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

PINNACLE FOODS GROUP, LLC and its successor CONAGRA BRANDS, INC.

and

Cases 14-CA-226922
14-CA-228742

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

ORDER REFERRING MOTION TO DISMISS TO ADMINISTRATIVE LAW JUDGE AND COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE AMENDED CONSOLIDATED COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

On November 29, 2018, the Regional Director of Region 14 issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in the above cases setting forth allegations that the above-captioned Respondents violated Section 8(a)(1) and (5) of the Act. A copy of the Consolidated Complaint ("Complaint") is attached as Exhibit A. On December 12, 2018, Respondent Pinnacle Foods Group, LLC (Respondent Pinnacle) filed an Answer to the Complaint ("Answer"). A copy of the Answer is attached as Exhibit B. The Region's November 29, 2018 Consolidated Complaint plainly was sufficient for Respondent Pinnacle to understand the allegations against it and timely file its Answer.

On February 25, 2019, the Regional Director issued an Amended Complaint and Notice of Hearing ("Amended Complaint") in the above cases; the only substantive changes from the initial Amended Complaint being the correction of the name of the Charged Party to reflect Respondent Pinnacle had been acquired by Conagra Brands, Inc. (Successor Conagra) and incorporation of Conagra as Respondent's successor throughout the Complaint. A copy of the

Amended Complaint is attached as Exhibit C. Despite having already fully answered the Consolidated Complaint without objection or any effort to seek clarification, on March 11, 2019, Respondent Pinnacle and Successor Conagra ("Respondents") filed a Motion to Dismiss the Amended Consolidated Complaint, or in the Alternative, for a More Definite Statement ("Motion"). A copy of this Motion is attached as Exhibit D. Further, despite this Motion, Respondents subsequently filed an Answer to the Amended Consolidated Complaint on March 12, 2019. A copy of this Answer to the Amended Consolidated Complaint is attached as Exhibit E.

IT IS ORDERED that Respondents' Motion to Dismiss is referred to the Administrative Law Judge for ruling.

A bill of particulars, or as Respondents references it, a "more definite statement," is justified only when the complaint is so vague that the party charged is unable to respond to the General Counsel's case. *DHSC,* LLC, 364 NLRB No. 67 slip op. at 2 (2016); quoting *McDonald's USA, LLC*, 362 NLRB No. 168, slip op. at 1 (2015); *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 871 (10th Cir 1968)); *American Newspaper Pub. Ass'n v. NLRB*, 193 F.2d 782 (7th Cir. 1952), affd. 345 U.S. 100 (1953). "The General Counsel is not required to plead its evidence or the theory of the case in the complaint." *Id.*

The role of an unfair labor practice complaint was explained in *NLRB v. Piqua Munsing Wood Products Co.*, 109 F.2d 552, 557 (6th Cir. 1940):

> The sole function of the complaint is to advise the respondent of the charge constituting unfair labor practices as defined in the Act, that he may have due notice and a full opportunity for hearing thereon. The Act does not require the particularity of the pleading of an indictment or information, nor the elements of a cause like a declaration at law or bill equity. All that is requisite in a valid complaint before the Board is that there be a plain statement of the things claimed to constitute an unfair labor practice that respondent may be put upon his defense. [Citations omitted.]

The Amended Complaint meets the requirements of Section 102.15 of the Board's Rules and Regulations, which provides in relevant part: "The complaint shall contain...a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts and the names of Respondent's agents or other representatives who committed the acts." Every act alleged by the Complaint to constitute an unfair labor practice, viz., paragraphs 6 and 7, identifies the requisite details of those acts.

Respondents' argument that the claims against Pinnacle lack evidentiary support is an attempt to engage in pre-trial discovery of the General Counsel's case. Respondents' pleas of ignorance regarding the facts and financial liability underlying this matter cannot withstand scrutiny. This is not a case in which a plethora of independent Section 8(a)(1) conduct is alleged; Respondent Pinnacle had no problem responding to these unfair labor practice allegations previously; and Respondents' Counsel represented Respondent Pinnacle not only at the time it filed its original Answer, but at the time of the unfair labor practices. Further, Respondent Pinnacle refused to respond to the General Counsel's requests for evidence in these cases and therefore is in a unique position to know details unknown even to General Counsel.

By way of their Motion, Respondents are attempting to impose on the General Counsel a duty to engage in discovery, which is not provided for under the Board's Rules. *Rainbow Coaches*, 280 NLRB 166, 169 (1986) (Respondent asserted that lack of pretrial discovery is a denial of due process. It is well settled that the fifth amendment does not require that parties to Board proceedings be permitted to prehearing discovery."); *Mid-West Paper Products Co.*, 223 NLRB 1367, 1376 (1976) (Respondent's rejected motion for a more definite statement of the allegations was an effort to know "'specifics' of the General Counsel's evidence, information to

which it was not entitled to in advance of the hearing.").

Finally, Respondents' argument that Conagra was improperly named as a respondent in the Amended Complaint is appropriate for argument at hearing. The Amended Complaint names Conagra as a respondent because it alleges Conagra to be a legal successor to Respondent Pinnacle. Like the General Counsel, Respondents are free to argue their theory of successorship without expressing those theories in the pleadings.

Based upon the foregoing, Counsel for the General Counsel respectfully requests that Respondents' Motion be denied in its entirety.

DATED at St. Louis, Missouri, this 18th day of March 2019.

Abby E. Schneider
Counsel for the General Counsel
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
Saint Louis, MO 63103-2829

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

PINNACLE FOODS GROUP, LLC

and

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

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

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 A

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
REGION 14

PINNACLE FOODS GROUP, LLC

and

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

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS AND LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (with 1st Amended Charge and forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **November 29, 2018**, I served the above-entitled document(s) by **certified or regular mail,** as noted below, upon the following persons, addressed to them at the following addresses:

Sean Blankley, Plant Manager Pinnacle Foods Group, LLC 1000 Brewbaker Dr Saint Elmo, IL 62458-1234	**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**
James N. Foster Jr., Attorney (Pinnacle Foods) McMahon Berger, P.C. 2730 North Ballas Road Suite 200 P.O. Box 31901 Saint Louis, MO 63131-3039	**FIRST CLASS MAIL**
Daniel H. Hines, Director Labor Relations Conagra Foods, Inc. Nine ConAgra Drive Omaha, NE 68102	**FIRST CLASS MAIL**
Hillary L. Klein, Attorney Husch Blackwell LLP 736 Georgia Avenue, Suite 300 Chattanooga, TN 37402	**FIRST CLASS MAIL**

James N. Foster, Jr., Attorney (CONAGRA)
McMahon Berger, P.C.
2730 North Ballas Road, Suite 200
P.O. Box 31901
Saint Louis, MO 63131-3039

FIRST CLASS MAIL

Jonathan D. Karmel, Attorney
The Karmel Law Firm
221 N LaSalle St Ste 1550
Chicago, IL 60601-1224

FIRST CLASS MAIL

Local 881, United Food and Commercial Workers
1 Sunset Hills Executive Dr Ste 102
Edwardsville, IL 62025-3723

CERTIFIED MAIL

Joseph C. Torres , ESQ.
The Karmel Law Firm
221 N LaSalle St Ste 1550
Chicago, IL 60601-1224

FIRST CLASS MAIL

November 29, 2018
Date

Harold L. Young, Jr., Designated Agent of NLRB
Name

Signature

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

PINNACLE FOODS GROUP, LLC,	)	
	)	
Respondent,	)	
	)	
and,	)	**Case No: 14-CA-226922**
	)	**14-CA-228742**
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	
	)	
	)	
Charging Party.	)	

RESPONDENT'S ANSWER TO CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

COMES NOW Pinnacle Foods Group, LLC ("Respondent"), pursuant to Section 102.20 *et seq.* of the Rules and Regulations of the National Labor Relations Board, by its attorneys, and for its Answer to the Complaint in the above-styled matter states as follows:

1. Respondent admits the allegations contained in Paragraph 1 A of the Complaint.

2. Respondent admits the allegations contained in Paragraph 1 B of the Complaint.

3. Respondent admits the allegations contained in Paragraph 1 C of the Complaint.

4. Respondent admits the allegations contained in Paragraph 2 A of the Complaint.

5. Respondent admits the allegations contained in Paragraph 2 B of the Complaint.

6. Respondent admits the allegations contained in Paragraph 2 C of the Complaint.

7. Respondent admits the allegations contained in Paragraph 2 D of the Complaint.

8. Respondent admits the allegations contained in Paragraph 3 of the Complaint.

9. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

10. Respondent denies the allegations contained in Paragraph 5 A of the Complaint unless the Region changes the word "Respondent" to "Employer." The proper unit description

EXHIBIT B

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

11. Respondent denies the allegations contained in Paragraph 5 B of the Complaint.

12. Respondent denies the allegations contained in Paragraph 5 C of the Complaint.

13. Respondent admits the allegations contained in Paragraph 6 A of the Complaint.

14. Respondent denies the allegations contained in Paragraph 6 B of the Complaint.

15. Respondent denies the allegations contained in Paragraph 6 C of the Complaint.

16. Respondent denies the allegations contained in Paragraph 6 D of the Complaint.

17. Respondent denies the allegations contained in Paragraph 7 A of the Complaint.

18. Respondent denies the allegations contained in Paragraph 7 B of the Complaint.

19. Respondent denies the allegations contained in Paragraph 7 C of the Complaint.

20. Respondent denies the allegations contained in Paragraph 7 D of the Complaint.

21. Respondent denies the allegations contained in Paragraph 7 E of the Complaint.

22. Respondent denies the allegations contained in Paragraph 8 of the Complaint.

23. Respondent denies the allegations contained in Paragraph 9 of the Complaint.

GENERAL DENIAL

Respondent denies each and every allegation of the Region's Complaint not specifically admitted herein.

FIRST DEFENSE

The Region's Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.

SECOND DEFENSE

The Complaint lacks sufficient factual specificity and, therefore, Respondent has been denied due process.

THIRD DEFENSE

Respondent denies that the Charging Party is entitled to any relief requested in the Region's Complaint.

FOURTH DEFENSE

Respondent effectively repudiated any alleged wrongdoing.

FIFTH DEFENSE

For the reasons set forth in Respondent's Position Statements, incorporated herein, Respondent's actions did not violate Sections 8(a)(1) and/or 8(a)(5) of the Act.

SIXTH DEFENSE

Respondent's expression of views, arguments, or opinions, or the dissemination thereof were done in accordance with Section 8(c) of the Act.

SEVENTH DEFENSE

All actions in which Respondent is alleged to have engaged in constitute legally permissible activity within the meaning of sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

EIGHTH DEFENSE

Respondent's actions which are the subject of the allegations set forth in the Complaint were made for legitimate, non-discriminatory reasons and the subject of good-faith negotiations.

NINTH DEFENSE

The NLRB's interpretation and application of the National Labor Relations Act is flawed and should be changed. This includes cases over the last eight years that overruled precedent and involved one or more dissents.

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.

James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, MO 63131-3039
(314) 567-7350
(314) 567-5968 facsimile

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2018, a true and correct copy of the above document was filed via electronically on the Board's website with the following individuals:

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

I further certify that on the 12th day of December, 2018, a true and correct copy of the above document was served via United States first class mail, postage prepaid and email, upon:

Jonathan Karmel, Attorney
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

Joseph C. Torres, Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

/s/ James N. Foster, Jr.

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

PINNACLE FOODS GROUP, LLC and its successor CONAGRA BRANDS, INC.

and

Cases 14-CA-226922
14-CA-228742

LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Based upon charges filed by Local 881 United Food and Commercial Workers (Union), in Cases 14-CA-226922 and 14-CA-228742, on November 29, 2018, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued against Pinnacle Foods Group, LLC (Respondent Pinnacle), alleging that it violated the National Labor Relations Act (Act), 29 U.S.C. § 151 et seq., by engaging in unfair labor practices. On December 27, 2018, an Order Rescheduling Hearing issued, rescheduling the hearing to April 9, 2019, at 10:00 AM. This Amended Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Sections 102.15 and 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), alleges that Respondent Pinnacle and its successor Conagra Brands Inc. (Successor Conagra) (collectively Respondents) have violated the Act as follows:

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 Pinnacle by U.S. mail on that date.

EXHIBIT C

B. The first amended charge in Case 14-CA-226922 was filed by the Union on November 26, 2018, and a copy was served on Respondent Pinnacle by certified mail on November 29, 2018.

C. The second amended charge in Case 14-CA-226922 was filed by the Union on January 2, 2019, and a copy was served on Respondents by U.S. mail on January 3, 2019.

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

E. The first amended charge in Case 14-CA-228742 was filed by the Union on January 2, 2019, and a copy was served on Respondents by U.S. mail on January 3, 2019.

2

A. From March 7, 2018 through October 25, 2018, Respondent Pinnacle had been a limited liability company with an office and place of business in St. Elmo, Illinois (Respondent Pinnacle's facility) and had been engaged in the manufacture and nonretail sale of salad dressings, syrups, and sauces.

B. About October 26, 2018, Conagra Brands, Inc. (Successor Conagra) purchased the business of Pinnacle Foods Group, LLC (Respondent Pinnacle) and since then has continued to operate Respondent Pinnacle's former business in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Respondent Pinnacle.

C. Based on its operations described above in paragraph 2B, Successor Conagra has continued the employing entity and is a successor to Respondent Pinnacle.

D. Before engaging in the conduct described above in paragraph 2B, Successor Conagra was put on notice of Respondent Pinnacle's potential liability in Board Cases 14-CA-

226922 and 14-CA-228742 through its hiring of Respondent Pinnacle's management and supervisory hierarchy.

E. Based on its operations described above in paragraph 2D, Successor Conagra has continued the employing entity with notice of Respondent Pinnacle's potential liability to remedy its unfair labor practices and is a successor to Respondent Pinnacle.

F. In conducting its operations during the 12-month period ending October 25, 2018, Respondent Pinnacle sold and shipped from its St. Elmo, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

G. In conducting its operations during the 12-month period ending October 25, 2018, Respondent Pinnacle purchased and received goods at Respondent Pinnacle's facility valued in excess of $50,000 directly from points outside the State of Illinois.

H. Based on a projection of its operations since about October 26, 2018, at which time Successor Conagra purchased the business of Respondent Pinnacle, Successor Conagra will annually sell and ship from its St. Elmo, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

I. Based on a projection of its operations since about October 26, 2018, at which time Successor Conagra purchased the business of Respondent Pinnacle, Successor Conagra will annually purchase and receive goods at its St. Elmo, Illinois facility valued in excess of $50,000 directly from points outside the State of Illinois.

J. At all material times, Respondent Pinnacle and Successor Conagra have been employers 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 held positions set forth opposite their respective names and have been supervisors of Respondent Pinnacle and Successor Conagra, as designated below, within the meaning of Section 2(11) of the Act and agents of Respondent Pinnacle and Successor Conagra, as designated below, within the meaning of Section 2(13) of the Act:

Sean Blankley	-	Plant Manager Respondent Pinnacle and Successor Conagra
LaQuida Booher	-	Human Resources Manager Respondent Pinnacle and Successor Conagra
Dan Hines	-	Director of Labor Relations Successor Conagra
Kelley Maggs	-	Vice President, General Counsel, Secretary Respondent Pinnacle
Uche Ndumule	-	Vice President, General Counsel Respondent Pinnacle
Michael Ryan	-	Human Resources Director Respondent Pinnacle

5

A. The following employees of Respondents (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 employed by Respondent Pinnacle.

C. From about March 7, 2017, through October 25, 2018, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Respondent Pinnacle and during that time the Union had been recognized as such representative by Respondent Pinnacle based on the Board's certification described above in paragraph 5A.

D. Since about October 26, 2018, based on the facts described above in paragraphs 2B, 2C, 5A, 5B, and 5C, the Union has been the designated exclusive collective-bargaining representative of the Unit employed by Successor Conagra.

6

A. At various times from about March 7, 2018, through October 24, 2018, Respondent Pinnacle 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 Pinnacle 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 Pinnacle 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 Pinnacle 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 Pinnacle 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 Pinnacle 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 Pinnacle 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 Pinnacle's conduct described above in paragraph 7A and 7B, Respondent Pinnacle caused employees to be displaced from Lines 4 and 5.

8

By the conduct described above in paragraphs 6 and 7, Respondents have 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.

9

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

10

WHEREFORE, as part of the remedy for Respondents' unfair labor practices alleged above in paragraph 6 and 7 the General Counsel seeks an Order requiring Respondents 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

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the amended consolidated complaint. The answer must be **received by this office on or before March 11, 2109 or postmarked on or before March 9, 2019**. Respondents 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.

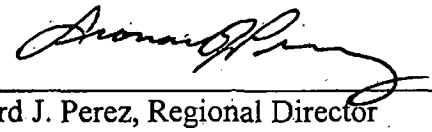
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the 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 **April 9, 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, Respondents 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: February 22, 2019



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

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 14-CA-226922

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Sean Blankley, Plant Manager
ConAgra Brands, Inc., as a successor to
Pinnacle Foods Group, LLC
1000 Brewbaker Dr
Saint Elmo, IL 62458-1234

James N. Foster Jr., Attorney
McMahon Berger, P.C.
2730 North Ballas Road Suite 200
P.O. Box 31901
Saint Louis, MO 63131-3039

Daniel H. Hines, Director Labor Relations
Conagra Foods, Inc.
Nine ConAgra Drive
Omaha, NE 68102

Hillary L. Klein, Attorney
Husch Blackwell LLP
736 Georgia Avenue, Suite 300
Chattanooga, TN 37402

Jonathan D. Karmel, Attorney
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221 N LaSalle St., Ste. 1550
Chicago, IL 60601-1224

Local 881, United Food and Commercial
Workers
1 Sunset Hills Executive Dr., Ste. 102
Edwardsville, IL 62025-3723

Joseph C. Torres, ESQ.
The Karmel Law Firm
221 N. LaSalle St., Ste. 1550
Chicago, IL 60601-1224

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

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

CONAGRA BRANDS, INC. AS A SUCCESSOR TO PINNACLE FOODS GROUP, LLC

and **Case 14-CA-226922; 14-CA-228742**

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS AND LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS

AFFIDAVIT OF SERVICE OF: Amended Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **February 25, 2019**, I served the above-entitled document(s) by **certified or regular mail,** as noted below, upon the following persons, addressed to them at the following addresses:

Sean Blankley , Plant Manager ConAgra Brands, Inc., as a successor to Pinnacle Foods Group, LLC 1000 Brewbaker Dr. Saint Elmo, IL 62458-1234	**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**
James N. Foster Jr., Attorney McMahon Berger 2730 North Ballas Road Suite 200 P.O. Box 31901 Saint Louis, MO 63131-3039	**FIRST CLASS MAIL**
Daniel H. Hines , Director Labor Relations Conagra Foods, Inc. Nine ConAgra Drive Omaha, NE 68102	**FIRST CLASS MAIL**
Hillary L. Klein , Attorney Husch Blackwell LLP 736 Georgia Avenue, Suite 300 Chattanooga, TN 37402	**FIRST CLASS MAIL**

Jonathan D. Karmel , Attorney
The Karmel Law Firm
221 N LaSalle St., Ste. 1550
Chicago, IL 60601-1224

FIRST CLASS MAIL

Local 881, United Food and Commercial Workers
1 Sunset Hills Executive Dr., Ste. 102
Edwardsville, IL 62025-3723

CERTIFIED MAIL

Joseph C. Torres , ESQ.
The Karmel Law Firm
221 N LaSalle St., Ste. 1550
Chicago, IL 60601-1224

FIRST CLASS MAIL

February 25, 2019
Date

Philip J. Wells, Jr., Designated Agent of NLRB
Name

P. Wells, Jr.
Signature

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

PINNACLE FOODS GROUP, LLC, and its successor CONAGRA BRANDS, INC.	)	
Respondents,	)	
and	)	**Case No: 14-CA-226922**
	)	**14-CA-228742**
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	
Charging Party.	)	

RESPONDENTS' MOTION TO DISMISS THE AMENDED CONSOLIDATED COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

COME NOW Respondents, Pinnacle Foods Group, LLC ("Pinnacle") and Conagra Brands, Inc. ("Conagra) (collectively "Respondents"), by and through their attorneys, and pursuant to Sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board ("Board"), move the Board to dismiss the Amended Consolidated Complaint ("Complaint"). In the alternative, Respondents move for a more definite statement.

ARGUMENT

A. The Board Should Dismiss the Complaint Against Respondents.

1. The Claims Against Pinnacle Lack Evidentiary Support.

The Complaint alleges the following:

- That from March 7, 2018 through October 24, 2018, Pinnacle "failed and refused to bargain with the Union by not making itself available for bargaining on reasonable dates" (Complaint, ¶ 6(B);

EXHIBIT D

- That from March 7, 2018 through October 24, 2018, Pinnacle "failed and refused to bargain with the Union by not providing sufficient time to bargain during bargaining sessions" (Complaint ¶ 6(C));
- That on September 17, 2018, Pinnacle "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" without bargaining with the Union to impasse (Complaint, ¶¶ 7(A), 7(D).

These allegations, however, are wholly lacking in evidentiary support. Allegations raised by the Board in a complaint that are unsupported by the evidence lack merit and should be dismissed. *See D&F Electric, Inc. and Int'l Brotherhood of Electrical Workers, Local Union 369,* 1998 WL 1985024 (1998) (complaint dismissed because General Counsel's allegations lacked evidentiary support). In this case, there is no evidence that Respondents failed or refused to bargain with the Union, failed to provide sufficient time to bargain during bargaining sessions, or unilaterally implement terms and conditions of employment without bargaining with the Union.

There is no evidence that Pinnacle failed to bargain collectively or in good faith with the Union at any time. The Complaint is deliberately vague about the allegations regarding bargaining, contending that during a period of over seven months, Pinnacle did not make itself available for bargaining and did not provide sufficient time to bargain during bargaining sessions. In fact, Pinnacle was committed to the bargaining process when it commenced and did not fail to meet its responsibility by bargaining with the Union in good faith. Pinnacle was responsive and cooperative with the Union in establishing negotiation dates, and times for bargaining sessions. The Union never suggested additional bargaining dates and never objected that the bargaining sessions the parties did have were too short.

Additionally, Pinnacle had two representatives that consistently traveled between Parsippany, New Jersey and St. Elmo, Illinois for each of the sessions scheduled and completed in 2018. The Union at no time communicated any concern, desire to meet more frequently, or issue regarding the negotiation process or indicated in any way that Pinnacle was not bargaining in good faith prior to filing its charge. Furthermore, on July 12, 2018, Pinnacle informed the Union that it had agreed to be acquired by Conagra (the "Acquisition") and recommended that the parties pause negotiations until the anticipated completion of the deal in late 2018. The Union initially stated that it agreed with that position, but on July 19, 2018, the Union changed its position and requested that the parties continue the negotiations as planned despite the Acquisition. Pinnacle obliged and met with the Union in August as previously planned. After the negotiations concluded in August, a Union representative indicated that if Pinnacle was aware of any updates regarding the completion of the Acquisition, the Union would be open to adjusting any future planned negotiation dates given the fact that Conagra would be the controlling entity after the Acquisition.

Once an employer provides appropriate notice of bargaining to a union, the onus is on the Union to request bargaining over subjects of concern. *NLRB v. Island Typographers, Inc.*, 705 F.2d 44, 51 (2d Cir. 1983). If the Union fails to request bargaining, the Union will have waived its right to bargain over the matter in question. *Id.; Assoc. Milk Producers, Inc.*, 300 N.L.R.B. 561, 563 (1990). "[A] union cannot simply ignore its responsibility to initiate bargaining over subjects of concern and thereafter accuse the employer of violating its statutory duty to bargain." *Island Typographers,* 705 F.2d at 51. The filing of an unfair labor practice charge does not relieve the Union of its obligation to request bargaining. *Assoc. Milk Producers,* 300 N.L.R.B. at 564. ("[I]t [i]s incumbent on the Union to request bargaining—not merely to protest or file an unfair labor practice charge").

In this case, there is no evidence that the Union made requests for bargaining during the time period at issue, or that it requested bargaining on the issue of shift changes. The Union's failure to raise the issue does not constitute waiver of its right to bargain if the Union is led to believe that an attempt to bargain over the issue would be futile. *Intermountain Rural Elec. Ass'n v. NLRB,* 984 F.2d 1562, 1568 (10th Cir. 1993); *accord NLRB v. Nat'l Car Rental Sys., Inc.,* 672 F.2d 1182, 1189 (3rd Cir. 1982). In this case, however, there was no indication that Pinnacle would refuse to bargain. To the contrary, the record is clear that Pinnacle agreed to bargain and sent representatives to bargain during the relevant time period alleged in the Complaint. Consequently, the Complaint lacks evidentiary support and should be dismissed.

2. <u>Conagra Was Improperly Named as a Respondent in the Complaint</u>.

As noted in Pinnacle's prior filings with the Region, Conagra completed its acquisition of Pinnacle on October 26, 2018. The Complaint nevertheless names Conagra as a Respondent despite the fact that the alleged failure to bargain purportedly occurred before the Acquisition, from March 7, 2018 through October 24, 2018 and in September, 2018. (Complaint, ¶¶ 6, 7). The Region's efforts to include Conagra as a Respondent is an unnecessary exercise. Pinnacle has never made any effort to claim the Region or the Union named the incorrect respondent in the charge or Complaint. Pinnacle has proceeded throughout the Region's investigation under the premise that the identity of the respondent is proper.

Pursuant to the National Labor Relations Board's Compliance Manual, "In the event the investigation raises a question as to the identity of the charged party, the Board agent should immediately seek to obtain all information relevant to resolving the issue." § 10504.5. Such is exactly what the Region did in this case by inquiring of Pinnacle the nature of the relationship between the entities in question. In response, Pinnacle provided the Region with a complete and accurate description of the relationship.

The Compliance Manual also provides "Some of the Agency's most challenging investigations and litigation involve attempts by a respondent to avoid liability under the Act by creating new business entities, disguising ownership and/or selling its business operations. Prompt identification and investigation of these issues greatly enhance the likelihood that a satisfactory remedy will be obtained in what may otherwise prove to be an extremely problematic case." § 10504.8. In this case, however, there is no indication that the allegations raised in the Complaint would qualify as an "extremely problematic case." Further there is no indication whatsoever Pinnacle would not comply with a Settlement Agreement or order should one be issued, or attempt to avoid liability if the Board rules against it. The employer continues to produce products at its St. Elmo facility and there is no evidence it has any intention to reduce or cease operations.

The Compliance Manual further states "If the Region obtains evidence that the respondent will be unable to satisfy its compliance obligations, the Region should determine whether there is another party that should be alleged as derivatively liable for respondent's compliance obligations." § 10506.4. Again, there is no information presented or indication that Pinnacle will be unable to satisfy its compliance obligations in the event the claims asserted in the underlying complaint are found to have merit.

Finally, the Compliance Manual provides that an investigation may be appropriate under the following circumstances:

- claim of inability to pay or to comply raised by any party,
- closure of business or substantial part (e.g., layoff),
- sale or potential sale of all or part of business,
- potential or actual loss of significant portion of customer base (e.g., completion of a major contract),

- apparent loss of assets, lack of cooperation by the respondent in providing evidence of its ability to comply, or supporting its inability to comply, or bankruptcy.

§ 10508.4. Clearly, none of these situations applies to the instant situation. Respondents continue to produce the same products with the same employees at its St. Elmo facility. The investigation demonstrated that Conagra was not the employer until after the investigation.

The Complaint makes **no** allegations against Conagra, but nevertheless names it as a Respondent. There simply is no basis for naming Conagra as a Respondent when there are no claims against it and no evidence that Respondents will not comply with any orders of the Board. The addition of Conagra to the Complaint does nothing more than to further delay and complicate what, at one point, was a relatively straightforward case. Conagra should, therefore, be dismissed as a Respondent.

B. In the Alternative, the Region Should File a More Definite Statement of the Claims.

Should the Complaint be allowed to proceed, the Region should file a more definite statement of the claims against Pinnacle. With respect to bargaining, the Complaint alleges that "from about March 7, 2018 through October 24, 2018," Pinnacle "failed and refused to bargain" with the Union by "not making itself available for bargaining on reasonable dates," and by "not providing sufficient time to bargain during the bargaining sessions held." (Complaint, ¶¶ 6(B), (C)). The Complaint fails to identify any dates when the Union requested bargaining and Pinnacle refused, or any bargaining sessions that the Union asserted were too short within the seven-and-one-half-month time frame asserted in the Complaint. In addition, Pinnacle has repeatedly asked the Region for an estimate of the financial liability, if any, associated with the claims in the Complaint in order to facilitate settlement. The Region has steadfastly refused to provide any assessment, estimate, or detail in this regard

As noted above, Pinnacle met with the Union multiple times between March 7 and October 24, 2018. Without further information regarding the specific dates the Union contends Pinnacle refused to meet, or when bargaining sessions were shortened, Pinnacle will be unable to prepare adequately

for the hearing in this matter. Moreover, because the Region has refused to provide Pinnacle with any assessment of potential liability, Pinnacle's settlement efforts have been frustrated. Consequently, if the Complaint is not dismissed, the allegations in the Complaint regarding failure to bargain should be amended to provide Pinnacle with a more definite statement of the Region's claims so that Respondents may prepare their defenses in this matter and/or be able to assess in more realistic terms the nature of the allegations in order to facilitate settlement.

CONCLUSION

Wherefore, for these reasons, Respondents Pinnacle Foods Group, LLC and Conagra Brands, Inc., respectfully request that the Region dismiss the Complaint against both Respondents. In the alternative, Respondent request that the Region file a more definite statement of the claims against Respondents.

Respectfully submitted,

MCMAHON BERGER, P.C.

/s/ James N. Foster, Jr.

James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, MO 63131-3039
(314) 567-7350—Telephone
(314) 567-5968—Facsimile
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2019, a true and correct copy of the above document was filed via electronically on the Board's website with the following individuals:

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

I further certify that on the 11th day of March, 2019, a true and correct copy of the above document was served via United States first class mail, postage prepaid and email, upon:

Jonathan Karmel, Attorney
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

Joseph C. Torres, Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

Glen M. Taubman
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, VA 22160

/s/ James N. Foster, Jr.

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

PINNACLE FOODS GROUP, LLC,	)	
	)	
Respondent,	)	
	)	
and,	)	**Case No: 14-CA-226922**
	)	**14-CA-228742**
LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS	)	
	)	
	)	
Charging Party.	)	

RESPONDENT'S ANSWER TO CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

COMES NOW Pinnacle Foods Group, LLC ("Respondent"), pursuant to Section 102.20 *et seq.* of the Rules and Regulations of the National Labor Relations Board, by its attorneys, and for its Answer to the Complaint in the above-styled matter states as follows:

1. Respondent admits the allegations contained in Paragraph 1 A of the Complaint.

2. Respondent admits the allegations contained in Paragraph 1 B of the Complaint.

3. Respondent admits the allegations contained in Paragraph 1 C of the Complaint.

4. Respondent admits the allegations contained in Paragraph 2 A of the Complaint.

5. Respondent admits the allegations contained in Paragraph 2 B of the Complaint.

6. Respondent admits the allegations contained in Paragraph 2 C of the Complaint.

7. Respondent admits the allegations contained in Paragraph 2 D of the Complaint.

8. Respondent admits the allegations contained in Paragraph 3 of the Complaint.

9. Respondent admits the allegations contained in Paragraph 4 of the Complaint.

10. Respondent denies the allegations contained in Paragraph 5 A of the Complaint unless the Region changes the word "Respondent" to "Employer." The proper unit description

EXHIBIT E

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

11. Respondent denies the allegations contained in Paragraph 5 B of the Complaint.

12. Respondent denies the allegations contained in Paragraph 5 C of the Complaint.

13. Respondent admits the allegations contained in Paragraph 6 A of the Complaint.

14. Respondent denies the allegations contained in Paragraph 6 B of the Complaint.

15. Respondent denies the allegations contained in Paragraph 6 C of the Complaint.

16. Respondent denies the allegations contained in Paragraph 6 D of the Complaint.

17. Respondent denies the allegations contained in Paragraph 7 A of the Complaint.

18. Respondent denies the allegations contained in Paragraph 7 B of the Complaint.

19. Respondent denies the allegations contained in Paragraph 7 C of the Complaint.

20. Respondent denies the allegations contained in Paragraph 7 D of the Complaint.

21. Respondent denies the allegations contained in Paragraph 7 E of the Complaint.

22. Respondent denies the allegations contained in Paragraph 8 of the Complaint.

23. Respondent denies the allegations contained in Paragraph 9 of the Complaint.

GENERAL DENIAL

Respondent denies each and every allegation of the Region's Complaint not specifically admitted herein.

FIRST DEFENSE

The Region's Complaint and each purported claim for relief stated therein fail to allege facts sufficient to state a claim upon which relief may be granted.

SECOND DEFENSE

The Complaint lacks sufficient factual specificity and, therefore, Respondent has been denied due process.

THIRD DEFENSE

Respondent denies that the Charging Party is entitled to any relief requested in the Region's Complaint.

FOURTH DEFENSE

Respondent effectively repudiated any alleged wrongdoing.

FIFTH DEFENSE

For the reasons set forth in Respondent's Position Statements, incorporated herein, Respondent's actions did not violate Sections 8(a)(1) and/or 8(a)(5) of the Act.

SIXTH DEFENSE

Respondent's expression of views, arguments, or opinions, or the dissemination thereof were done in accordance with Section 8(c) of the Act.

SEVENTH DEFENSE

All actions in which Respondent is alleged to have engaged in constitute legally permissible activity within the meaning of sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

EIGHTH DEFENSE

Respondent's actions which are the subject of the allegations set forth in the Complaint were made for legitimate, non-discriminatory reasons and the subject of good-faith negotiations.

NINTH DEFENSE

The NLRB's interpretation and application of the National Labor Relations Act is flawed and should be changed. This includes cases over the last eight years that overruled precedent and involved one or more dissents.

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ James N. Foster, Jr.

James N. Foster, Jr.
2730 North Ballas Road, Suite 200
St. Louis, MO 63131-3039
(314) 567-7350
(314) 567-5968 facsimile

Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2018, a true and correct copy of the above document was filed via electronically on the Board's website with the following individuals:

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

I further certify that on the 12th day of December, 2018, a true and correct copy of the above document was served via United States first class mail, postage prepaid and email, upon:

Jonathan Karmel, Attorney
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

Joseph C. Torres, Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1550
Chicago, IL 60601-1224

/s/ James N. Foster, Jr.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CONAGRA BRANDS, INC. AS A SUCCESSOR TO PINNACLE FOODS GROUP, LLC

and

Case 14-CA-226922;
14-CA-228742

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS

AFFIDAVIT OF SERVICE OF: Order Referring Motion to Dismiss to Administrative Law Judge and Counsel for the General Counsel's Opposition to Respondent's Motion to Dismiss the Amended Consolidated Complaint or, In the Alternative, for a More Definite Statement

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 18, 2019**, I served the above-entitled document(s) upon the following persons in the following manner:

E-Filing:

The Honorable Robert Giannasi
Chief Administrative Law Judge
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570

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March 18, 2019	Philip J. Wells, Jr., Designated Agent of NLRB
Date	Name
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	Signature