

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

**BODEGA LATINA CORPORATION
d/b/a EL SUPER**

Case 21-CA-183276

and

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 324**

**BODEGA LATINA'S
ANSWERING BRIEF TO THE UNION'S EXCEPTIONS**

STEPTOE & JOHNSON LLP
201 East Washington Street, Suite 1600
Phoenix, AZ 85004-2382
Telephone: (602) 257-5200
Facsimile: (602) 257-5299
Steven D. Wheelless
Erin Norris Bass
Email: swheelless@steptoe.com
ebass@steptoe.com

Attorneys for Bodega Latina

The Union raises only two exceptions to the ALJ's decision. The first exception relates to a minor factual error in the ALJ's decision. Bodega Latina agrees with the Union that the ALJ mistakenly referred to the collective bargaining agreement as "ratified." [Union Exceptions at 1.] Bodega Latina also agrees that the fact "is ultimately immaterial" to the ALJ's conclusions in the case. [*Id.*] However, Bodega Latina notes that error as yet another example of the ALJ's numerous factual inaccuracies with the record in this case.

The Union's second exception relates to the ALJ not awarding three months' interest on \$298.41 that Bodega Latina paid Beltran in vacation pay in June 2016. [*Id.* at 1-2.] The parties all agree that Bodega Latina paid Beltran any purportedly owed vacation pay in June 2016. [*See* Jt. Ex. 4.] The CGC expressly sought no monetary award whatsoever in this case. [GC Ex. 1(m) at exhibit B ("I've now verified that the Employer did cash out the employee last summer. Thus, it is our position that no money is owed to this employee.")] The CGC controls the theories of the case, and the Union cannot override the CGC's decisions. *See, e.g., Fineberg Packing Co., Inc.*, 349 NLRB 294, 296 (2007) ("It is well established that the General Counsel serves as the master of the complaint and controls the theory of the case.").

Moreover, the Union does not cite a single case to support the proposition that the Board can award interest in the absence of a back pay award. Bodega Latina knows of none. The only two cases the Union cites involved back pay awards. And in those cases, the Board expressly notes that the Board "order[s] interest to be paid *on backpay awards*"—and there is no back pay award here. *See Jackson Hospital Corp.*, 356 NLRB 6, 6 (2010) (emphasis added). The Act does not give the Board authority to award interest in the absence of a back pay award, and the Board should reject the Union's exception.

DATED this 4th day of April, 2018.

STEPTOE & JOHNSON LLP

By /s/ Erin Norris Bass _____
Steven D. Wheelless
Erin Norris Bass
201 East Washington Street, Suite 1600
Phoenix, AZ 85004-2382

Attorneys for Bodega Latina

CERTIFICATE OF SERVICE

The undersigned certifies that I filed an electronic copy of the foregoing via the Board's electronic filing service on April 4, 2018, to:

Gary Shinnars
Executive Secretary
National Labor Relations Board
1099 14th Street N.W.
Washington D.C. 20570

The undersigned certifies that I served a copy of the foregoing via email on April 4, 2018, to:

William B. Cowen, Regional Director
National Labor Relations Board, Region 21
William.Cowen@nrb.gov

Elvira Pereda, Counsel for the General Counsel
National Labor Relations Board, Region 21
Elvira.Pereda@nrb.gov

Travis S. West, Counsel for Charging Party
United Food and Commercial Workers Union, Local 324
Gilbert & Sackman, A Law Corporation
twest@gsllaw.org

/s/ Paulette Mattar _____