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St. John's College and Communications Workers of America, AFL-CIO. Case 28-RM-337949

March 25, 2026

DECISION ON REVIEW AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

On December 14, 2023, Communications Workers of America, AFL-CIO (the Union) presented a claim to be recognized as the collective-bargaining representative of a unit of certain employees employed by St. John's College (the Employer). On March 13, 2024, the Employer filed a petition pursuant to Section 9(c)(1)(B) of the National Labor Relations Act (an "RM" petition) premised on the Union's claim. On March 25, 2024, the Regional Director administratively dismissed the Employer's RM petition, stating that, under *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), an RM petition "must be filed within 14 business days after a union has made a demand to bargain." The Employer filed a timely Request for Review, and the Union filed an opposition.

The Employer's Request for Review is granted as it raises substantial issues warranting review.¹ On review, we find that the Regional Director erred by dismissing this petition based on *Cemex*. As explained below, the timeliness principles articulated in *Cemex* are not applicable in representation proceedings.

I.

Section 9(c)(1)(B) of the Act gives an employer the right to file an RM petition "alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as" the bargaining representative of a unit of the employer's employees. If the Board finds that the petition raises a question of representation, it will direct an election to test whether the labor organization presenting the claim does, in fact, represent a majority of the employees in that unit. In this way, RM petitions serve the purpose of resolving an employer's uncertainty about a union's claimed majority status. Section 102.61(b) of the Board's Rules and Regulations governs the filing requirements for RM petitions. There is no dispute that the

¹ The Regional Director's dismissal letter inadvertently stated that the parties had the right to request review pursuant to Sec. 102.67 of the Board's Rules and Regulations, and thus the Employer cited that section in seeking review. Requests for review of administrative dismissals are governed by Sec. 102.71, however, and we consider the Employer's request for review as having been filed pursuant to that section.

² Members Murphy and Mayer did not participate *Cemex*, an unfair labor practice case. They express no view as to whether it was correctly

Employer's RM petition comported with the requirements of Section 102.61(b), and it appears that no other bars to an election have been asserted.

In *Cemex*, the Board announced a new framework for determining when an employer has unlawfully refused to recognize and bargain with a designated majority representative of its employees. 372 NLRB No. 130, slip. op. at 25.² Under *Cemex*, "an employer violates Section 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as Section 9(a) representative by the majority of employees in an appropriate unit . . ." Id. Pertinent here, the *Cemex* framework also provides that an employer confronted with a demand for recognition may, instead of agreeing to recognize the union, and without committing an 8(a)(5) violation, "promptly file" an RM petition to test the union's majority support and/or challenge the appropriateness of the unit. Id., slip. op. at 26. The Board explained that "[a]llowing for unforeseen circumstances that may be presented in a particular case, we will normally interpret 'promptly' to require an employer to file its RM petition within 2 weeks of the union's demand for recognition." Id., slip. op. at 25 fn. 139.³

II.

The Regional Director appears to have relied on the foregoing provisions of *Cemex* to dismiss the Employer's RM petition as untimely. Those provisions, however, held only that if an employer chooses to file an RM petition to shield itself from a potential 8(a)(5) violation in an unfair labor practice proceeding, it must do so "promptly" in order to avail itself of that potential shield. These provisions do not state that the RM petition itself will be dismissed in such circumstances; indeed, *Cemex* does not limit an employer's ability to file an RM petition seeking a Board-conducted representation election. We accordingly take this opportunity to clarify that *Cemex*'s timeliness requirements pertain only to when the filing of an RM petition may shield an employer from potential unfair labor practice liability under the *Cemex* framework. Thus, *Cemex* should not be construed to require the dismissal of an otherwise properly filed RM petition solely because it was not filed "promptly" within the meaning of *Cemex*. The Regional Director accordingly erred by dismissing the instant petition on the basis that it was untimely under *Cemex*.

decided. In their view, the Employer's arguments in favor of overruling it are not properly cognizable in this representation proceeding.

³ We note that the Regional Director incorrectly stated that an RM petition must be filed "within 14 business days" (emphasis added) of a demand for recognition to be "promptly filed" within the meaning of *Cemex*.

The Employer asserts in its Request for Review that review is warranted because the Regional Director should have found that “unforeseen circumstances” justified its filing of the petition outside of the two weeks specified in *Cemex*. We need not and do not reach that question here. As explained above, the *Cemex* timeliness requirement for RM petitions is not applicable in representation proceedings. “Unforeseen circumstances” is a component of that requirement. We further observe that the issues pertaining to the timeliness requirements articulated in *Cemex*—including the question of whether unforeseen circumstances exist—are, in effect, elements of a potential defense to an 8(a)(5) unfair labor practice allegation. Such issues are not properly litigable in a representation proceeding. See, e.g., *Times Square Stores Corp.*, 79 NLRB 361 (1948) (The Board will not permit the litigation of unfair labor practices in representation proceedings.).

In sum, we clarify that *Cemex* did not create a filing deadline applicable in representation cases or otherwise modify existing representation case procedures. RM petitions that are filed in response to demands for recognition should be processed pursuant to extant representation case procedures without reference to *Cemex*’s timeliness requirements. The question of whether, within the meaning of *Cemex*, an RM petition was “promptly” filed or whether

“unforeseen circumstances” excuse a later filing are properly left to unfair labor practice proceedings.

ORDER

The Regional Director’s administrative dismissal of the petition is reversed, and the case is remanded to the Regional Director for further action consistent with this Decision.

Dated, Washington, D.C. March 25, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

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