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Subject: Activity in Case 1:15-cv-03519 Lineback v. Green Organics, Inc. motion for leave to appear
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United States District Court

Northern District of Illinois - CM/ECF LIVE, Ver 6,1

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Case Name: Lineback v. Green Organics, Inc.
Case Number: [1:15-cv-03519](#)
Filer: International Union of Operating Engineers, Local 150, AFL-CIO
Document Number: [9](#)

Docket Text:

MOTION by Amicus International Union of Operating Engineers, Local 150, AFL-CIO for leave to appear as Amicus Curiae (Kiser, Charles)

1:15-cv-03519 Notice has been electronically mailed to:

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Rik Lineback, Regional Director of the)
Twenty-Fifth Region of the National Labor)
Relations Board, for and on behalf of the)
NATIONAL LABOR RELATIONS)
BOARD,)

Case No. 1:15-cv-3519

Petitioner,)

v.)

GREEN ORGANICS, INC.,)

Respondent.)

**CHARGING PARTY LOCAL 150’s MOTION FOR
LEAVE TO APPEAR AND PARTICIPATE AS AMICUS CURIAE**

The International Union of Operating Engineers, Local 150, AFL-CIO (“Local 150” or “Charging Party”), as the Charging Party in the underlying National Labor Relations Board unfair labor practice charges, investigations, proceedings, and administrative trial, hereby respectfully moves for leave to appear and participate as *amicus curiae* in the above-captioned proceedings. In support of its Motion, Local 150 states as follows:

1. Under National Labor Relations Board (“NLRB”) procedure, the filer of an NLRB unfair labor practice (“ULP”) charge is designated the “Charging Party.” Pursuant to the NLRB’s processes, during the NLRB’s investigation of a ULP charge, the Charging Party is responsible for providing: evidence in support of its filed charge(s) and legal/factual support for any special requested relief (*see, e.g.*, Exhibit A, NLRB Casehandling Manual, Part 1, Unfair Labor Practice Proceedings, §§ 10040.04, 10052.3, 10052.9, 10054.1, 10310.1).

2. On January 7, 2015, Local 150 filed a ULP charge against Green Organics, Inc. (“GOP”), with Region 25 (“Region”) of the NLRB in Case No. 25-CA-143923, alleging various

Section 8(a)(1) and (3) violations of the National Labor Relations Act (“NLRA”) (Ex. B, ECF Doc. #2).¹

3. Upon the filing of the ULP charge in Case No. 25-CA-143923, Local 150, as the Charging Party, presented evidence in support of the ULP allegations, as well as legal/factual support in favor of the Section 10(j) injunctive relief on March 9, 2015 (*see* Ex. A at §§ 10052.9, 10310.1).

4. On February 27, 2015, Local 150 filed an amended ULP charge against GOI (Ex. B).

5. After its investigation of the above-referenced ULP charge filed by Local 150 against GOI, the Region found merit to Case No. 25-CA-143923, as amended.

6. On March 31, 2015, in accord with its merit-finding to the ULP allegations in Case No. 25-CA-143923, as amended, the Regional Director of the Region issued a complaint against GOI.²

7. On April 22, 2015, the Regional Director of the Region filed its “Petition for Injunction Under Section 10(j) of the National Labor Relations Act, as Amended,” as well as a supporting brief.

8. In Case No. 25-CA-143923, Local 150 through its legal counsel has provided a position letter in support of the Region seeking such relief.

9. Given the foregoing demonstrated active involvement and participation by Local 150 in the NLRB proceedings to date, the Court should allow the Union to participate as *amicus*

¹ The unfair labor practice charges referenced in Charging Party’s Motion for *Amicus Curiae* Status are attached as exhibits to the National Labor Relations Board’s “Petition for Injunction Under Section 10(j) of the National Labor Relations Act, as Amended,” previously filed in this case on April 22, 2015 (Ex. B, ECF Doc. #2, Exhibits A and B).

² The NLRB complaint against GOI resulting from ULP charges filed by Local 150 against GOI referenced in Charging Party’s Motion for *Amicus Curiae* Status is attached as Exhibit C to the NLRB’s “Petition for Injunction Under Section 10(j) of the National Labor Relations Act, as Amended” (*see* Ex. B).

curiae. The question of whether to allow the participation of an *amicus curiae* is firmly within the discretion of the District Court. *See., e.g., Sandra Dunbar, Regional Director of the Third Region of the National Labor Relations Board, for an don behalf of the National Labor Relations Board v. Landis Plastics, Inc.*, 996 F. Supp. 174, 179-80 (N.D. N.Y. 1998) (citations omitted); *Leigh v. Engle*, 535 F. Supp. 418, 420 (N.D. Ill. 1982); *U.S. v. State of Michigan*, 940 F.2d 143, 165 (6th Cir. 1991); *Hoptowit v. Ray*, 682 F.2d 1237 (9th Cir. 1982). There are no specific requirements for appearing as *amicus*, but leave to appear *amicus curiae* has been granted where it may be useful or otherwise helpful to the court. *See, 3A C.J.S. Amicus Curiae*, § 3 (“The privilege of being heard *amicus* rests in the discretion of the court which may grant or refuse leave accordingly as it deems the proffered information timely, useful or otherwise.”).

10. In *Landis Plastics, Inc.*, the Respondent moved to strike the appearance of a charging party in a 10(j) proceeding. 996 F. Supp. at 179. The Respondent argued that the Union was not a party and that Section 10(j) did not provide the Union with a right to intervene. *Id.* The District Court judge chose not to read Section 10(j) as narrowly as the Respondent, and reasoned that “the absence of a right to intervene pursuant to that section does not preclude the union’s more limited involvement as *amicus curiae*.” *Id.* The District Court judge reasoned that “the Union’s appearance [would] aid [him] in the determination of the issues before [him], and the union’s participation is not precluded by the fact that it has an interest in the outcome and is not a completely neutral actor.” *Id.* Furthermore, the Court concluded that “...although the NLRB is well equipped to litigate its petition, the union adds a legal and factual perspective that is helpful to the court.” *Id.* at 180. Accordingly, numerous district courts have allowed charging parties to appear *amicus curiae* in Section 10(j) proceedings. *See., e.g., Sandra Dunbar, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the National Labor*

Relations Board v. Onyx Precision Services, Inc., 129 F. Supp. 2d 230, 233 (W.D. N.Y. 2000); *Bernard Gottfried, Regional Director of the Seventh Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board v. Mayco Plastics, Inc.*, 472 F. Supp. 1161, 1164 (E.D. Mich. 1979) (stating that union was given permission to file *amicus* brief); *Glenn A. Zipp, Regional Director of the Thirty-Third Region of the National Labor Relations Board, for and on Behalf of the National Labor Relations Board v. Caterpillar, Inc.*, 858 F. Supp. 794, 795 (C.D. Ill. 1994) (stating that by leave of court, union filed *amicus* brief in support of petition).

11. In further support of granting *amicus curiae* status in this case, the General Counsel of the NLRB has determined that a charging party in a Section 10(j) injunction proceeding should be granted *amicus* status in the proceeding. To that end, the General Counsel has instructed the Regions of the NLRB to consent to the granting of *amicus curiae* status for a charging party (Exhibit C, NLRB GC Memo 99-4).

12. In making its determination that a charging party should be granted *amicus curiae* status, the General Counsel compared Section 10(j) to Section 10(l) of the NLRA, another injunction provision. *Id.* “Given the functional similarity of Section 10(j) and 10(l), it is appropriate to accord the same degree of participation to the charging parties in 10(j) proceedings.” *Id.* at 3-4. That is, a charging party should be afforded the right “to appear by counsel and present any relevant testimony.” *Id.* at 1.

13. As detailed above (since November 2014), Local 150 has been fully involved with GOI and the NLRB proceedings leading up to the Region’s Petition for 10(j) injunctive relief. Local 150’s extensive involvement in the NLRB proceedings to date that culminated in this 10(j) Petition, inherently allows it to assist the Court with a legal and factual perspective that can

supplement those provided by the parties. In light of the limited role of an *amicus curiae* as recognized by the NLRB General Counsel, Local 150's thorough knowledge of the surrounding facts and evidence will assist—not burden—the Court's understanding of the Petition at issue.

14. The Region does not oppose this Motion.

WHEREFORE, Local 150 respectfully requests that this Court grant its Motion for leave to appear and participate as *amicus curiae*.

Date: May 5, 2015

Respectfully submitted,

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 150, AFL-CIO

By: /s/ Charles R. Kiser
One of the Attorneys for Local 150

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on May 5, 2015, he electronically filed ***Charging Party Local 150's Motion for Leave to Appear and Participate as Amicus Curiae*** with the Clerk of Court using the CM/CM/ECF system which sent notification to the following:

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The undersigned further certifies that he caused the foregoing to be served on the following counsel of record via electronic and regular mail on May 5, 2015:

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