

NATIONAL LABOR RELATIONS BOARD

Grocery Haulers, Inc., : Case: 04-RD-251241
Employer :
and :
Teamsters Local 773, :
Union :
Troy Konnick, :
Petitioner :

UNION’S STATEMENT IN OPPOSITION
TO PETITIONER’S REQUEST FOR REVIEW

I. STATEMENT OF FACTS

On November 6, 2019, Petitioner filed an RD Petition with Region 4. In his Petition, Petitioner alleged that the current certified bargaining agent was Teamsters Local 773 (Union) at the Employer’s facility in Breinigsville, PA. The bargaining unit consists of eighteen (18) employees, all of whom are truck drivers. The Union filed an Unfair Labor Practice Charge (04-CA-247029) in August, 2019. The basis for Charge was that the Employer had refused to bargain with the Union. Specifically, the Union was certified as the collective bargaining representative for approximately two years and collective bargaining did not result in execution of a collective bargaining agreement. Instead, in late 2018, the Employer notified the Union that it intended to shut-down the facility in Breinigsville, PA and move all work to other company locations.

As a consequence of effects bargaining resulting from the shutdown, the parties entered into an Agreement dated December 16, 2018. That Agreement provided, among other provisions, that employees employed at the Breinigsville, PA facility could relocate to other company facilities or receive severance. Rather than comply with the Agreement, the Employer did not shut down the Breinigsville, PA facility. Instead, it hired additional employees and transferred seven (7) existing employees to its facility in Norristown, PA. All seven (7) employees were members of the Union and supported the Union in its organizing drive and consequent efforts at collective bargaining.

After the seven (7) employees were transferred, the present Decertification Petition was filed. The Union filed three (3) additional Unfair Labor Practice Charges alleging that the Employer failed to bargain in good faith and that the Employer had made promises to keep the facility open only if the Union was decertified.

Based upon the existence of the four (4) Unfair Labor Practice Charges, by letter dated November 19, 2019, the Regional Director determined it was appropriate to hold the Decertification Petition in abeyance pending investigation of the Unfair Labor Practice Charges.

Petitioner filed a Request for Review of the Regional Director's decision to hold the Decertification Petition in abeyance. Petitioner has alleged that there is no evidence in support of the allegation that the Employer's conduct tainted the ability of the Board to conduct a free and fair election and that the Board and its Regional Director should be prohibited from allowing "blocking charges".

II. ARGUMENT

A. THE PENDING CHARGES ESTABLISH THAT THE CONDUCT OF THE EMPLOYER HAS TAINTED THE ABILITY OF THE BOARD TO CONDUCT A FREE AND FAIR ELECTION.

Considering all four (4) Charges in combination, as the Regional Director has in his decision to block the Decertification Petition, it is clear that the conduct of the Employer has been so pervasive that for the Regional Director to conduct an election without disposition of the Unfair Labor Practice Charges would not result in a free and fair election. It is imperative that the Employer's conduct be viewed in totality when deciding whether or not the Regional Director appropriately exercised his discretion in blocking the election.

On or about October 3, 2016, the Union was certified as the collective bargaining representative for all full-time and regular part-time transport drivers employed at the Employer's location at 150 Boulder Drive, Breinigsville, PA. Subsequently, the parties entered into collective bargaining negotiations but were unable to reach a collective bargaining agreement. On some date prior to December 16, 2018, the Employer notified the Union that it intended to shut down the Breinigsville, PA facility. The parties entered into collective bargaining negotiations concerning the effects of the shutdown and reached a Shutdown Agreement (hereinafter referred to as Agreement). At negotiations, the Employer asserted without equivocation that it would shut down the facility and allow the employees who were employed at the Breinigsville, PA facility to transfer to other Employer locations based upon seniority. The Employer asserted at the negotiations that there was no doubt the shutdown would occur.

Subsequent to execution of the Agreement, the Employer did not shut down the Breinigsville, PA facility but continued operations. Consequently, subsequent to July 2019, the Union demanded that bargaining resume for a collective bargaining agreement since the Employer did not shut down the facility. The Employer refused to bargain necessitating the filing of the Unfair Labor Practice Charge at 04-CA-247029.

On or about October 15, 2019, the Employer transferred the seven (7) most senior employees from the Breinigsville, PA facility to its facility in Norristown, PA. This was done in response to the Union's demand to bargain. This was also contrary to the Agreement allowing transfer on a voluntary basis by seniority. The seven (7) employees were supporters of the Union and received better wages and benefits than other employees as a consequence of their initial transfer to Breinigsville, PA from other Employer facilities. Additionally, based upon information received, the Employer notified employees that if the employees filed a Decertification Petition the Breinigsville, PA facility would remain open and would not be shut down. Shortly after this threat/promise, a Decertification Petition was filed at 04-RD-251241.

Should the Board decide that the Unfair Labor Practice Charges have merit, the resulting remedy would be the inclusion of the seven (7) illegally transferred employees as eligible voters since those employees should remain employed at the Breinigsville, PA facility. Obviously, not blocking the Petition and holding an election without the inclusion of these seven (7) employees would unduly interfere with all existing employees. The Employer's conduct in falsely alleging that it was closing the facility, engaging in shutdown bargaining, signing an Agreement concerning the shutdown, and then not shutting down the facility but instead hiring additional employees and transferring Union supporters from the facility establishes a causal relationship between

the violations alleged in the Unfair Labor Practice Charges and the subsequent expression of employee dissatisfaction with the Union.

It is well-established that employer misconduct which causes expressions of employee dissatisfaction within an incumbent union is sufficient for a regional director to block a decertification petition. *Williams Enterprises*, 312 NLRB 937, 939 (1993). The NLRB Casehandling Manual Part 2, Representation Proceedings, which sets for the standards for regional directors to apply in decisions to block elections, envisioned exactly this type of employer misconduct when a regional director exercises his discretion to block an election pending the outcome of the Charges. The obvious purpose for blocking is so that employee free choice can be determined free and clear of coercion by an employer, such as that which exists in the present case, due to the Employer's pervasive conduct as outlined herein. The Regional Director properly exercised his discretion consistent with the standards set forth in the Casehandling Manual and existing law and his decision should not be overturned.

B. THE BOARD AND ITS REGIONAL DIRECTORS HAVE STATUTORY AUTHORITY TO BLOCK AN ELECTION AND THE BOARD'S RULES ON BLOCKING CHARGES ARE APPROPRIATE.

The reason for the Petitioner's Request for Review has nothing to do with the existing facts in this case. Rather, it is an effort by an outside party to interfere with employee free choice by overturning long-standing Board precedent to ensure a free and fair election. Evidence of this motive is set forth in the Petition wherein the Petitioner

makes note that rather than rely on its rule making authority concerning standards for blocking charges, the Board should overturn its well thought out standards for blocking.¹

On December 5, 2019, the Board concluded that it was appropriate to extend the time for submitting comments regarding its proposed amendments to Part 103 of its Rules and Regulations. The Office of Congressional and Public Affairs release 202-273-1991 notes that “The Board believes, subject to comments, that the proposed amendments concerning the Board’s blocking charge policy... will better protect employee statutory rights of free choice on questions concerning representation.” It would be highly premature and inappropriate for the Board to overturn the Regional Director’s decision to block Charges in this case when it is considering amendments to the existing standards concerning blocking. There are no compelling reasons for overturning the Regional Director’s decision in this matter while the Board’s consideration of the blocking rules is under current consideration.

Further, the Petitioner has presented no arguments supporting grounds for review as outlined in the Board’s Rules and Regulations Section 102.67(d)(1)-(4). The Board will grant review only if (1) there is a substantial question of law or policy because of the absence of or departure from officially reported board precedent; (2) the regional director’s decision on a substantial factual issue is clearly erroneous on the record; (3) the conduct of the regional director’s ruling has resulted in prejudicial error; or (4) there are compelling reasons for reconsideration of a Board rule or policy.

There is no substantial question of law or policy raised herein because of the absence of or departure from Board precedent. The Regional Director followed the

¹ See p. 4 of Petitioner’s Petition relating to its position concerning the Board’s rulemaking authority on this issue.

rulemaking standards identified in the Casehandling Manual at 11730-11731 as set forth herein. Second, the Regional Director's decision on any factual issue is not clearly erroneous. In fact, the Employer's conduct as alleged by the Union presents clear and unmistakable evidence of conduct interfering with employee rights of free choice which in this case would be a vote in favor of representation by the Union and the consequent benefits of collective bargaining. It is the Employer who has tainted this election by its refusal to bargain and discriminatory transfer of employees who support the Union as described in the Unfair Labor Practice Charges.

Thirdly, the Regional Director is ruling to block the election pending determination of the Charges does not result in any prejudicial error. Once the Charges have been disposed of, an election can be directed. Importantly, that election will include voter eligibility of the employees who were illegally transferred from the Employer's facility in Breinigsville, PA to other Employer facilities which will result in a majority determination of a collective bargaining representative.

Finally, there are no compelling reasons for reconsideration of the Board's rules or policy since the Board is already in the process of considering the standards applicable to blocking through its rulemaking policies. This Petition is an attempt to have the Board ignore its rulemaking authority that has already been utilized to address the standards and considerations applicable to blocking by regional directors.

III. CONCLUSION

The Union prays that the Petition for Review be DISMISSED.

Respectfully submitted,

MARKOWITZ & RICHMAN

Quintes D. Taglioli

Date: 12/9/19

By: _____

QUINTES D. TAGLIOLI, ESQUIRE
121 N. Cedar Crest Blvd., 2nd Fl.
Allentown, PA 18104
610-820-9531
610-820-9445 (Fax)
I.D. No. 30158

Attorney for the Union

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CERTIFICATE OF SERVICE

I, QUINTES D. TAGLIOLI, ESQUIRE, do hereby certify that on December 9, 2019, a true and correct copy of the Union's Statement in Opposition to Petitioner's 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 email:

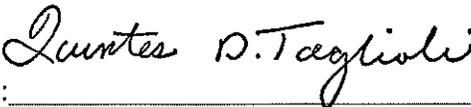
Dennis P. Walsh, Regional Director
Dennis.Walsh@nlrb.gov

Steven J. Porzio, Esquire
sporzio@proskauer.com

John Scully, Esquire
jcs@nrtw.org

Respectfully submitted,

MARKOWITZ & RICHMAN

By: 

QUINTES D. TAGLIOLI, ESQUIRE
121 N. Cedar Crest Blvd., 2nd Fl.
Allentown, PA 18104
610-820-9531
610-820-9445 (Fax)
I.D. No. 30158

Attorney for the Union