

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31**

AMPERSAND PUBLISHING, LLC D/B/A	)	
SANTA BARBARA NEWS-PRESS	)	
	)	
EMPLOYER,	)	
	)	CASE NO. 31-RD-1622
AND	)	
	)	
GERALD KEVIN FALL, AN INDIVIDUAL	)	
	)	
PETITIONER	)	
	)	
AND	)	
	)	
GRAPHICS COMMUNICATIONS CONFERENCE,	)	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	)	
	)	
UNION.	)	
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**REQUEST FOR REVIEW OF REGIONAL DIRECTOR’S ORDER**

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COMES NOW, Ampersand Publishing LLC d/b/a *Santa Barbara News-Press* (“the *News-Press*”) pursuant to Section 102.67(b) of the Board’s Rules and Regulations, Series 8, as amended, with this Request for Review of the Regional Director’s May 5, 2011, Order Postponing Hearing in the above-referenced case. *See Exhibit 1*. On May 3, 2011, Gerald Fall, an individual and unit employee represented by GCC/IBT, filed a petition for a decertification election with NLRB Region 31. *See Exhibit 2*. The Region processed the petition and ordered an R hearing. *See Exhibit 3*. On May 3, 2011, *Santa Barbara News-Press* proposed to stipulate to an election. *See Exhibit 4*. On May 5, 2011, the Regional Director ordered that the hearing be indefinitely postponed pending

the resolution of unfair labor practice charges currently pending before the Board. The *News-Press* timely files this Petition for Review. For the reasons explained herein, the *News-Press* respectfully asserts that the Order of the Regional Director should be reversed and the Regional Director should be ordered to direct an election in NLRB Case No. 31-RD-1622, post haste. In the alternative, the Regional Director should be ordered to conduct a hearing to determine how the charges impact an election.

## I. ARGUMENT

### A. **THE REGIONAL DIRECTOR'S ORDER DOES NOT COMPLY WITH THE BOARD'S RULES AND REGULATIONS**

The Regional Director's Order does not comply with the requirements of Section 102.67(b) of the Board's Rules and Regulations. The Regional Director's decision is required to "set forth his findings, conclusions, and order or direction." The Regional Director's Order is cursory. There is no analysis. The order simply cites unresolved unfair labor practice charges currently pending before the Board. There is no explanation of how or why the pending charges should serve to postpone a hearing and/or an election. The Regional Director should be ordered, at a minimum, to explain the rationale behind his Order. A failure to explain the Order violates the *News-Press*'s due process rights as the *News-Press* is left to guess why the Regional Director issued his Order. Without a specific explanation, the *News-Press* must speculate; this is not equitable.

### B. **AN ELECTION PROTECTS EMPLOYEE RIGHTS**

The *News-Press* employees exercised their Section 7 right to petition the Region to conduct an election. Employees have legitimately raised a question concerning representation. There is no allegation of taint associated with the RD Petition. The Board's Casehandling Manual expressly states that the Board's blocking charge policy

“is not to be misused by a party<sup>1</sup> as a tactic to delay the resolution of a question concerning representation raised by a petition. Rather, the blocking charge policy is premised solely on the agency’s intention to protect the free choice of employees in the election process.” *See* 29 CFR § 11730. The Regional Director’s Order does not protect the employees’ ability to exercise free choice in the election process. The Regional Director’s Order denies employees the right to exercise Section 7 rights. The Regional Director’s Order is an anathema to the administration of the Act.

The Regional Director is obligated to explain a “causal nexus between the unfair labor practice allegations and the decertification petition ...” 29 CFR § 11730.4. Absent a causal nexus, the Regional Director should reconsider whether blocking the processing of a petition is appropriate. *Id.* As the Board explained in *in re Hope Elec.*, 339 NLRB 933, 935 fn. 6 (2003), the blocking charge policy is not automatic. Regional Director McDermott, in contravention to this Board principle, applied the blocking charge policy mechanically. Such willful and wonton disregard of employee rights should not go unchecked.

The *News-Press* represents that the petitioner, Mr. Gerald Fall, was hired on March 15, 2010. All of the referenced unfair labor practice charges preceded Mr. Fall’s employment at the *News-Press*. Mr. Fall was not impacted by any of the listed charges.

The bargaining unit consists of 26 employees as of May 3, 2011. Twelve employees were hired after February 15, 2007, the last date of the nine allegations addressed in NLRB Case No. 31-CA-27950 et al.; it stands to reason that these charges

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<sup>1</sup> It is of note that GCC/IBT did not request that the election be blocked. The Regional Director acted *sua sponte*, effecting the same result as if GCC/IBT had filed a blocking charge.

did not affect those employees. Eight employees were hired after March 10, 2009, the last date of the 15 charges addressed in NLRB Case No. 31-CA-28589 et al.; it stands to reason that these employees were not affected by the allegations that preceded their employment. Finally, eight employees were hired after May 8, 2009, the date at issue involving NLRB Case No. 31-CA-29253; it stands to reason that employees hired after May 8, 2009 were not affected by the allegations in NLRB Case No. 31-CA-29253. The Regional Director's denial of the election reflects a continued bias repeatedly criticized by the *News-Press*.<sup>2</sup>

### **C. AN ELECTION COMPORTS WITH THE AGENCY'S MISSION**

Given the lack of analysis by the Regional Director, the *News-Press* can only speculate that the Regional Director has improperly assumed that the *News-Press* will be found to have violated the Act in its appeals before the Board. Such an assumption conflicts with extant Board law. *See Saint Gobain Abrasives, Inc.*, 342 NLRB 434, 434 (2004)(Board reversed Regional Director's dismissal of RD petition due to pending charges explaining, "... it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To speculate is to deny employees their fundamental Section 7 rights. Surely a hearing and findings are prerequisites to such a denial.").

The exceptions filed in the referenced cases have been pending before the Board between 27 and eight months. It is not equitable for the petitioning employees to be punished for the length of the administrative process. As the Fifth Circuit explained in

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<sup>2</sup> Previously, the *News-Press* requested that the General Counsel transfer NLRB Case No. 31-CB-12436 to a different Region for processing as the objectivity of Regional Director McDermott is suspect. The *News-Press* does not object to the Board remanding this case to a different Region for processing.

*NLRB v. Minute Maid Corp.*, 283 F.2d 705, 710 (5<sup>th</sup> Cir. 1960), the Board is “not relieved of its duty to consider and act upon an application for decertification for the sole reason that an unproven charge of an unfair labor practice charge has been made against the employer.” In *Templeton v. Dixie Color Printing Co., Inc.*, 444 F.2d 1064, 1065 (5<sup>th</sup> Cir. 1971), the court ordered the Board to hold a decertification election that had been held in abeyance for over three years because during that time the employees:

Have been deprived during all this time of their statutory right to a representative “of their own choosing” to bargain collectively for them, 29 U.S.C. 157, despite the fact that the employees have not been charged with any wrongdoing. Such practice and result are intolerable under the Act and cannot be countenanced. “The purpose of the Board is to protect the bargaining rights of employees, not the bargaining rights of union.” *NLRB v. Ben Duthler, Inc.*, 395 F.2d 28, 34 (6<sup>th</sup> Cir. 1968). See *NLRB v. S. S. Logan Packing Co.*, 386 F.2d 562, 564 (4<sup>th</sup> Cir. 1967). The union cannot avoid the consequence of the loss of its majority status by the mere filing of unfair labor practice charges against the employer. Nor does the filing of such unproved charges relieve the Board of its statutory duty to consider and act on a petition for decertification. *NLRB v. Minute Maid Corp.*, 283 F.2d 705, 710 (5<sup>th</sup> Cir. 1960).

\*\*\*\*

Here there is no administrative remedy to correct a clear wrong that undermines the employees' paramount right. Attrition and delay on the part of the Board charged by Congress with protecting this right have frustrated it. There is no indication that any relief will be forthcoming from the Board in the foreseeable future. The primary purpose of the Act is to protect employee rights. To deny to employees the right to determine whether or not they will be represented is tantamount to castrating [Section] 7, the heart of the Act.

Processing the petition and directing an election to determine whether the employees truly want continued representation by the Teamsters fortifies the Act and protects employee rights.

**D. EMPLOYEES' STATUTORY RIGHTS ARE PARAMOUNT AND SHOULD BE RESPECTED**

The Regional Director's *sua sponte* blocking of the decertification election is inconsistent with precedent. In the context of a "blocking charge," the mere filing of a charge does not act as a per se rule to thwart an election. Whether to block an election is a case-by-case determination, none of which occurred in the instant case. In *Surratt v. NLRB*, 463 F.2d 378, 380 (5<sup>th</sup> Cir. 1972), the company instituted suit in federal district court against the NLRB alleging that the Board wrongfully and arbitrarily refused to exercise jurisdiction over the decertification petition. The District Court ordered the Board to investigate the decertification petition due to a question of representation that affected commerce, and ordered the NLRB to conduct a hearing on the petition post haste. *Id* at 381. The Fifth Circuit affirmed the District Court's ruling explaining:

The crucial considerations in this case are that the rights of the employees would be seriously jeopardized if we sustain the Board action merely to avoid a collision with the Board's general "blocking charge policy." More specifically, the Board should not be allowed to apply its "blocking charge practice" as a per se rule without exercising its discretion to make a careful determination in each individual case with a violation alleged as such that consideration of the election petition ought to be delayed or dismissed.

463 F.2d at 381. The concurrence, in *Surratt*, further explained:

[The right to refrain from the rights embodied in Section 7 of the Act] cannot possibly be reconciled if the Board utilizes its blocking charge practice to deny an election solely because of pending unfair labor practice proceedings with no investigation of the surrounding circumstances and no consideration of to what extent the alleged loss of a Union majority has been affected by the alleged unfair labor practices.

*Id* at 382-83 (concurrence). In the instant case, there was no investigation by the Region.

The petitioner filed the Petition on May 3, 2011; the Region indefinitely postponed the



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S ORDER was electronically filed and served via email this 19<sup>th</sup> day of May, 2011 on the following:

James J. McDermott  
Regional Director  
NLRB Region 31  
11150 West Olympic Blvd, Ste. 700  
Los Angeles, CA 90064  
**james.mcdermott@nlrb.gov**

Gerald Kevin Fall  
3463 State Street #514  
Santa Barbara, CA 93105  
**geraldfall@gmail.com**

Ira Gottlieb, Esq.  
Bush, Gottlieb, Singer, Lopez, Kohanski, Adelstein & Dickinson  
500 North Central Ave., Ste. 800  
Glendale, CA 91203-3345  
**igottlieb@bushgottlieb.com**

/s/ Glenn E. Plosa  
Glenn E. Plosa

# Exhibit 1

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Ampersand Publishing

Employer

and

Gerald Kevin Fall, an Individual

Petitioner

and

Graphics Communications Conference/International  
Brotherhood of Teamsters

Union

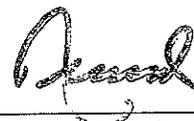
CASE NO. 31-RD-1622

**ORDER POSTPONING HEARING**

In view of the unresolved unfair labor practice charges currently pending in Cases 31-CA-27950, 31-CA-27965, 31-CA-28043, 31-CA-28104, 31-CA-28116, 31-CA-28131, 31-CA-28151, 31-CA-28161, 31-CA-28162, 31-CA-28157, 31-CA-28589, 31-CA-28661, 31-CA-28667, 31-CA-28700, 31-CA-28733, 31-CA-28734, 31-CA-28738, 31-CA-28799, 31-CA-28889, 31-CA-28890, 31-CA-28944, 31-CA-29032, 31-CA-29076, 31-CA-29099, and 31-CA-29124,

**IT IS HEREBY ORDERED** that the hearing in the above-captioned matter scheduled to be held on May 10, 2011, be, and it hereby is, postponed indefinitely.

Dated at Los Angeles, California this 5th day of May, 2011.



Regional Director, Region 31  
National Labor Relations Board

# Exhibit 2

INTERNET  
FORM NLRB-502  
(2-08)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. <b>31-RD-1622</b>	Date Filed <b>5-3-11</b>

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (if box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

UC-UNIT CLARIFICATION- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one)  In unit not previously certified.  In unit previously certified in Case No. \_\_\_\_\_

AC-AMENDMENT OF CERTIFICATION- Petitioner seeks amendment of certification issued in Case No. \_\_\_\_\_ Attach statement describing the specific amendment sought.

2. Name of Employer: **Ampersand Publishing** Employer Representative to contact: **Norman Colavincenzo** Tel. No. **805-564-5261**

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): **715 Anacapa Street, Santa Barbara, CA 93102-1359** Fax No. **805-564-5286**

4a. Type of Establishment (Factory, mine, wholesaler, etc.): **Newsroom** 4b. Identify principal product or service: **Newspaper** Cell No. \_\_\_\_\_ e-Mail \_\_\_\_\_

5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) 6a. Number of Employees in Unit: Present **26** Proposed (By UC/AC) \_\_\_\_\_

Included: **All full-time and regular part-time employees in the news department, including writers, reporters, copy editors, photographers, and graphic artists employed at the Employer's Anacapa Street facility located in Santa Barbara, California**

Excluded: **All other employees, guards, confidential employees, supervisors as defined in the Act, as amended, and writers and editors engaged primarily in working on the opinion editorial pages**

6b. Is this petition supported by 30% or more of the employees in the unit?  Yes  No \*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a.  Request for recognition as Bargaining Representative was made on (Date) \_\_\_\_\_ and Employer declined recognition on or about (Date) \_\_\_\_\_ (if no reply received, so state).

7b.  Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (if none, so state): **Graphics Communications Conference/International Brotherhood of Teamsters** Affiliation \_\_\_\_\_

Address: **1900 "L" Street., N.W. Washington, DC 20036** Tel. No. **202-462-1400** Date of Recognition or Certification **8/16/2007** Fax No. \_\_\_\_\_ e-Mail \_\_\_\_\_ Cell No. **202-721-0600**

9. Expiration Date of Current Contract. If any (Month, Day, Year): **N/A** 10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year) \_\_\_\_\_

11a. Is there now a strike or picketing at the Employer's establishment(s) Involved? Yes  No  11b. If so, approximately how many employees are participating? \_\_\_\_\_

11c. The Employer has been picketed by or on behalf of (Insert Name) \_\_\_\_\_, a labor organization, of (Insert Address) \_\_\_\_\_ Since (Month, Day, Year) \_\_\_\_\_

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

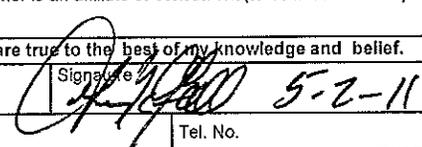
Name	Address	Tel. No.	Fax No.

13. Full name of party filing petition (if labor organization, give full name, including local name and number): **Gerald Kevin Fall**

14a. Address (street and number, city, state, and ZIP code): **3463 State Street #514 Santa Barbara, CA 93105** 14b. Tel. No. EXT \_\_\_\_\_ 14c. Fax No. \_\_\_\_\_ 14d. Cell No. **805-702-0792** 14e. e-Mail **geraldfall@gmail.com**

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): **GERALD K FALL** Signature:  Date: **5-2-11** Title (if any) \_\_\_\_\_

Address (street and number, city, state, and ZIP code): **3463 State Street #514 Santa Barbara, CA 93105** Tel. No. \_\_\_\_\_ Fax No. \_\_\_\_\_ Cell No. **805-720-0792** eMail **geraldfall@gmail.com**

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

# Exhibit 3

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Ampersand Publishing

Employer

and

Gerald Kevin Fall, an Individual

Petitioner

and

Graphics Communications Conference/International  
Brotherhood of Teamsters

Union

Case No. 31-RD-1622

**NOTICE OF REPRESENTATION HEARING**

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 a.m., on **Tuesday, May 10, 2011**, and on consecutive days thereafter until concluded, at the Olympic Center, 11150 West Olympic Boulevard, Suite 700, Los Angeles, California, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing the parties will have the right to appear in person or otherwise, and give testimony. (Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act, as Amended*, is attached.)

Signed at Los Angeles, California, on May 3, 2011.



/s/ James J. McDermott  
Regional Director, Region 31  
National Labor Relations Board

# Exhibit 4



414 Union Street, Suite 1200  
Bank of America Plaza  
Nashville, Tennessee 37219  
TELEPHONE 615.244.9700  
FACSIMILE 615.244.9734  
www.zinserlaw.com

May 3, 2011  
(Via Facsimile 310.235.7420 and U.S. Mail)

Mr. Steve Aldvenda  
NLRB Region 31  
11150 West Olympic Blvd., Ste. 700  
Los Angeles, CA 90064-1824

OF COUNSEL  
William H. Bruckner  
Bruckner Burch PLLC  
Houston, Texas  
Licensed in Texas, Nebraska and Oklahoma

Patrick J. Sullivan  
Law Offices of Patrick J. Sullivan  
Oceanside, California  
Licensed in California only

**RE: NLRB CASE NO. 31-RD-1622; AMPERSAND PUBLISHING**

Dear Mr. Aldvenda:

We are in receipt of the above-referenced RD Petition you faxed to our office today. To facilitate the election and to check the showing of interest, enclosed please find a list of bargaining unit employees.

To facilitate the election *Santa Barbara News-Press* is willing to agree to a stipulated election agreement. In negotiations, the parties have tentatively agreed to the following unit description that we believe is appropriate for the purposes of this election:

All full-time and regular part-time employees in the News Department, including writers, reporters, copy editors, photographers, and graphic artists employed at the Employer's Anacapa Street facility located in Santa Barbara, California, but excluding all other employees, guards, confidential employees, supervisors as defined in the Act, as amended, and writers and editors engaged primarily in working on the opinion editorial pages.

We further propose that the election be held at *Santa Barbara News-Press* in the 3<sup>rd</sup> floor conference room. We propose two polling times to accommodate employees, one from 11:00 to 11:30 a.m. and the second polling period from 4:00 to 4:30 p.m. We are amenable to a mutually agreeable date of both the petitioner and GCC/IBT.

Please feel free to contact me with any questions or to discuss this case further.

Very truly yours,



Glenn E. Plosa

Encl.

GEP/cw

cc: Wendy McCaw  
Arthur von Wiesenberger  
Norman Colavincenzo  
Don Katich  
Yolanda Apodaca  
L. Michael Zinser

**LIST OF BARGAINING UNIT EMPLOYEES**  
**NLRB CASE NO. 31-RD-1622**

1. Dennis Bateman
2. Joe Brewer
3. James Cheng
4. Thomas De Walt
5. John Eliason
6. Michal Elseth
7. Gerry Fall
8. Steve Galbreath
9. Ed Harbour
10. Victoria Harvey
11. Morgan Hoover
12. Karna Hughes
13. Robert Johnson
14. Steve Malone
15. Dave Mason
16. Mike McKean
17. Marilyn McMahan
18. Frank Newton
19. Angel Pacheco
20. Mark Patton
21. John Schroeter

22. Kathy Schultz
23. Steve Sinovic
24. Matthew Smolensky
25. Sherrie Waggener
26. Nora Wallace