



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
Region 1 Boston, Massachusetts
10 Causeway Street, 6th Floor
Boston, MA 02222-1072
(617) 565-6700

March 12, 2009

Mr. Jose E. Pinto
113 Union St.
Everett, MA 02149

Re: *NECCO*
Case 1-RD-2124

Dear Mr. Pinto:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been investigated and considered. I have determined that your petition must be dismissed because of insufficient evidence of interest in support of the petition.

On February 27, 2009, you filed a petition seeking to decertify Bakery, Confectionery, Tobacco Workers, and Grain Millers International Union, AFL-CIO, Local No. 348, as your collective bargaining representative. Under the Board's Statements of Procedure, Section 101.18, and Representation Casehandling Manual, Sections 11022.2 et seq., in order to be processed your petition must be supported by signatures of 30% of the employees in the bargaining unit stating that they no longer wish to be represented by the union.

In addition, under the Board's contract bar rules, where the parties have a collective bargaining agreement in effect, in order to be timely, a petition must be filed more than 60 days but less than 90 days before the expiration date of the contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Here, the parties' contract was effective for the time period May 1, 2006 through April 30, 2009. Accordingly, the petition in this case, in order to be timely, had to be filed on or between January 31, 2009 and March 1, 2009.

An administrative investigation of the showing of interest submitted by you has disclosed that you have failed to submit a sufficient timely showing. Rather, it appears from the investigation that you initially did not file any evidence of interest with your petition. The Board agent handling the case contacted you and informed you that you had to submit such evidence promptly. When you did submit evidence of interest, many of the signatures were dated after March 1, 2009, which means that the evidence of interest was secured and submitted later than the last day that the petition could be filed. The Board's rules provide, however, that "in no event will the time to submit such additional evidence of interest be later than the last day on which the petition may be timely filed." NLRB Statements of Procedure, Sec. 101.17; NLRB Representation Casehandling Manual Section 11030.1. Accordingly, that evidence was not timely submitted. A check of the evidence submitted against a payroll list supplied by the Employer showed that without the evidence of late-filed interest, your showing did not reach the requisite minimum of 30 percent.

Accordingly, I find that the showing of interest submitted by you in support of the petition is insufficient and the petition must be dismissed.

Right to Obtain Review: Section 102.71(b) of the National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing a request for review with the National Labor Relations Board. If you wish to file a request for review, your attention is directed to the following, which summarizes the provisions of Section 102.71(c) of the Rules:

Request Due Date: The request for review must be received by the Executive Secretary of the Board in Washington, D.C. by the close of business at 5 p.m. on March 26, 2009. However, if you mail the request, it will be considered timely if it is postmarked no later than one day before the due date. The request MAY NOT be filed by facsimile transmission. You may file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlrb.gov.

Extension of Time to File Request: If you provide a good reason, the National Labor Relations Board may grant you an extension of time to file the request for review. You may file a request for an extension of time by mail, by facsimile transmission, or through the Internet. The fax number is (202) 273-4270. Any request for an extension of time must be received by the due date indicated above. A copy of any request for extension of time should be sent to me.

Request Contents: The request for review (eight copies) must contain a complete statement setting forth the facts and the reasons why you believe the decision to dismiss the petition is incorrect.

Address for Request for Review: The request should be sent to the Executive Secretary of the National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570 by the due date specified above. You should send a copy of the request to me, and one copy of the request to each of the parties whose names and addresses are listed below.

Very truly yours,

Rosemary Pye
Regional Director

cc:

Mr. Richard Krause, President
Necco
135 American Legion Highway
Revere, MA 02151

Mr. Jay M. Presser, Esq.
Skoler, Abbott & Presser, P.C.
One Monarch Place, Suite 2000
Springfield, MA 01144

Mr. Wayne Matthews
Bakery, Confectionery, Tobacco Workers & Grain
Millers International Union, Local 348, AFL-CIO
One Pleasant Street
Framingham, MA 01701

Ms. Anne R. Sills, Esq.
Segal, Roitman, LLP
111 Devonshire Street, 5th Floor
Boston, MA 02109