

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

SABLE ELECTRIC, LLC,	§	
Employer	§	
	§	
and	§	Case No. 16-RC-243431
	§	
INTERNATIONAL BROTHERHOOD OF	§	
ELECTRICAL WORKERS LOCAL UNION 520,	§	
Petitioner	§	

PETITIONER'S REQUEST FOR REVIEW

Pursuant to NLRB Rules & Regulations Section 102.67, the Petitioner requests review of certain aspects of the Regional Director's Decision and Direction of Election in this matter, namely his finding that Eric Browder is not a Supervisor within the meaning of Section 2(11) of the Act. Browder represented the Respondent as its observer in the election conducted in this case on July 15, 2019. The grounds for review are that evidence that only came to light after the hearing establishes that Browder, indeed, is a Supervisor. The Regional Director's conclusion regarding Browder's supervisory status is clearly erroneous and prejudices the Petitioner not only in this case, but in related unfair labor practice proceedings. 102.67(d).

The hearing in this matter was conducted on June 26, 2019. After the hearing, the Petitioner filed several unfair labor practice charges against the employer, including one alleging that, during the critical period, the Respondent unlawfully discharged all of the employees who openly supported the Union. *Sable Electric*, 16-CA-244374. During investigation of the unfair labor practices, evidence came to light that the Petitioner did not have during the hearing. This evidence consists of voice recordings and testimony, including recordings of Browder himself, describing his authority to employees in a manner inconsistent with his hearing testimony.

Additionally, evidence that came to light during the unfair labor practice investigation includes at least one actual incident of Browder exercising supervisory authority by spontaneously discharging an employee in retaliation for his Union activity without any consultation with the Respondent's owner. Browder denied at the Representation Hearing that he had such authority. The evidence described herein is in the possession of the investigating Board Agent. It consists of affidavit testimony and audio recordings.

Several pending unfair labor practice charges controvert Eric Browder's supervisory status. 16-CA-244374, 16-CA-244634. The credibility of Browder's testimony in the June 26, 2019 hearing was not put to the test. *Fall River Savings Bank*, 246 NLRB 831 fn. 4 (1979) (R case hearings are not adversarial, thus the credibility of witness statements is not resolved). Browder's hearing testimony is contrary to the evidence now before the Regional Director in related unfair labor practice proceedings. Browder's credibility must be resolved by a true adversarial proceeding. If Browder is allowed to falsely claim he has no supervisory authority, and then shortly after so testifying, exercise that authority by terminating an employee in retaliation for that employee's Union activity, and then appear as the Respondent's election observer, then the protections of the Act are rendered a nullity.

Petitioner requests that the Board grant this request for review and that it remand the supervisory issue to the Regional Director for further proceedings.

Respectfully submitted,



Nicole Stasek, Organizer

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2019, I electronically filed this foregoing Request for Review. I have also e-mailed same to the following:

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