UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC,	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS,	)	
	)	
Union.	)	

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS'S MOTION TO ACCEPT ITS UNTIMELY STATEMENT IN OPPOSITION TO PETIONER'S REQUEST FOR REVIEW AND PINNACLE FOODS GROUP LLC'S REQUEST FOR REVIEW

NOW COMES Local 881 United Food and Commercial Workers ("Local 881" or "Union"), by its attorneys, and pursuant to § 102.2(d) of the National Labor Relations Board's Rules and Regulations, as amended, hereby submits its Motion to Accept its Untimely Statement in Opposition to the Petitioner, Robert Gentry's ("Petitioner" or "Gentry") Request for Review and Pinnacle Foods Group LLC's ("Pinnacle" or "Employer") Request for Review and Supplemental Memorandum in Support of its Request for Review; and states as follows:

PROCEDURAL BACKGROUND

On August 31, 2018, the Petitioner filed the petition in the above captioned matter. On September 7, 2018, the Union filed a charge in Case No. 14-CA-226922. In addition to other unfair labor practices, the charge alleged:

> "In the last six (6) months, the Employer has bargained in bad faith in negotiations for a first collective bargaining agreement."

(U. Ex. 1). Thereafter, on September 7, 2018, the Regional Director issued an order placing the RD case in abeyance and canceled the hearing that was scheduled for September 10, 2018. On September 21, 2018, the Petitioner filed its request for review of the Regional Director's order.

On October 5, 2018, the Union filed a second charge alleging that Pinnacle violated the Act by taking unilateral action (U. Ex. 2). Two weeks later Pinnacle filed a request for review of the Regional Director's September 7 order. Thereafter, following a 3-month investigation by the Region, the Union amended its charge in Case No.14-CA-226922, alleging that:

> In the last six months, the Employer has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining unit by refusing to make itself available to meet on reasonable dates and by refusing to provide sufficient time on the days the parties do meet.

(U. Ex. 3). The Region, after finding substantial evidence supporting the Union's charges, consolidated Case Nos. 14-CA-226922 and 14-CA-228742 and issued a Complaint against Pinnacle (U. Ex. 4).

The Complaint alleges that Pinnacle violated the Act by failing to bargain in good faith since about March 7, 2018 through October 24, 2018, and by failing to bargain with the Union to an overall good-faith impasse when it took unilateral action in September 2018. Thereafter, on December 17, 2018, Pinnacle filed a supplemental memorandum in support of its request for review, and Petitioner filed its supplemental memorandum on December 20, 2018. On December 20, 2018, the Office of the Executive Secretary dismissed the supplemental memorandums because they were untimely filed. On December 20, 2018, Petitioner filed a second supplemental letter.[1]

---

[1] The Union requests that the Executive Secretary reject Petitioner's December 20, 2018 letter. *Reliant Energy* clearly states that supplemental letters are *only* permitted when new relevant legal authority arises after a brief is filed. *Reliant Energy*, 339 NLRB 66 (2003). Petitioner cites no new legal authority in its supplemental letter, and merely rehashes its arguments the Executive-Secretary denied on December 20, 2018. Accordingly, the Union respectfully requests that Petitioner's supplemental letter be denied.

ARGUMENT

Petitioner's and Pinnacle's imperfect service caused the Union's untimely filing. The Board recognizes that there are variety circumstances that may cause an untimely filing. *International Union of Elevator Constructors*, 337 N.L.R.B. 426 (2002). Because of this, the Board will consider excusable neglect motions on a fact specific, case by case basis. *Id.*

In this case, Petitioner filed its request for review on September 21, 2018, and the Employer filed its Request for Review on October 15, 2018. The Union was not properly served Petitioner's and Pinnacle's respective requests for review. Section 102.67 of the Board's Rules and Regulations requires that service of requests for review be completed "on all of the other parties." 29 C.F.R. § 102.67. Additionally, §102.5(f) requires "[u]nless otherwise specified, documents filed with the Agency must be simultaneously served on the other parties to the case including, as appropriate, the Regional Office in charge of the case." 29 C.F.R. § 102.5(f). Moreover, when a party has failed to correctly serve a party, the Rules and Regulations require that the filings is rejected or the prejudiced party be given a reasonable amount of time to respond:

> **(i) Failure to properly serve.** — Failure to comply with the requirements of this section relating to timeliness of service on other parties will be a basis for either:
>
> (1) Rejecting the document; or
>
> (2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

29 C.F.R. § 102.5.

On Petitioner's and Pinnacle's respective certificates of service, both parties list the incorrect address for the Union, and neither the Union or its counsel were emailed a copy of the requests for review (See Attached Karmel & Roberts Affids.).[2] As a result, neither the Union nor its counsel were

[2] The address listed on the COS is 10400 W. Higgins Road, Rosemont, IL, 60018-3712. The Union's correct address is 1350 E. Touhy Ave., Suite 300e, DesPlaines, IL 60018.

aware that the aforementioned requests for review were filed in this matter until the Employer filed its supplemental memorandum on December 17, 2018.[3]

The Union was unable to timely file its statement in opposition because it was not served or noticed to Petitioner's and Pinnacle's filing. Additionally, Petitioner and Pinnacle were not prejudiced in this matter. Instead, their imperfect service only benefited their cause, as the Union was denied the opportunity to timely file a statement in opposition. Accordingly, the Union respectfully requests that the Board accept its Statement in Opposition to Petitioner's and Pinnacle's requests for review.[4]

CONCLUSION

For the reasons stated herein, Local 881 UFCW respectfully requests that the Board accept its Statement in Opposition to Petitioner's Request for Review and Pinnacle's Request for Review and Supplemental Request for Review.

Respectfully Submitted,

/s/ Joseph C. Torres

Joseph C. Torres
Attorney for Local 881 UFCW

Joseph C. Torres
The Karmel Law Firm
221 N. LaSalle Street, Suite 1550
Chicago, IL 60601
P:(312) 641-2910
F: (312) 641-0781

[3] The Union was only noticed to Pinnacle's supplemental memorandum because its counsel emailed a copy to Mike Roberts, a Union representative. Thereafter, the Union's counsel was noticed when Roberts forwarded the supplemental memorandum to them on the same date.

[4] Pursuant to § 102.2(d)(2) of the Board's Rules and Regulations, the Union's Statement in Opposition is attached to this motion (Ex. 5).

CERTIFICATE OF SERVICE

I herby certify that on the 2nd day of January 2019, a true and correct copy of the Motion to Accept was electronically filed on the Board's website to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that on the 2nd day of January 2019, I served a true and correct copy of the foregoing Statement in Opposition and the attachments regular U.S. mail and email:

Leonard J. Perez,
Regional Director National Labor Relations Board,
Region 14 1222
Spruce St., Rm 8.302
St. Louis, MO 63103-2829
leonard.perez@nlrb.gov

James N. Foster Jr., Esq.
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
foster@mcmahonberger.com

Glenn M. Taubman
National Right to Work
Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160
gmt@nrtw.org

Robert Gentry
8515 N. Empire Drive
Altamont, IL 62411
The5Gentrys@yahoo.com

Sean Blankley
Pinnacle Food Groups, LLC
1000 Brewbaker Driver
Saint Elmo, IL 62358
Sean.Blankley@pinnaclefoods.com

INTERNET
FORM NLRB-501
(2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Pinnacle Foods Group, LLC

b. Tel. No. (618) 829-4007

c. Cell No.

d. Address *(Street, city, state, and ZIP code)*
1000 Brewbaker Drive
St. Elmo, IL 62458

e. Employer Representative
Sean Blankley

f. Fax No.

g. e-Mail

h. Number of workers employed

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Factory

j. Identify principal product or service
Food Products

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) 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)*
See Exhibit A, attached.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Local 881 United Food and Commercial Workers

4a. Address *(Street and number, city, state, and ZIP code)*
One Sunset Hills Park, Suite 102
Edwardsville, IL62025

4b. Tel. No. (618) 692-6400

4c. Cell No.

4d. Fax No. (618) 692-6407

4e. e-Mail

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)*
UFCW International, AFL-CIO, CLC

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.

By _____ *(signature of representative or person making charge)*

Jonathan D. Karmel, Attorney
(Print/type name and title or office, if any)

Address 221 N. LaSalle Street, Suite 1550, Chicago, IL 60601

9/7/18
(date)

Tel. No. (312) 641-2910

Office, if any, Cell No.

Fax No. (312) 641-0781

e-Mail
jon@karmellawfirm.com

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 o the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the info the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT
1

Exhibit A

a. The Employer unlawfully assisted in the solicitation and circulation of the decertification petition filed by Robert Gentry.

b. In the last six (6) months, the Employer has bargained in bad faith in negotiations for a first collective bargaining agreement.

c. In the last six (6) months, the Employer unilaterally changed terms and conditions of employment.

d. In the last six (6) months, the Employer issued discretionary discipline to unit employees, including terminating employees, without first notifying the Union and giving it an opportunity to bargain about the discipline.

INTERNET
FORM NLRB-501
(2-08)

UNITED ST S OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Pinnacle Foods Group, LLC

b. Tel. No. (618) 829-4007

c. Cell No.

d. Address *(Street, city, state, and ZIP code)*
1000 Brewbaker Drive
St. Elmo, IL 62458

e. Employer Representative
Sean Blankley

f. Fax No.

g. e-Mail

h. Number of workers employed

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Factory

j. Identify principal product or service
Food Products

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) 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)*
On or about September 17, 2018, the Employer unilaterally changed terms and conditions of employment.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Local 881 United Food and Commercial Workers

4a. Address *(Street and number, city, state, and ZIP code)*
One Sunset Hills Park, Suite 102
Edwardsville, IL62025

4b. Tel. No. (618) 692-6400

4c. Cell No.

4d. Fax No. (618) 692-6407

4e. e-Mail

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)* UFCW International, AFL-CIO, CLC

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.

By _____ *(signature of representative or person making charge)*

Joseph C. Torres, Attorney
(Print/type name and title or office, if any)

Address 221 N. LaSalle Street, Suite 1550, Chicago, IL 60601

9/27/18
(date)

Tel. No. (312) 641-2910

Office, if any, Cell No.

Fax No. (312) 641-0781

e-Mail
joe@karmellawfirm.com

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 principa the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT
tabbies
2

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
14-CA-226922	26 Nov 18

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 Pinnacle Foods Group, LLC		b. Tel. No. 618-829-4007 c. Cell No.
d. Address (street, city, state ZIP code) 1000 Brewbaker Drive St. Elmo, IL 62458	e. Employer Representative Sean Blankley	f. Fax No. g. e-Mail h. Dispute Location (City and State) St. Elmo, IL
i. Type of Establishment (factory, nursing home, hotel) Factory	j. Principal Product or Service Food Products	k. Number of workers at dispute location

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 (5) 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*)

In the last six months, the Employer has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit by refusing to make itself available to meet on reasonable dates and by refusing to provide sufficient time on the days the parties do meet.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
Local 881 United Food and Commercial Workers

4a. Address (street and number, city, state, and ZIP code) One Sunset Hills Park, Suite 102 Edwardsville, IL 62025	4b. Tel. No. 618-692-6400 4c. Cell No. 4d. Fax No. 618-692-6407 4e. e-Mail

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*)

UFCW International, AFL-CIO, CLC

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.

By: [signature] (signature of representative or person making charge)	Joe Torres, Attorney Print Name and Title	Tel. No. 312-641-2910 Office, if any, Cell No.
Address: 221 N. LaSalle Street, Suite 1550 Chicago, IL 60601	Date: 11-26-18	Fax No. 312-641-0781 e-Mail joe@karmellawfirm.com

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 set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

RECEIVED
NLRB REGION 14

EXHIBIT
3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

PINNACLE FOODS GROUP, LLC

and

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

Cases 14-CA-226922 and 14-CA-228742

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 14-CA-226922 and Case 14-CA-228742, which are based on charges filed by Local 881 United Food and Commercial Workers (Union), against Pinnacle Foods Group, LLC (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1

A. The charge in Case 14-CA-226922 was filed by the Union on September 7, 2018, and a copy was served on Respondent by U.S. mail on that date.

B. The first amended charge in Case 14-CA-226922 was filed by the Union on November 26, 2018, and a copy is hereby served by certified mail on Respondent concurrently with this Order Consolidating Cases, Consolidated Complaint and Notice of Hearing.

EXHIBIT
tabbies
4

C. The charge in Case 14-CA-228742 was filed by the Union on October 5, 2018, and a copy was served on Respondent by U.S. mail on October 9, 2018.

2

A. At all material times, Respondent has been a limited liability company with an office and place of business in St. Elmo, Illinois (Respondent's facility) and has been engaged in the manufacture and nonretail sale of salad dressings, syrups, and sauces.

B. In conducting its operations during the 12-month period ending November 30, 2018, Respondent sold and shipped from its St. Elmo, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

C. In conducting its operations during the 12-month period ending November 30, 2018, Respondent purchased and received goods at Respondent's facility valued in excess of $50,000 directly from points outside the State of Illinois

D. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4

At all material times, the following individuals the held positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Sean Blankley	-	Plant Manager
LaQuida Booher	-	Human Resources Manager

Kelley Maggs	-	Vice President, General Counsel, Secretary
Uche Ndumule	-	Vice President, General Counsel
Michael Ryan	-	Human Resources Director

5

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

> All full-time production and maintenance employees including warehouse and distribution employees, sanitation employees, and coordinators employed by the Respondent at its St. Elmo, Illinois facility excluding office clerical employees, office coordinators, temporary employees, professional employees, guards, and supervisors as defined in the Act.

B. On March 7, 2017 the Board certified the Union as the exclusive collective-bargaining representative of the Unit.

C. At all times since March 7, 2017, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

6

A. At various times from about March 7, 2018 through October 24, 2018, Respondent and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

B. During the period described above in paragraph 6A, Respondent has failed and refused to bargain with the Union by not making itself available for bargaining on reasonable dates.

C. During the period described above in paragraph 6A, Respondent has failed and refused to bargain with the Union by not providing sufficient time to bargain during bargaining sessions held.

D. By its conduct described above in paragraphs 6B and 6C, Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

7

A. About September 17, 2018, Respondent changed the shifts for Lines 4 and 5 from 12-hour shifts to 8-hour shifts and unilaterally implemented bidding procedures for these new shifts.

B. About September 17, 2018, Respondent established bidding procedures for the new shifts described above in paragraph 7A.

C. The subjects set forth above in paragraph 7A and 7B relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

D. Respondent engaged in the conduct described above in paragraph 7A and 7B without first bargaining with the Union to an overall good-faith impasse.

E. As a result of Respondent's conduct described above in paragraph 7A and 7B, Respondent caused employees to be displaced from Lines 4 and 5.

8

By the conduct described above in paragraphs 6 and 7, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for Respondent's unfair labor practices alleged above in paragraph 5, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request, for a 7-month period as required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before December 13, 2018 or postmarked on or before December 12, 2018**. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer 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. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **March 12, 2019, 10:00 a.m.** at **1222 Spruce Street, Room 8.302, Saint Louis, Missouri,** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The

procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: November 29, 2018

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
Saint Louis, MO 63103-2829

Attachments

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC,	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS,	)	
	)	
Union.	)	

AFFIDAVIT OF GEORGE M. ROBERTS

I George Michael Roberts, being duly sworn, deposes and states:

1. I am a Union Representative for Local 881 United Food and Commercial Workers ("Local 881") at its office at #1 Sunset Hills Executive Drive, Suite 102, Edwardsville, IL 62025-9931.

2. My email address is MikeRoberts@local881ufcw.org.

3. In January 2018, Local 881's primary address changed from 10400 W. Higgins Road, Rosemont, IL 60018-3712 to 1350 E. Touhy Ave., Suite 300E, Des Plaines, IL 60018.

4. I have reviewed the certificate of service and the amended certificates of service filed by the Pinnacle's attorney, Jim Foster ("Foster"), whereby he certified that Pinnacle's Request for Review was sent via U.S. mail to Local 881's no longer valid Rosemont, IL address on October 15, 2018 and October 16, 2018, and that he emailed me a copy of Pinnacle's Request for Review on September October 15, 2018 and October 16, 2018 (Roberts Affid. Exhibit A-D). Additionally, I

reviewed the certificate of service and the amended certificate of service filed by Petitioner, whereby Petitioner certified that it sent its request for review to Local 881's no longer valid Rosemont, IL address on September 21, 2018 (Roberts Affid. Exhibit E-F).

5. A review of Local 881's electronic and hard-copy records revealed that Local 881 was not served a copy of Pinnacle's Request for Review via U.S. mail, and that Foster, or a representative of his law firm, did not email a copy of Pinnacle's Request for Review. Additionally, after reviewing Local 881's digital and hard-copy files, it was revealed that Local 881 did not receive a copy of Petitioner's request for review via U.S. Mail or Email.

6. The first correspondence that I received regarding the above captioned matter from Foster was Pinnacle's Supplemental Memorandum sent on December 17, 2018. It was only after Foster sent the Supplemental Memorandum that Local 881 and its legal counsel learned that Pinnacle and Petitioner filed requests for review in September and October of 2018.

FURTHER AFFIANT SAYETH NOT.

DATE: 1/2/2019

George M. Roberts

OFFICIAL SEAL
BARBARA J HANAHAN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:04/10/20

Signed and sworn before me
this 2d day of January, 2019

Notary Public

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	

PINNACLE FOODS GROUP LLC'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S ORDER GRANTING UNION'S REQUEST TO BLOCK THE PETITION AND ORDER CANCELLING HEARING IN CASE 14-RD-226626

COMES NOW Pinnacle Foods Group, LLC. (hereinafter "Pinnacle" or "Company" or "Employer"), by its attorneys, pursuant to the National Labor Relations Board's Rules and Regulations, as amended, Section 102.71, and hereby submits its Request for Review of the Acting Regional Director's Order Granting Union's Request to Block the Petition and Order Cancelling Hearing in case 14-RD-226626 (Ex. A).

Request for review is sought with respect to the conclusion of the Acting Regional Director, as contained within the Order Granting Union's Request to Block the Petition and Order Cancelling Hearing in case 14-RD-226626, that further processing of the decertification Petition filed by Robert Gentry ("Gentry") should be blocked and the election should be held in abeyance pending the disposition of the allegations advanced in 14-CA-226922.

I. PROCEDURAL BACKGROUND

On August 31, 2018 Gentry filed a Decertification Petition (14-RD-226626) wherein he seeks to decertify Local 881 of the United Food and Commercial Workers ("Union") as the exclusive bargaining representative of all full time hourly production employees at the Employer's St Elmo, Illinois facility (Ex. B). On the same date, the Region scheduled a Representation Hearing in 14-RD-226626 and set the deadline for the Employer's submission of a Statement of Position as September 7, 2018 at noon Central time (Ex. C).

On September 7, 2018 the Employer timely filed its Statement of Position including a list of employees encompassed by the proposed unit (Ex. D). As required, the Employer served its Statement of Position and all documents attached thereto on Gentry and the Union. At the same time that the Employer was filing its Statement of Position, the Union was filing an Unfair Practice Charge -14-CA-226922 ("Charge") against the Employer alleging that Pinnacle violated Section 8(a)(1) and 8(a)(5) of the Act (Ex. E). More specifically, in its Charge the Union alleges that the Employer: (1) unlawfully assisted in the solicitation and circulation of the decertification petition filed by Gentry; (2) bargained in bad faith for a first contract: (3) unilaterally changed terms and conditions of employment; and (4) issued discretionary discipline without first notifying the Union (Ex E).

Section 103.20 of the Board's Rules and Regulations provides:

> Whenever any party to a representation proceeding files an unfair labor practice charge together with a request that it block the processing of the petition to the election, or whenever any party to a representation proceeding requests that its previously filed unfair labor practice charge block the further processing of a petition, the party shall simultaneously file, <u>but not serve on any other party,</u> a written offer of proof in support of the charge. The offer of proof shall provide the names of the witnesses who will testify in support of the charge and a summary of each witness's anticipated testimony. The party seeking to block the processing of a petition shall also promptly make available to the regional director the witnesses identified in its offer of proof. If the regional director determines that the party's offer of proof does not describe evidence that, if proven, would

> interfere with employee free choice in an election or would be inherently inconsistent with the petition itself, and thus would require that the processing of the petition be held in abeyance absent special circumstances, the regional director shall continue to process the petition and conduct the election where appropriate.[1]

On September 7, 2018 the Region, via written correspondence, granted the Union's request to block the election (Ex A). Importantly, the Region granted the Union's request **the exact same day that the Charge was filed** and the Union's request was made. In its September 7, 2018 correspondence the Region expressly decided to block the election and hold further processing of the Decertification Petition in abeyance until the allegations advanced in the Union's Charge are resolved (Ex. A). The Employer was not given an opportunity to respond to the specious allegations contained in the Union's Charge prior to the Region issuing its decision. In addition, to date, the Employer has not received the Union's written offer of proof, any witness statements given in support of the allegations in the Charge or an explanation of the evidence relied on by the Region in making its decision. In short, the Employer was not afforded even a modicum of due process to assert a defense to the frivolous allegations in the Union's Charge before the Region made the unilateral decision to disenfranchise voters.

---

[1] According to the NLRB Case Handling Manual Section 110730, the section 103.20 blocking charge policy is designed to protect employee free choice in the election process; "it 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." See NLRB Case Handling Manual section 110730. Indeed, one recognized exception to the blocking charge policy is where the charging party has a past practice of utilizing the filing of charges as a tactic to delay representation proceedings. See *Surprenant Mfg. Co.,* 144 NLRB 507 (1963); *West-Gate Sun Harbor Co.*, 93 NLRB 830 (1951). The Union has such a past practice. In this respect, the Employer asks the Board to take administrative notice that in the initial RC case, the Union filed a blocking charge to delay the objections hearing.

II. BASIS FOR REQUEST FOR REVIEW

The undersigned respectfully submits, pursuant to the National Labor Relations Board Rules and Regulations, Sections 102.71(b)(2) and 102.71 (b)(3), that the granting of this Request for Review is mandated in the above-styled matter based upon the following grounds:

1. There are compelling reasons for reconsideration of the Board's current policy regarding blocking charges which allows Union's to unilaterally delay the right of employee's to vote on the issue of unionization.

2. The Regional Director's Decision is, on its face, arbitrary and/or capricious in that the Employer (nor apparently Petitioner) was given an opportunity to respond to the allegations prior to the Region's decision and the Employer was not provided with a copy of the Union's written offer of proof, any witness statements given in support of the allegations in the Charge or an explanation of the evidence relied on by the Region in making its decision.

III. ARGUMENT

A. There Are Compelling Reason for Reconsideration of The Board's Blocking Policy.

In a recent unpublished order, *CalPortland Co.,* 28-RD-206696, Board members Kaplan and Emanuel indicated they favored changing the Board's blocking charge policy:

> Chairman Kaplan agrees with the decision to deny review here. He notes, however, that consistent with the Petitioner's suggestion, he would consider revisiting the Board's blocking charge policy in a future appropriate case. Member Emanuel agrees that the determination to hold the petition in abeyance in this case was permissible under the Board's current blocking charge policy, but he believes that the policy should be reconsidered. Specifically, he believes that an employee's petition for an election should generally not be dismissed or held in abeyance based on contested and unproven allegations of unfair labor practices.

CalPortland Co 28-RD-206696 (Ex. F). See also *Westrock Services, Inc* 10-RD-195447 (Ex. G); *ADT Security Services* 18-RD-206831 (Ex. H); *Covanta Essex Co* 22-RD-199469 (Ex I.); *ARH*

Mary Breckenridge Health Services 09-RD-217672 (Ex. J); *Columbia Sussex* 19-RD-223516 (Ex. K).[2]

The point of view expressed by Members Kaplan, Member Emanuel and Chairman Ring are consistent with the point of view expressed by former Member Miscimarra, who urged a wholesale revision of the blocking charge rules. *See Cablevision Systems Corp.,* Case 29-RD-138839 (June 30, 2016) (Order Denying Review); *see also Baltimore Sun* Co. *v. NLRB,* 257 F.3d 419, 426 (4th Cir. 2001) (finding that Section 7 "guards with equal jealousy employees' selection of the union of their choice and their decision not to be represented at all."); *Conair Corp. v. NLRB,* 721 F.2d 1355, 1381 (D.C. Cir. 1983) (citing the "NLRA's core principle that a majority of employees should be free to accept or reject union representation.").

Consistent with the point of view of both former and current Board members the Employer asserts that the instant case presents the Board with the appropriate opportunity to reconsider the Board's blocking charge policy and, inter alia, clearly establish that, in general, petitions for an election should not be dismissed or held in abeyance based on contested and unproven allegations advanced in unfair labor practices.

1. The Board's Blocking Charge Policy Is Inconsistent With The Act

The fundamental purpose of the NLRB is to conduct elections and thereby vindicate the rights of employees under the Act to choose or reject union representation. It is not to suspend election petitions based upon the unilateral efforts of a party to a representation case that fears an election loss or wants to continue the collection of dues.

The Board's current blocking charge policy, however, allows a Union to stop a petition from being processed and an election from occurring upon the filing of an unfair labor practice charge and an offer of proof by the charging party – an offer of proof that cannot be viewed by

[2] In all of the above cases Members Kaplan and/or Emanuel and/or Chairman Ring expressed the same views.

the other parties to the election proceedings. As such the Board's current blocking charge policy – which allows elections to be blocked based on the mere filing of an unadjudicated and unproven claim -- is inconsistent with the primary purpose of the Act – allowing employees to choose or reject unionization through a secret ballot election.

Employee free choice regarding unionization under Sections 7 and 9 is the paramount interest of the NLRA. *See Pattern Makers League v. NLRB,* 473 U.S. 95, 104 (1985); *Lechmere, Inc. v. NLRB,* 502 U.S. 527, 532 (1992); *Lee Lumber & Bldg. Material Corp. v. NLRB,* 117 F.3d 1454, 1463 (D.C. Cir. 1997) (Sentelle, J., concurring) (employee free choice is the "core principle of the Act") (quotation marks and citation omitted). A Board-conducted, secret ballot election is the preferred form for employees to exercise their right of free choice. *See Levitz Furniture* Co. *of the Pacific, Inc.,* 333 N.L.R.B. 717, 725-26 (2001).

The right of employee free choice is sacrificed, however, whenever a union, in self-serving fashion, claims – without competent proof – that an employer has committed a violation of the Act. Stated another way, currently the statutory right to file a decertification petition and decide on the issue of unionization has been trampled by the Board's arbitrary blocking charge policy that delays/denies, upon the mere filing of an unfair labor practice charge and an uncontested offer of proof, the ability of employees to vote either for or against unionization in a secret ballot election. In this respect, once an unfair labor practice charge is filed by a union against an employer during a decertification proceeding, pursuant to the Board's blocking charge policy, the decertification proceeding is subject to being held in abeyance upon the barest of unchallenged evidence – evidence that is not provided to the employer or petitioner. Granting the abeyance deprives employees from exercising their statutory rights under Sections 7 and 9(c)(l)(A)(ii) through a decertification election and ignores the fact that the employee petitioner

and fellow bargaining unit members may wish to be free from union representation, regardless of any alleged employer infractions. This result is inconsistent with the purposes of the Act.

Industrial stability is enhanced when employees vote in secret ballot elections. As stated previously, however, the Board's current blocking charge policy sacrifices this right of employee free choice where an incumbent union seeks to hold on to its representational status, regardless of the desires of the employees it represents and regardless of the purposes of the Act.

In short, the use of blocking charges to halt decertification elections is inconsistent with the Act's paramount purpose of allowing employees to freely decide on the issue of unionization. In fact, the blocking charge policy may lead to the inequitable result of a decertification election being delayed for a period of months or years even where the employees are not aware of the alleged employer misconduct, and where their disaffection with the union originates from wholly independent sources. Use of the blocking charge policy to halt decertification elections, based on unsubstantiated allegations is not consistent with the intention of the Act and serves only to entrench unpopular but incumbent unions, thereby forcing an unwanted representative onto employees. For all of the above reasons, the Board's current blocking charge policy, which is under increasing scrutiny from former and current Board members, should be reconsidered.

2. **The Board's Blocking Policy is Not Authorized By the Act.**

There is no statutory basis for blocking charges. In this respect, Congress has never explicitly authorized the board to ignore section 9(e) of the Act, 29 U.S.C. section 159 (e) which clearly states that upon the filing of a petition by 30% of the bargaining unit employees "the Board shall take a secret ballot of the employees in such unit."

Rather, the Board's blocking charge policy is the creation of the Board, in theory based upon the Board's discretion to effectuate the policies of the Act. *American Metal Products* 139

NLRB 601 (1962); see also NLRB Casehandling Manual (Part Two) Representation Section 11730 et seq. (Setting forth the blocking charge procedures in detail.) But the blocking charge rules stop employees from exercising their paramount section 7 right to choose or reject representation which is not a proper use of the Board's discretion. In other words, blocking charges are not merely without statutory authorization but, yet, they undermine the act by limiting employee free choice.

Because employee free choice is the primary principle behind the Act, election bars that are arbitrarily created and not expressly mandated by the Act are unnecessary and harmful to its fundamental purpose. The only election bar created by Congress prevents holding more than one valid election within a 12 month period. Section 9(c)(3) of the Act states: "no election shall be directed in any bargaining unit or any subdivision within which in the preceding 12 month period a valid election shall have been held" 29 U.S.C. section 159. Had Congress intended the creation of other election "bars," it could have created them. Because Board created election bars, like the Board's blocking charge policy, inevitably crush employees' right to freely choose, they should be eliminated or significantly changed. This is just another reason to reconsider the Board's blocking policy.

3. The Board's Blocking Policy Creates a Double Standard.

In 2014 and 2015 the Board went to great lengths to establish rules designed to ensure that, upon the filing of a petition, eligible voters can expeditiously exercise their right to freely choose whether they want to be represented by a union. To help achieve this desired result, the Board changed the rule regarding an employer's ability to raise issues/challenges regarding a RC petition. In this respect, with limited exceptions, the Board now holds the election first and settles and resolves issues/challenges related to the petition after the vote. In addition any

challenges to the election or the conduct of the parties must be filed after employees vote in the form of objections. It is axiomatic that the same rules do not apply to RD petitions where a union can file a charge before the election which delays – not expedites – employees' right to freely choose.

If the Board can rush certification petitions to prompt elections by holding all objections and challenges until after the election, the Board can surely do the same for decertification petitions. 79 Fed Reg at 74430-74460. It is time for the Board to eliminate its discriminatory double standard with respect to blocking charges inasmuch as for all practical purposes they apply only to employees who do not want a union as their bargaining representative. The Board must create a system for decertification elections whereby such employees are afforded the same right to a prompt election as employees seeking initial certification of a union.

In short, the differences between certification and decertification are contrived. The Board should stop applying a double standard, order the processing of the Petition to continue, the election to occur, and follow the point of view of both former and current Board members that a wholesale revision of the Board's blocking charge policy is needed.

B. The Basis for the Regional Directors Decision to Block the Election Was Arbitrary and Capricious.

1. Arbitrary and Capricious.

The process used by the Region to cancel the scheduled hearing and hold the election in abeyance based on the Union's Charge is tantamount to being at the royal Palace of Westminster in the 16th century and appearing before the Star Chamber – it is fraught with secrecy and results in arbitrary decisions. In this respect the Assistant Regional Director's letter dated September 7, 2018 provides no explanation as to how the Regional Director reached its decision other than to state that the Union filed an unfair labor practice charge. This vaguely stated reason, however,

does not justify cancelling the scheduled hearing or holding the decertification election in abeyance and the Employer respectfully submits that under the circumstances presented, it is manifestly arbitrary to delay the decertification proceedings in this way.

Further evidence that the decision of the Regional Director was arbitrary and capricious is the fact that said decision was based on unsubstantiated allegations and an offer of proof from interested witnesses that the Employer cannot respond to, review, challenge or rebut.[3] This is a clear denial of due process in that the Employer had no opportunity to defend itself prior to the decision to cancel the hearing and hold the election in abeyance. This denial of due process denies employees the fundamental right to timely vote on the issue of unionization regardless of whether the allegations are specious.

Moreover, the Region certainly was not required to delay the hearing and election process. When the Region has not yet made merit determinations on one or more unfair labor practice charges prior to a scheduled representation hearing, the Region may, nonetheless, proceed with the election process. Section 11731.5 Exception 5: Scheduled Hearing states:

> In situations where a party files a Type I or Type II unfair labor practice charge and requests that the ULP charge block an R case hearing that is scheduled too soon in time to allow for a determination of possible merit of the charge, the Regional Director may proceed with the hearing in the R case. A separate determination should then be made by the Regional Director pursuant to Exceptions 2, 3, above (Secs. 11731.2 and 3,) with regard to issuing a decision and/or conducting an election.

NLRB Case Handling Manual, Vol. II, § 11731.5. The timing of the Regional Director's decision in the instant case does not indicate that consideration any consideration was given to proceeding with the hearing or that *any* of the above referenced exceptions were considered. Rather, the timing of the decision – the decision was issued the exact same day the Union filed its Charge -

[3] The Employer should be entitled to a copy of the offer of proof.

suggests that the decision was mechanical in nature and solely based on the fact that a charge was filed. Clearly, the Board did not have time to engage in any meaningful analysis before making the decision to cancel the hearing and hold the election in abeyance. This is a clear misapplication of the Board's blocking charge policy. The Region cannot "apply its blocking charge policy as a *per se* rule without exercising its discretion to make a careful determination in each individual case... " *Surratt v. NLRB,* 463 F.2d 378, 382 (5th Cir. 1972), Instead of making the requisite careful determinations, the Regional Director, as stated previously, mechanistically relied on a charge being filed with no consideration of anything else. That is insufficient, even under a deferential reading of the arbitrary and capricious standard. *See Overton Park v. Volpe,* 401 U.S. 402, 416 (1971) (the agency's decision must be "based on a consideration of the relevant factors"); *FTC v. Sperry & Hutchinson Co.,* 405 U.S. 233, 249 (1972) ("orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained").

The arbitrary and capricious nature of the regional Directors order in this case will result in a patently obvious injustice by causing undue delay in the exercise of employee free choice guaranteed by section 7 of the act and by requiring the Employer to invest resources to collectively bargain over terms and conditions of employment. Employees enjoy a statutory right to petition for a decertification election under Section 9(c)(1)(A)(ii) of the Act, and that right should not be undermined by arbitrary rules, decisions, bars, or blocking charges that prevent the expression of employee free choice. Unfortunately, that is exactly what happened in the instant case.

2. Denial of Due Process.

As stated previously, a union can block the processing of an election by simply filing an unfair labor practice charge and an unsubstantiated offer of proof. After these documents are filed the employer receives a copy of the filed charge but does not receive a copy of the offer of proof and is given no opportunity to defend itself prior to a decision by the Region. In other words, a union's submission of an offer of proof is tantamount to a union making an ex parte communication to a Judge. This is inconsistent with accepted protocol in all forums and it is expressly prohibited by the Board.

Section 2-210 of the Division of Judges Bench Book expressly states: "Once designated, the judge is prohibited from ex parte communication with any of the parties to the proceeding. NLRB Rules and Regulations, Secs 102.126 and 102.128 (e). Nor shall any person 'knowingly and willfully solicit the making of an unauthorized ex parte communications by another person by any other person.'" Id., Sec. 102.131. Yet, this is precisely happened in the instant matter. The Region solicited an ex parte communication from the Union and then failed to provide a copy to the Employer so it could defend itself. This is a blatant example of a denial of due process and another reason the Board's blocking charge policy should be re-evaluated and changed

V. CONCLUSION

For the foregoing reasons the Employer respectfully requests that the Board grant the Employer's Request for Review and adopt the rationale of former Chairman Miscimarra and the expressed views of member Kaplan, member Emanuel and Chairman Ring by revisiting its blocking charge policy. Further the Board should reverse the decision of the Region in this case and allow the decertification hearing and election to proceed immediately. Finally, the Union should be required to provide the Employer with its offer of proof.

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.
James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968 FAX
foster@mcmahonberger.com

Attorney for the Employer

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2018, a true and correct copy of the above document was electronically filed on the Board's website at http://www.nlrb.gov to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that I have this 15th day of October, 2018, served a copy of the foregoing upon the following via regular U.S. mail, postage prepaid as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

/s/ James N. Foster, Jr.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	

AMENDED CERTIFICATE OF SERVICE

The undersigned certifies that Pinnacle Foods Group LLC's Request For Review Of The Regional Director's Order Granting Union's Request To Block The Petition And Order Cancelling Hearing in Case 14-RD-226626 was served via regular U.S. mail, postage prepaid, on the 15th day of October 2018 and via e-mail on the 15th of October, 2018 to:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712
MikeRoberts@local881ufcw.org

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.
James N. Foster, Jr.

2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968 FAX
foster@mcmahonberger.com

Attorney for the Employer

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2018, a true and correct copy of the above document was electronically filed on the Board's website at http://www.nlrb.gov to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that I have this 15th day of October, 2018, served a copy of the foregoing upon the following via regular U.S. mail, postage prepaid and e-mail as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712
MikeRoberts@local881ufcw.org

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

/s/ James N. Foster, Jr.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	

AMENDED CERTIFICATE OF SERVICE

The undersigned certifies that Pinnacle Foods Group LLC's Request For Review Of The Regional Director's Order Granting Union's Request To Block The Petition And Order Cancelling Hearing in Case 14-RD-226626 was served via regular U.S. mail, postage prepaid, on the 15th day of October 2018 and via e-mail on the 15th of October, 2018 to:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.
James N. Foster, Jr.
2730 North Ballas Road, Suite 200

St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968 FAX
foster@mcmahonberger.com

Attorney for the Employer

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2018, a true and correct copy of the above document was electronically filed on the Board's website at http://www.nlrb.gov to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that I have this 15th day of October, 2018, served a copy of the foregoing upon the following via regular U.S. mail, postage prepaid and e-mail as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

/s/ James N. Foster, Jr.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	

AMENDED CERTIFICATE OF SERVICE

The undersigned certifies that Pinnacle Foods Group LLC's Request For Review Of The Regional Director's Order Granting Union's Request To Block The Petition And Order Cancelling Hearing in Case 14-RD-226626 was served via regular U.S. mail, postage prepaid, on the 15th day of October 2018 and via e-mail on the 15th of October, 2018 and re-sent on the 16th of October, 2018 to:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712
MikeRoberts@local881ufcw.org

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

Previously electronically filed with the Region 14 Regional Director below on 21st of September, 2018 and emailed on 16th of October, 2018 to:

Leonard J. Perez, Regional Director
National Labor Relations Board
Region 14
1222 Spruce St., Rm 8.302
St. Louis, MO 63103-2829
Leonard.Perez@nlrb.gov

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.
James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
(314) 567-7350
(314) 567-5968 FAX
foster@mcmahonberger.com

Attorney for the Employer

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2018, a true and correct copy of the above document was electronically filed on the Board's website at http://www.nlrb.gov to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that I have this 16th day of October, 2018, served a copy of the foregoing upon the following via regular U.S. mail, postage prepaid and e-mail as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712
MikeRoberts@local881ufcw.org

Robert Gentry
8515 N. Empire Dr.
Altamont, IL 62411
The5Gentrys@yahoo.com

Leonard J. Perez, Regional Director
National Labor Relations Board
Region 14
1222 Spruce St., Rm 8.302
St. Louis, MO 63103-2829
Leonard.Perez@nlrb.gov

/s/ James N. Foster, Jr.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC,
Employer,
and

Case No. 14-RD-226626

ROBERT GENTRY,
Petitioner,
and

LOCAL 881 UNITED FOOD &
COMMERCIAL WORKERS UNION,
Union.

PETITIONER'S REQUEST FOR REVIEW

Pursuant to National Labor Relations Board ("NLRB") Rules and Regulations §§ 102.67 and 102.71, Petitioner Robert Gentry ("Petitioner" or "Gentry") submits this Request for Review of the Regional Director's September 7, 2018 decision to "block" his decertification election at the behest of an unpopular union that is about to be voted out.

As noted by several Board members in recent cases, the "blocking charge" issue raised in this case provides "compelling reasons for reconsideration of [a] . . . Board rule or policy." Rules & Regulations §§ 102.71(a)(1), (2). The current "blocking charge" rules effectively halt decertification elections based upon a union's unproven and contested allegations of an employer's unfair labor practices, which is contrary to the Act's purpose of employee free choice. Petitioner urges the Board to use this case to halt its continued allowance of strategic, predictable, and dilatory "blocking charges" that allow UFCW Local 881 ("Union") to

prevent a decertification election. This case is "an appropriate vehicle" for re-evaluating the blocking charge policy.

In filing this Request for Review, Petitioner incorporates by reference the Employer's Request for Review, which is adopted herein and attached hereto. Petitioner relies upon the identical points, but adds a few additional ones, as follows:

First, the Employer notes that it was:

> not given an opportunity to respond to the specious allegations contained in the Union's Charge prior to the Region issuing its decision. In addition, to date, the Employer has not received the Union's written offer of proof, any witness statements given in support of the allegations in the Charge or an explanation of the evidence relied on by the Region in making its decision. In short, the Employer was not afforded even a modicum of due process to assert a defense to the frivolous allegations in the Union's Charge before the Region made the unilateral decision to disenfranchise voters.

Employer Request for Review at 4. The same is true for the Petitioner. Indeed, the Union's "blocking charge" falsely and maliciously asserts that Petitioner got unlawful assistance from his employer, yet he too was given no notice or opportunity to rebut this false allegation or provide evidence to the contrary. Under the Board's blocking charge policy, unions and their lawyers are free to manufacture falsehoods at whim to smear decertification petitioners and block employee free choice.

Second, the Board exists to conduct elections and thereby vindicate employees' rights under the Act to choose or reject union representation. It does not exist to suspend elections arbitrarily at the unilateral behest of a union that fears loss of its bargaining unit, based on unproven and contested unfair labor practice allegations. *Cf. General Shoe Corp.*, 77 NLRB 124, 126 (1948) (holding the Board should exercise its power to set aside an election

"sparingly" because it cannot "police the details surrounding every election" and the secrecy in Board elections empowers employees to express their true convictions). The Board's "blocking charge" rules deny Petitioner and his fellow employees their fundamental NLRA Sections 7 and 9 rights and allow the Union to "game the system" and strategically delay the decertification election—in contrast to the Board's recent policy of rushing all certification petitions to an election while prohibiting "blocks" under any circumstances. See Representation-Case Procedures, 79 Fed. Reg. 74308, 74430–74460 (Dec. 15, 2014).

Third, before allowing an election to be blocked, the Board should at the very least require the Union to meet its burden of proof, in an adversarial hearing, that there exists a "causal nexus" between the alleged Employer infractions and the employees' desire to decertify the union. *Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004). In order for an unfair labor practice to taint a petition or block an election, there must be a "causal nexus" between the Employer's actions and the employees' dissatisfaction with the Union. *Master Slack Corp.*, 271 NLRB 78 (1984). But here, there has been no such showing and the Regional Director did not compel the Union to make such a showing under *Saint-Gobain*. Petitioner has not even been asked by the Region for a statement whereby he can deny and disprove the Union's false allegations. The Board is left with only speculation about the Union's claimed causal connection between employees' motivations for wanting to oust the Union and its ULP charge.

In short, and at the very least, the Board should require Regional Directors to hold *Saint-Gobain* hearings as a precondition to blocking an election based on union ULP charges.

At such an adversarial hearing the union will be required to meet its burden of proof that a "causal nexus" actually exists. *See, e.g., Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 517–18 (1970) (holding a party asserting a bar's existence bears the burden of proof). As the Board noted in *Saint-Gobain*, "it is not appropriate to speculate, without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection. To so speculate is to deny employees their fundamental Section 7 rights." But due to the lack of a *Saint-Gobain* hearing all this record contains is speculation.

CONCLUSION

The Board should grant Petitioner's Request for Review and the Employer's Request for Review, and order the Regional Director to immediately process this decertification petition. In addition, the Board should overrule or substantially overhaul its "blocking charge" policy.

Respectfully submitted,

/s Glenn M. Taubman

Glenn M. Taubman, Esq.
c/o National Right to Work
Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160
(703) 321-8510
gmt@nrtw.org

Attorney for Petitioner Robert Gentry

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2018, a true and correct copy of the foregoing Request for Review and the attachment was electronically filed on the Board's website and e-mailed to the following individuals:

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
1222 Spruce St., Rm 8.302
St. Louis, MO 63103-2829
leonard.perez@nlrb.gov

James N. Foster Jr., Esq.
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
foster@mcmahonberger.com

I hereby certify that I have this 21st day of September, 2018, served a copy of the foregoing upon the following via regular U.S. mail, postage prepaid as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

s/ Glenn M. Taubman

Glenn M. Taubman

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2018, a true and correct copy of Petitioner's Request for Review and the attachment in Case No. 14-RD-226626 was electronically filed on the Board's website and e-mailed to the following individuals:

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
1222 Spruce St., Rm 8.302
St. Louis, MO 63103-2829
leonard.perez@nlrb.gov

James N. Foster Jr., Esq.
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
foster@mcmahonberger.com

I hereby certify that on the 21st day of September, 2018, I served a copy of the Petitioner's Request for Review and the attachment via regular U.S. mail, postage prepaid as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

I hereby certify that on the 24th day of September, 2018, a true and correct copy of Petitioner's Request for Review and the attachment was e-mailed to UFCW Local 881's counsel Jonathan Karmel at the following email address: jon@karmellawfirm.com

s/ Glenn M. Taubman

Glenn M. Taubman

Dated: Sept. 24, 2018

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC,	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS,	)	
	)	
Union.	)	

AFFIDAVIT OF JONATHAN D. KARMEL

I Jonathan D. Karmel, being duly sworn, deposes and states:

1. I am an attorney for Local 881 United Food and Commercial Workers ("Local 881") and represent Local 881 in the above captioned matter.

2. My email address is jon@karmellawfirm.com. My office is located at 221 N. LaSalle, Suite 1550, Chicago, IL 60601.

3. I have reviewed the amended certificate of service filed by Petitioner's counsel, Glenn Taubman, whereby he certified that he emailed me a copy of Petitioner's Request for Review on September 24, 2018 (Karmel Affid. Ex. A).

4. A review of our email system reveals that Petitioner's Request for Review was not emailed to me.

5. The first time I learned that Petitioner filed a Request for Review in this matter was after Pinnacle emailed its Supplemental Memorandum to Mike Roberts, a Local 881 Union Representative, on December 17, 2018.

FURTHER AFFIANT SAYETH NOT.

DATE: 1/2/2019

Jonathan D. Karmel

Signed and sworn before me
this 2nd day of January, 2019

Barbara J. Hanahan
Notary Public

OFFICIAL SEAL
BARBARA J HANAHAN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:04/10/20

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2018, a true and correct copy of Petitioner's Request for Review and the attachment in Case No. 14-RD-226626 was electronically filed on the Board's website and e-mailed to the following individuals:

Leonard J. Perez, Regional Director
National Labor Relations Board, Region 14
1222 Spruce St., Rm 8.302
St. Louis, MO 63103-2829
leonard.perez@nlrb.gov

James N. Foster Jr., Esq.
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
foster@mcmahonberger.com

I hereby certify that on the 21st day of September, 2018, I served a copy of the Petitioner's Request for Review and the attachment via regular U.S. mail, postage prepaid as follows:

UFCW Local 881
10400 W. Higgins Rd.
Rosemont, IL 60018-3712

I hereby certify that on the 24th day of September, 2018, a true and correct copy of Petitioner's Request for Review and the attachment was e-mailed to UFCW Local 881's counsel Jonathan Karmel at the following email address: jon@karmellawfirm.com

s/ Glenn M. Taubman

Glenn M. Taubman

Dated: Sept. 24, 2018

Karmel EXHIBIT
tabbies
A

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
14-CA-226922	26 Nov 18

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 Pinnacle Foods Group, LLC		b. Tel. No. 618-829-4007 c. Cell No.
d. Address (street, city, state ZIP code) 1000 Brewbaker Drive St. Elmo, IL 62458	e. Employer Representative Sean Blankley	f. Fax No. g. e-Mail h. Dispute Location (City and State) St. Elmo, IL
i. Type of Establishment (factory, nursing home, hotel) Factory	j. Principal Product or Service Food Products	k. Number of workers at dispute location

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 (5) 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*)

In the last six months, the Employer has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the bargaining unit by refusing to make itself available to meet on reasonable dates and by refusing to provide sufficient time on the days the parties do meet.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
Local 881 United Food and Commercial Workers

4a. Address (street and number, city, state, and ZIP code) One Sunset Hills Park, Suite 102 Edwardsville, IL 62025	4b. Tel. No. 618-692-6400 4c. Cell No. 4d. Fax No. 618-692-6407 4e. e-Mail

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*)

UFCW International, AFL-CIO, CLC

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.

By: (signature of representative or person making charge)	Joe Torres, Attorney Print Name and Title	Tel. No. 312-641-2910 Office, if any, Cell No.
Address: 221 N. LaSalle Street, Suite 1550 Chicago, IL 60601	Date: 11-26-18	Fax No. 312-641-0781 e-Mail joe@karmellawfirm.com

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 set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

RECEIVED
NLRB REGION 14

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC,	)	
	)	
Employer,	)	
	)	
and	)	**Case No. 14-RD-226626**
	)	
ROBERT GENTRY,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS,	)	
	)	
Union.	)	

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS'S
STATEMENT IN OPPOSITION TO
PETIONER'S REQUEST FOR REVIEW AND
PINNACLE FOODS GROUP LLC'S REQUEST FOR REVIEW

NOW COMES Local 881 United Food and Commercial Workers ("Local 881" or "Union"), by its attorneys, and pursuant to § 102.67(f) of the National Labor Relations Board's Rules and Regulations, as amended, hereby submits its Statement in Opposition to the Petitioner, Robert Gentry's ("Petitioner" or "Gentry") Request for Review and Pinnacle Foods Group LLC's ("Pinnacle" or "Employer") Request for Review and Supplemental Memorandum in Support of its Request for Review; and states as follows:

PROCEDURAL BACKGROUND[1]

On August 31, 2018, the Petitioner filed the petition in the above captioned matter. On September 7, 2018, the Union filed a charge in Case No. 14-CA-226922. In addition to other unfair labor practices, the charge alleged:

> "In the last six (6) months, the Employer has bargained in bad faith in negotiations for a first collective bargaining agreement."

(U. Ex. 1). Thereafter, on September 7, 2018, the Regional Director issued an order placing the RD case in abeyance and canceled the hearing that was scheduled for September 10, 2018. On September 21, 2018, the Petitioner filed its request for review of the Regional Director's order.

On October 5, 2018, the Union filed a second charge alleging that Pinnacle violated the Act by taking unilateral action (U. Ex. 2). Two weeks later Pinnacle filed a request for review of the Regional Director's September 7 order. Thereafter, following a 3-month investigation by the Region, the Union amended its charge in Case No.14-CA-226922, alleging that:

> In the last six months, the Employer has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining unit by refusing to make itself available to meet on reasonable dates and by refusing to provide sufficient time on the days the parties do meet.

(U. Ex. 3). The Region, after finding substantial evidence supporting the Union's charges, consolidated Case Nos. 14-CA-226922 and 14-CA-228742 and issued a Complaint against Pinnacle (U. Ex. 4).

The Complaint alleges that Pinnacle violated the Act by failing to bargain in good faith since about March 7, 2018 through October 24, 2018, and by failing to bargain with the Union to an overall good-faith impasse when it took unilateral action in September 2018. Notably, the remedy sought by the Region is a 7-month certification year extension as required by *Mar-Jac Poultry Co.,* 136 NLRB

[1] The Union incorporates by reference the Exhibits and Affidavits attached to its Motion to Accept its Untimely Statement in Opposition.

785 (1962). Thereafter, on December 17, 2018, Pinnacle filed a supplemental memorandum in support of its request for review, and Petitioner filed its supplemental memorandum on December 20, 2018. On December 20, 2018, the Office of the Executive Secretary dismissed the supplemental memorandums because they were untimely filed. On December 20, 2018, Petitioner filed a second supplemental letter.[2]

ARGUMENT

1. Petitioner and Pinnacle Did Not Serve the Union.

The Union was not properly served Petitioner's and Pinnacle's respective requests for review. Section 102.67 of the Board's Rules and Regulations requires that service of requests for review be completed "on all of the other parties." 29 C.F.R. § 102.67. Additionally, §102.5(f) requires "[u]nless otherwise specified, documents filed with the Agency must be simultaneously served on the other parties to the case including, as appropriate, the Regional Office in charge of the case." 29 C.F.R. § 102.5(f). Moreover, when a party has failed to correctly serve a party, the Rules and Regulations require that the filings is rejected or the prejudiced party be given a reasonable amount of time to respond:

> **(i) Failure to properly serve.** — Failure to comply with the requirements of this section relating to timeliness of service on other parties will be a basis for either:
>
> (1) Rejecting the document; or
>
> (2) Withholding or reconsidering any ruling on the subject matter raised by the document until after service has been made and the served party has had reasonable opportunity to respond.

29 C.F.R. § 102.5.

---

[2] The Union requests that the Executive Secretary reject Petitioner's December 20, 2018 letter. *Reliant Energy* clearly states that supplemental letters are *only* permitted when new relevant legal authority arises after a brief is filed. *Reliant Energy*, 339 NLRB 66 (2003). Petitioner cites no new legal authority in its supplemental letter, and merely rehashes its arguments the Executive-Secretary denied on December 20, 2018. Accordingly, the Union respectfully requests that Petitioner's supplemental letter be denied.

Petitioner filed its request for review on September 21, 2018, and the Employer filed its Request for Review on October 15, 2018. On Petitioner's and Pinnacle's respective certificates of service, both parties list the incorrect address for the Union, and neither the Union or its counsel were emailed a copy of the requests for review (See Attached Karmel & Roberts Affids.)[3] As a result of the imperfect service, neither the Union nor its counsel were aware that the aforementioned requests for review were filed in this matter until the Employer filed its supplemental memorandum on December 17, 2018.[4]

The Union was prejudiced by Petitioner's and Pinnacle's failure to correctly serve the Union, because the imperfect service cause the Union to miss the filing deadline for a statement in opposition. Moreover, the imperfect service advantaged Petitioner and Pinnacle because they were afforded the opportunity to submit their requests without opposition. Accordingly, the Union asks that the Board rejects Petitioner's and Pinnacle's requests for review, or accept this motion as its Statement in Opposition.

2. The Regional Director's Order Was Proper.

The Regional Director's order placing Case No. 14-RD-226626 in abeyance was proper. It is well established that when an employer engages in bad faith bargaining – by stalling and/or causing bargaining to be delayed – that a *Mar-Jac* remedy is proper and necessary. *Talbert Mfg., Inc.*, 250 NLRB 174 (1980) (*Mar-Jac* remedy applied when the employer stalled and delayed bargaining for eight months). Additionally, when a *Mar-Jac* remedy is necessary, a decertification petition filed during the period the employer engaged in bad faith bargaining shall be dismissed. *Big Three Industries, Inc.*, 201 NLRB 197 (1973) (affirming dismissal of decertification petition where the union

[3] The address listed on the COS is 10400 W. Higgins Road, Rosemont, IL, 60018-3712. The Union's correct address is 1350 E. Touhy Ave., Suite 300e, DesPlaines, IL 60018.

[4] The Union was only noticed to Pinnacle's supplemental memorandum because its counsel emailed a copy to Mike Roberts, a Union representative. Thereafter, the Union's counsel was noticed when Roberts forwarded the supplemental memorandum to them on the same date.

was certified as the exclusive bargaining representative and a subsequent complaint alleged that during the 1-year certification period the employer violated the Act by engaging in bad faith bargaining with the union); see also *Lamar Hotel*, 137 NLRB 1271, 1273 (1960) ("[a]ccordingly, following the *Mar-Jac Poultry* doctrine, we shall sustain the Union's motion to dismiss the decertification petition and grant the [u]nion an additional period of 6 months from the resumption of negotiations in which to engage in collective bargaining").

The facts in this matter are clear. The Region, after a long and thorough investigation of the Union's charges, found sufficient evidence Pinnacle engaged in bad faith bargaining and issued a Complaint. If the Region and the Union successfully prosecute the Complaint, the remedy will be an extension of the certification year and a dismissal of the decertification petition.[5] As such, if the Board were to grant Petitioner's and Pinnacle's requests for review it would create an absurd result where the Union may be decertified, only to later learn that the decertification petition was aided by an employer's unlawful delay and stalling tactics. Not only would this incentivize employers to engage in bad faith bargaining, this is the exact result the Board has already rejected and held as contrary to Act's underlying policies:

> "In order to effectuate this right, the Board's blocking charge procedures fulfill its longstanding policy that elections should be conducted in an atmosphere free of any type of coercive behavior that could affect employee free choice sufficiently to sway the outcome of the election. Postponing a decertification election until the election atmosphere is free and fair does not violate the employees' statutory right to an election, but instead provides them an opportunity to participate in an election reflecting their true—and uncoerced—views."

---

[5] Even if the Board analyzed Pinnacle's actions under *Master Slack*, the decertification would still be dismissed under long standing Board precedent. *Strategic Resources, Inc.*, 364 NLRB No. 42 (2016) ("[the Board has found] that where an employer had refused to meet at reasonable times, such conduct fatally tainted a decertification petition, rendering withdrawal of recognition unlawful under *Master Slack*"); *Fruehauf Trailer Services, Inc.*, 335 N.L.R.B. 393, 393 (2001) ("[t]he Board has long recognized that dilatory bargaining tactics such as those engaged in by the Respondent have a tendency to invite and prolong employee unrest and disaffection from a union); see also *The Westgate Corp.*, 196 NLRB 306, 313 (1972) (when an employer delays bargaining, "unrest and suspicion are generated, the conclusion of an agreement is delayed, and the status of the bargaining representative is disparaged"); *Little Rock Downtowner, Inc.*, 145 NLRB 1286, 1305 (1964), enfd. 341 F.2d 1020 (8th Cir. 1965) (delayed bargaining may invite or prolong employee discontent); *"M" System, Inc.*, 129 NLRB 527, 548-549 (1960) (dilatory bargaining tactics cause employee frustration at their bargaining representative's failure to report progress).

Mark Burnett Productions, 349 NLRB 706, 707 (2007) (dismissing the petitioner's request for review until related unfair labor practice charges were settled); see also *BOC Group, Inc.*, 323 NLRB 1100 (1997) (the decertification petition was dismissed, subject to reinstatement after a final disposition of pending unfair-labor-practice proceedings). Accordingly, Petitioner's and Pinnacle's requests for review should be denied.

CONCLUSION

For the reasons stated herein, Local 881 UFCW respectfully requests that the Board deny Petitioner's Request for Review and Pinnacle's Request for Review and Supplemental Request for Review.

Respectfully Submitted,

/s/ Joseph C. Torres
Joseph C. Torres
Attorney for Local 881 UFCW

Joseph C. Torres
The Karmel Law Firm
221 N. LaSalle Street, Suite 1550
Chicago, IL 60601
P:(312) 641-2910
F: (312) 641-0781

CERTIFICATE OF SERVICE

I herby certify that on the 2nd day of January 2019, a true and correct copy of the Statement in Opposition was electronically filed on the Board's website to the following individual:

Gary Shinners, Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001

I hereby certify that on the 2nd day of January 2019, I served a true and correct copy of the foregoing Statement in Opposition and the attachments regular U.S. mail and email:

Leonard J. Perez,
Regional Director National Labor Relations Board,
Region 14 1222
Spruce St., Rm 8.302
St. Louis, MO 63103-2829
leonard.perez@nlrb.gov

James N. Foster Jr., Esq.
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
St. Louis, Missouri 63131-3039
foster@mcmahonberger.com

Glenn M. Taubman
National Right to Work
Legal Defense Foundation
8001 Braddock Road, Suite 600
Springfield, VA 22160
gmt@nrtw.org

Robert Gentry
8515 N. Empire Drive
Altamont, IL 62411
The5Gentrys@yahoo.com

Sean Blankley
Pinnacle Food Groups, LLC
1000 Brewbaker Driver
Saint Elmo, IL 62358
Sean.Blankley@pinnaclefoods.com