

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

CRETE COLD STORAGE, L.L.C.)	
)	
and)	No. 17-CA-24469
)	
UNITED FOOD AND COMMERCIAL)	CRETE COLD STORAGE,
WORKERS INTERNATIONAL UNION,)	LLC'S REPLY TO GENERAL
AFL-CIO, CLC, LOCAL NO. 271)	COUNSEL'S RESPONSE TO
)	EXCEPTIONS

COMES NOW, Crete Cold Storage, L.L.C., and for its Reply to General Counsel's Response to Crete Cold Storage, L.L.C.' Exceptions, states as follows:

I. REPLY

It is apparent from General Counsel's Response that it would not have mattered how Crete would have responded to its employees desire to be free of the Union—the Union was going to file unfair labor charges regardless. For example, General Counsel asserts that Crete could have filed an RM Petition and then turns around and argues that Crete is not entitled to an election. Nothing in the record evidences a desire by the Union to represent the wishes of the Crete employees; rather, the Union is more interested in hampering such wishes and pointing the finger at Crete. Despite professing a desire and commitment to represent and stand for employees, both the Union and the General Counsel refuse to aid the employees of Crete. While the Union and General Counsel allege that Crete had no knowledge, actual or otherwise, regarding the bargaining unit employees' wishes to cease being represented by the Union, both the Union and the General Counsel have refused to take the logical step toward determining the true wishes—conducting an election. Instead, Crete has attempted to do what the General Counsel and Union have refused to do—stand for the employees. Crete has done this

despite being severely curtailed by the NLRB case law which requires a seemingly impossible knowledge requirement, a requirements made even more difficult by the NLRA prohibition placed on employers disallowing direct communication with their employees regarding their wishes. For Crete employees, the ability to make their wishes known is even more difficult as many do not speak English and have little to no knowledge of the NLRB rules and regulations.

Despite such restrictions, and despite the arguments set forth by General Counsel, Crete, at the time it withdrew recognition, had knowledge that, (1) regardless of the size of the bargaining unit, Mr. Garcia was the only employee paying dues and even he did not want to be represented by the Union (Tr. p. 24); (2) no employees, who were members of the bargaining unit, paid their dues in any manner other than the dues check-off provided to the Union by the Employer (Tr. 18-19); (3) none of the employees were willing to meet with the Union Representative and had complained about the Union to management (Tr. pp. 47-52, 72); (4) it's attorney had conducted an investigation and determined that the Union lacked the necessary support; (5) and, it asked the Union if it disagreed with the withdrawal of recognition, to provide information of majority support, yet the Union failed and refused to provide any information (Tr. pp. 19, 25, 104-05, 112; Gen. Counsel Ex. 12). Such knowledge meets the Requirements of both Allentown and Levitz.

General Counsel has made an issue of Crete's hearsay knowledge. However, as Crete cannot speak directly with its employees under the NLRA, all evidence obtained by an employer regarding the employees' desires not to be represented would necessarily be hearsay. Rather than consider the testimony and evidence in this matter as a whole,

General Counsel, similar to the ALJ, chose to look only at discreet portions of the record and in doing so, has taken the evidence out of context. Crete's Exceptions Brief fully sets forth the context of mischaracterized testimony. When taken all the evidence is taken into account and considered in the appropriate context, it is clear that Crete has not committed an unfair labor practice, and, instead, has attempted to assist its employees by following their wishes. In doing so, Crete has followed the NLRA in both spirit as well as law.

The Union has done nothing to assist/represent the Crete bargaining unit employees. Linda Lee was only at the plant, at maximum, once a month, and rarely talked with any of the employees. The Union never had a majority of the bargaining unit as members. The Union President had no knowledge as to who was actually in the bargaining unit, and, despite being able to obtain such information from his own employee, the Union President never even spoke to Linda Lee regarding the Crete bargaining unit. Finally, despite having actual knowledge that employee Javier Garcia no longer wishes to be represented by the Union, both in writing and orally by Mr. Garcia's testimony, it continues to withdraw dues from Mr. Garcia's paycheck. Despite General Counsel and the Union's arguments, they simply are not representing the Crete employees in this matter.

Crete continues to assert that the appropriate remedy is an election to determine the representation wishes of the bargaining unit. To this end, Crete joined in the election petition filed by the Union. Despite such joinder, the Union unilaterally dismissed their election petition without the consent of Crete. Crete has made no changes from the collective bargaining agreement and will not make any changes until after an election is

held. It has done nothing and will do nothing to influence or prejudice the opinion and vote of the bargaining unit employees. Crete further agrees to abide by the election results. The Crete employees should be entitled to an election in this case.

II. CONCLUSION

For the reasons set forth above as well as those reasons set forth in Crete Cold Storage, L.L.C.'s Exceptions and Brief in Support of Exceptions, Crete Cold Storage, L.L.C. respectfully requests that Board not enforce the ALJ Decision and find that Crete Cold Storage, L.L.C. has not committed any unfair labor practices.

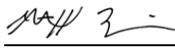
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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served, pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i), on October 12, 2009, upon all parties to the above cause via electronic mail at the above disclosed electronic mail addresses.

Signature: 

Respectfully Submitted,

BRICK GENTRY P.C.


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