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April 9, 2013

VIA ELECTRONIC FILING

Mr. Gary Shinners
Acting Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

Re: *Elmhurst Dairy, Inc.*
Case No.: 29-CA-090017

Dear Mr. Shinners:

On December 21, 2012, Elmhurst Dairy, Inc. ("Elmhurst") filed a motion for summary judgment, requesting that the Complaint in Case No. 29-CA-090017 be deferred to the parties' contractual arbitration procedure consistent with *Collyer Insulated Wire*, 192 NLRB 837 (1971) and *United Technologies Corp.*, 268 NLRB 557 (1984). The matter was fully briefed and, following the Board's Order to Show Cause, Elmhurst and the Acting General Counsel reiterated their respective positions on deferral by written submission.

In support of its motion, Elmhurst argues that the underlying dispute can only be resolved by examining the parties' lengthy bargaining history, including the interplay of two collective bargaining arguments, one establishing the terms and conditions for "existing employees" (utility employees hired on or before July 18, 2007) and the other setting terms and conditions for "new hires" (utility employees hired after July 18, 2007). Such an examination of the rights and obligations arising from these agreements is precisely the function of an arbitrator and, indeed, an arbitration hearing was convened on the very issues underlying Case No. 29-CA-090017 on February 26, 2013 and March 25, 2013. Briefs are to be submitted to the arbitrator by May 7, 2013 and the decision is expected on or before June 7, 2013. (The arbitrator has 30 days under the American Arbitration Rules to issue its decision.)

On the other hand, the Acting General Counsel opposes summary judgment by arguing primarily that Elmhurst "repudiated" the parties' collective bargaining relationship by violating allegedly clear and unmistakable contract language. In taking this position, however, the Acting General Counsel interprets the meaning and significance of the relevant collectively bargained agreements – a function reserved for an arbitrator. In doing

so, the Acting General Counsel asserts that the parties' rights and obligations arise only under a collective bargaining agreement negotiated directly between the parties, without regard to the fact that the parties have also repeatedly agreed that the terms and conditions for "existing employees" are set forth in an agreement between Local 584 and a multiemployer association to which Elmhurst formerly belonged.

On April 5, 2013, the Acting General Counsel submitted a letter to the Board restating its position that more recent actions by Elmhurst demonstrate "continued repudiation" of the parties' collective bargaining relationship, and that these actions, pled in Case No. 29-CA-096925, further justify denying Elmhurst's motion for summary judgment. Elmhurst strongly disputes this accusation and questions the Acting General Counsel's tactic of using a new unfair labor practice complaint to try to influence a decision on the pending motion. The very same issues underlying Case No. 29-CA-090017 are present in the second case. Resolving the new claims will require examination of the same negotiating history and collective bargaining agreements that are now before an arbitrator. In fact, the union originally grieved the issue involved in Case No. 29-CA-096925, at the same time it grieved the dispute in Case No. 29-CA-090017, but decided not to proceed to arbitration regarding the dispute in Case No. 29-CA-096925. Respondent will be filing a motion for summary judgment in Case No. 29-CA-096925 on the same basis as it previously filed, the matter should be deferred to the parties' contractual arbitration procedure.

The actions referenced in Case No. 29-CA-096925 do not evidence a "repudiation" of the parties' collective bargaining relationship. To the contrary, Elmhurst is merely exercising rights which arise from that relationship. That the Acting General Counsel fundamentally disagrees with Elmhurst's interpretation of those rights does not establish a "repudiation" by Elmhurst. If anything, it supports the proposition that a neutral arbitrator ought to be given the opportunity to weigh <u>all</u> relevant information reflective of the parties' prior negotiations.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

Robert A. Doren

RAD/dlo

cc: Erin E. Schaefer and Henry J. Powell, Esq. *(via e-mail)*
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