

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TITO CONTRACTORS, INC.
Employer

and

Case 05-RC-117169

INTERNATIONAL UNION OF PAINTERS
AND ALLIED TRADES, DISTRICT COUNCIL 51,
AFL-CIO
Petitioner

SUPPLEMENTAL ORDER DENYING REVIEW

The Employer's Request for Review of the Acting Regional Director's Supplemental Decision and Certification of Representative is denied as it raises no substantial issues warranting review.¹

¹ The Board has exercised its discretion to examine the entire record in evaluating the Request for Review. See Sec. 102.67(e) of the Board's Rules and Regulations.

In denying review, we reaffirm the applicability of the well-established principle that a petitioned-for employer-wide unit is presumptively appropriate under the Act. See, e.g., *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 516 (1998). In this case, it is therefore the Employer's burden to establish that the petitioned-for employer-wide unit is inappropriate by showing "that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit." *Airco, Inc.*, 273 NLRB 348, 349 (1984) (citing *E. H. Koester Bakery*, 136 NLRB 1006, 1011 (1962)). We find that the Employer has failed to show that the Acting Regional Director erred in finding that the Employer failed to meet its burden. We emphasize that, in accord with the court's remand in *NLRB v. Tito Contractors, Inc.*, 847 F.3d 724 (D.C. Cir. 2017), the Employer has now had an opportunity to present evidence at a hearing in support of the three principal contentions made in its prior offer of proof to show that the employer-wide unit is not appropriate. The evidence submitted fails to support each of the three claims made in its offer. We agree with the Acting Regional Director that the record establishes that there is no formal administrative division between the Employer's recycling and construction employees, that there is central control of labor relations, that there is at least some interchange between petitioned-for employees, and that neither the geographic dispersal of the worksites at issue nor the differences among employees in their terms and conditions of employment are sufficient to rebut the appropriateness of the unit.

Finally, with respect to the Acting Regional Director's changed circumstances analysis, we do not rely on the cases he cited involving appeals to changed

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., September 26, 2019.

circumstances in the context of contesting a continuing bargaining obligation. Due to the reopening of the representation case following the court's remand, there is no question of a continuing bargaining obligation before the Board at this juncture.