UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SCHWARZ PARTNERS PACKAGING, LLC d/b/a MAXPAK	)	
Petitioner/Cross-Respondent	)	**Case Nos. 15-1203 & 15-1235**
v.	)	
NATIONAL LABOR RELATIONS BOARD	)	
Respondent/Cross-Petitioner	)	
and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION AFL-CIO-CLC	)	
Intervenor	)	

REPLY OF THE NATIONAL LABOR RELATIONS BOARD TO SCHWARZ PARTNERS PACKAGING'S RESPONSE TO THE NATIONAL LABOR RELATIONS BOARD'S MOTION TO REMAND

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board ("the Board"), by its Deputy Associate General Counsel, respectfully submits this reply to the response filed by Schwarz Partners Packaging, LLC, d/b/a MaxPak ("the Company") to the Board's motion requesting that the Court vacate the Board's Order against the Company and remand the case to the Board.

There is no dispute among the parties (*see* Response pp. 1, 3-4) that Supreme Court and circuit law precludes enforcement of the Board's June 26, 2015 unfair-labor-practice Order because the August 29, 2012 Decision and Direction in the underlying representation case was issued by a Board panel that included two members whose recess appointments were invalid. *See Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), *affirmed on other grounds*, 134 S. Ct. 2550 (June 26, 2014); *UC Health v. NLRB*, 803 F.3d 669 (D.C. Cir. 2015); *SSC Mystic Operating Co. v. NLRB*, 801 F.3d 302 (D.C. Cir. 2015); *Hosp. of Barstow, Inc., d/b/a Barstow Cmty. Hosp. v. NLRB*, 820 F.3d 440 (D.C. Cir. 2016). As set forth in its Motion (pp. 4-5), the Board accordingly requests that the Court vacate the Board's June 2015 Order and remand the case for the Board to set aside the August 2012 Decision and Direction and to consider that decision (and any pending ballot challenges and objections) anew. That course of action is consistent with the Board's authority under Section 9(c) of the Act, 29 U.S.C. § 159(c), to resume processing the representation case in a manner consistent with the ruling of the Court. *See Freund Baking Co.*, 330 NLRB 17, 17 n.3 (1999) (citing cases).

Although the Company does not state that it opposes the Board's request that the Court vacate the Board's June 2015 Order, it requests (Response pp. 1, 4) that the Court enter a remand order that permits the Board to reconsider the Decision and Direction but prohibits it from reconsidering the Order. We submit

that the proper course is for the Court to vacate the Board's June 2015 unfair-labor-practice Order, which the Company has challenged based on a claim that the August 2012 Decision and Direction was improperly issued by a Board panel with recess appointees. As stated in the Motion, on remand the Board will set aside the Decision and Direction and consider that decision anew. The Board will then continue processing the case, consistent with its new decision.

WHEREFORE, the Board respectfully requests that the Court vacate the Board's Order and remand the case to the Board for further consideration.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half St., SE
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Dated at Washington, DC
this 7th day of July, 2016

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

SCHWARZ PARTNERS PACKAGING, LLC d/b/a MAXPAK	)	
	)	**Case Nos. 15-1203 & 15-1235**
Petitioner/Cross-Respondent	)	
v.	)	
NATIONAL LABOR RELATIONS BOARD	)	**Board Case No. 12-CA-109207**
Respondent/Cross-Petitioner	)	
and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION AFL-CIO-CLC	)	
Intervenor	)	

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Linda Dreeben
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Dated at Washington, DC
this 7th day of July, 2016