

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

**Grocery Haulers  
(Employer),**

**Case No.: 04-RD-251241**

**Teamsters Local 773  
(Union),  
and**

**Troy Konnick  
(Petitioner).**

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**PETITIONER'S REQUEST FOR REVIEW**

**INTRODUCTION**

Pursuant to Board Rules & Regulations Sections 102.67 and 102.71, Petitioner, Troy Konnick, submits this Request for Review of the Regional Director's decision to block his Decertification Petition. Petitioner requests the Board overturn the decision of the Region Director in Region 04 to block the Petition filed by Troy Konnick and 78% of the bargaining unit employees to decertify Teamsters Local 773("Union") as the exclusive bargaining agent with Grocery Haulers ("Employer") in Breinigsville, Pa..

The Union filed a charges (04-CA-247029) prior to the filing of the decertification. Following the filing of the decertification, the Union filed three additional charges. Two (04-CA25543, 04-CA-251523) of those charges made allegations against the employer for failing to bargain in good faith and the third (04-CA-251518) alleged that the employer made promises about keeping the facility open only if the Union was decertified. As discussed below, that last three charges were clearly false and intended to solely deny the employees their Sections 7 & 9 right to have a fair and prompt election. Neither the most recent charges nor the earlier charge has resulted in the issuance of a complaint. None of the charges except for 04-CA-251518 involved

allegations of employer taint in the Decertification Petition. It is clear that the Union's charges that were filed after the petition was filed are nothing but a desperate Hail Mary pass filed to prevent the election. Blocking the election based upon the filing of the unfair labor practice charges deprive employees of their statutory right to self-determination and free choice.

Petitioner urges the Board to drastically revise its "blocking charge" policy that delays/prevents decertification elections from occurring. Congress created no explicit authority for the Board to postpone or cancel elections due to the filing of unfair labor practice charges or the issuance of a complaint. Finally, the Region held no hearing to determine the truth or falsity of the Union's allegations, which Petitioner believes are spurious. *See, e.g., Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004). Indeed, no neutral designee of this Board ever reviewed the Union's allegations while also taking into consideration the Petitioner's position. The Decertification Petition was summarily blocked without any input from Petitioner or the bargaining unit employees who signed the Decertification Petition.

By his actions, the Regional Director acted outside his authority under the National Labor Relations Act ("Act" or "NLRA"), and prevented an election despite the fact that the one allegation that alleges employer interference is patently false. Denying Petitioner and other employees' statutory *rights* to decide their representational preferences for themselves under Sections 7 and 9 of the Act, 29 U.S.C. §§ 157 and 159 is outside the law. Furthermore, even if *arguendo*, the employer is guilty of failing to bargain, that does not mean that the employees should pay for the action of the employer by having their statutory rights stripped from them.

The Board exists to conduct elections and thereby vindicate employees' right to choose or reject union representation, not to act outside the authority of the Act and arbitrarily suspend election petitions at the unilateral behest of unions who fear an election loss. *C.f. Gen. Shoe Corp.*,

77 NLRB 124, 126 (1948) (holding that the Board should exercise the power to set aside an election "sparingly" in representation cases because it cannot "police the details surrounding every election," and the secrecy in Board elections empowers employees to express their true convictions); see also *NLRB v. Hart Beverage Co.*, 445 F.2d 415, 420 (8th Cir. 1971) (recognizing that "one of the purposes of the Union in filing the unfair practices charge was to abort Respondent's petition for an election"). This Request for Review should be granted because the Board's "blocking charge" rules unfairly deny employees their fundamental rights under NLRA Sections 7 and 9. The Board's "blocking charge" rules allow unions to delay all decertification elections, even as the Board's new Representation Election Rules rush all certification petitions to an election with no "blocks" allowed under any circumstances. 79 Fed. Reg. 74308, 74430-60 (Dec. 15, 2014).

The Board should put an end to this double-standard, order this election to proceed at once, and do a wholesale revision of the "blocking charge" rules. See *Cablevision Sys. Corp.*, Case 29-RD-138839, (June 30, 2016) (Order Denying Review); see also *Baltimore Sun Co. v. NLRB*, 257 F.3d 419, 426 (4th Cir. 2001) (finding that Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all."); *Conair Corp. v. NLRB*, 721 F.2d 1355, 1381 (D.C. Cir. 1983) (citing the "NLRA's core principle that a majority of employees should be free to accept or reject union representation.").

This Request for Review, challenging the Board's "blocking charge" rules, raises questions of exceptional national importance. There are compelling reasons for the Board to reconsider blocking charge rules, i.e., vindicating employee free choice. See NLRB Rules & Regulations § 102.71(a)(1) & (2), indicating that Requests for Review should be granted when "(1) . . . a substantial question of law or policy is raised . . . [or] (2) [t]here are compelling reasons for reconsideration of an important Board rule or policy." Petitioner asks the Board to: 1) grant his

Request for Review; 2) reactivate the election petition; and 3) overrule, nullify, or substantially revise the "blocking charge" rules. Such action by this Board will provide more protection for employees' right to choose or reject unionization at a time of their choosing, and less protection for incumbent unions that "game the system," unilaterally block elections, and cling to power despite their unpopularity.

It has been suggested that it is more appropriate for the Board to implement this needed reform through rule-making rather than through adjudication. However, it is clear that the Board can change the blocking charge rule by granting this Request for Review rather than through rule making. The Court in *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974) held that it is the Board's choice whether or not to implement changes through rulemaking or adjudication, therefore there is no impediment to the Board granting this Request.

#### **STATEMENT OF FACTS**

There is currently no collective bargaining agreement. On November 6, 2019, a Petition was filed by Troy Konnick and 78% of the bargaining unit employees to decertify Teamsters Local 773("Union") as the exclusive bargaining agent with Grocery Haulers ("Employer") in Breinigsville, Pa. Prior to the filing of the Petition, the Union had filed an unfair labor practice charges against Grocery Haulers in Region 04 (04-CA-247029),. A hearing was scheduled for November 15, 2019. However, on November 12, the Union filed a three new unfair labor practice charges and the hearing was cancelled. . On November 19, the Region blocked the election and sent the Petitioner a letter informing him that the charge was blocked. Two of the post-Petition charges (04-CA25543, 04-CA-251523) alleged that the employer failed to bargain in good faith. However, if the Region had questioned the bargaining unit employees it would have learned that the employees' view is that it was the Union, specifically the Union business agent, who failed to

bargain in good faith.

The third post-Petition charge (04-CA-251518) filed by the Union alleged that the employer stated that unless the decertification was successful, that the facility would be moved. The union has no evidence to support that false claim. Petitioner was prepared to provide an affidavit to the agent investigating the charge on November 25, 2019. However, the agent postponed the taking of the affidavit until a date after this Petition for Review is due. Therefore the Petitioner has made an affidavit (attached) that lays out the evidence he intended to provide to the agent. In the attached affidavit, Petitioner has sworn that the employer never stated that the drivers would not be moved to another facility unless the Union was decertified. Furthermore, it was he, the Petitioner, who told other bargaining unit employees that it was his opinion that the best way to keep the facility from moving was to decertify the union. He made it clear that it was his opinion and not based on any information from the employer. Also he informed the employees that he could not guarantee that the drivers would not be moved even if the decertification was successful.

### **ARGUMENT**

**I. There is no evidence that the Employer's conduct tainted the ability of the Board to conduct a free and fair election.**

As is made clear in Petitioner's affidavit, charge 04-CA-251518 is false and is no basis for blocking the election. Petitioner, in his affidavit, made clear that the employer did not taint the election but that the Petitioner was merely stating his personal opinion concerning the benefits of decertifying the Union.

Secondly, the other charges filed by the Union dealing with the alleged failure to bargain by the employer are also without basis. Even under current Board law, the Region erred by blocking

the petition without a hearing in which the Union must first prove there is a causal nexus between the alleged unfair labor practices and employee dissatisfaction.

The Regional Director is preventing the Petitioner and the rest of the bargaining unit from voting to decertify an unpopular and unwanted union, based on the Union's assertions in its unfair labor practice charges. The Regional Director should have held a hearing pursuant to *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004) in order for the Union to meet its burden and prove there exists a causal relationship between the alleged unfair labor practices and employee dissent. In order for an unfair labor practice to taint a petition or block an election, there must be a "causal nexus" between an Employer's unfair labor practice and the employees' dissatisfaction with the Union. *Id.* "[I]t is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." *Id.*

The Region should be required to hold a hearing and promptly determine if a causal relationship exists by analyzing a number of factors, including: "[1] the nature of the illegal acts, including the possibility of their detrimental or lasting effect on employees; [2] any possible tendency to cause employee disaffection from the union; and [3] the effect of the unlawful conduct on employee morale, organizational activities, and membership in the union." *Master Slack Corp.*, 271 NLRB 78, 84 (1984).

Here, the Regional Director made a unilateral decision to block the election based on unproven unfair labor practice allegations. This case should be used to reestablish, at the very least, the need to hold *Saint-Gobain* hearings. Petitioner has made it clear, in his affidavit that the charge alleging employer tainting of the election is untrue. He believes that earlier charges are also untrue but, even if should the charges be true, they do not impact employee free choice, and there is

no nexus between the conduct alleged and employee dissatisfaction with the Union. To so speculate is to deny employees their fundamental Section 7 rights." 342 NLRB at 434. At a hearing, the incumbent union will be required to bear the burden of proof concerning the existence of a "causal nexus." See, e.g., *Roosevelt Mem. Park, Inc.*, 187 NLRB 517, 517-18 (1970) (holding party asserting the existence of a bar bears the burden of proof); *Saint-Gobain Abrasives, Inc.*, 342 NLRB at 434. The Union will not be able to prove any nexus. However, if the Regional Director believes the union's claim that the alleged failure to bargain by the employers impacted the opinions of the bargaining unit in a decertification election, a *Saint Gobain* hearing should be held so that a determination can be made as to whether the Regional Director's belief is correct. Furthermore, if an election were held, the Union could use the alleged failure to bargain as a campaign issue to defeat the decertification. Then, at least the employees would decide and not the Regional Director or an ALJ as to whether they should be allowed to even vote.

**II. The Board and its Regional Directors lack explicit statutory authority to block an Election and the Board's rules on "blocking charges" should be abandoned or at a minimum substantially revised.**

Employees have a statutory right to petition for a decertification election under the NLRA and that right should not be trampled by arbitrary rules, bars, or "blocking charges" that prevent employee free choice. Employee free choice under Section 7 is the paramount interest of the NLRA. See *Pattern Makers League v. NLRB*, 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992); *Lee Lumber & Bldg. Material Corp. v. NLRB*, 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (employee free choice is the "core principle of the Act"). An NLRB conducted secret-ballot election is the preferred forum for employees to exercise their right of free choice. See *Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717,

725-26 (2001). Industrial stability is enhanced when employees vote in secret-ballot elections, since this ensures that employees actually support the workplace Representative empowered to speak exclusively for them. Yet, the "blocking charge" rules sacrifice this right of employee free choice based on a theory that permits an unpopular incumbent union to cling to power.

There is no statutory basis for blocking charges. Nowhere did Congress explicitly authorize the Board to ignore Section 9(e) of the Act, 29 U.S.C. § 159 (e), which clearly states that with the filing of a petition by 30% of the bargaining unit employees "the Board shall take a secret ballot of the employees in such unit." The only express limitation on the Board's mandate to conduct and certify such elections is the provision that prevents elections from being held within 12 months of a previous election. The Act contains no other limitations. No matter how offensive the alleged unfair labor practice may be, the election should be held once there is a showing of 30% seeking an election, with challenges or objections, if any, sorted out thereafter.

As noted, the "blocking charge" practice is not governed by statute. Rather, it is a creation of the Board, theoretically based upon the Board's discretion to effectuate the policies of the Act. *Am. Metal Prods. Co.*, 139 NLRB 601, 604-05 (1962); see also NLRB Casehandling Manual (Part Two) Representation Section 11730 et seq. (setting forth the "blocking charge" procedures in detail). But the "blocking charge" rules stop employees from exercising their paramount Section 7 right to choose or reject representation, which is not a proper use of the Board's discretion.

In the absence of blocking charges there are safeguards to election fraud or significant unlawful employer activity. Objections can be made and a post-election hearing held to determine the validity of those objections and whether they impacted employee free choice. The solution to conduct that allegedly interferes with a free and fair election is not to prevent the election from occurring whenever blocking charges are filed. Indeed, that can be a very time-consuming process due to

complaint issuance, trial, and appeals. Such delays can drag on for years, violating employees' right to free choice.

Petitioner does not believe that the allegations in the Union's charges are true; however, even if true many employees still wish to no longer be forced to be represented by the Union. Many employees simply do not like the union they are saddled with, and will vote it out regardless of any progress or lack thereof at the bargaining table. In short, blocking charges are not merely without statutory authorization, but they undermine the Act by limiting employee free choice. The Regional Director's reflexive application of the "blocking charge" policies ignores the fact that Petitioner and his fellow bargaining unit members may wish to be free from union representation, irrespective of any alleged employer infractions. The policies presume that the employees cannot possibly make up their own minds. This is wrong. *Overnite Transp. Co.*, 333 NLRB 1392, 1398 (Member Hurtgen, dissenting); *Cablevision Syst. Corp.*, Case 29-RD-138839 (June 30, 2016) (Order Denying Review) (Member Miscimarra, dissenting).

Petitioner and his fellow employees are not sheep, but responsible, free-thinking individuals who should be able to make their own choice about unionization. The employees' paramount Section 7 rights are at stake, and those rights should not be so cavalierly discarded simply because their Employer is alleged to have committed a violation or made a technical mistake under the labor laws. Petitioner urges the Board to overrule or overhaul its "blocking charge" policies to protect the true touchstone of the Act—employees' paramount right of free choice under Section 7. *Intl Ladies Garment Workers v. NLRB*, 366 U.S. 731, 737 (1961)

In the context of challenges to a certification petition, the Board holds the election first and settles any challenges after. If the Board can rush certification petitions to prompt elections by holding all objections and challenges until afterwards, it can surely do the same for Decertification Petitions. 79

Fed. Reg. at 74430-74460. It is time for the Board to eliminate its discriminatory "blocking charge" rules, which apply solely to employees who seek to refrain from supporting a union. The Board must create a system for decertification elections whereby such employees are afforded the same rights as employees seeking a certification election to support a union. The solution, if there is any misdeed, is to rely on the Board's objection policies with respect to elections (holding that "there could be no clearer abridgment of § 7 of the Act" than for a union and employer to enter into a collective bargaining relationship when a majority of employees do not support union representation); *see also Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004).

The Board's jurisprudence on blocking elections must be, if not eliminated, then drastically overhauled. The Board has long operated under a system of "presumptions" that prevent employees from exercising their statutory rights under Sections 7 and 9(c)(1)(A)(ii) to hold a decertification election whenever a union files so-called "blocking charges." As discussed above, this is without statutory authority. Furthermore, the Board's practice of delaying and denying elections has faced judicial criticism. *NLRB v. Minute Maid Corp.*, 283 F.2d 705, 710 (5th Cir. 1960) ("[T]he Board is [not] relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproved charge of an unfair practice has been made against the employer. To hold otherwise would put the union in a position where it could effectively thwart the statutory provisions permitting a decertification when a majority is no longer represented"); *NLRB v. Gebhardt-Vogel Tanning Co.*, 389 F.2d 71, 75 (7th Cir. 1968). Indeed, the Board's policies often deny decertification elections even where the employees are not aware of the alleged employer misconduct, and where their disaffection from the union springs from wholly independent sources. Use of "presumptions" to halt decertification elections serve only to entrench unpopular but incumbent unions, thereby forcing unwanted representatives onto employees. Judge Sentelle's concurrence in *Lee Lumber v.*

*NLRB*, 117 F.3d 1454, 1563-64 (D.C. Cir. 1997). specifically highlights the unfairness of the Board's policies. 117 F.3d at 1463-64.

Most of these "bars" and "blocking charge" rules stem from discretionary Board policies (see, e.g., Section 11730 of the NLRB Case handling Manual concerning "blocking charges") that should be reevaluated when industrial conditions warrant. *See, e.g., IBM Corp.*, 341 NLRB 1288, 1291 (2004) (holding that the Board has a duty to adapt the Act to "changing patterns of industrial life" and the special function of applying the Act's general provisions to the "complexities of industrial life") (citation omitted). Here, the Board should take administrative notice of its own statistics, which show that 30% of Decertification Petitions are "blocked," whereas certification elections are never blocked, for any reason. See NLRB, Annual Review of Revised R-Case Rules, <https://www.nlr.gov/sites/default/files/attachments/news-story/node-4680/R-Case%20Annual%20Review.pdf>.

Region 04 should be ordered to proceed to an immediate election without delay.

## CONCLUSION

As stated above, there is nothing stopping the Board from taking action in this case to grant the Petition for Review. It is the Board's choice whether or not to implement changes through rulemaking or adjudication, *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). Therefore, the Board should grant this Request for Review and order the Regional Director to

promptly process this Decertification Petition. It should also overrule or substantially overhaul its "blocking charge" and other rules which are used and abused to arbitrarily deny Decertification Petitions.

Respectfully submitted,



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*Counsel for Petitioners*

Konnick Witness Affidavit

I Troy Konnick, being duly sworn under oath, state the following:

I, Troy Konnick, being first duly sworn upon my oath, state as follows:

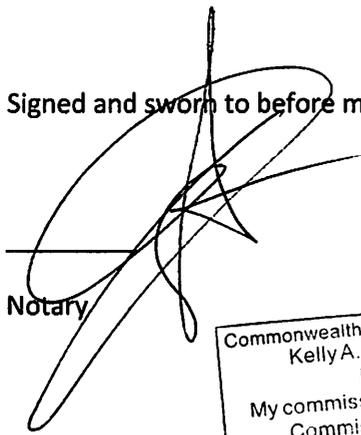
1. I am employed by Grocery Haulers in a bargaining unit represented by Teamsters Local 773 in a bargaining unit located in Breinigsville, Pa
2. I filed a decertification petition on November 6, 21019.
3. On November 12, 2019, Teamsters Local 773 filed an unfair labor practice charge 04-CA-251518.
4. The charge alleged that the employer stated on October 15, 2019 that if the employees decertified the union it would keep its facility in Breinigsville, Pa. but if they did not decertify the union it would move its facility.
5. The employer never made such a statement. I, not the employer, told other bargaining unit members that in my opinion the best way to keep the facility in Breinigsville operating was to decertify the union but that I could not guarantee that. That information was my opinion not based on any communication with the employer.

I fully understand this affidavit, and I state under penalty of perjury that it is true and correct

Date: 11-25-19

Signature:   
Troy Konnick

Signed and sworn to before me on 25 at NOV 2019  
Lehigh County State of  
Pennsylvania

  
Notary

Commonwealth of Pennsylvania - Notary Seal  
Kelly A. Ohare, Notary Public  
Lehigh County  
My commission expires June 10, 2022  
Commission number 1122983  
Member, Pennsylvania Association of Notaries

**CERTIFICATE OF SERVICE**

I hereby certify that on December 2, 2019, a true and correct copy of the foregoing Request for Review was filed electronically with the Executive Secretary using the NLRB e-filing system, and copies were sent to the following parties via e-mail, as noted:

  
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