

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29**

**PHOENIX ENERGY MANAGEMENT, INC. AND  
PEM INCORPORATED (AS A SINGLE  
EMPLOYER)**

**Employer**

**and**

**GARRETT HANSEN, AN INDIVIDUAL  
Petitioner**

**Case Nos. 29-RM-350311 &  
29-RD-351215**

**and**

**REGIONAL SHOP LOCAL UNION NO. 852,  
IRONWORKERS**

**Union**

**ORDER DISMISSING PETITIONS**

On April 26, 2024, Regional Shop Local Union No. 852, Ironworkers (the Union) filed a charge in Case No. 29-CA-341382 against Phoenix Energy Management, Inc. and PEM Incorporated, as a single Employer, (collectively “Employer”) and later amended the charge on November 14, 2024, alleging, inter alia, that the Employer violated Section 8(a)(5) of the Act by failing and refusing to bargain in good faith with the Union.

On September 12, 2024, the Employer filed the petition in Case No. 29-RM-350311 and later amended the petition on September 23, 2024.

On September 24, 2024, Garrett Hansen, an individual, (RD Petitioner) filed the petition in Case No. RD-351215. The petitions in 29-RM-350311 and 29-RD-351215 (the Petitions) both seek an election to determine whether the Employer’s production and maintenance employees (the Unit) desire continued representation by the Union.

By Order dated September 25, 2024, the undersigned Regional Director consolidated the Petitions.

On September 30, 2024, the Union filed a charge in Case No. 29-CA-351653 against the Employer and later amended the charge on November 14, 2024.

On October 10, 2024, a pre-election hearing was held regarding the petitions.

On November 14, 2024, the Union filed a charge in Case No. 29-CA-354885 against the Employer and later amended the charge on May 29, 2025, alleging, inter alia, that the Employer violated Section 8(a)(1) of the Act by circulating a decertification petition during working hours.

On February 6, 2026, the Region issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (the Complaint) in the unfair labor practice charges in Case Nos. 29-CA-341382, 29-CA-351653 and 29-CA-354885. The Complaint alleges, inter alia, that the Employer violated Section 8(a)(1)(3) and (5) of the Act by threatening employees with layoffs and unspecified reprisals if they supported the Union; promising employees better wages if they didn't support the Union; creating an alter ego corporation and diverting bargaining unit work to the employees of the alter ego in order to avoid its bargaining obligation; failing to apply the terms of the expired collective bargaining agreement to all Unit employees including new hires; failing to deduct union dues at the proper rate; refusing to provide the Union access to its Brooklyn facility; failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit; failing and refusing to provide the Union with requested information; and, providing more than ministerial assistance to employees in decertifying the Union. The Complaint further seeks, as a remedy for the above unfair labor practices, an order requiring that the Employer recognize and bargain in good faith with the Union as the exclusive bargaining agent of its employees.

After carefully reviewing the circumstances of this case and the relevant law, I have concluded that the pending unfair labor practices require dismissal of the petition, subject to a request for reinstatement by the Petitioner after final disposition of the pending unfair labor practice matter.

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 has discussed 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.

A general refusal to bargain on its own can taint a decertification petition and 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>1</sup>

The Complaint alleges that the Employer violated Section 8(a)(1) and (5) of the Act by creating an alter ego corporation and diverting bargaining unit work to the employees of the alter ego in order to avoid its bargaining obligation; failing to apply the terms of the expired collective bargaining agreement to all Unit employees including new hires; failing to deduct union dues at the proper rate; refusing to provide the Union access to its Brooklyn facility; failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit; and, failing and refusing to provide the Union with requested information. If the Complaint allegations are proven, the appropriate remedy would include an affirmative bargaining order which would preclude the existence of a question concerning representation and, therefore, further processing of the petition is not warranted at this time.<sup>2</sup>

The Complaint further alleges that the Employer provided more than ministerial assistance to employees in helping them decertify the Union by circulating a decertification petition for employees to sign, in violation of Section 8(a)(1) of the Act. It is well settled that an employer violates Section 8(a)(1) of the Act by "actively soliciting, encouraging, promoting, or providing assistance in the initiation, signing, or filing of an employee petition seeking to decertify the bargaining representative." *Wire Products Mfg. Co.*, 326 NLRB 625, 640 (1998). In determining whether an employer's assistance is unlawful, the appropriate inquiry is "whether the Respondent's conduct constitutes more than ministerial aid." *Times Herald*, 253 NLRB 524 (1980). In making that inquiry, the Board considers the circumstances to determine whether "the preparation, circulation, and signing of the petition constituted the free and uncoerced act of the employees concerned." *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985) (citing *KONO-TV-Mission Telecasting*, 163 NLRB 1005, 1006 (1967)); see also *Hall Industries*, 293 NLRB 785, 791 (1989). Under Section 11733.1(a)(1) of the Board's Casehandling Manual for Representation Proceedings, if the Regional Director finds merit to an 8(a)(1) charge that challenges the circumstances surrounding a petition or the showing of interest submitted in support of a petition and the alleged conduct, if proven, directly affects a petition or its showing of interest to an extent that the showing is insufficient, then the petition should be dismissed, subject to a request for reinstatement by the petitioner after final disposition of the unfair labor practice case. Thus, dismissal of the petition is

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<sup>1</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>2</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 Corp.*, 271 NLRB 78, 84 (1984). The Board notes, "[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." *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). 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.

further warranted where these allegations, if proven, directly affect the petition and showing of interest.

Based on the foregoing, and where the Complaint alleges that the Employer has failed and refused to bargain in good faith with the Union as the collective bargaining representative of the Unit and seeks a bargaining order remedy, and where the Complaint further alleges that the RD Petitioner, as an agent of the Employer under Section 2(13) of the Act, solicited signatures in support of the RD petition, I am dismissing the Petitions, subject to a request for reinstatement by the RD and/or RM petitioner after the final disposition of the unfair labor practice cases. The Petitions are subject to reinstatement only if the allegations in the unfair labor practice case, which caused the petition to be dismissed, are ultimately found to be without merit. An application for reinstatement under any other circumstances shall be denied. In order to assure notification of the disposition of the unfair labor practice proceeding, the RD Petitioner has been made a party-in-interest in the unfair labor practice proceeding, with an interest limited solely to receipt of a copy of the order or other document that operates to finally dispose of the proceeding.

It is hereby ordered that the Petitions in this matter are 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.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 **April 1, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire

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document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 1, 2026.**

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 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: March 18, 2026



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