

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

K-VA-T FOOD STORES, INC.
D/B/A FOOD CITY

and

RETAIL, WHOLESALE & DEPARTMENT
STORE UNION, UFCW, CLC

Cases 9-CA-46125
9-CA-46126
9-CA-46127
9-CA-46152
9-CA-46153

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S REQUEST
TO WITHDRAW CROSS-EXCEPTIONS
AND
REMAND CASE TO REGIONAL DIRECTOR
FOR APPROVAL OF INFORMAL SETTLEMENT AGREEMENT**

Counsel for the Acting General Counsel requests permission to withdraw its cross-exceptions to the decision of Administrative Law Judge Paul Bogas (JD-38-11) that issued in the above-captioned matter and asks that the Board remand this matter back to the Regional Director of Region 9 for approval of a proposed settlement agreement between the parties. In support of its request, Counsel for the Acting General Counsel avers as follows:

On March 29, 2011, the Board authorized the Region to file a petition for Section 10(j) relief in the United States District Court for the Eastern District of Kentucky, seeking interim reinstatement of alleged discriminatees Glenda Burton, Martha Smith and Ruth Ann Kirk. The petition was filed and has been pending since April 5, 2011.

On July 11, 2011, Judge Bogas issued his decision in the above-captioned matter; Respondent filed timely exceptions to the decision on August 24, 2011, and the Acting General

Counsel filed limited cross-exceptions and an answering brief on September 7, 2011. A just and proper hearing on the petition for injunctive relief scheduled for May 4, 2012,^{1/} prompted settlement discussions between the parties and, on May 3, Respondent tentatively agreed to enter into an informal settlement agreement remedying the allegations of the consolidated complaint pending before the Board. Respondent further agreed to withdraw its exceptions to Judge Bogas' decision to facilitate remand of the case back to the Region for approval of such settlement. Based thereon, on May 3, Respondent and Counsel for the Acting General Counsel jointly requested the District Court to continue the scheduled hearing to a later date pending finalization of the tentatively reached settlement.

On May 21 and 31, Respondent and the Charging Party, respectively, executed an informal Board settlement. The terms of the settlement provide that Respondent will make whole discriminatees Burton, Smith and Kirk, all of whom have chosen voluntarily to waive reinstatement, with full backpay and compound interest, in addition to reimbursement for applicable expenses related to their search for interim employment; reimbursement for lost 401(k) contributions as well as taxes and/or penalties associated with early withdrawals from retirement accounts; and reimbursement of any excess taxes owed upon lump sum backpay payments plus allocation of backpay to appropriate periods for social security credits. The proposed settlement also provides for the reading of a Notice to Employees to assembled employees by an official of Respondent or by a Board Agent in the presence of such an official.

In accordance with the proposed settlement, Respondent filed its request to withdraw its exceptions to Judge Bogas' decision with the Board on June 4. Counsel for the Acting General Counsel now requests permission to withdraw its limited cross-exceptions to the administrative law judge's decision.

^{1/} / All dates hereinafter are in 2012 unless otherwise indicated.

Counsel for the Acting General Counsel further requests that this matter be remanded to the Regional Director for Region 9 for approval of the informal settlement agreement executed by Respondent and the Charging Party.

Dated at Cincinnati, Ohio this 6th day of June, 2012.

Respectfully submitted,

A handwritten signature in black ink that reads "Naima R. Clarke". The signature is written in a cursive style with a large initial 'N'.

Naima R. Clarke
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CERTIFICATE OF SERVICE

June 6, 2012

The undersigned hereby certifies that the foregoing Counsel for the Acting General Counsel's Request to Withdraw Cross-Exceptions and Request for Board to Remand Case to Regional Director for Approval of Informal Settlement Agreement was served by electronic mail to the following persons:

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