UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

GRANDVIEW FOODS, LLC;
BARRETT BUSINESS SERVICES, INC.
Joint Employers

and Case 19-RC-14560

TEAMSTERS LOCAL UNION NO. 760,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER
VACATING THE ELECTION AND DISMISSING THE PETITION

On September 22, 2004, I issued a Decision and Direction of Election in this matter in which I directed an election in a unit of jointly and singly employed employees. Joint employers Barrett Business Services, Inc. (BBSI) and Grandview Foods filed timely requests for review of the Decision and Direction of Election shortly thereafter. The parties' requests for review were denied by the Board by Order issued on October 20, 2004.[1] The election was held the next day. The tally of ballots showed that the Union won the election by a vote of 97 to 4, with the number of challenged ballots being insufficient to overturn the results of the election. BBSI filed objections to the election on October 28, 2004. On November 30, 2004, BBSI filed a Motion for Reconsideration. In its motion, BBSI requests that the Regional Director reconsider the Decision and Direction of Election in this case in light of Oakwood Care Center, 343 NLRB No. 76 (2004), which was issued by the Board on November 19, 2004. The unit found appropriate in this case has not yet been certified as BBSI's objections to the election are still pending before the Region.

In Oakwood Care Center, 343 NLRB No. 76 (2004), the Board overruled M.B. Sturgis, 331 NLRB 1298 (2000), and returned to the Board's prior precedent requiring the employers' consent to units made up of both jointly and singly employed employees. In its Motion for Reconsideration, BBSI contends that the Region's Decision and Direction of Election should be vacated because it relies on M.B. Sturgis, in directing an election in a single unit of jointly and singly employed employees without obtaining the Employers' consent to the combined unit.

[1] As noted by Chairman Battista in the Board Order, in its requests for review, the Employers did not raise the issue as "to whether the petitioned-for unit is appropriate even though it includes both jointly employed employees and employees employed solely by Grandview."

Petitioner contends that BBSI's motion should be denied because BBSI failed to raise this issue either at hearing or in its request for review. In support of its contention, Petitioner cites NLRB Rule 102.65(e)(1) which prohibits the Board from entertaining motions for reconsideration "with respect to any matter which could have been but was not raised pursuant to any other section of these rules." Petitioner's position is unavailing as Oakwood Care Center was issued by the Board on November 19, 2004, long after the post hearing briefs and requests for review had been filed and there is no indication that BBSI had notice that M.B. Sturgis was slated to be overruled prior to the issuance of that case.[2]

Petitioner also contends that the Board should not apply Oakwood Care Center retroactively to this case as these issues have been litigated and closed. Petitioner's argument might control if Oakwood Care Center had been decided on policy grounds. However, as the representation case is still pending before the Region, the bargaining unit has not yet been certified, and for the reasons set forth below, I find that application of Oakwood Care Center to this case is appropriate.

Critical to my ruling today is the fact that it appears that the Board in Oakwood Care Center overruled the holding in M.B. Sturgis not as a policy matter, but rather because it found that the Board lacks authority under the Act to direct elections in units encompassing employees of more than one employer without the employers' consent. Oakwood Care Center, 343 NLRB slip op. at 3-4. Under these circumstances, where the Board has set forth that it lacks statutory authority to direct an election in such a unit without the employers' consent, the employers at issue have made their opposition to the combined unit known, and the unit in question has not yet been certified, I am constrained to grant BBSI's Motion for Reconsideration, vacate the election, and dismiss the instant petition.

ORDER

BBSI's Motion for Reconsideration is granted, the election is vacated, and the petition is hereby dismissed.

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,

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[2] The Union also contends that the motion was untimely, as it was not filed within 14 days of the decision being issued. However, the Rule cited by the Union in support of this contention provides that "motions for reconsideration be filed within 14 days, or such further period as may be allowed, after service of the decision." NLRB Rules and Regs 102.65(e)(2). Given that the Employer did not have notice of this issue until the issuance of the Oakwood decision, I find that BBSI filed its motion in a timely manner.

addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by Tuesday**,** December 28**,** 2004.

DATED at Seattle, Washington, this 14th day of December 2004.

/s/ Richard L. Ahearn

Richard L. Ahearn, Regional Director
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