

RANDY C. McCARTHY

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February 13, 2012

National Labor Relations Board
1099 14th St. N.W.
Washington, D.C. 20570-0001
Attn: General Counsel

Re: Calhoun Foods, LLC d/b/a Key Food
-and- Local 338, Retail, Wholesale and
Department Store Union, UFCW
Case Nos. 29-CA-30861
29-CA-30878

Dear National Labor Relations Board:

On behalf of Calhoun Foods, LLC d/b/a Key Food ("Respondent"), pursuant to Section 102.26 of the Board's Rules and Regulations, I hereby request special permission to appeal the Order issued by ALJ Esposito in the above-reference matter on February 10, 2012 ("Order"). [A copy of said Order is attached hereto as Exhibit "A"].

REQUEST FOR PERMISSION TO APPEAL

Based on the following facts and circumstances, all of which I affirm to be true to the best of my knowledge, I hereby request special permission to appeal from the Order of ALJ Esposito:

1. The relevant charge in this matter was filed on July 6, 2011 (Charge No. 29-CA-30878). Said charge, which at no time relevant hereto was ever amended, made reference to a demand for recognition that was made on April 29, 2011. [A copy of said charge is attached hereto as Exhibit "B"].
2. During the investigation of said charge, by email dated September 29, 2011, the Region provided Respondent's counsel with information that the Charging Party, Local 338, RWDSU, UFCW ("Union") had made two (2) visits to the Respondent's facility to discuss recognition; once on April 29, 2011, and once approximately ten (10) days thereafter. [A copy of the September 29, 2011 email is attached hereto as Exhibit "C"].
3. In the Region's initial Consolidated Complaint, which was issued on October 31, 2011, the Region alleged that "On a date presently unknown in late April or early May 2011..."

the Union demanded recognition. [See paragraph 15 of the initial Consolidated Complaint attached hereto as Exhibit "D"].

4. Unbeknownst to Respondent until February 1, 2012, on December 5, 2011, the Region took an affidavit from Union Business Agent Jeff Laub wherein he alleged that he had made an additional demand for recognition on the Respondent on April 26, 2011, more than seven (7) months earlier.
5. On or about this time, the Region requested an adjournment of the hearing that was scheduled in this matter for December 13, 2011. A new hearing was rescheduled for February 1, 2012.
6. Prior and leading up to the filing of its Amended Consolidated Complaint, which was issued on January 13, 2012, Regional counsel engaged Respondent's counsel in discussions over certain good-faith stipulations/admissions Respondent was willing to make to expedite pending litigation. At no time during these discussions did Regional counsel in any way advise Respondent's counsel that she was aware of an additional demand for recognition that allegedly took place on April 26, 2011.
7. After reaching certain understandings with Respondent's counsel, the Region issued an Amended Consolidated Complaint on January 13 2012, wherein, among other things, it amended its initial Consolidated Complaint to allege that two (2) demands for recognition had been made in April 2011, not one (1). [A copy of the Region's amended Consolidated Complaint is attached hereto as Exhibit "E"]. As this amendment appeared to be consistent with the two (2) meetings that Respondent had been advised of during the Region's investigation (see paragraph 2 hereinabove) and Regional counsel had made no mention of any additional alleged demand, Respondent had absolutely no reason to suspect that the Region's amendment was aimed at doing anything more than correcting the number of visits the union allegedly made to the store, along with the dates they were allegedly made. This is particularly true in view of the fact that the Region's amendment gave absolutely no indication that any new or additional information was being alleged (see paragraph 4 of the Amended Consolidated Complaint).
8. Notwithstanding the fact that it has no knowledge that the Board's Rules and Regulations would allow it to request a Bill of Particulars, as Respondent had been given absolutely no information concerning an alleged additional demand for recognition, it had no reason to make such a request. In order to do so, it would have had to somehow divine that such an allegation was being made.
9. Only **after** filing its Answer to the Amended Consolidated Complaint on January 24, 2012, and only **after** entering into certain stipulations consistent therewith at the outset of the hearing, did Respondent first receive notification that the Region was alleging an additional demand had been made on April 26, 2011. The Respondent first learned this information when said alleged demand was testified to by Union Representative Jeff Laub. Mr. Laub testified that he made a demand for recognition to Mike Hassan at an offsite location on April 26, 2011, a date which superseded the Respondent's actual

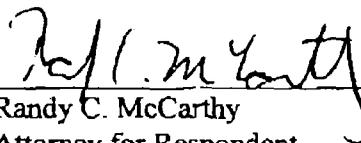
purchase of the business involved herein. It is the Respondent's position that no such demand occurred, that Mike Hassan is not an agent of Respondent even if it had, and that there was no substantial and representative compliment of employees hired at the time of the alleged demand.

10. At the time of Mr. Laub's testimony, and immediately upon learning that he first made this claim on December 5, 2011, over seven (7) months after it allegedly occurred, Respondent's counsel strongly objected to the introduction of this testimony and to the fact that it had not received prior notice of same. As Respondent has not yet received a copy of the transcript, I am not entirely certain whether or not it was done on the record but Respondent's objections in this matter were made perfectly clear to all those present, including ALJ Esposito.
11. While Respondent's counsel is accustomed to complaint allegations that include the date, location and persons involved in a particular claim (much like the Region's allegations with respect to the claims of unlawful interrogation and surveillance as set forth in paragraphs 17 and 18 of its initial Consolidated Complaint), no such clarity was provided with respect to the Region's allegations concerning its claims of refusal to recognize/bargain (see paragraph 4 of the Amended Consolidated Complaint).
12. Respondent's motion to clarify its stipulation and to amend its Answer to the Amended Consolidated Complaint was made while the record was still open and only seven (7) days after the new information upon which it was based was learned of.
13. Essentially, in discussions with Regional counsel, the Respondent agreed that, had the Union made a demand for recognition on Sam Hassan on April 29, 2011, Respondent would have been obligated to honor such a request and bargain with the Union as a *Burns* successor. In this regard, the Respondent had been advised of the alleged demand, admitted that Sam Hassan was an agent of Respondent, and acknowledged that, as of the time the alleged demand was made, it fulfilled the requirements of a *Burns* successor. These same acknowledgements, however, do not apply to the alleged demand made on Mike Hassan on April 26, 2011, an alleged demand which Respondent was not aware of at the time it made its stipulations/admissions.
14. Neither the Region's initial Consolidated Complaint, nor its Amended Consolidated Complaint, made any allegation as to Mike Hassan's standing as an agent of the Respondent, a key element of the claim, and neither document put Respondent on any reasonable notice that a demand was allegedly made on April 26, 2011.
15. To the extent that ALJ Esposito will rely on the facts and circumstances surrounding the Region's allegation of a demand for recognition occurring on April 26, 2011, the Respondent wants to make it clear that, whatever stipulations/admissions it made in this case, they were entered into prior to being notified or in any way put on notice of such an alleged demand and were not intended to apply thereto.

16. To allow the Region to establish its case based on a demand for recognition made on April 26, 2011, without having to prove that the Union enjoyed a majority status in a substantial and representative compliment of employees as of said date, would be to provide it with summary judgment on disputed key issues involved with said claim based on uninformed stipulations and admissions. Such a decision would be contrary to establishing the actual validity of the allegations involved and would not further the intentions of the Act.
17. There is no significant prejudice associated with the fact that Respondent waited for seven (7) days until making its motion, particularly in view of the significance of applying unintended stipulations/admissions to the alleged demand of April 26, 2011.

WHEREFORE, the Respondent respectfully requests permission to appeal ALJ Esposito's Order and to clarify its stipulations and amend its answer to the amended Consolidated Complaint herein.

Respectfully Submitted and Affirmed



Randy C. McCarthy
Attorney for Respondent
66 Rodeo Drive
Hopewell Junction, NY 12533

Via Mail & Fax
(202) 273-4483

TRUE COPIES MAILED AND FAXED TO:

Judge Lauren Esposito
National Labor Relations Board
Division of Administrative Law Judges
120 W. 45th St.
New York, NY 10036
Fax No. (212) 944-4904

Nancy Lipin, Esq.
National Labor Relations Board
Region 29
2 Metro Tech Center, 5th Floor
Brooklyn, NY 11201
Fax No. (718) 330-7579

[CONTINUED]

Jae W. Chun, Esq.
Friedman & Wolf
1500 Broadway – Suite 2300
New York, NY 10036-4052
Fax No. (212) 719-9072

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CALHOUN FOODS, LLC d/b/a KEY FOOD

and

Case Nos. 29-CA-30861
29-CA-30878

LOCAL 338, RETAIL, WHOLESALE AND
DEPARTMENT STORE UNION, UNITED
FOOD AND COMMERCIAL WORKERS

ORDER

The Consolidated Complaint herein, issued on October 31, 2011, alleges in pertinent part that Respondent Calhoun Foods, LLC d/b/a Key Food ("Key Food") has failed, since late April or early May 2011, to recognize and bargain with the Charging Party Union, despite its obligations as a successor employer to PSK Supermarkets, Inc., in violation of Sections 8(a)(1) and (5) of the Act. On January 13, 2012, the Consolidated Complaint was amended as discussed below. Respondent filed Answers to the Consolidated Complaint and to the amendments on November 9, 2011 and January 24, 2012, respectively.

The hearing in this matter opened on February 1, 2012. At the inception of the hearing, Counsel for the Acting General Counsel ("General Counsel") and Respondent entered into several stipulations on the record. General Counsel and Respondent stipulated that as of early May 2011: (i) Respondent was in normal business operations at its 135-46 Lefferts Boulevard, South Ozone Park location; (ii) Respondent had filled at least fifty percent of the available bargaining unit positions; (iii) the size of the bargaining unit was at least thirty percent of the ultimate complement of bargaining unit employees; and (iv) the majority of those employees had been employed by the predecessor employer or represented by the Union. Respondent and General Counsel further stipulated that Respondent admitted the Consolidated Complaint's allegations, as amended, except for allegations involving the Union's demand that Respondent recognize and bargain with it as the exclusive collective bargaining representative of the bargaining unit employees, and the allegations that Respondent made certain statements to employees violating Section 8(a)(1) of the Act.

The hearing continued on February 7, 2012, with General Counsel and Respondent both completing their respective cases. At the conclusion of the hearing on February 7, 2012, the record was left open for Respondent to produce several additional

documents pursuant to General Counsel's Subpoena *Duces Tecum*, and for General Counsel's possible presentation of rebuttal evidence.

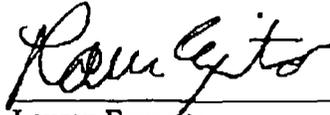
On the afternoon of February 8, 2012, I received an e-mail from Respondent's counsel, Randy C. McCarthy, Esq., stating that he wished to "modify" or "clarify" the stipulations entered into with General Counsel on the first day of the hearing, and attaching a proposed Amended Answer. Specifically, Mr. McCarthy stated that Respondent would now enter into these stipulations only with respect to a demand for recognition which, according to the testimony of General Counsel's witnesses, was made on April 29, 2011, and not with respect to a demand for recognition made on April 26, 2011. Although these contentions were raised by e-mail, and no appropriate motion to withdraw from or modify the stipulations and file an Amended Answer was submitted, I will address them immediately for the sake of expediency.

Respondent now argues that it was provided with inadequate notice of General Counsel's contentions regarding any April 26, 2011 demand for recognition. General Counsel argues that the Consolidated Complaint and amendments adequately apprised Respondent of the allegations against it. Paragraph 15 of the Consolidated Complaint alleged that "On a date presently unknown in late April or early May 2011, the Union requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit." Paragraph 4 of the amendments to the Consolidated Complaint alleges, "On or about two dates in late April 2011, the Union requested that Respondent recognize it as the exclusive collective bargaining representative of the Unit." Respondent, by Mr. McCarthy, filed Answers to both pleadings which specifically responded to these allegations. Respondent never filed a motion for a Bill of Particulars seeking additional information regarding the bargaining demands or any other allegations.

In addition, the amendments to the Consolidated Complaint allege at Paragraph 3(a-b) that Respondent began its operations at the 135-46 Lefferts Boulevard location on or about May 4, 2011, that at the time of the Union's recognition demand, Respondent "hired a substantial and representative complement of employees, a majority of whom were previously employed by PSK," and that Respondent "has continued to be engaged in substantially the same business operations at the same location, operating the South Ozone Park facility in basically unchanged form." Respondent's Answer to the amendments stated, "The Respondent admits the amended allegations set forth in paragraphs 3(a) and 3(b) of the Amended Consolidated Complaint except that it denies that the demand for recognition alleged in paragraph 3(a) was ever made." This is consistent with the stipulation entered into between Respondent and General Counsel at the inception of the hearing, and both General Counsel and Respondent presented their cases on this basis. Respondent cannot be permitted to withdraw from its stipulations only now, after both parties have fully completed their cases in chief at trial.

For all of the foregoing reasons, Respondent's request to withdraw from or modify the stipulations reached with General Counsel on February 1, 2012, and to file an Amended Answer, is denied.

New York, New York
February 10, 2012



Lauren Esposito
Administrative Law Judge

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case cs 29-CA-30878	Date Filed 7/6/11

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Calhoun Foods, LLC d/b/a Key Food		b. Tel. No. 718-641-2423
d. Address (Street, city, state, and ZIP code) 135-46 Lefferts Boulevard South Ozone Park, New York 11420		c. Cell No.
e. Employer Representative Mike Hassan, President Randy C. McCarthy, Attorney		f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Grocery Store		g. e-Mail
j. Identify principal product or service Grocery		h. Number of workers employed Approx. 25

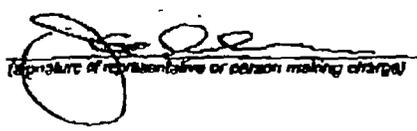
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practice)
Since on or about April 29, 2011, the Employer violated the Act by refusing to recognize and bargain with the Union despite employing a majority of the predecessor's employees.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
Local 338, RWDSU/UCFW

4a. Address (Street and number, city, state, and ZIP code) 1505 Kellum Place Mineola, New York 11501		4b. Tel. No. 516-294-1338
		4c. Cell No.
		4d. Fax No. 516-281-0257
		4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
RWDSU/UCFW

6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. 212-354-4500
By  (Signature of representative or person making charge)		Office, if any, Cell No.
Jae W. Chun, Attorney (Print type name and title or office, if any)		Fax No. 212-710-9072
Friedman & Wolf, 1500 Broadway, 23rd Fl., NY, NY 10036		e-Mail jchun@friedmanwolf.com
July 5, 2011 (Date)		

WILLFUL FALSE STATEMENTS ON THIS CHARGE 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. 74842-43 (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.

—Original Message—

From: Kearns, James <James.Kearns@nrlrb.gov>
To: 'randymccarthy5@aol.com' <randymccarthy5@aol.com>
Sent: Thu, Sep 29, 2011 4:26 pm
Subject: RE: Calhoun Foods, LLC d/b/a Key Food 29-CA-30878

When the store first opened, on or about April 29, 2011, Jack Caffey and Jeff Laub from the Union allegedly went to the store. They asked store manager Dave to speak to Mike Hassan. Apparently Mike was not in the store and Sam Hassan spoke with them. Caffey told Sam that they had a majority of the employees in the store and they wanted to sit down and bargain with him. Sam said that they could not afford the old contract. Jack told him that that it did not have to be that contract, they could sit down and bargain. Sam said that he would speak to Mike and he would get back to him. About 10 days later, after not hearing from Sam or Mike, Jack returned to the store and asked manager Dave to speak with Mike Hassan. Hassan did not come and speak with him and the Union started the leafleting.

From: randymccarthy5@aol.com [mailto:randymccarthy5@aol.com]
Sent: Thursday, September 29, 2011 4:00 PM
To: Blyer, Alvin P.
Cc: Kearns, James.
Subject: Fwd: Calhoun Foods, LLC d/b/a Key Food 29-CA-30878

Dear Mr. Blyer:

Following up on the below e-mail, I would like to know the following information:

1. Who from the Union allegedly demanded recognition?
2. Where and on what date was the demand allegedly made?
3. To whom was the demand allegedly made?
4. What was the Employer's alleged response?
5. Did the Union make any follow-up demands? If so, who made the demand, where and when was the demand allegedly made, to whom was the demand allegedly made and what was the alleged response?
6. Did the Union make a demand to bargain? If so, same questions as above and what were the proposed dates?
7. Did the Union request any information about the Unit members in furtherance of their demand? If so, same questions as above and what did they request?
8. Did the Union put anything in writing with respect to any alleged recognition demand, bargaining demand and/or request for information?

Thank you for your attention in this matter and please advise.

Randy C. McCarthy

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CALHOUN FOODS, LLC d/b/a KEY FOOD

and

Case Nos. 29-CA-30861
29-CA-30878

LOCAL 338, RETAIL, WHOLESALE
AND DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS

ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Local 338, Retail, Wholesale and Department Store Union, United Food and Commercial Workers, herein called the Union, has charged in Case Nos. 29-CA-30861 and 29-CA-30878, that Calhoun Foods, LLC d/b/a Key Food, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, as amended, 29 U.S.C. Section 151, et seq., herein called the Act. Based thereon, and in order to avoid unnecessary costs or delay, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.33 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, **ORDERS** that these cases are consolidated.

These cases having been consolidated, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, issues this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing and alleges as follows:

1(a). The charge in Case No. 29-CA-30861 was filed by the Union on June 28, 2011, and a copy was served by regular mail on Respondent on or about June 29, 2011.

1(b). The charge in Case No. 29-CA-30878 was filed by the Union on July 6, 2011, and a copy was served by regular mail on Respondent on or about July 7, 2011.

2. At all material times, Respondent, a domestic corporation, with an office and place of business located at 135-46 Lefferts Boulevard, South Ozone Park, New York, herein called the South Ozone Park facility, has been engaged in the operation of retail grocery stores.

3. During the past year, which period is representative of its annual operations in general, Respondent, in the course and conduct of its business operations described above:

(a) derived gross annual revenues in excess of \$500,000; and

(b) purchased and receive goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York.

4. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

5. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

6. At all material times, Sam Hassan has held the position of Respondent's manager and has been an agent of Respondent, acting on its behalf.

7. At all material times until on or about May 4, 2011, PSK Supermarkets, Inc. herein called PSK, the predecessor employer to Respondent, was engaged in the operation of supermarkets including the one located at the South Ozone Park facility.

8. At all material times until May 3, 2011, PSK recognized the Union as the exclusive collective-bargaining representative of the following employees at the South Ozone Park facility, and at facilities located at: 41-25 Greenpoint Ave, Queens, NY; 283 E. 204th St., Bronx, NY; 382 McDonald Ave., Brooklyn, NY; 885 Gerard Ave, Bronx, NY,

9105 3rd Ave., Brooklyn, NY; 202-15 Hillside Ave., Queens, NY; and 1368 Peninsula Blvd., Hewlett, NY, in a multi-location bargaining unit, herein called the PSK Unit:

All employees, including but not limited to Grocery, Deli, Bakery, Porters, Front End Personnel, Store Managers, and Assistant Store Managers, but excluding all guards, office and clerical employees

9. At all material times until on or about May 4, 2011, PSK was the designated exclusive collective bargaining representative of the PSK Unit, and had been recognized as such by PSK. Such recognition was embodied in successive collective bargaining agreements, the most recent of which was effective by its terms from July 1, 2006, to September 30, 2011.

10. At all material times, based on Section 9(a) of the Act, the Union had been the exclusive collective bargaining representative of the employees in the PSK Unit, for the purposes of collective bargaining with respect to their wages, hours and other terms and conditions of employment.

11 On or about a date present unknown in May 2011, Respondent acquired the assets and business of the South Ozone Park facility.

12. On or about May 4, 2011, Respondent commenced operations at the South Ozone Park facility, and hired a majority of employees employed at that facility, individuals who were previously employed by PSK, and since that time, has continued to be engaged in substantially the same business operations at the same location, operating the South Ozone Park facility in basically unchanged form.

13. (a) Respondent has continued to be the employing entity of employees at the South Ozone Park facility in the following unit, herein called the Unit, which constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time cashiers, produce, dairy, grocery, deli and frozen food employees, excluding all butchers, office clerical employees, guards and supervisors as defined in Section 2(11) of the Act.

(b) By virtue of the conduct described above in paragraphs 11 and 12, Respondent, as the employing entity of the employees in the Unit, as described above in subparagraph (a), is a successor to PSK with respect to said employees.

14. At all material times since on or about May 4, 2011, when Respondent acquired the assets of PSK, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of Respondent's employees in the Unit.

15. On a date presently unknown in late April or early May 2011, the Union requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit.

16. Since a date presently unknown in late April or early May 2011, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

17. On or about June 17, 2011, Respondent, by Sam Hassan, at the South Ozone Park facility, engaged in the following conduct:

- (a) interrogated employees about their Union activity; and,
- (b) created the impression among its employees that their Union activities were being kept under surveillance by Respondent.

18. On or about June 19, 2011, Respondent, by Sam Hassan, at the South Ozone Park facility, created the impression among its employees that their Union activities were being kept under surveillance.

19. By the acts described above in paragraphs 17 and 18, Respondent has been interfering with, restraining and coercing employees in

the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

20. By the conduct described above in paragraph 16, Respondent has been failing and refusing to bargain collectively in good faith with the exclusive collective bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

21. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

RESPONDENT IS NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an Answer to the Consolidated Complaint. The Answer must be **received by this office on or before November 14, 2011, or postmarked on or before November 10, 2011**. Respondent should file an original and four (4) copies of the Answer with this office and serve a copy of the Answer on each of the other parties. The Answer may not be filed by facsimile transmission. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true. Any request for extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulations, be received by the close of business, **November 14, 2011**. The request should be in writing and addressed to the Regional Director of Region 29.

An Answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an Answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the E-

Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the Answer rests exclusively upon the sender. A failure to timely file the Answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. When an Answer is filed electronically, an original and four paper copies must be sent to this office so that it is received no later than three business days after the date of electronic filing. Service of the Answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The Answer may not be filed by facsimile transmission. If no Answer is filed, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **December 13, 2011**, at 9:30 a.m. at Two MetroTech Center, Suite 5100, Brooklyn, New York, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is

described in the attached Form NLRB-4338.

Dated at Brooklyn, New York, October 31, 2011.



Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

CALHOUN FOODS, LLC d/b/a KEY FOOD

and

Case Nos. 29-CA-30861
29-CA-30878

LOCAL 338, RETAIL, WHOLESALE
AND DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS

**AMENDMENT TO ORDER CONSOLIDATING CASES,
CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

A Consolidated Complaint and Notice of Hearing having issued on October 31, 2011,

IT IS ORDERED, pursuant to Section 102.17 of the Board's Rules and Regulations that the above consolidated complaint is amended in the following respects:

1. Paragraph 9: Change

At all material times until on or about May 4, 2011, PSK was the designated exclusive collective bargaining representative of the PSK Unit, and had been recognized as such by PSK.

To

At all material times until on or about May 4, 2011, the Union was the designated exclusive collective bargaining representative of the PSK Unit, and had been recognized as such by PSK.

2. Paragraph 11: Change

On or about date a **date present unknown in May 2011**, Respondent acquired the assets and business of the South Ozone Park facility.

To

On or about a **date presently unknown in late April 2011**, Respondent acquired the assets and business of the South Ozone Park facility.

3. Paragraph 12: Change

On or about **May 4, 2011**, Respondent commenced operations at the South Ozone Park facility, and hired a majority of employees employed at that facility, individuals who were previously employed by PSK, and since that time, has continued to be engaged in substantially the same business operations at the same location, operating the South Ozone Park facility in basically unchanged form.

To

On or about **May 4, 2011**, Respondent commenced operations at the South Ozone Park facility, and:

(a) at a time when a demand for recognition had been made by the Union, hired a substantial and representative complement of employees, a majority of whom were previously employed by PSK; and

(b) has continued to be engaged in substantially the same business operations at the same location, operating the South Ozone Park facility in basically unchanged form.

4. Paragraph 15: Change

On or about a **date presently unknown in late April or early May 2011**, the Union requested that Respondent recognize it as the exclusive collective bargaining representative of the Unit.

To

On or about two dates in late April 2011, the Union requested that Respondent recognize it as the exclusive collective bargaining representative of the Unit.

RESPONDENT IS FURTHER NOTIFIED that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned an original and four (4) copies of an Answer to the above amendment to Consolidated Complaint within 14 days from the service thereof, and that, unless Respondent does so, all the allegations in the amendment to the Consolidated Complaint shall be deemed to be admitted to be true and shall be so found by the Board. Respondent is also notified that pursuant to the Board's Rules and Regulations, Respondent shall serve a copy of its Answer on the other parties.

Dated at Brooklyn, New York, this 13th day of January, 2012.



David Pollack
Acting Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201