of bargaining and up to one year. *See Lamons Gasket, supra*, 357 NLRB at 748. The Board incorporated the factors set out in *Lee Lumber* to define circumstances that might justify extending the bar beyond the initial six months. *Lee Lumber, supra*, 334 NLRB at 402.<sup>3</sup> The Board's approach provides ascertainable benchmark for employees, unions, and employers with respect to the employees' right to challenge a union's majority status while at the same time reserving to the Board the flexibility to address the recognized danger that "some employers may drag their feet in negotiations to avoid reaching a contract before the end of the 6-month period." *Lee Lumber, supra*, 399 NLRB at 402.

The benchmarks that the Board adopted in *Lamons Gasket* are rooted in both Board precedent and experience. In *Lee Lumber*, the Board stated that

[e]xperience teaches us that a period of around 6 months approximates the

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<sup>3</sup> Those factors are: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse. 334 NLRB at 402.

time typically required for employers and unions to negotiate renewal collective-bargaining agreements. Data collected by the Federal Mediation and Conciliation Service (FMCS) confirm the accuracy of that time period. Data from fiscal years 1998 through 2000 reveal the average length of time between the filing by either party of a notice with the FMCS of proposed termination or modification of the agreement and the conclusion of a renewal contract. In FY 1999, it was 172 days, and in FY 2000, 183 days. Assuming good-faith bargaining by the parties, it appears that 6 months is a fair estimate of the time unions need to show what they can accomplish in renewal contract negotiations.

*Id.* at 402. With respect to first-time negotiations, the Board cited FMCS data showing as follows:

The average length of time after certification for newly certified unions to reach initial contracts 296 days in FY 1998, 313 days in FY 1999, and 347 days in FY 2000. . . . That was almost twice the average length of time, indicated above, required to conclude renewal agreements.

These data indicate only the average length of time taken in negotiations by parties who successfully concluded collective-bargaining agreements. They do not reflect the fact that a relatively high percentage of initial contracts do not end in contracts.

*Id.* at n. 40.

Given the foregoing, the Board's adoption of a six-month minimum with flexibility to assess whether circumstances warrant a greater period constitutes sound policy. By no means does the policy guarantee that a labor agreement will be reached prior to the employees successfully filing a decertification petition: indeed, given the facts cited above, petitions should be processed in a substantial number of circumstances. But the Section 7 right of employees to seek to decertify their union is far from the *only*

Section 7-interest at play (notwithstanding that it is bandied about as the Act's cardinal concern by those who oppose collective bargaining in the guise of defending individual employee choice). Collective bargaining is the *direct expression* of employees' Section 7 right to form and join unions freely under the Act. Putting aside the debate over whether it is the Act's paramount concern, it is at least on *equal footing* with the Section 7 right of employees to organize against union representation. The current recognition bar properly aligns those competing interests.

Of course, an employer has no Section 7 right to be free from bargaining demands that it considers onerous, and that is really the main thrust of the Employer's argument here. It avers that the Union has "pushed the Employer to accept the terms of a standard form agreement," something that it considers "entirely unworkable for a manufacturing business." Employer's Request for Review, p. 3. It is frustrated with the Union's "regressive" wage proposal that "appeared only to benefit employers in the construction industry or the Union itself." *Id.* at p. 9. Indeed, it claims, "[a] bargaining representative for the Union went so far as to say that he would rather see L&L go out of business than back off the package the Union had negotiated with other contractors." *Id.* at p. 3. The Employer argues that this amounts to bad faith bargaining, and is obviously prepared to litigate its unfair labor practice theory in this representative proceeding should the Board to allow it to do so. *Id.* at p. 4.

But the fact that the Employer may be miffed by the Union's substantive proposals and the pace of bargaining provides no reason to revisit Board policy regarding what constitutes a reasonable period for negotiations to ensue before a decertification petition

should be processed. In fact, the Employer's arguments demonstrate why current policy is entirely sound. First-time negotiations are frequently characterized by outsized expectations and rhetorical posturing before the moment comes when the parties either get down to brass tacks or decide that a deal is out of reach. Nothing that the Employer complains about here is unusual in that regard. Furthermore, it has long been the rule that the Board does not allow representation proceedings to be turned into fora for litigating claims of unfair labor practices, as the Employer promises to do here should the case be remanded to the Regional Director. The Employer provides no compelling reason to reverse the Regional Director's decision.

Thus, even if the Board were inclined in an appropriate case to revisit the definition of "reasonable period" established in *Lamons Gasket*, the present case does not provide an appropriate vehicle for developing and applying other possible options. For instance, if the Board were inclined to establish a bright-line six-month rule as it did in the successor bar scenario, *see UGL-UNICCO Service Co.*, 357 NLRB 801 (2011), the instant petition must still be dismissed because it was filed within six months of both the commencement of bargaining and even recognition. It is also worth noting that the Employer barely disguises that it expects employees to file a new petition after March 4, 2019 (because they are "fed up," says the Employer). If that transpires (and if the Employer does not break the law in assisting them to do so), the Regional Director will then have occasion to evaluate the status of bargaining after six months and the Employer will have occasion to make its argument that a bargaining stalemate militates in favor of immediate processing of the petition. Indeed by the time this Request for Review is ruled

upon, that may have already happened. Regardless whether it does or not, the Employer's palpable dissatisfaction with the Union's economic proposals provides no compelling ground to grant review of an important Board policy. There is no other compelling reason to do so.

### CONCLUSION

For the foregoing reasons, the Petitioner and the Employer's requests for review present no compelling reason warranting review, and should be denied.

Dated: January 22, 2018

Respectfully submitted,

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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO**

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled **SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 68'S OPPOSITION TO REQUEST FOR REVIEW** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 22nd day of January, 2019 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 22, 2019 at San Francisco, California.

/s/Charles Gonzalez  
Charles Gonzalez