

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

NORTH AMERICAN CORPORATION,	)	
	)	
Employer,	)	
and	)	Case 13-RC-253792
	)	
TEAMSTERS LOCAL 705,	)	
	)	
Petitioner	)	
And	)	
	)	
PRODUCTION AND MAINTENANCE UNION,	)	
LOCAL 101,	)	
	)	
Intervenor.	)	

**EMPLOYER’S REQUEST FOR REVIEW OF REGIONAL DIRECTOR’S  
DECISION AND DIRECTION OF ELECTION**

In the decision below, the Regional Director directed an election despite North American Corporation’s (the “Employer”) and Production and Maintenance Union, Local 101’s (the “Incumbent Union”) having entered into a valid collective bargaining agreement, as amended by a supplemental agreement (“Supplemental Agreement”) on November 2, 2017. The Regional Director based his decision to direct an election on two issues that the parties never argued at Hearing: 1) the effective date of the Supplemental Agreement and 2) the ratification of the Supplemental Agreement.

Neither of these issues were ever raised by any Party during pre-Hearing discussions with the Region and certainly were not raised by Petitioner, Teamsters, Local 705 (the “Teamsters”) in any position statement (the Teamsters did not file a position statement), were never raised at the Hearing, nor in any parties’ Post-Hearing Briefs. Because none of these issues were contested by any Party, the Regional Director should not have based his ruling on these uncontested facts and

in doing so, he deprived the Employer and Incumbent Union their due process rights by effectively defaulting both of these Parties for failing to address these ministerial acts which were never put to issue. Furthermore, by concluding that there was no evidence that the Supplemental Agreement was ever ratified, the Regional Director basically rejected the admission of the Supplemental Agreement into the record and ignored the fact that it is a valid agreement. The Supplemental Agreement was admitted into the Record as Board Ex. 2 without any objection. No questions were raised concerning its authenticity, no objection was raised that the Agreement was not effective, and no question was raised concerning whether or not it had been ratified or what date it commenced.<sup>1</sup> By concluding that there was no evidence presented that the Supplemental Agreement had been ratified and had no clear commencement date, the Regional Director effectively held that the Supplemental Agreement was not a contract that could ever bind the Employer and Incumbent Union as a collective bargaining agreement under Board law.

As stated, this violated the Employer's and the Incumbent Union's due process rights. In cases in which an issue is uncontested, a finding by the Regional Director based on such uncontested issues is improper and violates a party's right to due process. *See, Bennett Industries, Inc.*, 313 NLRB 1363 (1994) holding that it is "[t]he Board's duty to ensure due process for the parties in the conduct of the Board proceedings requires that the Board provide parties with the opportunity to present evidence and advance arguments concerning relevant issues." In *Bennett*, the status of supervisory status of an employee was not raised as an issue even though the party alleging supervisory status had the burden of proof. The Board stated, where "no party alleges

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<sup>1</sup> It should be noted that in his opening statement, Counsel for the Union stated that only that in "Shen-Valley the Board mentioned the importance of the parties expressly allowing the parties to renegotiate a specifically broad range of significant terms. This was not done in this case, and it was also not the prior CBA also did not give the parties the right to enter into an extension on the date that the Employer alleges it did so. Tr. 14-15.

supervisory status, there is no basis for making a determination that the individuals in question are supervisors and no need to obtain record evidence on this issue. *Id.*

The Board has further held that when an issue has not been raised it is improper for a Hearing Officer (and therefore in the instant case, the Regional Director) to make a determination on the issue. See, J.K. Pulley, 338 NLRB 1152 (2003) and Precision Products Group, 319 NLRB 640 (1995).

In the instant case since no issue was raised concerning the ratification of the Supplemental Agreement or its commencement date of the Agreement, it was improper for the Regional Director to base his Decision on these issues.

Furthermore, in reaching his decision that there was no evidence of the ratification of the Supplemental Agreement on the record, the Regional Director ignored fact that the Incumbent Union was unable to be present at the Hearing to verify the ratification of the Supplemental Agreement, for medical reasons.

In reaching his decision that the Supplemental Agreement lacked a clear effective date, the Regional Director chose to overlook the effective date the parties enumerated in the very first paragraph of the Supplemental Agreement. Again, this was an issue never raised by the Teamsters in any position statement, at time prior to the Hearing, during or in their Post Hearing Brief. Again, by reaching a decision based on an issue that was never contested, the Regional Director further deprived the Employer and the Incumbent Union of their due process rights by defaulting those Parties for not addressing issues that were never raised by any other Party.

In fact, the only issues the Teamsters raised at the Hearing or in their Brief was that the Employer and the Incumbent Union did not utilize the terms of the collective bargaining agreement in reopening and entering into the Supplemental Agreement. The Teamsters also argued that the Supplemental Agreement did not contain sufficient terms to serve as a contract bar and, instead, served only as a wage reopener. The Regional Director found otherwise and in his Decision found ruled that: (1) the Employer and Incumbent Union properly reopened negotiations; (b) the Supplemental Agreement contained terms other than a wage reopener and; (c) the Supplemental Agreement contained sufficient terms and conditions of employment which would otherwise satisfy the terms necessary to form a bar to the current petition.

Because the Regional Director's Decision was based on issues that none of the Parties raised or contended to be at issue and the Hearing Officer ignored his obligation to raise these issues and seek testimony and evidence in order to create an accurate and complete record in this matter, at the very least, the record should be reopened to allow the Parties to address these issues. In fact, this is basically what the Incumbent Union argued when it made a Request to Reopen the Record by email to the Region on January 31, 2020. The Region did not formally rule on this Request and did not address the merits of the Incumbent's argument that the Hearing Officer failed to seek testimony and evidence concerning the ratification of the Supplemental Agreement and the effective date of that Agreement. The Region merely stated that Incumbent Union never filed a proper request to postpone the Hearing. This ignored the very fact that a request to postpone the Hearing had already been filed by the undersigned and the Incumbent Union had made clear to the Region that it had agreed with that Motion due to the previously scheduled medical procedure of its main witness. See attached email from Christina Mols, the NLRB Agent who processed this Representation Case. Ex. 1

Finally, the inconsistencies in the Board's case law on the contract bar doctrine are a compelling reason for the Board to review. Clearly, the Regional Director's decision was made in error and we respectfully request that the Board grant this Request for Review.

## **I. BACKGROUND**

On December 26, 2019, Petitioner Teamsters, Local 705 (the "Teamsters") filed the instant Petition (13-RC-253792) to represent the bargaining unit at Employer, which was already represented by the Incumbent Union. (Bd. Ex. 1). Employer and the Incumbent Union are currently parties to an amended collective bargaining agreement (the "CBA") that covers the period from November 2, 2017 through October 31, 2022. (Bd. Ex. 2, Ex. 1, 2). The original CBA had an effective period of October 5, 2015 to October 4, 2020. (Bd. Ex. 2, Ex. 1). The CBA was amended by agreement of Employer and the Incumbent Union on November 2, 2017 via a Supplemental Agreement that the Regional Director correctly found was that this Agreement not merely a wage reopener but a valid amendment to the CBA. (Bd. Ex. 2, Ex. 2). The Supplemental Agreement set forth new effective dates for the CBA, from November 2, 2017 to October 31, 2022, effectively extending the CBA for an additional five years. (*Id.*)

Shortly after receiving the Notice of Hearing for January 6, 2020, the undersigned filed a Motion to Postpone the Hearing as the undersigned was out of the Country on a family vacation, returning to Chicago the day before the Hearing. The undersigned had numerous discussions with the Regional Office concerning this Motion and even proposed a one-day extension. The Incumbent Union did not file its own Motion but the Region solicited that Union's position and the Incumbent Union informed the Region that it was not available on January 6<sup>th</sup> as its main witness, Union, President Ricardo Castaneda, would be unable to attend the Hearing due to previously-scheduled medical procedure that could not be moved to a different day. Additionally,

the Incumbent Union notified the Region that its only other employee, the Vice President of the Incumbent Union, Louis Burton, would also be unable to attend due to a flare up of a medical condition. The Teamsters Union never expressed any reason it could not agree to even a one-day postponement in any communication with the undersigned and the Region never informed the undersigned that the Teamsters were not available attend a Hearing. The Employer's request for this short extension of the Hearing date was denied by the Region even in light of this information.

The Incumbent Union did not attend the Hearing. In conducting preliminary matters and proceeding with the Hearing, the Hearing Officer noted on the Record that no representative of the Incumbent Union was present and that certain stipulations could not be made because of this. (Tr. 7-8). At Hearing, the parties addressed the issue of contract bar and introduced evidence pertaining to the terms and conditions contained in the Supplemental Agreement. (Tr. 8-36). The Parties arguments at Hearing, and in their Briefs, focused solely on whether the contract bar doctrine applied and whether the Teamsters were able to file a rival petition at that point in time. (Bd. Ex. 1, 2). Employer's counsel made a note on the record at the Hearing that the Incumbent Union was unable to appear at the Hearing due to the representative's medical procedure and that this may leave holes in the Record. (Tr. 37-38).

After the Hearing, the parties filed post-Hearing Briefs on January 13, 2020. The Regional Director issued his decision three days later, on Thursday, January 16, 2020. The Regional Director recognized that the Supplemental Agreement was sufficient on its face to satisfy the "substantial terms and conditions" requirement of the Board's contract bar doctrine. (DDE 4). The Regional Director then departed completely from any issues raised by any of the Parties' arguments in their position statements, at Hearing, and in their Post-Hearing Briefs. (DDE 4-6). The Regional Director ultimately based his decision on the effective date and ratification of the

Supplemental Agreement, two issues that none of the Parties saw fit to even mention during the Hearing or as issues in their Post Hearing Briefs. (*Id.*). After an analysis of these two issues, the Regional Director erroneously found that the Supplemental Agreement did not serve to bar the Petition. (DDE 5–6). The Regional Director directed that an election be held on February 10, 2020. (DDE 6). The election was held according to the Board’s Rules and Regulations. The ballots were tallied, and the Board sent out a Certificate of Representative indicating that the Bargaining Unit cast a majority of ballots for the Teamsters as collective-bargaining representative.

## II. ARGUMENT

A party may request Board review of Regional Director actions and decisions within fourteen days of the Regional Director’s issuance of a Certificate of Representative, following a directed election. 29 C.F.R. § 102.67(c); *Representation—Case Procedures* 11363–64. The Request for Review may be filed at any time within fourteen days following the Regional Director’s final disposition in the proceedings. 29 C.F.R. § 102.67(c). The Board may grant review based on several grounds, including when the Regional Director departs from Board precedent; when the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party; when the conduct of any Hearing or any ruling in connection with the proceeding has resulted in prejudicial error; and when there are compelling reasons for reconsideration of an important Board rule or policy. 29 C.F.R. § 102.67(d)(1)(ii), (d)(2)–(4). All four of the aforementioned grounds for granting review of a Regional Director’s actions and decision exist here.

**A. The Regional Director's Conclusion of Fact that the Effective Date of the Supplemental Agreement Is Ambiguous Is Erroneous Based On the Evidence On Record and On the Face of the Document Itself**

The Board may grant review of a Regional Director's decision when the decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party. 29 C.F.R. 102.67(d)(2). Even if the effective date of the Supplemental Agreement was an appropriate issue on which to decide this matter, the Regional Director's decision that the Supplemental Agreement had no clear effective date is erroneous, based on the record at hand and on the Supplemental Agreement itself. The Regional Director stated in his decision that the Supplemental Agreement has "several potential effective dates." (DDE 5). The Regional Director has failed to recognize that only one of these dates was clearly set apart from the other dates in the Supplemental Agreement and was intended to serve as the effective date. This would be the date the Supplemental Agreement was entered into November 2, 2017. (Bd. Ex. 1, Ex. 2). This is a fact so plain on the surface of the Supplemental Agreement that the Teamsters did not even bother to argue that a different effective date might apply. (Bd. Ex. 1; Tr. 13-15; Petitioner's Post-Hearing Brief, attached as Exhibit 3). This date was included in the very first paragraph of the Supplemental Agreement as the date the parties entered into the agreement. (Bd. Ex. 1, Ex. 2). There has been no assertion by any party to this case that any other date mentioned in the Supplemental Agreement could serve as the effective date. (Bd. Ex. 1; Tr. 13-15; Petitioner's Post-Hearing Brief, attached as Exhibit 3). The dates listed for the various wage increases are just that: dates upon which wage increases will occur for bargaining unit employees. (*Id.*; Tr. 29). The dates the Supplemental Agreement was signed by the parties are also exactly that: dates the agreement was signed and nothing more. (*Id.*; Tr. 34-35).

The Regional Director clearly erred by reading multiple possible effective dates into the Supplemental Agreement. This error was prejudicial to the rights of both the Employer and the Incumbent Union. Both of these parties have the right to a stable bargaining relationship, and the Regional Director's error led him to direct an election, resulting in the ousting of the Incumbent Union in the middle of the CBA term. (CoR). This error clearly demonstrates the necessity of a review of the Regional Director's decision in this matter.

Further, the Regional Director stated, erroneously, that a rival union could not readily discern when the open period of the Supplemental Agreement would occur. (DDE 5). Not only is this conclusion incorrect for the reasons discussed above, but this it also ignores the Board's holding in *Dominick's*, which dictates that the open period under the CBA recurs every three years from the original effective date of October 5, 2015. *Dominick's Finer Foods, Inc.*, 308 NLRB 935, 945 (1992). Under this analysis, the effective date of the Supplemental Agreement would be immaterial, rendering the Regional Director's conclusion on this issue irrelevant, even if the Supplemental Agreement did not contain a clear effective date. This is yet another example of the error committed by the Regional Director, which necessitates a review of his decision in this matter.

**B. The Regional Director's Decision That There Is No Evidence of Ratification of the Supplemental Agreement Is Erroneous**

The Regional Director concluded that there was no evidence on record that the Employer and Incumbent Union ratified the Supplemental Agreement. (DDE 6). This conclusion in and of itself is erroneous. While the Supplemental Agreement states that it was subject to ratification, whether ratification occurred was never contested by any Party. The fact that the document is signed by the Incumbent Union and the Employer is basis enough to establish that the Employer

and Incumbent Union agreed that the Supplemental Agreement had been ratified and that the terms of this Agreement were in place. No Party has contested that the terms of the Supplemental Agreement were not implemented. The fact that the Supplemental Agreement was entered into evidence as Board Exhibit 2 is without objection is basis enough to find that it is the Agreement that governs the employees' terms and conditions of employment as agreed to by the Employer and Incumbent Union. If this were an unfair labor practice case and the Employer argued that a contract it had followed for years was invalid because it was not ratified years prior even though it was signed and followed for two years, the General Counsel would have a field day in refuting such an argument in a contract repudiation case. The same standard should apply in this instance. The Supplemental Agreement was signed with a commencement date of November 2, 2017 and has been followed ever since. For the Regional Director to find that it cannot serve as a bar because there was no evidence presented that it was ratified is clear error.

In fact, Union's counsel was correct in his statement on the record as follows:

This extension is clear about what the terms are and how it affects the original CBA. His understanding of it is not relevant to this. The Board has been very clear that the four corners of the documents that the party asserting the contract bar is using to assert such bar will be tantamount to any argument that it has. Any outside evidence of that should not at all be entertained. Particularly now he's asking what his understanding was as to the terms of the agreement. The terms of the agreement are on the exhibit that the Employer is entering into evidence and that's all that the Board is allowed to entertain as far as whether or not there was a contract bar.

Tr. 32

Mr. Tillett-Saks was correct in his assertion. The Regional Director need only look at the four corners of the Supplemental Agreement to determine if it serves as a contract bar in this case and determine if it had a start and ending date and if it contained sufficient terms and conditions

to serve as a contract bar. The signed Supplemental Agreement itself is confirmation enough that it was ratified and that it commenced on its effective date, November 2, 2017.

Finally, because this issue and the issue was never raised, the Incumbent Union and Employer have been denied their due process rights in this case. The Board has time and time again held that “due process requires that a respondent have notice of the allegations against it so that it may present an appropriate defense.” *See, Lamar Advertising of Hartford*, 343 NLRB 261, 265 (2004); *Yellow Freight System, Inc. v. Martin*, 954 F.2d 353, 357 (6th Cir.1992)); see also *KenMor Electric Co., Inc.*, 355 NLRB 1024, 1029 (2010). In this case, had the Employer and Incumbent been aware that the issue of ratification and commencement date of the Supplemental Agreement been at issue, they could have provided appropriate evidence to establish that the Supplemental Agreement was ratified and that it commenced on November 2, 2017.

**C. The Hearing Officer’s Failure to Develop a Complete Record at Hearing Has Resulted in Prejudicial Error to the Employer and the Incumbent Union**

The Board should review the Regional Director’s Decision and Direction of Election because the Hearing officer’s conduct during the Hearing caused prejudicial error. *See* 29 C.F.R. § 102.67(d)(3). The Board’s Hearing Officer’s Guide (the “Guide”) lays out procedure that Hearing Officers are meant to follow in order to create a complete record in cases involving contract bar. *NLRB Hearing Officer’s Guide* at 59. The Guide section on the General Principles to Contract Bar states that the Hearing Officer should ask questions about the ratification of the agreement at issue when contract bar has been called into question. *Id.* at 60. Specifically, Number 4, Section C directs the Hearing Officer to ask: “Does the contract contain an express provision requiring ratification? Has ratification been obtained? Date and Manner?” *Id.* The Guide also addresses the issue of the effective date of an agreement, stating that the Hearing Officer should

raise this issue at Hearing and question the parties on their positions to get evidence of the start date into the record where it is at issue. *Id.* at 59.

The Guide very explicitly describes the method Hearing Officers are obligated to follow to flesh out a complete and accurate record at Hearing:

It is the obligation of the Hearing officer to ask follow up questions and to obtain specific examples when the parties elicit generalized testimony regarding matters in issue, including issues on which the parties have a burden. If parties cannot supply specific examples in support of their generalized testimony, they should be required to state that on the record. Where the testimony is confusing, unclear or incomplete, the Hearing officer should ask questions that will clear up the confusion or make the record complete.

*Id.* at 14. The Board's guidance in guidance memorandum GC 15-06 goes even further, stating that "The Hearing officer's role is to ensure a complete record as to issues relevant to a question concerning representation and any other issue the regional director has decided should be litigated at the pre-election Hearing." GC 15-06 11. The guidance also states that it is the Hearing Officer's job to ensure that there is sufficient evidence on record to enable the Regional Director to decide the issues in a case. *Id.* It is also the duty of the Hearing Officer to inform the parties, on record at Hearing, of what those issues are. *Id.*

Even assuming, *arguendo*, that the start date and ratification of the Supplemental Agreement were appropriate issues to base a decision on in this matter, the Hearing Officer did not fulfill his duty to develop the record on these issues. First, the Hearing Officer failed to even mention that the Regional Director felt the start date and ratification of the Supplemental Agreement were at issue at Hearing. The Hearing Officer then failed to ask a single question about the ratification or start date of the Supplemental Agreement, nor did he even mention these issues during the Hearing. He also did not even attempt to obtain any evidence related to the ratification

or start date of the Supplemental Agreement from any of the parties. He made no effort to complete the record, despite knowing that the only party who could put forth evidence of ratification of the Supplemental Agreement was absent and that it was Hearing Officer's obligation to raise these issues at Hearing.

In fact, because neither the Teamsters nor the Employer raised the issue of the ratification or start date of the Supplemental Agreement in their position statements, these parties were precluded from raising either of these issues at the Hearing. The Board's guidance memorandum GC 15-06 states that Board rule 102.66(d) prohibits a party from raising or litigating any issue that it failed to timely raise in its position statement or response. GC 15-06 10. Thus, only the Hearing Officer had the ability to raise either of these apparently crucial issues at Hearing, and yet he did not.

The Hearing Officer's failure to meet his obligations at Hearing has severely prejudiced both the Employer and the Incumbent Union and, thus, his Decision and Direction must be reviewed, and this case reheard if not overturned. Rehearing or, at the very least, reopening the record to allow for introduction of evidence of the effective date and ratification of the Supplemental Agreement by the Incumbent Union, is necessary to remedy the extreme prejudice to both the Employer and Incumbent Union resulting from the Hearing Officer's conduct at Hearing.

**D. The Regional Director's Decision to Ignore the Incumbent Union's Absence from the Hearing and Conclude that There Is No Evidence of Ratification of the Supplemental Agreement Is Extremely Prejudicial to the Parties**

The Board may review a Regional Director's decision when the Regional Director's conduct results in prejudicial error. 29 C.F.R. § 102.67(d)(3). Here, the Regional Director, by ignoring the fact no party contested the fact that the Supplemental Agreement was ratified or that it commenced on November 2, 2017 has resulted in error that is prejudicial to both the Employer and the Incumbent Union. While the signed Supplemental Agreement should provide the basis that it was ratified, there was no further evidence provided on the record at Hearing. The Incumbent Union was deprived of the opportunity to create its record because its representative's previously scheduled medical procedure and it's the only other employee's flare-up of a medical condition on the Hearing date. The record was also not developed because the Hearing Officer asked no questions about ratification. (Tr. 6-7, 37-38). The Region denied a request for an extension of the Hearing date by a mere two days and chose to proceed with the Hearing despite being fully aware of the nature of the Incumbent Union's conflict on the Hearing date. Both the Employer and the Incumbent Union have been extremely prejudiced by the Region's utter disregard for the Employer's and Incumbent Union's request for an extension due to a very compelling reason. Because of this erroneous and, frankly, callous decision by the Region, the record in this case is incomplete. Had the Incumbent Union been present at the Hearing, their representative could have testified, as Louis Burton, the Vice President of the Incumbent Union, did in the affidavit submitted by the Incumbent Union along with their request to reopen the record, to the ratification of the Supplemental Agreement.

The Regional Director was on notice that the Incumbent Union was absent from the Hearing due to a medical procedure and a flare-up of the only other employee of the Incumbent

Union's medical condition because the parties informed the Region of this fact in advance of the Hearing and because counsel for Employer made a statement about the absence on record. (Tr. 37–38). Proceeding without granting an extension of the Hearing to a day when the Incumbent Union's representative is not undergoing a medical procedure was akin to deliberately proceeding on an intentionally incomplete record. The Regional Director's Decision has caused instability in the bargaining relationship between the Employer and the Incumbent Union, a result which the Board has time and time again sought to avoid. In this instance, the Regional Director's Decision based on an incomplete record made for a serious and extremely prejudicial error that can only be remedied by reopening the record in this case or a finding that the Supplemental Agreement served as a contract bar in this matter.

**E. The Board's More Recent Decision on Open Periods Under a Long-Term Collective Bargaining Agreement is Inconsistent with Prior Decisions**

The Board's rules allow for review of a Regional Director's Decision when there are compelling reasons for reconsideration of an important Board rule or policy. 29 C.F.R. § 102.67(d)(4). Here, there are compelling reasons for reconsidering the Board's prior decisions on the timing of the open period under a long-term collective bargaining agreement. Prior Board case law concerning the timing of the open period under a long-term collective bargaining agreement is inconsistent with the analysis in the Board's findings in *Dominick's Finer Foods*, resulting in different timing for the open period than any of the Board's decisions before it. *See Dominick's*, supra at 945. Under the *Dominick's* analysis, the open period recurs every three years from the effective date of the original agreement through the extended period of the agreement. *Id.* This analysis is a clear departure from more longstanding decisions like *Shen-Valley* and *M.C.P. Foods*, where the open period is measured from the effective date of the amended agreement between the parties. *See M.C.P. Foods*, 311 NLRB 1159 (1993); *Shen-Valley*, supra at 959–60. The analysis

in *Dominick's* muddies the waters of the contract bar doctrine and a review of the Regional Director's Decision in the instant case provides the Board an opportunity to set a clear and consistent analysis when determining the open period under a long-term agreement. A review of this issue will be especially important because it will allow the Board a chance to reconcile its case law on when the open period occurs in prematurely extended long-term contracts.

### III. CONCLUSION

For these reasons, Employer respectfully requests that the Board grant this Request for Review of Regional Director's Decision, Direction of Election, and Post-Election Decision.

Dated: March 4, 2020

Respectfully Submitted,

NORTH AMERICAN CORPORATION

By: 

One of its Attorneys

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**CERTIFICATE OF SERVICE**

Scott A. Gore, an attorney, hereby certifies that he caused the Employer's Post-Hearing Brief to be served on the parties of record listed below, by electronic filing and email, on this 4th of March 2020 addressed to:

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\_\_\_\_\_  
Scott A. Gore

**Gore, Scott**

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**From:** Mols, Christina <Christina.Mols@nlrb.gov>  
**Sent:** Wednesday, February 5, 2020 5:24 PM  
**To:** pmulocal 101  
**Cc:** Gore, Scott; Aldridge, David; ats@I705ibt.org  
**Subject:** RE: Revised Request (typo) to Reopen the Record or to Reconsider

Hello All,

The Region is in receipt of the below e-mail from the Intervenor in case 13-RC-253792 North American Corporation.

When the instant petition was filed, a docketing letter was sent to each party from the Regional Director. The letter included the notice of hearing and it stated the following:

**“Upon request of a party, the regional director may postpone the hearing for up to 2 business days [upon] a showing of special circumstances and for more than 2 business days upon a showing of extraordinary circumstances. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.”**

The intervenor never filed a proper request for postponement and the hearing proceeded on January 6, 2020.

Based on the evidence and record in this matter, and after considering the parties’ post-hearing briefs, the Regional Director issued a Decision and Direction of Election on January 16, 2020 articulating the basis upon finding no contract bar. The e-mail correspondence below, dated January 31, 2020, states the Intervenor’s arguments regarding the hearing and evidence. These arguments not part of the record nor are they properly before the Region for consideration.

If any party would like to file a Request for Review in this matter, please refer to the instructions at the end of the Decision and Direction of Election or Section 102.67 of the National Labor Relations Board’s Rules and Regulations which can be found on our website at [www.nlrb.gov](http://www.nlrb.gov).

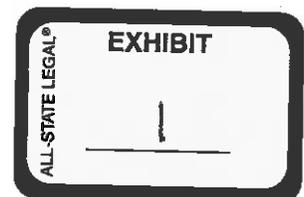
The Region does not consider the below communication to constitute a request for review as it does not comport with the filing requirements set forth at the end of the Decision and Direction of Election or in Section 102.67 of the Rules and Regulations.

If any party has questions, feel free to contact me at 312-353-7608.

Best regards,

Christina Mols

**From:** pmulocal 101 <pmulocal101@gmail.com>  
**Sent:** Friday, January 31, 2020 5:38 PM  
**To:** Mols, Christina <Christina.Mols@nlrb.gov>  
**Cc:** sgore@lanermuchin.com; Aldridge, David <DAldridge@na.com>; ats@I705ibt.org  
**Subject:** Revised Request (typo) to Reopen the Record or to Reconsider



On December 26, the day after Christmas, Teamsters, Local 705 filed petition in Case 13-RC-253792. Apparently, the Company filed a motion to postpone the hearing on December 30, 2019 but this Union was not served a copy of that Motion until January 2, 2020. In the meantime, I had been in contact with the NLRB concerning the postponement of the hearing that was set for January 6, 2020 and informed them that Ricardo Castaneda would have to testify for Local 101 as the undersigned suffers from Shingles and I had an outbreak at that time. I informed Christina Mols that Ricardo could not attend on January 6<sup>th</sup> as he had a serious medical procedure that could not be rescheduled. I let Ms. Mols know that Ricardo could attend a hearing on January 7, 2020, the very next day. Our request was denied and Local 101 was unable to send anyone else to the hearing as we have no one else on staff except for Ricardo and myself at this time except our secretary who has no firsthand knowledge of the events. To my knowledge, the Teamsters did not give a reason why they were not available on January 7<sup>th</sup> or the 8<sup>th</sup> for that matter and the hearing went on without Local 101 attending.

We received the Regional Director's Decision and were surprised that it stated that no one had provided evidence that the Supplemental Agreement had been ratified. The Decision also states that it is not clear when the Supplemental Agreement went into effect. If Local 101 had the opportunity, it certainly would have been able to provide evidence to address both of these issues.

First, the Supplemental Agreement was ratified on October 27, 2017 in the Company's break room. Our Union received a final offer from the Company that day and we were able to vote the agreement that day and a majority of the bargaining unit employees approved and ratified the offer that was then drafted by the Company and signed by both Local 101 and the Company. **We never would have signed the Agreement if the terms were not ratified.** This is the document that was put into evidence by the Company at the hearing. I have attached an affidavit confirming this fact. I want to point out that the issue of ratification was never raised before the Hearing or from what it appears, at the Hearing. **As for the effective date of this Agreement, like any other Agreement we reach, as soon as it was put down on paper and dated, that was the date it went into effect.** There are many times that we reach an agreement and it is not signed right away but that doesn't mean the contract is not in effect on the date we put on the contract. Here, we dated it November 2, 2017. That was the effective date. The grievance was withdrawn as of this date which was a material term of the Supplemental Agreement. This was in part the settlement of a grievance concerning wages the Company was paying to new hires and we wanted those increases to apply to current employees as well so effective on November 2, 2017, the grievance was settled and the wages then went into effect for new hires as of that date and the current employees were entitled to the increases on the document as of that date as well. Had we been given the opportunity to address this issue, we certainly would have.

From reading the Guide to Board Procedures dated April 6, 2017, on page 19, it states that in filing a Motion to Reopen or for Rehearing, we must demonstrate that extraordinary circumstances require granting the motion

and that there is an error requiring the rehearing or reopening of the record. Here it cannot be clearer. I have a serious health condition that did not allow me to come in and testify and Ricardo Castaneda; the Union's President had a medical procedure that he could not reschedule. We asked to postpone the hearing one day for a good reason. No other party stated that they could not be at the hearing the next day. Also, remember that the petition was filed the day after Christmas when we were very short staffed. Our organization is not like the Teamsters with dozens of people. We did not even receive the petition until December 26, 2019 and we immediately asked to move it one day. The Company had asked the Hearing to be moved two days but we did not even receive a copy of that request until January 2, 2020. The Company did not even ask our position on this Motion. If it had, we would have joined in on the same Motion for the reasons we have stated.

Finally, according to the rules, we must show why evidence was not produced previously. Again, the issue of ratification was never raised by either the Teamsters or the Company. Even if the Post Hearing Briefs, neither Local 705 nor the Company raised the issue. To our knowledge the Hearing Officer did not raise the issue even though it is a question he should have asked according to the Hearing Officer's Guide dated September, 2003.

This Guide is supposed to be followed by Hearing Officers in Representation cases so that a complete record can be made. If there was any issue as the effective date, it was the job of the Hearing Officer to raise this issue at the Hearing and have the Parties address their positions and put this into evidence. It does not look like this issue was raised or properly addressed by the Hearing Officer.

As to the question in the Guide, "Does the contract contain an express provision requiring ratification? Has ratification been obtained? Date and Manner?" Again, if this is an issue, the Hearing Officer is supposed to clarify and obtain evidence on this issue but in this Hearing, he did not.

Because Local 101 was not in attendance, the Hearing Officers' failure to properly address the issues and to take relevant evidence on such important issues is even more troublesome and in this case certainly provides reason enough to reopen the record so that he can take the necessary evidence so that a Decision can be reached with all of the available facts from all of the Parties. This certainly provides evidence of an error which would allow the reopening of the record in this case. Representation Cases are supposed to be investigatory proceedings to flush out all of the facts so that a proper decision can be reached on all of the facts. The Guide states: "It is the obligation of the hearing officer to ask follow up questions and to obtain specific examples when the parties elicit generalized testimony regarding matters in issue, including issues on which the parties have a burden. If parties cannot supply specific examples in support of their generalized testimony, they should be required to state that on the record. Where the testimony is confusing, unclear or incomplete, the hearing officer should ask questions that will clear up the confusion or make the record complete." In this case, it cannot be clearer that the Hearing Officer failed

in his obligation to make a complete and accurate record, especially in a case in which Local 101 was unable to attend for good cause. It is for these reasons that we are requesting that the Record be Reopened and Rehearing be ordered.

Respectfully,

Louis Burton, Vice President

Production and Maintenance Union, Local 101