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Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-001

Re: **Specialty Healthcare and Rehabilitation Center of Mobile,**

NLRB Case No. 15-RC-8773;

Supplemental Letter Brief of International Foodservice Distributors Association

Dear Executive Secretary Heltzer:

This supplemental letter brief to the National Labor Relations Board ("Board") is submitted for filing on behalf of the International Foodservice Distributors Association as authorized by the Board's March 15, 2011 Order to address Board web site data relative to representation cases ("R cases"). At bottom, as discussed below, the data raises more questions than answers, and certainly provides no basis for modifying unit determinations standards in broader industry or otherwise away from traditional community of interest factors.

Initially, while the Board's inquiry in this area centers around, under current Board standards, concern that litigation over unit scope issues, "have long been criticized as a source of unnecessary litigation," Notice at 3, the Board looks to input from all interested parties to decipher underlying data that would impact this contention. The Board, better than any

interested party, has full and unqualified access to data that would, if at all, substantiate or negate alleged unacceptable delay caused by unit appropriateness litigation under current standards.

The Board, then, should in the first instance, transparently interpret its own data with the opportunity, then, for interested parties to respond, not the other way around. Absent such analysis, generalized claims of unnecessary delay in the conduct of elections flowing from unit hearing proceedings should not serve as a basis for modifying standards in a way that would, as suggested by Questions 7 and 8, result in a proliferation of units and continuous bargaining.

Additionally, the posted data is not in a useable format vis-à-vis the specific questions raised by the Board in its notice or otherwise. Specifically, the posted data provides no basis to conclude as the Board appears to urge that a job or classification-only approach to unit standards would result in a reduction in litigated R cases or the timeframe in which an election takes place following petition filing. Very few if any job specific units appear to be at issue in any of the reported data, i.e., broader units appear, not surprisingly, to be the "norm."

To the extent that any conclusions can be drawn from the reported data as to R case litigation and election delay the data suggests the current approach is efficient and expeditious with respect to unit scope issues. Specifically, for example, taking the most recent reporting year data as posted on the Board's web site (under tab, "cats-frf-r-2011"), apparently for year 2010, of seven-hundred-eighty-five (785) petitions filed only twenty-nine (29) involved a "Pre-Election Hearing – less than 4% of total petitions filed.

Similar results are expected in prior years. As practitioners representing all stakeholders are eminently aware, contrary to the Board's concern about lengthy and unnecessary litigation over unit issues, delaying elections, the vast majority of the time, unit issues are resolved in the form of an election agreement between the parties, usually in via a stipulated election agreement in which the parties define and agree to the appropriate unit.

Even taking the 2010 results mentioned above where cases went to hearing, a number were resolved and elections were conducted inside of the internal NLRB guideline of 42 days to date of election from the date a petition is filed. See, e.g. Clark Rawlings, 5-RC-16596 and Jeremiah Hawkins, 5-RC-16600. Thus, even cursory review of the data posted negates, to the extent that data can be interpreted in relation to the questions posed by the Board, an approach that would move away from the time-tested community of interest factors in relation to a goal of expeditious conduct of elections.

Finally, with more time, careful analysis of the data that has been posted might yield additional basis for substantive comments. See and compare § 2 of Executive Order 13563, "Improving Regulation and Regulatory Overview" (encouraging "the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole"; administration has advised agencies of importance of "afford[ing] . . . public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days"). Two weeks, given the hundreds

and hundreds of pages of data represented in the 10 years of reports published is simply an insufficient amount of time to thoroughly review the posted information. Comprehensive and careful analysis in the areas identified by Questions 7 and 8 of the Board's notice merits a longer review period.

If the Board is to rely on election delay as a basis to shift away from traditional community of interest factors, it should come forth with and demonstrate, using its own data and not dated non-Board commentary. If and when it does so, the parties will have a meaningful basis upon which to respond. In the meantime, interested parties have not had sufficient time to comprehensively review the data, or relate it to the questions posed by the Board, and so additional time is warranted to comment.

To the extent that useful comment can be made at this juncture the data suggests, as many know, that current standards do not result in bottlenecking of and delay in the conduct of elections, but, rather, that both organized labor and management generally cooperate in efforts to expeditiously schedule and conduct NLRB elections. Empirically, in other words, and to use the vernacular, the system isn't "broken," and does not need to be fixed. For all of these reasons and those set out in IFDA's initial letter brief, the Board should not reach Questions 7 and 8 of its Notice in this case, but if it does so, traditional community of interest standards should control and job/classification-specific unit standards should be rejected.

Respectfully submitted,

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