UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PHOENIX ENERGY MANAGEMENT, INC.
AND PEM INC. (AS A SINGLE EMPLOYER)
Employer/Petitioner

and

Cases 29-RM-350311
29-RD-351215

GARRETT HANSEN, AN INDIVIDUAL
Petitioner

and

REGIONAL SHOP LOCAL UNION NO. 852,
IRONWORKERS
Union

ORDER

The Employer's Request for Review of the Regional Director's Decision and Order Dismissing Petitions is denied as it raises no substantial issues warranting review.[1]

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[1] The Regional Director's Decision inadvertently states that the parties had the right to request review pursuant to Sec. 102.67(c) of the Board's Rules and Regulations. Requests for review of dismissals of a petition resulting from the pendency of concurrent unresolved unfair labor practice charges are governed by Sec. 102.71(b), however.

In denying review, we observe that the Regional Director engaged in what we have termed a "merit-determination dismissal" by dismissing the petitions, subject to reinstatement, because of a merit determination with respect to certain types of unfair labor practice charges. The Employer does not seek review of the analytical details of the Regional Director's application of the merit-determination dismissal test. Instead, it seeks review on various grounds, which we deem without merit, challenging the overall appropriateness of applying the merit-determination dismissal framework in this case. Its primary contention in that regard is that the Regional Director erred by failing to resolve the preliminary question whether Ironworkers Local 852 properly assumed representation of its unit employees from another local, Ironworkers Local 580. We disagree. Although the Regional Director's Order dismissing the petitions did not explicitly say as much, it is apparent that she assumed-as-true the allegation from the unfair labor practice complaint that Local 852 had assumed representation of the unit employees from Local 580. In view of the methodological framework that applies to merit-determination dismissals—namely, that "complaint allegations" are accepted "as true" and then, in view of those assumptions, there is a "determin[ation] whether the allegations, if proven, would require setting aside the election," *Rieth-Riley Construction Co.*, 371 NLRB No. 109, slip op. at 7 (2022)—the Regional Director did not err in this regard.

JAMES R. MURPHY, CHAIRMAN

DAVID M. PROUTY, MEMBER

SCOTT A. MAYER, MEMBER

Dated, Washington, D.C., August 20, 2026

Chairman Murphy and Member Mayer did not participate in *Rieth-Riley* and express no view on whether it was correctly decided. They apply it for institutional reasons for the purpose of deciding this case.

For the reasons stated in his separate opinion in *Starbucks Corp.*, 14-RD-327273 (Apr. 21, 2026), Member Mayer believes that a reassessment of *Rieth-Riley* is long overdue in light of the way in which it can deprive employees for years of any opportunity to exercise their right to freely select, reject, or change their bargaining representative.

Member Mayer further expresses his concern regarding the protracted delay in processing these petitions, which were filed before the effective date of the 2024 Fair Choice-Employee Voice Rule and are hence governed by the 2020 Election Protection Rule. Seventeen months passed between the close of the preelection hearing (at which the parties raised no litigable issues) and the Regional Director's issuance of the merit-determination dismissal order without an election having been directed. That long and unexplained delay in affording these employees an opportunity to select their own bargaining representative and exercise the right to a prompt vote set forth in the Election Protection Rule is regrettable.