

**UNITED STATE OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**Sysco Columbia, LLC**

**Employer,**

**and**

**International Brotherhood of Teamsters,  
Local 504,**

**Petitioner.**

**Case No. 10-RC-195759**

**REQUEST FOR REVIEW**

COMES NOW Employer Sysco Columbia, LLC (“Sysco Columbia” or “Employer”) and, pursuant to Section 102.71 of the National Labor Relations Board’s Rules and Regulations, files this request for review of the decision by the Regional Director for Region 10 to hold the election in this case in abeyance due to the filing of a blocking charge by the International Brotherhood of Teamsters, Local 504 (“Union”). The Board should grant this Request for Review because the Regional Director’s action was, on its face, arbitrary and capricious under the facts of this case, and a substantial question of law or policy has been raised because the Regional Director departed from the requirements of the NLRB’s Regulations and Casehandling Manual (“CHM”).

**I. STATEMENT OF THE CASE**

**A. The Petition**

Sysco Columbia, LLC (“Sysco Columbia”) sells, markets and distributes food products to restaurants, healthcare and educational facilities, lodging establishments and other customers

who prepare meals away from home. The petition in the above-captioned representation case was filed on or around March 29, 2017, seeking a unit of fleet maintenance employees and yard spotters at Sysco's distribution facility in Columbia, South Carolina. The Regional Director directed that the election be held on April 27, 2017, from 12:00 noon to 1:00 p.m. and from 8:00 p.m. to 9:00 p.m. (Exh. A).

**B. The Charge and the RD's Decision**

On April 26, 2017, literally the eve of the election, the Union filed an unfair labor practice charge (Case No. 10-CA-197588) (the "Charge") alleging violations of Sections 8(a)(1) and 8(a)(3) of the Act. (Exh. B). Sysco received a copy of the charge from the Board Agent at 5:27 PM on Wednesday, April 26. (Exh. C). Sysco then received a letter from the Regional Director holding the election in abeyance approximately 30 minutes later, at 6:04 PM. (Exh. D).

The next day, April 27, 2017, Sysco submitted a letter to the Region requesting that the Regional Director provide the reasons in writing for his decision to hold the election in abeyance. (Exh. E). Specifically, Sysco requested a copy of the offer of proof the Union was required to submit in order to block the election and suggested that any employee names contained in the offer of proof be redacted. (Id.) Sysco also asked the Regional Director to reconsider his decision to hold the election in abeyance. (Id.)

The Regional Director responded by email later that day, contending:

The blocking letters which were sent in the representation cases contained the written reasons for blocking the elections and/or ballot counts i.e. the referenced charges. Copies of the charges themselves have also been sent to you. The allegations in the charges provide additional information as to the nature of the allegations which led to the blocking of the election and/or ballot counts.

(Exhibit F).

The Regional Director's email offered no clarification regarding the reasons for his decision to hold the election in abeyance, other than by referencing the conclusory allegations of the charge and stating that "the offers of proof contain assertions of alleged pay increases, threats and other allegations which, if substantiated during the unfair labor practice investigations, would preclude the holding of free and fair elections." (Id.) The Region still has not provided Sysco with the particulars of the Union's allegations.

## **II. SYSCO'S REQUEST FOR REVIEW**

Pursuant to Section 102.71 (b) of the Board's Rules and Regulations, a request for review of a Regional Director's decision to hold proceedings on a petition in abeyance may be granted on one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from officially reported Board precedent.
- (2) There are compelling reasons for reconsideration of an important Board rule or policy.
- (3) The Regional Director's action is, on its face, arbitrary or capricious.

29 C.F.R. §102.71(b).

In this case, immediate review is warranted because the Regional Director's action is, on its face, arbitrary and capricious and because a substantial question of law or policy is raised because of the absence of Board precedent or a departure from Board precedent.

### **A. The Regional Director's Action Was Arbitrary and Capricious**

The CHM states that "[t]he filing of a charge does not automatically cause a petition to be held in abeyance." CHM at §11730. Rather, it is within the Region's discretion to make an exception to the blocking policy. *Id.* at §11730.4 ("[T]he Regional Director should decide whether the general policy of holding the petition in abeyance should be applied.") It is within the Regional Director's discretion to proceed with an election despite the pending ULP charge,

resolving any alleged unfair labor practices through the objections process, or to hold the election and impound the ballots. See CHM §11731.6. As shown below, the Regional Director's failure to proceed with the election in this matter was arbitrary and capricious in light of the fact that the Union's blocking charge was clearly intended as a delay tactic.<sup>1</sup>

Instead of blocking the scheduled balloting, the Regional Director should have either (1) held the election as scheduled and impounded the ballots until after disposition of the charge; or (2) conducted the election issued a tally, and resolved any alleged unfair labor practices through the objections process. Both of these options were available to the RD under Section 11731.6 of the CHM, and either approach would have been more appropriate than holding the petition in abeyance, because the filing of the Charge was clearly a dilatory tactic by the Union. As the Board's Casehandling Manual notes, "it should be recognized that the [blocking charge] policy is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition." CHM at §11730. In this case, the Union waited until the eve of the vote count to file the Charge. The Union's motive in filing the Charge, rather than using the objections process, was clearly to unduly delay the processing of the petition, a prime factor for the Region's consideration in determining whether or not to proceed in the face of a blocking charge. The Regional Director ignored this glaring fact in granting the Union's request to hold the election in abeyance under these circumstances, which is a clear abuse of discretion.

The process of holding the election and resolving any alleged unfair labor practices through the objection process would potentially conserve the Board's and the parties' resources, since the vote count could reveal that the Union has won the election, which would likely cause the Union to withdraw the Charge. If, on the other hand, the vote count was in Sysco's favor, the

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<sup>1</sup> The scheduled election was to occur just 4 business days from the Region's issuance of the Decision and Direction of Election.

Board and the parties would expend no more resources resolving the Union's allegations through the objections process than they would by resolving the alleged unfair labor practices through the charge process. Further, if a majority of employees voted for union representation, delaying the vote count does nothing more than artificially lengthen the time before they can commence collective-bargaining through their chosen representative. There simply is no legitimate reason not to proceed with the vote and vote count and resolve the alleged unfair labor practices thereafter through the objections process.

It is well settled that an arbitrary, unsupported decision by a Regional Director may be invalidated by the Board. *See, e.g., Pepsi-Cola Bottling Co. of Alaska, Inc.*, 159 N.L.R.B. 1325, 1328 (1966). In this instance, the Regional Director's actions were clearly arbitrary and capricious. As such, the Board should direct the Regional Director to continue processing the petition in this case, conduct a vote, and either (1) issue a tally of ballots and resolve any alleged unfair labor practices through the objections process or (2) impound the ballots pending investigation of the Charge.

**B. The Regional Director Did Not Follow The Board's Own Procedures**

The Regional Director's decision should further be reviewed because "a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from officially reported Board precedent." Under the Board's rules, when a party requests that an election be blocked, that party is required to submit an offer of proof, which the RD reviews in determining whether to hold the petition in abeyance. 29 C.F.R. §103.20. If the offer of proof does not describe evidence that, if proven, would interfere with employees' free choice in the election, the RD should continue to process the petition. *Id.* Once the Region makes its decision whether or not to hold the case in abeyance, it must inform the parties of its reasoning. As the CHM states:

The Board agent handling the matter should inform the parties of any determinations made with regard to concurrent charges and petitions *and the reason therefor*. *If any party requests the reasons in writing, the regional director should promptly provide them.*

CHM §11730.7 (emphasis added).

In this case, the Regional Director departed from this established Board precedent by refusing to provide the reasons in writing for his decision. By letter on April 27, 2017, Sysco Columbia promptly requested that the Regional Director provide the reasons for his decision to hold the election in abeyance. Specifically, Sysco Columbia requested a copy of the offer of proof submitted by the Union pursuant to Regulation §103.20 so that it could have the same, sufficient information the Regional Director relied upon in making its decision, thus allowing Sysco the necessary information to better evaluate and if necessary pursue - or not - this request for review. Sysco even suggested that the offer of proof be redacted to remove the names of any non-supervisory employees. However, instead of providing the reasons for his decision or a redacted copy of the offer of proof, the Regional Director merely referred Sysco to the bare allegations of the Charge and claimed that this satisfied the requirements of the CHM.

As the U.S. Supreme Court has acknowledged, duly promulgated regulations have the force of law and must be followed by both the public and the government, including the agency that promulgated them. See *U.S. v. Nixon*, 418 U.S. 683, 696 (1974) (holding that although Attorney General had authority to amend regulations, “[s]o long as this regulation remains in force the Executive Branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and to enforce it”). Therefore, the Regional Director was not free to disregard the duly promulgated rules set forth in the CHM nor the new regulations that now require offers of proof and thus make them *immediately available in the process*, a rule that clearly demonstrates the intent of the Board to prevent abuses of the blocking

process. The Regional Director's interpretation of the CHM – that he could satisfy his obligation to provide Sysco with the “reasons in writing” for his decision merely by referencing the bare allegations of the charge and not with a more detailed explanation up to and including a redacted copy of the offer of proof – would render the CHM's requirements completely meaningless. Further, by the failing to adequately address Sysco's request for the blocking charge offer of proof and by refusing to provide the same, the Regional Director has completely ignored the Board's clear intent in Section 103.20 of the Rules and Regulations and §11730.7 of the CHM. The Regional Director's actions were clearly insufficient to comply with the Regional Director's obligations under both the Board's Regulations and the CHM.

### **III. CONCLUSION**

For the reasons set forth above, the Board should direct the Regional Director to continue processing the petition in this case, conduct an election, and either issue a tally of ballots or impound those ballots. Pursuant to the Board's rules, a copy of this request has been served upon the Regional Director and Union via electronic mail.

Dated this 10th day of May, 2017.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.



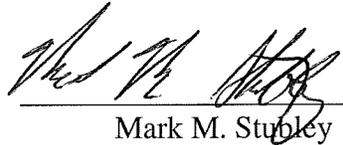
Mark M. Stublely  
Attorney for Sysco Columbia, LLC

**CERTIFICATE OF SERVICE**

I, Mark M. Stublely, do hereby certify that the foregoing was served on the following parties on the 10th day of May 2017.

Claude T. Harrell, Jr., Regional Director  
National Labor Relations Board  
Region 10  
Harris Tower  
233 Peachtree Street N.E.  
Suite 1000  
Atlanta, GA 30303-1531  
*Via E-Mail*

Chris Rosell  
International Brotherhood of Teamsters, Local Union 509  
2604 Fish Hatchery Road  
West Columbia, SC 29172-2036  
E-Mail: [crozell@teamster.org](mailto:crozell@teamster.org)  
*Via E-Mail*



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Mark M. Stublely

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**Exhibit A**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10, SUBREGION 11**

**SYSCO COLUMBIA, LLC**

**Employer**

**and**

**Case 10–RC–195759**

**TEAMSTERS LOCAL UNION 509**

**Petitioner**

**REGIONAL DIRECTOR’S DECISION AND DIRECTION OF ELECTION**

The Employer, Sysco Columbia, LLC, is a Delaware limited liability company engaged in selling, marketing, and distributing food products in Columbia, Charleston, Florence, Greenville, Hilton Head, and Myrtle Beach, South Carolina, and Augusta, Georgia. The Employer’s headquarters office is in Columbia, South Carolina, where it also maintains a warehouse and yard. Its Columbia facility is the only facility involved in this proceeding. Petitioner, Teamsters Local Union 509, filed this petition under Section 9(c) of the National Labor Relations Act.<sup>1</sup> Petitioner seeks to represent a unit of all fleet shop employees; specifically, Fleet Technicians and Maintenance Utility Worker Technicians.<sup>2</sup> The Employer maintains that the unit Petitioner seeks is not appropriate and that the only appropriate unit must also include the remainder of the employees in its Fleet and Facility Maintenance Department; specifically, Maintenance Coordinators, Facility Technicians, Sanitation Engineers, and Material Handling Technicians.<sup>3</sup> A hearing officer of the Board held a hearing in this matter, and the

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<sup>1</sup> The parties stipulated that Petitioner claims to represent the employees in the proposed unit, and the Employer declines to recognize Petitioner. The parties also stipulated that there is no contract bar.

<sup>2</sup> Maintenance Utility Worker Technicians are also called “spotters.” These terms are used interchangeably throughout the record. I will use the Employer’s formal classification, Maintenance Utility Worker Technicians.

<sup>3</sup> The unit descriptions appear as amended at hearing.

parties were offered the opportunity to file briefs, that the Employer subsequently filed with me on April 18, 2017, which I have duly considered.

Petitioner argues that the petitioned-for unit is appropriate for bargaining because it is a readily identifiable group that shares a strong and recognizable community of interest. It also contends that the Employer cannot show that the employees it seeks to exclude from the petitioned-for unit share such an overwhelming community of interest with the petitioned-for employees that there is no legitimate basis on which to exclude them. There are nine employees in the petitioned-for unit.

The Employer contends that the petitioned-for unit is not readily identifiable as a group, is fractured, and would create a residual unit. The Employer asserts that there are 15 employees in the unit it contends is the smallest appropriate unit.

I have considered the evidence and the arguments the parties presented on the issues. As described below, based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Transitional Care v. NLRB*, 727 F.3d 552 (6<sup>th</sup> Cir. 2013), I find that the petitioned-for unit limited to the Employer's full-time and regular part-time Fleet Technicians and Maintenance Utility Worker Technicians is appropriate.

To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations. I will then provide my legal analysis of the issue presented, including why Petitioner's unit is an appropriate unit and why the Employer did not meet its burden to show that the employees it believes must be included in the unit share an overwhelming community of interest with the petitioned-for unit.

## **I. The Employer's Operations**

The Employer receives, warehouses, and delivers food to and from its Columbia, South Carolina warehouse. Both the employees in the Petitioned-for unit and the employees the Employer wishes to include in the unit are involved in some fashion with this process.

### **A. Work Flow**

Third party companies deliver food to the Employer's Columbia warehouse by tractor trailer. The driver drops the trailer at an area on the Employer's premises known as the hill. Maintenance Utility Worker Technicians will then use a "yard dog" to transport the trailers from the hill to the docks. From there, Receivers unload the trailers and store the goods either in the dry warehouse in the case of dry product, or the cooler or freezer area for product needing refrigeration. Maintenance Utility Worker Technicians then move the third-party trailers back to the hill. Third-party delivery takes place during the day.

The Employer also distributes food from its warehouse to its customers. To initiate that process, the Maintenance Utility Worker Technicians use the yard dog to move the Employer trailers to the cold dock where Loaders load frozen food and then refrigerated food into the Employer's trailers. After the cold dock items have been loaded, Maintenance Utility Worker Technicians use the yard dog to move the Employer's trailers to the dry dock where Loaders load dry food into the trailers. Supervisors in the Operations and Transportation Management Departments provide Maintenance Utility Worker Technicians with lists showing to which of the approximately 35 cold docks and to which of the approximately 14 dry docks each trailer should go for loading. This process takes place during the Employer's second shift and thus, all of the Maintenance Utility Worker Technicians work during the second shift.

Once loaded for delivery, a Driver will transport the Employer's trailer to a customer, have the trailer unloaded, and return the empty trailer to the Employer's Columbia, South Carolina warehouse. Maintenance Utility Worker Technicians use a pressure washer to clean each returned trailer before returning it with a yard dog to its designated area where it waits until it is ready to be loaded during the day shift.

### **B. The Employer's Fleet and Facility Maintenance Department**

The Employer has a Fleet and Facility Department at its Columbia location headed by a Fleet and Facility Manager, Dwayne McCloud. McCloud's department supports the operations side of the business, meaning that McCloud handles support for maintenance for other departments, including the distribution, transportation, and warehouse departments. The Employer's Fleet and Facility Department also has a Fleet Maintenance Supervisor, Randell Drafts.

Employees in the petitioned-for job classifications, Fleet Technicians and Maintenance Utility Worker Technicians, report to Supervisor Drafts. Drafts, in turn, reports to Facility Manager McCloud. McCloud, however, also directly supervises employees in five other job classifications, as well as employees in two classifications outsourced to contractors. The five positions that report to McCloud, not through Drafts, are Material Handling Technicians,<sup>4</sup> Facility Technicians, Sanitation Technicians, Maintenance Coordinators, and Senior Maintenance Technicians.<sup>5</sup>

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<sup>4</sup> While there is currently only one Material Handling Technician, one Maintenance Coordinator, and one Senior Maintenance Technician, I will use the plural when discussing the positions generally.

<sup>5</sup> The Senior Maintenance Technician is the lead Facility Technician.

Fleet Technicians are responsible for maintaining and repairing the Employer's trailers. Material Handling Technicians are responsible for repairing and maintaining equipment that Loaders and Receivers use, including forklifts, pallet jacks, and other equipment. The Maintenance Coordinator is responsible for ordering and stocking parts that Fleet Technicians and Material Handling Technicians need for their respective repair or maintenance work.<sup>6</sup>

Facility Technicians are responsible for repairing and maintaining the Employer's physical facility, work that may include, for example, painting the exterior of buildings or repairing dock doors. The Maintenance Coordinator does not normally order parts for Facility Technicians.

## **II. Board Law**

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit a petitioner proposed is appropriate. If employees in the petitioned-for unit are readily identifiable and share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit that would also be appropriate, or even more appropriate. To establish that additional employees must be added to what would otherwise be a readily identifiable unit among employees that share a community of interest, the party so contending must demonstrate that employees in the larger unit share an "overwhelming community of interest" with those in the petitioned-for unit. *Specialty*

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<sup>6</sup> However, unlike the employees in the unit sought, the Maintenance Coordinator only works days, has a slightly different uniform and importantly reports to a different supervisor.

*Healthcare and Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Transitional Care v. NLRB*, 727 F.3d 552 (6<sup>th</sup> Cir. 2013).

Thus, the first inquiry is whether the job classifications Petitioner sought are readily identifiable as a group and share a community of interest. The Board will not approve fractured units; that is, combinations of employees that have no rational basis. *Odwalla Inc.*, 357 NLRB No. 132 (2011); *Seaboard Marine*, 327 NLRB 556 (1999). Thus an important consideration is whether the Employer has organized the employees sought into a separate department or administrative grouping. Also important are whether the employees have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations*, 338 NLRB 123 (2002); see also *Specialty Healthcare*, 357 NLRB at 942. Particularly important to this determination are the organization of the plant and the utilization of skills. *Gustave Fisher*, 256 NLRB 1069 fn. 5 (1981). All relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare*, 357 NLRB at 944 & fn. 28, quoting *Blue Man Vegas, v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008). Moreover, the

burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding*, 357 NLRB 2015 fn. 8 (2011).

### **III. Application of Board Law to the Facts of this Case**

#### **A. The Classifications Petitioner Seeks Share a Community of Interest, are a Readily Identifiable Group, and are Not a Fractured Unit**

Analyzing the factors the Board uses to make these determinations, I find that the employees in the petitioned-for unit share a community of interest, are readily identifiable as a group, and are not a fractured unit.

##### **1. Whether Petitioned-For Employees Are in a Separate Department or Administrative Grouping**

While the Board would not generally approve a unit consisting of some, but not all, of an employer's department, see *Check Printers*, 205 NLRB 33 (1973), in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289, 1291 (2000).<sup>7</sup> Here, the employees in the petitioned-for unit are the only employees to report directly to Drafts, are the only employees to consider themselves part of the fleet shop, and are the only employees in the Fleet and Facility Maintenance Department to handle trailers. Accordingly, I find that they share a sufficiently distinct community of interest to separate them from other employees in the Fleet and Facility Maintenance Department.

##### **2. Whether the Petitioned-For Employees Have Distinct Skills and Training**

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<sup>7</sup> In *Home Depot*, the Board held that although petitioned-for drivers, which were part of the larger special services department, shared a number of similarities with other employees and had contact with other employees, the weight of the evidence supported a finding that the petitioned-for unit of drivers shared a sufficiently distinct community of interest and therefore constituted an appropriate unit under the Act. 331 NLRB at 1289, 1291.

Each of the six classifications in the Fleet and Facility Maintenance Department requires distinct skills and training. The Facility Technicians, Material Handling Technicians, and Fleet Technicians all do maintenance and repair work, just on different things. The Maintenance Coordinator orders and stocks the parts. The Maintenance Utility Worker Technicians move the trailers to and from the docks and wash the trailers. The training and skills required for each position is distinct; thus, this factor neither weighs in favor of, nor against, one set of employees having more of a community of interest than another set.

3. Whether Petitioned-For Employees Have Distinct Job Functions and Perform Distinct Work

The petitioned-for employees are the only employees to work with trailers. No other classification in the Fleet and Facility Maintenance Department works with trailers. While there is no overlap in job functions between Fleet Technicians and Maintenance Utility Worker Technicians, they report to the same supervisor and are the only classifications to report to that supervisor.

4. Whether Petitioned-For Employees are Functionally Integrated with the Employer's Other Employees

To the extent that all employees of the Employer, not just those in the Fleet and Facility Maintenance Department, use the same road, pass the same guard shack, park in the same parking lot, and use the same employee entrance, the petitioned-for employees are functionally integrated with other employees. The Fleet Technicians and Maintenance Utility Worker Technicians use the same copy machine as the rest of the employees in the Fleet and Facility Maintenance Department. The Fleet Technicians and Maintenance Utility Worker Technicians use the same containment or liquids room to store liquids such as motor oil, grease, window

wash fluid, and anti-freeze that is used by most of the rest of the employees in the Fleet and Facility Maintenance Department.

However, there are some stark differences between the petitioned-for employees and the remainder of the Fleet and Facility Maintenance Department that make the petitioned-for employees not functionally integrated with other employees. For example, the petitioned-for employees have slightly different uniforms than the remainder of the Fleet and Facility Maintenance Department. While all employees in the Fleet and Facility Maintenance Department wear dark blue pants and most wear a dark blue button-down shirt<sup>8</sup> with the Employer's name over the left breast, the employee's name over the right breast, and the American flag on the left shoulder, the petitioned-for employees' uniforms also have reflector pieces on the breast pockets and arms. This is a seemingly small detail; however, it is evidence of different job functions between the petitioned-for employees and other employees in the Fleet and Facility Maintenance Department. The petitioned-for employees work in the yard at night and must be visible to all other employees. The other employees in the Fleet and Facility Maintenance Department do not have the same job responsibilities and do not need such a uniform.

The entire Fleet and Facility Maintenance Department meets rarely, if at all. The Material Handling Technician; McCloud; the Senior Maintenance Technician; the Maintenance Coordinator; and a supervisor in training meet on average about once every four days. These meetings do not generally include the Fleet Technicians or Maintenance Utility Worker Technicians, but Fleet Technicians have been present at some meetings. McCloud meets at time with his maintenance employees, the Material Handling Technician, Facility Technicians, and

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<sup>8</sup> At least one employee testified that he usually wears a dark blue t-shirt instead of the dark blue button-down shirt.

Sanitation Technicians.<sup>9</sup> The petitioned-for employees do not attend these meetings with McCloud.

5. Whether Petitioned-For Employees Have Frequent Contact with Other Employees

Fleet Technicians and Facility Technicians interact about 10 percent of the day, according to testimony at the hearing. Fleet Technicians interact with Maintenance Utility Worker Technicians about 20 to 30 percent of the day. The testimony establishes that the petitioned-for employees interact with each other more than they interact with employees in any other job classification.

6. The Interchange with Other Employees

There is little to no interchange among employees and no progression from one position to another. An employee the Employer hired as a Maintenance Utility Worker Technician became a Fleet Technician. This employee testified that his agreement when the Employer hired him was that he would work as a Maintenance Utility Worker Technician only until a Fleet Technician position became available. Another employee who worked as a Maintenance Utility Worker Technician for over four years became a Material Handling Technician. There was no testimony or evidence that the Employer uses the Fleet Technician or Maintenance Utility Worker Technician classifications as a path to one of the classifications not included in the petitioned-for unit, or vice-versa.

According to testimony provided at the hearing, employees do not perform the work duties of other employees. Material Handling Technicians occasionally assist Facility

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<sup>9</sup> The current Sanitation Technician is in training to become a Facility Technician.

Technicians by, for example, using a forklift to hold open a bay door that needed repairs. Additionally, the Sanitation Technician is in training to become a Facility Technician.

7. Whether Petitioned-For Employees Have Distinct Terms and Conditions of Employment

The petitioned-for employees have the same benefits as the rest of the Fleet and Facility Maintenance Department and the rest of the Employer's employees. The wages among the petitioned-for employees are similar, ranging from \$19.77 per hour to about \$25.00 per hour. The wages for the entire Fleet and Facility Maintenance Department range from \$16.55 per hour to about \$27.00 per hour. All employees of the Employer go through a similar orientation program with Human Resources that explains the Employer's policies and practices.

The petitioned-for employees work on shifts spanning 24 hours a day, including overnight shifts. The Material Handling Technician and Maintenance Coordinator work the day shift exclusively. The testimony about the shifts of the Facility Technicians showed that they, too, work either mostly or exclusively day shifts.

8. Whether the Petitioned-For Employees are separately supervised

The petitioned-for employees are separately supervised from other employees in the Fleet and Facility Maintenance Department. As explained above, Supervisor Drafts supervises the employees in the petitioned-for job classifications, Fleet Technicians and Maintenance Utility Worker Technicians. Facility Manager McCloud supervises the Material Handling Technicians, Facility Technicians, Sanitation Technicians, Maintenance Coordinators, and Senior Maintenance Technicians.

9. Conclusion: The Classifications Petitioner Seeks Share a Community of Interest, are a Readily Identifiable Group, and are Not a Fractured Unit

Based on the evidence presented at the hearing, I find that the petitioned-for employees share a community of interest under the Board’s traditional criteria. They are the only employees that Supervisor Drafts oversees. Their work has a shared purpose and is functionally integrated. The petitioned-for employees wear the same, distinct uniform and support the Employer’s drivers by maintaining, repairing, and washing the trailers and arranging the trailers so that they can be loaded and unloaded. In addition, the petitioned-for employees have more contact with one another than with other employees in the Fleet and Facility Maintenance Department. See *DTG Operations*, 357 NLRB 2122 (2011); *Northrop Grumman Shipbuilding*, 357 NLRB at 2018. The petitioned-for unit is also “readily identifiable as a group.” They are all in the same self-defined administrative unit<sup>10</sup> and that they share a unique function; namely, that they are the only employees to work with trailers. See *Macy’s Inc.*, 361 NLRB No. 4 (2014). Because the combination of employees in the petitioned-for unit has a rational basis, it is also not fractured. See *Odwalla Inc.*, 357 NLRB No. 132.

**B. The Employees the Employer Contends Must Be Added to the Unit Do Not Share an Overwhelming Community of Interest with the Employees in the Classifications Sought by Petitioner**

The employees the Employer seeks to add to the unit do not share an overwhelming community of interest warranting their inclusion with the employees sought by Petitioner. Facility Technicians, Material Handling Technicians, Maintenance Coordinators, and Sanitation Technicians work separately from the employees in the petitioned-for unit and

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<sup>10</sup> The petitioned-for employees consider themselves part of the fleet shop, whereas other employees in the Fleet and Facility Maintenance Department do not consider themselves to be part of the fleet shop.

perform distinct tasks with distinct qualifications and expectations, are separately supervised, and have infrequent and limited interchange with the classifications the Employer contends must be added.. Further, the degree of functional integration differs significantly between the two groups when compared to the functional integration of the unit of employees sought by Petitioner.<sup>11</sup>

I acknowledge that the employees the Employer contends must be included in the unit share the same benefits, are paid on an hourly basis, and interact with one another occasionally. While the Employer's contentions may establish that the broader unit sought by the Employer is an appropriate unit, they are insufficient to establish that the Maintenance Coordinators, Facility Technicians, Sanitation Engineers, and Material Handling Technicians share such an overwhelming community of interest as to *require* their inclusion in the unit.

#### **IV. Conclusions**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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<sup>11</sup> The Employer also argued that if the petitioned-for unit is accepted, there would be a residual unit of the one Maintenance Coordinator. However, the Employer's other Fleet and Facility Maintenance Department are not organized. In the event they seek representation, the Maintenance Coordinator could be appropriately included in that unit or units on the merits or to avoid a residual unit of one.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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

All full-time and regular part-time Fleet Technicians and Maintenance Utility Worker Technicians employed by Sysco Columbia, LLC at its facility located in Columbia, South Carolina, excluding Material Handling Technicians, Facility Technicians, Sanitation Technicians, Maintenance Coordinators, and Senior Maintenance Technicians, and all office clerical employees, professional employees, guards and supervisors as defined in the Act.

#### **V. Direction of Election**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union 509.

##### **A. Election Details**

The election will be held on Thursday April 27, 2017, from 12 noon to 1:00 p.m. and from 8:00 p.m. to 9:00 p.m. at the fleet shop break room.<sup>12</sup>

##### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending April 8, 2017, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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<sup>12</sup> The Petitioner has agreed to waive having the voter list, discussed below, for a full ten days in order to obtain an early election date. Both parties agree that having an election on a Thursday is desirable.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, April 25, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a

file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with these requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be

posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **VI. Right to Request Review**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015

Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: April 21, 2017



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Claude T. Harrell Jr., Regional Director  
Region 10, Subregion 11  
National Labor Relations Board  
4035 University Parkway, Suite 200  
Winston-Salem, NC 27106



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**PURPOSE OF ELECTION:** This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

**SECRET BALLOT:** The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

**ELIGIBILITY RULES:** Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

**SPECIAL ASSISTANCE:** Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

**PROCESS OF VOTING:** Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. **DO NOT SIGN YOUR BALLOT.** Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

**CHALLENGE OF VOTERS:** If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. **DO NOT SIGN YOUR BALLOT.** Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

**AUTHORIZED OBSERVERS:** Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.



# United States of America National Labor Relations Board NOTICE OF ELECTION



## VOTING UNIT

### EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time Fleet Technicians and Maintenance Utility Worker Technicians employed by Sysco Columbia, LLC at its facility located in Columbia, South Carolina, who were employed by the Employer during the payroll period ending April 8, 2017.

### EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All Material Handling Technicians, Facility Technicians, Sanitation Technicians, Maintenance Coordinators, and Senior Maintenance Technicians, and all office clerical employees, professional employees, guards and supervisors as defined in the Act.

## DATE, TIME AND PLACE OF ELECTION

Thursday, April 27, 2017	12 noon - 1 PM and 8 PM - 9 PM	Fleet Shop Break Room 131 Sysco Ct, Columbia, SC
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EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

ALL BALLOTS WILL BE MINGLED AND COUNTED IMMEDIATELY AFTER THE CONCLUSION OF THE LAST VOTING SESSION.

	<b>UNITED STATES OF AMERICA</b> <b>National Labor Relations Board</b> 10-RC-195759 <b>OFFICIAL SECRET BALLOT</b> For certain employees of <b>SYSCO COLUMBIA, LLC</b>	
Do you wish to be represented for purposes of collective bargaining by <b>TEAMSTERS LOCAL UNION 509?</b>		
MARK AN "X" IN THE SQUARE OF YOUR CHOICE		
<b>YES</b> <input type="checkbox"/>	<b>NO</b> <input type="checkbox"/>	
<b>DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.</b> If you spoil this ballot, return it to the Board Agent for a new one. The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.		



United States of America  
National Labor Relations Board  
**NOTICE OF ELECTION**



**RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

**It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.**

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

**The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:**

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

**The National Labor Relations Board protects your right to a free choice.**

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (336)631-5201 or visit the NLRB website [www.nlr.gov](http://www.nlr.gov) for assistance.

**Exhibit B**

UNITED STATES OF AMERICA  
 NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
10-CA-197588	04-26-2017

**INSTRUCTIONS:**

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

a. Name of Employer Sysco Columbia, LLC		b. Tel. No. (803) 239-4006
d. Address (street, city, state ZIP code) 131 Sysco Ct Columbia, SC 29209		c. Cell No. (803)479-9160
		f. Fax No. (803)239-4016
e. Employer Representative Mike Turner, Vice President Employer Representative		g. e-Mail Weldon.almetrice@sysco.com
		h. Dispute Location (City and State) Columbia, SC
i. Type of Establishment (factory, nursing home, hotel) Food Distribution - Fleet Shop	j. Principal Product or Service Distribution of food products	k. Number of workers at dispute location 9
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3), of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act; or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge: (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)		

Within the last (6) months prior to the date of this charge, the above-mentioned Employer, through its officers, agents and representatives, interfered with, restrained and coerced its employees in the exercise of their Section 7 rights and has discriminated with respect to hire, tenure and other conditions of employment because of his/her engaging in union and concerted protected activities and/or to discourage membership in a labor organization including but not limited to:

See Attachment A"

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

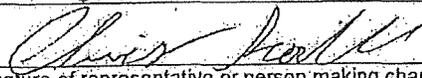
Teamsters Local Union 509	
4a. Address (street and number, city, state, and ZIP code) 2604 Fish Hatchery Rd West Columbia, SC 29172	4b. Tel. No. (803)796-6172
	4c. Cell No. (202)528-3775
	4d. Fax No. (803)796-7890
	4e. e-Mail rrwc82@comcast.net

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)**

**6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

Tel. No.  
(803)796-6172

By:   
(signature of representative or person making charge)

Chris Rosell, Int. Organizer  
Print Name and Title

Office, if any, Cell No.  
(202)528-3775

Address: 2604 Fish Hatchery Rd  
West Columbia, SC 29172

Date: 4/26/2017

Fax No.  
(803)796-7890

e-Mail  
crosell@teamster.org

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT.**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully

## Attachment "A"

In the last 6 months the above mentioned Employer, through its officers, agents and representatives have violated their employees Section 7 rights by;

1. Granting employees improved wages, benefits and/or improved terms and conditions of employment in an effort to discourage employees from supporting the union.
2. Interrogating employees about their union membership, activities, sympathies and protected concerted activities of other employees.
3. Threatening employees with a loss of wages, benefits and/or terms and conditions of employment in an effort to discourage employees from supporting the union.

**Exhibit C**

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**From:** Jenkins, Ingrid J. [<mailto:Ingrid.Jenkins@nlrb.gov>]  
**Sent:** Wednesday, April 26, 2017 5:27 PM  
**To:** Stublely, Mark  
**Cc:** Fowles, III, James H.; Fulton, Kelly I.; Fisher, H. Ellis  
**Subject:** Sysco Columbia, LLC, Cases 10-CA-197586 and 10-CA-197588

Everyone,

Attached are copies of the blocking charges.

Ingrid

**Exhibit D**

## Merrell, John

---

**From:** Jones, Jacqueline K. <Jacqueline.Jones@nlrb.gov>  
**Sent:** Wednesday, April 26, 2017 6:04 PM  
**To:** Stuble, Mark; Fowles, III, James H.; Merrell, John; crosell@teamster.org  
**Cc:** Jenkins, Ingrid J.; Combs, Terry D.; Harrell, Claude T.; Thompson, Scott C.; Shearin, Lisa R.; Lewis, Lauren  
**Subject:** BLT.10-RC-195759.Blocking Letter  
**Attachments:** BLT.10-RC-195759.Blocking Letter.pdf

Hello,

Please see the attached Blocking Letter.

Thank you.

Jackie Jones, Officer In Charge Secretary  
NLRB Sub-region 11  
4035 University Pkwy, Suite 200  
Winston-Salem, NC 27106  
336-582-7128 Ph.  
336-631-5210 Fax  
[jacqueline.jones@nlrb.gov](mailto:jacqueline.jones@nlrb.gov)



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11  
4035 University Pkwy Ste 200  
Winston Salem, NC 27106-3275

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (336)631-5201  
Fax: (336)631-5210

April 26, 2017

Mark M. Stublely, Attorney at Law  
Ogletree Deakins  
The Ogletree Building 300 North Main Street, Suite 500  
Greenville, SC 29601

Re: Sysco Columbia, LLC  
Case 10-RC-195759

Dear Mr. Stublely:

**This is to notify you that the petition in the above-captioned case will be held in abeyance pending the investigation of the unfair labor practice charges in Case 10-CA-197588. As a result, the election scheduled for April 27, 2017, has been cancelled. The Employer should post this letter wherever it posted the Notices of Election so that the employees are notified that the election is postponed indefinitely.**

***Right to Request Review:*** Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, unless filed electronically, with a copy filed with the regional director, and all copies must be served on all the other parties. The request must contain a complete statement setting forth facts and reasons upon which the request is based.

***Procedures for Filing Request for Review:*** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on May 10, 2017, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on May 10, 2017.

**Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically.** Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the regional director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy

has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Claude T. Harrell Jr.  
Regional Director

By: 

Scott C. Thompson  
Officer in Charge

cc: Office of the Executive Secretary (by e-mail)

Troy Barnes, President  
Sysco Columbia, LLC  
131 Sysco Ct  
Columbia, SC 29209-5143

Chris Rosell, International Organizer  
Teamsters Local Union 509  
2604 Fish Hatchery Rd  
West Columbia, SC 29172-2036

James H. Fowles, Attorney  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
2142 Boyce St., Ste 401  
Columbia, SC 29201-2675

John T. Merrell, Esq.  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
300 N. Main Street, Suite 500  
Greenville, SC 29601

**Exhibit E**

# Ogletree Deakins

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

*Attorneys at Law*

The Ogletree Building  
300 North Main Street, Suite 500  
Greenville, SC 29601  
Telephone: 864.271.1300  
Facsimile: 864.235.8806  
www.ogletree.com

Mark M. Stublely  
mark.stublely@ogletree.com

April 27, 2017

## **Via Electronic Filing and E-Mail**

Mr. Claude T. Harrell Jr.  
Regional Director  
National Labor Relations Board  
Region 10, Subregion 11  
4035 University Pkwy Ste 200  
Winston-Salem, NC 27106-3275

Re: Sysco Columbia, LLC  
Case 10-RC-195759

Dear Mr. Harrell:

This firm represents Sysco Columbia, LLC (“Sysco”) in the above-referenced matter (the “RC case”). We are in receipt of your April 26, 2017 letter holding the RC case in abeyance pending resolution of an unfair labor practice charge (Case No. 10-CA-197588) (the “Charge”) filed by the Union. Pursuant to §11730.7 of the Casehandling Manual (“CHM”), Sysco requests the reasons in writing for the Region’s decision to hold the election in the above-referenced matter in abeyance, so that Sysco may evaluate whether to file an Emergency Request for Review to the NLRB. Specifically, Sysco requests a copy of the offer of proof the Union was required to submit in order to block the election. To the extent the names of unit employees are shown in the offer of proof, Sysco proposes that those names be redacted by the Board.

We also request that the Region reconsider the nature of this charge and elect not to hold the election in abeyance. In the alternative, we request that the Region either (i) conduct the election and impound the ballots (as the Region has done in Sysco’s other pending representation case, Case 10-RC-194843) or (ii) complete the election, issue a tally, and determine the validity of the election if objections are filed. Both alternatives are available to the Region under the CHM, and either would be appropriate in light of the extremely limited amount of time the Region had available to assess the merits of the Charge prior to the election. See CHM §11731.6 (“When an election has already been scheduled and thereafter a Type I or Type II unfair labor practice charge is filed too late to permit adequate investigation before the scheduled election, the Regional Director may, in his/her discretion... (b) Hold the election as scheduled and impound the ballots until after disposition of the charge; or (c) Conduct the election, issue the

Mr. Claude T. Harrell Jr.  
April 27, 2017  
Page 2

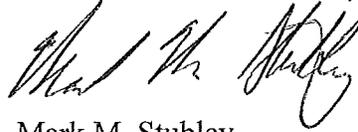
Ogletree  
Deakins

tally of ballots and, in the absence of objections, issue a certification; and then proceed to investigate the charge.”)

If you have any questions, please do not hesitate to call or email me.

Sincerely,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

A handwritten signature in black ink, appearing to read "Mark M. Stublely". The signature is written in a cursive style with a large, looping initial "M".

Mark M. Stublely

29637344.1

**Exhibit F**

## Merrell, John

---

**From:** Harrell, Claude T. <Claude.Harrell@nlrb.gov>  
**Sent:** Thursday, April 27, 2017 2:30 PM  
**To:** Merrell, John  
**Cc:** Jenkins, Ingrid J.; Thompson, Scott C.; Stublely, Mark; Combs, Terry D.; Henderson, Lisa Y.  
**Subject:** RE: Sysco Columbia, LLC - 10-RC-194843 [ODNSS-OGL.002870.000123]

Dear Mr. Merrill:

You letters in this case and in 10-CA-195759 were previously forwarded to me by the Winston-Salem office for consideration.

The blocking letters which were sent in the representation cases contained the written reasons for blocking the elections and/or ballot counts i.e. the referenced charges. Copies of the charges themselves have also been sent to you. The allegations in the charges provide additional information as to the nature of the allegations which led to the blocking of the election and/or ballot counts.

Based on the offers of proof submitted in the representation cases, which correspond to the allegations in the charges, I have concluded the Petitioner has submitted sufficient evidence to block the representation cases at this point. I further have concluded that the most efficient use of our resources would be to investigate and dispose of the alleged unfair labor practices prior to proceeding any further in the representation cases.

I cannot provide you with redacted copies of the offers of proof. I can state, however, the offers of proof contain assertions of alleged pay increases, threats and other allegations which, if substantiated during the unfair labor practice investigations, would preclude the holding of free and fair elections.

At an appropriate time in the investigation of the charges, a letter will be sent asking for the Employer's responses to the allegations in the charges.

You may, of course, appeal my determination to block the elections and/or ballot counts as set forth in the blocking letters.

Very truly yours,

Claude T Harrell, Jr.  
Regional Director

**From:** Merrell, John [<mailto:John.Merrell@ogletree.com>]  
**Sent:** Thursday, April 27, 2017 2:07 PM  
**To:** Harrell, Claude T. <Claude.Harrell@nlrb.gov>  
**Cc:** Jenkins, Ingrid J. <[Ingrid.Jenkins@nlrb.gov](mailto:Ingrid.Jenkins@nlrb.gov)>; Thompson, Scott C. <[Scott.Thompson@nlrb.gov](mailto:Scott.Thompson@nlrb.gov)>; Stublely, Mark <[Mark.Stublely@ogletreedeakins.com](mailto:Mark.Stublely@ogletreedeakins.com)>  
**Subject:** Sysco Columbia, LLC - 10-RC-194843 [ODNSS-OGL.002870.000123]

Dear Mr. Harrell,

Please see the attached letter regarding the Region's decision to hold the election in Case 10-RC-194843 in abeyance.

**John T. Merrell | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

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