

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

KEN-TRON MANUFACTURING CO.,
Employer

and

25-UD-085770

BRIAN HORTON,
Petitioner

and

UNITED STEEL WORKERS OF
AMERICA LOCAL 9443-05,
Union

REQUEST FOR REVIEW OF DECISION AND DIRECTION OF ELECTION

Employer Ken-tron Manufacturing (“the Company”) hereby requests review of the Decision and Direction of Election in the above matter dated August 10, 2012. The Company has set forth its grounds for review below.

A. The Petition Is A Fraud.

At the hearing on August 2, 2012, the Region decided not to permit the Company to produce evidence of fraud in the filing of the petition. In so doing, the Region further declined to permit the Company to make a proffer of evidence to properly preserve the issue for the record. While the Company recognizes the Region’s good faith in handling this matter, the extraordinary fact pattern herein should have opened the door to proof on the subject of whether the petition raised a genuine question.

Had the Company been permitted to present evidence, it would have shown that the petition resulted from fraudulently obtained signatures, together with Union coordination. The Company’s proof would have shown that a genuine question of de-authorization did not exist at

the time of the filing of the petition based on Mr. Horton's petition. Indeed, the Company had submitted multiple affidavits to that effect to the Region prior to the hearing.

The Region has since begun to investigate the Company's unfair labor practice charge relating to the fraud; however, it has thus far permitted the election to proceed, with a tentative date of September 5 for the election. Very simply, in this case a Union and pro-Union supporters filed a fraudulent petition to obtain an election bar. This has now been confirmed by multiple witnesses, none of whom were allowed to testify at the hearing.

When a Union and its supporters manipulate the system to fraudulently invoke an election bar, the Board and its Regions should have a keen interest in rooting out the fraud at the earliest possible opportunity, including but not limited to at the Representation hearing itself. Otherwise, a parties' abuse of process and manipulation of the system will either be temporarily countenanced or permitted to succeed for a substantial period of time. Such a practice can also have the undesirable effect of protracting election processes and/or resulting in unnecessary proceedings. The Company respectfully requests that the Decision and Direction of Election be set aside to permit the Company to present proof of fraud and to protect the integrity of the Board against abuse of its petition processes.

B. Under The Unique Circumstances, Replaced Strikers Should Not Be Part of the Unit.

As indicated above, the election has been tentatively set for September 5, 2012. Again, although the Region has acted in good faith, on September 10, 2012 replaced strikers will have been off the job for 12 months. The Union and its supporters caused the petition to be filed based on falsified support from people who wanted the shop closed as part of an illegal scheme to obtain a vote before the 12 month period expired. They intentionally "beat the clock" by 5 days for a purpose which is directly contrary to the petition.

Allowing the replaced strikers to be part of the unit, under these unique circumstances, would encourage more parties to abuse the Board's processes and systems for the purpose of taking away employee rights. Employees, if any, who support an open shop should have the right to determine when and if to exercise their protected rights to file, without being subjected to a pre-emptive effort to thwart their rights through a fraudulent election bar.

The Company was not permitted to present evidence on this issue at hearing, including the fact that the replaced workers will not return to work by September 10, 2012. The Union did, however, admit at hearing that the replaced strikers have not been paying dues and operating under the closed shop provisions in the parties' contract. The Company respectfully submits that where a party has manipulated the system to attain a result proscribed by the Act, it should not be rewarded by permitting the inclusion of a segment of the workforce which is the subject of the manipulation. In this case, the replaced strikers have not been operating under the closed shop provisions at issue, they have not been part of the workforce for nearly a year, and they do not share a community of interest with the workers in the plant. Notwithstanding cases like *L.E.M., Inc. d/b/a Southwest Engraving Co. and Towell Printing Co.*, 198 NLRB 694 (1972), relied upon by the Region, the Company respectfully requests a modification of existing law to reject the inclusion of replaced strikers where the system has been manipulated in an attempt to advance an illicit purpose, close to the expiration of the 12 month period, with no reasonable expectation of return by that date.

Respectfully submitted,

/s/ Robert D. Hudson

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