United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1012 September Term, 2006

Filed On: November 27, 2006

[1006536]

George Washington University,
Petitioner

v.

National Labor Relations Board,
Respondent

Service Employees International Union,
CLC, Local 500,
Intervenor

Consolidated with 06-1051

Petition for Review and Cross-Application for Enforcement
of an Order of the National Labor Relations Board

Before: SENTELLE, and KAVANAUGH, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge.*

JUDGMENT

This cause was considered on a petition for review and cross-application for enforcement of an order of the National Labor Relations Board ("Board" or "NLRB") and was briefed and argued by counsel. It is

ORDERED and **ADJUDGED**, by this Court, that the petition for review is hereby denied, and the Board's cross-application for enforcement is granted.

The Board's rules preclude litigation "in any related subsequent unfair labor practice proceeding" of "any issue which was, or could have been, raised in the representation proceeding." 29 C.F.R. § 102.67(f). Before the Board, Petitioner George Washington University ("University") attempted to defend its refusal to bargain with the Service Employees International Union, Local 500 ("Union") by attacking the Union's certification. The Board found that "[a]ll representation issues raised by the [University] were or could have been

litigated in the prior representation proceeding." *George Wash. Univ.*, 346 N.L.R.B. No. 13 (Dec. 28, 2005). Substantial evidence on the record confirms that the University could have raised the defense it offered at the unfair labor practice proceeding in the prior representation proceeding. *See* 29 U.S.C. § 160(e), (f). "Since the record shows that [the University] waived its right to request review of the [argument] during the representation proceeding, relitigation of the . . . issue is precluded." *Family Serv. Agency S.F. v. NLRB*, 163 F.3d 1369, 1381 (D.C. Cir. 1999). We have previously held that, in such circumstances, "[t]here is no merit whatsoever to [an employer's] claim that the Board erred in entering a summary judgment." *Corr. Corp. of Am. v. NLRB*, 234 F.3d 1321, 1323 (D.C. Cir. 2000) (per curiam). We therefore hold that the Board did not err by finding the University's defense waived and concluding that the University engaged in an unfair labor practice in violation of § 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. § 158(a)(5) and (1).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. Cir. Rule 41.

Per Curiam
FOR THE COURT:
Mark J. Langer, Clerk

By:
Michael C. McGrail
Deputy Clerk