

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12

SERVICE TRADES COUNCIL UNION,

Petitioner,

and

Case No. 12-UC-248568

WALT DISNEY WORLD PARKS, U.S.

d/b/a WALT DISNEY WORLD,

Employer.

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**PETITIONER'S REQUEST FOR REVIEW**

Petitioner, SERVICE TRADES COUNCIL UNION, by and through counsel, submits this Request for Review of the Regional Director's Decision and Order Dismissing the Petition<sup>1</sup> and states:

**STATEMENT OF FACTS**

The Service Trades Council Union ("STCU" or "Petitioner") is a labor organization that consists of six local union affiliates. The Service Trades Council Union is a labor union within the meaning of the Section 2(5) of the National Labor Relations Act. (B.E. 2). Walt Disney World Parks, U.S. d/b/a Walt Disney World ("WDW" or "Employer") is an Employer engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and is subject to the jurisdiction of the Board. (*id.*). WDW has recognized the STCU as the exclusive representative of certain employees since 1972. That recognition is currently embodied in two

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<sup>1</sup> Record references are to the transcript, and exhibits. For clarity and consistency, the Union hereinafter refers to the Regional Director's Decision and Order Dismissing the Petition on February 18 as "D&O" using the Board's own internal pagination. References preceding a semicolon are to the Regional Director's D & O; those following are to the supporting evidence. Board exhibits will be identified by "B.E." Company exhibits will from herein be identified by "C.E." Petitioner exhibits will be identified by "P.E."

collective bargaining agreements effective September 24, 2017 through October 1, 2022 for certain full-time and part-time employees. (C.E.'s 3(a) and 3(b)). The STCU and WDW are parties to two (2) collective bargaining agreements covering both full-time bargaining unit employees and part-time employees in certain job classifications.<sup>2</sup> (*id.*). The bargaining unit(s) consist(s) of those full-time and part-time employees as described by job classifications in Addendum A of the collective bargaining agreement(s). (*id.*). The job classification of Attractions Hosts/Hostesses is listed in both collective bargaining agreements under Addendum A. (*id.*)

On September 19, 2019, Petitioner filed a Unit Clarification petition (“UC Petition”) with the National Labor Relations Board (“NLRB” or the “Board”) to clarify whether “NBA Experience Guides” perform essentially the same functions as Attractions Hosts/Hostesses and belong in the bargaining unit(s) under that job classification.<sup>3</sup> (B.E. 1(a)). On October 8, 2019, Region 12 of the NLRB (the “Region”) issued a Notice to Show Cause to WDW and the STCU (“parties”) as to why the UC Petition should or should not be dismissed. (B.E. 1(c)). In the Notice to Show Cause, both parties were ordered to address (1) whether the contract coverage standard adopted by the Board in MV Transportation was applicable to this case and; (2) to analyze the UC Petition under an accretion standard. (*Id.*)

In the Union’s Response to the Notice to Show Cause, the Union stated the following:

The Union asserts that NBA Experience guides should be considered Attractions hosts/hostesses, a classification which is already in the bargaining unit, because NBA Experience guides perform the same basic job functions as Attractions hosts/hostesses.

Alternatively, even if the Regional Director should find, after testimony and evidence is adduced at hearing, that the NBA

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<sup>2</sup> Because the full-time agreement and part-time agreement are nearly identical in substance, both collective bargaining agreements will be collectively referred to in the singular as the “Agreement” unless otherwise noted.

<sup>3</sup> Board exhibits will be identified by “B.E.” Company exhibits will from herein be identified by “C.E.” Petitioner exhibits will be identified by “P.E.”

experience guides are a new job classification, the STCU has not waived its right to represent new job classifications. In that connection, NBA experience guides should be accreted to the unit as they constitute an inappropriate separate bargaining unit share an overwhelming community of interest with employees in the current bargaining unit.

The Union has not made an express promise nor waived its right pursuant to Article IV, Section 2 of the parties' collective bargaining agreement, to represent these employees. Article XII, Section 2 clearly excepts newly-created job classifications from the purported waiver. Moreover, *MV Transportation* and the contract coverage standard are not applicable here. *MV Transportation* changed the standard of waiver under the unilateral change doctrine, and there is no allegation of an unfair labor practice here.

(B.E. 1(j) at pg. 2) (emphasis supplied).

On November 15, 2019, the Region issued a Notice of Hearing. (B.E. 1(k)).

Beginning December 11, 2019 and continuing through December 13, 2019, the parties held a hearing at the Regional Office in Tampa, Florida. Both parties were allowed to present witnesses, offer exhibits into evidence, and file a post-hearing brief. A court reporter also created a transcript of the hearing and records of exhibits. WDW called only one witness, its Director of Labor Relations, Christie Sutherland. The STCU called four witnesses; Victor Fagella, the STCU representative who currently handles grievances and organizing for one of the local affiliates and previously worked as an Attractions Host; Jessica Lella, a current Attractions Hostess who has worked a variety of attractions at multiple WDW theme parks; Joesph Carlberg, a current Attractions Host at WDW's venue known as ESPN Wide World of Sports; and Zizzy Caceres Agostini, who has worked at multiple WDW attractions and locations in her twenty-nine (29) years with WDW including the job classification of Roamer at the NBA Experience. WDW offered fourteen (14) exhibits that were received into evidence by the hearing officer. The STCU offered

sixteen (16) exhibits, one of which was withdrawn (P.E. 11). The other fifteen (15) exhibits offered by the Petitioner were received into evidence by the hearing officer.

Both parties submitted post-hearing briefs and the D & O dismissing the Petition was issued on February 18, 2020.

### **STANDARD OF REVIEW.**

The Board may grant a request for review when there is a substantial question of law or policy is raised because of the absence of or departure from officially reported Board precedent. The Board may also grant a request for review if the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of the party. 29 CFR § 102.67(d).

### **SUMMARY OF ARGUMENT**

In the D & O, the Regional Director stated, "The parties agree that the Petitioner is contractually bound not to pursue representation of employees who do not perform the job duties of the employees set forth in Addendum A." (D & O at pg. 35). This is clearly erroneous. The Union has argued in its Response to Order to Show Cause, at hearing, and in its Post-Hearing Brief that the alleged disclaimer is *not* a clear and unmistakable waiver required under *Briggs Indiana*. *Briggs Indiana Corp.*, 63 NLRB 1270 (1945). Further, the Union argued in the alternative that if the NBA Experience guides were not added to the unit under a Premcor analysis, the NBA Experience guides should be accreted to the unit. Citing Supreme Court precedent, the Union argued that the contract coverage standard the Board adopted in *MV Transportation* was inapplicable in a unit clarification petition (or any representational proceeding) and "properly limited to the context of unfair labor practice adjudication." *Litton Financial Printing Division v.*

*NLRB*, 501 U.S. 190, 202 (1991); *MV Transportation, Inc.*, 368 NLRB No. 66 (September 10, 2019).

Presumably, because of the Regional Director’s misunderstanding of the Union’s position, the Regional Director found that Article 4, Section 2 of the Agreement was a waiver of the Union’s right to accrete the NBA Experience guides into the unit. (D & O at pg. 36). In *Walt Disney Parks & Resorts U.S.*, the Board declined to rule on this same waiver but nonetheless used an accretion analysis in that clarification case. *Walt Disney Parks & Resorts U.S.*, 367 NLRB No. 80 (Jan. 25, 2019). At a minimum, the Board should correct the clearly erroneous statement in the D & O that the parties agreed the disclaimer was a clear and unmistakable waiver and remand the case to the Regional Director to do an accretion analysis, of the disputed units as the Union has requested.

Under that accretion analysis, the Board and Regional Director must accrete the NBA Experience guides to the presumptively appropriate employer-wide bargaining unit if it should find that neither group can that neither group can be said to have any separate community of justifying a separate bargaining unit.” See *Pcc Structural, Inc.*, 365 NLRB No. 160 (Dec. 15, 2017).

### **AMENDED CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 3, 2020, the foregoing was e- served on the Employer’s counsel via electronic mail and on the Regional Director via electronic mail:

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