

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

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PIGGLY WIGGLY MIDWEST, LLC,  
Employer,

CASE 30-RD-1539

and

HEATHER NEUENDORF,  
Petitioner,

and

UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 1473,  
Union.

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**PIGGLY WIGGLY MIDWEST, LLC'S REQUEST FOR REVIEW OF REGIONAL  
DIRECTOR'S ORDER TO PUT IN ABEYANCE THE PROCEEDINGS REGARDING THE  
PETITION TO DECERTIFY UFCW LOCAL 1473 AT PIGGLY WIGGLY STORE #4**

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Piggly Wiggly Midwest, LLC (the "Company") is exercising its right under Section 102.71 of the Casehandling Manual to request a review of Region 30 Director Irving Gottschalk's order that the proceedings regarding the petition to decertify United Food and Commercial Workers Local 1473 (the "Union") as the bargaining representative for Piggly Wiggly Store #4 ("Store #4") non-meat department employees be held in abeyance. The Company's request for review is based on its belief that the Regional Director's action is, on its face, arbitrary and capricious.

**I. FACTUAL BACKGROUND**

In January 2011, the Company informed the Union of its intention to remove itself from the retail grocery business in favor of a wholesale-based business model. The Company also informed the Union that as part of this change in business model, the Company intended to sell all of its retail grocery stores. On March 14, 2011, the Company notified the Union that it was selling three of its retail grocery stores (Stores #25, 43 and 44). The Company further notified the Union that the

projected date of sale was May 21, 2011. On March 16, 2011, the Union filed ten Unfair Labor Practice Charges against the Company relating to the Company's intention to remove itself from the retail grocery business by selling its retail stores, specifically Stores #25, 43 and 44. None of the charges are supported by fact and many are based on outright fabrications by the Union and the Union's complete lack of knowledge in business franchising.

On April 14, 2011, Heather Neuendorf filed a petition to decertify the Union as the employee representative for non-meat department employees at Store #4. Ms. Neuendorf was able to show that a substantial number of Store #4 employees assert that the Union is no longer their representative. Store #4 employees are currently members of the same collective bargaining unit as two of the stores being sold; Stores #43 and 44. On April 15, 2011, Director Gottschalk notified the Company that he was blocking further processing of the decertification petition because he believed that the Unfair Labor Practice Charges relating to Stores #43 and 44 would directly impact the petition at store #4 since the three stores are in the same collective bargaining agreement.

## **II. ARGUMENT**

The National Labor Relations Board has built-in safeguards to put aside or nullify decertification elections if it determines that the election has been tainted by actions of the employer. Instead of Director Gottschalk using safeguards, such as setting a Store #4 election aside *if* the election atmosphere at store #4 is *proven* to be coerced by unlawful conduct, Director Gottschalk immediately refused to hold the Store #4 election because of the mere *possibility* that: (1) the Unfair Labor Practice Charges relating to Stores #43 and 44 have merit; *and* (2) such Unfair Labor Practices produce a coercive atmosphere at Store #4. By putting the petition in abeyance, Director Gottschalk has restricted Store #4 employees' Section 7 rights under the National Labor Relations Act. This restriction may have dire results if the abeyance is left in place.

Admittedly, in order to maintain the laboratory conditions of an election, “the Board's blocking charge procedures fulfill its longstanding policy that elections should be conducted in an atmosphere free of any type of coercive behavior that could affect employee free choice *sufficiently* to sway the outcome of the election.”<sup>1</sup> However, the connection between the legitimate Store #4 decertification petition and the alleged Stores #43 and 44 Unfair Labor Practice Charges is far too remote to *sufficiently* sway the outcome of the Store #4 election, even if the charges are found to be true. Certainly, the sufficiency of the connection cannot reasonably justify the restriction on Store #4 employees’ Section 7 right to determine which, if any, union will represent them. Laboratory conditions for a decertification election at Store #4 cannot be considered tainted by the unsupported charges at another facility filed by a Union that is desperate to prevent the Company from exercising its rights to sell its stores in a legitimate arms-length transaction.

A Regional Director’s action may be regarded as arbitrary and capricious when it is not supportable on a rational basis.<sup>2</sup> Directory Gottschalk has failed to elaborate *how* the Stores #43 and 44 charges would at all affect the Store #4 election, let alone how the charges would *sufficiently* affect the Store #4 election. He has provided no rational basis for his decision. Instead, Director Gottschalk is using his power to put the decertification proceedings in abeyance in order to frustrate Store #4 employees from exercising their Section 7 rights and to unreasonably delay the election proceedings. Therefore, Director Gottschalk’s order to put the Store #4 decertification proceedings in abeyance is arbitrary and capricious.

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<sup>1</sup> *Mark Burnett Productions & Stephen R. Frederick, Petitioner & Int'l Alliance of Theatrical Stage Employees*, 349 NLRB 706 (2007) (emphasis added)

<sup>2</sup> *Carlisle Paper Box Co. v. N. L. R. B.*, 398 F.2d 1, 6 (3d Cir. 1968)

### III. CONCLUSION

Director Gottschalk's order to put the Store #4 decertification proceedings in abeyance is both arbitrary and capricious. For these reasons, the Company respectfully requests the Board order Director Gottschalk to continue proceedings on the Store #4 decertification petition.

Dated: April 29, 2011

Respectfully submitted,

PIGGLY WIGGLY MIDWEST, LLC



By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the Employer's Request for Review was served this 29<sup>th</sup> day of April 2011 via:

**Petitioner**  
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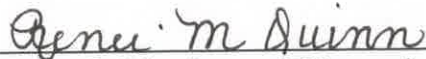
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Rhonda Bautz

Subscribed and sworn to before me  
this 29<sup>th</sup> day of April, 2011.

  
Notary Public, State of Wisconsin  
My commission: 12.11.2011

