

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WENDT CORPORATION  
Employer

and

Case 03-RD-276476

DAVID WILHELM  
Petitioner

and

SHOPMEN'S LOCAL UNION NO. 576  
Union

ORDER

The Union's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues warranting review.

On July 29, 2020, the Board issued a decision *Wendt Corp.*, 369 NLRB No. 135 (2020), finding that the Employer engaged in several violations of Sections 8(a)(1), (3) and (5) of the Act. Subsequently, the Employer filed a petition for review of the Board's decision in the U.S. Court of Appeals for the D.C. Circuit. On May 3, 2021, the Petitioner filed a petition to decertify the Union. The Regional Director scheduled an election, stating that the Board's recent changes to its blocking-charge policy "do[] not contemplate deferring any election until the final adjudication of the unfair labor practices at issue." See Representation-Case Procedures: Election Bars; Proof of Majority Support in Construction-Industry Collective-Bargaining Relationships, 85 Fed. Reg. 18366-01 (April 1, 2020) (blocking-charge provisions codified at 29 CFR §103.20).

The Board's blocking-charge policy, however, is not relevant where, as here, the Board has issued its final disposition with respect to the charges at issue. The Board has made clear that its recent changes to the blocking-charge policy pertain to unproven and unlitigated unfair labor practice allegations. See Section 103.20(d) of the Board's Rules (stating that the petition will proceed until "there is a final disposition of the charge and a determination of its effect, if any, on the election petition"); see also 85 Fed. Reg. at 18377 (stating that the Board views a charge as "meritorious" once it is "admitted or so found in litigation," and that "from the Board's perspective, the current blocking-charge practice denies employees supporting a petition the right to have a timely election based on charges the merits of which remain to be seen"). Here, the violations have been found by the Board, and the Regional Director must now determine the

impact of those violations, if any, on the petition. See *Overnight Transportation*, 333 NLRB 1392, 1392-1393 (2001).<sup>1</sup>

Accordingly, we find that the Regional Director erred in ordering an election here before determining whether the violations found in *Wendt Corp.*, supra, require dismissal of the petition. We therefore stay the election and remand the case to the Regional Director to determine the impact of the violations, if any, on the present petition, including ordering a hearing, if necessary.<sup>2</sup>

LAUREN McFERRAN, CHAIRMAN

WILLIAM J. EMANUEL, MEMBER

JOHN F. RING, MEMBER

Dated, Washington, D.C., June 25, 2021.

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<sup>1</sup> The Board's unfair labor practice findings in *Wendt Corp.*, supra, constitute a final disposition of those issues for the purpose of the further processing of this petition even though the Employer has exercised its right to seek review in the court of appeals. See *Riviera Manor Nursing Home, Inc.*, 220 NLRB 124, 125 (1975) ("it is the Board's established policy to dismiss pending representation petitions upon the issuance of a bargaining order," even though order was subject to review in the courts at the time); *Flav-O-Rich Inc.*, 224 NLRB 687, 688 fn. 17 (1976) (same).

<sup>2</sup> Member Emanuel would deny the Union's Request for Review of the Regional Director's Decision and Direction of Election. He agrees with the Regional Director's determination that the Board's new blocking-charge rule is properly applied here, and accordingly that the election should not be deferred until the final adjudication of the unfair labor practices at issue here. Because the Board's decision is pending at the Court of Appeals for the District of Columbia Circuit, it is the court's decision that would constitute a final disposition of the unfair labor practice allegations. Accordingly, the decertification election should proceed as scheduled. In Member Emanuel's view, the cases cited by the majority to block the instant petition are inconsistent with the blocking-charge rule and are accordingly not dispositive here.