

March 11, 2019

In the Matter before the National Labor Relations Board

Case #: 18-RC-233643



Employer, Avera Marshall

Certified Representative, American Federation of State County & Municipal Employees, Council 65, AFL-CIO (Hereafter AFSCME Council 65)

Statement of Opposition on Request for Reconsideration of Election; Support for the decision of the Regional Director to Certify AFSCME Council 65 as Exclusive Representative

AFSCME Council 65, pursuant to Sections 102.67 (c), (e) and 102.69 (c)(2) Board's Rules and Regulations, writes in Opposition to the request by the Employer, Avera Marshall for Motion of Reconsideration and Re-Election of the newly Certified AFSCME Council 65 Licensed Practical Nurses, Local 105 at Avera Marshall, Marshall, MN. AFSCME Council 65 supports the Certification of AFSCME Council 65 as the exclusive representative.

Background

AFSCME Council 65 filed an RC petition for a bargaining Unit made up of Licensed Practical Nurses at a Clinic in Marshall, MN which until January 1, 2019 had gone by the name of Carris ACMC. See Petition: 18-RC-233462. In the initial petition filed, AFSCME Council 65 suggested the election be held on-site 30 minutes before and after each work shift on one date in the month of January, 2019. It should be noted that on January 9th, the Employer suggested the specific date of February 1, 2019 in the response to the election petition.

On January 10, 2019, a pre-election hearing was conducted at the Lyon County Courthouse in Marshall, MN. The pre-election hearing focused mostly on the make-up of the Voting Unit, vs details of the

specific Election date and procedures. Testimony provided by both parties on record related primarily to which Licensed Practical Nurses should be included or excluded in the Bargaining Unit.¹

It should be noted, neither party provided testimony indicating February 5th, 2019 would be a date to avoid. In fact, when working toward a possible stipulated agreement to avoid hearing, AFSCME Council 65 proposed any single voting date on January 29, 30 or 31st, or February 5, 6, 7th. We maintained our position to the Board Agent that voting shifts be held on-site for 30 minutes before and after the regular work shifts. The rationale for the dates selected was that these dates were all mid-week, rather than falling on a Friday or Monday.

January 18th, 2019, the Regional Director issued her Decision and Direction of Election. AFSCME Council 65 continued our contact with potential voters, and are aware from the same group of workers the Employer did the same. It was not until January 31st, emailed at 3:21 pm that the Employer first raised a concern regarding the “disenfranchised voters.”²

The Employer cites the potential for 29% of the voting block to be unable to vote in the Election³. This supposition includes that if an individual was not scheduled, they would not be able to cast a ballot. The Acting Regional Director appropriately determined “As with any selected election date, it is likely some employees will not be working on the scheduled election date.” At most, the employer was aware workers were not on the schedule to work and may have personal plans. AFSCME Council 65 can only assume the employer was not polling individual voters regarding their voting plans.

Regardless of the intent, the 29% appears to be a false equivalent, as **81% of the voting block *did*** in fact choose to vote on Election Day. AFSCME Council 65 believes in a fair voting process, and in this case, we believe there was no diversion from that course.

¹ There was very little discussion of voting dates, however, it should be noted there was no issue raised regarding whether February 5th as a potential date for election was unacceptable to either party. It was discussed the Sonya Kayser would be the on-site representative for the Employer.

² Email received as part of Service from Nancy Sirany at 3:21 p.m.

³ Employer Motion for Reconsideration, February 11, 2019

History is clear that many elections do not meet an 80% of potential voters appearing to cast ballots on Election Day. What is *unclear*, is whether the voters identified in this case as *possibly* being unable to vote in the employer affidavit by Ms. Sonya Kayser, would have in fact voted; or whether that would have materially changed the election outcome. We know at least two (2) of the six (6) identified voters did in fact vote, because 17 of 21 Nurses voted.

Conclusion

In scheduling elections, the Regional Directors and Board have a long history of proper election handling. This Election does not meet the compelling reasons laid out in 102.67 (c). Specifically, there is no departure from Board Precedent, law or policy; there is a clear record without factual errors prejudicing either party; the conduct of the hearing did not result in a prejudicial error; there is a lack of compelling reason for reconsideration of the Election.

We believe the Regional Director was correct in dismissing the Employer's Request for Reconsideration, and appropriately certified AFSCME Council 65 as the Representative for the Bargaining Unit.

Supporting Case Law in Coast North America Trucking LTD 325 NLRB 980; Saint Jean Des Pres Restaurant, 279 NLRB 109, 115 (1986) was cited and form a basis of our opinion that this case does not warrant a "re-election" or set aside. We believe this appeal should be dismissed and the Certification of AFSCME Council 65, Local 105 be upheld and in full force and effect.

Best regards,

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