

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**SHAMROCK FOODS COMPANY**

**and**

**Cases 28-CA-167910  
28-CA-169970**

**BAKERY, CONFECTIONERY, TOBACCO  
WORKERS' AND GRAIN MILLERS  
INTERNATIONAL UNION, LOCAL  
UNION NO. 232, AFL-CIO-CLC**

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO  
RESPONDENT'S MOTION FOR BILL OF PARTICULARS**

Counsel for the General Counsel (CGC) opposes the Motion for a Bill of Particulars (the Motion) filed by Shamrock Foods Company (Respondent) on May 20, 2016. The Motion seeks disclosure of the specific representatives of Respondent who are alleged to have “subjected its employee [Steve] Phipps to closer supervision,” as alleged in paragraphs 6(e) and (h) of the Consolidated Complaint. However, for the reasons set forth below, the Motion should be denied in full.

A Bill of Particulars is only justified where the complaint is so vague or ambiguous that a charged party cannot form a responsive pleading. *See North American Rockwell Co., v. NLRB* 389 F.2d 866, 871 (10<sup>th</sup> Cir. 1968). Where, as here, a Motion for Bill of Particulars amounts to an attempt to obtain pre-trial discovery, rather than an inquiry necessary for the filing of an Answer, the Board has rejected such motions. *See Spiegel Trucking Co., 225 NLRB 178, 178 n.5* (1976).

Here, a Bill of Particulars is not warranted because the Complaint provides sufficient information to put Respondent on notice and adheres to routine pleading practices followed by the General Counsel. Specifically, the Complaint identifies the individual whom Respondent is alleged to have supervised more closely along with the dates of that action, putting Respondent on notice of the alleged unlawful conduct. That is to the extent of information routinely pled in complaint allegations related to conduct in violation of Section 8(a)(3) of the Act. This itself, is illustrated by the remaining Section 8(a)(3) allegations in the Complaint. See Complaint ¶¶ 6(a) through (d), 6(f) through (g), and 6(i).

Respondent has cited no case for the proposition that CGC is obligated to disclose the supervisor or agent responsible for an adverse action in violation of Section 8(a)(3). It is the routine practice of the General Counsel not to disclose the supervisor or agent responsible for acts of discrimination, and for good reason. For example, where the adverse action is a form of written discipline, the supervisor or agent who actually issues the discipline may not be the individual who decided to discipline the employee. Here, the allegation is analogous: Although one supervisor or agent may have confronted employee Steve Phipps (Phipps), thereby actually engaging in the closer supervisor, that supervisor or agent is not necessarily the person responsible for deciding whether Phipps should be supervised more closely. Moreover, even the supervisor or agent who confronted Phipps is not necessarily the one who was engaging in closer supervisor of his conduct in the workplace, as other supervisors may have alerted the confronting supervisor to Phipps' activity. Thus, to require this additional information would be to require the disclosure of evidence, rather than simply require notice

to Respondent of the allegation raised against it. In other words, Respondent is attempting discovery of evidence that it would not normally be able to obtain prior to a hearing.

Based on the forgoing, the Motion should be denied in its entirety.

Dated at Phoenix, Arizona this day of 23<sup>rd</sup> day of May 2016.

/s/ Sara S. Demirok

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION FOR A BILL OF PARTICULARS in Shamrock Foods Company, Cases 28-CA-167910 and 28-CA-169970, was served by E-Gov, and E-Filing, E-Mail, or Regular U.S. Mail on this 23<sup>rd</sup> day of May 2016, on the following:

**Via E-Gov & E-Filing:**

Honorable Gerald M. Etchingham  
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*/s/ Dawn M. Moore*

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