UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 455 (CARGILL MEAT SOLUTIONS CORPORATION)

and **Case 27-CB-168294**

SAID ALI, AN INDIVIDUAL

TEAMSTERS LOCAL UNION NO. 455's RESPONSE To The EXECUITVE SECRETARY's NOTICE TO SHOW CAUSE And RESPONSE IN OPPOSITION To COUNSEL FOR THE GENERAL COUNSEL's MOTION TO TRANSFER PROCEEDING TO THE BOARD and MOTION FOR DEFAULT JUDGMENT

Teamsters Local Union No. 455 hereby files its Response to the Executive Secretary's Notice to Show Cause and its Response in Opposition to the Motion for Default Judgment filed in this matter, as follows:

General Defense

Pursuant to Section 102.24 of the Board's Rules and Regulations, "The Board in its discretion may deny the motion where the motion itself fails to

establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their fact that a genuine issue may exist." By this Response and its Answer to the Complaint (attached hereto as Exhibit 1), Teamsters Local Union No. 455 establishes that a genuine issue exists, and therefore prays that the Motion for Default Judgment be *denied*.

Response to the Specific Allegations of the Motion for Default Judgment

1. Teamsters Local Union No. 455 (hereinafter "the Union"), admits that Exhibit A to the Motion for Default Judgment is a correct copy of the original Charge filed in this matter. In response, the Union provided a position statement, Business Agent and Union steward affidavits, and voluminous documents. In consequence, the Charging Party Amended his Charge, dropping the most significant claims in the original Charge: that the Union breached its duty of fair representation by (1) "Refusing to file and process grievances on behalf of Somali and Muslim employees; and (2) Retaliating against Somali and Muslim employees for filing a charge with the NLRB regarding the union's breach of the duty of fair representation (charges filed in May and July of 2015)."

2. The Union admits that Exhibit B to the Motion for Default Judgment is a correct copy of the Amended Charge, which retained only the claim that the Union breached its duty of fair representation in claiming that the Union "coerced and threatened employees because they waged Beck

objections." This claim the Union adamantly denied at the time of Region 27's investigation. Indeed, the Affidavits of Union Business Agent Norberto Ricardo and Somali Union Steward Ali Gele obtained by Region 27 both include statements denying that any threats whatsoever were made by Union representatives to people who had submitted Beck objection letters. Due to the confidential nature of these affidavits, they are not attached here as exhibits. However, these points are noted in the Union's Answer to Complaint and Notice of Hearing which was filed with Region 27 of the National Labor Relations Board on June 23, 2016. Please note in particular the Union's answer to paragraphs 5 and 6 of the Complaint, beginning on page 2. (A copy of Teamsters Local Union No. 455's Answer to Complaint and Notice of Hearing is attached hereto as Exhibit 1.)

a. Paragraph 5 of the Complaint alleges that certain Union representatives (a) told employees they would no longer represent them because they objected to the payment of dues and fees for non-representational activities. In paragraph 5 of the Union's Answer, the Union denies this allegation in its entirety, and explains that the Union consulted with certain of the Beck objectors because it had received a form letter from @ two dozen individual – some of whom no longer worked at the Company, and some we understood to no longer even be

in the State of Colorado – thus the Union wanted to double-check that the signatories were legitimate. In addition, given the similarity of names, Union representatives contacted a small number to again check that the letters were legitimate. (See Exhibit 1, pages 2 and 3.)

b. Paragraph 5 of the Complaint also alleges that Union representatives threatened employees with preventing them from being promotes. This, too, the Union denies in its entirety; it is nonsensical. In its Position Statement and Affidavits submitted to Region 27, Union representatives point out that the Union has no control or influence over promotions; that it is wholly a function of Company management. (See Exhibit 1, pages 2 and 3.)

c. Paragraph 5 of the Complaint also alleges that Union personnel "interrogated" employees about why they objected to paying Union dues and fees. Likewise, the Union denies this claim in its entirety. As reflected in its Position Statement and Affidavits submitted to Region 27, and as explained in its Answer to the Complaint, the only mention which Union representatives made regarding fees was to check that the members submitting a Beck objection understood that the consequences were that they could no longer attend Union meetings or vote on Union

matters. Whether such a conversation amounts to an "interrogation" as alleged, is clearly a question of fact. (See Exhibit 1, pages 2 and 3.)

d. Paragraph 6 of the Complaint alleges that Union representatives told un-named employees that the Union no longer represented them because they had submitted a Beck objection. In its Position Statement, Union representatives' Affidavits and in its Answer to the Complaint, the Union has denied this allegation in its entirety. Thus, a question of fact is presented, and the issue is clear. (See Exhibit 1, pages 2, 4 and 5.)

3. The Union acknowledges that it was sent a copy of the Complaint and Notice of Hearing, and that Exhibit C to the Motion for Default Judgment is a correct copy of the Complaint.

4. The Union acknowledges that it failed to file an Answer by June 7th. Upon investigation, the Union has established that while the date of the hearing (July 25, 2016), was entered into our legal proceedings suspense system, the date for the filing of an Answer was overlooked, and thus inadvertently not noted in a suspense. This was entirely an oversight by legal counsel, and should not fairly be attributed to act in prejudice of the Union itself, particularly in light of the existence of an issue as described herein and in the Union's Answer to the Complaint.

5. The Union acknowledges that it received a copy of a June 8, 2016, notice from Region 27 which extended the date for the filing of an Answer, and that Exhibit E to the Motion for Default Judgement is a correct copy of said letter. Upon investigation, the Union has established that this hard-copy document was apparently placed directly into the case file, thus unintentionally by-passing the suspense system. In consequence, the Union did not file an Answer to the Complaint by June 22nd, as required by the Region.

6. The Union has filed an Answer to the Complaint. (See Exhibit 1, submitted herewith.) The Answer was filed on June 23, 2016, the very same day that the Union's General Counsel received an e-mail that Region 27 had filed a Motion for Default Judgment because it had failed to timely file an Answer.

7. Paragraph 7 of the Motion for Default Judgment alleges that the Union "restrained and coerced" certain members who submitted Beck objections. The Union has and does emphatically deny any acts of restraint or coercion whatsoever. (See Exhibit 1, pages 2 through 5.) This is the very issue and question of fact which is deserving of a hearing.

8. Paragraph 8 of the Motion for Default Judgment alleges that the actions attributed to the Union were unfair labor practices affect commerce within the meaning of the applicable sections of the Act. The Union denies that

any of its actions constitute unfair labor practices. (See Exhibit 1, pages 2 through 5.)

WHEREFORE, the Union prays that the Motion for Default Judgment be **denied**, that its Answer be accepted, and that a new date for hearing on the Complaint be established, *to wit*:

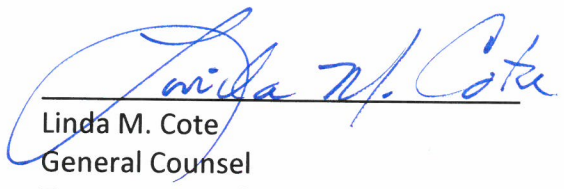
(a) The Union's failure to timely file an Answer to the Complaint was entirely inadvertent, and a result of administrative errors. If the Motion for Default Judgment is granted, the Union will itself be prejudiced because a hearing on the question of whether it breached its duty to its members as alleged will not take place. The Union has consistently denied such allegations in its Position Statement, supporting Affidavits, its Answer to the Complaint, and in this Response to the Order to Show Cause.

(b) Although submitted out-of-time, the Union has filed an Answer to the Complaint, denying the allegation of a breach of its duty. (See Exhibit 1, attached hereto.) That an issue is presented in this matter, that questions of fact abound, is clear from the Union's Answer and this Response to the Order to Show Cause.

(c) Pursuant to the Board's Rules and Regulations, and specifically Section 102.24, "The Board in its discretion may deny the motion [for default

judgment] . . . where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist." Applying this legal standard, both this Response to the Order to Show Cause and the Answer to Complaint clearly establish that "a genuine issue" exists. Thus, the Board has the discretion, in light of the clear existence of an issue, to deny the Motion for Default Judgment. Given the circumstances that administrative error in noting the date for a response to the Complaint led to the Union's failure to file it timely, it would be prejudicial and clearly not serve the cause of justice for the Union to be denied an opportunity for a hearing at which it can address the disputed Beck issues presented by the Complaint.

Respectfully submitted this 8th day of July, 2016.



Linda M. Cote
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

TEAMSTERS LOCAL UNION NO. 455 (CARGILL MEAT SOLUTIONS CORPORATION)

and

Case 27-CB-168294

SAID ALI, An Individual

TEAMTERS LOCAL UNION NO. 455's
ANSWER TO COMPLAINT and NOTICE OF HEARING

NOW COMES Teamsters Local Union No. 455 (hereinafter "Union"), and, pursuant to the National Labor Relations Act, files this, its Answer to the Complaint and Notice of Hearing filed in the above-referenced action, as follows:

1.

(a) The Union admits the allegations of paragraph 1(a) of the Complaint.

(b) The Union admits the allegations of paragraph 1(b) of the Complaint.

2.

(a) The Union admits the allegations of paragraph 2(a) of the Complaint.

(b) The Union is without sufficient knowledge or information to admit or deny the allegations of paragraph 2(b) of the Complaint.

Blumberg No. 5119
EXHIBIT
1

(c) The Union admits the allegations of paragraph 2(c) of the Complaint.

3.

The Union admits the allegations of paragraph 3 of the Complaint.

4.

The Union admits the allegations of paragraph 4 of the Complaint.

5.

(a) The Union denies the allegations of paragraph 5(a) of the Complaint in its entirety.

(b) The Union denies the allegations of paragraph 5(b) of the Complaint in its entirety.

(c) The Union denies the allegations of paragraph 5(c) of the Complaint in its entirety.

In further answer to the allegations contained in paragraph 5 of the Complaint, which alleges that the Union undertook certain alleged actions because certain bargaining unit members had "objected to the payment of dues and fees for non-representational activities" (hereinafter, "Beck" objections), the Union answers that Union representatives contacted a few of the Beck objecting members directly to confirm their Beck objections for several reasons. First, the Union was concerned that at least some of the Beck objection form letters which were

received may be forgeries because a number were allegedly signed by persons who no longer worked for the Employer. Therefore, Union representatives consulted with a small number of those who had signed the Beck objection letters (@ 6 or 8 employees out of the 22 who had submitted Beck objection letters), in order to determine whether they were legitimate letters. Second, the names of many of the members of the bargaining unit are very similar, if not virtually identical, so the Union representatives contacted some Beck signatories in order to confirm whether they had signed the Beck letter attributed to them by confirming the last four digits of their social security number. Third, the Union representatives sought to insure that the signatories who they spoke with understood the consequences of being a Beck objector: that he/she would no longer be able to attend Union meetings or vote on Union matters. Indeed, this became more significant after some of the Beck objector signatories advised the Union representatives that they had been told that if they signed the form letter they would be refunded "thousands" of dollars by the Union. The Union categorically denies that their representatives advised any bargaining unit member that the Union would not represent them because they were a Beck objector, or, indeed, for any other reason. The Union representatives' discussions with the half dozen or so Beck objectors to confirm that they had signed the form letter, that their name was accurate, and that they knew the consequences of being a Beck objector does not in any way rise to the level of "harassment" or "threats," as alleged in the Complaint.

6.

The Union denies the allegations of paragraph 6 of the Complaint in its entirety.

In further answer to the allegations contained in paragraph 6 of the Complaint, which alleges that the Union undertook certain alleged actions because certain bargaining unit members had "objected to the payment of dues and fees for non-representational activities" (hereinafter, "Beck" objections), the Union answers that Union representatives contacted a few of the Beck objecting members directly to confirm their Beck objections for several reasons. First, the Union was concerned that at least some of the Beck objection form letters which were received may be forgeries because a number were allegedly signed by persons who no longer worked for the Employer. Therefore, Union representatives consulted with a small number of those who had signed the Beck objection letters (@ 6 or 8 employees out of the 22 who had submitted Beck objection letters), in order to determine whether they were legitimate letters. Second, the names of many of the members of the bargaining unit are very similar, if not virtually identical, so the Union representatives contacted some Beck signatories in order to confirm whether they had signed the Beck letter attributed to them by confirming the last four digits of their social security number. Third, the Union representatives sought to insure that the signatories who they spoke with understood the consequences of being a Beck objector: that he/she would no longer be able to attend Union meetings or vote on Union matters. Indeed, this became more significant after some of the Beck objector signatories advised the Union representatives that they had been told that if they signed the form letter they would be refunded "thousands" of dollars by the Union. The Union categorically denies that their

representatives advised any bargaining unit member that the Union would not represent them because they were a Beck objector, or, indeed, for any other reason. The Union representatives' discussions with the half dozen or so Beck objectors to confirm that they had signed the form letter, that their name was accurate, and that they knew the consequences of being a Beck objector does not in any way rise to the level of "harassment" or "threats," as alleged in the Complaint.

7.

The Union denies the allegations of paragraph 7 of the Complaint in its entirety.

8.

The Union denies the allegations of paragraph 8 of the Complaint in its entirety.

REMEDY

As regards the remedy sought by the Region, the Union answers that it has no information, methodology or system in place by which it may "electronically distribute the notice to employees," and therefore prays that the remedy being sought by the Region be denied. In further answer to the remedy request, the Union prays that, should a posting be ordered, that the Region be required to specify the languages which are "appropriate," as while dozens of languages may be spoken by members of the bargaining unit, the commonly used language is English.

UNION's REQUEST FOR RELIEF

The Union requests that the Region's Complaint be denied in its entirety, and that the matter proceed to hearing, presently scheduled for July 25, 2016.

Respectfully submitted this 23rd day of June, 2016.

TEAMSTERS LOCAL UNION NO. 455

Linda M. Cote, No. 14777
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(303) 458-1600, ext. 315

UNITED STATES OF AMERICA
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REGION 27

TEAMSTERS LOCAL UNION NO. 455 (CARGILL MEAT SOLUTIONS CORPORATION)

and **Case 27-CB-168294**

SAID ALI, An Individual

AFFIDAVIT OF SERVICE OF: Teamsters Local Union No. 455's Answer to Complaint and Notice of Hearing.

The undersigned hereby confirms that the above and foregoing Teamsters Local Union No. 455's Answer to Complaint and Notice of Hearing was served on the following via regular mail on this 23rd day of June, 2016:

Laura Wolf, Attorney
Rathod Mohamedbhai, LLC
2701 Lawrence St.
Ste. 100
Denver, Colorado 80205-2226

Alan Boelter, General Manager
Cargill Meat Solutions Corporation
1505 E. Burlington Ave.
Fort Morgan, Colorado 80701-4611

Linda M. Cote

Linda M. Cote

Confirmation

You have successfully E-Filed document(s). You will receive an E-mail acknowledgement from this office when it receives your submission. This E-mail will note the official date and time of the receipt of your submission. Please save this E-mail for future reference. Please print this page for your records.

NOTE: This confirms only that the document was filed. It does not constitute acceptance by the NLRB. Confirmation information

Confirmation Number: 1000079379
Date Submitted: 6/23/2016 8:54:03 PM (GMT-07:00) Mountain Time (US & Canada)

Case Number: 27-CB-168294
Case Name: Teamsters Local Union No. 455 (Cargill Meat Solutions Corporation)
Filing Party: Charged Party / Respondent
Submitted E-File To Office: Region 27, Denver, Colorado

Contact Info:
Cote, Linda M
10 Lakeside Lane
Suite 3-A
Denver, CO 80112
(303) 458-1600 Ext: 315
Fax: (303) 480-1015
Email: lcote@teamsterslocal455.org

Attached E-File(s):
Answer to Complaint 16-06-23 U's Answer to Complaint.pdf

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TEAMSTERS LOCAL UNION NO. 455 (CARGILL MEAT SOLUTIONS CORPORATION)

and **Case 27-CB-168294**

SAID ALI, AN INDIVIDUAL

AFFIDAVIT OF SERVICE OF: **TEAMSTERS LOCAL UNION NO. 455's RESPONSE To The EXECUITVE SECRETARY's NOTICE TO SHOW CAUSE And RESPONSE IN OPPOSITION To COUNSEL FOR THE GENERAL COUNSEL's MOTION TO TRANSFER PROCEEDING TO THE BOARD and MOTION FOR DEFAULT JUDGMENT**

I, the undersigned employee of Teamsters Local Union No. 455, state under oath that on July 8, 2016, I served the above-entitled document and its exhibit by E-Mail, E-file and regular U.S. Mail upon the following persons, addressed to them as follows:

National Labor Relations Board Gary Shinners, Executive Secretary 1015 Half Stree, SE Washington, DC 20570	E-File
Division of Judges National Labor Relations Board 901 Market, Suite 300 San Francisco, CA 94103	Regular U.S. Mail
National Labor Relations Board, Region 27 Attn.: Jose Rojas Byron Rogers Federal Office Building 1961 Stout Street, Suite 13-103 Denver, Colorado 80294	E-Mail

Norberto Ricard, Business Agent Teamsters Local Union No. 455 10 Lakeside Lane, Suite 3-A Denver, Colorado 80212	Hand-delivery
Teamsters Local Union No. 455 1025 Burlington Avenue Fort Morgan, CO 80701	Regular U.S. Mail
Laura Wolf, Attorney Rathod Mohamedbhai, LLC 2701 Lawrence Street, suite 100 Denver, CO 80205	Regular U.S. Mail
Allen Boelter, General Manager Cargill Meat Solutions Corporation 1505 E. Burlington Avenue Fort Morgan, CO 80701	Regular U.S. Mail

Linda M. Cote

Linda M. Cote
General Counsel
Teamsters Local Union No. 455