

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

GAREY E. LINDSAY, Regional Director
of the Ninth Region of the National Labor
Relations Board, for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

Civil No. 2:16-cv-00169-WOB-CJS

WDFG NORTH AMERICA LLC

Respondent

PETITION FOR PRELIMINARY INJUNCTION
UNDER SECTION 10(j) OF THE
NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable Judges of the United States District Court for the Eastern District of
Kentucky:

COMES NOW, Garey E. Lindsay, Regional Director of the Ninth Region of the National
Labor Relations Board, herein the Board, and petitions this Court, for and on behalf of the Board,
pursuant to Section 10(j) of the National Labor Relations Act, as amended [61 Stat. 149;
29 U.S.C. Sec. 160(j)] herein the Act, for appropriate injunctive relief, pending the final
disposition of the matters pending before the Board on the complaint of petitioner alleging that
WDFG North America LLC, herein called respondent, has engaged in, and is engaging in, acts
and conduct in violation of Section 8(a)(1), (5), and 8(d) of the Act [29 U.S.C. Sec. 158(a)(1),
(5), and (d)]. In support thereof, petitioner respectfully shows as follows:

1. Petitioner is the Regional Director of the Ninth Region of the Board, an agency of the
United States, and files this Petition for and on behalf of the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

3. On June 14, 2016 the Chicago and Midwest Regional Joint Board and its Affiliated Local 12, herein called the union, filed a charge with the Board in Case 09-CA-178286 and an amended charge on September 2, 2016, alleging that respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1), (5) and 8(d) of the Act. (Copies of the Charge and Amended Charge are attached hereto as Exhibits 1(a) and (b) and made a part hereof.)

4. The aforesaid charges (Exhibits 1(a) and 1(b)) were referred to petitioner for investigation as Regional Director of the Ninth Region of the Board.

5. On August 30, 2016, the General Counsel of the Board, on behalf of the Board, by petitioner, pursuant to Section 10(b) of the Act [29 U.S.C. Sec. 160(b)] issued a Complaint and Notice of Hearing against respondent alleging violations of Section 8(a)(1), (5) and 8(d) of the Act, and an Amendment to the Complaint on September 16, 2016. The allegations of the complaint, as set forth in the notice of hearing, are scheduled to be heard before an administrative law judge on October 13, 2016. (Copies of the complaint and notice of hearing, and the Amendment to Complaint, are attached hereto as Exhibits 2(a) and (b), respectively, and made a part hereof.)

6. There is reasonable cause to believe that the allegations set forth in the complaint are true, and that respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(1), (5) and 8(d) of the Act, thereby affecting commerce within the meaning of Section 2(6) and (7) of the Act [29 U.S.C. Sec. 152(6) and (7)]. More particularly, in support thereof, and in view of the request for injunctive relief as set forth herein, petitioner, upon information and belief, shows as follows:

7. (a) At all material times, respondent, a limited liability company with an office and place of business in Hebron, Kentucky at the Cincinnati/Northern Kentucky International Airport

(CVG), herein called respondent's CVG stores, has been engaged in the operation of several retail stores at CVG.

(b) Annually, respondent, in conducting its operations during the 12-month period ending August 15, 2016, derived gross revenues in excess of \$500,000 and purchased and received at its CVG stores goods valued in excess of \$5,000 directly from points outside the Commonwealth of Kentucky.

(c) At all material times, respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act [29 U.S.C. Sec. 152(2), (6) and (7)] and has been conducting and transacting business within this judicial district.

8. At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of respondent within the meaning of Section 2(11) of the Act and agents of respondent within the meaning of Section 2(13) of the Act [29 U.S.C. Sec. 152(11) and (13)]:

Robert Divivo	- Senior Manager Labor and
	- Employee Relations
Chuck Rink	- Retail Operations Director

9. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All retail sales, specialty retail associates, and senior specialty retail associates employed by the Employer at the Cincinnati/Northern Kentucky International Airport.

(b) Since at least July 1, 2015 and at all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from July 1, 2015 to June 30, 2016.

(c) At all material times since at least July 1, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

10. (a) Since about early April 2016, a more precise date being presently unknown to the undersigned, the Union has requested that Respondent provide available dates for successor collective-bargaining agreement negotiations, and otherwise meet and bargain for a successor agreement.

(b) Since about early April 2016, a more precise date being presently unknown to the undersigned, Respondent has refused to meet and bargain with the Union for the purposes of negotiating a new collective-bargaining agreement and has failed to provide the Union with available dates for bargaining.

(c) By its overall conduct described above in paragraph 10(b), Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

11. By the conduct described above in paragraph 10(b) and (c), respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

12. The unfair labor practices of respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

13. Upon information and belief, it may fairly be anticipated that, unless enjoined by this Court, respondent will continue to engage in the acts and conduct aforesaid or similar or related acts in violation of Section 8(a)(1), (5) and 8(d) of the Act.

14. Upon information and belief, unless the continuation of the aforementioned unfair labor practices are immediately restrained, a serious flouting of the Act will continue with the result

that enforcement of important provisions of the Act and of public policy will be impaired before respondent can be placed under legal restraint through the regular procedures of a Board order and enforcement decree. Unless injunctive relief is immediately obtained, it may fairly be anticipated that respondent will continue its unlawful conduct during the proceedings before the Board and during subsequent proceedings before a court of appeals for an enforcement decree with the result that respondent's employees will continue to be deprived of their rights guaranteed in the Act.

15. No previous application has been made for the relief requested herein.

16. Upon information and belief, Section 10(j) relief is essential, appropriate and just and proper, for purposes of effectuating the policies of the Act and avoiding substantial, irreparable and immediate injury to Board policies, to the public interest, and to respondent's employees. Accordingly, it is requested that respondent be enjoined and restrained from the commission of the conduct alleged above, similar acts and conduct or repetitions thereof, pending the final disposition of the above-referenced Board charges.

WHEREFORE, petitioner prays:

1. That the Court issue an Order to Show Cause directing respondent that any answer to the petition be filed within 7 days of the issuance of the Court's Show Cause Order, that any responsive brief to the petition be filed within 14 days of the issuance of the Court's Show Cause Order, that petitioner shall have 7 days to file a reply to any responsive brief filed, and that respondent appear before this Court, at a time and place fixed by the Court, and show cause, if any there be, why pending the Board's final disposition of the administrative proceeding in this matter, an injunction should not issue enjoining and restraining respondent, its officers, representatives, agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert or participation with them, from:

(a) refusing to meet and bargain in good faith with the union as the exclusive collective-bargaining representative of its employees in the following appropriate unit: All retail sales, specialty retail associates, and senior specialty retail associates employed by the Employer at the Cincinnati/Northern Kentucky International Airport;

(b) in any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. That the Court issue an affirmative Order directing respondent, pending final disposition of the Board charges referred to herein, to:

(a) bargain, on request, with the union within 5 days of the Court's Order;

(b) propose dates and respond to the union's proposed bargaining dates and meet with the union at reasonable times and places and bargain for a minimum of 15 hours per week until an agreement is reached or lawful impasse is reached or until the parties mutually agree to and abide by another schedule;

(c) within 10 days of the Court's Order:

(i) hold a mandatory employee meeting or meetings on working time, at times when respondent customarily holds employee meetings and scheduled to ensure the widest possible employee attendance, at which the Court's Order will be read to employees in English, and in any other language deemed appropriate, by a responsible management representative of respondent in the presence of a Board agent;

(ii) announce the meeting for the Court Order reading in the same manner it would customarily announce a meeting of employees;

(iii) require that all employees at the facility involved in this proceeding attend the meeting; and

(iv) have the Regional Director of the Ninth Region of the National Labor Relations Board's prior approval of the time and date of the meeting or meetings for the reading of the Court's order and the Regional Director's approval of the content and method of the announcement to employees of the reading of the Court's Order.

(d) within twenty (20) days of the issuance of the Court's Order, file with the Court, and serve a copy to petitioner, a sworn affidavit from a responsible official of respondent, setting forth with specificity the manner in which respondent has complied with the Court's Order including where exactly respondent has posted the documents required by the order.

3. That upon return of the Order to Show Cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.

4. That the Court grant such further and other relief as may be just and proper.

Dated: September 21, 2016.

Office of the General Counsel:

Robert F. Griffin Jr., General Counsel
Barry J. Kearney, Associate General Counsel
Elinor L. Merberg, Assistant General Counsel
Robert E. Omberg, Deputy Assistant General Counsel
Eric V. Oliver, Regional Attorney

Petitioner:

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/s/ Daniel A. Goode
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Attachments