UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION 2

FRESENIUS USA MANUFACTURING, INC.

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 445

Case No. 2-CA-39518

RESPONDENT'S OPPOSITION TO THE JOINT MOTION FOR EXTENSION OF TIME TO FILE EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS

Fresenius USA Manufacturing, Inc. ("Fresenius" or the "Respondent"), by its undersigned counsel, hereby opposes Counsel for the General Counsel's and Charging Party's Joint Motion for an extension of time to file exceptions and a brief in support of exceptions.

I. Introduction

As an initial matter, the reasons articulated by Counsel for the General Counsel for seeking the extension in the Joint Motion are inconsistent with the reason provided only a few days earlier at the time the request for the extension was submitted to Counsel for the Respondent. Furthermore, Respondent agreed to a nearly two week extension to address the stated reason asserted by Counsel for the General Counsel when the initial request for an extension was received and such extension should be more than sufficient in this case. Finally, Counsel for the General Counsel neglects to mention that the primary reason for Respondent's desire to avoid a lengthy extension is that a decertification petition for the applicable bargaining unit was filed in November 2009 and has been held in abeyance by the Regional Director pending the final resolution of the above captioned matter. The Administrative Law Judge has now ruled that the conduct in this case (ie. the investigation and discharge of Mr. Kevin "Dale"

Grosso due to his violation of the Respondent's EEO and Harassment Policies and for dishonesty in the investigation) did <u>not</u> violate the National Labor Relations Act (the "Act"). Thus, any further delay in the resolution of the instant action continues to prejudice Fresenius and its employees who are seeking to decertify the Union as the exclusive bargaining representative.

II. Analysis

By way of background, Counsel for the General Counsel contacted Counsel for Respondent on August 25, 2010 seeking an extension of time to file exceptions and a brief in support of exceptions. Counsel for the General Counsel indicated that the primary reason she was seeking an extension was due to a pre-planned ten (10) day vacation and made no mention that there was any purported delay in service of the Administrative Law Judge's decision, that there was a Jewish holiday that occurred outside her pre-planned vacation time, or that she had other cases that might render her too busy to comply with the deadlines in this case.

Nevertheless, in an effort to accommodate Counsel for the General Counsel's request, Respondent offered to agree to a twelve (12) day extension (ie. until September 28, 2010) which was more time than was needed to accommodate the stated reason for the extension; namely, a ten (10) day pre-planned vacation. Counsel for Respondent memorialized the conversation with Counsel for the General Counsel's stated reason for the extension as well as Respondent's offer to agree to a twelve (12) day extension of time to file exceptions in an email dated August 27, 2010, a copy of which is attached hereto as Exhibit "A."

Counsel for the General Counsel and the Charging Party now jointly request an extension until October 13, 2010 to file exceptions and a brief in support thereof. Counsel for the General Counsel now provides three additional justifications for such an extension which were not

provided in the original request; namely, the Jewish holidays, deadlines in other unspecified cases, and the purported failure to be served with the Administrative Law Judge's decision.

Counsel for the General Counsel provided none of these additional justifications to Counsel for Respondent when they spoke on August 26, 2010, as memorialized by Counsel for Respondent's August 27 email. See Exhibit "A."

Counsel for the General Counsel's claim that an extension is necessary due to the General Counsel not being properly served with the Administrative Law Judge's decision lacks merit.

Clearly, Counsel for the General Counsel timely received a copy of the ALJ's decision as evidenced by her prompt contacting of Respondent's counsel for an extension of the deadline, only a few days after the decision was issued. Respondent further objects to an extension until October 13, 2010 because it will further prejudice Respondent and the employees at the Chester facility in the drivers' unit due to the further delay in the processing of the pending decertification petition.

On or about November 18, 2009, almost a year ago, a truck driver employed in the Drivers Bargaining Unit (the "Drivers' Unit") at the Respondent's Chester, NY facility filed a decertification petition seeking to decertify the Charging Party as the exclusive bargaining representative of the Drivers' Unit employees. On or about January 26, 2010, the Regional Director issued a decision indicating that the decertification petition must be held in abeyance pending the outcome of the instant action. Any further delay in the filing of exceptions in this action further delays the ultimate resolution of this action and, therefore, delays the ability of the Drivers' Unit employees to exercise their right to vote in a decertification election.

III. Conclusion

Therefore, for the reasons stated above, Respondent respectfully requests that Counsel for the General Counsel's and Charging Party's joint motion for an extension of time to file exceptions be denied and that the deadline for all parties to submit exceptions and a brief in support of such exceptions be scheduled no later than September 28, 2010.

DUANE MORRIS LLP

By:

Thomas G. Servodidio Sarah M. Boyer 30 South 17th Street

Philadelphia, PA 19103-4196 Telephone: (215) 979-1000

Dated: September 2, 2010

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EXHIBIT "A"

Servodidio, Thomas G.

From:

Servodidio, Thomas G.

Sent:

Friday, August 27, 2010 3:55 PM

To:

'Rivchin, Julie Y.'

Subject:

RE: Fresenius USA, 2-CA-39518

Julie:

As a follow up to our telephone conversation yesterday, my understanding is that the primary reason for the requested extension is due to a pre-planned vacation that you have scheduled for about 10 days before the current due date of the exceptions (ie. September 16, 2010). As I mentioned in our telephone conversation, the decertification petition filed in November 2009 for the Drivers Unit at the Chester, NY facility is being held in abeyance pending the resolution of this case so any delay is, in our client's view, prejudicial to the interests of the bargaining unit employees and the Employer. Mindful of that concern, we are agreeable to a mutual extension for all parties to file exceptions (if any are to be filed by a party) until September 28, 2010 (which more than addresses your concern about your vacation). Please let me know if this is agreeable or if you would like to discuss this further. Thank you.

Tom

Thomas G. Servodidio Partner

Duane Morris LLP 30 South 17th Street Philadelphia, PA 19103-4196 P: 215.979.1844 F: 215.689.4379 C: 609.417.8275

TGServodidio@duanemorris.com

www.duanemorris.com

From: Rivchin, Julie Y. [mailto:Julie.Rivchin@nlrb.gov]

Sent: Wednesday, August 25, 2010 11:30 AM

To: Servodidio, Thomas G.

Subject: Fresenius USA, 2-CA-39518

Tom,

I am planning to request an extension of an additional four weeks to file exceptions, which I believe would bring the due date to October 14. Dan Clifton has advised me that the Union will join the General Counsel's request. What is your client's position?

Thanks, Julie

Julie Y. Rivchin, Field Attorney National Labor Relations Board, Region 2

Direct phone: 212-264-7614 Operator: 212-264-0300 Facsimile: 212-264-2450 Julie.Rivchin@nlrb.gov

CERTIFICATE OF SERVICE

This is to certify that on September 2, 2010, I caused the foregoing Opposition to the Joint Motion for Extension of Time to File Exceptions and Brief in Support of Exceptions to be served electronically, properly addressed as follows:

Julie Y. Rivchin, Esquire Counsel for the General Counsel 26 Federal Plaza, Room 3614 New York, NY 10278-0179 Julie.Rivchin@nlrb.gov

Daniel Clifton, Esquire Lewis, Clifton & Nikolaidis, P.C. 350 Seventh Ave., Suite 1800 New York, New York 10001-5013 dclifton@lcnlaw.com

Sarah M. Boxer Esquire

Dated: September 2, 2010

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