

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UGL-UNICCO SERVICE COMPANY  
Employer

and

Case 1-RC-22447

AREA TRADES COUNCIL a/w  
INTERNATIONAL UNION OF  
OPERATING ENGINEERS LOCAL 877,  
INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 103,  
NEW ENGLAND JOINT COUNCIL OF  
CARPENTERS LOCAL 51, PLUMBERS  
AND GASFITTERS UNION (UA) LOCAL  
12, AND THE PAINTERS AND ALLIED  
TRADES COUNCIL DISTRICT NO. 35  
Petitioner

and

FIREMEN AND OILERS CHAPTER 3,  
LOCAL 615, SERVICE EMPLOYEES  
INTERNATIONAL UNION  
Intervenor

GROCERY HAULERS, INC.  
Employer

and

Case 3-RC-11944

TEAMSTERS LOCAL 294, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS  
Petitioner

and

BAKERY, CONFECTIONERY,  
TOBACCO WORKERS' AND GRAIN MILLERS,  
INTERNATIONAL UNION, LOCAL 50  
Intervenor

## NOTICE AND INVITATION TO FILE BRIEFS

On August 27, 2010, the Board granted the Intervenor's Request for Review in *UGL-UNICCO Service Company*, 1-RC-22447 (Members Schaumber and Hayes dissenting).<sup>1</sup> On June 9, 2010, the Board granted the Intervenor's Request for Review in *Grocery Haulers, Inc.*, 3-RC-11944. The Board has consolidated these cases for purposes of decision-making. The Board invites the filing of briefs in order to afford the parties and interested amici the opportunity to address issues raised in these cases--whether the Board should modify or overrule *MV Transportation*, 337 NLRB 770 (2002), and whether and how *MV Transportation* otherwise applies in the "perfectly clear" successor situation.

In *MV Transportation*, 337 NLRB 770 (2002), the Board reversed the "successor bar" doctrine. Under the successor bar doctrine, once a successor employer's obligation to recognize an incumbent union attached, the union was entitled to a reasonable period of time for bargaining without challenge to its majority status. *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999). In *MV Transportation*, the Board overruled *St. Elizabeth Manor* and held that "an incumbent union in a successorship situation is entitled to -- and only to -- a *rebuttable* presumption of continuing majority status, which will not serve to bar an otherwise valid decertification, rival union, or employer petition, or other valid challenge to the union's majority status." 337 NLRB at 770 (emphasis in original).

In *UGL-UNICCO Service Company*, the Intervenor has asked the Board to reconsider its decision in *MV Transportation* and to return to the successor bar doctrine set forth in *St. Elizabeth Manor*. In *Grocery Haulers, Inc.*, the Intervenor has, among other things, questioned whether *MV Transportation* applies in a "perfectly clear" successor situation, and contends that if it does, "then it requires a showing that the presumption of the incumbent union's exclusive representational status has been rebutted," and that such a showing has not been made in this case.

Almost a half century ago in *American Cyanamid Co.*, 131 NLRB 909 (1961), the Board stated, "The Board must hold fast to the objectives of the statute using an empirical approach to adjust its decisions to the evolving realities of industrial progress and the reflection of that change in organizations of employees." The Board continues to believe that it is its obligation under the Act to continually evaluate whether its decisions and rules are serving their intended purposes.

The parties and amici are invited to file briefs addressing the issues raised in these cases. Specifically, the parties and amici in their briefs should address some or all of the following questions. (1) Should the Board reconsider or modify *MV Transportation*? (2) How should the Board treat the "perfectly clear" successor situation, as defined by *NLRB v. Burns Security Services*, 406 U.S. 272, 294-295 (1972), and subsequent Board

---

<sup>1</sup> 355 NLRB No. 155.

precedent? In answering these questions, the parties are invited to submit empirical and practical descriptions of their experience under *MV Transportation*.

Briefs not exceeding 50 pages in length shall be filed with the Board in Washington, D.C. on or before November 1, 2010. The parties may file responsive briefs on or before November 15, 2010, which shall not exceed 10 pages in length. No other responsive briefs will be accepted. The parties and amici shall file briefs electronically at <http://mynlrb.nlrb.gov/efile>. If assistance is needed in filing through <http://mynlrb.nlrb.gov/efile>, please contact the undersigned.

Dated, Washington, D.C. August 31, 2010

By direction of the Board:

---

Lester A. Heltzer  
Executive Secretary