

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

WALT DISNEY PARKS AND RESORTS U.S.  
d/b/a WALT DISNEY WORLD CO.,

Case 12-UC-203052

Employer,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 385,

Petitioner.

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**TEAMSTERS LOCAL 385'S RESPONSE IN OPPOSITION TO  
EMPLOYER'S RENEWED MOTION TO STAY**

Teamsters Local 385, Petitioner in the underlying UC proceeding, opposes the Renewed Motion to Stay filed August 2, 2018 by the Employer, Walt Disney Parks & Resorts U.S. for the reasons expressed by Local 385 in opposition to the Employer's initial motion to stay which was denied by the Board, for the reasons accepted by the Board in denying the initial motion to stay, and for the reasons below. Permitting the pending ULP proceeding to go forward during the pendency of the Employer's Request for Review expedites final resolution of the issues within the contemplation of the Election Rules and the Rules and Regulations, avoids unnecessary subsequent delay, and levels the playing field by preserving the opportunities of both parties to seek judicial review.

An employer who wishes to challenge a Regional Director's Decision in a Section 9(c) case which results in a bargaining duty has two separate opportunities to do so. It may file a Request For Review (as the Employer has done), *plus* it may engage in a "technical" Refusal to Bargain and challenge the Decision via a "test cert" ULP proceeding culminating in judicial review if it is unhappy with the result. Going through both procedures in serial fashion rather

than simultaneously only causes undue delay in reaching finality, which is exactly what the Employer asks the Board to permit and what the election rules seek to avoid.

Conversely, there is no mechanism available to a Union to challenge whatever decisions are made by a Board majority in addressing the Employer's Request for Review (subject *only* to the rarely-granted *Leedom v. Kyne* exception), *unless* a ULP proceeding is pending when those decisions are made, and the result of the ULP is affected by those decisions. It is fundamentally unfair to grant the Employer both bites at the apple and at the same time delay finality, while denying one bite to the Union (because a ULP Complaint, which a stay would prevent, has not yet been issued, defended against, and/or decided) and prolonging the proceedings. The Employer's Renewed Motion asks the Board, in effect, to pre-judge the issues presented by its Request for Review in its favor and to prevent a ULP proceeding based on that pre-judgment. The Board should decline the invitation and should decide the issues as, and when, it sees fit in the normal course.

No Board Rule prohibits Local 385 from filing its ULP while a Request for Review is pending. To the contrary, the Rules contemplate that such may occur, by providing that the pendency of a Request for Review does not operate as a stay, and by further providing that a stay is warranted *only* under "extraordinary" circumstances. There is therefore no good reason why the case cannot or should not proceed simultaneously on both tracks; and there is every good reason why it should. The Employer's plea that it is on the horns of an assertedly-unsolvable urgent dilemma is simply false, because its *only* stated reason for seeking a stay is to preserve its right to judicial review at the end of the ULP process. It has already announced that it will refuse to bargain if it is unhappy with the result of its Request for Review, so in that event bargaining

won't happen even if a stay is granted; and the asserted "irreparable harm" resulting from interim bargaining is therefore a mere chimera and a "straw man".<sup>1</sup>

Assuming the Board were to deny the Petition for Review (as it should) and/or resolve the issues in favor of the Regional Director's Decision after granting Review, then the inevitable subsequent delay in proceeding with the "test cert" ULP (with resulting harm to the employees) would be averted and eliminated by denying the requested stay. Even if the Board has not yet disposed of the Petition for Review by the time the ULP proceeding reaches the Board on Exceptions to a ALJD, those proceedings may be combined for decision and thereby preserve both parties' opportunities for judicial review while avoiding unnecessary subsequent delay in reaching the judicial level. Finally, if on Review the Board were to reach a result contrary to the Regional Director's Decision and an ALJ's disposition of the ULP were affected thereby, those issues could be advanced to judicial review by Local 385 in an expeditious fashion.

In sum, granting the Employer's Renewed Motion to Stay would only cause undue delay in arriving at finality via judicial review, and would unfairly prejudice Local 385 by denying it any opportunity to seek judicial review. Conversely, denial of the motion would result in elimination of unnecessary delay, and will result in no prejudice to the Employer or to the subject employees because the Employer has announced its intent to seek judicial review and therefore will not engage in interim bargaining. The Employer's Renewed Motion To Stay should accordingly be denied.

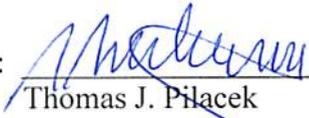
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<sup>1</sup> The "proof of the pudding" is that Local 385 offered to waive any right to claim that the Request for Review would be mooted if the Employer agreed to bargain while the Request remained pending (see emails attached to the Renewed Motion). The Employer's refusal to agree is "proof positive" that it will not bargain and will proceed with the "test cert" ULP if it does not like the result of the Request.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the Original of this Motion was filed electronically with the National Labor Relations Board, Washington DC e-filing system and that a true and correct copy was sent via e-mail to David Cohen, Regional Director of the National Labor Board, Region 12 davidcohen@nlrb.gov; Andrew S. Hament, Esquire ahament@fordharrison.com; Aaron Zandy, Esquire azandy@fordharrison.com, and Bret C. Yaw, Esquire byaw@fordharrison.com, FORD & HARRISON LLP, 300 S. Orange Avenue, Suite 1300, Orlando, FL 32801 this 8th day of August, 2018.

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