

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MAXWELL PLUMB MECHANICAL CORP.
Employer

and

Case 29-RC-315834

UNITED ASSOCIATION, PLUMBERS LOCAL 1
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Order Dismissing Petition is denied as it raises no substantial issues warranting review.¹ The petition is subject to reinstatement, if appropriate, after final disposition of the unfair labor practice proceedings.

LAUREN McFERRAN, CHAIRMAN

DAVID M. PROUTY, MEMBER

GWYNNE A. WILCOX, MEMBER

Dated, Washington, D.C., September 25, 2024.

¹ In denying review, we observe that a dismissal pursuant to the Board's decision in *Cemex Construction Materials Pacific LLC*, 372 NLRB No. 130, slip op. at 26 (2023), is not subject to reinstatement and may occur only after the Board has found merit to the relevant unfair labor practice allegations and determined that an affirmative bargaining order is warranted. However, the Board's longstanding practice of merit-determination dismissals permits a Regional Director "to *dismiss* a representation petition, subject to reinstatement, when the Regional Director (on behalf of the General Counsel) has found merit in an unfair labor practice charge involving misconduct that would irrevocably taint the petition and any related election." See *Rieth-Riley Construction Co.*, 371 NLRB No. 109, slip op. at 1 (2022) (emphasis in original). We find that a merit-determination dismissal is appropriate here because, as the Regional Director's order explains, the Regional Director has found merit to allegations which, if proven, would result in an affirmative bargaining order. See *id.*, slip op. at 7; *Brannan Sand & Gravel*, 308 NLRB 922, 922 (1992); *Big Three Industries, Inc.*, 201 NLRB 197, 197 (1973). See also Sec. 11733.1(a)(2) of the NLRB Casehandling Manual (Part Two) Representation Proceedings. We accordingly disavow any implication that the alleged unfair labor practices have already been found. The petition remains subject to reinstatement pending the results of the unfair labor practice case, and the Employer will have the opportunity to litigate the relevant unfair labor practice allegations, as well as the propriety of a bargaining order, in that proceeding. We note that no party is arguing to the Board that the Regional Director should have consolidated the representation and the unfair labor practice cases. We observe that that determination is within the Regional Director's discretion.