

**UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of

**PRESIDENT AND TRUSTEES OF
BATES COLLEGE**

Employer

And

**MAINE SERVICE EMPLOYEE ASSOCIATION
SEIU LOCAL 1989**

Petitioner

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Case No. 01-RC-284384

**EMPLOYER’S BRIEF IN OPPOSITION TO THE AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS’ MOTION FOR PERMISSION TO FILE AMICUS BRIEF**

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May 20, 2022

Employer President and Trustees of Bates College (the “College”) hereby submits this response in opposition to the American Association of University Professors’ (“AAUP”) motion to file an *amicus curiae* brief in connection with the above-captioned matter (“Motion”). The College respectfully requests that the Board deny the AAUP’s Motion, because (a) under the Board’s rules, parties may seek permission to file an *amicus* brief by motion only in unfair labor practice cases, and (b) the AAUP’s Motion is untimely in any event.

First, the College believes it would be inequitable for the AAUP to be the sole *amicus curiae* in this matter in the absence of a public notice and invitation to file *amicus curiae* briefs, when the Board’s rules preclude the AAUP’s Motion. Prior to 2017, no Board rules expressly governed the filing of *amicus curiae* briefs.¹ In September 2017, however, the Board issued a detailed set of procedures at 29 C.F.R. § 102.46(i) on the subject.² Those procedures state that the Board will consider motions to file an *amicus curiae* brief “only” in two circumstances: (1) when “[a] party files exceptions to an Administrative Law Judge’s decision,” or (2) when “a case is remanded by the court of appeals and the Board requests briefing from the parties.” 29 C.F.R. § 102.46(i)(1) (emphasis added). The AAUP’s interpretation is that these procedures apply directly in unfair labor practice cases only, that *amicus curiae* briefs upon motion in representation cases are permitted but not formally regulated, and that in the “absence” of any directly applicable rules it “is appropriate” to look to the procedures at § 102.46(i) for timing and format requirements. AAUP’s Motion, at 1. The College submits, however, that where detailed

¹ See generally “Guide to Board Procedures,” Office of the Executive Secretary, National Labor Relations Board (April 2017), at 37.

² See Final Rule, “Procedural Rules and Regulations,” 82 Fed. Reg. 43695, 43695, 43697 (Sept. 19, 2017) (stating that the Board’s Final Rule “added language setting forth the procedures . . . applicable to *amicus curiae* briefs,” which *inter alia* “cover the circumstances when motions for permission to file an *amicus* brief may be filed”).

procedures now exist in the Board’s rules for filing *amicus* briefs upon motion, and confirm that such motions can be filed only in circumstances not present here, the Board’s rules do not permit the AAUP’s Motion at all – and there is no basis to excuse the AAUP from those rules’ operation.

Even applying § 102.46(i)’s terms, moreover, the AAUP’s Motion is extremely untimely and should be denied for that reason as well. Section 102.46(i) states that interested *amici* must file a motion to submit briefing “no later than 42 days after the filing of exceptions.” 29 C.F.R. § 102.46(i)(2). The “filing of exceptions” is not an applicable event in this case, but the closest equivalent would be the College’s filing of its Request for Review with the Board, as both would represent the first briefing directed to the Board setting forth disagreement with the underlying decision and requesting relief.³ The College filed its Request for Review on December 30, 2021, making the AAUP’s May 13, 2022 Motion well outside that 42-day period. More generally, the College’s Request for Review has been pending for nearly five months, and allowing the AAUP’s Motion at this late stage in proceedings would only potentially delay them further without justification.

For all the reasons set forth above, the College respectfully requests that the Board deny the AAUP’s Motion for Permission to File Amicus Brief.

Respectfully submitted,

PRESIDENT AND TRUSTEES OF BATES
COLLEGE

³ The AAUP’s argument that the 42-day period would instead date from when the College submitted *supplemental* briefing following the Board’s March 18, 2022 decision accepting the College’s Request for Review is illogical. The Board need not have issued a separate order accepting the College’s Request for Review, and the College’s supplemental briefing also was optional. *See* 29 C.F.R. § 102.67(h). Accepting the AAUP’s argument would mean tying the relevant deadline for *amicus* brief motions in representation case proceedings to a series of dependent contingencies that might never occur.

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May 20, 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Opposition was filed electronically today, May 20, 2022, using the National Labor Relations Board's E-Filing system, and a copy was sent by electronic mail to the following:

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