

United States of America  
Before the National Labor Relations Board

RAD MANUFACTURING, LLC,	:	
	:	
	:	Case 04-RM-230627
Employer,	:	
	:	
v.	:	
	:	
	:	
UNITED STEEL, PAPER AND	:	
FORESTRY, RUBBER,	:	
MANUFACTURING, ENERGY,	:	
ALLIED INDUSTRIAL AND SERVICE	:	
WORKERS INTERNATIONAL	:	
UNION, LOCAL 8567, AFL-CIO	:	
	:	
	:	
Union,	:	

**RAD MANUFACTURING, LLC'S STATEMENT IN OPPOSITION TO UNION'S  
REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION ON  
OBJECTIONS AND CERTIFICATION OF RESULTS**

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Attorney for Employer, RAD MFG, LLC

## **HISTORY OF THE CASE**

RAD Manufacturing, LLC (hereinafter the “RAD”) is a Delaware Limited Liability Corporation engaged in the manufacturing and distribution of hardwood flooring products at its 531 Maple Street, Nescopeck, Pennsylvania facility. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 8567, AFL-CIO (hereinafter the “Union”), is the sole and exclusive collective bargaining agent for the full-time production employees employed by RAD at its facility located at 531 Maple Street, Nescopeck, Pennsylvania. The parties’ collective bargaining agreement expired on October 31, 2017. On November 7, 2018, RAD filed a RM Petition with the Board based upon the fact that it had a good faith uncertainty about the majority support of the Union by the Bargaining Unit members. RAD and the Union entered into a Stipulated Election Agreement and an election was held on Friday, December 7, 2018 whereby the majority of voters cast ballots directing that they do not want to be represented by the Union, On or about December 4, 2018 the Union filed its first ULP charge with the National Labor Relations Board (“NLRB”)(04-CA-232028). On or About December 13, 2018 the Union filed its second ULP charge with the NLRB (04-CA-232731) as well as identical objections to the December 7, 2018 election. On or about December 18, 2018 the Union filed its third ULP charge with the NLRB (04-CA-232908). On February 28, 2019, the Regional Director approved the request of the Union to withdraw portions of Case 04-CA-232028 and Case 04-CA-232731. The Regional Director then dismissed all but one of the Union’s ULP filings. On March 7, 2019, the Regional Director issued a Decision on Objections and Certification of Results dismissing in their entirety

the objections filed by the Union to the December 7, 2018 election and certifying the election results.

### **STATEMENT OF THE CASE**

On March 21, 2019, the Union filed a request for partial review of the Regional Director's well-reasoned, fact-based Decision on Objections and Certification of Results, seeking to have the Board overturn the Regional Director's finding that the Union's objections to the December 7, 2018 were denied/overruled in their entirety and the Certification of Results was issued. The December 7, 2018, vote was to determine whether the bargaining unit wished to continue to be represented by the Union. 39 Valid votes were counted at the December 7, 2018 election, 20 votes were cast against participating in the Union and 19 votes were cast for Union involvement.

The Union raises two (2) issues in its partial petition for review. They are that the Regional Director's decision regarding access to RAD's facility on November 21, 2018 is in conflict with Board precedent and (2) that the Regional Director's fact based Decision that RAD's statement on November 27, 2018 was de minimis and "virtually impossible" to conclude that it had the tendency to affect free choice in the election was incorrectly decided.

### **SUMMARY OF ARGUMENT:**

Under Board regulation 102.67(d), the party seeking review must demonstrate that compelling reasons exist for review. 29 C.F.R. 102.67(d) states that there are limited grounds upon which review may be granted. Specifically they are (1) that a substantial question of law or policy is raised because of the absence of or departure from officially reportable precedent; (2) the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially effects the rights of a party; (3) that the conduct of any hearing or any ruling

made in connection with the proceeding has resulted in prejudicial error; or (4) that there are compelling reasons for reconsideration of an important Board rule or policy. The Petitioner has failed to articulate a single reason which meets the burden established by 29 C.F.R. §102.67(d).

The Union's claims are without merit. The March 7, 2019, Decision on Objections and Certification of Results cites established Board precedent, and is consistent and complies with Board case law. With regard to the Union's argument regarding the events of November 21, 2018, the Union is inferring that the Regional Director determined the events on November 21 did not warrant a finding of objectionable conduct because the Union representatives were granted access to the RAD facility on November 29 and therefore there was no unilateral change to a policy of permitting the Union representatives access to RAD's facility. However, this conclusion ignores the Regional Director's finding that "the Employer had previously never been presented with a request for access by the Union for the purpose of having meetings with employees." Accordingly, the Union's assertion that ignores the fact that the Regional Director did not find a violation of policy occurred or a the Union was ever denied access to the RAD facility. Therefore, the Regional Director's decision did not deviate from established board policy and the Union's argument is without merit.

With regard to the Union's assertion that the Regional Director's decision regarding the events of November 27 are de minimis in nature, this allegation does not raise a substantial question of law and policy requiring review. Essentially, the Union is asking the Board to Review the March 7, 2019 Decision on Objections and Certification of Results because the Union does not like the Regional Director's decision. Specifically, Petitioner subjectively feels the Regional Director did not give enough weight to the evidence the Union thought supported its position, and that the

Regional Director did not interpret the evidence presented in a manner favorable to the Union. This is not a sufficient basis for review under the standard established by 29 C.F.R. § 102.67(d).

### **ARGUMENT**

#### **1. THE REGIONAL DIRECTOR DID NOT ERR BY CONCLUDING THERE WAS NO UNILATERAL CHANGE TO RAD'S PLANT ACCESS POLICY.**

The Regional Director, after taking affidavits and seeing the evidence collected in the investigation, held that the Union had never requested access to the RAD facility for the purpose of having meetings with employees. The Regional Director specifically found as a fact that “the Employer had previously never been presented with a request for access by the Union for the purpose of having meetings with employees.” March 7, 2019 Decision pg 4. Accordingly, because the Regional Director specifically found that there was no established policy in place prior to November 21, 2019, there could not be a unilateral change in policy. The Regional Director then further supported this decision with its reasoning that on November 29, RAD did allow the Union access to the facility to meet with bargaining unit members but placed reasonable restrictions on the time and place of the Union’s meeting.

The Union’s petition for review cites to the case of Frontier Hotel & Casino, 323 NLRB 815 for the proposition that a single denial of access is a violation of Section 8(a)(5). However, as previously stated the Regional Director never found a denial of access or change of any policy occurred. Accordingly, the Union has not raised an argument that meets the criteria for review under the standard established by 29 C.F.R. § 102.67(d), and is nothing more than a request for the Board to substitute its judgment for that of the Regional Director.

Further, on November 21 the Union was not denied access to the RAD facility. The parties collective bargaining agreement provides in Article VI - - Plant Visitation that “Authorized

Representatives of the Union shall be permitted to visit the plant or operations of the Company during working hours. The Representative will notify the Company prior to entering the plant or operations.” The collective bargaining agreement requires advanced notification prior to a Union Representative being allowed access to the RAD facility. There has been no practice established by the parties which allows for unannounced visitation by Union representatives or unlimited access to the RAD facility. Further, there is no language in the CBA that allows unlimited access to the facility.

On November 20, 2018, the Union representative, Mike Lapsansky, emailed RAD Human Resources manager Andrew Knipfer requesting to visit the RAD facility to do a grievance investigation. Mr. Lapsansky has never in the tenure of RAD’s current ownership, asked to conduct a grievance investigation at the RAD facility. Josh Cantor, CEO, of RAD emailed Mr. Lapsansky back and stated he was not available on November 20, 2018 and suggested that Mr. Lapsansky wait until he was available on the following day. Mr. Cantor wanted to be present while Mr. Lapsansky was at the RAD facility in case questions arose regarding the alleged grievance that was being investigated. Due to Mr. Lapsansky asking to come to the RAD facility for a grievance investigation, it was believed that there was a specific issue to be addressed and therefore Mr. Cantor wanted to be available to address the issue. Accordingly, Mr. Cantor offered to allow the Union representative to come to the RAD facility on November 21, 2018. A copy of this email exchange was provided to the NLRB field investigator.

On November 21, 2018 Mr. Lapsansky and two (2) other Union representatives showed up at the RAD facility at around noon. It should be noted that Mr. Lapsansky never informed RAD management that he would be bringing any individuals with him. At that time Mr. Lapsansky

informed Mr. Cantor that he wanted to interview all of RAD's Latino employees to determine if they had any grievances, which is not the stated purpose of the email communications scheduling the plant visit. Mr. Cantor suggested to Mr Lapsansky that they meet in his office to discuss the appropriateness of Mr. Lapsansky's timing, given the new information he was providing to Mr. Cantor regarding the purpose of his visit.

On November 21, 2018 the RAD employees were having an employee sponsored and organized Thanksgiving lunch. Mr. Cantor suggested to Mr. Lapsansky that due to the employees having their holiday lunch it might be better received by the Latino employees if Mr. Lapsansky did not conduct his interview during the Thanksgiving luncheon. Mr. Cantor suggested that instead of interrupting the employee lunch party, Mr. Lapsansky and the individuals with him use the RAD Training Room and that Mr. Lapsansky meet with the bargaining unit employees he wanted to speak with on an individual basis in said room. Mr. Cantor stated during this conversation that it was Mr. Lapsansky's choice if Mr. Lapsansky wanted to interrupt the employee lunch and that Mr. Cantor would not stop Mr. Lapsansky if he decided to go forward with his request to meet with employees during their holiday lunch party. Alternatively, Mr. Cantor simply suggested that Mr. Lapsansky return to the RAD facility later in the day after the employee party had concluded. Mr. Lapsansky decided to leave at that time saying "that was fine" as he had work to do in Berwick and he would come back to the RAD facility later in the day. Mr. Lapsansky left and did not come back to the RAD facility later that day. See the Affidavit of Josh Cantor obtained by the NLRB Field Investigator.

It is important to note a few things about the events of November 21, 2018. First, the employee holiday lunch was a unique situation that occurs rarely, and the Union had never

requested to have a grievance investigation previous to November 21. Second, Mr. Cantor never informed Mr. Lapsansky that he could not meet with employees on November 21, 2018 or that when he came to the facility Union representatives would not be granted access. Mr. Cantor only suggested to Mr. Lapsansky that Mr. Lapsansky may not want to interrupt the employee lunch and that he come back at a later time. It was, therefore, Mr. Lapsansky and the Union representatives choice to leave on November 21, 2018. Finally, Mr. Cantor offered Mr. Lapsansky a quiet space and/or the opportunity to interrupt the employee Thanksgiving celebration, but Mr. Lapsansky instead choose to leave on his own.

Because the Regional Director never found that RAD unilaterally changed a policy or denied the Union access to the RAD facility, the Regional Director's decision does not deviate from established Board precedent. Therefore, the Union has not raised an argument that meets the criteria for review under the standard established by 29 C.F.R. § 102.67(d), and RAD respectfully requests that the Union's request for review be dismissed and denied in its entirety.

**2. THE QUESTION OF WHETHER IT WAS VIRTUALLY IMPOSSIBLE TO CONCLUDE THAT THE EMPLOYER'S STATEMENT ON NOVEMBER 27, 2019 COULD HAVE HAD A TENDENCY TO AFFECT FREE CHOICE DOES NOT RAISE A SUBSTANTIAL QUESTION OF LAW AND POLICY.**

On November 27, 2018 Josh Cantor made a speech to a group of employees. As part of that speech, a fully copy of the speech was provided to the NLRB Field Investigator, Mr. Cantor stated: "The Union cannot force you to attend a meeting off-site. And cannot call a meeting on RAD property. This is not my rule, this is a government rule. There a no mandatory meetings off-site." The Regional Director held this conduct to be de minimis because it was "virtually impossible to conclude" that the conduct of Mr. Cantor would have affected the results of the election. The Regional Director based this holding on the fact that within 2 days of Mr. Cantor

making the statement, November 29, RAD permitted Union representatives to hold a meeting with employees at the RAD facility.

The Union is asking for the Board to review this decision because there is not a case which has the exact same factual scenario as the one presented to the Regional Director. However, no case is factually the same. The principal of de minimis conduct does not change based upon the facts. Weighing the factors articulated by Board precedent as to what amounts to de minimis conduct, the Regional Director properly concluded that Mr. Cantor's actions on November 27 without a doubt could not have affected the outcome of the election. The Regional Director did not deviate from established Board law nor is there a substantial question of law and policy requiring review. One comment made to a group of employees that was later corrected by the actions of RAD can be reviewed and analyzed in the normal context of de minimis conduct, which is what the Regional Director did.

The Union does not cite to any affidavits or employee statements to support its position that Mr. Cantor's statement influenced the election. Instead the Union focuses on the election results and how closely the Union lost the vote. However, other factors tend to favor finding the actions of Mr. Cantor were de minimis. The fact that the statement was made only once, the lack of severity as there was no threat or enticement of fear by the statement, the fact that the statement was made more than a week and a half prior to the election occurring, and the misconduct was not persistent with the bargaining employees and was cured by RAD because a Union meeting occurred less than 2 days later on RAD property. The Regional Director's decision weighed the appropriate facts and took into consideration the entire circumstances surrounding the claims of the Union. Ultimately, the Regional Director determined that while Mr. Cantor made an incorrect statement as

to the law, Mr. Cantor rectified that situation. Such a minor act was found to be de minimis and virtually impossible to conclude that the conduct would have affected the results of the election. Essentially, the Union is asking the Board to Review the March 7, 2019 Decision on Objections and Certification of Results because the Union does not like the Regional Director's decision. The Union subjectively feels the Regional Director did not give enough weight to the evidence the Union thought supported its position, and that the Regional Director did not interpret the evidence presented in a manner favorable to the Union. This is not a sufficient basis for review under the standard established by 29 C.F.R. § 102.67(d).

Further, the Board has consistently held that misstatements of facts or law are not grounds to set aside an election. John W. Galbreath & Co., 288 NLRB 876, 877 (1988)(a misstatement of the law does not constitute objectionable conduct because the mere fact that a party makes an untrue statement, whether of law or fact, is not grounds for setting aside an election); Riveredge Hospital, 264 NLRB 1094 (1982); Midland National Life Insurance, 263 NLRB 127 (1982); Phoenix Mechanical, 303 NLRB 888 (1991)(no basis for setting aside elections on the basis of misrepresentations by third parties). Mr. Cantor's statements on November 27 clearly fall into this category of cases and as such the Regional Director's March 7 Decision does not raise an important or compelling issue of law that warrants review by the Board.

Therefore, the Union has not raised an argument that meets the criteria for review under the standard established by 29 C.F.R. § 102.67(d), and RAD respectfully requests that the Union's request for review be dismissed and denied in its entirety.

## **CONCLUSION**

The Union has failed to articulate compelling reasons for the Board to reconsider the Regional Director's rational and well-reasoned March 7, 2019, Decision on Objections and Certification of Results. Therefore, the Board should dismiss and deny the request for review in its entirety.

Respectfully Submitted  
HOURIGAN, KLUGER & QUINN, P.C.

BY: /s/ Lars H. Anderson, Esq.  
LARS H. ANDERSON, ESQ.

Attorney for Employer, RAD MFG, LLC

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**CERTIFICATE OF SERVICE**

I, Lars H. Anderson, Esquire, hereby certify that a copy of the Employer's, Statement in Opposition to the Union's Request for Review was served upon the attorney for the Union via electronic mail at the address below. Service was made upon the following:

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Respectfully Submitted  
HOURIGAN, KLUGER & QUINN, P.C.

BY: /s/ Lars H. Anderson, Esq.  
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