UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

THE AMERICAN BOTTLING COMPANY,
INC., d/b/a DR. PEPPER SNAPPLE GROUP,

Employer,

and

TEAMSTERS LOCAL UNION NO. 293, a/w
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

and Case No. 8-RC-17064

TEAMSTERS LOCAL UNION NO. 1164, a/w
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Joint Petitioners,

and

TEAMSTERS LOCAL UNION NO. 348, a/w
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Intervenor.

JOINT PETITIONERS, TEAMSTERS LOCAL UNIONS NOS. 293 AND 1164'S BRIEF IN OPPOSITION TO INTERVENOR TEAMSTERS LOCAL UNION NO. 348'S REQUEST FOR PARTIAL REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Pursuant to Sections 102.67(e) and (k) of the Board's Rules and Regulations, now come Joint Petitioners, International Brotherhood of Teamsters, Local Unions Nos. 293 and 1164, by and through counsel, and hereby respectfully submit their Brief in Opposition to Intervenor International Brotherhood of Teamsters, Local Union No. 348's Request for Partial Review of the Regional Director's Decision and Direction of Election.

Respectfully submitted,

/s/ Timothy R. Fadel, Esq.
TIMOTHY R. FADEL, ESQ. (0077531)
Wuliger, Fadel, & Beyer LLC
1340 Sumner Court
Cleveland, Ohio 44115
(216) 781-7777
tfadel@wfblaw.com
Attorney for Joint Petitioners

I. Introduction

On May 2, 2012, the Regional Director of Region 8 issued a Decision and Direction of Election ("Decision") in the above-captioned case. In that Decision, the Regional Director made the following findings: 1) the petition filed in the instant case properly raised a question concerning representation ("QCA"); 2) the collective bargaining agreement ("CBA") between Employer and Intervenor, dated January 14, 2011 through May 31, 2012 did not bar the instant petition because in fact there was no valid CBA between those parties; 3) Joint Petitioners did not disclaim their interest in representing the proposed bargaining unit; 4) the instant case should not be stayed pending the final outcome of an ongoing internal jurisdictional dispute pursuant to Article XII of the Constitution of the International Brotherhood of Teamsters; and 5) determined the appropriate bargaining unit.[1] (Decision pp. 1-3.) Specifically, the Regional Director ruled that the following group of employees constituted an appropriate collective bargaining unit within the meaning of Section 9(b) of the National Labor Relations Act ("NLRA" or "Act"): "All full-time and regular part-time salespersons, drivers [including OTR drivers], merchandisers, vending technicians, warehouse employees, custodial workers, truck jockeys, and mechanics, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act." (Decision, p. 2.) The Regional Director further stated that this unit was in "substantial accord with the petitioned-for unit," (id.) and directed an election for eligible employees to vote whether or not they desire to be represented for collective bargaining purposes by: 1) Teamsters Local Unions Nos. 293 and 1164; 2) Teamsters Local Union No. 348; or 3) Neither. (Decision pp. 12-13.)

On May 16, 2012, Intervenor filed a Request for Partial Review of the Decision. Specifically, Intervenor claims it sought review for the Regional Director's rulings that the CBA

[1] The Decision and Direction of Election shall hereinafter be cited as "Decision, p. [x]."

between Employer and Intervenor did not bar the instant petition and that Joint Petitioners did not disclaim their interest in representing the proposed bargaining unit. However, Intervenor's brief also clearly contains a rebuttal to the Regional Director's ruling that it would not defer to the Article XII proceedings.[2] (R.R. pp. 5-6.)

Intervenor's request for review should be denied. The Regional Director's decision is in full accordance with applicable Board precedent, and the request ultimately fails to provide any compelling reason whatsoever for granting review. Rather, Intervenor's request simply provides a wholesale rehash of the same arguments that were correctly rejected by the Regional Director's Decision and both ALJ Wedekind and the Board in the related decision *Dr. Pepper Snapple Group*, 357 NLRB No. 167 (2011) (wherein the Board determined that, *inter alia*, Employer violated Section 8(a)(2) of the Act by entering into the January 14, 2011 to May 31, 2012 bargaining agreement with Intervenor).

II. Argument

a. Response to "Disclaimer of Interest by Joint Petitioners Locals 293 and 1164"

In arguing that Joint Petitioners should disclaim any interest in representing any bargaining unit at the Twinsburg facility, Intervenor did not assert that the Decision merited review because of a departure from or absence of officially reported Board precedent, pursuant to Section 102.67(c)(1) of the Board's Rules and Regulations, let alone rebut the Regional Director's analysis to the contrary in any meaningful way. Rather, the only Board decision it relied on for indirect support of its contentions was *VFL Technology Corp.*, 332 NLRB 1443 (2000). Yet the Regional Director had already distinguished that case because it "involved a situation where a union had clearly disclaimed interest in representing the employees in question following [an internal union proceeding] at issue." (Decision, p. 5.) As the Regional Director

[2] Intervenor's Request for Review shall hereinafter be cited as "R.R. p. [x]."

found that based on his analysis there was no disclaimer in the instant case, *VFL Technology Corp*. was completely inapplicable. (Id., pp.5-6.) Intervenor did not address this inapplicability in any way, shape, or form.

Intervenor apparently attempts to satisfy the threshold requirement of Section 102.67(c)(1) by alleging that because there is an absence of officially reported Board precedent "regarding the operation of the Teamsters Constitution Article VII [sic] procedures" (R.R. p. 5), a substantial question of policy was raised, meriting review. This argument fails on two grounds. First, regarding Intervenor's argument for deferral, even assuming *arguendo*, that there is an absence of officially reported Board precedent as claimed by Intervenor, no substantial question of policy is raised because the jurisdictional dispute being processed by the Article XII proceedings does not involve an incumbent union, but rather a total absence of contractual relationships between Employer, Intervenor, and Joint Petitioners. It is a foundational principle of the Act that employees' rights under Section 7 are "vitally important." *Firstline Transportation Security, Inc.*, 347 NLRB 447, 459 (2006). *See also Carter and Brother*, 90 NLRB No. 257 (1950). Thus, the paramount rights of the Twinsburg employees, under Section 7, to determine which union, if any, will be their collective bargaining representative take precedence over any internal union procedures.

Second, in deciding representation cases, the Board has consistently held that its "authority and jurisdiction over questions of representation [are] exclusive," and will not defer to private dispute resolution mechanisms, especially proceedings under a union constitution. *E.g.*, *McLaren Health Care Corp.*, 333 NLRB 256, 258 (2001). *See also* Decision, p. 5. Furthermore, Joint Petitioners have in fact filed an appeal of the Teamsters Joint Council No. 41 decision to the General President of the International Brotherhood of Teamsters, the evidence of which was

included in Intervenor's Exhibit 21 to its Request for Partial Review, yet whose existence was conveniently omitted in the request itself. Thus, as contemplated by the Regional Director, such a deferral would be lethal to a "speedy resolution . . . in this representation case." (Decision, p. 6.) The Board policy underlying this concern is that allowing such a private resolution of the question concerning representation would be contrary to the policies of the Act and "restrict[] employee free choice." *Great Lakes Industries, Inc.*, 124 NLRB No. 50 (1959); *see also Weather Vane Outwear Corp., Inc.*, 233 NLRB 414, 415 (1977); *Anheuser-Busch, Inc.*, 246 NLRB 29, 30 (1979). Accordingly, there is a plethora of Board law that addresses both the interplay and resolution between internal union procedures and Board jurisdiction in representation cases. Intervenor's contention that there is no published Board law *specifically* regarding the Article XII proceedings is simply splitting hairs and not a sufficient argument to raise review by the Board.

b. Response to "Local 348's CBA effective June 1, 2008 to May 32, 2012 is a bar to an election at this time"

As a preliminary matter, Joint Petitioners adopt the discussion and finding of the Regional Director's Decision that the contract bar doctrine is inapplicable to the instant case. Indeed, there is not much to say except that Intervenor raises the exact same arguments it presented in its Post-Hearing Brief regarding the instant case. These arguments are identical to those contained in Intervenor's written briefs in *Dr. Pepper Snapple Group* (including both its Brief in Support of Exceptions to ALJ Wedekind's decision and its Motion for Reconsideration of the Board's decision). Not only is the sum and substance of Intervenor's arguments throughout all four of these written briefs the same, but they are almost completely identical in

organization, grammar, spelling, and conventions.[3] Other than suggesting a lack of legal creativity, Intervenor's repeated recitations of the same Board law demonstrate that the facts of the instant case are fatally arranged against it. That is, as held by both the Regional Director (Decision, pp. 4-5) and the Board, *Dr. Pepper Snapple Group*, 357 NLRB at 8-11, there was no valid contract between Employer and Intervenor for the period of January 14, 2011 to May 31, 2012, and therefore there could be no contract to bar a representation election. Intervenor has failed to assert any legal argument sufficient to raise review by the Board.

III. Conclusion

Accordingly, for the foregoing reasons, Joint Petitioners respectfully request that Intervenor's Request for Partial Review be denied.

Respectfully submitted,

/s/ Timothy R. Fadel, Esq.
TIMOTHY R. FADEL, ESQ. (0077531)
Wuliger, Fadel & Beyer LLC
1340 Sumner Court
Cleveland, Ohio 44115
(216) 781-7777
tfadel@wfblaw.com
Attorney for Joint Petitioners

[3] For comparison, see: R.R., pp. 13-20; Intervenor's Post-Hearing Brief, pp. 13-32 (Attached as Exhibit A); Intervenor's Brief in Support of Exceptions to ALJ Wedekind's Decision, pp. 11-24, 27 (Attached as Exhibit B); and Intervenor's Motion for Reconsideration: pp. 12-19. (Attached as Exhibit C.)

CERTIFICATE OF SERVICE

A copy of the foregoing was filed electronically on this 23rd day of May 2012. Additionally, a copy hereof was served by U.S. Mail postage pre-paid to:

Robert J. Bartel, Esq.
Krukowski & Costello
1243 N. 10th Street, Suite 250
Milwaukee, WI 53205

Timothy C. Kamin, Esq.
Krukowski & Costello
1243 N. 10th Street, Suite 250
Milwaukee, WI 53205

James F. Wallington, Esq.
Baptiste & Wilder, P.C.
1150 Connecticut Ave., NW Suite 500
Washington, DC 20036

Frederick J. Calatrello, Regional Director
National Labor Relations Board
1240 East 9th Street, Room 1695
Cleveland, OH 44119

/s/ Timothy R. Fadel, Esq.
TIMOTHY R. FADEL (0077531)