

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HMH RESIDENTIAL CARE, INC., D/B/A  
MERIDIAN NURSING AND  
REHABILITATION AT SHREWSBURY  
Employer

and

Case 22-RD-243803

LOUNDY SAINT LOUIS  
Petitioner

and

1199 SEIU UNITED HEALTHCARE  
WORKERS EAST  
Union

DECISION ON REVIEW AND ORDER

The Employer's and Petitioner's requests for review of the Regional Director's administrative dismissal of the decertification petition are granted as they raise substantial issues warranting review.<sup>1</sup> On review, we find that the Regional Director erred by dismissing the instant petition based on his conclusion that the Petitioner had not submitted a sufficient, original showing of interest.

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<sup>1</sup> Chairman Ring, who is recused, is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S.Ct 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the National Labor Relations Act, "the group quorum provisions [of Section 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S.Ct at 2644. See also, e.g., *D.R. Horton*, 357 NLRB 2277, 2277 fn. 1 (2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *NLRB v. New Vista Nursing and Rehabilitation*, 870 F.3d 113, 127-128 (3d Cir 2017); *1621 Route 22 West Operating Company*, 357 NLRB 1866, 1866 fn. 1 (2011), enfd. 725 Fed.Appx. 129, 136 fn. 7 (3d Cir. 2018).

The Union, 1199 SEIU United Healthcare Workers East, is the recognized representative of a unit of all full-time, regular part-time and per diem certified nursing aides, environmental service aides, laundry employees, cooks and dietary aides employed by the Employer, HMM Residential Care, at its facility in Shrewsbury, New Jersey. On June 11, 2019,<sup>2</sup> an employee filed a decertification petition and an original showing of interest in Case 22-RD-243025 seeking to decertify the Union. On June 18, the Region approved her request to withdraw the petition.

On June 25, the Petitioner, a different employee, filed the instant decertification petition and a showing of interest via facsimile. When advised of her obligation to provide an original showing of interest within 2 business days, the Petitioner responded that she did not have the original showing of interest, but that the Region should use the earlier showing of interest from Case 22-RD-243025, which she understood was still in the Region's possession. On July 3, the Petitioner submitted several original, dated signatures which were insufficient, by themselves, to meet the 30% requirement to support the decertification petition.<sup>3</sup>

On July 12, the Regional Director dismissed the petition, finding that the original signatures the Petitioner had submitted were an insufficient showing of interest. With respect to the Petitioner's request to use the showing of interest submitted in Case 22-RD-243025, the Regional Director stated that the petitioner in that case had not instructed or requested the Region to transfer the showing of interest to the Petitioner. Thereafter, in accordance with Section 102.71 of the National Labor Relations Board's Rules and Regulations,<sup>4</sup> the Employer and the Petitioner filed requests for review. The Union filed an opposition.

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<sup>2</sup> All dates are in 2019 unless otherwise indicated.

<sup>3</sup> See NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11023.1.

<sup>4</sup> The Regional Director's dismissal letter inadvertently stated that the parties had the right to request review pursuant to Sec. 102.67, and thus both the Employer and the Petitioner cited that

We find that the Regional Director erred in holding that the prior petitioner had to authorize the Petitioner to use the earlier showing of interest to support the instant petition.<sup>5</sup> Although the Board has not directly addressed this precise situation, the principles set out in prior cases compel this conclusion. First, and most importantly, the Board recognizes that, under Section 9(c)(1)(A)(ii), the petitioner in a decertification case merely acts “[on] behalf of employees” and that accordingly such a petitioner does not “obtain any individual status or recognition,” but instead acts “in a representative capacity.” *Weyerhaeuser Timber Co.*, 93 NLRB 842, 844 (1951).<sup>6</sup> Second, the Board permits the re-use of a “current” showing of interest

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section in seeking review (the Petitioner also cited Sec. 102.71). Requests for review of administrative dismissals are governed by Sec. 102.71, however.

<sup>5</sup> Although the Union is correct that a Regional Director’s determination of the adequacy of the showing of interest is a non-litigable, purely administrative matter, the adequacy of the showing of interest is not at issue here. Rather, the question is whether the Regional Director properly required the instant Petitioner to secure the prior petitioner’s authorization to use the showing of interest submitted in Case 22-RD-243025. There is no dispute that, taken together, the original signatures submitted by the instant Petitioner and the prior petitioner would constitute a sufficient showing of interest, nor is there any dispute that both petitions and their accompanying showings of interest were otherwise timely. Cf. *Excel Corp.*, 313 NLRB 588, 589 (1993), reversing 311 NLRB 710 (1993) (pursuant to contract-bar doctrine, Regional Director properly refused to permit decertification petitioners to submit signatures in support of their showing of interest after the expiration of window period).

<sup>6</sup> In *Weyerhaeuser*, the Board refused to dismiss a decertification petition filed by an employee who was subsequently promoted to a supervisory position, emphasizing the decertification petitioner’s limited representative capacity. The Board explained that after initiating a decertification proceeding, a petitioner is “only nominally involved in the case” and his or her participation in the matter “is unnecessary to the ultimate conclusion of the proceeding” because, after a decertification petition is filed, “responsibility for all further action in the matter devolve[s] upon the Board.” *Id.* Moreover, given that the outcome of a decertification election does not confer any particular status upon the petitioner, in such elections the employees of the employer “are principally involved rather than the Petitioner. To dismiss the petition herein would be to their prejudice, not the Petitioner.” *Id.*; see *Tyson Fresh Meats, Inc.*, 343 NLRB 1335, 1335 fn. 3 (2004) (decertification proceedings did not abate after petitioner’s promotion to supervisory position); *Harter Equipment*, 293 NLRB 647, 647 fn. 4 (1989) (same). See also *Saginaw Hardware Co.*, 108 NLRB 955 (1954) (Board denied petitioner’s request to withdraw decertification petition where other employees indicated desire to continue proceedings); *Northwestern Photo Engraving Co.*, 106 NLRB 1067, 1067 fn. 1 (1953) (petition not dismissed

used in a prior proceeding that still reflects the wishes of the employees. See, e.g., *General Dynamics Corp.*, 175 NLRB 1035 (1969) (showing of interest previously submitted one month earlier was not stale). Relatedly, the Board has permitted the re-use of a showing of interest already on file with the Board in connection with a previous petition. See *Knox Glass Bottle Co.*, 101 NLRB 36, 36 fn. 1 (1952) (petitioner’s failure to provide a showing of interest was not a “fatal defect” where showing of interest petitioner had submitted in support of earlier petition, filed and withdrawn 1½ months before present petition, remained on file with regional office).

Drawing on these principles, we find that the Regional Director should have permitted the instant Petitioner to avail herself of the showing of interest submitted in Case 22-RD-243025, which was still in the Region’s possession. Under *Weyerhaeuser* and its progeny, neither petitioner possessed an individual interest in the proceedings, but merely stood in the shoes of the employees wishing to decertify the Union. As such, the prior petitioner did not need to authorize the instant Petitioner’s use of the earlier showing of interest, and rather than focusing on the identity of the individual decertification petitioners, the Regional Director should have focused on the wishes of the signatory employees.<sup>7</sup> Under *General Dynamics* and *Knox Glass Bottle*, a showing of interest from an earlier petition can be used to support a later petition involving the same parties as long it is “current.” In this case, the showing of interest in Case 22-RD-243025 was filed a mere two weeks before the current petition and therefore represents

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despite death of decertification petitioner because he “was acting in behalf of” affected employees).

<sup>7</sup> In addition, had the instant Petitioner sought to proceed with or reinstate the petition in Case 22-RD-243025 in the face of the first petitioner’s request to withdraw the petition, under *Saginaw Hardware*, supra, the Regional Director clearly would have been obligated to permit the instant Petitioner to do so. To hold that a different result should obtain because the instant Petitioner—an individual who was unrepresented by counsel when she filed the instant petition—instead filed a new petition would elevate form over substance.

the current wishes of the signatory employees; indeed, it is considerably more recent than the showings the Board found current in *General Dynamics* and *Knox Glass Bottle*. The Union's argument that the different identities of the petitioners distinguishes the present situation from *General Dynamics* and *Knox Glass Bottle* is without merit because under *Weyerhaeuser* and its progeny, the identity of a decertification petitioner can be switched (or dispensed with entirely) if necessary.

We therefore find that the Petitioner could rely on the showing of interest in Case 22-RD-243025 in support of her petition, and the Regional Director erred by refusing to permit her to do so absent the earlier petitioner's authorization. Accordingly, we reinstate the petition and remand this case to the Regional Director for further appropriate action.

#### ORDER

The Regional Director's administrative dismissal of the petition is reversed, and the case is remanded to the Regional Director for further action consistent with this Decision.

MARVIN E. KAPLAN,           MEMBER

WILLIAM J. EMANUEL,       MEMBER

Dated, Washington, D.C., April 6, 2020