

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

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

UFCW LOCAL 881,
Union,

Case No. 14-RD-226626

and

ROBERT GENTRY,
Petitioner.

PETITIONER ROBERT GENTRY'S REQUEST FOR REVIEW

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REQUEST FOR REVIEW

I. INTRODUCTION

It has long been black letter Board law that settlement agreements cannot block a decertification election absent an employer's admission of wrongdoing. *City Markets*, 273 NLRB 469 (1984); *Island Spring*, 278 NLRB 913 (1986); *Jefferson Hotel*, 309 NLRB 705 (1992); *Truserv Corp.*, 349 NLRB 227 (2007); *Cablevision Systems Corp.*, 367 NLRB No. 59 (Dec. 19, 2018). That is because “[t]he peaceful settlements of disputes is important—but not so important that it should be obtained at the expense of abrogating employees’ Section 7 rights to reject or retain a union as their collective bargaining representative.” *Truserv*, 349 NLRB at 232.

Yet, in this case, the Region has dismissed a decertification petition pursuant to a settlement agreement containing a non-admissions clause. The Region took this extraordinary step because the settlement it engineered requires the dismissal of the decertification petition pursuant to a seven-month “certification extension” bar under *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). But, a petitioner cannot “be bound to a settlement by others that has the effect of waiving the petitioner’s right under the Act to have the decertification petition processed.” *Jefferson Hotel*, 309 NLRB at 706; *see also Truserv*, 349 NLRB at 228 (overruling *Douglas-Randall* and reinstating *Jefferson Hotel*). Petitioner was not a party to the settlement of the ULP “blocking charge” case and, indeed, his attempt to intervene in that case was denied.

In short, the Region’s decision to dismiss the petition is inconsistent with well-established Board law and the Act’s paramount policy of employee free choice. The Board should grant review, summarily reverse, and order the Region to hold a prompt election.

II. FACTS

On March 7, 2017, UFCW Local 881 (“Local 881” or “Union”) was certified as the exclusive bargaining representative of all full time hourly production employees at Pinnacle Foods’ (“Pinnacle” or “Employer”) St. Elmo, Illinois facility.

Well over one year later, on August 31, 2018, Robert Gentry (“Mr. Gentry” or “Petitioner”), an employee in the certified unit, filed a Petition in this case, No. 14-RD-226626, to decertify Local 881. (Ex. A). Predictably, the Union responded by filing “blocking charges” to try to halt the election. Case Nos. 14-CA-226922 and 14-CA-228742. (Ex. B). Just a few days later, on September 7, 2018, Region 14 granted the Union’s request to block the election based on the Union’s newly-filed ULP charges. (Ex. C).¹ On or about Sept. 21, 2018, Pinnacle and Gentry filed Requests for Review seeking to have the election “unblocked,” but this Board denied those Requests for Review on Feb.

¹ Although the Board’s current election rules purport to require Region Directors to conduct prompt investigations and demand prima facie evidence of serious ULP violations before allowing an election to be blocked at the behest of an incumbent union, see R & R 103.20, it is doubtful that Region 14 could have conducted such an investigation between Aug. 31, 2018 when Mr. Gentry’s Petition was filed and Sept. 7, 2018 when the Region unilaterally blocked his Petition. (Ex. C).

4, 2019. (Ex. D).²

On February 22, 2019, the Regional Director issued an Amended Consolidated Complaint (“Complaint”) against Pinnacle in Case Nos. 14-CA-226922 and 14-CA-228742 (Ex. E), alleging relatively minor and picayune violations of the NLRA related to the scheduling of bargaining and some minor unilateral changes in scheduling work, none of which have the slightest “causal nexus” with Mr. Gentry and his co-workers’ earlier (and still current) desire to get rid of this unpopular incumbent Union. *See, e.g., Saint-Gobain Abrasives, Inc.*, 342 NLRB 434 (2004); *Master Slack Corp.*, 271 NLRB 78 (1984). A trial was scheduled for April 9, 2019.

Despite the obvious lack of a causal nexus between the alleged ULPs and Mr. Gentry’s and other employees’ desire to get rid of the Union, the Region’s Complaint in Case Nos. 14-CA-226922 and 14-CA-228742 sought to add a new, seven-month insulated period on to the Union and Employer bargaining.

The Complaint states:

² Although the Request for Review was denied (Ex. D), Chairman Ring and Member Kaplan correctly recognized in a footnote:

In particular, [we] note that here, the Acting Regional Director summarily granted the Union’s request to block the election on the same day an unfair labor practice charge was filed. The election remains blocked even though the Union failed to substantiate certain allegations it made in its initial unfair labor practice charge in Case 14-CA-226922. And although a complaint ultimately issued upon an amended charge, the timing of the initial charge—filed 18 months after the Union’s certification and 12 months after the parties began bargaining, but only days after the decertification petition was filed—suggests that its primary purpose was to delay the decertification election.

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.

(Ex. E at 7, ¶10).

On March 11, 2019, Mr. Gentry attempted to intervene in Case Nos. 14-CA-226922 and 14-CA-228742, to protect his election and oppose the *Mar-Jac* remedy that would encrust this unpopular Union onto his bargaining unit for an additional seven months. (Ex. F). On March 22, 2019, ALJ David Goldman denied the Motion to Intervene (Ex. G). ALJ Goldman refused to even cite or acknowledge GC Memo 18-06, in which the General Counsel explicitly recommended approval of employees' intervention in cases like this.³

With a trial date of April 9, 2019 looming, Pinnacle and Local 881 agreed to a settlement with Region 14 in late March, 2019. (Ex. H). Confirming Mr. Gentry's worst fears, that settlement agreement purported to create a seven-month certification extension under *Mar-Jac* and expressly recognized that Mr. Gentry's petition would be dismissed, despite the fact that: (a) Mr. Gentry was not a party to the Pinnacle-Local 881 settlement

³ G.C. Memo 18-06 was responding to strong judicial criticism of the Board's failure to apply consistent standards when employees attempt to intervene to protect their decertification or withdrawal petitions. *See, e.g., Veritas Health Servs., Inc. v. NLRB*, 895 F.3d 69, 89 (D.C. Cir. 2018), where Judge Millet criticized the Board's inconsistent handling of employee-petitioners' intervention motions: "I write separately only to express my concerns about the Board's continued failure to establish any discernible, consistent standard for granting and denying intervention in agency proceedings. . . . [I]t remains incumbent on the Board to formulate objective and reliable standards for intervention in its proceedings. The transparent, consistent, and evenhanded application of identified and reasoned factors is essential to fair process for all would-be intervenors, regardless of on which side of a case they wish to appear."

agreement; (b) Mr. Gentry had been excluded by the Region and ALJ Goldman from having any input into this objectionable settlement agreement and *Mar-Jac* remedy; and, most importantly (c) the settlement contains a non-admissions clause. (Ex. H).

On April 1, 2019, a few days after the parties signed the settlement agreement, Region 14 summarily dismissed Mr. Gentry's decertification petition. (Ex. I). This Request for Review follows.

The Board should grant review because the Region blatantly ignored Board law that requires a decertification petition be processed when a settlement agreement contains a non-admissions clause. *Truserv* 349 NLRB at 238; *Cablevision*, 367 NLRB slip op. at *3-5. Additionally, this case presents compelling reasons for reconsideration of the "*Mar-Jac* certification extension doctrine" and related Board rules and policies that deny basic employee rights under NLRA Sections 7 and 9. *See* R & R 102.71(a)(2). Mr. Gentry asks the Board to: (1) reverse the dismissal of his election petition based upon a ULP settlement from which he was expressly excluded by the Region and the ALJ; and (2) severely limit or overrule *Mar-Jac* to more properly protect employees' right of free choice in the selection or rejection of a union. It is time for the Board to place employee free choice at the pinnacle of the Act, not the bottom.

ISSUE PRESENTED

- 1) Can a Region disregard *Truserv Corp.*, 349 NLRB 227 (2007) and *Cablevision Systems Corp.*, 367 NLRB No. 59 (Dec. 19, 2018) and dismiss a decertification petition pursuant to an Employer's settlement agreement containing a non-admissions clause?
- 2) Should *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), be limited or overruled, so that "certification extensions" are not arbitrarily granted to interested unions and supine employers in the face of employee opposition and a pending decertification petition?

ARGUMENT IN SUPPORT OF REVIEW

I. The Region's decision to dismiss Mr. Gentry's decertification petition is flatly wrong under Board law.

Under *Truserv* and *Cablevision Systems* the Region should have processed the decertification petition because the settlement contained a non-admissions clause. *Truserv* protects employees' rights to self-organization and fundamental rights of due process by holding that a settlement of an unfair labor practice charge is not an admission, finding, or adjudication that an employer's actions constitute an unfair labor practice tainting a pending decertification petition and thereby requiring its dismissal. *Truserv*, 349 NLRB at 232. Thus, where, as in the present case, a decertification petition is blocked by an unfair labor practice charge and the employer settles the charge without an admission of wrongdoing, the petition should be processed.

The key reason the petition should be processed is because the settlement agreement does not, standing alone, constitute an admission, finding, or adjudication that the employer

violated the Act. Put simply, it is not *evidence* that the Act has been violated. Without *evidence* that the employer's unfair labor practice actually undermined majority support for the union or caused employee disaffection, employees' Section 7 rights may not be impaired or frustrated by holding a decertification petition in abeyance or dismissing it. Mere presumption, allegation, or speculation is not superior to employee free choice, nor is it sufficient to thwart a decertification election. *See also BPH & Co., Inc. v. NLRB*, 333 F.3d 213, 222 (D.C. Cir. 2003) (finding that a non-admissions clause did not constitute substantial evidence).

The Board recently upheld these sound principles in *Cablevision Systems Corp.*, 367 NLRB No. 59 (Dec. 19, 2018). There, a Regional Director dismissed a decertification petition based on unfair labor practice charges that were found to have merit by two ALJs, but were settled prior to final adjudication by the Board. 367 NLRB slip op. at *2-3. On review, the Board reversed the Region's dismissal of the petition. The Board found that under *Truserv* "a timely filed decertification petition that has met all of the Board's requirements should be reinstated and processed at the petitioner's request following the parties' settlement and resolution of the unfair labor practice charge." *Cablevision*, slip op. at *3. Petitions should be reinstated post-settlement because "absent a finding of a violation of the Act, or an admission by the employer of such a violation, there is no basis for dismissing a petition based on a settlement of alleged but unproven unfair labor practices. To do so would . . . be in derogation of employee rights under Section 7 of the Act." *Id.*

slip op. at *3.

Nor does it matter that an employer and union have agreed to a prolonged certification bar under *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). “[E]ven if the union and employer agree to preclude further processing of a decertification petition, the petitioner is not bound by the settlement agreement, absent the petitioner’s consent to the dismissal or an admission of wrongdoing by the employer.” *Truserv*, 349 NLRB at 237. Thus, the Regional Director cannot seriously contend that the petition should be dismissed because the Employer and Union agreed to dismiss the petition, for the simple fact that it is *not their petition*—it is Mr. Gentry’s and the employees’ petition. Self-interested unions and employers cannot be given the power to collude against employees’ desire to hold an election.

If the Regional Director wanted to have the petition dismissed, he (and ALJ Goldman) should have followed the Board’s advice and included Mr. Gentry in the settlement discussions. *See Truserv*, 349 NLRB at 232 n.14 (“we encourage the inclusion of the petitioner in settlement discussions to allow for the possibility that the petitioner could agree to a settlement that provides for the dismissal of the petition.”). Despite the fact Mr. Gentry tried to intervene in the proceedings to protect his petition (Ex. F), the Region (and ALJ Goldman) ignored the Board’s command and negotiated a settlement without him. (Exs. G, H, I).

In short, the Region’s decision flatly contradicts *Cablevision* and *Truserv*. The Board

should grant review and order the petition expeditiously processed.

II. The extension of the certification year is unjustified.

The certification bar exists to allow unions to bargain fairly with the employer for one year—a presumptively reasonable time to bargain. *Mar-Jac Poultry Co.*, 136 NLRB 785, 786–87 (1962) (Board wants to “insure the parties a reasonable time in which to bargain without outside interference or pressure, such as a rival petition. . . . Among the reasons supporting the adoption of this rule is to give a certified union ‘ample time for carrying out its mandate’ and to prevent an employer from knowing that ‘if he dillydallies or subtly undermines, union strength’ he may erode that strength and relieve himself of his duty to bargain.”). But the “certification extension” rule created in *Mar-Jac* does more than just ensure bargaining for a year: it can crush employees’ free choice rights and entrench an unwanted and unpopular union onto a workplace for long and arbitrary periods of time, with no factual showing that any bargaining violations even occurred. Here, Pinnacle filed an Answer denying the ULP allegations in the Complaint, and seemed prepared to go to trial until pressured by Region 14 to settle, albeit with a non-admissions clause. This situation is identical to the “settlement bar” cases, where “the issue is whether an already raised, previously existing question concerning representation is to be nullified, absent a showing or admission of tainting conduct and in derogation of the employees’ Section 7 rights, because of a subsequent agreement to bargain entered into by the employer and the union without securing the agreement of the decertification petitioner to withdraw his or

her petition.” *Truserv Corp.*, 349 NLRB at 230; *Cablevision*. In this case, Mr. Gentry and other employees’ Sections 7 and 9 rights should not be so easily cast aside solely to give an unpopular incumbent union more time to dig in its heels.

Indeed, the Board has frequently denied union or General Counsel requests for *Mar-Jac* remedies that would extend the certification year. The Board recognizes that employee free choice—not union incumbency—is the paramount policy of the NLRA, and that not every ULP that occurs regarding bargaining is cause to extend the certification year. In *Buck Creek Coal*, 310 NLRB 1240, 1240 (1993), the Board denied a certification extension and held:

In fashioning a remedy for the Respondent's unilateral implementation of a shift rotation plan in violation of Sec. 8(a)(5) and (1), the judge ordered an extension of the Union’s certification year under *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). Because there is no evidence that this single unilateral change had any meaningful impact on the course of contract negotiations at the bargaining table, we find that a *Mar-Jac* remedy is not warranted. *American Rubber & Plastics Corp.*, 200 NLRB 867, 876-877 (1972). *See also generally Litton Systems*, 300 NLRB 324, 330 (1990), *enfd.* 949 F.2d 249 (8th Cir. 1991) (unlawful unilateral changes insufficient to establish overall bad-faith or surface bargaining in absence of evidence that changes linked to ongoing negotiations so as to frustrate reaching of an agreement).

The Board held much the same thing in *Cortland Transit, Inc.*, 324 NLRB 372, 372 (1997), where a *Mar-Jac* extension was denied because “[t]here was no general allegation that the Respondent had failed or refused to recognize the Union or to meet and bargain with the Union in good faith following its certification and no indication how the Respondent's failure to provide information regarding a discharge or unilateral changes

affected the parties' negotiations.”

Similarly, in *Metta Elec. & IBEW Local No. 1*, 349 NLRB 1088, 1090 n.6 (2007) (citations omitted), Member Schaumber observed “that the duration of the extension of the certification year depends on the circumstances of the individual case. In fashioning an appropriate remedy, the Board’s task is to provide ‘a reasonable period of time’ for bargaining ‘without unduly saddling the employees with a bargaining representative that they may no longer wish to have represent them.’”

That is exactly the case here. Local 881 has already had plenty of time—well over a year—to bargain, and Mr. Gentry and his fellow employees are now “saddled” with a bargaining representative they no longer wish to have. Yet both the Region and the ALJ summarily wrote Mr. Gentry and his co-workers out of the case, and refused to hear from them about their opposition to the *Mar-Jac* remedy and the lack of a “causal nexus” between the ULP allegations and their desire to get rid of the union—a desire fully protected by NLRA Sections 7 and 9. Review should also be granted so the Board can limit or overrule *Mar-Jac*, to make sure it is more carefully tailored in a way that does not arbitrarily destroy employees’ Sections 7 and 9 rights.

CONCLUSION

The Regional Director's dismissal of the petition is a complete departure from Board precedent under *Truserv* and *Cablevision*. The Board should expeditiously grant this Request for Review; overturn the Regional Director's dismissal; and order that the decertification petition is reinstated and expeditiously processed.

Respectfully submitted,

/s/ Glenn M. Taubman

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2019, a true and correct copy of the foregoing Request for Review and attachments were e-filed with the NLRB's Executive Secretary and e-mailed to:

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National Labor Relations Board, Region 14
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St. Louis, MO 63103-2829
leonard.perez@nrlrb.gov

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/s/ Glenn M. Taubman

Exhibit A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RD PETITION

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

14- RD-226626

8/31/18

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 7 below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. **PURPOSE OF THIS PETITION:** RD- DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
Pinnacle Foods Group, LLC

2b. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code)
1000 Brewbaker Drive, St Elmo, IL 62458

3a. Employer Representative - Name and Title
Sean Blankley, Plant Manager

3b. Address (if same as 2b - state same)
same

3c. Tel. No.
618-829-4007

3d. Fax No.

3e. Cell No.

3f. E-Mail Address

4a. Type of Establishment (Factory, mine, wholesaler, etc.)
factory

4b. Principal product or service
food products

5a. Description of Unit Involved
Included:
All full-time hourly production employees including maintenance, warehouse and distribution, sanitation, team leads, coordinators and quality assurance employees, employed by the Employer at its St. Elmo, Illinois facility
Excluded: Office clerical employees, office coordinators, temporary employees, professional employees, guards, and supervisors as defined in the Act.

5b. City and State where unit is located:
St. Elmo, Illinois

6. No. of Employees in Unit
214

7. Do a substantial number (30% or more) of the employees in the unit no longer wish to be represented by the certified or currently recognized bargaining representative? Yes No

8a. Name of Recognized or Certified Bargaining Agent
Local 881, United Food and Commercial Workers Union

8b. Affiliation, if any
United Food and Commercial Workers International Union, AFL-CIO, CLC

8c. Address
10400 W. Higgins Road
Rosemont, IL 60018-3712

8d. Tel. No.
618-692-6400

8e. Cell No.

8f. Fax No.
847-759-7106

8g. E-Mail Address

9. Date of Recognition or Certification
March 7, 2017

10. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
No contract

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes No

11b. If so, approximately how many employees are participating?
_____ a labor organization, of _____ since (Month, Day, Year)

11c. The Employer has been picketed by or on behalf of (Insert Name)
(Insert Address)

12. Organizations or individuals other than those named in items 8 and 11c, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5 above. (If none, so state)

12a. Name
None

12b. Address

12c. Tel. No.

12d. Fax No.

12e. Cell No.

12f. E-Mail Address

13. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.

13a. Election Type: Manual Mail Mixed Manual/Mail

13b. Election Date(s)
September 14, 2018

13c. Election Time(s)
5:30 a.m. to 8:30 a.m. and 1:30 p.m. to 4:30 p.m.

13d. Election Location(s)
Training Room, 1000 Brewbaker Dr., St. Elmo, IL 62458

14. Full Name of Petitioner
Robert Gentry

14a. Address (Street and number, city, state, ZIP code)
8515 N. Empire Dr., Altamont, IL 62411

14b. Tel. No.

14c. Fax No.

14d. Cell No.
618-553-2804

14e. E-Mail Address
The5gentrys@yahoo.com

14f. Affiliation, if any

15. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

15a. Name
Robert Gentry

15b. Title
Petitioner

15c. Address (Street and number, city, state, ZIP code)
8515 N. Empire Drive, Altamont, IL 62411

15d. Tel. No.

15e. Cell No.
618-553-2804

15f. E-Mail Address
The5gentrys@yahoo.com



I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)
Robert Gentry

Signature
Robert Gentry

Title
Petitioner

Date Filed
8-29-18

WILLFUL FALSE STATEMENTS ON THIS PETITION 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 representation 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 may cause the NLRB to decline to invoke its processes.

Exhibit B

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SECOND AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
14-CA-228742	

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 and its successor Conagra Brands, Inc.		b. Tel. No. 1: 402-240-3459 2: 618-829-4007
d. Address (street, city, state ZIP code) 1: 9 ConAgra Drive MS 9-210 Omaha, Nebraska 68102 2: 1000 Brewbaker Drive St. Elmo, IL 62458		c. Cell No. 513-594-6235
e. Employer Representative 1: Daniel Hines Director, Labor Relations 2: Sean Blankley		f. Fax No.
i. Type of Establishment (factory, nursing home, hotel) Factory		g. e-Mail dan.hines@conagra.com
j. Principal Product or Service Food Products		h. Dispute Location (City and State) St. Elmo, IL
		k. Number of workers at dispute location

i. 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)

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)

1 Sunset Hills Executive Park, Suite 102
Edwardsville, IL 62025

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

4c. Cell No.

4d. Fax No.
(618)692-4407

4e. e-Mail

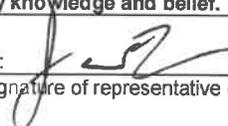
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

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.

Tel. No.
312-641-2910

By: 
(signature of representative or person making charge)

Joe Torres, Attorney
Print Name and Title

Office, if any, Cell No.

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

Date: 2/27/2019

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.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

THIRD AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
14-CA-226922	2/27/19

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 and its successor Conagra Brands, Inc.		b. Tel. No. 1: 402-240-3459 2: 618-829-4007
		c. Cell No. 513-594-6235
d. Address (street, city, state ZIP code) 1: 9 ConAgra Drive MS 9-210 Omaha, Nebraska 68102 2: 1000 Brewbaker Drive St. Elmo, IL 62458	e. Employer Representative 1: Daniel Hines Director, Labor Relations 2: Sean Blankley	f. Fax No. g. e-Mail dan.hines@conagra.com 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

1. 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) 1 Sunset Hills Executive Park, Suite 102 Edwardsville, IL 62025	4b. Tel. No. (618)692-6400
	4c. Cell No.
	4d. Fax No. (618)692-4407
	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)

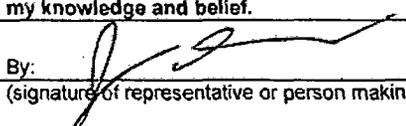
UFCW International, AFL-CIO, CLC

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.

Tel. No.
312-641-2910

Office, if any, Cell No.

By: 
(signature of representative or person making charge)

Joe Torres, Attorney
Print Name and Title

Fax No.
312-641-0781

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

Date: 2/27/2019

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
2019 FEB 27 PM 3:58
SAINT LOUIS, MO 63102

Exhibit C

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

PINNACLE FOODS GROUP, LLC

Employer

and

Case 14-RD-226626

ROBERT GENTRY

Petitioner

and

LOCAL 881 UNITED FOOD AND COMMERCIAL
WORKERS

Union

**ORDER GRANTING UNION'S REQUEST TO BLOCK THE PETITION
AND ORDER CANCELLING HEARING**

On August 31, 2018, the Petitioner filed the instant decertification petition and a hearing was scheduled for Monday, September 10, 2018. On Friday, September 7, 2018, the Union filed a request to block further processing of the petition along with an offer or proof based on a charge filed in Case 14-226922, which alleges unlawful conduct affecting employees covered by this petition. Accordingly, pursuant to Section 103.20 of the Board's Rules and Regulations,

IT IS ORDERED that the Union's request to block the election has been granted and the petition will be held in abeyance pending the disposition of the unfair labor practice charges in Case 14-CA-226922.

IT IS FURTHER ORDERED that the hearing scheduled for September 10, 2018, is cancelled and may be rescheduled upon disposition of the charge filed in Case 14-CA-226922.

Right to Request Review: Pursuant to Section 102.71 of the National Labor Relations Board's Rules and Regulations, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review shall be submitted in eight copies, with a copy filed with the Regional Director, and copies must be served on all the other parties. The request must contain a complete statement setting forth the facts and reasons upon which the request is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. Eastern Time) on September 21, 2018, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on September 21, 2018.

Exhibit

C

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

The Board may grant special permission for an extension of time within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Dated: September 7, 2018

/s/ MARY TAVES

MARY TAVES
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 14
1222 Spruce Street, Room 8.302
Saint Louis, MO 63103-2829

Exhibit D

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC
Employer

and

ROBERT GENTRY
Petitioner

Case 14-RD-226626

and

LOCAL 881 UNITED FOOD AND COMMERCIAL
WORKERS UNION
Union

ORDER

The Petitioner's and the Employer's Requests for Review of the Acting Regional Director's Order Granting Union's Request to Block the Petition and Order Canceling Hearing are denied as they raise no substantial issues warranting review.¹

¹ For institutional reasons, Chairman Ring and Member Kaplan apply extant law in denying the Requests for Review. However, in their view, this case highlights significant issues with the law pertaining to blocking charges that potentially frustrate the rights of employees. In particular, they note that here, the Acting Regional Director summarily granted the Union's request to block the election on the same day an unfair labor practice charge was filed. The election remains blocked even though the Union failed to substantiate certain allegations it made in its initial unfair labor practice charge in Case 14-CA-226922. And although a complaint ultimately issued upon an amended charge, the *timing* of the initial charge—filed 18 months after the Union's certification and 12 months after the parties began bargaining, but only days after the decertification petition was filed—suggests that its primary purpose was to delay the decertification election. In light of such an example of suspect timing, and for other reasons, the Board intends to revisit the blocking charge policy in a future rulemaking proceeding.

Member McFerran concurs with her colleagues in denying the Requests for Review. In joining her colleagues in denying review, Member McFerran does so because the Acting Regional Director's decision to block the election is consistent with the Board's longstanding blocking charge policy and Board precedent.

Finally, Member McFerran notes that she was not part of any decision by the Board majority to revisit the blocking charge policy in a future rulemaking. She anticipates that all

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

MARVIN E. KAPLAN, MEMBER

Dated, Washington, D.C., February 4, 2019.

Board members, whatever their prior expressed views in connection with blocking-charge issues, will keep an open mind during any future rulemaking on the subject.

Exhibit E

**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.

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.

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

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.

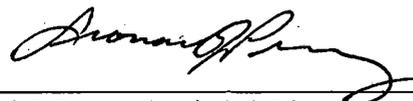
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the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

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
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Chattanooga, TN 37402

Jonathan D. Karmel, Attorney
The Karmel Law Firm
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

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.nlr.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.nlr.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

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, 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.

Exhibit F

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 14**

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

Cases 14-CA-226922
14-CA-228742

UFCW LOCAL 881,
Union-Charging Party,

ROBERT GENTRY,
Employee-Proposed Intervenor.

ROBERT GENTRY’S MOTION TO INTERVENE

I. INTRODUCTION AND BACKGROUND

Pursuant to Section 102.29 of the Board’s Rules and Regulations, the Administrative Procedure Act, 5 U.S.C. §§ 554 and 702, Board case law, and the requirements of due process under the Fifth Amendment to the United States Constitution, Robert Gentry (“Gentry”) moves to intervene as a full party in the above-captioned cases, which are set for trial on April 9, 2019.

Gentry is an employee of Pinnacle Foods Group (“Pinnacle” or “Employer”) in a bargaining unit represented by UFCW Local 881 (“Union” or “Local 881”). On August 31, 2018, Gentry filed a Decertification Petition in Case No. 14-RD-226626, wherein he seeks to decertify Local 881 as the exclusive bargaining representative of all full time hourly production employees at the Employer’s St. Elmo, Illinois facility. (Ex. A). On September 7, 2018, Region 14, via written correspondence, granted the Union’s request to block

Gentry's election based on alleged ULP violations. (Ex. B). It should be noted that the Union has filed a plethora of unfounded ULP allegations against Pinnacle, many since withdrawn, all in an effort to delay the decertification election and the day of reckoning.

On February 22, 2019, the Regional Director issued an Amended Consolidated Complaint against Pinnacle, alleging essentially minor and picayune violations of the NLRA, none of which has the slightest "causal nexus" with Gentry and his co-workers' desire to get rid of this unpopular incumbent Union. *See, e.g., Saint Gobain Abrasives, Inc.*, 342 NLRB 434 (2004); *Master Slack Corp.*, 271 NLRB 78 (1984).

Despite the obvious lack of a causal nexus between the alleged ULPs and Gentry and other employees' extreme dissatisfaction with the Union, the Region's Amended Consolidated Complaint seeks a *seven-month* insulated bargaining period for the Union, and, in effect, the dismissal of Gentry's still-pending decertification petition in Case No. 14-RD-226626.¹ In doing so, the Region has treated Gentry and his fellow employees as non-existent entities, failing to serve him or his undersigned attorney with any of the documents in this case, even though the outcome of this ULP case clearly affects his Sections 7 and 9 rights and his still-pending decertification petition.

In essence, the Region seeks to force the Union on Gentry and his co-workers, and cement it in place for an extra seven months despite the filing of a valid and untainted

¹ The Amended Consolidated Complaint, issued February 22, 2019, states at 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."

decertification petition.

Presumably, the Region can only negate Gentry's decertification petition by demonstrating that it was tainted by the Employer's serious and unremedied unfair labor practices. *See, e.g., Tenneco Auto., Inc. v. NLRB*, 716 F.3d 640, 648 (D.C. Cir. 2013) (citations omitted) ("not every unfair labor practice will taint evidence of a union's subsequent loss of majority support. Thus, the Board has the burden of adducing substantial evidence to support its finding that an employer's unfair labor practices have 'significantly contributed' to the erosion of a union's majority support.") The Region cannot meet that burden here, as Gentry can clearly attest. He knows that he and other employees have longstanding and principled reasons to oppose the Union that have nothing to do with the alleged ULP allegations against the Employer in this case.

Establishing such taint requires "specific proof of a causal relationship between the [ULPs] and the ensuing events indicating a loss of support." *Lee Lumber & Bldg. Material Corp.* ("*Lee Lumber I*"), 322 NLRB 175, 177 (1996); *Master Slack*, 271 NLRB at 84. This is a highly fact-specific inquiry and requires detailed testimony from all parties.

Gentry files this Motion to Intervene to protect his decertification petition and his rights under NLRA Sections 7 and 9. Specifically, he wishes to present evidence showing that even if the Employer did, *arguendo*, commit the minor ULPs referenced in the Complaint, those could not possibly have tainted the decertification petition because the Employer's acts had no effect on "employee morale, organizational activities, and membership in the union." *Garden Ridge Mgmt.*, 347 NLRB 131, 134 (2006), citing *Master Slack*.

In sum, Gentry and his coworkers have longstanding and principled disagreements with the Union, and their positions against union representation are entirely protected by Sections 7 and 9. Gentry seeks to show that his Employer's actions at the bargaining table had no actual effect on the employees' negative views about the Union. Gentry and his coworkers have Sections 7 and 9 rights to disassociate from the Union through a decertification petition, and they oppose the Region's efforts to quash those rights and cement an unpopular union into power over their workplace. Intervention must be granted to allow Gentry to protect those rights.

II. STANDARDS FOR GRANTING INTERVENTION

The Board lacks precise standards for when intervention should be granted. Generally, ALJs decide such issues on an ad hoc basis (and many ALJs have granted such motions in similar cases, as shown *infra*). Federal Rule of Civil Procedure 24, however, provides strong guidance for the Board, including defined standards and criteria to rule upon this Motion. It states:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a).

Federal courts apply a four-part test to evaluate claims for intervention under this rule: (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction that is the subject of the action;

(3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his or her ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action. *See, e.g., United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

In applying those tests, Rule 24(a) is construed "broadly in favor of potential intervenors," *City of Los Angeles*, 288 F.3d at 397, and in light of the liberal policies favoring intervention. *See also Camay Drilling Co.*, 239 NLRB 997 (1978) (intervention liberally granted to pension fund trustees). This four-part test is satisfied here.

III. ARGUMENT

A. The Motion to Intervene is timely.

This Motion to Intervene is being filed approximately one month prior to the start of the hearing. It is timely and no party is prejudiced.

B. The fundamental purposes and policies of the Act support intervention because Gentry and his fellow employees have legally protectable rights at stake in this case.

Gentry and his fellow employees' rights under NLRA Sections 7 and 9 lie at the very heart of these proceedings, and they have a legal interest in protecting them. At bottom, this entire case is about Gentry and his co-workers' rights and preferences, especially since the Region seeks to use this case to force the dismissal of Gentry's pending decertification petition in Case No. 14-RD-226626. "The fundamental policies of the Act are to protect employees' rights to choose or reject collective bargaining representatives." *HTH Corp.*, 356 NLRB 1397, 1428 (2011) (citing *Levitz Furniture Co. of the Pac., Inc.*,

333 NLRB 717, 723 (2001)). “Undoubtedly the cornerstone of [the] Act is Section 7 which guarantees to *employees* certain basic rights.” *Univ. of Chic.*, 272 NLRB 873, 877 (1984) (Member Zimmerman, dissenting) (emphasis added). NLRA Section 7, 29 U.S.C. § 157, provides that:

[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities

Both the Board and the United States Supreme Court have noted that the primary focus of the NLRA is the expansion and protection of the rights of employees—not the rights of unions or employers. “The National Labor Relations Board is not just an umpire to referee a game between an employer and a union. It is also a *guardian of individual employees*. Their voice, though still and small, commands a hearing.” *McCormick Constr. Co.*, 126 NLRB 1246, 1259-60 (1960) (emphasis added) (quoting *Shoreline Enter. of Am., Inc. v. NLRB*, 262 F.2d 933, 944 (5th Cir. 1959)).

In fact, “the NLRA confers rights *only on employees*,” and any rights that a labor union enjoys are merely derivative of the employees’ Section 7 rights. *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 532 (1992) (emphasis added); *NY NY, LLC*, 356 NLRB 907, 914 (2011); *Leslie Homes, Inc.*, 316 NLRB 123, 127 (1995). “If the rights of employees are being disregarded,” it is incumbent upon the Board “to take affirmative action to effectuate the policies of the Act” and ensure that “those rights be restored.” *McCormick Constr.*, 126 NLRB at 1259.

In this case, Gentry and his co-workers have taken a principled stand against the Union and have stated they do not want to be represented. As such, their core Section 7 right to freely choose or reject a bargaining agent—a right that is the very “essence of Section 7”—is being threatened by the Region’s proposed remedy under *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962). *See, e.g., McDonald Partners, Inc.*, 336 NLRB 836, 839 (2001) (Chairman Hurtgen, dissenting). The Region is attempting to cement into place for an extra seven months an unpopular Union that is likely now to be the minority representative. “There could be no clearer abridgment of § 7 of the Act . . .” than for a union and employer to engage in collective bargaining when a majority of employees do not support union representation. *Int’l Ladies’ Garment Workers Union v. NLRB*, 366 U.S. 731, 737 (1961).

The exclusion of Gentry from this proceeding would inflict irreparable damage on the rights the Act is designed to protect. The Board simply cannot accomplish its statutory charge of providing a voice to and vindicating the rights of employees if it excludes the key employee—the decertification petitioner—and refuses to provide him any role in the litigation over *his* Sections 7 and 9 rights. To the contrary, such a result would serve as a glaring example of how the Board’s prosecutorial process can utterly disregard employees’ rights and preferences by imposing unwanted collective bargaining relationships upon them. The Region’s requested *Mar-Jac* remedy is predicated on the notion that the Employer tainted Gentry’s decertification petition, but only his and other employees’ testimony can establish that any of the Employer’s alleged ULPs had no causal nexus to the petition, in accord with the third and fourth *Master Slack* factors.

Finally, General Counsel Memo 18-06 requires that the Region not oppose Gentry's proposed intervention in this case, and, in actuality, supports his intervention. G.C. Memo 18-06 provides for two types of employees to intervene in ULP proceedings against their employer. The first type of employee is one who has "filed [a] decertification petition with a Regional Office and where the ULP proceeding may impact the validity of [his or her] petition." The second type of employee is one who has "circulated a document relied upon by an employer to withdraw recognition from a labor organization." Gentry squarely falls into the first category because he has filed a decertification petition the Region and the Union are seeking to dismiss and destroy based upon these ULP charges.

General Counsel Memo 18-06 goes on to state that "Regions should no longer oppose timely motions filed at or during ULP hearings by Proposed Intervenors." Pursuant to Section 10388.1 of the Casehandling Manual, Gentry fits into the category of "parties or interested persons with direct interest in the outcome of the proceeding," since the proposed *Mar-Jac* remedy is being sought to his detriment. As such, Region 14 should not oppose Gentry's intervention.

C. No current party can adequately represent Gentry or protect his rights under the NLRA.

One of the traditional factors to weigh in deciding a motion to intervene is whether any existing party will represent the intervenor's interests. An applicant in intervention need not show that the existing parties will engage in conduct detrimental to his interests. To the contrary, the requirement of inadequacy of representation "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of

making that showing should be minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (citation omitted). Whether representation may be inadequate has nothing to do with the quality of the parties’ attorneys: “Rule 24 requires that we look to the adequacy or inadequacy of representation by ‘existing parties,’ not counsel.” *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 529 (9th Cir. 1983).

Pinnacle cannot adequately protect Gentry and other employees’ Sections 7 and 9 rights in these proceedings. Contending otherwise defies common sense and contradicts the fundamental premise upon which the Act is based. “The Act was premised on the view that there is a fundamental conflict between the interests of the employers and employees engaged in collective bargaining” *Brown Univ.*, 342 NLRB 483, 487-88 (2004); *Boston Med. Ctr. Corp.*, 330 NLRB 152, 178 (1999). Recognizing this, the Board and the federal courts have resoundingly rejected the notion of an employer serving as the “vindicator of its employees’ organizational freedom.” *Corrections Corp. of Am.*, 347 NLRB 632, 655 n.3 (2006), citing *Auciello Iron Works*, 517 U.S. 781, 792 (1996). By very definition, “[t]he employer has its self-interest to watch over and those interests are not necessarily aligned with those of its employees.” 347 NLRB at 655 n.3. Accordingly, “[t]he Board is . . . entitled to suspicion when faced with an employer’s benevolence as its workers’ champion against their certified union” *Auciello*, 517 U.S. at 790; *Int’l Ladies’ Garment Workers Union*, 366 U.S. at 738-39.

Here, the Region contends Pinnacle *violated* its employees’ Section 7 rights. It is logically inconsistent to conclude, therefore, that Pinnacle can simultaneously serve as both the violator and the *vindicator* of its employees’ interests. Regardless, even where

Pinnacle's and Gentry's interests overlap, the defense of those interests will necessarily be undertaken from the unique perspective of each party. Although Pinnacle and Gentry may desire the same result, Pinnacle may not have Gentry's best interests in mind, or adequately protect his position.

For example, Pinnacle's economic interests could lead it to settle the case to save itself the cost and disruption of further litigation. For business or financial reasons, any rational employer might choose to settle ULP charges and accept an unpopular union despite proof of the employees' opposition to union representation. *See Nova Plumbing v. NLRB*, 330 F.3d 531, 537 (D.C. Cir. 2003). Pinnacle has business interests to defend while Gentry and the employees who signed his decertification petition have statutory rights to vindicate. Without intervention and full party status, Gentry is powerless to contest any settlement and *Mar-Jac* remedy that cements Local 881 into power.

Finally, even if Pinnacle elects to contest the allegations of the Complaint at a hearing, there is no guarantee that it or any other party will act in the Employee-Intervenor's best interest. There are several tactical considerations the Employer may take that harm Gentry's rights without opposing his position. The parties may enter into factual stipulations that effectively limit the testimony and evidence introduced at the hearing, or they may make strategic decisions to forego the introduction of relevant testimony. This is not hypothetical. In other cases, employers have made tactical missteps and failed to call employee-petitioners when they were central to the employer's case. *See Veritas Health Serv., Inc.*, 363 NLRB No. 108 (Feb. 4, 2016), *enforced*, 895 F.3d 69, 89 (D.C. Cir. 2018) (Millett, J., "express[ing her] concerns about the Board's continued failure to establish any

discernible, consistent standard for granting and denying intervention in agency proceedings.”).

Consequently, absent Gentry’s intervention, there is a real and substantial risk that Pinnacle employees—the only individuals whose interests these proceedings are intended to protect—will be denied a voice in a case that concerns their own representational desires. As such, no existing party can or will represent Gentry’s interests: not the Region, not the Union, and not Pinnacle.

D. Permitting intervention is consistent with Board precedent.

In a wide variety of circumstances, the Board’s rules and the Administrative Procedure Act allow employees to intervene in ULP cases brought by a union against an employer. Where the employees’ right to determine their representative is at stake, they possess a concrete and legally sufficient interest to justify intervention. Thus, as many ALJs have held, permitting Gentry to intervene is both appropriate and necessary to the conduct of a fair hearing.

Intervention was granted by ALJ Keltner Locke in *Johnson Controls, Inc. & UAW and Brenda Lynch & Anna Marie Grant (Intervenors)*, Case No. 10-CA-151843, JD-14-16, 2016 WL 626283 (Feb. 16, 2016) (“On November 16, 2015, a hearing opened before me in Florence, South Carolina. At the hearing, I granted the petition of two of Respondent’s employees, Brenda Lynch and Anna Marie Grant, to intervene.”). In *Johnson Controls*, employees presented their employer with a majority decertification petition and the employer withdrew recognition from the union in reliance upon that petition. However, the General Counsel alleged that the union maintained majority employee support because

a number of employees who had signed the decertification petition later signed union authorization cards. The ALJ granted intervention to the two employees who collected the decertification petition so they could protect the validity of their petition.

In *New England Confectionary Co.*, 356 NLRB 432 (2010), the Board allowed an employee who had initiated a decertification petition to intervene in a ULP case filed against his employer, which alleged unlawful assistance with the decertification petition. The Board recognized that when employees' decertification petition is being challenged, they are parties with concrete interests possessing the right to intervene.

In *Renaissance Hotel Operating Co.*, NLRB Case No. 28-CA-113793, ALJ Dickie Montemayor granted the motion of two decertification petitioners to intervene in a ULP case after the union and General Counsel claimed that employer taint should block their decertification petition. (Ex. C). The ALJ in *Renaissance Hotel* stated: "As conceded by the Regional Director . . . the matters presented by this case 'may be of import and interest to the Petitioners.' I concur and find these matters to be of 'import and interest' sufficient to warrant intervention." *Id.*

Camay Drilling, 239 NLRB 997, is also instructive. There, the trustees of various union pension funds moved to intervene, claiming that the trusts they administered were entitled to receive increased fringe benefit contributions depending on the results of the underlying case. The trustees asserted that they had a direct financial interest in "both the resolution of the alleged unfair practices *and* in any remedy fashioned by the Board." *Id.* at 997 (emphasis added). The ALJ denied the trustees' motion to intervene on the ground that they would have no interest in the case until he first decided the threshold issue, *i.e.*,

whether the Act had been violated. Thus, in the ALJ's view, the trustees' interest would not manifest itself until the NLRB held a compliance proceeding, if indeed it were to hold one. On appeal, the Board reversed. Relying on Section 554(c) of the Administrative Procedure Act ("APA"), it held that the trustees must be allowed intervenor status at an early stage to challenge the ultimate remedy being sought. Further, the Board noted that the trustees' interests were not necessarily identical to those of the charging party union, and therefore, could not adequately be protected without the trustees' actual participation. The same analysis holds true here, and Gentry specifically relies upon the APA and G.C. Memo 18-06 to support this motion.²

Finally, Gentry relies upon the intervention decisions in *Novelis Corp. v. NLRB*, 885 F.3d 100 (2d Cir. 2018) and related cases. In *Novelis*, the union lost an NLRB-supervised election. In subsequent proceedings, the General Counsel contended the employer's ULPs so tainted the election that a re-run was impossible, and the employees should be forced to accept the union's representation via a bargaining order issued under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). The Second Circuit rejected this proposition. Most importantly, the ALJ allowed the Novelis employees, who opposed the

² Many other cases support intervention as well. *See, e.g., Gary Steel Prods. Corp.*, 144 NLRB 1160, 1160 n.1, 1162 (1963) (employee permitted to intervene on behalf of himself and sixty-two other employees in a case concerning a union representative's misrepresentations to employees during an organizing campaign); *J.P. Stevens & Co.*, 179 NLRB 254, 255 (1969) (employees who had signed authorization cards permitted to intervene during the course of the trial, where the complaint claimed that the employer had unlawfully interfered with a union organizing campaign); *Wash. Gas Light Co.*, 302 NLRB 425, 425 n.1 (1991) (employee who revoked his dues check-off permitted to intervene in case against the employer where the employer had accepted the revocation and stopped collecting dues); *Sagamore Shirt Co.*, 153 NLRB 309, 309 n.1 (1965) (sixty-four employees allowed to intervene to establish a claim that they constituted a majority of the employees and did not wish union representation).

union and the *Gissel* bargaining order, to intervene. Their intervention was upheld by the Board when the General Counsel filed a special appeal challenging it. *Novelis Corp.*, Case No. 03-CA-121293 (Sept. 12, 2014) (unpublished Order upholding intervention); *see also Novelis Corp.*, 364 NLRB No. 101, n.1 (Aug. 26, 2016). The nonunion employees also filed a separate and renewed Motion to Intervene directly with the Second Circuit after their employer appealed, which that court granted. (Order dated January 4, 2017).

In short, a plethora of Board cases demonstrate Gentry's interest in this case, and support his intervention to protect his decertification petition and oppose the *Mar-Jac* remedy. His intervention will ensure that the ALJ, the Board, and federal courts have no doubt where the majority of employees stand on the question of the validity of the decertification petition he collected. *See, e.g., Levitz Furniture Co. of the Pac., Inc.*, 333 NLRB 717 (2001)); *Scomas of Sausalito v. NLRB*, 849 F.3d 1147, 1159 (D.C. Cir. 2017) (Henderson, J., concurring); *Veritas Health*, 895 F.3d at 89 (Millett, J., concurring).

E. Due process requires intervention be allowed.

Finally, the Due Process Clause of the Fifth Amendment requires intervention be granted because a Board decision denying intervention would undermine Gentry's right of free association not to be represented by a minority labor union against his will. *Mulhall v. IAM Local 355*, 618 F.3d 1279, 1286-87 (11th Cir. 2010) (employee has standing to challenge forced representation by a labor union he opposes); *Int'l Ladies' Garment Workers' Union*, 366 U.S. at 738-39. *See also Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963) (freedom of association "inseparable" aspect of liberty guaranteed by Due Process Clause); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)

(“Freedom of association . . . plainly presupposes a freedom not to associate.”); *Thomas v. Collins*, 323 U.S. 516, 532 (1945) (“The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly.”). Those rights are protected by the Due Process Clause of the U.S. Constitution.

To bring a claim under the Due Process Clause, a plaintiff must show (i) deprivation of a protected liberty or property interest, *see General Electric Co. v. Jackson*, 610 F.3d 110, 117 (D.C. Cir. 2010); (ii) by the government, *see American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40, 50 (1999); (iii) without the process that is ‘due’ under the Fifth Amendment, *see Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Denial of intervention under the circumstances of this case would satisfy these criteria.

Gentry has the greatest protected liberty interest at stake because this case will determine whether he and his co-workers have the right under the Act to disassociate themselves from an unwanted union. Employees’ right to freely associate with, or reject, a union is fundamental under the Act, 29 U.S.C. §§ 141 and 157, and the Board cannot cavalierly adjudicate those rights without allowing the affected employees to be heard. The right to freely associate or disassociate from a union is found not only in the Act, but within the Constitution. *See Mulhall*, 618 F.3d at 1287 (“regardless of whether [an employee] can avoid contributing financial support to or becoming a member of the union . . . its status as his exclusive representative plainly affects his associational rights.”) (citation omitted). Because the NLRA gives Gentry the right to oppose the Union and be free of forced

unionization by a minority union, he is entitled to due process of law under the Fifth Amendment when that right is adjudicated in a manner that harms him. *NB ex rel. Peacock v. D.C.*, 794 F.3d 31, 41 (D.C. Cir. 2015) (“certain government benefits give rise to property interests protected by the Due Process Clause”).

Here, the Region seeks to dismiss Gentry’s decertification petition and cement the Union into power as the exclusive representative via a *Mar-Jac* remedy. “[T]he congressional grant of power to a union to act as exclusive collective bargaining representative” necessarily results in a “corresponding reduction in the individual rights of the employees so represented.” *Vaca v. Sipes*, 386 U.S. 171, 182 (1967). Gentry opposes such reduction of his liberty and property rights in the face of his having collected a valid decertification petition.

“‘[T]he root requirement’ of the Due Process Clause” is “‘that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.’” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. Conn.*, 401 U.S. 371, 379 (1971) (emphasis in original)). And the core purpose of the NLRA is to protect employee rights *from* employers and unions. Here, consistent with the Due Process Clause, the NLRB may not deny Gentry the opportunity to be heard in this case in opposition to the dismissal of his decertification petition and the *Mar-Jac* remedy.

IV. CONCLUSION

The Motion to Intervene should be granted. Gentry has tangible statutory and pecuniary interests at stake in this case that are separate and distinct from those of Pinnacle. His participation will not burden, delay, or extend the hearing by even one day, and he must be allowed to intervene to protect his rights under Sections 7 and 9. The Board and many ALJs have allowed intervention in identical circumstances, and it must be allowed here.

March 11, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 2019, a true and correct copy of the foregoing Motion to Intervene was electronically filed on the Board's e-filing website system and e-mailed to the following individuals:

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s/ Glenn M. Taubman

Glenn M. Taubman

Exhibit G

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

**PINNACLE FOOD GROUP, LLC and its
Successor CONAGRA BRANDS, INC.,**

and

**Cases 14-CA-226922
14-CA-228742**

**LOCAL 881 UNITED FOOD AND
COMMERCIAL WORKERS.**

ORDER DENYING MOTION FOR INTERVENTION

Background

This matter, scheduled for hearing April 9, 2019, involves the General Counsel's allegations that the Respondent Pinnacle Foods Group (Pinnacle) violated Section 8(a)(5) and (1) of the National Labor Relations Act (Act) by committing violations of the duty to bargain with its unit employees' collective-bargaining representative, Local 881 United Food and Commercial Workers Union (Union). Specifically, the General Counsel alleges that Pinnacle violated the Act by bargaining in overall bad faith, and by unilaterally altering terms and conditions of employment without bargaining to a valid impasse. As a remedy, the General Counsel seeks, *inter alia*, to require Pinnacle and/or its alleged successor, Conagra Brands, Inc. (Conagra), to bargain in good faith with the Union, on request, for a 7-month period as required by *Mar-Jac Poultry Inc.*, 136 NLRB 785 (1962).

Pending for consideration is the motion of employee Robert Gentry to intervene in this proceeding and to participate as a party. Gentry's motion represents that he is an employee of Pinnacle, part of the represented bargaining unit, and desires to remove the Union as the collective-bargaining representative. Gentry's motion represents that he has filed a decertification petition in the hopes of doing that. Gentry represents that the petition is pending as case 14-RD-226626.

Gentry seeks to intervene in this unfair labor practice proceeding, concerned that the General Counsel is seeking a remedy requiring the Respondents to bargain with the union. Gentry's concern is that such a remedy will delay or undermine his decertification efforts, and, thus, subject him (and others) to continued union representation that he opposes. He states:

Presumably, the Region can only negate Gentry's decertification petition by demonstrating that it was tainted by the Employer's serious and unremedied unfair labor practices. See, e.g., *Tenneco Auto., Inc. v. NLRB*, 716 F.3d 640, 648 (D.C. Cir. 2013) (citations omitted) ("not every unfair labor practice will taint evidence of a union's subsequent loss of majority support. Thus, the Board has the burden of adducing substantial evidence to support its finding that an employer's unfair labor practices have 'significantly contributed' to the erosion of a union's majority support.") The Region cannot meet that burden here, as Gentry can clearly attest. He knows that he and other

employees have longstanding and principled reasons to oppose the Union that have nothing to do with the alleged ULP allegations against the Employer in this case. Establishing such taint requires "specific proof of a causal relationship between the [ULPs] and the ensuing events indicating a loss of support." *Lee Lumber & Bldg. Material Corp.* ("Lee Lumber I"), 322 NLRB 175, 177 (1996); *Master Slack*, 271 NLRB at 84. This is a highly fact-specific inquiry and requires detailed testimony from all parties.

Gentry files this Motion to Intervene to protect his decertification petition and his rights under NLRA Sections 7 and 9. Specifically, he wishes to present evidence showing that even if the employer did, *arguendo*, commit the minor ULPs referenced in the Complaint, those could not possibly have tainted the decertification petition because the Employer's acts had no effect on "employee morale, organizational activities, and membership in the union." *Garden Ridge Mgmt.*, 347 NLRB 131, 134 (2006), citing *Master Slack*.

Gentry seeks to show that his Employer's actions at the bargaining table had no actual effect on the employees' negative views about the Union. Gentry and his coworkers have Sections 7 and 9 rights to disassociate from the Union through a decertification petition, and they oppose the Region's efforts to quash those rights and cement an unpopular union into power over their workplace. Intervention must be granted to allow Gentry to protect those rights.

His intervention will ensure that the ALJ, the Board, and federal courts have no doubt where the majority of employees stand on the question of the validity of the decertification petition he collected.

Gentry's Motion to Intervene, at 3-4, 14.

Discussion

Under the Act, intervention in an unfair labor practice proceeding is discretionary and not a matter of right. *DirectSat USA, LLC*, 366 NLRB No. 141, slip op. at 2 (2018); *MediCenter of America*, 301 NLRB 680, 680 fn. 1 (1991) ("Sec[ti]on 10(b) of the Act expressly provides that intervention in unfair labor practice proceedings is discretionary with the Board, and not a matter of right"). Accordingly, the ruling of the judge or Board will not be disturbed absent abuse or prejudice. *Auto Workers v. NLRB*, 392 F.2d 801, 809 (D.C. Cir. 1967), cert. denied 392 U.S. 906 (1968); *Semi-Steel Casting v. NLRB*, 160 F.2d 388, 393 (8th Cir. 1947).

After consideration of the motion, and a response filed by the Union, I deny Gentry's motion to intervene. Gentry's interest in opposing union representation, and his interest in showing that employee sentiment was unaffected by any unfair labor practices that are found, is irrelevant to this proceeding.

As Gentry stresses, the precondition for a union's service as a bargaining unit's exclusive representative is the existence of majority support for the union within the unit. *Auciello Iron Works v. NLRB*, 517 U.S. 781, 786 (1996). This reflects "the Act's clear mandate to give effect to employees' free choice of bargaining representatives." *Levitz Furniture Co.*, 333 NLRB 717, 720 (2001).

However, employee choice is not the only goal of the Act. Another fundamental goal of the Act is the stability of labor relations. The Act's primary aim of fostering industrial peace and stability is buttressed by the balancing of these twin goals of employee free choice and stability of labor relations. To this ends,

The Board has also recognized that, for employees' choices to be meaningful, collective-bargaining relationships must be given a chance to bear fruit and so must not be subjected to constant challenges. Therefore, from the earliest days of the Act, the Board has sought to foster industrial peace and stability in collective-bargaining relationships, as well as employee free choice, by presuming that an incumbent union retains its majority status.

Levitz, supra at 720; *Auciello Iron Works*, supra at 785-786.

The presumption of majority support is usually rebuttable, but in some periods of a collective-bargaining relationship it is conclusive and irrebuttable. One such period is for the 12-month period after the union's certification. Long-settled Board precedent provides that the "standard remedy" where employer unfair labor practices have interfered with the union's "free period of a year" to bargain after certification is the extension of this period.¹

This is the established and settled framework within which the instant case will be decided. According to the complaint, the employees selected collective bargaining representation and their choice was certified by the Board on March 7, 2017. At that point, presumably—and in any event, as a matter of law—the union enjoyed majority support of the unit employees. The complaint alleges that, thereafter, the Employer engaged in a course of unlawful bad faith bargaining and committed an unlawful unilateral change. Based on the alleged unfair labor practices, the government is seeking the standard remedy under longstanding Board precedent. This includes an order to bargain and often includes an extension of the certification bar.

The foregoing is the theory being pursued by the General Counsel in this case. At this point, of course, I have no view on the merits of the General Counsel's case. However, Gentry's addition as a party/intervenor would add nothing. This is an unfair labor practice case. It is not a representation case. Neither the fact of continuing employee majority support for the union nor the merits of the decertification petition is at issue in this proceeding. While employee sentiment in favor or against union representation is important in the scheme of the Act, and is at issue in the decertification case—it is not at issue in this case. The Act's twin goals of employee free choice and stability of labor relations have already been balanced and factored into the Board's adoption of the certification bar and its potential extension pursuant to *Mar-Jac*, supra. If the unfair labor practices alleged are found, the appropriateness of the remedy—including any extension of the "free period" for bargaining—will be based on objective

¹*Accurate Auditors*, 295 NLRB 1163, 1167 (1989) ("The law is settled that when an employer's unfair labor practices intervene and prevents the employees' certified bargaining agent from enjoying a free period of a year after certification to establish a bargaining relationship, it is entitled to resume its free period after the termination of the litigation involving the employer's unfair labor practices"); *Outboard Marine Corp.*, 307 NLRB 1333, 1348 (1992); *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

consideration of the nature and type of unfair labor practices.² It will not be based on the subjective views of employees about whether they support or oppose union representation or whether their views on unionization were affected by the employer's unfair labor practices. None of that is relevant to this proceeding.

Gentry's presence as a party and/or intervenor in the case is unnecessary. The Respondents are fully motivated and capable of defending against the contention that they bargained unlawfully. Gentry is not uniquely positioned to advance any particular position regarding the Respondent's bargaining conduct. (And if he has information, any party may choose to call him as a witness.)

Nor is Gentry's participation warranted in order to argue for or against the General Counsel's proposed remedy. As noted, the Board has already factored in the balancing of employee free choice with bargaining stability when it developed the remedies proposed here. Employee support or lack of support for the union will not be at issue. The actual effect of the employer's unfair labor practices on employee sentiment will not be litigated. The issue of the appropriate remedy for any unfair labor practices found is a matter that the Employer appears motivated and well situated to argue.

In short, Gentry's motion is premised on the erroneous view that his or others views on employee sentiment toward the union, or the subjective effect of unfair labor practices on employee sentiment, will be litigated. None of it will be. Gentry's expressed interest in the employer not having an obligation to recognize and bargain with the union is an interest adequately protected by the Employer, given the issues in this proceeding. Accordingly, the motion is **DENIED**.

Dated, Washington, D.C. March 22, 2019



David I. Goldman
U.S. Administrative Law Judge

²*American Medical Response*, 346 NLRB 1004, 1005 (2006) ("in determining the length of any extension [of the certification year], the Board considers the nature of the violations; the number, extent, and dates of the collective-bargaining sessions; the impact of the unfair labor practices on the bargaining process; and the conduct of the union during negotiations").

Exhibit H

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Pinnacle Foods Group, LLC and its successor Conagra Brands, Inc.

**Cases 14-CA-226922,
14-CA-228742**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its facility located at 1000 Brewbaker Drive, St. Elmo, IL 62458. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

EXTENSION OF THE CERTIFICATION YEAR — The Charged Party agrees that, pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), the certification year in case 14-RC-183775 will be extended for a period of seven months, commencing upon approval of this settlement agreement. During this seven month period of time, the Charged Party agrees to bargain in good faith with the Charging Party for an initial collective-bargaining agreement and acknowledges that the Board will dismiss any representation petitions concerning this bargaining unit filed through the end of the extended certification year.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement,

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

WE WILL NOT refuse to bargain in good faith with Local 881, United Food and Commercial Workers (“the Union”) as the exclusive collective-bargaining representative of our employees in the following appropriate unit by limiting the frequency and duration of bargaining meetings or unilaterally making changes in wages, hours, and working conditions.

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.

WE WILL NOT make changes in wages, hours and working conditions, including implementing new job bid processes and awarding jobs pursuant to new job bid processes, without reaching an overall good faith impasse or agreement with the Union.

WE WILL, upon request, bargain in good faith with Local 881, United Food and Commercial Workers as the exclusive collective-bargaining representative of our employees in the above-described appropriate unit, concerning rates of pay, wages, hours of work, and other terms and conditions of employment and, if an understanding is reached, embody such an understanding in a signed agreement.

WE WOULD HAVE rescinded any or all changes to your terms and conditions of employment that we made without bargaining with the Union if the Union had so requested, but the Union has chosen to address all changes to terms and conditions of employment in the current bargaining.

WE HAVE agreed to an extension of the certification year for seven (7) months, as outlined in the Settlement Agreement

**Pinnacle Foods Group, LLC and its successor
Conagra Brands, Inc.**

(Employer)

Dated: _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

Telephone:

Hours of Operation:

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.

Exhibit I



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 14
1222 SPRUCE ST
RM 8.302
SAINT LOUIS, MO 63103-2829

Agency Website: www.nlrb.gov
Telephone: (314)539-7770
Fax: (314)539-7794

April 1, 2019

Glenn M. Taubman, ESQ.
National Right To Work Legal Defense Foundation
8001 Braddock Rd., Ste 600
Springfield, VA 22151-2110

Re: Pinnacle Foods Group, LLC
Case 14-RD-226626

Dear Mr. Taubman:

The above-captioned petition for the removal of a bargaining representative has been carefully investigated and considered pursuant to Section 9(c) of the National Labor Relations Act (the Act).

Decision to Dismiss: As a result of the investigation, I am dismissing the petition for the following reasons:

It is the Board's policy to treat a certification as bargaining representative under Section 9 of the Act with certainty and finality for a period of one year. Based on this policy, the Board has found that petitions filed before the end of the certification year are untimely and shall be dismissed. The Board does this in order to afford an employer and a union full opportunity to arrive at an agreement. The conclusive nature of a newly certified union's unchallenged status is such that it is the Board's policy to administratively dismiss representation petitions filed before the expiration of the 12-month period following a certification, on the basis that "the mere retention on file of such petitions, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete 1-year course before any question of the representative status of the certified union is given formal cognizance by the Board." *United Supermarkets, Inc.*, 287 NLRB 119, 120 (1987), citing *Centre-O-Cast & Engineering Co.*, 100 NLRB 1507, 1508 (1952).

The investigation in this case disclosed that Local 881 United Food and Commercial Workers ("the Union") was certified in Case 14-RC-183775 on March 7, 2017, as the collective-bargaining representative of the unit of employees included in the petition in this matter. This petition was then filed on August 31, 2018. However, after this petition was filed, the Union filed unfair labor practice charges in Cases 14-CA-226922 and 14-CA-228742. Together, these charges alleged that the Employer unlawfully failed and refused to bargain in good faith with the Union with respect to the terms and conditions of employment for an initial collective-bargaining agreement applicable to the unit involved in the instant decertification petition.

On March 25, 2019, I approved a Settlement Agreement between the Union and Pinnacle Foods Group, LLC and its successor Conagra Brands, Inc. ("the Employer") in Cases 14-CA-226922 and 14-CA-228742. The Settlement Agreement included the following provision:

EXTENSION OF CERTIFICATION YEAR - The [Employer] agrees that, pursuant to Mar-Jac Poultry Co., 136 NLRB 785 (1962), the certification year in Case 14-RC-183775 will be extended for a period of seven months, commencing upon approval of this settlement agreement. During this seven month period, the [Employer] agrees to bargain in good faith with the [Union] for an initial collective-bargaining agreement and acknowledges that the Board will dismiss any representation petitions concerning this bargaining unit filed through the end of the extended certification year.

Based on the foregoing, the seven-month extension of the certification period is effective as of March 25, 2019. The Board has long held that "...the certification year will be extended 'to embrace that time in which the employer has engaged in its unlawful refusal to bargain.'" *Mammoth of California*, 253 NLRB 1168, 1169 (1981), citing *Pride Refining, Inc.*, 224 NLRB 1353, 1354-1355 (1976). The Employer's conduct subject to the settlement agreement noted above commenced on or about March 7, 2018. The instant petition, filed on August 31, 2018, was filed during the extended certification that "embrace[s] that time in which the employer has engaged in its unlawful refusal to bargain," and, by operation of law, must be dismissed.

Because the petition was filed during the extended certification year, I am dismissing the petition.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **April 15, 2019**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on April 15, 2019**.

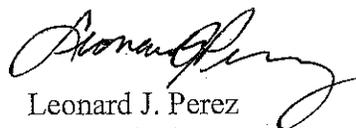
Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review 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, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,


Leonard J. Perez
Regional Director

cc: Office of the Executive Secretary (by e-mail)

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Sean Blankley, Plant Manager
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