

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

---

**NCRNC, LLC D/B/A NORTHEAST CENTER  
FOR REHABILITATION AND BRAIN INJURY,  
Employer/Petitioner,**

**- and -**

**Case No. 3-RM-250927**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST,  
Union.**

---

**C FARE LLC,  
Employer/Petitioner,**

**- and -**

**Case No. 3-RM-250938**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST,  
Union.**

---

**UNION’S OPPOSITION TO REQUEST FOR REVIEW**

Pursuant to National Labor Relations Board (“the Board”) Rules and Regulations § 102.67, 1199 SEIU United Healthcare Workers East (“the Union”) submits this statement in opposition to the request for review filed by NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury and C Fare LLC (collectively, “the Employers”). The Regional Director’s decision to dismiss the Employers’ RM petitions followed longstanding principles of Board law, and the request for review cites no authority to the contrary. There is no reason for the Board to grant review.

It is well established that “in the absence of a claim for recognition in the unit alleged as appropriate by the Employer in its RM petition, such petition will not be processed by the Board.” *United States Postal Service*, 256 NLRB 502, 504 (1981). The only evidence cited by the Employers to justify their petitions is the RC petition that was filed by the Union on October 22, 2019, and withdrawn the following week, on October 30, 2019. For several reasons, the Employers’ showing fails to meet the threshold required for processing of their petitions.

First, as the Regional Director noted, neither of the units designated by the RM petitions were coextensive with the unit designated by the Union in its (later withdrawn) RC petition. “[E]ven assuming that the filing of a petition could constitute a claim of majority status,” Regional Director’s Decision at 3, the Union’s petition did not include any employees of C Fare LLC (which employs all of the dietary employees working at Northeast Center for Rehabilitation and Brain Injury).<sup>1</sup> Both RM petitions, on the other hand, include the C Fare employees. Therefore, “a question concerning representation does not exist, and the Board is, under these circumstances, without jurisdiction to proceed with its investigation under Section 9(c)(1) of the Act.” *Ny-Lint Tool & Mfg. Co.*, 77 NLRB 642, 643 (1948); *see United Hospitals, Inc.*, 249 NLRB 562, 563 (1980); *Sonic Knitting Industries*, 228 NLRB 1319, 1320 (1977); *Woolwich, Inc.*, 185 NLRB 783 (1970); *Maclobe Lumber Co. of Glen Cove*, 120 NLRB 320, 322 (1958). As the Board explained in *Ny-Lint*, “[t]o force the Union ... to an election in a unit which it does not claim to represent would result, not only in a futile act leading toward a purely negative result, but also in depriving the employees of any opportunity to select any bargaining representative for an entire year after the election.” 77 NLRB at 643.

---

<sup>1</sup> Notwithstanding the Employers’ claim that Union counsel stated in a phone call that the Union was seeking a “wall-to-wall unit,” there is no dispute that the Union’s RC petition (which was the subject of the call) included only non-professional employees of Northeast and did not include any employees of C Fare LLC.

Even if the units designated in the Employers' petitions were the same units designated in the Union's petition, there would still be no question concerning representation because there was no Union "claim to be recognized as the representative," NLRA § 9(c)(1)(B), of any employees of either Employer. The Union has never presented such a claim to the Employer and so indicated in its RC petition by leaving box 7a unmarked. Further, by definition, an RC petition seeks only certification through the Board's election process, not voluntary recognition. As the Regional Director explained, an RC petition is qualitatively different from a claim to be recognized because it asserts only sufficient interest among employees in the petitioned-for unit to warrant holding an election, not majority support for the union as exclusive representative. It therefore cannot be deemed a "claim to be recognized" within the meaning of Section 9(c)(1)(B), and has never been treated as such.

Moreover, "[t]he Board has consistently construed Section 9(c)(1)(B) as requiring evidence of a '*present* demand for recognition' before the employer's petition will be processed." *Windee's Metal Indus.*, 309 NLRB 1074, 1074 (1992) (emphasis in original) (quoting *Martino's Complete Home Furnishings*, 145 NLRB 604, 607 (1963)). This requirement "was placed in the statute to prevent an employer from precipitating a premature vote before a union has the opportunity to organize." *Albuquerque Insulation Contractor*, 256 NLRB 61, 63 (1981). "[T]he Act contemplates that a union which is not presently majority representative may decide when or whether to test its strength in an election by its decision as to when or whether to request recognition or itself petition for an election." *Id.* Here, the Union had withdrawn its petition before the Regional Director ruled on the RM petitions, indeed, before the RM petitions were filed. Therefore, even if the RC petition could be considered a claim to be recognized, and

even if either of the RM petitions had addressed the same unit as the RC petition, there was no question concerning representation because there was no *present* demand for recognition.<sup>2</sup>

Finally, the Regional Director correctly found, contrary to the Employers and in accordance with well-established Board law, that the Union's continuing organizing activities did not constitute a claim to be recognized. The law is clear that "[m]ere campaigning by a union and knowledge of such campaigning by the employer are not the equivalent of a claim by the union that it represents a majority of the employees, nor do they constitute a request for exclusive bargaining rights under the Act." Higgins, *Developing Labor Law* 10-14 (7th ed. 2017); *see Electro Metallurgical Co.*, 72 NLRB 1396, 1399 (1947).

For all of these reasons, the Regional Director's decision to dismiss the Employers' RM petitions was proper, and the Employers' request for review should be denied.

---

<sup>2</sup> In the face of many decades of Board law and practice uniformly to the contrary, the Employers insist that "a withdrawn RC petition [is] a sufficient basis for the Region to order an election," citing as their sole authority *Local 130, IUE v. McCulloch*, No. 3018-63, 1964 U.S. Dist. LEXIS 7463 (D.D.C. Feb. 26, 1964) (copy attached). That decision, of which they provided neither a correct citation nor a copy, stands for nothing remotely resembling the proposition for which the Employers cite it. In that case, the court rejected a challenge to the Board's direction of an election in a unit consisting of two formerly separate maintenance shops, which had been represented by two different unions pursuant to Board certifications, that the employer had consolidated into a single, unified operation. *Id.* at \*1-\*10. One of the unions had engaged in a strike for recognition as representative of all employees in the consolidated shop, *id.* at \*3, and both claimed to represent their members from the pre-consolidation shops and refused to participate in the Board proceeding that resulted in the direction of election. *Id.* at \*6-\*7; *see Westinghouse Electric Corp.*, 144 NLRB 455 (1963). At no time during the course of events had either union filed an RC petition (or any other kind of petition). The narrow jurisdictional issue before the court was whether the plaintiff union could bypass the judicial review provisions of the Act under the limited exception for clear violations by the Board of statutory commands that the Supreme Court recognized in *Leedom v. Kyne*, 358 U.S. 184 (1958). The court ruled that it could not, and the court of appeals agreed. *Local 130, Electrical, Radio & Machine Workers*, 345 F.2d 90 (D.C. Cir. 1965).

Dated: New York, New York  
December 4, 2019

Respectfully submitted,

GLADSTEIN, REIF & MEGINNISS, LLP

By:       s/ Jessica E. Harris      

Jessica E. Harris  
William S. Massey  
817 Broadway, 6th Floor  
New York, New York 10003

Attorneys for 1199 SEIU United Healthcare  
Workers East

