

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

PUNA GEOTHERMAL VENTURE,)
Employer,)
AND) 20-RC-078220
INTERNATIONAL BROTHERHOOD OF)
ELECTRICAL WORKERS, LOCAL 1260)
Union.)

EMPLOYER'S MOTION FOR CONTINUANCE AND CONSOLIDATION OF FILING DATES FOR EXCEPTIONS TO THE REGIONAL DIRECTORS REPORT AND RECOMMENDATION REGARDING CERTAIN OBJECTIONS AND NOTICE OF HEARING AND, ALTERNATIVELY, FOR CONTINUANCE OF THE FILING DATE FOR EXCEPTIONS AS DESIGNATED BY THE REGIONAL DIRECTOR

On May 21, 2012,¹ the Employer, Puna Geothermal Venture, timely filed Objections to Election in the above captioned case.² On June 29, Regional Director Joseph Frankl issued a Report and Recommendation Regarding Certain Objections and Notice of Hearing Regarding Others ("Report and Recommendation"). In the Report and Recommendation, Regional Director Frankl found that the Employer presented no meaningful evidence in Objections Nos. 11, 12, 13, 14 and 15 and determined Objection No. 16 to be non-specific and conclusive in nature. However, Regional Director Frankl's administrative investigation confirmed that the Employer's Objections Nos. 1, 2, 4, 5, and 7 raised substantial and material issues of fact.³ Hearing on Objections Nos. 1, 2, 4, 5, and 7 is currently set to

¹ All dates are herein after 2012 unless otherwise noted.

² See Report and Recommendation, dated June 29, 2012, at pg. 2.

³ Objections Nos. 3, 6, 8, 9 and 10 were withdrawn by the Employer.

commence Monday, July 16. Exceptions to the Report and Recommendation are due to the National Labor Relations Board (“Board”) on Friday July 13 – the business day before the hearing is set to commence in Hilo, Hawaii.⁴ Without waiving the Employer’s request for a continuance of filing date for Exceptions to the Report and Recommendation, as explained below, and in an effort to conserve Board and party resources, minimize duplicative litigation, and streamline the hearing process, the Employer requests that the Board continue the filing deadline for exceptions until after the hearing and consolidate the filing of exceptions to the Regional Director’s Report and Recommendation⁵ with the exceptions to the Hearing Officer’s report, if any are needed.⁶ Such a ruling will allow the Board and the parties to address exceptions in this case only if needed after hearing rather than expend time, resources, and administrative review that may not ultimately be needed after hearing.

In essence, the Regional Director has ordered a hearing on whether supervisory campaigning and co-worker electioneering impacted the results of the election. The Regional Director has rejected objections relating to whether the appearance of Board bias has impacted the results of the election. The Employer does not ask the Board to order objections relating to the appearance of Board bias to hearing; rather, Employer asks that the Board eliminate the wasteful and unnecessary step of appealing on those objections pre-hearing when there may be no need to take exception in view of the outcome of the hearing.

The Board’s current Rules and Regulations provide the parties are afforded an opportunity to file exceptions to the Regional Director’s Report and Recommendation separately from exceptions to the Hearing Officer’s report. Additionally, if the exceptions filed to the Regional Director’s Report and Recommendation are found by the Board to raise substantial and

⁴ See, Erratum issued by Regional Director Frankl on July 2.

⁵ Rules and Regulations, 29 CFR § 102.69 (c)(2).

⁶ Rules and Regulations, 29 CFR § 102.69 (e).

material factual issues, the Board may require a second hearing on the objections previously excluded from the purview of the Hearing Officer.⁷ It is quite possible that an election for a unit of 20 employees that took place in May could be the subject of two hearings, four sets of exceptions, and multiple levels of Board and appellate decisions. The Employer's motion to postpone and consolidate the exceptions post-hearing will cut down on duplicative and possibly needless litigation. The due process afforded by the Rules and Regulations allows flexibility of process in order to effectuate the Act when no undue prejudice will result.⁸ The Employer is prejudiced by the Regional Director's position on filing: the Employer should not have to prepare exceptions the day before hearing and the Employer should not have to potentially have two hearings when one may determine the entire matter. Consequently, there is cause here to consolidate the dates for all exceptions, if any are needed, post-hearing.

In the alternative, the Employer hereby requests a continuance to July 17 or thereafter for the filing of exceptions to the Report and Recommendation. Despite the multiple points of contact provided to the Region and Board, as explained below, the Employer did not receive notification of the issuance of the Report and Recommendation until four full days after initial execution by Regional Director Frankl.

On Monday, May 21, an attorney for the Employer, April L. Weaver, transmitted a Notice of Representation to Board Agent Scott Hovey via email. The Notice of Representation to the Board contained direct-dial phone, facsimile, email and physical address information for attorneys at the Employer's law firm. Ms. Weaver's block in the transmitting email to Mr. Hovey contained the direct-dial phone number, facsimile, email and physical address. Mr. Hovey acknowledged receipt of the Notice of Representation on this same day. On May 21, Ms.

⁷ Rules and Regulations, 29 CFR § 102.69 (f).

⁸ Rules and Regulations, 29 CFR § 102.111(b) and (c).

Weaver also filed Objections to the Election via the Board's e-file system. The confirmation received from the Board, once again, included her direct-dial phone number, email and physical address. During the month of June, Mr. Hovey additionally received the direct-dial phone and email address of attorney Julie L. Hall from the Employer's law firm. It is indisputable that Mr. Hovey had multiple ways to contact any of the three attorneys representing the Employer.

On Friday, June 29, Regional Director Frankl executed the Report and Recommendation. On June 29, the Region did not email, call, send a facsimile or otherwise provide any form of notice to the Employer indicating that the Report and Recommendation had issued. On Monday, July 2, the Regional Director Frankl executed an Erratum correcting an erroneous exception due date listed in the June 29 Report and Recommendation. On July 2, the Region did not email, call, send a facsimile or otherwise provide any form of notice to the Employer indicating that the Report and Recommendation or Erratum had issued. It wasn't until after 7:00 p.m. PDT on Tuesday, July 3 -- the day before the Fourth of July holiday, four full days after the original Report and Recommendation had issued, and a full day after the Erratum had issued -- that Mr. Hovey emailed attorney Julie Hall with the Regional Director's Report and Recommendation.

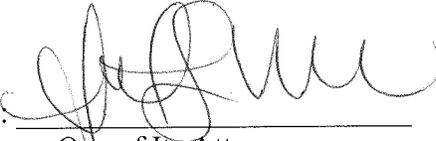
The Region has offered no reason for the delay in notification. By delaying notification to the Employer for four days post issuance of the Report and Recommendation, the Region is effectively shortening the Employer's exception deadline from 14 days to 10 days with a holiday and a weekend in that time period. This is nearly a 30% reduction in statutory guaranteed response time.⁹ The significant delay by the Region is unacceptable. For the foregoing reasons, the Employer respectfully requests the Board grant a continuance of the

⁹ Rules and Regulations, 29 CFR § 102.69 (c)(2).

exception due date to at least July 17 if the Board does not consolidate riling deadlines as proposed above. At a minimum, exceptions should be due on the July 17.

Respectfully submitted,

PUNA GEOTHERMAL VENTURE.

By: 

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CERTIFICATE OF SERVICE

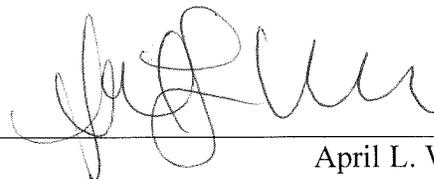
The undersigned counsel for the Employer, Puna Geothermal Venture, hereby certifies that she caused a true and correct copy of the foregoing **MOTION FOR CONTINUANCE AND CONSOLIDATION OF FILING DATES FOR EXCEPTIONS TO THE REGIONAL DIRECTORS REPORT AND RECOMMENDATION REGARDING CERTAIN OBJECTIONS AND NOTICE OF HEARING AND, ALTERNATIVELY, FOR CONTINUANCE OF THE FILING DATE FOR EXCEPTIONS AS DESIGNATED BY THE REGIONAL DIRECTOR** to be served upon the following parties of record on this 9th day of July, 2012 by U.S. Mail, electronic mail and, where noted, facsimile:

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