

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

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CONSTELLATION BRANDS U.S.  
OPERATIONS, INC. D/B/A WOODBRIDGE  
WINERY

Case No.: 32-RC-135779

Respondent Employer,

vs.

**RESPONDENT EMPLOYER'S  
STATEMENT OF POSITION  
REGARDING ISSUES RAISED  
ON REMAND**

CANNERY, WAREHOUSEMEN, FOOD  
PROCESSORS, DRIVERS AND HELPERS,  
LOCAL UNION NO. 601, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,

Petitioner.

----- X

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Dated: March 28, 2017

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## INTRODUCTION

In this case, the Teamsters Local Union 601 (“Teamsters”) petitioned to represent a group of employees at one of Respondent Constellation Brands U.S. Operations, Inc.’s (“Constellation”) wineries. The Regional Director ruled that the employees constitute an appropriate bargaining unit, and the Board refused to disturb that decision. The Second Circuit, however, held that the Regional Director had misapplied the standard for determining the appropriateness of a bargaining unit, and remanded the case to the Board for proceedings consistent with its opinion. *See Constellation Brands, U.S. Operations, Inc. v. NLRB*, 842 F.3d 784 (2d Cir. 2016).

The Board should now remand this matter to the Regional Director with instructions to reopen the record. The Second Circuit’s decision sets forth the appropriate standard for determining the appropriateness of a bargaining unit at step one of the framework laid out in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. 934 (2011). That standard requires the Board (among other things) to determine the similarities and differences between the included and excluded employees, to analyze the differences to determine whether they are meaningful in the context of collective bargaining, and finally to determine whether the differences outweigh the similarities. But the Board cannot conduct that analysis on the current record. As the Second Circuit’s and Regional Director’s opinions make plain, the current record does not enable the Board even to *identify* all the relevant similarities and differences between the employees in the petitioned-for unit and other employees, let alone to *analyze* those similarities and differences in the manner mandated by the Second Circuit.

## FACTS

Constellation owns and operates Woodbridge Winery in Acampo, California. Woodbridge employs about 300 employees. This case concerns Woodbridge’s cellar operations

department, which consists of approximately 71 employees. Among other things, the cellar operations department is responsible for offloading grapes upon their arrival at the winery, crushing and pressing those grapes, transferring the resulting juice into tanks or barrels, and then aging and blending the wine as directed. The 18 cellar operations employees responsible for winemaking in barrels are known as “barrel employees”; their 46 colleagues responsible for winemaking in steel tanks are known as “outside cellar employees.” They are supported by six cellar services employees and one recycler employee.

In September 2014, the Teamsters petitioned the National Labor Relations Board seeking to represent the outside cellar employees. Constellation objected, arguing that outside cellar employees do not constitute an appropriate bargaining unit. Instead, an appropriate unit consists of all production and maintenance employees at Woodbridge or, at a minimum, all employees in the cellar operations department (*i.e.*, barrel employees, outside cellar employees, cellar services employees, and the recycler).

The Regional Director ruled that outside cellar employees constitute an appropriate bargaining unit and ordered an election. A panel of the Board denied review. The outside cellar employees then voted to unionize. Constellation contested the validity of the election by refusing to bargain with the union, but a panel of the Board rejected Constellation’s challenge.

Constellation filed a petition for review in the Second Circuit; the Board filed a cross-petition for enforcement. The Second Circuit granted Constellation’s petition, holding that the Regional Director had failed to properly apply the test governing the appropriateness of bargaining units. 842 F.3d at 793. The Court remanded the case to the Board for further proceedings. *Id.* at 795.

This Statement of Position addresses the steps the Board should take on remand.

## ARGUMENT

The Second Circuit articulated the correct standard for determining the appropriateness of a bargaining unit at step one of the *Specialty Healthcare* framework. Its decision makes clear, however, that the Board cannot apply that standard on the existing record. Accordingly, to ensure compliance with the Second Circuit's remand order, the record must be reopened. *See, e.g., NBC Universal, Inc. v. Employer & Local 11*, 2017 WL 971647, at \*2 (N.L.R.B. Mar. 7, 2017) (reopening record to facilitate analysis in light of court's opinion); *In re Midwest Generation, EME, LLC*, 352 N.L.R.B. 243, 244 (2008) (same); *Advanced Stretchforming Int'l, Inc.*, 336 N.L.R.B. 1153, 1153 (2001) (same); *cf.* 29 C.F.R. § 102.65(e)(1) (stating that a party "may, because of extraordinary circumstances, ... move after the decision or report ... to reopen the record").

### I. THE SECOND CIRCUIT ARTICULATED THE CORRECT STANDARD FOR DETERMINING THE APPROPRIATENESS OF A BARGAINING UNIT AT STEP ONE OF THE *SPECIALTY HEALTHCARE* ANALYSIS

The National Labor Relations Act (the "Act") requires the Board to "decide in each case" which group of employees constitutes "the unit appropriate for the purposes of collective bargaining." 29 U.S.C. § 159(b). The Second Circuit deferred to the Board's use of the *Specialty Healthcare* framework to assess the appropriateness of a proposed unit in this case. 842 F.2d at 787. That framework requires the Board to conduct a "two-step analysis." *Id.* at 790. At the first step, the Board must determine whether the employees in the proposed unit share a "community of interest"; if so, it is *prima facie* appropriate. *Id.* At the second step, an objecting employer may establish that the proposed unit is nevertheless inappropriate by showing that employees excluded from the unit share an "overwhelming community of interest" with employees included in the unit. *Id.*

In addition, the Second Circuit's decision explained how step one operates. The critical question at this step is "whether the interests of the group sought [are] sufficiently distinct from those of other employees to warrant the establishment of a separate unit." *Id.* at 792. The factors relevant to this determination include "[w]hether the employees are organized into a *separate* department; have *distinct* skills and training; have *distinct* job functions and perform *distinct* work ...; are functionally integrated with ... other employees; have *distinct* terms and conditions of employment; and are *separately* supervised." *Id.* (citation omitted).

In applying these factors, the Board must go beyond "[m]erely recording similarities or differences between employees." *Id.* at 794. Rather, it "must *analyze*" the factors to "(a) identify shared interests among members of the petitioned-for unit, *and* (b) explain why excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *Id.* at 794. "Explaining why the excluded employees have distinct interests in the context of collective bargaining is necessary to avoid arbitrary lines of demarcation and to avoid making step one of the *Specialty Healthcare* framework a mere rubber stamp." *Id.* at 795.

Applying these principles, the Second Circuit ruled that the Regional Director "did not make the step-one determination required by *Specialty Healthcare*." *Id.* at 793. In particular, the Regional Director "did not explain *why* [the outside cellar] employees had interests 'sufficiently distinct from those of other employees to warrant the establishment of a separate unit.'" *Id.* Put another way, the Regional Director failed to explain "why the excluded employees had distinct interests from employees of the petitioned-for unit *in the context of collective bargaining*." *Id.* at 795 (emphasis added).

The Second Circuit also explained why the reasoning contained in the Regional Director's opinion was inadequate. For example, the court acknowledged that the Regional Director appropriately recited the community of interest standard. *Id.* at 793. Merely "[r]eciting the legal framework," however, "does not substitute for analysis." *Id.* at 794.

Similarly, the court acknowledged that the Regional Director "purported to identify differences between members of the petitioned-for unit and other employees." *Id.* at 793 n.39. But the court dismissed this passage as "boilerplate." *Id.* For example, the court rejected the Regional Director's claim that only outside cellar employees must "demonstrate skills" before being promoted as "highly unlikely" and indeed "implausible." *Id.* The Regional Director's "remaining findings of differences," the court continued, "are similarly conclusory." *Id.*

Finally, the court acknowledged that the Regional Director "made a number of *factual* findings that tend to show that outside cellar employees had interests distinct from other employees." *Id.* at 794. The court stressed, however, that the Regional Director "never explained the weight or relevance of those findings." *Id.* Nor did he ever explain why those findings should have outweighed other findings of similarities, such as "similar job functions and duties, evidence of interchange and working together, and identical skills and training requirements." *Id.* (quotation marks and brackets omitted). "To the extent the [Regional Director] did provide such explanations, [he] did so only at step two, *i.e.*, only to rebut a heightened showing that the excluded employees share an '*overwhelming* community of interest' with the presumptively appropriate petitioned-for unit." *Id.* at 794. The Regional Director's reasoning thus amounted to a "misapplication of *Specialty Healthcare*." *Id.*

## II. THE BOARD CANNOT PROPERLY APPLY THE STANDARD ARTICULATED BY THE SECOND CIRCUIT WITHOUT REOPENING THE RECORD

Under the Second Circuit's articulation of step one of the *Specialty Healthcare* framework, among other things, the Board must (1) determine the similarities and differences between outside cellar employees and other cellar operations employees, (2) explain why the differences are meaningful in the context of collective bargaining, and (3) explain why the differences outweigh the similarities. The Board, however, cannot perform any of these tasks on the current record. Only by reopening the record can it properly apply the standard set forth by the Second Circuit.

*First*, the court of appeals' decision requires the Board to determine what similarities and differences there are between the included and excluded employees. After all, the Board must first identify the "differences between unit-members and other employees" before it can analyze those differences in the manner required by the court's opinion. 842 F.3d at 794.

Here, the Second Circuit's opinion points up important gaps in the record before the Regional Director. Specifically, the Regional Director asserted that *only* outside cellar employees "must demonstrate skills of lower-level job classifications before moving up to higher-level job classifications." *Id.* at 794 n.39. The Second Circuit, however, dismissed this assertion as "highly unlikely," finding it "implausible" that other employees "need not 'demonstrate skills' before being promoted." *Id.* In light of that determination, the Board must take additional evidence about the promotion of other employees at the winery, so that it can determine whether outside cellar employees and other employees are, in fact, subject to different requirements for promotion.

More broadly, the Second Circuit also rejected the Regional Director's other "purported ... differences between members of the petitioned-for unit and other employees." *Id.* According

to the court, the Regional Director's "remaining findings" on this score were all "conclusory." *Id.* That determination shows that, in the Second Circuit's view, the record before the Regional Director was insufficiently robust to support *any* of the asserted differences between included and excluded employees. The Board must reopen the record to cure that problem.

Quite apart from the Second Circuit's opinion, the Regional Director's own opinion also underscores the extent to which the record does not contain evidence about potentially relevant similarities and differences between outside cellar employees and other employees. For example:

- The Board must consider whether the outside cellar employees "have *distinct* job functions and perform *distinct* work." 842 F.3d at 792 (citation omitted). Yet the Board cannot do so here, because, inter alia, "[t]here are no job descriptions in the record for Cellar Services employees." Regional Director's Decision 6.
- The Board must consider whether the outside cellar employees "have *distinct* skills." 842 F.3d at 792 (citation omitted). Yet the Board cannot do so here, because, among other things, the record lacks any "description as to how often each classification [of employee] unloads tanker trucks with wine." Decision 14.
- The Board must consider whether outside cellar employees "are functionally integrated with ... other employees," 842 F.3d at 792 (citation omitted), as well as the frequency of their "contact" and "interchange with other employees, 357 NLRB at 942. Again, the Board cannot make that determination on this record. For example, "[t]he record lacks evidence regarding short-term interdepartmental transfer" (Decision 20), as well as evidence establishing the "frequency" with which "different departments cooperate" (*id.* at 19). Similarly, "[t]here is no

description” in the record of “the nature and extent of any interaction” between different groups of employees during the process of unloading grapes. *Id.* at 14. Nor does the record show “with any specificity” how often the different groups of employees “frequent the old barrel cellar.” *Id.* The record also “provide[s] no indication” about “whether and how” outside cellar and barrel employees “interacted” while working to transfer wine from barrels to tanks. *Id.* at 15–16. So too, the record does not show whether the barrel employees and outside cellar employees “actually interac[t] with one another” in “the ingredients room.” *Id.* To top it off, the record on interactions in other parts of the facilities lacks “any degree of specificity” (*id.*), and the record on interactions in “the parking lots” is devoid of “specific evidence” (*id.* at 19).

In short, the Second Circuit’s and Regional Director’s opinions both make clear that the current record does not allow the Board even to *identify* the similarities and differences between included and excluded employees—much less to *analyze* those similarities and differences in accordance with the Second Circuit’s decision. That problem requires reopening the record.

*Second*, the court of appeals’ decision requires the Board to explain how any differences between the included and the excluded employees are meaningful for purposes of collective bargaining. As the court put it, “[m]erely recording similarities or differences between employees” does not suffice. 842 F.3d at 794. Rather, the Board must explain “how and why” those differences establish that the employees have “meaningfully distinct” interests “in the context of collective bargaining.” *Id.* at 794–95.

Here, the Board must take more evidence to explore how and why any differences among employees within the cellar operations department are meaningful in the specific context of

collective bargaining. For example, the Regional Director asserted that the outside cellar and barrel employees “work in physically separate locations.” Decision 40 n.20. Yet physical separation alone proves nothing; the Board must take evidence to determine whether the physical separation somehow establishes that employees in one location have one set of collective-bargaining interests, while employees in a different location have different interests. Similarly, the Regional Director asserted that outside cellar and barrel employees have “separate front-line supervisors.” *Id.* Yet separate supervision alone proves nothing; the Board must take evidence to determine whether, in light of Woodbridge’s organizational structure, employees with different supervisors thereby have different collective-bargaining interests. Along the same lines, the Regional Director said that outside cellar and barrel employees “have limited daily contact with each other.” *Id.* But again, the degree of contact makes no difference on its own. The Board must take more evidence to answer the critical question: whether this limited contact somehow translates into a meaningful difference in collective-bargaining interests.

*Third*, the court of appeals’ decision requires the Board to weigh the similarities between the included and excluded employees against the differences. As the court put it, the Board must “explain why [the excluded employees’] meaningfully distinct interests in the context of collective bargaining ... *outweigh* similarities with unit members.” 842 F.3d at 794. This weighing “is necessary to avoid arbitrary lines of demarcation and to avoid making step one ... a mere rubber stamp.” *Id.* at 795.

Here, the current record does not allow the Board to make the comparison required by the Second Circuit. For example, the record does not reveal which has a greater effect on the outside cellar and barrel employees’ collective-bargaining interests: the fact that they have the “same job descriptions,” or instead the fact that they work “on different portions of the Employer’s

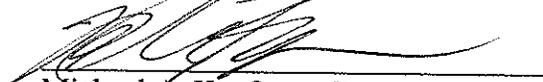
winemaking process.” Decision 40 n.20. To take another example, the record does not reveal which is more important: the “many similarities” between the employees’ “job duties,” or the “physically separate locations” at which the employees perform those duties. *Id.* Likewise, the record does not reveal the relative weight in the collective-bargaining context of (on the one hand) the employees’ “identical skills and training requirements” and (on the other hand) the employees’ “limited daily contact with each other.” *Id.* The Board must reopen the record in order to take evidence on these comparisons.

All in all, then, the current record does not suffice to enable the Board to conduct the analysis mandated by the Second Circuit—to identify the relevant similarities and differences, to determine how and why the differences matter in the context of collective bargaining, and then to weigh the differences against the similarities. Reopening the record is therefore imperative.<sup>1</sup>

#### CONCLUSION

The Board should remand this matter to the Regional Director with instructions to reopen the record in order to develop the facts relevant to the analysis required by the Second Circuit’s opinion.

Respectfully submitted,  
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DATED: March 28, 2017

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<sup>1</sup> Constellation continues to believe that the *Specialty Healthcare* framework is wrong. Constellation, of course, accepts that the Second Circuit upheld the use of that framework here. However, in the event the Board decides to reconsider its framework, Constellation preserves its challenge to *Specialty Healthcare* and its claim that a wall-to-wall unit of production and maintenance employees is appropriate on the facts of this case.

## STATEMENT OF SERVICE

I hereby certify and declare under penalty of perjury, under the laws of the United States of America and the State of California, that a copy of the RESPONDENT EMPLOYER'S STATEMENT OF POSITION REGARDING ISSUES RAISED ON REMAND TO THE OFFICE OF THE EXECUTIVE SECRETARY was served today, March 28, 2017, on the following parties or persons via Facsimile and Federal Express:

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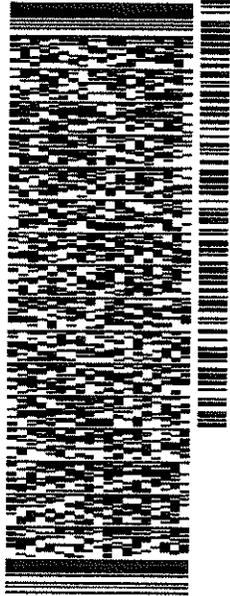
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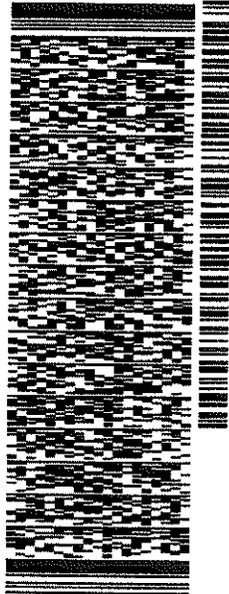
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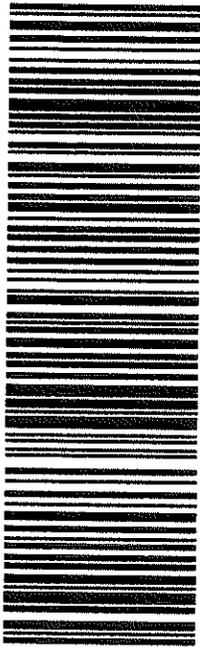
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