

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE SUPERMARKET**

and

CASE NOS.

8-CA-37667

8-CA-38794

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 880**

**MOTION TO THE NATIONAL LABOR
RELATIONS BOARD FOR SUMMARY JUDGMENT**

Counsel for the Acting General Counsel respectfully moves the National Labor Relations Board (Board) for summary judgment in this case, requesting that the allegations in the Amended Compliance Specification issued in this matter be found to be true, that the Board make findings of fact and conclusions of law based upon these allegations and that the Board issue an appropriate Supplemental Decision and Order. This Motion is based upon the Respondent's Answer to the Amended Compliance Specification in which it "...admits and acknowledges the truth of the allegations set forth in the Amended Compliance Specification."¹

¹ This Motion was initially prepared and served on the parties on May 21, 2012. Due to inadvertence, the Motion was mailed to the Division of Judges rather than to the Board. This oversight was only recently discovered. Accordingly, the Motion is now being re-filed in the appropriate manner.

MEMORANDUM IN SUPPORT

I. FACTS

The original Compliance Specification in this matter was issued by the Regional Director on November 30, 2011 and the Respondent filed an Answer on December 21, 2011. (Exhibits A and B) In order to better articulate its disagreements with the allegations in the Compliance Specification, the Respondent subsequently, on January 18, 2012, filed an Amended Answer. (Exhibit C) After considering the Respondent's objections to the Specification, the Region revised its calculations accordingly and on March 6, 2012 issued an Amended Compliance Specification and Notice of Hearing (Exhibit D) It was served on Landmark Family Foods, Inc. d/b/a Church Square Supermarket ("Respondent") by certified mail on the same date. (Exhibit E)

The Amended Compliance Specification provides notice to the Respondent that it must file an Answer by March 27, 2012. It further advises the Respondent that, "the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures."

By letter received in the Regional Office on April 20, 2012, the Respondent filed an Answer to the Amended Compliance Specification. (Exhibit F) In its April 20th letter, the Respondent states that it "admits and acknowledges the truth of the allegations set forth in the Amended Compliance Specification." This statement reflects the Respondent's satisfaction that the Amended Specification is responsive to the objections it previously raised to the original Specification.

Respondent's Answer to the Amended Compliance Specification was signed and filed by its President, Si Harb, who has not been represented by Counsel. The undersigned counsel for the Acting General Counsel represents, however, that Respondent's President Si Harb was informed throughout the compliance stage of this proceeding of his right to have an attorney represent him. His written acknowledgement of this waiver is included as Exhibit G. At all times, Mr. Harb elected to proceed without an attorney and affirmatively waived the right to such legal representation. The undersigned counsel repeatedly reminded Mr. Harb of his right to seek counsel during all settlement conferences with the Regional Office and Mr. Harb waived this right on all such occasions.

II. LEGAL ANALYSIS

Section 102.56 of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(b) further states, "the answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial."

Respondent filed a responsive Answer to the Amended Compliance Specification. This Answer specifically states that, "Respondent admits and acknowledges the truth of the allegations set forth in the Amended Compliance Specification." (Exhibit F)

Counsel for the Acting General Counsel submits that the allegations set forth in the Amended Compliance Specification explain the basis for the backpay owed to the affected employees and the contributions owed to the fringe benefit funds. (See Exhibit

D attached to the Amended Compliance Specification) Respondent's Answer admits to the truth of the allegations in the Amended Compliance Specification and does not set forth any disagreement with the backpay amounts or the contributions owed.

As noted above, Respondent has, to date, proceeded without legal representation in the compliance phase of this proceeding. In assessing summary judgment motions, the Board has given some leniency towards respondents who proceed without the benefit of counsel. **Kenco Electric & Signs, 325 NLRB 1118 (1998)**. Here, however, the Respondent has filed a responsive Answer to the Amended Compliance Specification and has, after being given the opportunity to resolve certain issues with the original compliance specification, admitted to the truth of all of the allegations contained in the Amended Compliance Specification. It took this action after repeatedly being reminded of its right to counsel and knowingly waiving that right. Accordingly, no further leniency is owed to the Respondent in this matter and there is no need to proceed further with a hearing in this case.

Based upon Respondent's responsive Answer in which it admits to the truth of the allegations set forth in the Amended Compliance Specification, the Board should grant this Motion for Summary Judgment, find that the allegations in the Amended Compliance Specification are true and issue an appropriate Supplemental Decision and Order.

Dated at Cleveland, Ohio this 28th day of September 2012.

Respectfully submitted,

/s/ Rudra Choudhury

Rudra Choudhury
Counsel for the Acting General Counsel
National Labor Relations Board
Region 8

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September 2012, I electronically filed this foregoing Motion to the National Labor Relations Board for Summary Judgment to the Executive Secretary of the Board using the Agency's e-filing system and served copies of by electronic mail upon:

DANIEL S. WHITE, ESQ.
SCHWARZWALD, MCNAIR & FUSCO
1300 E. 9TH ST.
CLEVELAND, OH 44114
dwhite@smcnlaw.com

SI HARB, President
LANDMARK FAMILY FOODS, INC
d/b/a CHURCH SQUARE SUPERMARKET
7973 EUCLID AVE
CLEVELAND, OH 44103-4426
CSM7973@yahoo.com

/s/ Rudra Choudhury

Rudra Choudhury
Counsel for the Acting General Counsel
National Labor Relations Board
Region 8

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE SUPERMARKET**

and

**Case Nos. 8-CA-37667
8-CA-38794**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880**

COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board, herein referred to as the Board, having on May 31, 2011 issued its Decision and Order in Cases 8-CA-37667 and 8-CA-38794 directing Landmark Family Foods, Inc. d/b/a Church Square Supermarket, herein Respondent Church Square, to take certain affirmative actions as a result of Respondent Church Square's violation of Section 8(a)(5) and (1) of the National Labor Relations Act, herein the Act, including:

A. making all delinquent pension fund and health and welfare funds contributions on behalf of the unit employees that have not been paid since September 6, 2007, including any additional amounts due the funds; and,

B. making unit employees whole for any expenses incurred as a result of Respondent Church Square's failure to make the required pension and health and welfare contributions, with interest.

A controversy has arisen over the amounts owed to the pension and health and welfare funds under the terms of the Board's Order.

On November 29, 2011, the Respondent entered into a Stipulation waiving its rights under 10(e) and (f) of the Act (29 U.S.C. 160) (e) and (f) to contest either the propriety of the Board's Order or the findings of fact and conclusions of law underlying said Order, and providing for a compliance hearing to resolve any disputes concerning the amount of backpay due under the terms of the Order. The Regional Director of the National Labor Relations Board for Region 8, pursuant to the authority duly conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges as follows:

1. The backpay period referred to herein for the contractually required pension and health and welfare contributions began on September 6, 2007¹ and remains untolled.

2. Health and Welfare Fund²: contributions were calculated according to the provisions of Article IX of the collective bargaining agreement which establish the level of contribution for each category of employee. The category is determined by hire date, hours regularly worked per week, and whether the discriminatee was a student or non-student, or a baggage-carryout employee. See Appendices A-1 and A-2.

3. Pension Fund³: contributions were calculated by multiplying the number of hours worked each month by each of the discriminatees at \$.62 per hour worked. See Appendices A-1 and A-2.

¹A portion of the delinquent pension and health and welfare contributions on behalf of eligible employees was made in November 2008.

²Calculations are based on the Fund's payroll audit summaries for September 1, 2007 thru June 30, 2009 and the Fund's estimated payroll audit for July 1, 2009 through June 30, 2011.

³Calculations are based on the Fund's payroll audit summaries for September 1, 2007 thru June 30, 2009 and the Fund's estimated payroll audit for July 1, 2009 through June 30, 2011.

4. Interest and Liquidated Damages: Pursuant to the collective-bargaining agreement, Respondent Church Square is obligated to pay interest and liquidated damages. The Funds base their calculations of interest on an annualized basis using the monthly federal short-term interest rate, rounded to the nearest percentage, plus three percent. The liquidated damages are equal to 20% of the unpaid contributions. The liquidated damages and interest for pension and health and welfare are as follows:

FUND	INTEREST	LIQUIDATED DAMAGES
Pension	\$4,029.29	\$ 9,893.10
Health and Welfare	9,419.14	23,700.20

5. Summarizing the facts and calculations specified in Paragraphs 1 through 4, Respondent Church Square's obligation under the Board's Order to pay pension funds, health and welfare funds, interest and liquidated damages to the Union will be discharged by payment of the amounts summarized below⁴:

FUND	AMOUNT OWED	INTEREST	LIQUIDATED DAMAGES	TOTALS
Pension	\$ 49,465.49	\$4,029.29	\$ 9,893.10	\$ 63,387.88
Health & Welfare	118,501.00	9,419.14	23,700.20	151,620.34

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be **received by this office on or before December 21, 2011, or postmarked on or before**

⁴ Interest and liquidated damages were calculated through October 31, 2011 and continue to accrue until paid. To-date, no expenses have been submitted.

December 20, 2011. Unless filed electronically in a pdf format, Respondent should file an original and two copies of the answer with this office.

An answer may 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. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, 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. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer is being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on the 22nd day of February 2012, at 10:00 a.m., in a hearing room of the National Labor Relations Board, 1695 AJC Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio, 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 compliance specification. 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 Cleveland, Ohio this 30th day of November 2011.

A handwritten signature in black ink, appearing to read "Frederick J. Calatello", written over a horizontal line.

Frederick J. Calatello
Regional Director
National Labor Relations Board
Region 8

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE REGARDING ULP CASE HEARINGS

Case 08-CA-37667 & 328794

Hearing Cancellation Based on Agreement of Parties: The issuance of the Notice of Hearing in this case does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments. The Board agent assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by me, will cancel the hearing.

Postponement of the Hearing: Postponement of the hearing *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing and be filed with the Regional Director;
- (2) Copies of the request must be simultaneously served on all other parties, and that fact must be noted on the request;
- (3) Absent extraordinary circumstances, the request must be received no later than 24 hours before the hearing is scheduled to begin;
- (4) Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances;
- (5) Grounds must be set forth in *detail*, e.g., the unavailability of counsel and all other counsel in the law firm due to previously scheduled federal court or other U.S. Agency hearings or trials;
- (6) Alternative dates for any rescheduled hearing must be given; and
- (7) The positions of all other parties regarding the postponement and alternative hearing dates must be ascertained in advance by the requesting party and set forth in the request.

Approval of a postponement request may be conditioned upon one or more of the following:

- (1) The agreement of all parties to participate at a conference to be held at the Regional Office at least one full day before the rescheduled hearing date;
- (2) Agreement by the requestor that extensions of time for filing of briefs will not be sought or granted; and/or
- (3) The requestor's execution of stipulations on matters not in dispute, e.g., jurisdiction, labor organization status, appropriate unit.

Consecutive Days of Hearing: Once opened, it is expected the hearing will continue on consecutive business days until concluded.

DANIEL WHITE, Esq.
PENTON MEDIA BLDG.
1300 E. 9TH ST., STE. 1600
CLEVELAND, OH 44114

SI HARB, Pres.
LANDMARK FAMILY FOODS, INC.
DBA CHURCH SQUARE
SUPERMARKET
7973 EUCLID AVE
CLEVELAND, OH 44103-4226

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880
2828 EUCLID AVE
CLEVELAND, OH 44115-2414

Administrative Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

LANDMARK FOODS PAYROLL AUDIT SUMMARY
JULY 1, 2008 TO JUNE 30, 2009

EMPLOYEE NAME	HEALTH & WELFARE AMOUNT DUE (OVERPAID)	PENSION AMOUNT DUE (OVERPAID)	TOTAL
Bailey, Krystal		\$7.76	\$7.76
Blair, Ronald		\$137.95	\$137.95
Booker, Lloyd		\$434.37	\$434.37
Crenshaw, April	\$2,136.00	\$505.71	\$2,641.71
Eadeh, Hala	\$2,136.00	\$945.02	\$3,081.02
Henderson, Ruth	\$2,136.00	\$1,045.50	\$3,181.50
Johnson, Clementine	\$2,136.00	\$1,092.10	\$3,228.10
Jones, William		\$546.91	\$546.91
Kahoush, Jabra N	\$2,136.00	\$1,019.72	\$3,155.72
Kenney, Menike	\$2,136.00	\$539.43	\$2,675.43
Knox, Natessia		\$195.61	\$195.61
Lyons, Terry	\$1,050.00	\$240.72	\$1,290.72
Nettles, Willie	\$1,593.00	\$352.29	\$1,945.29
Preston, Dalton	\$1,412.00	\$489.55	\$1,901.55
Pritchett, Yakeima		\$933.78	\$933.78
Roney, Jassmine		\$39.68	\$39.68
Rosado, Sonya	\$7,264.00	\$1,152.41	\$8,416.41
Scott, Eddie	\$516.00	\$119.04	\$635.04
Smith, Latasha		\$863.58	\$863.58
Smith, Sherri		\$84.94	\$84.94
Stacy-Webb, Carlin	\$7,264.00	\$1,136.46	\$8,400.46
Steele, Darlia P		\$832.08	\$832.08
Turk, Caroline A	\$7,264.00	\$1,272.52	\$8,536.52
Walker, Latricia M		\$328.92	\$328.92
TOTAL DUE	\$39,179.00	\$14,316.04	\$53,495.04

**LANDMARK FOODS PAYROLL AUDIT SUMMARY
JULY 1, 2009 THROUGH JUNE 30, 2011**

EMPLOYEE NAME	HEALTH & WELFARE AMOUNT DUE (OVERPAID)	PENSION AMOUNT DUE (OVERPAID)	TOTAL
Crenshaw, April	\$4,615.00	\$900.61	\$5,515.61
Bland, Bobby		\$180.18	\$180.18
Mittman, Charlene	\$201.00	\$525.29	\$729.29
Springfield, Chardae	\$402.00	\$779.16	\$1,181.16
Smith, Dawn		\$66.75	\$66.75
Rosado, Sonya	\$15,715.00	\$2,724.88	\$18,439.88
Jones, Rose		\$420.99	\$420.99
Stokes, Patricia	\$1,005.00	\$671.30	\$1,676.30
Griggs, Nyree		\$254.03	\$254.03
Stacy-Webb, Carlin	\$5,935.00	\$1,677.95	\$7,612.95
Kahoush, Jabra	\$2,430.00	\$1,589.95	\$4,019.95
Eadeh, Hala	\$4,615.00	\$2,051.47	\$6,666.47
Kenney, Menike	\$181.00	\$573.40	\$754.40
Turk, Caroline	\$12,290.00	\$2,373.96	\$14,663.96
Henderson, Ruth	\$4,615.00	\$2,577.47	\$7,192.47
Johnson, Clementine	\$4,615.00	\$2,026.20	\$6,641.20
Steele, Darlia	\$4,253.00	\$2,730.48	\$6,983.48
Bailey, Krystal	\$1,206.00	\$1,096.93	\$2,302.93
Pritchett, Yakeima	\$3,849.00	\$1,978.76	\$5,827.76
Roney, Jassmine	\$1,206.00	\$855.16	\$2,061.16
Smith, Latasha		\$148.79	\$148.79
McWilliams, Jocelyn		\$2,016.86	\$2,016.86
Gundy, Bobbie	\$4,253.00	\$1,524.29	\$5,777.29
Wilson, El'Porchea		\$38.32	\$38.32
Wilson, Crenshaw		\$2.81	\$2.81
Mbaike, Ugonna	\$2,937.00	\$1,440.70	\$4,377.70
Stimecz, Arpad		\$106.88	\$106.88
Warren, Devante		\$263.48	\$263.48
Springfield, Cierra	\$2,185.00	\$1,833.80	\$4,018.80
Richardson, Judith	\$1,809.00	\$778.27	\$2,587.27
Smith, Rayshaun		\$68.54	\$68.54
Haughton, Jade	\$1,005.00	\$871.77	\$1,876.77
TOTAL DUE	\$79,322.00	\$35,149.45	\$114,471.45

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

LANDMARK FAMILY FOODS, INC. d/b/a CHURCH SQUARE SUPERMARKET	
<p style="text-align: center;">and</p>	Case No. 8-CA-37667 8-CA-38794
UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 880	

RESPONDENT'S ANSWER TO COMPLIANCE SPECIFICATION

Now comes Respondent and, pursuant to Section 102.56 of the Rules and Regulations of the National Labor Relations Board ("Board"), files its Answer to the Compliance Specification and Notice of Hearing issued by the Board on November 30, 2011. The Respondent, for its Answer, states as follows:

- Respondent admits and acknowledges the truth of the allegations set forth in the Compliance Specification, but, for want of knowledge as to specific dates of employment of certain discriminatees, and the identity of specific discriminatees, denies the truth and accuracy of the amounts alleged to be owed by Respondent to the Funds.

LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE
SUPERMARKET
/s/ Si Harb, Pres.

[Handwritten Signature]
12/21/11



**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE SUPERMARKET**

and

**Case No. 8-CA-37667
8-CA-38794**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880**

January 18, 2012

RESPONDENT'S AMENDED ANSWER TO COMPLIANCE SPECIFICATION

Now comes Respondent and, pursuant to Section 102.56 of the Rules and Regulations of the National Labor Relations Board ("Board"), files its Amended Answer to the Compliance Specification and Notice of Hearing issued by the Board on November 30, 2011. The Respondent, for its Amended Answer, states as follows:

1. Respondent admits and acknowledges the truth of the allegations set forth in the Compliance Specification, EXCEPT AS FOLLOWS:

A. While employed by Landmark Foods, for the specific reasons stated below next to their respective names, the following alleged discriminatees were not and/or are not eligible for contributions on their behalf to the Health & Welfare Fund and/or the Pension Fund, and/or were not and/or are not members of the bargaining unit, and/or did not and/or do not serve in positions covered by the contract, to wit:

Terry Lyons Security Guard (not in bargaining unit)

Dalton Preston. Security Guard (not in bargaining unit)

Willie Nettles Part-time employee for Landmark Foods who did not meet minimum requirements for entitlement to benefits; during same period, was employed by Giant Eagle Supermarkets and received benefits from Giant Eagle Supermarkets

Patricia Stokes Employed while a student covered by parents' health benefits and entitled only to contributions to the Pension Fund

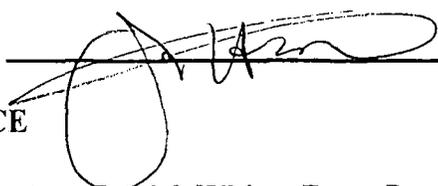
Jade Haughton Employed while a student covered by parents' health benefits and entitled only to contributions to the Pension Fund

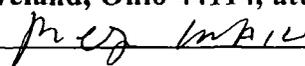
B. Based upon the foregoing factual circumstances, Landmark Foods specifically disagrees with the compliance calculations and submits that the true and accurate amounts owed on behalf of each alleged discriminatee are as follows:

	<u>PENSION</u>	<u>HEALTH & WELFARE</u>
Terry Lyons	0.00	0.00
Dalton Preston.	0.00	0.00
Willie Nettles	0.00	0.00
Patricia Stokes (Employment Periods: 8/9/9-6/26/10; 1/10/11-7/20/11)	unknown	0.00
Jade Haughton (Employment Period: 1/19/10-	unknown	0.00

For the foregoing reasons and grounds Landmark Foods disputes and denies the truth and accuracy of the Compliance Specification as specifically set forth above.

LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE
SUPERMARKET
/s/ Si Harb, Pres.

SERVICE 

A copy of this Amended Answer was sent to Daniel White, Esq., Penton Media Building, 1300 East Ninth Street, Cleveland, Ohio 44114, attorney for the United Food and Commercial Workers, Local 880, by  this 1/13/12 day of January, 2012.

LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE
SUPERMARKET
/s/ Si Harb, Pres.



**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

**LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE SUPERMARKET**

and

**Case Nos. 8-CA-37667
8-CA-38794**

**UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880**

AMENDED COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board (Board), having on May 31, 2011 issued its Decision and Order in Cases 8-CA-37667 and 8-CA-38794 directing Landmark Family Foods, Inc. d/b/a Church Square Supermarket (Respondent) to take certain affirmative actions as a result of Respondent's violation of Section 8(a)(5) and (1) of the National Labor Relations Act (Act), including:

A. Making all delinquent pension fund and health and welfare funds contributions on behalf of the unit employees that have not been paid since September 6, 2007, including any additional amounts due the funds.

B. Making unit employees whole for any expenses¹ incurred as a result of Respondent Church Square's failure to make the required pension and health and welfare contributions, with interest.

¹No expenses have been claimed by the Charging Party or the discriminatees.

A controversy has arisen over the amounts owed to the pension and health and welfare funds under the terms of the Board's Order.

On November 29, 2011, the Respondent entered into a Stipulation waiving its rights under 10(e) and (f) of the Act (29 U.S.C. 160(e) and (f)) to contest either the propriety of the Board's Order or the findings of fact and conclusions of law underlying said Order, and providing for a compliance hearing to resolve any disputes concerning the amount of backpay due under the terms of the Order. Accordingly, the Regional Director of the National Labor Relations Board for Region 8, pursuant to the authority duly conferred upon him by the Board, hereby issues this Amended Compliance Specification and Notice of Hearing and alleges as follows:

1. The backpay period referred to herein for the contractually required pension and health and welfare contributions began on September 6, 2007² and remains untolled.

2. Health and Welfare Fund: contributions were calculated according to the provisions of Article IX of the collective bargaining agreement which establish the level of contribution for each category of employee. The category is determined by hire date, hours regularly worked per week, and whether the discriminatee was a student or non-student, or a baggage-carryout employee. Calculations are based on the United Food and Commercial Workers Union—Employer Health and Welfare Fund's (the Fund) payroll audit summaries for September 1, 2007 through June 30, 2009. For the period July 1, 2009 through June 30, 2011, the calculations are based on draft audits that were not reviewed by the Fund Office and are subject to change once reviewed. Additional contributions are owed for periods after June 30, 2011 and have not been calculated as the Respondent had not submitted the

²A portion of the delinquent pension and health and welfare contributions on behalf of eligible employees was paid by the Respondent in November 2008 and the Respondent has been credited here with that payment.

necessary documents requested by the Union for the Fund to have adequate time to calculate the additional amounts owed. Therefore, the amount owed to the Fund continues to accrue. For the amounts owed that can currently be calculated, see Appendices A-1 and A-2.

3. Pension Fund: contributions were calculated by multiplying the number of hours worked each month by each of the discriminatees at \$.62 per hour worked. Calculations are based on the United Food and Commercial Workers Union Local 880—Retail Food Employers Joint Pension Fund's (Joint Fund) payroll audit summaries for September 1, 2007 through June 30, 2009. For the period July 1, 2009 through June 30, 2011, the calculations were based on draft audits that were not reviewed by the Joint Fund Office and are subject to revision once the data has been reviewed. Any additional contributions owed for periods after June 30, 2011 have not been calculated as the Respondent had not submitted the documents requested by the Union for the Joint Fund to have sufficient time to calculate the additional amounts owed. Therefore, the amount owed to the Joint Fund continues to accrue. For the amounts owed that can currently be calculated see Appendices A-1 and A-2.

4. Interest and Liquidated Damages: Pursuant to the collective-bargaining agreement, Respondent Church Square is obligated to pay interest and liquidated damages on the unpaid Funds contributions. The Funds base their calculations of interest on an annualized basis using the monthly federal short-term interest rate, rounded to the nearest percentage, plus three percent. The liquidated damages are equal to 20% of the unpaid contributions. Interest and liquidated damages were calculated by the Fund and the Joint Fund through October 31, 2011 and continue to accrue until paid. Both the Fund and the Joint Fund calculate interest on an annualized basis using the monthly federal short-term

interest rates rounded to the nearest percentage, plus three percent. The applicable rate for the month in the beginning of a quarter is the rate used for that quarter. The interest amount, as well as the liquidated damages amount, are subject to change based on both Funds' finalized audit summaries. The accrued liquidated damages and interest to date for pension and health and welfare are as follows:

FUND	INTEREST	LIQUIDATED DAMAGES
Pension	\$3,896.72	\$ 9,747.04
Health and Welfare	9,222.78	23,207.80

5. Summarizing the facts and calculations specified in Paragraphs 1 through 4, Respondent Church Square's obligation under the Board's Order to pay pension fund contributions, health and welfare fund contributions, interest and liquidated damages to the Union will be discharged by payment of the amounts summarized below and the additional amounts yet to be calculated as described above:

FUND	AMOUNT OWED	INTEREST	LIQUIDATED DAMAGES	TOTALS
Pension	\$ 48,735.22	\$3,896.72	\$ 9,747.04	\$ 62,378.98
Health & Welfare	116,039.00	9,222.78	23,207.80	148,469.58

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be **received by this office on or before March 27, 2012, or postmarked on or before March 26, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, 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. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) 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, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the amended compliance specification are true.

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 the **E-Gov tab**, select **E-Filing**, and then follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the

Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, 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. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to

deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **a date, time and place to be designated later**, and on consecutive days thereafter until concluded, in hearing room of the National Labor Relations Board, 1695 ANC Federal Building, 1240 East Ninth Street, Cleveland, Ohio, 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 compliance specification. 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 Cleveland, Ohio this 6th of March 2012.

/s/ Allen Binstock

Allen Binstock
Acting Regional Director
National Labor Relations Board
Region 8

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE REGARDING ULP CASE HEARINGS

Case 08-CA-37667 & 328794

Hearing Cancellation Based on Agreement of Parties: The issuance of the Notice of Hearing in this case does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments. The Board agent assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by me, will cancel the hearing.

Postponement of the Hearing: Postponement of the hearing *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing and be filed with the Regional Director;
- (2) Copies of the request must be simultaneously served on all other parties, and that fact must be noted on the request;
- (3) Absent extraordinary circumstances, the request must be received no later than 24 hours before the hearing is scheduled to begin;
- (4) Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances;
- (5) Grounds must be set forth in *detail*, e.g., the unavailability of counsel and all other counsel in the law firm due to previously scheduled federal court or other U.S. Agency hearings or trials;
- (6) Alternative dates for any rescheduled hearing must be given; and
- (7) The positions of all other parties regarding the postponement and alternative hearing dates must be ascertained in advance by the requesting party and set forth in the request.

Approval of a postponement request may be conditioned upon one or more of the following:

- (1) The agreement of all parties to participate at a conference to be held at the Regional Office at least one full day before the rescheduled hearing date;
- (2) Agreement by the requestor that extensions of time for filing of briefs will not be sought or granted; and/or
- (3) The requestor's execution of stipulations on matters not in dispute, e.g., jurisdiction, labor organization status, appropriate unit.

Consecutive Days of Hearing: Once opened, it is expected the hearing will continue on consecutive business days until concluded.

LAWRENCE G. PLUMB, Intl. Vice
President and Director
UNITED FOOD AND COMMERCIAL
WORKERS
51 CAVALIER BLVD STE 240
FLORENCE, KY 41042-3967

SI HARB, Pres.
LANDMARK FAMILY FOODS, INC.
DBA CHURCH SQUARE
SUPERMARKET
7973 EUCLID AVE
CLEVELAND, OH 44103-4226

DANIEL S. WHITE, ESQ.
SCHWARZWALD, MCNAIR & FUSCO
LLP
616 PENTON MEDIA BLDG.
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CLEVELAND, OH 44114

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880
9199 MARKET PL, SUITE 2
BROADVIEW HTS, OH 44147-2834

Administrative Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

LANDMARK FOODS PAYROLL AUDIT SUMMARY
JULY 1, 2008 TO JUNE 30, 2009

EMPLOYEE NAME	HEALTH & WELFARE AMOUNT DUE (OVERPAID)	PENSION AMOUNT DUE (OVERPAID)	TOTAL
Bailey, Krystal		\$7.76	\$7.76
Blair, Ronald		\$137.95	\$137.95
Booker, Lloyd		\$434.37	\$434.37
Crenshaw, April	\$2,136.00	\$505.71	\$2,641.71
Eadeh, Hala	\$2,136.00	\$945.02	\$3,081.02
Henderson, Ruth	\$2,136.00	\$1,045.50	\$3,181.50
Johnson, Clementine	\$2,136.00	\$1,092.10	\$3,228.10
Jones, William		\$546.91	\$546.91
Kahoush, Jabra N	\$2,136.00	\$1,019.72	\$3,155.72
Kenney, Menike	\$2,136.00	\$539.43	\$2,675.43
Knox, Natessia		\$195.61	\$195.61
Nettles, Willie	\$1,593.00	\$352.29	\$1,945.29
Pritchett, Yakeima		\$933.78	\$933.78
Roney, Jassmine		\$39.68	\$39.68
Rosado, Sonya	\$7,264.00	\$1,152.41	\$8,416.41
Scott, Eddie	\$516.00	\$119.04	\$635.04
Smith, Latasha		\$863.58	\$863.58
Smith, Sherri		\$84.94	\$84.94
Stacy-Webb, Carlin	\$7,264.00	\$1,136.46	\$8,400.46
Steele, Darlia P		\$832.08	\$832.08
Turk, Caroline A	\$7,264.00	\$1,272.52	\$8,536.52
Walker, Latricia M		\$328.92	\$328.92
TOTAL DUE	\$36,717.00	\$13,585.77	\$50,302.77

LANDMARK FOODS PAYROLL AUDIT SUMMARY
JULY 1, 2009 THROUGH JUNE 30, 2011

EMPLOYEE NAME	HEALTH & WELFARE AMOUNT DUE (OVERPAID)	PENSION AMOUNT DUE (OVERPAID)	TOTAL
Crenshaw, April	\$4,615.00	\$900.61	\$5,515.61
Bland, Bobby		\$180.18	\$180.18
Mittman, Charlene	\$201.00	\$525.29	\$729.29
Springfield, Chardae	\$402.00	\$779.16	\$1,181.16
Smith, Dawn		\$66.75	\$66.75
Rosado, Sonya	\$15,715.00	\$2,724.88	\$18,439.88
Jones, Rose		\$420.99	\$420.99
Stokes, Patricia	\$1,005.00	\$671.30	\$1,676.30
Griggs, Nyree		\$254.03	\$254.03
Stacy-Webb, Carlin	\$5,935.00	\$1,677.95	\$7,612.95
Kahoush, Jabra	\$2,430.00	\$1,589.95	\$4,019.95
Eadeh, Hala	\$4,615.00	\$2,051.47	\$6,666.47
Kenney, Menike	\$181.00	\$573.40	\$754.40
Turk, Caroline	\$12,290.00	\$2,373.96	\$14,663.96
Henderson, Ruth	\$4,615.00	\$2,577.47	\$7,192.47
Johnson, Clementine	\$4,615.00	\$2,026.20	\$6,641.20
Steele, Darlia	\$4,253.00	\$2,730.48	\$6,983.48
Bailey, Krystal	\$1,206.00	\$1,096.93	\$2,302.93
Pritchett, Yakeima	\$3,849.00	\$1,978.76	\$5,827.76
Roney, Jassmine	\$1,206.00	\$855.16	\$2,061.16
Smith, Latasha		\$148.79	\$148.79
McWilliams, Jocelyn		\$2,016.86	\$2,016.86
Gundy, Bobbie	\$4,253.00	\$1,524.29	\$5,777.29
Wilson, El'Porchea		\$38.32	\$38.32
Wilson, Crenshaw		\$2.81	\$2.81
Mbaike, Ugonna	\$2,937.00	\$1,440.70	\$4,377.70
Stimecz, Arpad		\$106.88	\$106.88
Warren, Devante		\$263.48	\$263.48
Springfield, Cierra	\$2,185.00	\$1,833.80	\$4,018.80
Richardson, Judith	\$1,809.00	\$778.27	\$2,587.27
Smith, Rayshaun		\$68.54	\$68.54
Haughton, Jade	\$1,005.00	\$871.77	\$1,876.77
TOTAL DUE	\$79,322.00	\$35,149.45	\$114,471.45

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LANDMARK FAMILY FOODS, INC.
d/b/a CHURCH SQUARE SUPERMARKET

and

Case Nos. 8-CA-37667
8-CA-38794

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880

DATE OF MAILING 3/6/12

AFFIDAVIT OF SERVICE OF AMENDED COMPLIANCE SPECIFICATION AND
NOTICE OF HEARING (w/NLRB forms and Appendices)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by regular U.S. Mail upon the following persons, addressed to them at the following addresses:

DANIEL WHITE, Esq.
PENTON MEDIA BLDG.
1300 E. 9TH ST., STE. 1600
CLEVELAND, OH 44114

SI HARB, Pres.
LANDMARK FAMILY FOODS, INC.
DBA CHURCH SQUARE
SUPERMARKET
7973 EUCLID AVE
CLEVELAND, OH 44103-4226

UNITED FOOD AND COMMERCIAL
WORKERS UNION LOCAL 880
2828 EUCLID AVE
CLEVELAND, OH 44115-2414

Administrative Law Judges
1099 14th Street, N.W.
Washington, D.C. 20570

Subscribed and sworn to before me this 6th
day of March 2012

DESIGNATED AGENT ⁴ Sharon Zilinskas



NATIONAL LABOR RELATIONS BOARD

RC

National Labor Relations Board, Region 8
1240 E. Ninth Street, Rm 1695
Cleveland, Ohio 44199-2086

*RE: Landmark Family Foods, d/b/a Church Square Supermarket
Case Nos 8-CA-37667 & 38794*

Pursuant top Section 102.56 of the Rules and Regulations of the National Labor Relations Board ("the Board"), Respondent files its Answer to the Amended Compliance Specification and Notice of Hearing issued by the Board on March 6, 2012. Respondent, for its Answer to the Amended Compliance Specification, states as follows:

1. Respondent admits and acknowledges the truth of the allegations set forth in the Amended Compliance Specification.
2. Respondent further states that any stipulations made on the part of Respondent were made in an effort to settle this matter both timely and amicably, but certain acts of the Board have prevented both the timely and amicable resolution of this matter.



 SI HARB
 President
 Landmark Family Foods d/b/a Church Square
 Supermarket

4/20/12

 DATE



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

LANDMARK FAMILY FOODS, INC.,
d/b/a CHURCH SQUARE SUPERMARKET

and

Cases 8-CA-37667
8-CA-38794

UNITED FOOD AND COMMERCIAL WORKERS
UNION LOCAL 880

WAIVER OF COUNSEL

STATEMENT OF PARTY

I, SI HARB have been informed of my right to have an attorney represent me during the compliance phase in this case including any settlement discussions with the National Labor Relations Board.

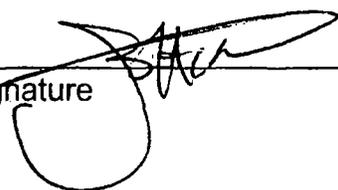
KNOWING THAT I HAVE A RIGHT TO HAVE AN ATTORNEY REPRESENT ME, I NEVERTHELESS ELECT TO PROCEED IN THIS MATTER WITHOUT AN ATTORNEY AND WAIVE MY RIGHT TO SUCH A LAWYER.

Landmark Family Foods, Inc. d/b/a Church Square Supermarket

SI HARB

Owner and President, Landmark Family Foods, d/b/a Church Square Supermarket

Signature



Date

11/18/11