

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LAFARGE NORTH AMERICA, INC.¹

Employer

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150 AFL-CIO

Petitioner

Case 13-RC-20721

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁴

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁵

All full time and regular part-time production and maintenance employees employed by the Employer at its facility currently located at 3210 Watling Street, East Chicago, Indiana 46312; excluding all quality assurance employees, all office clerical employees and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees

engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 150 AFL-CIO.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before **October 17, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **October 24, 2003**.

DATED October 10, 2003 at Chicago, Illinois.

/s/ Gail R. Moran
Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing have been carefully considered.ⁱ

3/ The Employer is a corporation engaged in the business of Slag processing.

4/ The Petitioner seeks to represent a unit of all full time and regular part time production and maintenance employees at the Employer's 3210 Watling Street, East Chicago, Indiana facility. The Employer has recognized United Steelworkers of America, Local 1010 (herein the Steelworkers or Local 1010) as the collective bargaining representative of the employees sought by the Petitioner and has a collective bargaining agreement covering these employees with the Steelworkers through July, 2004. The Employer's recognition of the Steelworkers and execution of a collective bargaining agreement with the Steelworkers is the subject of a current unfair labor practice proceeding pending before the Board on the Employer's exceptions to the Decision of the Administrative Law Judge in Cases 13-CA-39980 and 13-CA-40178 and is also the subject of United States District Court Order in a Section 10(J) proceeding in *GAIL R. MORAN, Acting Regional Director of Region 13 of the National Labor Relations Board for and on behalf of the National Labor Relations Board, Petitioner vs. LAFARGE NORTH AMERIAC, INC.*, Respondent, Case No. 2:03-CV-176. Case NO. 2:03-CV-176 (Northern District of Indiana, Hammond Division - herein the respectively referred to as the Court and the 10j Order). The Order of the Court, *inter alia*, requires (1) the Employer to withdraw and withhold all recognition from the Steelworkers unless and until it is certified as the representative of the Employer's employees and (2) cease giving any effect to its collective bargaining agreement with the Steelworkers.

The Parties' Contentions

The Employer takes the position that the Petitioner's petition should be dismissed. In support of its position the Employer contends that, notwithstanding the Court's 10(j) injunctive cease and desist order, the collective bargaining agreement with Steelworkers acts as a bar to the Petitioner's petition until the Board issues a final order in the unfair labor practice proceeding and that order finds its recognition of the Steelworkers to be unlawful. The Employer also asserts that under well-established precedent the petition should be blocked pending the resolution of multiple unfair labor practice (ULP) charges filed by the Petitioner. The Employer further contends that the petition should be dismissed because the Petitioner has "unclean hands" in the processing of this petition and that the showing of interest is stale, being more than 19 months old.

ⁱ The record in the instant case consists of administrative notice by the Hearing Officer of an unfair labor practice proceeding involving the Employer and Petitioner herein in Case 13-CA-39980 and 13-CA-40178 before Administrative Law Judge Earl E. Shamwell, Jr. (JD-79-03); contentions and positions of the parties on the record; and the admission of three documents in the record as Employer exhibits: (1) An Order of the United States District Court in a Section 10(j) proceeding authorized by the Board in *GAIL R. MORAN, Acting Regional Director of Region 13 of the National Labor Relations Board for and on behalf of the National Labor Relations Board, Petitioner vs. LAFARGE NORTH AMERIAC, INC.*, Respondent in Case No. 2:03-CV-176 (herein the 10j Order); (2) Respondent, LaFarge North America, Inc.'s Exceptions to the Decision and Recommended Order of the Administrative Law Judge in Case 13-CA-39980 and 13-CA-40178; (3) A signed one page document between the Petitioner and the United Steelworkers of America (Steelworkers) pursuant to which the Steelworkers "will formally disclaim interest" in representing the Employees employees at issue herein.

The Petitioner contends that the collective bargaining agreement between the Employer and Local 1010 is not a bar to processing its petition through the operation of the 10(j) Order issued by the Court. The Petitioner's position is that the pending unfair labor practice charges before the Board do not serve to block the instant petition. In addition, the Petitioner asserts that the Employer's "unclean hands" and showing of interest arguments lack merit under current Board law and procedure.

Based on the evidence set forth below, I find that there is no contract bar to the Petitioner's representation petition and that the pending ULP charges do not require that the processing of the petition be held in abeyance. I further find that the Employer's "unclean hands" and untimely showing of interest arguments are without merit.

A. Backgroundⁱⁱ

The Employer operates as a slag granulation facility at Ispat Inland's Indiana Harbor Works, a plant that is comprised of a collection of steel related facilities in East Chicago, Indiana. Approximately 5,700 employees at Ispat's plant are represented by a labor union. Of those, approximately 5,600 are represented by Steelworkers Local 1010. The Employer and Steelworkers Local 1010 entered into their most recent collective bargaining agreement (cba) on August 1, 1999; it is valid through July 2004. The collective bargaining agreement, among other terms and conditions, prohibits contracting out any work capable of being performed by bargaining unit employees, both inside and outside of Ispat's premises. In the past, employees represented by Steelworkers Local 1010 have performed slag removal at Blast Furnace No. 7. Ispat and Local 1010 interpreted the agreement to mean that contracting out of slag removal was not permitted.

In the Spring of 1999, the Employer and Ispat began discussing the possibility of an agreement through which the Employer would build and operate a new slag facility as Blast Furnace No. 7 (East Chicago facility) using a new advanced process. On or about December 20, 1999, the Employer met with Ispat and Local 1010 to discuss the construction, operation and maintenance of the proposed slag plant.

On January 18, 2000, the Employer sent Local 1010 a copy of their initial contract proposal. Three days later, the Employer met again with Local 1010 and discussed the terms of the proposed contract. The Employer agreed to recognize Local 1010 after a card check. In addition, it was agreed that if Local 1010 got a majority status, that the subsequent agreement would become the contract. On March 14, 2000, the Employer sent Local 1010 a signed but undated copy of the proposed contract for Local 1010's approval and signature. Sometime after March 14, 2000, Local 1010 signed the contract, which did not have an effective bargaining date or specific termination date. At this point, the Employer had not hired any employees for the new slag granulation facility.

ⁱⁱ The information contained in the Background section is derived from the findings of the Court as set forth in its 10(j) Order.

The Employer's slag granulation facility began construction in early 2001. In June 2001, the Employer hired Steve Marcus as plant manager for the new facility. A few months later, the Employer advertised in local newspapers for certain job openings and solicited resumes from various sources. Ultimately, employees were hired through this effort.

In December 2001, Local 1010 met with a number of the Employer's newly hired workers at its union hall. There, Local 1010 asked the workers to sign a Local 1010 authorization card, authorizing Local 1010 to represent them. By January 25, 2002, the Employer was informed that approximately 9 to 12 of its workers had signed authorization cards for Local 1010. On that day, the Employer and Local 1010 also formerly completed the execution of the agreement of March 14, 2000.

On February 6, 2002, Petitioner's Organizer David Fagan, informed Marcus that two employees were engaging in organizational activities for Local 150 at the Employer's East Chicago facility. By the middle of February, 17 of the Employer's employees signed revocation of authorization forms in an attempt to withdraw and revoke the prior bargaining authorization of Local 1010. A number of these workers then signed authorization cards for Petitioner. On February 6, 2002, Petitioner filed a representation petition with the NLRB asserting that it be certified as the collective bargaining representative for the Employer's employees at the East Chicago facility.

Subsequently, based upon unfair labor practice charges filed by the Petitioner, Region 13 of the National Labor Relations Board (NLRB) filed a Complaint against the Employer alleging violations of Section 8(a)(2) of the Act. The Complaint alleged that the March 2000 contract, executed in January 2002, between the Employer and Local 1010 was illegal. In concert, Region 13 also contended the Employer engaged in numerous other ULPs with regard to recognizing and authorizing Local 1010 to be its employees' representative. As a result, Administrative Law Judge (ALJ) Shamwell, Jr. of the NLRB conducted a full hearing on the merits of the Complaint. On August 6, 2003, ALJ Shamwell issued his Decision on the unfair labor practice charges. (JD-79-03).

On October 3, 2002, the Petitioner and Local 1010 signed and executed a document whereby they agreed that Local 1010 would disclaim interest in the employees employed at the Employer's East Chicago facility at some indefinite time in the future. In return, Local 150 would disclaim interest in employees working for another unrelated company. The record is clear that Local 1010 had not implemented the disclaimer as of the date of the issuance of the 10(j) Order issued by the Court. Nor is clear whether the disclaimer agreement is viable as of the date of the hearing in the instant matter.ⁱⁱⁱ

ⁱⁱⁱ A signed document containing the terms of this agreement was entered into the record as Employer Exhibit No. 3, and the Employer's position regarding its unclean hands contention posits the agreement as being viable. On the other hand, the Petitioner in its brief citing to the transcript of the 10(j) proceeding states no formal disclaiming resulted because the Employer threatened to sue the Steelworkers. In any event, the agreement for the Steelworkers to disclaim is worded as an event to occur at some future point.

On May 25, 2003, the acting Regional Director for Region 13, on the Board's authorization and on behalf of the Board, filed a petition with the Court requesting issuance of a preliminary injunction against the Employer. In paragraph 10 of the Petition for Temporary Injunction under Section 10(j) of the National Labor Relations Act, as Amended, the Acting Regional Director set forth, *inter alia*, that "by enjoining Respondent from continuing to recognize Local 1010 would restore the conditions necessary for Respondent's employees to freely choose whether they wish to be represented by any union, thereby providing an equitable remedy not otherwise available at law". The Court was informed that Local 150 had made a written waiver of its right to file objections to the results of any election conducted on its representation petition based on the unfair labor practice charges filed with the Board. The Employer argued before the Court that the Steelworker agreement operated as a contract bar against any election during its term until the window period ninety (90) to sixty (60) days before the end of the agreement. The Employer also argued that the Petitioner had unclean hands because of the disputed disclaimer agreement with the Steelworkers. On August 4, 2003, the Court granted the preliminary injunction. The Court held that pending final disposition of the matters before the NLRB, the Employer, is ordered to withdraw and withhold all recognition from Local 101, unless and until they have been certified by the NLRB as the exclusive collective bargaining representative of its employees. In addition, the Court ordered the Employer to cease and desist from giving effect to the collective bargaining agreement between the Employer and Local 1010.

B. Analysis

The Employer contention that the petition is barred by its collective bargaining agreement with the Steelworkers or, at the least, that the processing of the petition should be blocked under the Board's blocking charge policy pending a final Board order rests on long standing Board policies with regard to processing representation petitions in the face of unfair labor practice charges that are not applicable herein by virtue of the 10(j) Order. Neither the contract bar nor blocking charge policies of the Board which the Employer relies upon are carved in stone. It has long been recognized that the Board has discretion to apply these policies, or not apply them, as different circumstances may warrant:

[t]he contract bar rule is not statutorily or judicially mandated, but is a creation of the Board. *El Torito*, 929 F.2d at 493. This rule "was formulated by the Board in an effort to reconcile the NLRA's goals of promoting industrial stability and employee freedom of choice. *Bob's Big Boy*, 625 F.2d at 851. Therefore, the Board has "substantial discretion in deciding whether to apply the rule in a particular case and in formulating the contours of the rule" [citations omitted].

NLRB v. Dominick's Finer Foods, 28 F.3d 678, 146 LRRM 2784, at 2787 (7th Cir. 1994). Substantial discretion also exists with regard to the application of the Board's blocking policy. A Regional Director, may, notwithstanding blocking charges, proceed to process a representation petition, if in the Director's opinion, the employees at issue can exercise a free choice in an election. Section 11731.2 of the Board's *Casehandling Manual, Part*

Two, Representation Proceedings; see also, *Empresas Inabon, Inc.*, 309 NLRB 291 (1992). The Employer's contentions herein concerning the application of Board's contract bar and blocking charge policies to dismiss or block the processing of the instant petition completely ignores the impact of the Court's 10(j) Order and fails to address the issues and policies involved in reconciling the remedial impact of interim relief under Section 10(j) of the Act on the application of traditional policies such as the contract bar or blocking charge policies.

The Court's 10(j) Order has obviated the underlying basis upon which the Board has applied the contract bar and blocking charge policies. A fundamental purpose in the Board seeking interim Section 10(j) relief is, as the Court noted in its 10(j) Order, to restore the status quo to that which "existed before the onset of unfair labor practices". (10(j) Order p. 28). The Court, based upon finding that Acting Regional Director had established a "high likelihood" of success in proving the merits of the unfair labor practice allegations, restored the status quo to that which existed prior to the Employer's recognition of the Steelworkers as the exclusive collective bargaining representative of its employees. The Court has required the Employer to withdraw recognition of the Steelworkers and to cease applying the collective bargaining agreement it negotiated with the Steelworkers. The purpose of this portion of the Court's 10(j) Order was to restore the conditions necessary to allow the employees of the Employer involved herein to choose a bargaining representative on their own accord. It is the opinion of the undersigned that in these circumstances, the Employer's employees can make an uncoerced choice of whether they wish to be represented by the Petitioner.

In the opinion of the undersigned, the Court's 10(j) Order has removed the collective bargaining agreement between the Employer and the Steelworkers from serving as a bar.^{iv} The undersigned will not give effect to a collective bargaining agreement to block a representation petition when the Court, on basis of a petition by the undersigned on the Board's behalf, rejected the Employer's contract bar argument and ordered the Employer to give no effect to that agreement. Such an action would undermine the very basis upon which interim relief was sought from the Court. That the Court's 10(j) Order is an interim order effective until the Board issues a decision on the unfair labor practices does not negate the impact of the Court's 10(j) Order that, at least for now, the agreement between the Employer and the Steelworkers is to be given no effect. In short, under the Court's 10(j) Order, there is at this time no collective bargaining agreement in place to bar the processing of the instant petition. Further, to allow the Employer's agreement with the Steelworkers to serve as a bar to the instant petition would undermine the Court's finding that the employees will suffer irreparable harm if not allowed to exercise their right to select a bargaining representative of their own choosing at this time rather than having to wait for a final Board Order. (10(j) Order pp. 25 – 26).

^{iv} The Court rejected the Employer's contract bar argument finding that while the Employer put a "lot of faith in its *contract bar* argument" the contract is likely unlawful and that the court "was unpersuaded that the contract bar would require the continued enforcement of such an unlawful contract to its fruition" (10(j) Order at p. 26).

The fact that the Steelworkers have not sought to intervene in this proceeding and has an agreement to disclaim interest in representing the Employer's employees, at some point in the future, also substantially diminishes the basis for applying the contract bar policy to bar the petition herein. Under these circumstances there is negligible or no "industrial stability" to protect, the prime policy consideration underlying the contract bar doctrine. The only stability that would be protected is that of the Employer at the expense of the employees who are seeking to choose a bargaining representative of their own choosing and who may find themselves without effective representation for a substantial period of time as the Steelworkers under the Court's 10(j) Order, and apparently on their own volition, are precluded from representing the Employer's employees. In sum, I find that the collective bargaining agreement between the Employer and the Steelworkers is not a bar to processing the instant petition.^v

With regard to the Employer's contention that the processing of the instant petition should be blocked pending the resolution of the unfair labor practice proceeding it cites Section 11730.3(b)(3) of the Board's Casehandling Manual, Part Two, Representation Proceedings. That section, in part, states the following: "A determination of merit to the 8(a)(2) charge *may* cause the petition to continue to be blocked, until resolution of the [ULP] charge by the Board, since the bargaining relationship must be disestablished before the petition can be processed" (emphasis added). Herein, the Court's 10(j) Order has disestablished the bargaining relationship that is the subject of the Section 8(a)(2) unfair labor practice charge - thus, removing the purpose for blocking the petition.^{vi} Further, as noted in the Board's Casehandling Manual in Section 11731.2,

^v In its brief the Employer raises the specter of possible conflicting findings if the Board precedes to conduct an election. In the Employer's scenario, it asserts that it would be subject to an 8(a)(5) violation if after an election it enters into negotiations with the Petitioner, but the Board subsequently finds that its recognition of the Steelworkers did not violate the Act. The Employer cited no cases to support the proposition that might be subject to such a finding in the event the Board's decision negated the basis for the interim relief, and it is the opinion of the undersigned there is no support for such a proposition. It is well recognized that any collective bargaining agreement entered into by and between the Employer and the Petitioner may be made contingent upon the Board ultimately affirming the General Counsel's complaint in the unfair labor practice case. *Kaynard v. Palby Lingerie, Inc.*, 625 F.2d 1047, 1054 (2d Cir. 1980); *Asseo v. Pan American Grain Co.*, 805 F.2d 23, 28 (1st Cir. 1986). Further, an analogy to the Board's policy in *RCA Del Caribe, Inc.*, 262 NLRB 963 (1982) may be applicable. In that case, an employer faced with the filing of a rival union petition was, nevertheless, permitted to bargain with the incumbent union and execute an agreement if such was reached notwithstanding the outstanding question concerning representation. The Board stated if the rival union won the election, the agreement reached with the incumbent union would be null and void and no Section 8(a)(2) charge would lie against the employer for negotiating with the incumbent union in the face of the rival petition.

^{vi} Inasmuch as the Steelworkers have not intervened in this proceeding, the lack of a final Board order on the unfair labor practice allegations is not an impediment to proceeding to an election. In such circumstances the Board has recognized that any certification issued in the representation proceeding would not be affected by pending Section 8(a)(2) proceedings. *Pullman Industries, Inc.*, 159 NLRB 580 (1966), involved an issue of whether a representation petition should be processed in the face of pending 8(a)(2) allegations concerning the employer bargaining with an employee "committee". The Board found it would effectuate the purposes of the Act to direct an immediate election notwithstanding the pending 8(a)(2) allegations as "the 'committee' has not intervened in the instant proceeding, [and] any certification which the Board might issue herein would not be affected by the pending 8(a)(2) proceedings". *Id* at 584.

there is also an exception to the blocking policies of the Board in circumstances where “the Regional Director is of the opinion that the employees, could, under the circumstances, exercise their free choice in an election. . . .” see also, *Empresas Inabon, Inc.*, supra. Given the circumstances found herein, where the Court’s 10(j) Order has restored the status quo to that which existed prior to the commission of the unfair labor practices that are the subject of the ongoing unfair labor practice litigation, it is the opinion of the undersigned, and I so find, that the employees who are the subject of the instant petition can exercise their free choice in an election.^{vii}

In further support of its position that the petition should be dismissed, the Employer contends that the October 3, 2002 agreement between the Steelworkers and the Petitioner resolving representation issues between them - including the Steelworkers disclaiming interest in the Employer’s employees establishes that Petitioner has unclean hands in this matter. I find that on two bases the Employer’s “unclean hands” argument lacks merit. First, the argument was expressly rejected by the Court in the preliminary injunction proceedings. In the Court’s view, the rights at stake in selecting a representative are those of the employees, and there is no contention that the employees had unclean hands. Secondly, the Employer has failed to cite any authority in support of its contention that the October 3, 2002 agreement is unlawful or violates any policy under the Act. The Board recognizes and allows time for labor organizations with competing interests in a group of employees to have their competing representation interest resolved outside the Board’s processes which may result in one labor organization disclaiming interest in favor or the other. See, Sections 11018 through 11019 of the Board’s Casehandling Manual, Part Two, Representation Proceedings. Thus, I find no basis for finding that the Petitioner has unclean hands or for dismissing the petition on the basis of the October 3, 2002 agreement.

Finally, the Employer objects to processing a petition based on a showing of interest that is more than 19 months old. Under Section 9(c)(1)(A) of the Act, the Board is required to investigate any petition which alleges that a “substantial number” of the employees desire an election. By administrative rule^{viii}, a showing of interest of 30 percent of the employees the appropriate unit is the minimum requirement to invoke the Board’s process. The showing of interest requirement is an administrative device designed, on the one hand, to effectuate employee free choice through the running of representation elections, while on the other hand, also conserving the limited resources available to the Agency by insuring that a significant number of employees actually desire to participate in such elections. *Big Y Food, Inc.* 238 NLRB No. 114 (1978). To effectuate these policy considerations, the Board has made the showing of interest a requirement that is measured at the beginning of the processing of a petition. Thus, a showing of interest must be submitted within 48 hours of the filing of a petition. The

^{vii} The Board has discretion to “determine the proper time for an election in the face of 8(a)(2) allegations.” See *Louis-Allis Co. v. NLRB*, 463 F.2d 512, 516 (7th Cir. 1972); *NLRB v. Keller Aluminum Chairs Southern, Inc.*, 425 F.2d 709, 710 (5th Cir. 1970). Herein, upon the Court’s grant of the requested 10(j) relief, the immediate processing of the instant representation petition is the authorized consequence of the fruition of the Board’s 10(j) authorization.

^{viii} See Section 101.18(a) of the Board’s Rules and Regulations.

Board noted in response to a contention concerning “stale” authorization cards in *General Dynamics Corporation, Convair Division*, 175 NLRB 1035 (1969), “Such an attack has no bearing on the validity of the original showing but merely raises the question as to whether particular employees have changed their minds about union representation. That question can best be resolved on the bases of an election by secret ballot.” *Big Y Food, Inc.* 238 NLRB No. 114 (1978)(quoting *General Dynamics Corporation, Convair Division*, 175 NLRB 1035, 1035 (1969)). Thus, the mere passage of time herein from the initial filing of the petition due to the petition being blocked until the Court’s 10(j) Order by the pending unfair labor practice charges does not negate a valid initial showing of interest submitted at the time the petition was filed. Further, the showing of interest is an administrative matter not subject to litigation, and an administrative determination that there is a sufficient showing of interest to process the petition has been made.

Conclusion

Based upon all the entire record, I find that there is no basis to dismiss the petition or to hold its processing in abeyance. I find that the employees sought in the petition in the unit found appropriate herein can exercise their free choice in an election, and that it will effectuate the purposes and policies of the Act to Direct an election herein.

5/ The parties stipulated, and I find, that the above describe unit is an appropriate unit for the purposes of collective bargaining.

There are approximately 19 employees in the unit found to be appropriate.

247-4001-2550
347-4020-3375
347-4030-3750-5000
347-6020-5000
347-6020-5033
393-6061-3350

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