Community Affairs, Inc. *and* Communications Workers of America, Local 1040, Petitioner. Case 22–RC–11485

August 25, 1998

ORDER DENYING REVIEW

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's "request for review" of the Regional Director's letter (pertinent portions are attached as an appendix) rejecting the Employer's request to conduct a check of the Petitioner's showing of interest against the Employer's late-filed list of employee names. The "request for review" is denied as it raises no substantial issues warranting review.[1]

APPENDIX

This is in response to your letter dated February 11, 1998, transmitted to this office via telecopier on April 6, 1998. It is the Region's position that it is not appropriate to conduct a check of the Petitioner's Showing of Interest (Showing) at this time. The Region concluded it would not be appropriate to conduct a check of the Petitioner's Showing as a significant time has elapsed since the filing of the petition here and the Region's initial request of the Employer that it provide the necessary employee and payroll documentation for a check of the Showing. In this regard, I note that the Region's initial letter to the Employer dated November 19, 1997, requested from the Employer, inter alia, "an alphabetized list of employees described in the petition together with their job classifications, for the payroll period immediately preceding the date of this letter" to conduct a check of the Showing. No such list was submitted in a timely fashion, and a check of the Showing was thereafter conducted pursuant to Representation Casehandling Manual (Manual) section 11030.1, which provides that "if no payroll list has been submitted, the estimate made by the affected union should be used as the number involved and each signer of authorization material should be considered to be employed within the unit claimed."

The Agency's blocking charge policy requires that a scheduled hearing or election be postponed until completion of a preliminary investigation and determination of the merits and impact of the charge. However, Manual section 11730.1 states in relevant part that "if the charge is filed after investigation of the R case has already begun, action on the petition will normally be suspended pending investigation of the charge, *except where dismissal of the petition is warranted* or the Petitioner had requested its withdrawal" (emphasis added). Thus, while a blocking charge causes the Region to hold in abeyance the further processing of a pending petition, it *does not* preclude the Region from acting on the petition's dismissal or withdrawal after, for example, having checked the sufficiency of a petitioner's Showing. Therefore, if the involved employer submits the requisite information in a timely fashion, and dismissal of the petition is warranted, such action would be taken irrespective of the fact the petition is "suspended" from further processing.

It is undisputed that the Employer in the instant case did not timely submit a list of employees' names when initially requested. Section 11195 of the Manual states that "[i]f the employer has had a request and sufficient time to furnish a list earlier, the list now presented need not be checked." I consider this principle, with regard to the list submitted in a letter dated February 11, 1998, applicable to the circumstances presented here.

I further note that the position you take, that the list of employees employed as of February 7, 1998, the only list submitted by the Employer, should be used to check the Showing, has an inequitable consequence for the Petitioner. Thus, although the Petitioner would normally be entitled to supplement its Showing on being advised of any inadequacy, Manual section 11024.1, the passage of time, and the consequent turnover among employees could render such efforts futile as the Petitioner must attempt to supplement its Showing among the current employees, whereas the list of employees is from a distant period. In addition, using a list of current employees is equally inequitable as the petition and its Showing relate to a time distant from the list. The only equitable approach is to perform the Showing check and provide an opportunity for supplementation, only at or around the time the petition is filed, and only based on a list of employees from around the time the petition is filed. Accordingly, when the Employer fails to timely submit the list on request, it has waived its opportunity to have the Showing checked, and the check based on the Petitioner's estimate is determinative.

Lastly, I note that the Showing determination only resolves the threshold issue of whether the Agency will choose to process the petition further to its culmination, i.e., if otherwise appropriate, an election. As such, it is within the Agency's discretion to make this administrative determination as to merely whether to proceed further with the processing of the petition.

For the above reasons, I will not now conduct such a Showing check against the Employer's delayed list.

[1] An order denying review was originally issued in unpublished form on May 8, 1998.