

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

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In the Matter of )  
EAST-LAND FOOD PRODUCTS, INC. )  
 )  
                                  and )  
 )  
UNITED FOOD AND COMMERCIAL WORKERS )  
INTERNATIONAL UNION, LOCAL 328 )  

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Case No.: 01-CA-182772

**EASTLAND FOOD PRODUCTS, INC.'S POST HEARING MEMORANDUM,**  
**PROPOSED FINDINGS OF FACT AND PROPOSED CONCLUSIONS OF LAW**

**TABLE OF CONTENTS**

	<b>PAGE</b>
INTRODUCTION.....	4
SUMMARY OF TESTIMONY.....	5
A. JURISDICTIONAL FACTS .....	5
B. FACTS REGARDING THE EMPLOYER.....	5
C. FACTS REGARDING CONFIDENTIAL INFORMATION AND TRADE SECRETS OWNED BY EASTLAND.....	6
D. FACTS REGARDING THE ORGANIZATION OF EASTLAND’S EMPLOYEES UNDER THE ACT AND THE INITIATION OF GOOD FAITH COLLECTIVE BARGAINING .....	8
E. FACTS REGARDING THE FIRST COLLECTIVE BARGAINING NEGOTIATION SESSION .....	9
F. FACTS REGARDING THE AUGUST 24, 2016 NEGOTIATING SESSION.....	12
G. FACTS REGARDING ADRIEN VENTURA’S & HIS EMPLOYER, CENTRO COMMUNITARIO DE TRABAJADORES .....	16
STANDARD OF REVIEW.....	18
ARGUMENT.....	19
1. NEITHER VENTURA NOR CCT REPRESENTS THE EASTLAND EMPLOYEES AS EXCLUSIVE REPRESENTATIVES FOR COLLECTIVE BARGAINING PURPOSES, ALTHOUGH CCT COULD REPRESENT EMPLOYERS OF EASTLAND OR SIMILAR EMPLOYERS IF IT CHOSE TO DO SO .....	20
2. NEITHER VENTURA NOR CCT IS NECESSARY TO THE COLLECTIVE BARGAINING PROCESS AS AN EXPERT, CONSULTANT, TRANSLATOR, OR OTHER THIRD PARTY PARTICIPANT.....	22
3. EASTLAND’S PROPRIETARY INFORMATION IS SIGNIFICANT, VALUABLE, AND DESERVES PROTECTION WHEN WEIGHED AGAINST THE <i>DE MINIMUS</i> INTEREST OF THE EMPLOYEES AND THE UNION IN INCLUDING A REPRESENTATIVE OF CCT ON THE BARGAINING TEAM .....	25

4. NEITHER VENTURA NOR CCT HAS A DUTY TO KEEP INFORMATION LEARNED ABOUT EASTLAND’S OPERATIONS SECRET, OR TO FORBEAR FROM USING SUCH INFORMATION TO ITS OWN ADVANTAGE AND TO THE DETTRIMENT OF EASTLAND’S EMPLOYEES.....	26
5. AN AGREEMENT TO THAT VENTURA AND CCT WOULD KEEP CONFIDENTIAL ANY INFORMATION LEARNED IN THE COLLECTIVE BARGAINING PROCESS WOULD BE UNENFORCEABLE AND, SHOULD A BREACH OF SUCH AN AGREEMENT OCCUR, IRREMIADIABLE .....	28
6. TESTIMONY AT THE HEARING DISCLOSED THAT VENTURA’S PRESENCE ON THE BARGAINING TEAM WOULD HAVE A CHILLING EFFECT ON EASTLAND’S PARTICIPATION IN GOOD FAITH COLLECTIVE BARGAINING, LEADING TO A CLEAR AND PRESENT DANGER TO THE COLLECTIVE BARGAINING PROCESS .....	29
CONCLUSION .....	29
CERTIFICATION .....	36

## INTRODUCTION

United Food and Commercial Workers International Union, Local 328 (“the Union”) alleges that Eastland Food Products, Inc. (“Eastland”) has engaged in an unfair trade practice by refusing to bargain collectively with Eastland employees as required by Section 8(a)(5) and (1) of the National Labor Relations Act (the “Act”) 29 U.S.C. §§ 158(a)(1), (5). As described *infra*, a hearing on this matter occurred on January 24, 2017. References to the transcript of that hearing are provided in the following format: Transcript Page number/line number (s). The crux of Eastland’s response to the unfair labor practice charge is that it is privileged to forbear from bargaining so long as the Union insists on the inclusion of Adrian Ventura (“Ventura”), the executive director of Centro Comunitario de Trabajadores (“CCT”), on its bargaining team. Ventura’s relationship to the employees is attenuated at best and CCT, a community organizer and labor organization, has no relationship to them at all other than through Ventura.

The Hearing Officer should note at the outset of this post-trial brief the distinction between Eastland having cancelled a tour of its facility due to the makeup of the Union’s negotiating team, and Eastland’s forbearance from further collective bargaining due to the makeup of that same negotiating team. The former cannot form the basis of an unfair labor practice charge, since an employer is not required to offer a tour of its facilities as a component of good faith collective bargaining and the record contains no evidence that such a tour is necessary for the Union to effectively represent Eastland’s employees. *Holyoke Water Power Co.*, 273 NLRB 1369 (1985), *enfd.* 778 F.2d 49 (1st Cir. 1986), see also *WASHINGTON BEEF, INC. and UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1439, AFL-CIO*, 1997 NLRB LEXIS 374 (N.L.R.B. May 1, 1997). The latter may form the basis of an unfair labor practice charge, but only if the Employer is not privileged to forbear from good faith

collective bargaining because the makeup of the Union negotiating committee creates a clear and present danger to good faith collective bargaining, as has occurred here.

**I. SUMMARY OF TESTIMONY PRESENTED AT HEARING**

**a. Jurisdictional Facts.**

It is undisputed that Eastland is an employer the operations of which affect commerce within the meaning of the Act and that the Union is a labor organization within the meaning of the Act.

**b. Facts regarding the Employer**

Eastland is a fifty-three (53) year old company. Transcript 207/18. It has been in the fresh prepared food business for the last thirty (30) of those years. Transcript 198/1-2. Eastland prepares and delivers fresh fruits and vegetables, cut and prepared and delivered to its customers for immediate consumption in Rhode Island and New England, New York and the Mid-Atlantic states. Transcript Eastland also supplies other vegetables for re-processing into other products such as coleslaw and the like. Eastland has grown over the last 15 years from approximately 25 employees to its current 130 employees. Transcript 15 7/23, Transcript, pages 150 - 153.

It is a growing concern in a highly competitive field, and it is of critical importance to Eastland that its procedures and methodologies remain shielded from the public eye and confidential as against its competitors. Transcript 207 -213. Every step in Eastland's operation is designed to accomplish one goal: to slow down or halt the deterioration of the vegetable products so that they can be received, cleaned and sanitized, processed as required, packaged, loaded, transported, and delivered to Eastland's customers within a short period of time. For all intents and purposes, Eastland is not a grocer, but a highly sophisticated food product manufacturing

facility and distribution company, with all of the assets associated with such an operation. Not surprisingly, those assets include trade secrets: confidential business processes, confidential management mechanisms, proprietary formulas, trade secrets and proprietary methodologies for handling produce all as more particularly set forth below.

**c. Facts regarding Confidential Information and Trade Secrets owned by Eastland:**

Eastland's proprietary processes and trade secrets were generally described by Eastland's President and General Manager at the hearing:

Q. Okay. Let's go to the methods and the procedures that you believe are proprietary in nature. And if you would try to be specific for the Judge, if you -- . . .

A. -- I talked about it. Plant layout is -- is, you know --

Q. What about the plant layout?

A. It -- it's the way the plant is laid out makes us efficient. And the equipment that -- that -- in that layout is -- it's proprietary. I own it, okay. It's -- it was custom manufactured for me. The --

Q. Who laid the plant out?

A. I laid the plant out.

Q. Okay. What about the machinery --

A. I bought --

Q. -- the equipment?

A. -- all the equipment in the plant, piece by piece.

Q. And what --

A. Okay.

Q. -- what, if anything, is specialized to --

A. There's --

Q. -- Eastland?

A. -- there's a lot of pieces in there that are specialized. Specialized, you know, we do some items that other people don't do. And we --

Q. For instance?

A. -- developed procedures. Our butternut operation. I mean, it's -- you know, it's a monster, and it's --

MR. GURSKY: You said butternut?

THE WITNESS: Butternut squash.

MR. GURSKY: Thank you.

THE WITNESS: Yeah. So -- and there's a lot of things that we do. There's certain ways that we -- you know, we have customers that are so demanding in the -- in their -- in the sanitizing. The food industry and the Food Modernization Act, you know, have -- changed the industry drastically. Hassled. And USDA and -- and all of those things are why our customers feel comfortable coming to us, because we have those procedures in place. I'll be damned if I'm going to share that information with somebody who is negotiating with other food processors along the way. No disrespect to Mr. Ventura, but you know, somebody's got to --

Q. How would that --

A. -- protect the interests of Eastland Foods.

Q. How would that adversely affect Eastland?

A. Just, you know, that information getting out of how we -- how we -- you know, how do we turn orders? I mean, there's -- there's -- there's some involvement in it. We have a -- systems and procedures that we go through. We're SQF certified, which is a tough certification to get. You know, I -- I can't say I got a secret sauce and I'm putting it on the burger, okay, and I don't want anybody to know it. That isn't how it works with us, okay. But there are so many processes within the plant, and so many features that we have, that -- that make us who we are.

Q. How many --

A. At the end of the day --

Q. -- processes --

A. -- that's what I got my hang -- hang my had on.

Q. How many processes do you have in the plant that you believe are

proprietary in nature?

A. I think everything that we do is proprietary, you know.

Q. In terms of the -- in terms of the sanitizing of the -- of the products --

A. It's a unique system. It's a -- you know, from our --

Q. Does anyone else have that?

A. I've never seen it.

Q. Okay.

A. I've never seen it.

Q. Is that unique to Eastland?

A. It is. Our -- the way we handle out chemicals, centralized in a system that we developed, is -- it's -- it's all important.

Testimony of Dayne Wahl, Transcript 209-25 to Transcript 212/1

**d. Facts regarding the Organization of Eastland's Employees under the Act and the initiation of Good Faith Collective Bargaining**

Following an election by Eastland's employees on May 19, 2016, the National Labor Relations Board ("Board") certified the Union on May 27, 2016 as the exclusive collective bargaining representative of certain Eastland employees. **Hearing Exhibit JT 1.** Shortly afterward, the Employer and the Union representatives had an informal breakfast meeting to meet and discuss generally the issues that would be the subject of collective-bargaining. Transcript 17/14-22. Neither Ventura nor any other representative of Centro Comunitario de Trabajadores attended the breakfast meeting. Transcript 155/22 – 24.<sup>1</sup> Thereafter, the Union made several requests for information with respect to wages, hours, and working conditions at Eastland, and Eastland complied with each of those requests. **Hearing Exhibits JT 2, 3, 4, 5.**

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<sup>1</sup> Attending the meeting were Thomas McAndrew (Eastland's labor counsel), Antonio DeMarco (Eastland's owner), Dayne Wahl (Eastland's Vice President), Timothy Melia (President of UFCW Local 328), Domenic Pontarelli (VP/Executive Assistant to the President of UFCW Local 328), and Megan Carvahlo (Director of Organizing for UFCW Local 328). Transcript 104/1 – 5.

The record contains no evidence that Ventura or Centro Comunitario de Trabajadores joined in those requests. Additionally, the Union requested that Eastland release certain bargaining unit employees to participate in negotiations scheduled for July 22 and Eastland complied with that request. **Hearing Exhibit JT 6**. The record does not disclose that any mention of Ventura or Centro Comunitario de Trabajadores was made in any of the communications associated with the pre-bargaining activities described above.

**e. Facts regarding the First Collective Bargaining Negotiation Session**

On July 22, 2016, the parties met for purposes of collective bargaining. Transcript 105/16 – 18. Attending on behalf of Eastland were DeMarco, Wahl, and McAndrew Transcript 50/11 – 16 Present on behalf of the Union were Melia and Megan Carvahlo from UFCW Local 328, and the Union’s interpreter. Employees Elena Hernandez, Cesario Ixcunda, and Victor Castro also attended. Marc Gursky, the Union’s counsel, was also present. Id.

Also present was Ventura, who was not known by Eastland or its counsel at all, and who was not initially identified by the Union or Employee representatives. Id. A seating diagram of the conference table around which the attendees met is was introduced as **Hearing Exhibit JT 9**. It is clear that Ventura was seated with the employees at the opposite end of the table from the actual participants in the bargaining session.

The first meeting took several hours. The Union presented its proposals and responses to occasional questions by the Employer representatives. Transcript 105/16 – 25, 106/1 – 16. See **Hearing Exhibit JT 10**. Eastland’s witnesses observed Ventura seated with the employees, **Hearing Exhibit JT 9**, but they were unable to ascertain his identity or the nature of his actions during the meeting. Because of Eastland’s discomfort with this state of affairs, Transcript 158/17 -18, 196/

7-25, 197/1-8, before the meeting broke up, McAndrew asked to meet with his client and the Union representatives privately outside of the hearing of the employee representatives, intending thereby to get to the bottom of Ventura's role without involving communications with the employees themselves. Transcript 109/3 – 7. Included in that corridor meeting were McAndrew, DeMarco, Wahl, Melia and Gursky. Transcript 105/8 – 11. McAndrew inquired regarding Ventura and his affiliation (if any) with the Union or the employees. Transcript 109/15 – 20, 158/13 – 24, 159/1 – 25, 160/1 – 25. Gursky responded but he was vague and said nothing about who Ventura was, where he worked, or what his connection was to the Union, if any.

JUDGE GOLLIN: I just want to be clear . . . were you present during the exchange between Mr. McAndrew, Mr. Gursky and the Local president? Were you present?

THE WITNESS: Yes.

JUDGE GOLLIN: And you were there with --

THE WITNESS: Yes.

JUDGE GOLLIN: -- and you heard what was said?

THE WITNESS: Yeah.

JUDGE GOLLIN: Okay. And do you have a specific recollection of what was said during that -- that exchange?

THE WITNESS: I -- I just remember Mr. Gursky saying that -- ... they really weren't sure who the guy was either, and you know, just pretty much made it clear that he was not -- they -- they had no issue with him not being there going forward.

JUDGE GOLLIN: Okay. How would you assess your recollection of what was exchanged there, as far as the details of the wording? Would you say you've got a very good recall of it? Not a good recall of it?

THE WITNESS: Pretty good recall.

...

Q. (Mr. McAndrew) Okay. And do you recall if Mr. Gursky made a

comment about Mr. Ventura?

A. Yeah, just basically he didn't know who he was, and no one liked the guy or something like that. I, you know, I don't remember exactly what -- the way it was said, but it was -- he wasn't sure why he was there and no one was particularly fond of the guy.

Testimony of Antonio DeMarco, Transcript 159/2-24, 160/15 – 24.

The hearing record does not disclose that Ventura was identified by the Union at that time as an expert witness, advisor, consultant, or interpreter on behalf of the Union. *Id.* The Union did not say that Ventura was a member of the negotiating team, nor did it propose that he would be a part of future collective-bargaining activities. Not surprisingly, this caused the Eastland representatives to believe that Ventura's "participation" in the negotiations was at an end.

We had set up the time, you know, for the tour and the -- and the next negotiating [sic], and when we were leaving, it was -- you -- [Mr. McAndrew] you did all the talking with Mr. Gursky and Tim, and we brought up Mr. Ventura, like, who was this guy? Why is he here? We, you know, we were very uncomfortable with the fact we didn't even know who he was. And they just basically shrugged it off. Like they didn't know who was and why he was there, either, but he said -- it was, you know, there was no doubt in my mind that when we left the building that day that they were going to take care of it through whatever means that he was not going to be part of that group come August 24th.

Testimony of Antonio DeMarco Transcript 158/13-23 (emphasis added)

Q. (Mr. McAndrew) Okay. And as a result of that, what impression did you come to as a result of that sidebar conversation?

A. I -- I didn't have one ounce of reservation that this guy was not going to be

there going forward. It was a clear understanding I believe.

Q. Okay. Would you have scheduled the plant tour if you knew Mr. Ventura was going to --?

A. No –

Testimony of Antonio DeMarco, Transcript 160/18-25.

Q. Based on your presence, did at any time on July 22nd, did Mr. Melia or Mr. Gursky say that Mr. Ventura was a member of their negotiating team?

A. No. Never.

Testimony of Dayne Wahl, Transcript 221/22-25. Transcript 221/22 – 24.

**f. Facts regarding the August 24, 2016 Negotiating Session.**

One of the agreements reached by the parties at the July 22 bargaining session was that the next negotiating session would occur at the FCMS office in Warwick, Rhode Island following a complimentary tour of the Eastland facility in Cranston, Rhode Island by the two negotiating teams on August 24, 2016. Transcript 158/3 – 23. This was not a tour which is required by the Act; there is no statutory requirement that collective bargaining representatives be given access to an employer's facility during negotiations except under circumstances not shown to have been present in this case. Nevertheless, Eastland believed that a complimentary tour would assist the parties. It further believed that Ventura would not be present for the tour or for future negotiations. See Testimony of Mr. DeMarco and Mr. Wahl, *supra*. Eastland would not have scheduled the tour had it known that Centro Comunitario de Trabajadores, through Ventura, would attempt to take part.

Q. Would you have scheduled the plant tour at Eastland with the Union if you knew Mr. Ventura was going to participate?

A. No.

Q. Why not?

A. We -- we just don't know this guy is. And you know, we don't let anybody into the plant freely. I mean, it's -- there's a lot of food law issues, sanitation issues, you know, basically we like to think of what we do as, you know, proprietary versus what some of our competitors do. So we're just not going to let anybody come into the plant.

Testimony of Antonio DeMarco, Transcript 162/10 – 19.

On August 24 at approximately 11:00 AM the parties reconvened at Eastland's Cranston, Rhode Island facility for the tour. Ventura was not present at the outset, but shortly before the tour was to begin, Ventura appeared, apparently seeking to participate in the tour. Transcript 163/6 – 25, 164/1 – 22, 215/1 – 25, 216/1 – 25, 217/1 – 23. Ventura arrived last. Transcript 217/19 – 23. When he appeared, Eastland's representatives were furious.

(Mr. Wahl) I got to the head of the table and I looked at -- right -- Tim [Melia] right in the eye and said, I thought we had an agreement? I thought this guy was not going to be involved in the plant tour or for the negotiations? Tim looked at me like -- it was like a car in deer's -- or a deer in car's headlight. I thought he looked surprised. And he looked at me and said --

Q. When you said you thought he looked surprised, explain what you -- what that was? What you --

A. Well, you could see the -- oh, he looked at me and said, well, what would it hurt if he were here? And that's when I --

Q. What did you say?

A. I -- that's when I said -- I went -- I said, listen, you this is -- I said the exact words, this is my IBM. This is what I do. This is what I hang my hat on at the end of the day. This is how I provide for my family. This guy is not going to tour this plant. I'll be more than glad to take you through the plant, but there are proprietary things. And I talked about a few of them. And I turned to Tom

[McAndrew] and I said, Tom, listen, if they want to tour the plant without Mr. Ventura, I'm going to be in my office.

Testimony of Dayne Wahl, Transcript 218/8-25, 219/1-4.

Eastland's representatives objected vehemently to Ventura's attendance and advised the Union that it was in breach of its agreement that Ventura would take no further part in the negotiations. They told the Union that they would not allow Centro Comunitario de Trabajadores, through Ventura, access to its facility, nor would Eastland engage in a collective bargaining session with a third party present, one who the Union had represented as having no connection with its collective bargaining team. Transcript 218/3 – 25, to 19/1 – 25, 220/1 – 14.

Following Eastland's making its position clear; the Union requested an opportunity to meet with Ventura and the employees privately, which opportunity was afforded to it. Transcript Page 91. Thereafter, the Union representatives and the employees returned to the meeting with Ventura and announced for the first time that Ventura had been appointed to the Union's bargaining committee. Transcript 165/1/9. Eastland terminated discussions at that time, loath to engage in a good faith disclosure of its operations, business activities, technology, customers, business plans, expansion plans, and other matters when a complete stranger to the business, was present in the room.

THE WITNESS: Okay, I -- I know what was said. I don't recall who said it. [It]Was that basically Mr. Ventura was going to be part of the negotiations going forward.

MR. McANDREW: Okay.

BY MR. McANDREW:

Q Had you ever heard that before?

A. No.

Q. Did you hear that on July 22nd?

A. No.

Q. Okay. All right. And as a result of that comment that -- do you recall if anything else was said by the company?

A. After that comment was said, you basically said, well, we can't negotiate. That the meeting was over.

Q. Um-hum.

A. And you had left the room; they had also left the room. I recall them being out in the parking lot for like another 15, 20 minutes and then they just left.

Q. Okay. Now, after the August 24th [sic], there have been no further negotiations; correct?

A. No.

Q. And there's no plant tour, either?

A. No.

Testimony of Antonio DeMarco, Transcript 165/ 1-23, see also Transcript 218/20 – 25.

On August 24, 2016 the Union filed a charge with the National Labor Relations Board (NLRB). **Hearing Exhibit GC 1**. The Board issued a complaint in this matter on November 30, 2016. *Id.* Eastland filed its answer to the complaint on or about December 13, 2016, essentially denying the charges in the complaint and asserting various defenses. *Id.* On or about December 19, 2016, the Board filed a Petition for Temporary Injunction under Section 10 (j) of the National Labor Relations Act, 29 U.S.C. § 160(j), together with a motion that the relief prayed for in the petition be granted on the pleadings without conducting a full evidentiary hearing. **Hearing Exhibits JT 15-20**. The United States District Court for the District of Rhode Island granted both motions. **Hearing Exhibit JT 20**. A hearing was held before the Administrative Law Judge on the Union's charges on January 24, 2017.

**g. Facts regarding Adrien Ventura and his Employer, Centro Comunitario de Trabajadores.**

**Hearing Exhibit JT 23** describes Centro Comunitario de Trabajadores as an organization working with New Bedford businesses to organize New Bedford's workplaces<sup>2</sup> which it is alleged, rely largely on immigrant workers.<sup>3</sup> Id. Page 3. **Hearing Exhibit JT 23** describes Centro Comunitario de Trabajadores' area of activity as "New Bedford's food processing, recycling and garment industries". Id. Pages 4 – 5. Transcript 120/24 – 25, 121/1 – 5<sup>4</sup>. A fair reading of **Hearing Exhibit JT 23** discloses that Centro Comunitario de Trabajadores is a community organization dedicated to the organization of low-wage workers in the above-mentioned industries, including the food processing industry, in New Bedford, Massachusetts. Several examples of the agency's organizing activities are cited in **Hearing Exhibit JT 23**. **Hearing Exhibit GC 2** purports to be a letter from "the workers committee" at Eastland, but it is written on the letterhead of Centro Comunitario de Trabajadores.

At the hearing, General Counsel described Ventura as Executive Director of Centro Comunitario de Trabajadores, which she described as "a community organization in New Bedford Massachusetts, working generally with Central American immigrants and workers in the

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<sup>2</sup> In restating the allegations contained in Centro Comunitario de Trabajadores webpage, Eastland does not mean to adopt as its own testimony the allegations contained therein.

<sup>3</sup> At the hearing, the Union was permitted to introduce testimony concerning a conversation with Ventura in which Ventura explained that the Union should attempt to organize the Employers employees because Centro Comunitario de Trabajadores, was not capable of doing so.

<sup>4</sup> As described *infra*, a hearing on this matter occurred on January 24, 2017. References to the transcript of that hearing are as set forth above, in the following format: Transcript Page number/line number (s).

fisheries industry, garment industry, and recycling industry. Transcript 19/10 – 15. No witness for the Union made any suggestion that Centro Comunitario de Trabajadores had dealings with any other member of the food processing industry, or any industry, outside of its home base of New Bedford other than its foray into Rhode Island to organize the Eastland employees – insofar as Rhode Island industries of any kind might be concerned, Ventura and his employer Centro Comunitario de Trabajadores, are complete strangers.

Ventura is Guatemalan and purportedly speaks a language described by general counsel as “K’iche”. He also purportedly speaks Spanish. General Counsel identified Ventura as the connection between Eastland’s employees and the Union. Transcript 20/7 – 13. She acknowledged that Centro Comunitario de Trabajadores had worked with the Union before, and that it was Ventura who told the Union “that there was only so much [Centro Comunitario de Trabajadores] could do because it was not a labor organization and did not negotiate collective-bargaining agreements.” Transcript 20/14 – 21. General Counsel’s statement was obviously based on hearsay insofar as she was repeating alleged conversations that other witnesses were expected to testify to, and if her expectation were true, the underlying status of Centro Comunitario de Trabajadores was incorrectly stated. The organization’s web page makes clear from the description of the organization that it is exactly the type of organization that the Act contemplates in Section 2(5) will become an exclusive collective bargaining agent and representative of employees such as those of the Employer. Centro Comunitario de Trabajadores’ true motives remained hidden but they are not difficult to discern. It is a labor organization as defined by the Act. It intends to expand the scope of its activities into Rhode Island, and to use Eastland as the thin end of that expansion wedge. Of course, that agenda does

nothing for Eastland's employees that cannot be done by the Union acting alone without Centro Comunitario de Trabajadores.

## **II. STANDARD OF REVIEW**

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, guarantees certain rights to employees, including the right to join together in labor organizations and "to bargain collectively through representatives of their own choosing." This right of employees and the corresponding right of employers, see section 8(b) (1) (B) of the Act, 29 U.S.C. § 158(b) (1) (B), to choose whomever they wish to represent them in formal labor negotiations is fundamental to the statutory scheme. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 33, 57 S. Ct. 615, 622, 81 L. Ed. 893 (1937), *GE v. NLRB*, 412 F.2d 512, 516 (2d Cir. 1969). In general, either side can choose as it sees fit and neither can control the other's selection. *Id.* Exceptions to the general rule are rare, usually confined to situations so infected with ill-will, usually personal, or conflict of interest as to make good -faith bargaining impractical. *Id.*, at 517. Thus, in arguing that its employees may not select "representatives of their own choosing" on a negotiating committee, Eastland undertakes a considerable burden, characterized in *NLRB v. David Buttrick Co.*, 399 F.2d 505, 507 (1st Cir. 1968), as showing a "clear and present" danger to the collective bargaining process. Cited in *GE v. NLRB*, *supra*, at 517. "Absent any finding of bad faith or ulterior motive" *Standard Oil Co. v. NLRB*, 322 F.2d 40, 44 (6th Cir. 1963), on the part of a challenged member of a bargaining team, an employer must bargain with the employees' chosen representatives. *GE v. NLRB*, *supra* at 517. On the other hand, under some circumstances, where a challenged member of a negotiation team has absolutely no duty of loyalty to the employees and is engaged in activities where her or she may already have, or may acquire later, conflicting duties to employees of the employer's rivals, it defies credence that such a representative would

ignore his responsibility to his (current and future) constituents in favor of fairly representing the employees for whom he or she is purporting to negotiate at the moment. It is under those circumstances that a conflict or “clear and present danger” arises. *CBS Inc. and International Brotherhood of Electrical Workers, AFL-CIO, and Local 4, Local 45, Local 202, Local 1200, Local 1212, Local 1220, and Local 1228, International Brotherhood of Electrical Workers, AFL-CIO*. 226 N.L.R.B. 537, 539 (N.L.R.B. 1976) (hereinafter, “CBS”), affirmed *International Brotherhood of Electrical Workers v. NLRB*, 557 F.2d 995, 1977 U.S. App. LEXIS 12507, 95 L.R.R.M. (BNA) 2996, 82 Lab. Cas. (CCH) P10022 (2d Cir. 1977) (hereinafter “CBS Appeal”). Other courts have agreed under similar circumstances. See *N.L.R.B. v. I.L.G.W.U.*, 274 F.2d 376, 379 (3d Cir. 1960) (ex-union official added to employer committee to “put one over on the union”); *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954) (union established company in direct competition with employer); *N.L.R.B. v. Kentucky Utilities Co.*, 182 F.2d 810 (6th Cir. 1950) (union negotiator had expressed great personal animosity towards employer).

### **III. ARGUMENT:**

Eastland is privileged to forbear from collective bargaining because Adrian Ventura, a third party representative of Centro Comunitario de Trabajadores, an unrelated labor organization operating out of New Bedford, Massachusetts, presents a clear and present danger to the collective-bargaining process between Eastland and the Union. It has an amorphous and ill-defined relationship with Eastland’s employees, with no basis in law or contract. CCT has an ulterior motive: it is clearly engaged in a fishing expedition designed to educate its executive director as to the “ins and outs” of Eastland’s sector of the food preparation industry in New

England, with no particularized interest in the work or conditions of employment of Eastland's employees.

**1. Neither Ventura nor CCT represents the Eastland employees as exclusive representatives for collective bargaining purposes, although CCT could represent employees of Eastland or similar employers if it chose to do so.**

No bargaining obligation may arise under the NLRA until a labor organization has been duly designated as the representative of a majority of an employer's employees in an appropriate bargaining unit. 1-12 Labor and Employment Law § 12.03. Thus, at the outset, Eastland has no obligation to bargain with Ventura or CCT as an exclusive bargaining agent of its employees because neither Ventura nor CCT has been so certified by the NLRB. While CCT has the ability to act as the exclusive bargaining agent for purposes of collective bargaining in its capacity as a "labor organization", it has elected to make no attempt to do so with respect to Eastland's employees.<sup>5</sup> While Ventura himself may have strong relationships with certain Eastland employees as a community organizer, as far as his employer's relationship with Eastland's employees or management is concerned, a substantive relationship barely exists. The only action CCT has taken has been to permit its letterhead to be used in a letter purportedly from Eastland's employees to Eastland management concerning alleged employee grievances.<sup>6</sup> **Hearing Exhibit**

**GC 2.** After that, CCT according to hearsay evidence offered by General Counsel at the hearing, "Mr. Ventura told the Union that there was only so much C.C.T. could do because it's not a labor

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<sup>5</sup> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.. 29 USCS § 152.

<sup>6</sup> Like many of the facts underlying Eastland's argument in this brief, Eastland must rely on hearsay evidence offered by the Union's witnesses or inferences drawn from document introduced at the hearing, because, inexplicably, neither Ventura nor his employer appeared at the hearing.

organization and doesn't negotiate collective bargaining agreements, and cannot command the same response from the Employer and the Government that a labor organization can.” Transcript 20/15-19. The Union never notified Eastland in writing that CCT was assisting the Union in organizing its employees for collective bargaining purposes. Transcript 71/1-8; in fact, the Union’s position in this matter is that CCT is not a labor organization within the meaning of the Act. Transcript 123/14 – 20.<sup>7</sup> The basis of that position is unclear since the record demonstrates with crystal clarity that as labor organization is exactly what CCT is and that it was engaged in the activities that make it a labor organization when it injected itself into Eastland’s business. General Counsel made that clear in her opening comments and it was never challenged by any other witness at the hearing.

Before there even was a union campaign, Mr. Ventura was helping employees to navigate these employment issues with Eastland. In April, employees delivered a letter that was written on C.C.T.'s letterhead to Eastland's manager -- management. That letter is what will be introduced as General Counsel Exhibit 2, which Your Honor already has a copy of.

It was Mr. Ventura that connected Eastland's employees with UFCW Local 328. The two groups had worked together many times in the past, and Mr. Ventura invited union representatives to join him and the employees in bringing the letter that I've just mentioned to the company. So from the beginning, this was C.C.T.'s group of employees; Mr. Ventura was the link between the employees of Eastland and the Union.

Transcript 20/1-13. See also **Hearing Exhibit G.C. 2**. . CCT’s own publicity material states: “It was [in 2007] that a group of workers who had experienced the ills of the work in said

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<sup>7</sup> The fact that CCT is not the labor organization seeking certification in this case begs the question of why Ventura was permitted to observe the counting of ballots at the election. In May 2016. Transcript 21/5-7, 47/11-25.

factory decided to organize and seek the support from their community to ameliorate work conditions. Since then the group of workers has evolved into the organization CCT is today. . . . Since 2009, CCT has worked to combat the flagrant abuse of workers' rights such as . . . retaliation against employees who speak up and organize.” **Hearing Exhibit JT 23.** Clearly, had it chosen to do so, CCT could have secured a place at the table for itself, through Ventura, simply by taking the reins as a labor organization and having itself certified as the employees' exclusive bargaining agent, but it did not do so. Accordingly, Eastland has no statutory or other obligation to negotiate directly with CCT or indirectly with CCT through Ventura. Both are strangers to the negotiation process with no right to be there except whatever rights might arise as a result of their ability to assist the Union in its negotiations as an expert, consultant or translator.<sup>8</sup>

**2. Neither Ventura nor CCT is necessary to the collective bargaining process as an expert, consultant, translator, or other third party participant.**

In response to the hearing officer's questioning, General Counsel acknowledged at the hearing that Ventura has no elected, hired, or permanent position with the staff of the Union itself. Transcript 25/5-25. At best, he holds “some contractual relationship of sorts” with respect to the organization of companies that the Union might someday represent. Transcript 26/3-6. That position did not require him to be present at the pre-negotiation breakfast meeting.

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<sup>8</sup> Eastland does not dispute the general rule that the mere presence of representatives of other unions on the employee negotiating team does not present a clear and present danger to the collective bargaining process, so long as the other unions have *some* relationship to the employer, even if that relationship is somewhat attenuated. In *GE v. NLRB*, supra, for example, the “other unions” were labor organizations that represented other GE employees at other plants. See also *3M v. NLRB*, 415 F.2d 174 (8th Cir. 1969). In the present case however, the “relationship” between Eastland's employees and CCT is more than attenuated – it does not exist at all. Ventura is simply someone who the employees “trust more than the union”. Transcript 21/12 - 17.

Transcript 27/6-20. According to Mr. McAndrew, who was present at the July 22 negotiating session, Ventura was present, but did nothing and said nothing. Transcript 29/5-11, 33/1-13. Union representative Carvahlo said nothing. Transcript 51 8/9. The employees said nothing; the meeting consisted entirely of Union Representative Melia describing and explaining the Union's proposals to Eastland's representatives. Id., Lines 14-15. Ventura, as Chief Executive Officer of CCT, did not even show up at the hearing, and no testimony adduced at the hearing discloses that he has any particular skill set that is either necessary or relevant to the negotiations required by the Act. He is no more than, and no less than, a community organizer. Transcript, Pages 37, 38. The hearing record contains no evidence that he is an expert in labor relations, or an economist, or a negotiations consultant, or a benefits expert. Moreover, while he may be *capable* of translating from Spanish to K'iche, the evidence that a translator of that apparently arcane dialect was or is required was exceedingly limited at the hearing and contradicted by Eastland's witnesses. Megan Carvahlo, who testified for the Union on this issue, acknowledged that, at pre-organizational meetings, the language spoken was either Spanish or English and that while English was sometimes translated, it was only "when there was a complicated scenario" that Ventura had any utility at all as a translator. Transcript 43 10/20. Thereafter, when the workers selected their bargaining team, although Ventura was present at that meeting, he was not selected for the team. Transcript, pages 48-49. At the only negotiation he attended, he sat at the end of a very long table with the employees and the Union supplied Spanish translator, Carlos Gonzales. **Hearing Exhibit JT 9** He was with the Spanish Translator, Carlos Gonzales, whom the Union had assigned to the employees. Transcript 22/20. Although General Counsel suggested in her opening comments that he had some utility as a translator, no witness to the negotiation itself was able to substantiate that claim. Ms. Carvahlo testified that she thought that she might have

been able to hear him, and that assuming that she had been able to hear him; she thought that he was translating from Spanish to K'iche, but that since she did not speak K'iche, she was not sure.

Transcript Pages 83-87.

Q. But wasn't Elena Hernandez the person who had the most difficulty with Spanish? Isn't that what you testified to?

A. Yes. Compared to Victor and Cesario, she's -- has more difficulty with Spanish.

Q. And she was sitting between your interpreter and Mr. Melia, far away from Mr. Ventura; correct?

A. I don't think it was that far really.

Q. I -- didn't your interpreter verbally explain what we -- what we were discussing? Didn't he out loud discuss -- translate for the people in the room?

A. Carlos you mean?

Q. Yes.

A. He -- yeah. I mean, that's what interpreting is.

Q. Okay. And Mr. Ventura never did that.

A. No. I mean, as I've testified --

Q. Okay.

Transcript, 88 8/24. Moreover, Eastland's witnesses testified that Eastland had operated for years with those same employees with nothing more than a Spanish translator (English – Spanish). In fact, one of Eastland's witnesses had never heard the word “K'iche” before referring to a dialect spoken by Eastland's employees. Transcript 222/16-23. See also Ms. Carvahlo Affidavit to the NLRB, **Hearing Exhibits JT 17 and 18**, in which Mr. Melia described

Ventura's actions as "he sat quietly at the end of the table" and Ms. Carvahlo notes that Ventura "did not speak during the meeting."

Getting a handle on exactly what role Ventura plays in the collective bargaining process has been an elusive goal for the Eastland. Long after the Employer's concern with Ventura was brought to the Union's attention, when the General Counsel sought a 10(j) injunction from the federal court, the Union described Ventura for the first time as a "translator" engaged to translate Spanish conversations into "K'iche", a dialect allegedly spoken by some employees of the Employer. The Employer has operated for years with employees who speak K'iche, and has no awareness of any K'iche speaking employee who is insufficiently conversant with Spanish to do his or her job. The Union has offered little evidence that a K'iche" translator is required at the negotiating table. In short, neither Ventura nor CCT has even an insubstantial, role to play in the collective bargaining negotiations. While there is testimony that the employees trust him, possibly even more than they trust the union, Transcript 21/12-16, the same might be said of the local mailman, parking attendant, or the guy who runs the food truck in the parking lot, none of whom would have any claim to a place at the negotiating table. Moreover, as indicated below, Eastland *and Eastland's employees* have an interest in keeping Ventura and CCT away: Both benefit by Eastland's efforts to keep its trade secrets and its proprietary trade information confidential, whereas neither Ventura nor CCT have any such interest.

**3. Eastland's proprietary information is significant, valuable, and deserves protection when weighed against the *de minimus* interest of the employees and the Union in including a representative of CCT on the bargaining team.**

Eastland's interest in keeping its proprietary information secret from its competitors was the subject of much testimony at the hearing. General Counsel pointed out at the hearing that speculation concerning the disclosure or use of confidential trade secrets by an unwelcome

bargaining team member is insufficient to create a privilege to forbear from negotiations. Eastland's concerns go well beyond speculation, and are essentially identical to the ones held by the Board to have created that very privilege in *CBS*.

The trade secrets at issue in *CBS* concerned CBS's business and its plans to introduce technology to the market that, if divulged to competitors, would damage CBS's position in the market for its services. In *CBS* the employer would have had to disclose that information to the Union negotiation team as part of its good faith negotiations process. Similarly here, Eastland's witnesses testified that they were concerned that Eastland's position in the marketplace for prepared foods would be damaged if its confidential methodologies and processes were to become generally known in the industry, and that any member of the negotiating team would have access to those confidential trade secrets if good faith negotiations were to occur. Dayne Wahl's testimony regarding the company's proprietary information is reproduced above in this brief. Transcript 209/25 – 213/3. His testimony that disclosure of proprietary information would be required by good faith negotiations appears at Transcript 214/15 – 17.<sup>9</sup>

**4. Neither Ventura nor CCT has a duty to keep information learned about Eastland's operations secret, or to forbear from using such information to its own advantage and to the detriment of Eastland's employees.**

In the absence of an agreement to the contrary, no party to collective bargaining negotiations has a statutory or contractual duty to forbear from using information obtained in the

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<sup>9</sup> At the hearing, General Counsel laid the evidentiary foundation for what will no doubt be an argument that, because Eastland does not require its own employees to sign confidentiality agreements, it's "proprietary" information is not really proprietary since there is no contractual basis for preventing a former employee from disclosing it to a third party. That argument is without merit. The employees organized in this case are line workers, who see little of the whole Eastland operation other than their own small part of it. See Generally Testimony of Dayne Wahl, Transcript 224, 225. Thus, as to any particular employee, there is little for him or her to disclose. In contrast, anyone engaged in collective bargaining would get the "whole picture" of how the Eastland plant operated. See Transcript 123,124.

negotiations for his, her, or its own benefit, or from disclosing it to others who will do so. However, when the parties to the negotiations are only the Union and the Employer, there is no need for a confidentiality agreement in most cases. The employer already owns the confidential information, and the Union has a fiduciary relationship to its members to forbear from taking action that would damage their employers' position in the market place. In other words, in the absence of a third party, all the parties to the negotiation have an incentive to protect confidential information. Similarly, if they want to be retained again, the experts, consultants, and other members of the community who might be brought in to advise the Union or the Employer have no incentive to disclose what they learned in the negotiating sessions.

Enter Ventura and, through Ventura, CCT. Ventura is a stranger to the negotiations. He may or may not be interested in obtaining the best, or at least a fair, deal for Eastland's employees. The fact that he was not called as a witness by the Union before the ALJ suggests that the Union really had no interest in exploring Ventura's or CCT's motivation. CCT operates out of New Bedford, Massachusetts, about 35 miles away from Cranston, Rhode Island. It is dedicated to organizing workers in, among others, the food preparation industry in the Commonwealth of Massachusetts. What other relationships does it have, and with what competitors of Eastland? What relationships will it develop in the future now that it has been involved in the Eastland organizing efforts? In *CBS*, it was enough that the proposed third party team members were from unions that represented, not CBS, but its CBS' competitors. The Board recognized a privilege to forbear from negotiations arising from that conflicting interest. Eastland's case is nearly identical – CCT does not represent the employees of Eastland, but if it does not already work with employees of Eastland's competitors, its public web site makes it appear highly likely that it will do so in the future. CCT is on a fishing expedition, using this

experience with Eastland to bolster its level of knowledge about the food processing industry so as to be more able to work with other members of that market in the future. That agenda has nothing to do with Eastland, its employees, or the terms and conditions of their employment.

**5. An agreement to that Ventura and CCT would keep confidential any information learned in the collective bargaining process would be unenforceable and, should a breach of such an agreement occur, irremediable**

Any suggestion that Eastland's interest in protecting its confidential information would be adequately addressed by the execution of a confidentiality and nondisclosure agreement by the insurer or CCT should be rejected by the hearing officer out of hand. The same argument was raised in CBS, where it was apparently suggested that CBS's interest in protecting its confidential technological and trade information might be addressed in negotiations by the execution of a confidentiality agreement by the labor organization that was, in that case, a stranger to CBS's employees and to the negotiations. This board rejected this argument with substantially no analysis, pointing out that it was "obvious" since the stranger unions had no obligation to CBS employees and conflicting obligations to employees of CBS's competitors, the breach of such a pledge of confidentiality would cause immediate and irreparable damage to CBS's position in the marketplace. Similarly in this case, since CTT is located some 35 miles away from Eastland's facility, and its field of operations constitutes, apparently, all of southern New England, not only would Eastland have no effective mechanism for policing or monitoring compliance with any putative confidentiality agreement, it would also be completely unable to undo the competitive impact of the disclosure of its confidential and proprietary trade information to its competitors in the region.

**6. Testimony at the hearing disclosed that Ventura's presence on the bargaining team would have a chilling effect on Eastland's participation in good faith collective bargaining, leading to a clear and present danger to the collective bargaining process.**

During the course of the hearing, the Eastland witnesses (who would be the only witnesses with knowledge) testified that the impact of Ventura's presence on the negotiating committee would be that confidential information that would otherwise be disclosed would instead be held back during the negotiations.

Q. [D]id Mr. Wahl say that as far as he was concerned, we were not going to disclose proprietary information or plant information to Mr. Ventura? And that was one of the -- one of the reasons that they weren't going to allow him in?

A. Like I previously said, Dayne said that he didn't want Adrian coming on the tour because of proprietary information.

Testimony of Meghan Carvahlo, Transcript 913-9. For example, Dayne Wahl testified that under no circumstances would he agree to an unrelated third party such as Ventura or his employer having the authorities granted to the Union in the Union's negotiating proposals concerning access to Eastland's plant or participation in its grievance procedure.

Q. [By Mr. McAndrew] Looking at the proposal that the Union provided to the company, please take a look at **Joint Exhibit Number 10**. Do you see that?

A. If I can get through them. Hold on. Oh, the big one, yeah, hold on.  
22nd?

Q. Yes.

A. Yeah.

Q. Now, I'm going to direct your attention to Page 27. [Of **Hearing Exhibit JT 10**]

A. Okay. Okay.

Q. "Access." Do you see that?

A. Um-hum.

Q. Do you see that, yes or no?

A. Yes, I do.

Q. Okay.

A. Sorry.

Q. If the -- if visitation was intended to include Mr. Ventura, would he company agree to this proposal?

A. I would never allow anybody in the plant without knowing who they are, and just -- I would never do that.

Q. Okay. If the provision on Page 8 regarding grievance and facilitating grievances were intended to include Mr. Ventura, would the company ever agree to a grievance procedure?

A. No.

Q. Okay.

A. No, it would not.

Q. Okay. Now, if Mr. Ventura were not there, would the company be more inclined to negotiate these provisions?

A. Surely. And that's what we were there to do.

Testimony of Dayne Wahl, Transcript 206, 207. Mr. Wahl continued to explain his reluctance to disclose trade secrets to Mr. Ventura:

Q. Now, in terms of the -- in terms of the proprietary information, if you would please, what proprietary information are you concerned about that Mr. Ventura would have access to if he were allowed the plant tour, firstly? And then secondly, if he were allowed to participate in negotiations?

A. Just a little preface here that in 53 years Eastland Foods has built a nice niche in the marketplace. Most of our business is done before the processors. The retail end of our business is -- is maybe 15 percent. Most of our -- its further processed, people take our items, salad manufacturers, the soup, and the pasta people, so over the years we've dealt -- you know, built up a pretty nice business.

And like I said, I've been involved in the plant layout, and the purchasing of equipment, and all of that is proprietary. The way a plant is laid out, the type of equipment that is purchased, a lot of it custom made, which makes us more efficient. The processes and procedures that we do, we have a wonderful system - - system engineered by us, with the capability of sanitizing that very few people in the marketplace have. Our ability to turn over orders very quickly. My -- my concern again, is when you talk about proprietary, you know, the -- I'm -- and if I'm rambling let me know, but what's going to happen here, I mean, people look at Eastland Foods and they think of this small family owned operation; it's our IBM. I mean, it's -- so when I look at the possibilities of somebody down the road hurting or affecting the business, you know, maybe that's not something that happens today, but when these negotiations get to a certain point, and they will get to that point, okay, there's the possibility that somebody can use that information against us. And this is a person who's dealing with other food processing plants. And Tony mentioned that there's five or six other. There are five or six people who do what we do in Rhode Island. There's another of them in the Boston area, that -- that -- and we also do Pennsylvania. We do Maryland. We do New York. And there are a lot of processors in that area, and my concern is more the local stuff. But you know, that's my concern. It's, you know, the systems and procedures that we've developed to be able to grow the business; they are proprietary. Okay. And I think they're proprietary for -- We're not making nuts and bolts here, okay. We're able to 4 turn product over quicker, with less lead time, in a very small window like nobody else can do, and that's how we've grown our business. And when these negotiations go on, in order to negotiate with Tim [Melia] -- Tim, we can't do this overtime situation because I don't know at 3:00 in the afternoon how my day's going to go. So if I've got a guy that's got seniority and he's on the first shift, and he's gone, am I going to call him back in at 10:00 because I got an order at 5:00 for -- those are the type --

Q. Well --

A. -- of things that I need to share, but I'm not going to share those things with somebody that, you know, is not part of the Union.

Q. Okay.

A. Is not part of what I think should be the --

Q. Okay.

A. -- negotiating [sic] because he's friends with the employees --

Q. Let's go to the --

A. -- and they feel more comfortable with him.

Testimony of Dayne Wahl, Transcript 207/13 – 209/24.

Mr. Wahl's testimony should be examined in contrast to the Union's contract proposal (**Hearing Exhibit JT 10**) and Mr. Melia's testimony as to those matters that he would normally expect to be included in a collective bargaining agreement of the nature under consideration in this case. Transcript 121/ 10-25, 122/1-2.

### **CONCLUSION**

Nothing in the NLRA or the cases interpreting it suggests that there is significance in the fact that the trade secret protected by the board in *CBS, Inc.* was in the nature of a technical device, whereas the trade secrets sought to be protected by Eastland in this case are industrial processes and procedures. Eastland's concerns about Ventura have merit for the same reasons as were present in *CBS, Inc.* Ventura is not an employee of Eastland, nor is he an employee of the Union or a consultant to the Union. He is the acknowledged Executive Director of Centro Comunitario de Trabajadores and according to the testimony at hearing, he is a union organizer. He or his employer is clearly capable, following Eastland negotiations, of using for his own benefit or for that of Comunitario de Trabajadores any information gleaned from these negotiations. Moreover, no law, statute, regulation or common law privilege prevents him, his employer, or either of them, from disclosing to others, everything learned concerning Eastland's operation.

For example, Ventura might use the information as a member of another negotiating team in another collective-bargaining context, or disclose information to a competitor of Eastland's in the context of his own union organizing activities, thereby damaging Eastland's position in the marketplace, indirectly adversely affecting the bargaining unit employees in a manner that simply cannot be remedied after the fact.

In light of these facts, should the ALJ decide that he should be included on the employee negotiating team, his presence will leave Eastland no choice but to refuse to make disclosures or enter into agreement that might otherwise be acceptable to it. Testimony was adduced at the hearing that the parties might consider the possibility of using an executed confidentiality agreement as a mechanism whereby Eastland could impose on Ventura and his employer an obligation to protect confidential information. Unfortunately, even if the parties were to agree to a confidentiality agreement, there would be no manner in which compliance with such a document could be monitored. Moreover, if non-compliance were to occur, there would be no mechanism by which Eastland could be compensated for damages arising as a result. Accordingly, a confidentiality agreement would serve little utility in this case.

In forbearing to negotiate, Eastland is not relying on speculative concerns, but actual concerns regarding the very real possibility that its trade secrets will be disclosed in connection with Ventura's general business activities as a union organizer. Ventura is not a machinist, a doctor, or a taxi driver. His employment appears to require him to interact regularly with businesses such as Eastland's competitors, learn about their respective businesses, and organizing their workers into bargaining units under the Act. Accepting full responsibility for its forbearance from negotiating while Ventura is a member of the team, Eastland insists that it is permitted to do so under applicable law and that it has not engaged in any activity in violation of

the National Labor Relations Act. But for the dispute over Mr. Ventura, Eastland is a company that has recognized and cooperated with the Union and complied with the National Labor Relations Act in all material respects, and Eastland does not believe that the Union has a different position on this issue. Before the dispute involving Ventura, there were no charges of unfair labor practices and no allegations of intimidation with respect to the organization of the employer's facility or with respect to the election of the Union as the bargaining representative for the employer's employees. After the election, Eastland met with union officers for breakfast to discuss the negotiations.

Thereafter, but before negotiations commenced, Eastland responded to various union requests for information without objection, thus permitting the Union to properly prepare for the commencement of formal negotiations. Eastland has continuously maintained its position that, but for the presence of Ventura on the negotiating team, Eastland would continue to sit with the Union and engage in good faith collective-bargaining. In fact, even while this dispute is pending, Eastland, as part of its continuing obligation to recognize UFCW Local 328, has continued to offer the Union information concerning conditions of employment in so far as they affect the Union's members. For example, after the August 24 incident, Eastland notified the Union of matters involving the discipline of bargaining unit employees, as would customarily be included in a properly negotiated collective bargaining agreement. In fact, in every possible respect, Eastland has acted in good faith in its dealings with the Union and its employees in the context of collective bargaining.

Wherefore and based upon the testimonial, documentary, and inferential evidence, Eastland respectfully suggests that the ALJ should find that it did not violate the Act when it refused to provide a plant tour on August 24, 2016, and further suggests that the ALJ should

dismiss the Complaint as it relates to the issue of refusal to bargain with a committee that includes Adrien Ventura of CCT.

Respectfully submitted  
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By its Attorney,

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**CERTIFICATION**

I, the undersigned, do hereby certify that on this 21<sup>st</sup> day of February 2017, I caused a true and accurate copy of the foregoing Post Hearing Memorandum Proposed Findings of Fact and Proposed Conclusions of Law to be sent by electronic mail to:

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