

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CRISTAL USA, INC.

and

Case No. 08-CA-200737

INTERNATIONAL CHEMICAL WORKERS
UNION COUNCIL OF THE UNITED FOOD
AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC,

**ICWUC'S RESPONSE IN OPPOSITION TO CRISTAL USA, INC.'S
MEMORANDUM IN OPPOSITION TO THE GENERAL COUNSEL'S MOTION
FOR SUMMARY JUDGMENT IN THE WAREHOUSE CASE**

Now comes the Charging Party, the International Chemical Workers Union Council (Union), by through the undersigned counsel, and hereby joins in and incorporates by reference the Counsel for General Counsel's motion for summary judgment and supporting memorandum in the above-captioned matter and responds to the opposition of Respondent, Cristal USA, Inc. (Cristal) to said motion for the reasons stated below. Additionally, the Union relies on and incorporates by reference its briefs filed in the related representation case, Case 08-RC-188482, as well as other Cristal case-related filings cited herein, most of which can be found on the Board's internet docket. The Union requests that the Board take administrative notice of these records.

I. INTRODUCTION

In Cristal USA, Inc., 365 NLRB No. 74, Case 08-RC-188482 (2017), the Board denied Cristal's request for review of the Regional Director's Decision and Direction of Election, wherein the Regional Director found that the petitioned-for warehouse unit was an appropriate unit. Subsequently, the Board denied Cristal's motion for reconsideration of that decision.

Thereafter, the Union made a demand to bargain, as well as served a series of information requests on Cristal, regarding the warehouse unit. As is often true in a "test of certification" case, as this one, Cristal refused to bargain or provide the requested information. Cristal alleged that, since only a wall-to-wall unit of Plant 2 North, Plant 2 South, maintenance, and warehouse employees was appropriate, the Union was not lawfully certified as the exclusive representative for a unit of warehouse employees only. Thereafter, the Union filed an unfair labor practice charge, Region 8 of the Board issued a Complaint, and Crystal filed an answer in which it admitted to most of the allegations, other than the appropriateness of the unit and its obligation to provide the requested information.^{1/}

Region 8 then filed the pending summary judgment motion. While the Union supports and incorporates herein by reference the Counsel for General Counsel's motion and memorandum, it wishes to expand on that memorandum, as well as seek a broader remedy.

II. ARGUMENT

A. There is no basis for the Board to permit Cristal to re-litigate the unit determination in this unfair labor practice proceeding.

Cristal does not deny that it has refused to recognize and bargain with the certified Union. Instead, Cristal argues that the Regional Director and the Board unlawfully certified an inappropriate unit for bargaining, when it certified the unit of warehouse employees, and, therefore, it had no duty to bargain, or corresponding duty to provide the requested information. Cristal seeks to re-litigate the representation issues, including the unit determination issue, in this

^{1/}While Cristal raised a number of defenses in its Answer, it has only advanced some of those in its Memorandum opposing the summary judgment motion. Consequently, Cristal should either be deemed to have abandoned those defenses, or inadequately supported them.

unfair labor practice proceeding.^{2/} It should not be permitted to do so based on long-standing Board precedent.

Cristal has failed to substantiate any basis for the Board to depart from its long-established policy of normally not permitting re-litigation in a "CA" case those matters that were, or could have been, litigated in the underlying "RC" case:

"All representation issues raised by the Respondent were or could have been litigated in the prior representation proceedings. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decisions made in the representation proceedings. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment."

Pace University, 349 NLRB 68 (2007).

Cristal seeks to avoid the non-re-litigation doctrine (1) based on its claim that the Board's refusal to grant its belated consolidation request deprived the Board of all necessary evidence to decide *this* case's related "RC" case, *even though the transcript and exhibits of the hearing in Case 08-RC-184947 (Plant production unit) were admitted as a joint exhibit at the hearing of the related "RC" warehouse case, Case 08-RC-188482*; and (2) based on allegedly newly-discovered evidence, *evidence that actually was adduced at the underlying "RC" warehouse-unit hearing related to this case*. Cristal claims such evidence raises a genuine issue of fact and the existence

^{2/}There is some question as to whether Cristal even preserved any right to challenge, in whole or in part, the analytical framework utilized by the Regional Director in the addressing the unit issue. The Union submits that it did not. Cristal's Statement of Position in response to the "RC" Petition did not adequately preserve that issue. See, "Union's Response and Opposition to Cristal USA, Inc.'s Request for Review of the Regional Director's Decision and Direction of Election" in Case 08-RC-188482 at pp. 2-3.

of special circumstances to justify re-litigation of the representation issues. The Union strongly disagrees. Neither exception applies here.

Cristal acknowledges that, in the warehouse "RC" case, it unsuccessfully sought to have the Board consolidate Cristal USA, Inc., Case 08-RC-184947 (Plant production unit) with Cristal USA, Inc., Case 08-RC-188482 (warehouse unit). Cristal claims that this Board did not assess all of the facts relevant to the appropriateness of the petitioned-for warehouse unit in that case, because it did not consolidate the "RC" cases, and because it did not consider the testimony of Union Organizer Lance Heasley in the Plant production employee-unit hearing. Cristal misconstrues the facts.

Cristal had *all* of the evidence that it now claims the Board should have considered in the warehouse "RC" case related to this case. The warehouse "RC" hearing was held after the Plant production-unit hearing. This allowed the transcript and exhibits from the Plant production-unit "RC" hearing to be submitted as a joint exhibit at the warehouse "RC" hearing. Warehouse DDE, p. 2. The Board, then, had *all* relevant evidence, including Heasley's testimony, when it issued the warehouse-unit "RC" decision, *before* it issued the Plant production-unit "RC" decision.

Cristal is grasping at straws. There is no legitimate claim, *here*, in *this* case, that the Board was deprived of *any* evidence before denying Cristal's request for review in the warehouse "RC" proceedings. Thus, Cristal's efforts, here, to consolidate this, or its related "RC" case, with the Plant production employee "RC" and "CA" cases is without merit substantively. Those efforts also are without merit procedurally.

In the "Petitioning Union's Response and Opposition to Cristal USA, Inc.'s Motion for Reconsideration of the Board's Order or, in the Alternative, to Consolidate Cases" at p. 2 in Case No. 08-RC-188482 (warehouse unit), the Union established that Cristal's then-effort to consolidate

the "RC" cases was belated and not supported by the rules. The Union incorporates those arguments herein by reference. Cristal did not timely raise the consolidation issues in the "RC" case and, therefore, should not be rewarded, here, in this unfair labor practice proceeding by, effectively, allowing such consolidation and re-litigation of the representation issues.

Similarly, Cristal had more than sufficient time to request that the Region consolidate the "CA" cases, but failed to present such a request to the Regional Director, as required by Board Rule 102.33, before the summary judgment motion was filed. The complaint in this case was issued on June 29, 2017, while the summary judgment motion was not filed until September 22, 2017, nearly three months later.

Moreover, Cristal sheds false tears with its cries of "newly-discovered" evidence. This so-called evidence was *not* newly-discovered and it involves only the hypothetical, ambiguous, settlement-related testimony of Union Organizer Lance Heasley at the warehouse-unit "RC" hearing related to *this* very case. While Heasley did not testify at the Production plant-unit "RC" hearing, the transcript in Case 08-RC-184947 (Plant production unit) establishes that Heasley was present throughout that entire representation hearing. Just as Cristal called him as its own witness in the later warehouse representation hearing in Case 08-RC-188482, it could have called him in the Plant 2 North representation proceeding. It did not.

Furthermore, in the Case 08-RC-188482 (warehouse unit) hearing, the entire record, including the transcript, from Case 08-RC-184947 was made a part of the warehouse hearing record. Cristal raised the same arguments in the warehouse case, that a wall-to-wall unit of Plant 2 North, Plant 2 South, and warehouse employees was the only appropriate unit, as it previously

had made in the Plant 2 North production case, plus it raised Heasley's testimony!^{3/} Thus, the Board, which issued its denial of a request for review in the warehouse unit "RC" case *before* it issued its denial of Cristal's request for review in the Plant 2 North unit "RC" case, clearly understood -- but rejected -- *all* of the bases for Cristal's wall-to-wall arguments.

Cristal misrepresents and exaggerates Heasley's irrelevant and ambiguous testimony, testimony that never should have been admitted, or considered, since it involved settlement discussions and was belatedly raised before the Board, as more fully shown in the "Petitioning Union's Response and Opposition to Cristal USA, Inc.'s Motion for Reconsideration of the Board's Order or, in the Alternative, to Consolidate Cases" in Case 08-RC-188482 (warehouse unit) at p. 7.^{4/} Indeed, Cristal did not even rely on Heasley's testimony, when it filed its request for review

^{3/}In "Cristal USA, Inc.'s Motion for Reconsideration of the Board's Order or, in the Alternative, to Consolidate Cases" in Case 08-RC-184947 (Plant production unit) at pp. 12-14, Cristal extensively quoted from Heasley's testimony in the warehouse RC hearing and made the same arguments about that testimony, as it raised in the warehouse "RC" case. In opposing that reconsideration motion, the Union addressed Heasley's testimony. Thus, Heasley's testimony *was litigated* in the Plant production unit "RC" case. Obviously, the Board also was aware of Heasley's testimony, when it dismissed Cristal's motion for reconsideration of its denial of the request for review in *this* case's related "RC" case.

The Union submits that, if Heasley's testimony was not sufficient for the Board to reconsider its denial of the request for review in *this* case's related "RC" case, then, it is not sufficient, now, to effectively be the basis to re-open the representation matters and allow them to be re-litigated in this unfair labor practice proceeding.

The Board's denial of Cristal's request for review in the Plant production unit "RC" case (May 18, 2017) was *after* its denial of Cristal's request for review in the warehouse unit case (May 10, 2017) and the Board's denial of Cristal's motions for reconsideration in both "RC" cases occurred on the same day, June 27, 2017. Thus, even before Cristal raised Heasley's testimony in its reconsideration motion in the Plant production-unit case, the Board was aware of -- and apparently found unconvincing -- Cristal's similar arguments about his testimony, when it issued its warehouse unit decision on May 10, 2017.

^{4/}Heasley, a non-attorney organizer, was the Union's only representative handling the warehouse hearing. When called by Cristal as Cristal's own witness, the Union then had no representative, attorney or otherwise, present to object to introduction of settlement discussions, which surely would, and should, have been excluded under normal evidence rules. *See*, Federal Rules of

in the warehouse case, first raising it belatedly, but improperly, under Board Rule 102.65(e)(1), in its subsequent reconsideration motion in that case. His testimony was not newly-discovered, but developed in the very "RC" case at issue.^{5/}

Nevertheless, Heasley's specific testimony, at best, on which Cristal heavily relies, is of little, or no, relevance. The answer on which Cristal heavily relies was in response to a hypothetical question, an answer that, in most cases, is a truism and proves little, if anything, regarding this case. Heasley merely acknowledged in the abstract that it would probably be simpler to have one bargaining unit, rather than two. Few can argue that, in many cases, that may well be true. But simplicity is not the test, under either the current unit-determination analytical framework, or the prior traditional description of the appropriate-unit standard test.^{6/}

Evidence, Rule 408. Cristal's attorney presumably knew this and took advantage of Heasley's non-attorney/witness status to adduce the settlement-discussions evidence.

^{5/}Heasley testimony is not even newly-discovered regarding the earlier Plant Production "RC" hearing, since Heasley's discussions *with Cristal* about which he testified occurred *prior to* the filing of the "RC" petitions in Cases 08-RC-184947 and 08-RC-188482, so Cristal was aware of those discussions as of the date of the "RC" hearing in the Plant production unit case and could have attempted to elicit his testimony then, since Heasley was present throughout that hearing. Despite being aware of the conversation, Cristal still failed to call Heasley as a witness at the Plant production-unit "RC" hearing.

^{6/}The Union points out that, unlike an employer, who does, or should, have full knowledge of its operations and the interrelationship between its various employee groups, unions that seek to organize employees often must rely on incomplete information, at least initially, directly from employees regarding the employer's organizational structure, etc. It may well be that, once an employer has filed its position statement, or a hearing starts, the union becomes more familiar with the structure and what may, or may not, constitute an appropriate or workable unit, or units, for the employees' purposes.

What seems to often escape employers' attention is that a union is an organization of employees, by employees, and for employees. Employees' associational rights include who they want, or do not want, in their association. The First Amendment of the U.S. Constitution recognizes this right to choose who one wants in their association. Recently, the Supreme Court held,

What Cristal is attempting to do through its arguments opposing the summary judgment motion, as well as in its similar arguments supporting its motion to consolidate this case with Cristal USA, Inc., Case 08-CA-200330, is to correct the errors that it made, when it failed to adequately support its request for review in Cristal USA, Inc., Case 08-CA-184947. When Cristal filed its request for review in the Plant 2 North "RC" case, it failed to follow the Board's requirement that its filing be a "self-contained" document pursuant to Board Rule 102.67(e). As described more fully in the "Union's Response to Cristal USA, Inc.'s Request for Review of

"The forced inclusion of an unwanted person in a group infringes the group's freedom of expressive association if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints. New York State Club Assn., Inc. v. City of New York, 487 U.S. 1, 13, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988). But the freedom of expressive association, like many freedoms, is not absolute. We have held that the freedom could be overridden 'by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.' Roberts, *supra*, at 623, 104 S.Ct. 3244."

Boy Scouts of America v. Dale, 530 U.S. 640, 648 (2000). Cristal has shown no compelling state interest to deny the employees' associational rights here. Those rights extend to union organizations:

"A government entity may not burden the expressive association of a union or its members by 'prohibit[ing] its employees from joining together in a union, or from persuading others to do so, or from advocating any particular ideas.' Ark. State Highway Emps., 441 U.S. at 465, 99 S.Ct. 1826."

Hamilton County Educ. Ass'n v. Hamilton County Bd. of Educ., 822 F.3d 831, 840 (6th Cir. 2016).

While the First Amendment may not require an employer to deal with a union – the NLRA may do, and often does, that -- it certainly may be implicated, when an employer attempts to influence who may, and who may not, be included within that association. Boy Scouts, *supra*. Thus, Section 9(a) of the NLRA must be interpreted and applied with the employees' First Amendment associational rights in mind. Unions are employee organizations, not employer organizations. Their interests, even if not controlling, should predominate over an employer's interest in defining the membership of that unit.

Regional Director's Decision and Direction of Election" in Case 08-RC-184947 (Plant production unit), at pp. 1, 3, the Union established that Cristal's factual assertions frequently were not supported by the "self-contained" document. That, alone, should have been fatal to Cristal's request for review in that "RC" case.

Cristal has attempted to correct its error by seeking to consolidate the Plant production-unit RC case with the warehouse-unit "RC" case, in which it did develop a more extensive record. But consolidation is not for the purpose of allowing a party to correct its prior procedural, or evidentiary, errors; supplement a record, that it failed to fully develop; or provide the Board with its request for review evidence from another proceeding, that could have been, but was not, developed in the Plant production-unit "RC" case. Consolidation should not be used for those purposes.

Here, in this "test of certification" "CA" case, Cristal seeks to do indirectly what it failed to achieve directly: Consolidate the warehouse and Plant production employee records, so that a combined "RC" record will be before a court in the Plant production employee "RC" matter, thereby effectively correcting its procedural errors in the "RC" Plant production employee case. Since *all* of the evidence in the "RC" warehouse case related to this "CA" case was before the Board, including the Plant production-unit "RC" record, in the warehouse "RC" case, there simply is no basis, or "special circumstances" to justify re-litigation of the warehouse-unit issue *in this case* and, certainly, not in order to help Cristal correct its errors in another "RC" case. Regardless of whether the record in the Plant production "RC" case was adequate, this "RC" warehouse case record was extensive.

Consequently, the Board should follow its long-standing principle and refuse to allow Cristal to re-litigate the warehouse-unit issue in this unfair labor practice proceeding. Having

admitted that it has refused to recognize and bargain with the certified exclusive bargaining representative for this unit, summary judgment should be granted on at least this allegation in favor of the Counsel for General Counsel and the Union.^{2/}

B. Cristal has failed to adequately put into issue with any specificity, or evidence, its defenses to failing to produce the Union's requested information.

Cristal offers only conclusory bases for its refusal to provide information, other than it had no duty to bargain at all. Cristal apparently acknowledges that at least some of the information requests involve presumptively relevant information. However, Cristal never specifies which information requests it is alleging are not presumptively relevant, nor does it identify those it believes deal with employees outside the unit. Similarly, Cristal does not identify the requests it asserts are overly-broad, or burdensome, as is its responsibility to *timely* do. U.S. Postal Service, 364 NLRB No. 27, slip op., p.2 (2016). Since Cristal does not contend that it timely raised with the Union, or timely substantiated, its overly-broad, or unduly-burdensome, defenses, they should be deemed to have been waived. *Id.*; Conditioned Air Systems, Inc., 360 NLRB 789 (2014). In summary judgment proceedings in court, such failures by the non-moving party to adequately support its opposition to a summary judgment motion would -- and should -- result in denial of such defenses. *See, e.g., Guarino v. Brookfield Tp. Trustees*, 980 F.2d 399, 405 (6th Cir. 1992). The Board likewise should reject the inadequately-supported and untimely defenses here.

^{2/}While the warehouse unit issue is not properly before the Board for re-litigation, the Union notes that the supervision of the warehouse employees involves a completely different chain-of-command from the supervisory chain for production and maintenance employees, with even disciplinary decisions having a different chain-of-authority up to the corporate level. Warehouse employees have different training and require less skills than for production and maintenance employees and their wage scale correspondingly differs. "Union's Response and Opposition to Cristal USA, Inc.'s Request for Review of the Regional Director's Decision and Direction of Election" in Case 08-RC-188482 (warehouse unit).

A review of the Union's information requests (GC Exhibit 10) clearly reflects that these requests involved presumptively relevant information.^{8/} Since Cristal has not specifically challenged any particular information request as not being presumptively relevant, or as purportedly involving non-unit employees, nor did Cristal timely raise these vague objections with the Union, those defenses have been waived.^{9/} Postal Service, *supra*; Conditioned Air, *supra*.

^{8/}While the information requests, in some cases specifically referred to "unit" employees, the Union, hereby, states that, to the extent a particular request may not specifically include the adjective, "unit," all of its requests were intended to obtain wages, hours, and other conditions of employment for only the "unit" employees at issue. To the extent Cristal failed to meet its burden to seek clarification as to whether certain information requests sought information beyond unit employees, it waived that defense. NECA, Birmingham Chapter, 313 NLRB 770 (1994).

The only requests that the Union believes may involve unit employees, who are no longer unit employees, is Request 6(E), which requests a "List of persons retired since on or after December 1, 2016, date of hire, date of retirement, amount of benefit and options chosen [regarding any particular pension-retirement options]." (GC Exhibit 10 at p. 4)(bracketed material added). Since the Union was certified as of December 1, 2016, it was appropriate for it to seek information as to how the employer had handled bargaining-unit employees' retirements, if any, since on or after the date of certification to see if different approaches for current unit employees, who may retire in the future, may be appropriate.

The only other category of information requests that arguably might be at issue involve news accounts that "Cristal may be involved in a transaction with Tronox of some nature, which [the Union] will refer to throughout this letter as a sale, [sic] though the use of that term should be interpreted broadly to include any type of transaction that is being contemplated between and/or among Cristal, Tronox, and/or their related interests." (GC Exhibit 10, DeLoach letter dated March 4, 2017, at p. 1)(bracketed material and "sic" added). Clearly, the Union's information requests related to a possible sale of the facility regarding the bargaining-unit employees (GC Exhibit 10 at p. 6) deal with the bargaining-unit employee's conditions of employment. Nevertheless, by failing to timely raise any objection to these requests about a possible sale, Cristal waived its defenses. *Id.*

^{9/}Cristal asserts, without any evidence other than the information requests themselves, that they are overly-broad and unduly burdensome. However, in this world of computers and digitally-stored information, it is likely that an employer the size of Cristal has much, if not almost all, of the requested information electronically stored and, thus, more easily producible. Moreover, in assessing the Union's information requests, it is relevant that the requests were in part to prepare

Indeed, in its Answer to Paragraph 7(E) of the Complaint, it appears that Cristal's only real objection and basis for its failure to provide the information to the Union was because of its view that the unit was inappropriate and, thus, the Union was invalidly certified, so that it had no obligation at all to provide the requested information.

Summary judgment on the requested-information allegation should be granted. Alternatively, if the Board should find that summary judgment is appropriate on the general failure to recognize and bargain with a certified unit allegation, finds that certain, or most, of the information requests involve presumptively-relevant information, but believes there are disputes of fact regarding certain information requests and such defenses have not been waived, the Board should not delay resolution of the general duty to bargain allegation and, thereby, continue to deny the unit employees of their general bargaining rights under the Act. The Board has long held that "there are strong policy considerations favoring prompt completion of representation proceedings." Versail Mfg., Inc., 212 NLRB 592, 593 (1974), *cited favorably in*, Premier Utility Services, LLC, 363 NLRB No. 159 n. 1 (2016).

As such, the Board should not deny the unit employees their statutory right to a certified bargaining agent any longer and, only if and to the extent necessary, sever and bifurcate the matter, enter summary judgment on behalf of the Counsel for the General Counsel and Union regarding Cristal's failure to recognize and generally bargain with a certified unit, grant summary judgment

for first contract negotiations, so the Union would need, presumably, much more information in a newly-organized unit, than it might need for a long-standing unit.

Nevertheless, Cristal has not met its burden to put into factual dispute any of these defenses to providing the information, nor timely raised these defenses. U.S. Postal Service, *supra*.

on behalf of the General Counsel regarding those information requests that address presumptively relevant information, and sever and remand only those information requests, if any, with which the Board has concerns. Picini Flooring and Freemans Carpet Service, Inc., 355 NLRB 606, 612n.23 (2010).

For similar reasons, the Board should not further delay resolution of this case. It should deny Cristal's request that it hold in abeyance this case pending the issuance of any decision in any other *Specialty Healthcare* case, as it requested in note 2 of Cristal's Brief. Justice delayed is justice denied. If the Board is going to address in other cases employers' challenges to *Specialty Health care*, it is unlikely that any such decision will, or should, be applied retroactively in this case. *See, Blackman-Uhler Chemical Division-Synalloy Corp.*, 239 NLRB 637 (1978). Since the representation issues here already have been resolved, should not be re-litigated, and all essentially facts have been established, summary judgment in this "test of certification" matter should be promptly granted.

Additionally, if this matter proceeds to court, as Cristal has threatened to do, Cristal may have its opportunity then to raise the unit issues, though the Union will show that Cristal either waived its right to raise the *Specialty Healthcare* issues, and/or that the Board's warehouse-unit decision is sustainable under either current, or prior, Board unit-determination law. In any event, resolution of this matter before the Board should not be delayed.

C. The Board should insulate the Union from challenges to its status for more than the certification year.

Counsel for General Counsel requests that the initial certification year be deemed to start on the date Cristal begins to bargain in good faith with the Union. The Union recognizes that this is current Board law. However, the Union submits that such an effective certification-year

extension does not sufficiently remedy Cristal's violation, particularly if its failure to recognize and bargain with the Union since December 1, 2016, the date of certification, continues beyond a year, which is likely, if Cristal intends to pursue this matter through the courts, as it has threatened to do with the employees. The bargaining-unit employees will be denied their statutory bargaining rights for more than a year, while the Union's support among the employees may likely be eroded, or adversely impacted, due to delay, delay caused by Cristal's unlawful activity.

The Union, then, should be given more than the 1-year insulation period from challenge to its exclusive bargaining agent status, regardless of when the date of that certification year is triggered, to re-build and strengthen its support. Thus, if it is two (2) years after December 1, 2016, until Cristal ceases its unlawful actions, the Union should have an insulation period of two (2) years from the date this unlawful activity ceases and Cristal commences to recognize and bargain in good faith with the Union.

III. CONCLUSION

For the reasons stated above, summary judgment should be granted, in whole or in part, in favor of the Counsel for the General Counsel and Union. Additionally, since the Union is permitted to request remedies other than and/or beyond those requested by Counsel for the General Counsel, the Union requests that the Board grant, in addition to its traditional remedies in such cases, an insulation term longer than a calendar year, if Cristal's unlawful activity continues longer than a year, *i.e.*, for a period of the same amount of time from the date of certification, December 1, 2016, until Cristal commences to recognize and bargain with the Union in good faith.

Alternatively, as requested above, summary judgment should be granted on the information requests in favor of Counsel for the General Counsel and Union, with only those information requests that may remain at issue severed and remanded for further proceedings.

Dated: October 17, 2017
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2017, a copy of the foregoing was electronically filed using the Board's electronic filing system and served thereby on:

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