

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

PUEBLO WEST ORGANICS, LLC,
Employer

and

Cases 27-RC-173506
27-CA-173551
27-CA-176643

UNITED FOOD & COMMERCIAL WORKERS,
LOCAL 7, AFL-CIO,
Petitioner

**ORDER GRANTING RESPONDENT'S MOTION FOR
CONTINUANCE OF TRIAL**

In April 2016, the first charge in this matter was filed by the Union. Additional charges were filed thereafter. On August 31, 2016, the Regional Director for Region 27 issued a Complaint and Notice of Hearing in this case alleging, among other things, that Respondent discharged several employees and engaged in other unlawful conduct during an organizing campaign. Trial is currently set to commence on October 17, 2016, in Pueblo, Colorado.

On September 27, 2016 Respondent filed a motion to continue the October 17 hearing in this matter ("Motion") arguing that Respondent's counsel has a scheduling conflict on October 17, 2016, as he has an unrelated 4-day hearing beginning on October 17 in the El Paso County District Court in Colorado which pre-dates the scheduling of hearing in this matter. The Motion does not ask for a specific date for a postponed hearing and does not provide the position of the Charging Party Union to the Motion.

Also on September 27, 2016, I issued an Order to Show Cause ("OSC") giving the parties until noon today, October 3, 2016, to file *any opposition to the Motion*.

On September 28, 2016, Counsel for the General Counsel's opposition to the Motion ("GC Opposition") was filed. The General Counsel opposes the request for a trial continuance and argues that: (1) given the nature of the alleged unfair labor practices, the Board authorized the General Counsel to seek 10(j) injunctive relief against Respondent on September 14 and that proceeding will soon be filed in District Court and the transcript from this proceeding is necessary to support the General Counsel's District Court injunctive relief matter; (2) the Motion does not ask for a specific date for a postponed hearing; (3) Respondent did not seek input from the Charging Party Union before filing its Motion; and (4) Respondent waited almost a full

month to file the Motion when the scheduling conflict should have been immediately known to him and Respondent has had ample time to obtain alternative counsel for this matter. Thus, “[b]ased on foregoing circumstances, Respondent has failed to demonstrate why its attorney’s scheduling conflicts, which it has not attempted to address over the past four weeks, should take priority over the General Counsel’s efforts to obtain a speedy remedy for the alleged discriminatees in this case, as well as obtain a timely transcript of the hearing for purposes of Section 10(j) proceedings.” In conclusion, the General Counsel provides that “if the Associate Chief Judge is inclined to grant Respondent’s postponement request, the General Counsel respectfully requests that the hearing be rescheduled for the earliest alternative date, that being October 24, 2016.

On September 30, 2016, the Charging Party Union filed its statement of position with respect to the Motion (“CP Statement”) and repeats and joins in some of the GC Opposition and further states that in this case “two employees have been terminated by the improper and unlawful activities of the Respondent and their damages continue to accrue” so a “continuance, especially with Respondent having offered no available dates, is thus completely inequitable.” The Charging Party further states that “Charging Party does not object to a *brief* continuance to a date certain, so long as such date(s) is in the month of October, 2016. Charging Party is available to commence this hearing on October 24, 2016 or any time during that week.” The CP Statement concludes that if “Respondent is unable to commit to a definite date for the commencement of this hearing prior to October 31, 2016, [and] then Charging Party is left with no alternative but to object to the Motion for Continuance.”

Today before noon, Respondent’s counsel filed a reply to the GC Opposition which I reject as uninvited and in violation to my OSC and the Board’s law and motion rules and regulations.

After reviewing and considering the filed pleadings in this matter, I find that good cause has been shown for a short hearing postponement to avoid prejudice to Respondent’s counsel due to his expressed 4-day scheduling conflict from October 17 to October 20, 2016. I further find that Respondent has failed to show good cause why the current hearing in this case should be postponed beyond the week of October 24, 2016 due to Respondent’s 4-day scheduling conflict from October 17 to October 20, 2016 as this proceeding is tied to a parallel Section 10(j) action in the District Court which is further grounds to deny the Motion beyond the week of October 24, 2016. In addition, a postponement beyond the week of October 24, 2016 would further prejudice the 2 discriminatees having their hearing on the merits. Given the consolidated nature of this matter and the number of alleged Act violations combined with the seriousness of the charges and parallel injunctive relief request, I find the potential harm to the Charging Party associated with a trial postponement after the week of October 24, 2016 outweighs any added burden to Respondent and its counsel associated with any conflicting business needs of

rearranging schedules or simply getting a continuance or replacement attorney prepared to try other unrelated cases.

ORDER

For the reasons stated above:

IT IS ORDERED that Respondent's motion to continue the October 17, 2016 hearing in this matter is **GRANTED** and the hearing shall be **CONTINUED** from October 17, 2016 to **Monday, October 24, 2016 at 10:00 a.m.**, and consecutive days thereafter until concluded, at the location arranged and noticed by the Regional Director of Region 27.

IT IS FURTHER ORDERED that Respondent and its counsel shall make this matter a priority for scheduling purposes. *No further trial postponements shall be considered absent exigent circumstances pursuant to this Order.*

Dated: October 3, 2016, San Francisco, California.



Gerald M. Etchingham,
Associate Chief
Administrative Law Judge

Served by facsimile and/or email upon the following:

For the NLRB:

Julia M. Durkin, Esq. Fax: (303)844-6249
Email: julia.durkin@nlrb.gov

For the Respondent Employer

Gregory E. Givens Esq., (no fax available)
Email: gegivens@hotmail.com

For the Charging Party/Petitioner – UFCW Local 7

Mathew Shechter, Esq., Fax: (303)424-2416
Email: mshechter@ufcw7.com
Todd McNamara, Esq., Fax: (303)403-1387
Email: tmcnamara@ufcw7.com

Goetz, Kathryn

From: Lee, Vanise J.
Sent: Monday, October 03, 2016 4:12 PM
To: tmcnamara@ufcw7.com; mshechter@ufcw7.com; gegivens@hotmail.com; Durkin, Julia M.
Cc: Goetz, Kathryn; Gomez, Doreen E.; DiCrocco, Brian; Lee, Vanise J.
Subject: Pueblo West Organics, LLC, 27-CA-173551, et al., Order Granting MPP10-3-16
Attachments: PuebloWestOGrantMPP10-3-16.pdf
Importance: High

Good day.

Attached is Associate Chief Judge Etchingham's Order in the above matter that will be faxed to your offices shortly.

Regards,

Vanise J. Lee, Legal Tech.

NLRB Division of Judges San Francisco Branch

Main – 415.356.5255

Direct – 628.221.8826

Fax – 415.356.5254

Goetz, Kathryn

From: SM-Nass
Sent: Monday, October 03, 2016 4:28 PM
To: Goetz, Kathryn
Subject: [NASS] Scan-To-Fax Completed - kgoetz-20162703072704.PDF

Your document (kgoetz-20162703072704.PDF) has been successfully scanned and faxed to the following recipients (+13038446249;+13034242416;+13034031387)

This document is 3 pages long, and was processed in 5.0 seconds (Processing time is calculated based on the time the NxGen Advanced Scanning System (NASS) begins processing the scanned document, to the time the document is faxed.)

Should you have any questions or issues, please contact the Service Desk at helpdeskOCIO@nlrb.gov
Processed by NASS50.