UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMAZON.COM SERVICES, LLC
Employer

and

AMAZON LABOR UNION
Petitioner

Case 29-RC-288020

ORDER

The Employer’s Request for Review of the Regional Director’s Order Denying Motion to Exclude Region 29’s Participation in the Post-Election Objections Hearing is denied as it raises no substantial issues warranting review. The Employer’s request for a stay of the proceedings is denied as moot.

In denying review, we emphasize that the appointment of a representative for a regional director is a well-established practice1 that has been codified in Section 11424 of the Board’s Casehandling Manual (Part Two) Representation Proceedings. That provision states in relevant part:

the primary function of a representative of the Regional Director is to see that the relevant evidence adduced during the region’s administrative review becomes part of the record. During the hearing, the file should be in his/her possession. The representative may voice objections; cross-examine, call and question witnesses; and call for and introduce appropriate documents. If the information in the representative’s possession warrants it, he/she should seek to impeach the testimony of witnesses called by others or contradict evidence that has been presented. However, the representative of the Regional Director should not offer new material unless he/she is certain it will not be offered by one of the parties.

If the representative finds it necessary to impeach the testimony of witnesses or contradict evidence that has been presented, the representative must exercise self-restraint and display impartiality as well as the appearance of impartiality.

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1 See, e.g. Fox Television Stations, LLC, Case 28-RD-274741 (2021) (case transferred from Region 28 to Region 19; Regional Director for Region 28 represented at hearing); MHN Government Services, LLC, 19-RC-242915 (2020) (case transferred from Region 19 to Region 32; Regional Director for Region 19 represented at hearing).
Sec. 11424.4(b).\(^2\)

The appointed representatives for the Regional Director for Region 29 in this case are accordingly expected to adhere to the role that is defined for them in the Casehandling Manual.\(^3\) We recognize that in certain respects the Regional Director for Region 28’s description of the representatives’ role diverges from what is provided in the Casehandling Manual, and we reject his additional commentary where it does so. Nonetheless, we agree overall that the appointment of the representatives here is consistent with Agency practice and the Casehandling Manual, and there is no basis for finding that the Regional Director for Region 28 departed from precedent or committed an error in taking this action.\(^4\)

The Employer suggests repeatedly that the Regional Director for Region 28’s appointment of these representatives was inherently prejudicial to its interests, and our dissenting colleague asserts that the Employer’s request for review raises a substantial issue as to whether this practice is “potentially contrary to the impartial role the representative is expected to play” (emphasis added). In our view, the concerns being raised here are speculative. Indeed, as these concerns were raised before the hearing even began, the Employer cannot point to any actual prejudice or specific misconduct by the representatives, and instead relies on the mere unsubstantiated possibility that the representatives will not “exercise self-restraint and display impartiality” during the hearing. It follows that any allegations of prejudice are more appropriately raised at the conclusion of the hearing, at which time specific, fact-based arguments can be considered.

LAUREN McFERRAN, CHAIRMAN

\(^2\) Although Sec. 11424 does not expressly refer to the instant scenario, i.e., where a regional director overseeing a proceeding that was transferred from another region appoints a representative for the regional director for the originating region, it certainly does not preclude this practice, and indeed, it has been used by regions almost exclusively in this very scenario.

\(^3\) The record is inconclusive as to who designated the specific representatives at issue here. We find this issue to be immaterial, however, given it is clear that both representatives are from regions other than Region 29 and had no involvement in the processing of the initial petition.

\(^4\) The Employer and our dissenting colleague take issue with the Regional Director for Region 28’s designation of Region 29, through its representatives, as a party to the case. But Section 102.1(h) of the Board’s Rules and Regulations – which defines a party as “the Regional Director in whose Region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding . . .” (emphasis added) – is sufficiently broad to encompass the admission of a non-presiding regional director’s representative as a party. Accordingly, we do not find that the Regional Director for Region 28 abused his discretion by admitting Region 29, through the representatives, as a party. In any event, we do not believe that the question of party status is dispositive of whether representatives should be permitted to participate in hearings to the extent contemplated in the Casehandling Manual.
DAVID M. PROUTY, MEMBER

MEMBER RING, DISSENTING:

Contrary to my colleagues, I would grant the Employer’s Request for Review. This case involves objections to an election supervised by Region 29, and was transferred to Region 28 because some of the objections allege misconduct by Region 29 personnel. Thereafter, attorneys from Regions 13 and 21 were appointed to represent the Regional Director for Region 29 at the hearing. The Employer filed a motion to exclude those representatives on June 1, 2022 and the Regional Director for Region 28 issued an Order Denying Motion to Exclude Region 29’s Participation in the Post-Election Objections Hearing on June 10, a Friday. The Employer filed its Request for Review on June 12, and the hearing opened as scheduled on June 13. In my view, the request for review raises substantial issues warranting review with respect to that order.

As my colleagues note, Section 11424 of the Board’s Casehandling Manual (Part Two) Representation Proceedings states that “the Regional Director” may “assign a Board agent designated as representative of the Regional Director (Sec. 11424.4) to appear at the hearing to see that evidence adduced during the region’s investigation becomes part of the record. However, as the parties are expected to carry the burden of ensuring that a full record is made (Secs. 11362.2 and 11392.10), a representative of the Regional Director will ordinarily not be necessary.” Section 11424.4 further provides that “The representative may voice objections; cross-examine, call and question witnesses; and call for and introduce appropriate documents. If the information in the representative’s possession warrants it, he/she should seek to impeach the testimony of witnesses called by others or contradict evidence that has been presented…. If the representative finds it necessary to impeach the testimony of witnesses or contradict evidence that has been presented, the representative must exercise self-restraint and display impartiality as well as the appearance of impartiality.” The Order Denying Motion contradicts this guidance in several respects.

First, the Order Denying Motion grants party status to the Region 29 representatives. Nothing in the Casehandling Manual supports this designation, which is contrary to Section 102.1(h) of the Board’s Rules and Regulations defining a party as “the Regional Director in whose Region the proceeding is pending and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the Act, any person named as Respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of Section 8(a)(1) or 8(a)(2) of the Act; but nothing herein should be construed to prevent the Board or its

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5 Although it is not clear who selected the representatives, the Order Denying Motion suggests that it may have been the Regional Director for Region 29. See Order Denying Motion at 5 fn. 3 (“In any event, the Employer admits that I may appoint a Regional Office representative to appear at the hearing and so I may choose the same Board Agents as the Regional Director of Region 29, resulting in essentially the same outcome.”).
designated agent from limiting any party to participate in the proceedings to the extent of the party's interest only.”

Second, the Order Denying Motion expressly contemplates that the Region 29 representatives will act in the same adversarial role as a party, “to defend and explain the conduct that the Employer alleges to be objectionable …. the functions and powers of the Regional Director’s representative are identical to those of the employer and petitioner in a post-election hearing… the accused has a right to face his or her accuser and respond.” Order Denying Motion at 2, 3, and 5. This ruling directly contradicts the Casehandling Manual provisions quoted above, on which the Order Denying Motion purports to rely. It also contradicts the procedure used in Fox Television Stations, LLC, Case 28-RD-274741 (2021), a case cited by Region 28, where the regional director’s representative emphasized that “I am here as a representative of the Regional Director to see that the evidence use (sic) in the investigation is made available to the Hearing Officer in this case. In this function, I may ask some questions, and if necessary, call witnesses. I am not here to advocate on behalf of any party to this proceeding, and my services are equally at the disposal of the Hearing Officer and the parties throughout the case.” (Emphasis added.)

Third, neither the Casehandling Manual nor the Board’s Rules and Regulations specify who should appoint representatives pursuant to Section 11424 where, as here, a case has been transferred between regions because it includes allegations of regional misconduct. Even if the Regional Director for the accused region has designated a representative in prior cases, the Request for Review raises substantial issues warranting review with regard to any such prior practice as potentially contrary to the impartial role the representative is expected to play.

For all of the foregoing reasons, I believe that the Employer’s Request for Review raises substantial issues warranting review. I reluctantly concur in denying as moot the Employer’s request for a stay, inasmuch as the hearing has already opened.

JOHN F. RING, MEMBER


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6 My colleagues properly reject these comments. While I would grant review to clarify the proper role of the representatives, I agree that the Employer retains the right to raise any allegations of prejudice to the hearing officer or, if necessary, to the Board.