

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MCLAREN OAKLAND
Employer

and

Case 07-RC-365793

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME) MICHIGAN,
AFL-CIO
Petitioner

ORDER

The Employer's Requests for Review of the Regional Director's Decision Overruling Objections and Certification of Representative and the Regional Director's Supplemental Report on Objections are denied as they raise no substantial issues warranting review.¹

¹ In denying review, we observe that the Board generally enforces Stipulated Election Agreements that establish the appropriate unit, and that parties may withdraw from such agreements "only upon an affirmative showing of unusual circumstances or by agreement of the parties." See *Hampton Inn & Suites*, 331 NLRB 238, 238-239 (2000). We agree with the Regional Director that the evidence submitted by the Employer in this case does not establish that the Petitioner agreed to withdraw from the Stipulated Election Agreement, especially absent any communications from the Petitioner itself in which it affirmatively agreed to do so. To the extent the Employer filed an objection challenging the appropriate unit after the election and in abrogation of the parties' Stipulated Election Agreement, this objection clearly ran afoul of the principles articulated in *Cruis Along Boats, Inc.*, 128 NLRB 1019, 1020-1021 (1960).

Moreover, even assuming *arguendo* that the parties did agree to the Employer's proposal—specifically, that the Employer would withdraw its objections only on the condition that the parties would agree to exclude two of the three petitioned-for locations from the certified unit—we find that the Regional Director did not abuse her discretion in declining to give effect to this purported "voluntary resolution." As the Regional Director noted, it is well-established that that the parties to a bargaining relationship may voluntarily agree to modify the composition or scope of a Board-certified bargaining unit during the collective-bargaining bargaining process, but only if the modification is not a condition precedent to the negotiations themselves. See *Canterbury Gardens*, 238 NLRB 864, 864-865 (1978). The Employer here has arguably made its proposed unit modification a "condition precedent" to negotiations by offering to withdraw its objections—which included an improper post-election challenge to unit scope—only on the condition that the Petitioner agreed to the modification. Permitting such an arrangement would not, in our view, effectuate the purposes of the Act, given the potential for gamesmanship.

Furthermore, we also agree with the Regional Director that *Hamilton Test Systems v. NLRB*, 743 F.2d 136 (2d Cir. 1984), as well as its progeny, counsel against the Board certifying a

JAMES R. MURPHY,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
SCOTT A. MAYER,	MEMBER

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substantially different unit than the one in which the election was conducted in this case, without reaching the question of whether *Hamilton Test* would unquestionably require a rerun election here. We reiterate that, to the extent the parties do not wish to include the Oxford and Clarkston locations in the bargaining unit, they may voluntarily exclude those facilities from the unit via the bargaining process—this does not require the Board to formally modify the certification after the election, and therefore avoids any potential problems under *Hamilton Test*.