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10 TEAMSTERS LOCAL UNION NO. 890

11 UNITED STATES OF AMERICA
12 NATIONAL LABOR RELATIONS BOARD

13 TEAMSTERS LOCAL UNION NO. 890,
14 INTERNATIONAL BROTHERHOOD OF
15 TEAMSTERS.

No. 32-CA-078166

MOTION TO RECALL CASE

16 Charging Party/Union,

17 and

18 BUD ANTLE, INC. ,

Respondent/Employer.

19 The Charging Party, Teamsters Local 890, hereby requests the Board to recall this case
20 from the D.C. Circuit and to issue a new Decision and Order.

21 The Board consisting of three members issued its Decision and Order in this case on June
22 26, 2013. The Employer taking advantage of the *Noel Canning* problem filed a Petition for
23 Review in the D.C. Circuit on July 12, 2013.

24 Teamsters Local 890 subsequently filed a Motion to Intervene in that proceeding on July
25 26, 2013, which is pending before the Court.

26 The Court in the meantime, as it has done with all other NLRB cases pending before it,
27 issued a stay of proceedings on July 15, 2013.

28 The Union has sought to have Bud Antle comply with this decision. Bud Antle's counsel,

1 Ronald Barsamian, indicated it would not be complying with the Union's request or the Board's
2 decision pending the decision in the Court of Appeals.

3 *Noel Canning* will not be decided by the Supreme Court until the late spring of 2014,
4 almost a year from now. Assuming even that the D.C. Circuit then entertains briefing in this case,
5 an order from that court will not issue for probably another year into 2015. If the Supreme Court
6 finds the Board's decisions constitutionally infirm, it is likely the D.C. Circuit will then remand
7 this case to the Board sometime in the summer of 2014 for re-decision by the Board.

8 All this delay in what is a garden-variety information request serves the interests of the
9 Employer. There is absolutely no advantage to the Union in this delay. Delay is totally to its
10 disadvantage because it needs the information now, not two years from now.

11 Although the Union does not concur with the Employer's position that there really is a
12 *Noel Canning* problem, the delay does not serve the Union's interest.

13 At this point, the Board has the power under 29 U.S.C. § 160(d) to recall the case and re-
14 decide it. Under the plain language of Section 160(d) and Section 102.49 of the Board's Rules
15 and Regulations, at any time before the record is filed with the court, the Board retains the
16 authority to recall and reconsider its findings and orders *sua sponte* or upon the request of one of
17 the parties. *Raven Gov't Servs., Inc.*, 336 NLRB 991 (2001); *see also Haddon House Food*
18 *Products, Inc.*, 260 NLRB 1060 (1982).

19 Given the fact that the Board is now fully confirmed and there is no *Noel Canning* or other
20 constitutional impediment to the Board re-deciding this case, the Charging Party requests that the
21 Board recall the case and submit it for another decision.

22 The Charging Party also makes this request because it has a pending motion for
23 reconsideration before the Board. This will enable the current Board to consider and decide that
24 motion for reconsideration.

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1 For these reasons, the Board should recall the case, submit it to an appropriate panel and
2 issue another decision and order promptly.

3 Dated: August 1, 2013

Respectfully submitted,

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/s/ David A. Rosenfeld

By: DAVID A. ROSENFELD
Attorneys for Charging Party,
TEAMSTERS LOCAL UNION NO. 890

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1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed
3 in the County of Alameda, State of California, in the office of a member of the bar of this Court,
4 at whose direction the service was made. I am over the age of eighteen years and not a party to
5 the within action.

6 On August 1, 2013, I served the following documents in the manner described below:

7 **MOTION TO RECALL CASE**

8 X (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy
9 through Weinberg, Roger & Rosenfeld’s electronic mail system to the email addresses
set forth below.

10 On the following part(ies) in this action:

11
12 Tracy Wei Constantino
13 Lewis Brisbois Bisgaard & Smith LLP
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19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct. Executed on August 1, 2013at Alameda, California.

21
22 /s/ Joanna Son
Joanna Son