

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**ASANTE D/B/A ASANTE ROGUE REGIONAL  
MEDICAL CENTER**

**Employer**

**and**

**Case 19-RC-316663**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION LOCAL 49**

**Petitioner**

**ORDER DISMISSING PETITION**

Based on a petition filed on April 21 2023,<sup>1</sup> and pursuant to a Stipulated Election Agreement entered into by the parties and approved on May 11, the Region conducted a representation election on June 8 and June 9 to determine whether the following unit of employees (Unit) of Asante d/b/a Asante Rogue Regional Medical Center (Employer) wished to be represented for purposes of collective bargaining by Service Employees International Union, Local 49 (Petitioner):

**INCLUDED:** All full-time, part-time and per diem non-professional employees, including Anesthesia Tech Trainee, Anesthesia Tech, Certified Nursing Assistant & Unit Secretary, Certified Nursing Assistant 1, Certified Nursing Assistant 1 & Rehab Tech, Certified Nursing Assistant 2, Certified Nursing Assistant 2 & Rehab Tech, CNA2 Surgery Aide, Communications Operator, Communications Operator (Lead), Cook, Coord Couriers, Coord Phlebotomy, Courier/Package Delivery, Customer Service Representative, Dietary Clerk, EEG Tech 1, EEG Tech 2, EKG Equipment Tech, Emergency Services Tech 1, Emergency Services Tech 2, Endoscopy Tech, Environmental Services Assistant, Environmental Services Assistant (Lead), Environmental Services Floor Specialist, Food Service Worker, Food Service Worker 2, Food Service Worker 3, Grounds Maintenance Technician, Hospitality Services Coord, Imaging Services Aide, Lab Aide, Lab Assistant/Specimen Processor, Laboratory Service Rep, Laboratory Service Rep (PM), Laboratory Service Rep 2, Laboratory Service Rep 2 (PM), Lead

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<sup>1</sup> All dates are 2023 unless otherwise specified.

Cook, Lead Dispatcher, Material Handler, Material Handler/Receiver (Lead), Mental Health Assistant 1, Mental Health Assistant 2, Monitor Technician, Nuclear Medicine Cardio Aide, Nutrition Services Coordinator, Nutrition Services Specialist, Patient Access Rep 1 ED, Patient Access Rep 1 Outpatient, Patient Access Support Rep 3, Patient Safety Monitor, Patient Scheduling Coordinator, Patient Service Representative (Rehab), Patient Service Representative 1, Patient Service Representative 2, Patient Service Representative PM, Pharmacy Clerk, Pharmacy Clerk 2, Pharmacy Technician 1, Pharmacy Technician 2, Pharmacy Technician 3, Phlebotomist, Phlebotomist – Certified, Phlebotomist/Lab Assistant, Receiver, Referral Coordinator, Rehab Tech, Scheduling Clerk, Scheduling Specialist, Staff Assistant 1, Staff Assistant Scheduler, Staffing Office Assistant, Sterile Processing Data Coord, Sterile Processing Tech, Sterile Processing Tech (Certified), Sterile Processing Tech (Lead), Sterile Processing Trainer & Compliance Auditor, Surgery Aide, Surgery Aide 2, Transporter, Unit Secretary, and Wound Tech employed by the Employer at its acute care hospital located at 2825 E. Barnett Rd, Medford, Oregon.

**EXCLUDED:** All professional employees, registered nurses, physicians, technical employees, business office clerical employees, skilled maintenance employees, managerial employees, confidential employees and guards and supervisors as defined by the Act.<sup>2</sup>

The tally of ballots prepared at the conclusion of the election showed that, of approximately 1113 eligible voters, 436 votes were cast for, and 440 votes were cast against the Union, with 67 challenged ballots, a number that was sufficient to affect the results of the election. Accordingly, a majority of the Employer's Unit employees did not select the Union as their exclusive collective-bargaining representative. On June 12, the Region sent a letter to the parties, notifying them of the various challenged ballots and the reasons for each challenge, and duplicating their positions on the challenges. On June 17, the Petitioner filed timely objections to conduct affecting the results of the election.

Between May 1 and September 8, the Petitioner filed a series of unfair labor practice charges in Case Nos. 19-CA-317221, 19-CA-317908, 19-CA-320501, 19-CA-320502, 19-CA-320507, and 19-CA-325455 alleging that the Employer violated Sections 8(a)(1), (3), and (5) of the Act by interfering with, restraining, and coercing employees in the exercise of their rights under Section 7 of the Act.

On December 23, 2024, the Region issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (Complaint) in the unfair labor practice charges in Case Nos.

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<sup>2</sup> Additionally, the Parties agree that individuals serving in the roles Staff Assistant 2 and Staff Assistant 3 would be permitted to vote subject to challenge, as no decision had been made about their inclusion in or exclusion from the bargaining unit.

19-CA-317221, 19-CA-317908, 19-CA-320501, 19-CA-320502, 19-CA-320507, and 19-CA-325455. The Complaint alleges that: a majority of the unit designated the Petitioner as their exclusive collective-bargaining representative; the Petitioner requested that the Employer recognize it as the exclusive collective-bargaining representative of the Unit and bargain; and the Employer violated Sections 8(a)(1), (3), and (5) of the Act by:

- Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit since on or about April 18.
- Creating an impression among its employees that their union and/or concerted activities were under surveillance on various dates between March 20 and May 27.
- Interrogating its employees by asking how they obtained other employees' phone numbers on or about March 20.
- Interrogating its employees by asking why they were interested in the union in about May.
- Threatening its employees with unspecified reprisals because they discussed the Union on or about March 23 and April 24.
- Threatening its employees with loss of benefits and job loss in the event of unionization on various dates between April 29 and June 5.
- Selectively and disparately restricting pro-Union employees from accessing certain areas of the hospital while allowing other employees access on or about April 24.
- Selectively and disparately enforcing the non-solicitation rule by instructing employees they could not have Union literature in the break areas and by removing employees' Union literature and materials on or about May 3.

The Complaint seeks, among other things, a remedial bargaining order. The remedial bargaining order is sought pursuant to *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023) and, alternatively, pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

### **DISCUSSION**

In *Rieth-Riley Construction Co.*, 371 NLRB No. 109 (2022), the Board defined “merit-determination dismissals” as those situations where a Regional Director elects “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.” *Id.*

The Board elaborated on the rationale for merit-determination dismissals in *Overnite Transportation Co.*, 333 NLRB 1392, 1392-1393 (2001), noting:

The Board generally will dismiss a representation petition, subject to reinstatement, where there is a concurrent unfair labor practice complaint

alleging conduct that, if proven, (1) would interfere with employee free choice in an election, and (2) is inherently inconsistent with the petition itself. The Board considers conduct that taints the showing of interest, precludes a question concerning representation, or taints an incumbent union's subsequent loss of majority support to be inconsistent with the petition.

As the Board further explained in *Overnite Transportation*, however, “[n]ot every unfair labor practice will taint a union’s subsequent loss of majority support or taint a decertification petition. There must be a causal connection.” *Id.* “[I]n cases involving unfair labor practices other than a general refusal to recognize and bargain, there must be specific proof of a causal relationship between the unfair labor practice and the ensuing events indicating a loss of support.” *Lee Lumber & Materials Building Corp.*, 322 NLRB 175, 177 (1996), *affd.* in part and remanded in part 117 F.3d 1454 (D.C. Cir. 1997). In determining whether a causal nexus exists, the Board applies the analysis set forth in *Master Slack Corp.*, 271 NLRB 78 (1984).

Separate from the causal-nexus analysis performed under *Master Slack*, and as indicated in the cases above, a general refusal to bargain on its own can taint a decertification petition. Merit-determination dismissals are appropriate where the General Counsel seeks an affirmative bargaining order or an extension of the certification year in the unfair labor practice complaint. *Rieth-Riley Construction Co.*, 371 NLRB slip op. at 7, citing *Big Three Industries*, 201 NLRB 197 (1973); *Starbucks Corp.*, 372 NLRB No. 156 (2023). See also, § 11733.1(a)(2) of the Board’s Casehandling Manual.<sup>3</sup>

Here, the Region’s issuance of a Complaint over severe and pervasive violations of Section 8(a)(1), (3), and (5) of the Act committed by high-ranking officials of the Employer and disseminated to virtually the entire bargaining unit during the period between the demand for recognition and the election, interfered with employee free choice and undermined the reliability of the election. The Complaint further alleges that the Employer violated §§ 8(a)(1) and (5) of the Act by refusing to recognize the Union and negotiation an initial collective bargaining agreement. In order to remedy the violations, the Complaint therefore seeks a remedial bargaining order. Thus, if the Complaint allegations are proven, then the appropriate remedy would include an affirmative bargaining order. There is therefore no question concerning representation and further processing of the petition is not warranted at this time.<sup>4</sup>

In *Cemex*, 372 NLRB No. 130 (2023), the Board held that even a single violation of the Act by an employer that interferes with employee free choice and undermines the reliability

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<sup>3</sup> § 11733.1(a)(2) provides that “[i]f the Regional Director finds merit to charges involving violations of §§ 8(a)(1), (2), (3), (5), or 8(b)(3), and the nature of the alleged violations, if proven, would condition or preclude the existence of a question concerning representation, the petition should be dismissed with a dismissal letter setting forth the specific connections between the alleged unfair labor practices and the petition, subject to a request for reinstatement by the Petitioner after final disposition of the charge.”

<sup>4</sup> Because the Complaint seeks an affirmative bargaining order which would preclude the existence of a question concerning representation at this time, it is not necessary to address the extent to which there is a causal nexus between the unfair labor practices alleged in the Complaint and the filing of the petition under *Master Slack*. Even if demonstrating a nexus was required, however, the violations alleged include a general refusal to recognize and bargain with the Union as contemplated by the Board in *Lee Lumber & Materials Building Corp.* As noted there, “[i]n cases involving an 8(a)(5) refusal to recognize and bargain with an incumbent union, however, the causal relationship between unlawful act and subsequent loss of majority support may be presumed.” *Id.*, at 177. Thus, even assuming *arguendo* that a showing of nexus is required to dismiss the petition, the Complaint contains allegations of the type that would create a presumption of nexus and no additional showing is necessary.

of an election will result in a remedial bargaining order. *See Cemex*, 372 NLRB No. 130 (2023), slip op. at 26 fn. 142 and at 35 fn.188. The underlying rationale is that “if the employer commits unfair labor practices that invalidate the election, then the election necessarily fails to reflect the uncoerced choice of a majority of employees. In that situation, the Board will, instead, rely on the prior designation of a representative by the majority of employees by nonelection means, as expressly permitted by Section 9(a), and will issue an order requiring the employer to recognize and bargain with the union, from the date that the union demanded recognition from the employer.” *Cemex*, slip op. at 26. Germane to this analysis, “under long-established Board law, an election will be set aside based on an employer’s critical-period violation of Sec. 8(a)(1) unless the “violations . . . are so minimal or isolated that it is virtually impossible to conclude that the misconduct could have affected the election results.” *Id.* at 277 (quoting *Longs Drug Stores California*, 347 NLRB 500, 502 (2006), and *Clark Equipment Co.*, 278 NLRB 498, 505 (1986)). In determining whether unlawful misconduct could affect the results of an election, the Board considers all relevant factors, including the number of violations, their severity, the extent of dissemination, the size of the unit, the closeness of the election (if one has been held), the proximity of the conduct to the election date, and the number of unit employees affected. *See, e.g., Bon Appetit*, above, 334 NLRB at 1044 (citing cases).” *Cemex*, slip op. at 26, n 142. Thus, based on the foregoing, if a demand for recognition is made, an election petition is filed by the union, and the employer commits unfair labor practices between the demand for recognition and the election that frustrate a free, fair, and timely election, the election petition will be dismissed and the employer will be subject to a remedial bargaining order “based on employees’ prior, proper designation of a representative for the purpose of collective bargaining pursuant to Section 9(a) of the Act.” *Cemex*, slip op. at 28-29.

The remedial bargaining order is also sought pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), because, as alleged in the Consolidated Complaint, the investigation disclosed that prior to the Employer’s serious and substantial unfair labor practices, a majority of the Unit designated the Petitioner as their exclusive collective-bargaining representative, and the serious and substantial unfair labor practice conduct of the Employer is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair rerun election, such that, on balance, the employees’ sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

Therefore, based on the Complaint in Case Nos. 19-CA-317221, 19-CA-317908, 19-CA-320501, 19-CA-320502, 19-CA-320507, and 19-CA-325455, dismissal of the petition in 19-RC-316663 is appropriate, subject to reinstatement.

**IT IS ORDERED** that the petition is dismissed, subject to reinstatement upon the Petitioner’s request, if appropriate, after the final disposition of the charges in Case Nos. 19-CA-317221, 19-CA-317908, 19-CA-320501, 19-CA-320502, 19-CA-320507, and 19-CA-325455.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties, as well as on the

undesigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedure for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. **Eastern Time**) on **January 22, 2025, unless filed electronically**. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on January 22, 2025.

Filing a request for review electronically may be accomplished by using the E Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the 9 formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated at Seattle, Washington, on the 6th day of January, 2025.



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Anne Pomerantz, Acting Regional  
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