

**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.)	

**PRODUCTION AND MAINTENANCE UNION LOCAL 101'S REQUEST FOR
REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION
AND MOTION TO REOPEN THE RECORD**

A. The Record Should be Reopened in Order for Production and Maintenance Union, Local 101 to Provide Relevant Evidence

The Regional Director ordered an election in this case despite the fact that On December 26, the day after Christmas, Teamsters, Local 705 filed the 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 Union President, 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 6th 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. To my knowledge, the Teamsters did not give a reason why they were not available on January 7th or the 8th 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 of the contract and the same date that this Union withdrew our Wage Grievance which was a material term of the Supplemental Agreement.

The settlement of the Wage Grievance concerned bonuses the Company was paying to new hires and the Union's complaint was that those bonuses were not being paid 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 more clear. 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. The only staff are myself and Ricardo. We did not even receive the petition until December 27, 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 and the General Counsel Memo dated April 6, 2015.

This Guide is supposed to be followed by Hearing Officers in Representation cases so that a complete record can be made. Page 59 states the General Principles to Contract Bar that the Hearing Officer is supposed to raise. Number 3, Section (d) raises the issue that was addressed by the Regional Director, Effective Date. 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.

Number 4, Section C asks "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 the Region 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 as well as the Request for Review. Representation Cases are supposed to be an investigatory proceedings to bring out all of the facts so that a

proper decision can be reached based on all of the available and it is the Hearing Officer who is supposed to make sure there is a complete record addressing any issues that are relevant.

The Guide states the following on page 14: "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 more clear 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.

B. Even if the Record is not Reopened, the Request for Review Should be Granted and the Regional Director's Decision Overturned

The Regional Director's Decision to direct an election was based on is determination that there is no effective date of the Supplemental Agreement and that there was no proof that Supplemental Agreement was ratified. Based on our review of the record in this case, neither of these issues were raised or addressed by either Teamsters Local 705 or North American at the hearing or in their Post Hearing Briefs. As stated above, it cannot be more clear that the effective date of the Supplemental Agreement was the date on the Agreement, November 2, 2017. Also, as stated above, that Agreement was ratified by this Union. No one at any time raised this issue with this Union, and it does not appear that the issue was raised at the Hearing or in any Briefs.

Again, it is our position that the Hearing Officer should have raised both of these issues especially since the Regional Director decided this Case based on those issues.

C. The Regional Director's Determination that the Effective Date of the Supplemental Agreement is Ambiguous is Incorrect

The Regional Director's Decision stated that the Supplemental Agreement did not have a clear effective date. However, the Regional Director's determination is wrong. The date of November 2, 2017 is identified in the document as the date that the Supplemental Agreement went into place. No Party even argued this point as it was not in contention. While there are other dates in the Supplemental Agreement, those only point out the dates on which wage increases occur even though the effective date of the Supplemental Agreement is November 2, 2017. How the Regional Director could find this to be ambiguous is beyond belief. Again, if the effective date of the contract was an issue, the Hearing Officer should have addressed this at the Hearing as well.

D. The Regional Director's Determination That There was no Evidence that the Supplemental Agreement was Ratified is also in Error

In this case, had this Union attended the Hearing and had we known that the issue of ratification was even contested, we could have provided evidence that the Supplemental Agreement was ratified. The fact is, there was no mention of this issue in the record of the Hearing. Neither Local 705 or the Company raised this issue at the Hearing and neither Party raised this as a point of contention in their Briefs. Because we were not in attendance, we were prejudiced by this Decision but even beyond that, the issue of ratification was never raised as an issue. The fact is, the signed Supplemental Agreement was put into evidence. That document itself confirmed that it was ratified.

Again, if this was such an important issue, the Hearing Officer had a duty to raise the issue, ask questions and take any available evidence on concerning this issue. By not doing so, this Union has been denied it's due process rights. We had no opportunity to provide this information. Had we been asked the question about the ratification, I would have testified that the Supplemental Agreement was ratified. I have attached an affidavit to that effect. See the Attached Exhibit.

Beyond this, again, if this was such an important issue, as stated above, the Hearing officer's failure to ask questions about the ratification 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 Principals 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. 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?" 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.

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.”

In this Case, the Hearing Officer did not ask any questions about the ratification process or start date of the Supplemental Agreement. He didn't ask any questions to try to obtain this evidence. Having the Hearing Officer elicit testimony on these issues was even more important in this Case because our Union representatives could not attend the Hearing. It was his job to make sure there was a complete record so that the Regional Director could make a Decision based on all of the facts and he failed to do so. This prejudiced this Union and therefore this should serve as right to have the Decision reviewed and overturned or at the very least a reopening of the record.

Finally, on January 31, 2020 we filed a request to reopen the record with the Board Agent. We copied every party to this case. The Region did not treat it as a Request for Review but also did not agree to reopen the record. I have attached that email. With this Request for Review, we are asking that the Board overturn the Regional Director's Decision by in the alternative that the Board order the Record reopened in this matter.

For all of these reasons, Production and Maintenance Workers Union, Local 101 requests that the Board grant this Request for Review of Regional Director's Decision, Direction of Election, and Post-Election Decision and overturn the Decision of the Regional Director.

Dated: March 4, 2020

Respectfully Submitted,

PRODUCTION AND MAINTENANCE
WORKERS, LOCAL 101

By: /s/ Louis Burton

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REGION 13**

CERTIFICATE OF SERVICE

Louis Burton hereby certifies that he caused the Intervenor's Post-Hearing Brief to be served on the parties of record listed below, by electronic filing and email, on this 4th day of March, 2020 addressed to:

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