UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

DRAGONFLY WELLNESS, LLC

Employer

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 222

Petitioner **Case 27-RC-366579**

and

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 99

Intervenor

DECISION AND ORDER

The instant petition was filed on May 28, 2025.[1] Through this petition, International Brotherhood of Teamsters, Local 222 (Petitioner) seeks an election among certain employees of Dragonfly Wellness, LLC (Employer). The dispute in this matter relates to whether the processing of the instant petition is barred by Section 9(c)(3) of the Act.[2] On June 2, an Order to Show Cause and Order Indefinitely Postponing Hearing issued, giving each party the opportunity to submit its legal position and argument as to whether Section 9(c)(3) requires dismissal of this petition. The Petitioner and the Employer submitted position statements. United Food and Commercial Workers International Union (Intervenor) did not file a response.[3]

Having carefully considered the submissions of the parties; I conclude that the petitioned-for unit is a subunit of a bargaining unit in which an election was recently conducted. Thus, Section 9(c)(3) bars further processing of the instant petition. I am, therefore, dismissing the petition.

REPRESENTATIONAL TIMELINE

The Employer is engaged in the operation of a cannabis dispensary at a facility located in Salt Lake City, Utah (the Employer's facility). On August 18, 2023, the Intervenor filed a petition in Case 27-RC-324056, seeking an election among certain employees at the Employer's facility.

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[1] All dates hereinafter are in 2025 unless otherwise stated.

[2] Section 9(c)(3) of the Act states, in part, that "[n]o election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held."

[3] The Intervenor was listed on the Petitioner's petition as the current representative of bargaining unit employees; however, as discussed below, the Intervenor was decertified prior to the filing of the instant petition. There is no other basis on which to conclude that the Intervenor has an interest in this matter.

The undersigned subsequently approved a stipulated election agreement (the Agreement) that provided for an election in the following bargaining unit:

> Included: All full-time and regular part-time wellness associates, delivery drivers, and pharmacists employed by the Employer at its Salt Lake City, Utah facility.
>
> Excluded: All delivery operations managers, patient experience representatives, fulfillment managers, chief pharmacists, general managers, patient experience managers, delivery personnel managers, maintenance employees, office clerical employees, professional employees, guards, and supervisors, as defined in the Act.

In addition to the above, the Agreement also permitted wellness leads and delivery leads to vote subject to challenge, as the Intervenor and the Employer were unable to agree as to whether the individuals in these classifications were properly included in the bargaining unit.

The Intervenor prevailed in the subsequent election and, on October 11, 2023, was certified as the exclusive collective-bargaining representative in the above-described bargaining unit. The certification further noted that the inclusion or exclusion of wellness leads and delivery leads remained unresolved.

On December 16, 2024, prior to the Intervenor and Employer reaching an initial collective-bargaining agreement, a decertification petition was filed in case 27-RD-356738, seeking an election to determine whether the Intervenor should remain the collective-bargaining representative for the above unit. The stipulated election agreement that was subsequently approved in the decertification case contained virtually identical language regarding the bargaining unit. The only exception was that the parties stipulated that Floor Leads would vote subject to challenge in this election, with no specific reference to wellness leads or delivery leads.

In the subsequent election,[4] held on January 31, a majority of employees voted against continued representation by the Intervenor. Per the tally of ballots issued to the parties after this election, the approximate size of the bargaining unit was 33 employees. On February 11, a certification of results issued stating that "no labor organization is the exclusive representative of employees in the bargaining unit…"

The instant petition was filed on May 28. This petition seeks an election in the following bargaining unit, which the Petitioner estimates as including 30 employees:

> Included: Inventory Specialists, Patient Success, Leads, Wellness Associates and Drivers
>
> Excluded: Pharmacists, Supervisors, Managers, Guards, and Office Personnel

[4] Hereinafter referred to as "the decertification election."

THE PARTIES' POSITIONS

The Petitioner asserts that its petition does not run afoul of Section 9(c)(3). The Petitioner notes that its petitioned-for unit, unlike the agreed-upon unit in the recent decertification election, explicitly includes Leads, Inventory Specialists, and Patient Success classifications. The latter two classifications, argues the Petitioner, were not included in the unit description for the recently-decertified unit. The Leads, meanwhile, voted subject to challenge in the decertification election. The Petitioner, citing *Treasure City, Inc.*, 206 NLRB 185 (1973), argues that the inclusion of these three classifications demonstrates that there are "multiple groups of employees" who were not recently able to vote in a Board-supervised election, supporting a conclusion that a new election is appropriate.

Moreover, its petition seeks to exclude Pharmacists from the unit, another differentiation from the recently-decertified bargaining unit. Thus, the Petitioner contends, its proposed unit is sufficiently dissimilar to the unit that voted to decertify the Intervenor just three months prior to the filing of the instant petition.[5]

Additionally, the Petitioner claims that *Thiokol Chemical Corp.*, 123 NLRB 888 (1959) supports its position regarding the existence of a question concerning representation, as the Board determined in that case that a group of electrical employees who had recently voted in a Board-supervised election were permitted to vote in another, plantwide election less than a year after the first was held.[6]

Meanwhile, the Employer argues that Section 9(c)(3) bars processing of the petition in this matter. The Employer notes that the election bar contained within this subsection of the Act is in furtherance of the Act's stated goal of fostering stability and peace in industrial relations by preventing labor organizations from immediately and repeatedly filing for elections after failed attempts at organizing those units. The Employer also contends that the Petitioner's addition of job classifications to its proposed bargaining unit constitutes no more than minor alterations to the bargaining unit that was recently decertified and does not successfully remove this situation from the ambit of Section 9(c)(3).

In that regard, the Employer contends that the instant petition's proposed addition of Inventory Specialist and Patient Success classifications to the bargaining unit is a largely cosmetic change. The Employer argues that employees in those classifications were included in the recently-decertified unit. The Employer asserts that these classifications are recently-renamed positions that, at the time of the Intervenor's initial certification, fell under the umbrella of "Wellness Associates." The Employer asserts that the sole reason that these updated classifications did not explicitly appear in the unit description in that matter was the Board's policy of requiring the bargaining unit in a decertification election to be to be coextensive with the unit description of the originally certified unit.[7] As such, Inventory Specialists and Patient Success employees were

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[5] The Petitioner further asserts that its petition would constitute a subunit if, for example, it sought a unit including Wellness Associates and Drivers while excluding Pharmacists.

[6] Other cases cited by the Petitioner in support of this argument include *Allstate Insurance Co.*, 176 NLRB 94 (1969); and *Leslie Metal Arts Co.*, 167 NLRB 693, 694 (1967).

[7] The Employer presented evidence regarding this evolution in job titles in the form of a tentative agreement agreed upon between it and the Intervenor during the course of bargaining for an initial contract. This tentative agreement

included in and eligible to vote in the decertification election, and that they did so without challenge.[8]

With respect to Leads, the Employer does not dispute that individuals in this classification were not explicitly included in the recently-decertified unit. However, the Employer does note that these Leads were given the ability to vote subject to challenge and thus participated in the election in that regard.[9] The Employer therefore claims that the Petitioner's reliance on *Treasure City* is misplaced as it relates to employees' abilities to cast ballots if denied the opportunity to do so in a previous election.

Relying on the aforementioned clarifications, the Employer asserts that the only actual change sought by the Petitioner in its petition is the exclusion of Pharmacists from the bargaining unit. This, per the Employer, is insufficient to distinguish the petitioned-for unit from the recently-decertified unit. As such, the Employer argues that Section 9(c)(3) is controlling in this matter and urges dismissal of the petition.

ANALYSIS

In *Retail Store Employees' Union*, the Board noted that "[b]y including the 12-month limitation on the frequency of Board-conducted elections in Section 9(c)(3), Congress intended to, and did effect a reasonable balance between a union's interest in gaining representation status, and the employees' interest in maintaining stability and repose after having exercised their free choice in a representation election." 134 NLRB 686, 690-691 (1961), citing *NLRB v. Ray Brooks*, 204 F.2d 899 (9th Cir. 1953), affd. 348 U.S. 96 (1954). As the Supreme Court further explained, "Congress was mindful that, once employees had chosen a union, they could not vote to revoke its authority and refrain from union activities, while if they voted against having a union in the first place, the union could begin at once to agitate for a new election."[10]

It is well established that "[t]he Act does not permit circumvention of the election bar rule contained in Section 9(c)(3). *E Center, Yuba Center Head Start*, 337 NLRB 983, 983 (2002). However, this bar applies "only in a 'unit or any subdivision' in which a previous election was held.'" *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1192 (1994). It is well established that Section 9(c)(3) is not implicated in situations where a subsequent petition is filed seeking a unit larger in size or scope than a prior election, notwithstanding that an election may have been held in the smaller unit less than 12 months prior. See, e.g., *Leslie Metal Arts Co.*, supra (election in unit with broader scope than prior voting group does not fall within ambit of Section 9(c)(3)); and

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contemplated explicit inclusion of inventory specialists and patient success. However, as the Employer concedes, this tentative agreement was never enacted because the Intervenor and the Employer never consummated a full collective-bargaining agreement.

[8] A review of the Voter List utilized in the decertification election confirms this assertion; multiple employees with the titles of Inventory Specialist and Patient Success appear on that Voter List. Several employees in these classifications cast ballots in the decertification election without their votes being challenged.

[9] The Employer also notes that its above-cited tentative agreement with the Intervenor contemplated inclusion of Leads in the bargaining unit.

[10] *Ray Brooks v. NLRB*, 348 U.S. at 99.

Vacuum Cooling Co., 105 NLRB 794, 797 (1953) (appropriate to direct election in employer-wide unit notwithstanding recent election at single facility).

Contrary to the Petitioner's assertions, its petitioned-for unit is, when properly considered, a subunit of the bargaining unit that recently voted to decertify the Intervenor. The Region's records affirm the Employer's assertions that employees classified as Patient Success and Inventory Specialist were included without challenge in the bargaining unit for the purposes of the decertification election. As such, the Petitioner's inclusion of these classifications does not serve to differentiate the unit in the instant petition from the prior election.

The same is true regarding the Petitioner's proposed inclusion of Leads. It is true that the prior election did not expressly include Leads in the bargaining unit. However, neither did it exclude them, instead placing them in a purgatorial middle ground in accordance with the Board's practice regarding unresolved unit issues. As the Board explicated in its 2014 Election Rule which codified this practice, "the Notice of Election will inform employees prior to the election that the individuals in question are neither included in, nor excluded from, the bargaining unit…"[11] Thus, as the Employer notes, the Board's decision in *Treasure City*, supra, is distinguishable. There, the Board noted that "the proscription of Section 9(c)(3) is not violated where the second election is held among a group of employees who did not participate in the first election, and, in particular, where the second election involves a voting group which had not been given the opportunity to be represented as part of the unit involved in the first election." 206 NLRB at 186 (internal footnotes omitted). Here, the Leads were given the opportunity to vote in the decertification election, albeit subject to challenge. Additionally, as the issue of whether Leads were properly included in the decertified unit was deferred, it cannot be said that the Leads had been denied the opportunity to be represented by the Intervenor in the previous election.[12]

In light of the above, the only substantive change between the recently-decertified unit and the petitioned-for unit in the instant case is the exclusion of Pharmacists, a position which was included in the recently-decertified unit. Thus, by definition, the petitioned-for unit is a subunit of the unit which was decertified.

The cases cited by the Petitioner are readily distinguishable. In *Thiokol Chemical Co.*, supra, the Board rejected the employer's argument that Section 9(c)(3) precluded inclusion of a group of electrical employees in a larger, plantwide unit. In doing so, the Board noted that its direction of election in a plantwide unit was not "in the unit or subdivision in which the [previous] election was held," adding that the electrical employees were "not precluded by Section 9(c)(3) from participation in choosing a bargaining representative for a production and maintenance unit."

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[11] See *Representation—Case Procedures*, Fed. Reg. 74308, 74390 (Dec. 15, 2014) ("the 2014 Rule"). Many of the changes enacted in the 2014 Rule, including the above-cited proposition, were reversed by the Board via another rulemaking process in 2019. See *Representation—Case Procedures*, 84 Fed. Reg. 69524 (Dec. 18, 2019) ("the 2019 Rule"). The 2019 Rule, in turn, was effectively reversed by the Board in a 2023 Rule. See *Representation-Case Procedures*, 88 Fed. Reg. 58 (Aug. 25, 2023) ("the 2023 Rule"). In its 2023 Rule, the Board stated that it had determined it was appropriate to "return the Board's representation case procedures substantially to those in effect following the implementation of the 2014 rule." 88 Fed. Reg. at 58079.

[12] There is also a distinct possibility, given that the Leads voted subject to challenge in the previous elections in which the Intervenor was certified and subsequently decertified, that the same fate would befall these Leads if the instant petition was processed. In the event this transpired, the Petitioner's unit would hew even closer to the decertified unit.

123 NLRB at 890, citing *Vacuum Cooling Co.*, supra, and *Pacific Maritime Association*, 110 NLRB 1647, 1651 (1954). *Leslie Metal Arts*, supra, and *Allstate Insurance Co.*, supra, both implicated a multilocation unit with a broader scope than the previous election involving the same employer. Here, regardless of the Petitioner's claims regarding changes to the composition of the bargaining unit, there is no dispute that the scope of the petitioned-for unit is, as was the case in the decertification election, limited to a single facility.

CONCLUSION

In sum, I conclude that the petitioned-for unit is a subunit of the bargaining unit which participated in a decertification election less than 12 months prior to the filing of the instant petition. Thus, in accordance with Section 9(c)(3) of the Act, it is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the 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 undersigned, 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.

Procedures 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.nlrb.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 July 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 July 22, 2025.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.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 Direction and copies served on all the other parties. The opposition must comply with the 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: July 8, 2025

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