

progressed to hearings in which the presiding Administrative Law Judge and/or the Board found OHL had committed violations of the Act.

OHL's serious violations of the Act also resulted in two separate 10(j) injunctions issued by judges for the United States District Court for the Western District of Tennessee and a second representation election after the first election was voluntarily set aside based on objections filed by the Union.¹ On May 24, 2013, the Regional Director for Region 15 issued a certification of

¹ The initial representation election was held on March 16, 2010. OHL's unlawful conduct in the months leading up to the first election was the subject of the first two unfair labor practice complaints, Cases 26-CA-023497 and 26-CA-023675. The unfair labor practice proceeding for Case 26-CA-23497 was heard in February and March 2010 (OHL I) and involved the discharge of three union activists, the suspension of another union activist and numerous 8(a)(1) violations. The Administrative Law Judge found two of the discharges and the suspension to be unlawful along with several 8(a)(1) violations. The Board upheld this decision at 357 NLRB 1632 (2011) which was subsequently enforced by the D.C. Circuit Court of Appeals on May 15, 2015.

The unfair labor practice proceeding for Case 26-CA-23675 (OHL II), was heard in July 2010 and involved the discharge of one union activist, the discipline of another union activist and other 8(a)(1) and (3) violations. The Administrative Law Judge found the discharge and several 8(a)(1) violations to be unlawful. The decision was upheld by the Board at 357 NLRB 1456 (2011) and enforced by the D.C. Circuit Court of Appeals on May 1, 2015.

The allegations in the consolidated complaints for Cases 26-CA-023497 and 26-CA-023675 were also the subject of a Section 10(j) injunction granted by U.S. District Judge Samuel H. Mays, Jr. on April 5, 2011, which ordered the reinstatement of the discharged employees, the rescission of a suspension and a cease and desist order prohibiting further unlawful conduct by OHL.

The second representation election, held after the parties agreed to set aside the results of the first election, was conducted on July 27, 2011, in Case 26-RC-8635. The results of this election were 165 ballots cast for the Union, and 164 votes cast for OHL with determinative challenged ballots. Both parties filed objections to the election and challenges to certain voters. The objections and challenges filed by the parties to the second election were heard by ALJ Robert Ringler during the third unfair labor practice proceeding, consolidated under Case 26-CA-024057, held in October and November 2011 (OHL III). The consolidated complaint alleged OHL had committed multiple unfair labor practices in the months leading up to the second election, including discharging one union activist, disciplining another union activist, and other serious 8(a)(1) violations. ALJ Ringler found OHL committed the violations as alleged in the complaint, dismissed OHL's election objections, and found four of the six challenged voters to be ineligible. ALJ Ringler's decision was upheld by the Board in 359 NLRB 1025 (2013). The Board later set aside this decision as a result of the Supreme Court's decision in *NLRB v. Noel Canning*, 573 U.S. 513 (2014), but issued a decision at 361 NLRB 921 (2014) reaffirming the Board's prior decision. This decision was later enforced by the D.C. Circuit Court of Appeals in its decision at *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, 833 F.3d 210 (D.C. Cir., Aug. 19, 2016). The Circuit Court consolidated for review the Board's decision in *Ozburn-Hessey Logistics, LLC*, 362 NLRB 977 (2015) where the Board found that Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union as the certified representative of the bargaining-unit employees. The Court rejected Respondent's defenses and granted the General Counsel's cross-application for enforcement of the Board order.

On May 14, 2013, Region 15 conducted a ballot count for the election in Case 26-RC-8635, which showed the Union had prevailed in the election with 169 votes for the Union and 166 votes against the Union. On May 24, 2013, Region 15 issued a certification of representative, certifying the Union as the collective bargaining representative for the unit. The Board, in its decision at 361 NLRB 921 (2014), issued a new certification of representative, confirming the Union as the collective bargaining representative of the unit.

representative, certifying the Union as the representative for the unit. In November 2015, Respondent purchased OHL with notice of OHL's actual or potential liability in the five complaints and continued the operation of the business in unchanged form. The Memphis operations of Respondent continued to be overseen by many of the same individuals responsible for the unfair labor practices found to be unlawful by the Board in the prior complaints, including the Director of Operations, the Vice-President, and the Regional Human Resources Manager.

On March 27, 2018, a decertification petition was filed in Case 15-RD-217294. On October 31, 2018, the Regional Director for Region 15 issued a complaint which included

The fourth unfair labor practice proceeding, consolidated under Case 26-CA-070471, was heard before an Administrative Law Judge in October and November 2012. (OHL IV). The consolidated complaint alleged OHL, in the 10 months following the July 2011 election, unlawfully disciplined one union activist, suspended one union activist and discharged five other union activists. The Administrative Law Judge found the suspension of one employee and discharges of three other employees to be unlawful. The Board, at 362 NLRB 1532 (2015), later overruled the Administrative Law Judge's findings concerning two of the discharged employees but upheld her findings concerning the other two employees. The Board decision was enforced by the D.C. Circuit Court of Appeals on December 30, 2016.

The fifth unfair labor practice proceeding, consolidated under Case 26-CA-092192, was heard by an Administrative Law Judge in June and July 2014. (OHL V). The consolidated complaint in this case alleged OHL unlawfully discharged nine union activists, suspended one union activist prior to his discharge, disciplined two union activists, and assigned more onerous working conditions to one union activist. The complaint further alleged OHL made thirteen separate unlawful unilateral changes to employee terms and conditions of employment and fifteen separate 8(a)(1) violations. The Administrative Law Judge found the discharge of one employee to be unlawful along with several of the 8(a)(1) and 8(a)(5) violations. The Board, at 366 NLRB No. 177 (August 27, 2018), upheld many of the Administrative Law Judge's findings but also determined three additional employees were unlawfully discharged, and OHL committed several other 8(a)(1) and 8(a)(5) violations. On March 12, 2020, the Sixth Circuit, in an unpublished order, reversed the Board's findings concerning two of the discharged employees and one alleged unilateral change but ordered enforcement of the remaining unfair labor practices and the extraordinary remedies as directed by the Board. The unfair labor practices alleged in the complaint for Case 26-CA-092192 were also the subject of a Section 10(j) injunction granted by U.S. District Judge John T. Fowlkes, Jr. on January 29, 2015, which ordered the reinstatement of all discharged employees, the rescission of the suspension and discipline issued to employees, and a cease and desist order prohibiting further unlawful conduct by OHL.

The sixth unfair labor practice proceeding, in Case 15-CA-165554, was heard by an Administrative Law Judge in July 2016 (OHL VI). The complaint in this case alleged OHL made unlawful unilateral changes to its attendance policy and discharged one employee as a result of this unilateral change. The Administrative Law Judge found OHL had made only one unlawful unilateral change to its attendance policy and the employee discharge was not a result of this specific change. The Board, at 366 NLRB No. 173 (August 24, 2018) upheld the unilateral change found by the Administrative Law Judge, and also found OHL had made an additional unilateral change and unlawfully discharged an employee as a result of this change. The Board's decision was enforced by the Sixth Circuit Court of Appeals in its decision at *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, 939 F.3d 777 (6th Cir., Sept. 14, 2019).

allegations that Respondent violated the Act by providing more than ministerial assistance to employees in the collection of signatures for the Showing of Interest (SOI 1) in support of the March 27, 2018 decertification petition.² On October 9, 2019, the Acting Regional Director for Region 15 issued a Second Consolidated Complaint.³

Based on the merit determination regarding the collection of signatures for SOI 1, it was determined that SOI 1 was tainted and it was against Board policy to process the March 27, 2018 petition. Subsequently, on November 29, 2018, the Petitioner filed a second decertification petition, Case 15-RD-231857.⁴ The Showing of Interest (SOI 2) for the second petition was collected by the same Petitioner while there were unremedied unfair labor practices, which included the aforementioned alleged unlawful assistance in collecting SOI 1. On January 2, 2020, both decertification petitions (collectively Petitions) were dismissed. Case 15-RD-217294 was dismissed because SOI 1 was tainted by the above described unfair labor practices. Case 15-RD-231857 was dismissed because at the time it was filed on November 29, 2018, the above listed unfair labor practice charges alleging, among other things, that Respondent violated the Act by providing more than ministerial assistance to employees seeking to decertify the Union,

² This initial complaint in Case 15-CA-218543 alleged Respondent, in February and March 2018, provided more than ministerial assistance to employees seeking to remove the Union as the unit's collective bargaining representative; transferred a Union bargaining committee person to a position with more onerous working conditions in late February 2018; in meetings conducted with employees following the filing of the decertification petition told employees it was losing customers and/or clients because of the Union; told employees it was losing business because its employees are represented by the Union; told employees it was unable to attract new business because of the Union; told employees its customers and/or clients were unwilling to do business with Respondent because its employees were represented by a Union; told employees they could be required to pay Union dues even if they were not members of the Union or had not signed a dues check-off authorization, and Respondent allowed employees to use its photocopier to produce anti-union materials in contravention of its policies.

³ The second consolidated complaint in Case 15-CA-218543, in addition to the allegations in the original complaint, added allegations that Respondent unlawfully discharged one union activist; unlawfully disciplined four union activists; told employees they were not represented by a Union; told employees not to join the Union; told employees it would be futile to join the Union, and threatened employees with unspecified reprisals if they joined or supported the Union.

⁴ The RD Petitioner has subsequently been promoted and is no longer a part of the bargaining unit.

were not only still unremedied but that the same employee collected the signatures for SOI 2 and therefore, a fair and neutral election could not be conducted.

On January 16, 2020, the Union, relying on the fact the Petitions had been dismissed, agreed to the Settlement which included, inter alia, a non-admissions clause. On January 16, 2020, Respondent, filed a Request for Review of the Dismissal of the Petitions with the Board.⁵ On January 17, 2020, Respondent signed the Settlement. On January 22, 2020, although there was a long history of unfair labor practices at this facility, the Regional Director for Region 15 approved the Settlement based on the Union's representation that the Settlement would finally allow the Union to enter into a new and stable relationship with Respondent. On January 25, 2020, relying on the non-admissions clause in the Settlement, Respondent filed with the Region a Request to Reinstate the Petitions.

On February 5, 2020, the Union filed a request to withdraw from the Settlement. On February 6, 2020, the Region advised Respondent of the Union's request to withdraw from the Settlement and instructed Respondent to immediately cease taking any actions required by the Settlement. As of February 6, 2020, the only action taken by Respondent in compliance with the Settlement was forwarding backpay checks to the Region, which the Region has retained.

II. ARGUMENT

A. The Regional Director Exercised Appropriate Authority in Revoking the Settlement

Respondent argues the Regional Director exceeded her authority in revoking the Settlement and reinstating the Complaint⁶. However, Section 3(d) of the Act grants General

⁵ On April 10, 2020, Request for Review was denied by the Board.

⁶ Respondent argues the Regional Director's reliance in her Order on *Kennicott Bros. Co.*, 256 NLRB 11 (1981) is misplaced. In *Kennicott*, the Regional Director reinstated withdrawn unfair labor practice charges after the expiration of the 10(b) period. Although later Board rulings limited reinstatement of charges to periods within 10(b), the Regional Director's authority to prosecute cases and reinstate charges remains unquestioned. See *Winer Motors, Inc.*, 265 NLRB 1457 (1982) (General Counsel may reinstate withdrawn charges within 10(b)).

Counsel, and by extension, duly appointed Regional Directors, exclusive and final authority over the issuance and prosecution of unfair labor practice complaints, independent of the Board's supervision and review. 29 U.S.C. §153(d); *See NLRB v. Food Workers, Local 23*, 484 U.S. 112, 126 (1987) (“until the hearing begins, settlement or dismissal determinations are prosecutorial”). The broad and extensive authority granted Regional Directors under Section 3(d) of the Act to investigate and prosecute unfair labor practice complaints includes the authority to revoke approval of informal settlement agreements absent a showing the decision is an abuse of discretion. Sections 101.9(b)(2) and 102.18 of the Board’s Rules and Regulations; *See California Pacific Signs, Inc.*, 233 NLRB 450, 451 (1977) (General Counsel “has virtual unlimited discretion to proceed in such timely filed charges as he deems fit and, in the absence of a showing of abuse of discretion the Board will not interfere with the General Counsel's exercise thereof.”). Regional Director authority to revoke settlement agreements is actually explicit in Section 101.9(e)(2) of the Board’s Rules and Regulations, which authorizes a Regional Director to revoke a settlement agreement when a respondent fails to comply with the terms of a settlement agreement.

Therefore, the Regional Director has the authority to revoke the Settlement and the facts of this case demonstrate she did not abuse that discretion. *See, e.g., Senftner Volkswagen Corp.*, 257 NLRB 178 (1981); *S.F. Exec. Bd., Culinary Wrkrs*, 196 NLRB 633, 634 (1972) (abuse of discretion defined as acts which are arbitrary, capricious, or otherwise not in accordance with law). In this case, only thirteen days passed between the Regional Director’s approval of the Settlement and the Union’s request to withdraw its approval from the Settlement. In the interim, Respondent had taken only minimal steps toward compliance with the Settlement. As such, and explained further *infra*, Respondent has not been prejudiced by the Regional Director’s decision

to revoke the Settlement. Because Respondent is not prejudiced by this decision, and the Regional Director's interest in ensuring the alleged unfair labor practices of a recidivist employer, including providing unlawful assistance to the decertification petitioners, do not prevent or impair the Agency's interest in conducting free and fair elections, the Regional Director's decision was not an abuse of discretion warranting reversal⁷.

B. Respondent's Legal Authority does not Impair the Regional Director's Authority to Revoke Settlement Agreements

Respondent cites *Fruit Distributors, Inc.*, 109 NLRB 376 (1954), which concerned an employer's refusal to reinstate employees who engaged in protected work stoppages. The Board upheld the Administrative Law Judge's ruling prohibiting the employer from repudiating a grievance settlement by, after settlement, punishing employees for activities condoned by the grievance settlement. *Id.* at 389-90. Simply stated, in *Fruit Distributors*, the Board prohibited *the employer* from engaging in violations of the Act in contravention of its prior agreement. This case offers nothing to curtail or constrain the Regional Director's lawful exercise of her authority to prosecute such violations by approving or revoking settlement agreements.

Respondent next offers *George Banta Co.*, 236 NLRB 1559 (1978), in which the Board reviewed whether an *employer* was permitted to *unilaterally* withdraw its approval from a formal settlement stipulation prior to approval of the stipulation by the Board. The employer's request to withdraw from the formal settlement stipulation was opposed by the charging party *and the*

⁷ Respondent further argues the Regional Director exceeded her authority by revoking the Settlement based, in part, on Respondent's "long and recidivist" history of committing unfair labor practices and the Union's mistaken belief that the dismissed Petitions could not be revived following approval of the Settlement. Respondent states, because the Regional Director was aware of Respondent's long history of unfair labor practices, the Regional Director cannot now rely on Respondent's repeated and willful violations of the Act as a basis to reconsider her decision to approve the Settlement. Respondent offers no statutory basis or Board precedent to support this argument. Respondent further notes the Union's ignorance of the law is not basis to unilaterally rescind an agreement with another party. As noted previously, the Union here is not acting unilaterally; the issue is whether a Regional Director may, upon request by a party, revoke its prior approval of an informal settlement agreement.

Regional Director. Id. at 1559-60. The Board rejected the employer's assertion it had the right to unilaterally withdraw from the settlement stipulation noting the negative effects such a right would have on the "continued efficacy of the settlement process." *Id.* at 1561. In the present case, however, the issue is not whether the Union has the right to unilaterally withdraw from the Settlement; instead, the issue is whether the Regional Director has the authority under Section 3(d) of the Act to revoke a settlement agreement upon application by one of the parties to the agreement. Similarly, *George Banta*, involving the actions of a single party, offers nothing to curtail or constrain the Regional Director's lawful exercise of her authority to revoke settlement agreements.

Respondent then relies on *U.S. Gypsum*, 284 NLRB 4 (1987) in which the Board rebuffed the General Counsel's attempt to reinstate complaint allegations resolved by a unilateral settlement more than a year earlier. Although the General Counsel asserted the employer violated the unilateral informal settlement agreement by conduct which both pre- and post-dated the settlement agreement, the Region had itself prevented the employer from complying with the informal settlement by failing to provide the employer with necessary documents. *Id.* at 12, fn. 10. The Board held, under these circumstances, General Counsel abused his discretion in seeking to reinstate the complaint. *Id.* at 4-5. *U.S. Gypsum* is factually distinguishable from the instant case because the Union submitted its request to withdraw from the Settlement less than two weeks after the Regional Director approved the Settlement and the Regional Director revoked her approval of the Settlement before Respondent had, or could have, substantially fulfilled its obligations under its terms. Finally, the Regional Director does not base revocation of the Settlement on any lack of performance with the terms of the agreement at all but instead on the Union's assertion that the Respondent's subsequent conduct demonstrates that there was

not a meeting of the minds in reaching the settlement. In sum, none of the factors in *U. S. Gypsum* which moved the Board to find the General Counsel abused his discretion are present in the instant case.

C. Respondent Is Not Unduly Prejudiced by Reinstatement of the Complaint

Although Respondent argues it is now prejudiced by reinstatement of the Complaint based on the intervening death of a potential fact witness, this cannot be proven. Respondent states Supervisor Greg Bradsher, who died on March 23, 2020, the same date the settlement was initially approved, would have provided factual testimony at the hearing which would address and rebut testimony offered by discriminatee Aaron Rolfe during General Counsel's case-in-chief. While Respondent states Bradsher's testimony "would have been able to refute" testimony from Rolfe, Respondent, along with the other parties, cannot, in absence of prior sworn testimony from Bradsher, predict Bradsher's testimony under oath.⁸ Respondent also does not assert the testimony which it believes Bradsher would have provided cannot be established through other witnesses and/or documentary evidence. Although Bradsher is unavailable, his death alone does not establish prejudice sufficient to preclude the Regional Director's revocation of the settlement agreement.

Finally, although the Respondent argues it is entitled to the benefit of its bargain, because of the quick timing of the revocation, the Respondent did not substantively perform its obligations under the Settlement such that it is unduly prejudiced now by its revocation. Further, the Union asserts that the Respondent's subsequent conduct demonstrates that there was no bargain reached by the Settlement.

⁸ General Counsel would note the Region, during the investigation of Case 15-CA-226722, requested Respondent make witnesses, including Bradsher, available to provide sworn affidavits. Had Respondent fully cooperated with the investigation, Bradsher's sworn affidavit testimony would be available to present at the hearing based on Bradsher's unavailability.

III. CONCLUSION

For the reasons set forth above, General Counsel respectfully requests that Respondent's Request for Special Appeal be denied.

Dated: April 23, 2020

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of General Counsel's Opposition to Respondent's Request for Special Permission to Appeal the Regional Director's Order Revoking Settlement Agreement and Reinstating the Second Consolidated Complaint to be filed electronically with the National Labor Relations Board on April 23, 2020.

I further certify that on April 23, 2020, I caused a true and correct copy of General Counsel's Opposition to Respondent's Request for Special Permission to Appeal the Regional Director's Order Revoking Settlement Agreement and Reinstating the Second Consolidated Complaint to be served via electronic mail upon the following persons:

Ben Bodzy
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United Steelworkers Union
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Dated: April 23, 2020

/s/ William T. Hearne

William T. Hearne
Counsel for the General Counsel

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

GEODIS Logistics, LLC,

Employer,

and

**Cases 15-CA-218543
15-CA-226722
15-CA-232539
15-CA-239440
15-CA-239492**

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY
ALLIED INDUSTRIAL AND SERVICE
WORKERS UNION, AFL CIO-CLC,**

Union.

**REQUEST FOR SPECIAL PERMISSION TO APPEAL THE REGIONAL DIRECTOR'S
ORDER REVOKING SETTLEMENT AGREEMENT AND REINSTATING THE
SECOND CONSOLIDATED COMPLAINT**

I. INTRODUCTION

In a transparent effort to thwart employee free choice and to unlawfully circumvent the established law of the National Labor Relations Board (“NLRB” or the “Board”), Regional Director Kathleen McKinney exceeded her authority by issuing an order to revoke a settlement agreement that she had already approved.

On March 27, 2018, Geodis Logistics, LLC’s (“Geodis” or the “Company”) Memphis employees filed a petition in Case No. 15-RD-21794 seeking an election to decertify the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers Union, AFL CIO-CLC (“Union” or “USW”). On November 30, 2018, Geodis’s Memphis employees filed a second petition in Case No. 15-RD-231857 seeking to decertify the Union. For nearly two (2) years, the two decertification petitions in Cases 15-RD-21794 and 15-RD-231857 (collectively, the “Petitions”) were trapped in limbo, subject to a series of “blocking” charges filed by the Union. Region 15 investigated five (5) blocking charges brought by the Union, three of

Exhibit A

which were amended at least three (3) times each, all the while holding the Petitions in abeyance during these prolonged investigations. On October 9, 2019, after eighteen (18) months of investigation, the Region issued a Second Consolidated Complaint and Notice of Hearing alleging that the Company provided assistance to employees seeking to decertify the Union. On January 2, 2020, the Regional Director conditionally dismissed both decertification petitions, asserting that the showings of interest used to support the Petitions were tainted by alleged unlawful assistance provided by the Company.¹ On January 16, 2020, Geodis filed with the Board a Request for Review of the Regional Director’s Decision to Dismiss the Decertification Petitions in Case Nos. 15-RD-217294 and 15-RD-231857. Also, on January 16, 2020, both Geodis and the USW signed an informal settlement agreement that, with a nonadmissions clause, provided complete relief as to all unfair labor practice allegations in Case Nos. 15-CA-28543, 226722, 232539, 239440, and 239492 (“Settlement”). The Regional Director approved the Settlement on January 22, 2020. *Exhibit 1.* On January 25, 2020, Geodis filed with the Regional Director a Request to Reinstate the Petitions, which substantively mirrored Geodis’s already pending Request for Review filed with the Board on January 16. *Exhibit 2.* In order to circumvent the holding of *Truserv Corp.*, 349 NLRB 227 (2007), which requires reinstatement of the decertification petitions upon a settlement with a nonadmissions clause, the Regional Director reversed course on March 27, 2020, to revoke the Settlement without any legal or factual basis, as set forth more fully below.

Geodis respectfully requests special permission to appeal the Order under Sections 102.26 of the Board Rules and Regulations (“NLRB Rules”).

¹ As set forth in Geodis’s already-pending Requests for Review appealing the dismissal of the decertification petitions, the Petitions were dismissed without a hearing on the pending Complaint to determine whether the Company actually provided unlawful assistance, and without a *Saint Gobain* hearing to garner the Petitioner’s perspective or establish a required causal nexus between the alleged unlawful conduct and the disaffection for the Union by the employees who signed the showings of interest in support of the Petitions. Moreover, the Regional Director dismissed the Petitions with full awareness of the Company’s intent to settle the October 2019 Complaint with a non-admission clause – circumventing the NLRB’s holding in *Truserv*.

I. PROCEDURAL BACKGROUND

The procedural backgrounds of the Petitions and their dismissal is fully set forth in Geodis's Request for Review in Case Nos. 15-RD-21794 and 15-RD-231857, which is currently pending before the Board. Since the Regional Director's approval of the Settlement on January 22, 2020, Geodis filed with the Regional Director a Request to Reinstate the Petitions on January 25, 2020, which filing substantively mirrored Geodis's Request for Review of the same decision that was filed with the Board on January 16.. On February 6, 2020, the Regional Director informed Geodis that the USW had requested on February 5 to withdraw from the approved Settlement. *Exhibit 3.* Geodis submitted its response in opposition to the Regional Director on February 13, 2020. *Exhibit 4.* On March 27, 2020, the Regional Director issued the Order Revoking Settlement Agreement and Reinstating the Second Consolidated Complaint ("Order"). *Exhibit 5.* On April 2, 2020, the Regional Director issued an Order Denying Employer's Request to Reinstate the RD Petitions. *Exhibit 6.*

II. ARGUMENT

A. The Regional Director Exceeded Her Authority in Revoking the Settlement.

The Regional Director's Order attempts to abrogate the Settlement without citing any supporting legal authority. However, a settlement agreement is a contract. It cannot be set aside at the Regional Director's whim. The Board has long recognized that settlement agreements are contracts that cannot be unilaterally abrogated. *See, e.g., S. Fruit Distributors, Inc.*, 109 NLRB 376, 390 (1954)("The policy of the Act is to encourage the settlement of labor disputes. To permit parties to repudiate such settlements at will and take action contrary to such settlements would not only violate such policy, but would be contrary to the general principles of contract law."); *George Banta Co.*, 236 NLRB 1559 (1978) (holding that a party does not have a right to unilaterally

withdraw from agreed upon settlement stipulations executed with the General Counsel as such would undermine “the continued efficacy of [the Board’s] settlement procedures.”).

As one ALJ noted:

Absent an effective settlement program the agency's processes would soon drown in a sea of litigation. It is, therefore, imperative that the public have confidence that the settlement commitments made by the General Counsel and his agents, the Regional Directors. Such confidence is built upon fairness in the administration of the settlement program, not only toward individuals and labor organizations but to employers large and small as well. Moreover, it is just as important to be perceived to be fair as it is to practice fairness. Central to this critical perception is a party's ability to rely, absent violation of the agreements' terms, on the steadfastness of settlement agreements...

U.S. Gypsum, 284 NLRB 4, fn. 8 (NLRB May 29, 1987).

In this case, the Order literally cites only one case (in a passing footnote) to even attempt to justify the legal authority of the Regional Director to rescind the Settlement. It cites *Kennicott Bros. Company*, 256 NLRB 11 (1981) for the proposition that “[i]t is within the General Counsel’s sole discretion to reinstate or reissue complaints based on originally timely filed charges.” There are several glaring problems with the Regional Director’s reliance on *Kennicott*. As an initial matter, *Kennicott* has absolutely nothing to do with rescinding settlement agreements. Instead, the issue in *Kennicott* was whether the General Counsel could reinstate a complaint on a charge that was *withdrawn*; not on a charge that was *settled*. Moreover, *Kennicott*’s rationale was subsequently overturned by the Board.² Hence, the Regional Director’s feeble reliance on an overturned case, to support a proposition that was not at issue in that case, provides no support for her unauthorized Order.

B. The Regional Director’s Order is Premised on Facts She Knew At the Time She Approved the Settlement.

² The *Kennicott* decision was premised on *Silver Bakery Inc. of Newton*, 150 NLRB 421 (1964), which was overruled in *United Mine Workers of America, Local Union No. 8217*, 266 NLRB 1081 (1983).

The Regional Director's reliance on facts that were readily apparent on January 22 when she approved the settlement to justify her later revocation of the settlement shows that she is serving as a puppet of the USW. Almost half of the Order is devoted to a selective recitation of Geodis's alleged history of unfair labor practices, culminating with the Order labeling the litigation history as "long and recidivist."³ However, setting aside the correctness of the label, the Region's litigation history with Geodis was well-established at the time that Regional Director McKinney approved the settlement. Therefore, it cannot serve as a basis to rescind the settlement.

The Order also cites "evidence to support the Union's assertions" and alleged "taint" of the showing of interest supporting the Petitions. In fact, the Regional Director calls the "most significant" justification for her Order that "revoking the settlement is in the best interest of the Act and the Agency's interest in protecting the election process and not processing petitions where the Showing of interest has been tainted by an employer's unfair labor practices." Again, any evidence of alleged taint was known to the Regional Director when she approved the settlement, and therefore, cannot serve as a basis to rescind it.⁴

C. The Union Did Not Rely on Anything to Its Detriment.

Once the facts known to the Regional Director at the time that she approved the settlement are stripped away, all that is left in the Order is the Union's contention that it "relied to its detriment" on its own ignorance of Board law and procedure. The Order notes that the Union was "relying on the fact that the petitions had been dismissed," and then proceeds to note "the Union's mistaken belief the Region could not reinstate and process the dismissed Petitions." Presumably,

³ The Order fails to note that the USW has filed literally hundreds of ULP allegations over the same time period that have been found to be without merit, that Geodis has prevailed on dozens of allegations at the ALJ and Board levels, and that Geodis prevailed on eight out of ten discharge allegations in a recent case, including a successful appeal to the Sixth Circuit..

⁴ This purported basis for the Regional Director's decision is also contrary to the Region's refusal even to hold a *Saint Gobain* hearing, to even rule on Geodis' motion for such a hearing, or to introduce some record evidence establishing a nexus between the showing of interest and any alleged taint.

the Order is suggesting that the Union was unaware that Geodis could subsequently request review of the dismissal of the Petitions. However, there is no contention that the Union was unaware of any material fact or representation relating to Geodis's ability to request review of the dismissal of the Petitions⁵, so the only possible explanation is that the Union was unaware of the Board's Rules and Regulations. That is not sufficient. The Board has long noted that "ignorance of the law is not an excuse." *See, Space Needle, LLC*, 362 NLRB 35, 43 (2015) ("an agreement based on a mistake of law may not be unilaterally rescinded"); *Yoshi's Japanese Restaurant, Inc.*, 330 NLRB 1339, fn. 3 (2000) (ignorance of the law is not a legally cognizable excuse). In sum, the Union's knowledge, or lack thereof, of Geodis's procedural rights in a separate case has no bearing on whether the settlement agreement should be rescinded in this case.

D. Geodis Is Prejudiced By the Revocation of the Settlement.

The Regional Director also asserts – incredibly – that "Geodis is not prejudiced by this Order." That is plainly wrong. There is one discharge at-issue in this case, and that is the discharge of Aaron Rolfe. Mr. Rolfe was discharged for repeatedly mis-shipping firearms, after being repeatedly warned. After the Settlement was reached, on March 23, 2020, Mr. Rolfe's former Supervisor, Greg Bradsher died on March 23, 2020. Geodis anticipates that if this case is tried now, Mr. Rolfe will attempt to deflect his own performance failures by blaming Mr. Bradsher. Prior to the Settlement, this case was scheduled for trial on January 27, 2020. Mr. Bradsher was alive at the time that trial was scheduled, and he would have been able to refute Mr. Rolfe's excuses. By allowing the Union to delay the trial by entering into the Settlement only to back out later, Geodis will be deprived of the benefit of Mr. Bradsher's testimony.

⁵ Indeed, there is no mention – whatsoever – in the Settlement Agreement about the Petitions. Nor were the Petitions ever discussed at any time with Geodis during negotiation of the Settlement Agreement.

Geodis is also prejudiced by the loss of the benefit of its bargain. By revoking the Settlement, Geodis will be forced to divert witnesses away from ongoing essential operations during the current pandemic to prepare for and attend a NLRB hearing, incur attorneys' fees that Geodis would not otherwise be required to incur, all for a case which Geodis and the USW previously settled and the Regional Director approved.

III. CONCLUSION

For the foregoing reasons, GEODIS respectfully requests that the Board grant the Employer's Request for Special Permission and vacate the Regional Director's Order. The critical question in this appeal is "what changed" to justify the revocation of the Settlement? The answer is that nothing changed between the time that the Regional Director approved the Settlement and the time that she rescinded it. The only event that occurred between the approval and the rescission of the Settlement was Geodis's January 25, 2020 Request to Reinstate the the Petitions, which the Regional Director separately denied in her order of April 2, 2020. Geodis's exercise of its procedural right to request that the Regional Director reinstate the Petitions after she approved the Settlement is not a basis to then set aside the Settlement. Therefore, the Board should reverse the Order and effectuate the previously-approved Settlement.

Respectfully submitted,

/s/ Ben Bodzy

Ben Bodzy

Vice President and Associate General Counsel

GEODIS Logistics, LLC

7101 Executive Center Drive, Suite 333

Brentwood, TN 37027

ben.bodzy@geodis.com

Attorney for the Employer

Certificate of Service

I hereby certify that I have served the foregoing Request For Special Permission to Appeal the Regional Director's Order Revoking Settlement and Reinstating Second Amended Complaint on this 10th Day of April, 2020 on the following:

bbrandon@usw.org

william.hearne@nrb.gov

/s/ Ben Bodzy_____

Ben Bodzy

Exhibit 1

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

**IN THE MATTER OF
Geodis Logistics, LLC**

**Cases 15-CA-218543, 15-
CA-226722, 15-CA-
232539, 15-CA-239440 &
15-CA-239492**

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 all locations where notices to employees are regularly posted at the Charged Party's facilities located at 5510 E. Holmes Road, 5540 East Holmes Road, and 5265 E. Holmes Road in Memphis, Tennessee and 350 Stateline Road (Remington warehouse) in Southaven, Mississippi. 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.

PAYMENT OF WAGES AND BENEFITS — Within 14 days from approval of this agreement, the Charged Party will provide the Regional Director for each employee named below with 1) payment making them whole in the amount opposite each name; 2) a Backpay report allocating the payment(s) to the appropriate calendar year; and 3) a copy of the IRS form W-2 for wages earned in the current calendar year. The Charged Party will make appropriate withholdings for each named employee. No withholdings should be made from the interest portion of the backpay.

	Backpay	Interest	Excess Tax Liab.	Front Pay	Total
Aaron Rolfe -	\$20,719	\$1229	\$168	\$22,884	\$45,000

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), 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 that 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.

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

Exhibit 2

Attorneys at Law

Michael S. Ferrell
t 312.499.1480
f 312.845.1998
MFerrell@ebglaw.com

January 25, 2020

VIA NLRB E-FILE

Kathleen McKinney
Regional Director
National Labor Relation Board, Region 15
F. Edward Herbert Federal Building
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413

Re: GEODIS Logistics, Inc., Case Nos. 15-RD-217294 and 15-RD-231857

Dear Regional Director McKinney:

This firm represents GEODIS Logistics, Inc. (“GEODIS”) in connection with the above-captioned decertification petitions (the “Petitions”) filed by Petitioner Mary Alexis. On January 2, 2020, you issued a Decisional Letter dismissing the Petitions. The Dismissal Letter asserts that unfair labor practice charges in Case Nos. 15-CA-218543 *et al* prevent the petition in Case No. 15-RD-217294 from moving forward, and thereafter asserts that Case No. 15-RD-231857 could not proceed as there were still un-resolved unfair labor practices. However, on January 16, 2020, GEODIS and the Charging Party United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union, AFL CIO-CLC, entered into a global informal settlement agreement, which included a non-admission clause and resolved all pending unfair labor practice charges. Consequently, the unfair labor practice allegations that had been blocking processing of the Petitions have been resolved with no finding or admission of any unlawful activity by GEODIS.

Accordingly, please accept this letter as GEODIS’s Request for Reinstatement of the Petitions dismissed on January 2, 2020. See *Cablevision Systems Corp.*, 367 NLRB No. 59 (Dec. 2018).

Best regards,

/s/ Michael S. Ferrell

Michael S. Ferrell

Cc: Ben Bodzy, Esq.
RyAnn Hooper, Esq.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

GEODIS Logistics, LLC,

Employer,

and

MARY ALEXIS RAY,

Petitioner,

And

**UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY
ALLIED INDUSTRIAL AND SERVICE
WORKERS UNION, AFL CIO-CLC,**

Union.

**Case Nos. 15-RD-217294
15-RD-231857**

AFFIDAVIT OF SERVICE of Request for Reinstatement Case Nos. 15-RD-217294 and 15-RD-231857

I, the undersigned state under oath that on January 25, 2020, I served the above-entitled document by electronic mail upon the following persons, addressed to them at the following addresses:

William Hearne, Counsel for the General Counsel
William.Hearne@nlrb.gov

Brad Manzollilo, Counsel for the Union
bmanzollilo@usw.org

Alexis Ray, Petitioner
malexisray@yahoo.com

/s/ RyAnn M. Hooper

1/25/2020

Signature

Date

Exhibit 3

Attorneys at Law

Michael S. Ferrell
t 312.499.1480
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MFerrell@ebglaw.com

February 13, 2020

VIA NLRB E-FILE

M. Kathleen McKinney
Regional Director
National Labor Relation Board, Region 15
F. Edward Herbert Federal Building
600 South Maestri Place, 7th Floor
New Orleans, LA 70130-3413

Re: GEODIS LOGISTICS, Case Nos. 15-CA-218543, 15-CA-226722, 15-CA-232539,
15-CA-239440, 15-CA-239492, 15-RD-217294 and 15-RD-231857

Dear Regional Director McKinney:

We write in response to your February 6 letter requesting GEODIS's position on the Union's February 5 Request to Withdraw from the parties' Informal Settlement Agreement (the "Settlement Agreement") that resolved the above-referenced unfair labor practice cases. As described in your letter, the Union's request to unilaterally withdraw from the Settlement Agreement is without factual or legal merit. It is nothing more than buyer's remorse. It would also represent a further abuse of the Board's blocking charge policy, as the Union is effectively seeking to resurrect allegations that have been settled with a non-admission clause to block the reinstatement and processing of election petitions in accord with the Board's decisions in *Cablevisions Systems Corp.*, 367 NLRB No. 59 (2018), and *TruServ Corp.*, 349 NLRB 227 (2007).

The Union agreed to the terms of the settlement when it signed the Settlement Agreement. GEODIS timely filed and served on the Union its request for review of the Regional Director's decision to dismiss the above-referenced RD Petitions on January 16. The Regional Director then approved the Settlement Agreement on January 22, without any intervening objection or request to withdraw by the Union prior to approval. After approval, GEODIS promptly commenced compliance with the Settlement Agreement, tendering to the Region four required checks for the alleged discriminatee.

The notion described in your February 6 letter that, "based on [GEODIS's] Request for Reinstatement of the Petitions," which was submitted to the Region on January 25, "the Union asserts the settlement no longer represents a meeting of the minds" is ludicrous. The entirety of the parties' "meeting of the minds" concerning the settlement of the unfair labor practice allegations is set forth in the Settlement Agreement, which makes no mention – whatsoever – to the RD Petitions. Moreover, during the entire course of discussions regarding the Settlement Agreement, GEODIS never made any representation about intending to waive or otherwise forego

its right under Board law to seek reinstatement of the RD Petitions. As such, the Union cannot reasonably claim GEODIS's actions on January 16 or 25 seeking reinstatement of the Petitions was somehow contrary to the parties' mutual understanding of the Settlement Agreement.

To the extent the Union was simply ignorant of Board law requiring reinstatement of Petitions following a settlement subject to a non-admission clause, such is not a valid basis for permitting unilateral withdrawal from an approved Board settlement. See, e.g., *George Banta Co.*, 236 NLRB 1559 (1978) (holding that a party does not have a right to unilaterally withdraw from agreed upon settlement stipulations executed with the General Counsel as such would undermine "the continued efficacy of [the Board's] settlement procedures.").

As one ALJ noted:

Absent an effective settlement program the agency's processes would soon drown in a sea of litigation. It is, therefore, imperative that the public have confidence that the settlement commitments made by the General Counsel and his agents, the Regional Directors. Such confidence is built upon fairness in the administration of the settlement program, not only toward individuals and labor organizations but to employers large and small as well. Moreover, it is just as important to be perceived to be fair as it is to practice fairness. Central to this critical perception is a party's ability to rely, absent violation of the agreements' terms, on the steadfastness of settlement agreements...

U.S. Gypsum, 284 NLRB 4, fn. 8 (NLRB May 29, 1987)

Here, the Union's February 5 Request to Withdraw from the Settlement Agreement is nothing more than an effort to evade the post-settlement application of the Board's holdings in *Cablevisions Systems* and *TruServ*, which support GEODIS's January 16 and 25 filings seeking reinstatement of the Petitions. As the Board stated in *Cablevisions Systems*: "Simply put, *Truserv* requires that a petition be reinstated after a settlement agreement is executed 'absent a finding of a violation of the Act, or an admission by the employer of such a violation.'" 367 NLRB No. 59 at slip op. 3 (quoting *Truserv*, 349 NLRB at 228). Solely to avoid the application of this controlling Board law, the Union seeks to undermine the efficacy of the Board's settlement procedures by unilaterally withdrawing from the approved Settlement Agreement without any legal basis for doing so. Casehandling Manual Section 11730 recognizes that the blocking charge policy "is not intended to be misused by a party as a tactic to delay the resolution of a question concerning representation raised by a petition." The union's desperate attempt to withdraw from the settlement agreement is just that - a tactic to delay the resolution of a question concerning representation raised by a petition, which the Casehandling Manual expressly prohibits.

Indeed, the only potential legal basis available for granting the Union's request would be if GEODIS were in material breach of the Settlement Agreement. However, there has been no

M. Kathleen McKinney
February 13, 2020
Page 3

allegation of breach.¹ On the contrary, the only party that has so far failed to perform under the Settlement Agreement is the Region, which is withholding the back pay and front pay checks for the discriminatee that were tendered by GEODIS, and has yet to provide the Notices for posting, despite the Regional Director having approved the Settlement Agreement on January 22.

For all of the above reasons, the Union's Request is without factual or legal merit, and should be denied as contrary to both Board law and policy.

Respectfully submitted,



Michael S. Ferrell

Cc: Ben Bodzy, Esq.
RyAnn Hooper, Esq.

¹ Even if the Union could show material breach, which it cannot, in accord with GC Memorandum 18-02, the Settlement Agreement does not contain default language authorizing immediate revocation of the settlement. Instead, the Region must first provide GEODIS with notice and an opportunity to cure any compliance defect. No such notice has been provided, and the Union's dissatisfaction over potential reinstatement of the Petitions is neither a contractual defect nor a material breach of the Settlement Agreement.

Exhibit 4

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

* * * * *
*
GEODIS LOGISTICS, LLC *
*
and * Cases 15-CA-218543
* 15-CA-226722
* 15-CA-232539
* 15-CA-239440
* 15-CA-239492
*
UNITED STEELWORKERS UNION *
*
* * * * *

**ORDER REVOKING SETTLEMENT AGREEMENT AND
REINSTATING THE SECOND CONSOLIDATED COMPLAINT**

The approval of the Informal Settlement Agreement (Settlement) in the above-captioned matter is **hereby** revoked and the Second Consolidated Complaint in this matter is **hereby** reinstated.¹

Background:

The United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers Union (Union) started an organizing campaign in 2009, to represent various employees at the Memphis facilities of Ozburn-Hessey Logistics, LLC (herein OHL, and which is now known as Geodis Logistics, LLC (Geodis)). Between 2009 and 2016, OHL was the subject of six separate complaints alleging it had engaged in a wide variety of serious and chilling hallmark violations of the Act. All six of the complaints progressed to hearings in which the presiding Administrative Law Judge and/or the Board found OHL had committed violations of the Act.

¹ It is within the General Counsel’s sole discretion to reinstate or reissue complaints based on originally timely filed charges. *Kennicott Bros. Company*, 256 NLRB 11 (1981).

OHL's serious violations of the Act also resulted in two separate 10(j) injunctions issued by judges for the United States District Court for the Western District of Tennessee and a second representation election after the first election was voluntarily set aside based on objections filed by the Union.² On May 24, 2013, the Regional Director for Region 15 issued a certification of

² The initial representation election was held on March 16, 2010. OHL's unlawful conduct in the months leading up to the first election was the subject of the first two unfair labor practice complaints, Cases 26-CA-023497 and 26-CA-023675. The unfair labor practice proceeding for Case 26-CA-23497 was heard in February and March 2010 (OHL I) and involved the discharge of three union activists, the suspension of another union activist and numerous 8(a)(1) violations. The Administrative Law Judge found two of the discharges and the suspension to be unlawful along with several 8(a)(1) violations. The Board upheld this decision at 357 NLRB 1632 (2011) which was subsequently enforced by the D.C. Circuit Court of Appeals on May 15, 2015.

The unfair labor practice proceeding for Case 26-CA-23675 (OHL II), was heard in July 2010 and involved the discharge of one union activist, the discipline of another union activist and other 8(a)(1) and (3) violations. The Administrative Law Judge found the discharge and several 8(a)(1) violations to be unlawful. The decision was upheld by the Board at 357 NLRB 1456 (2011) and enforced by the D.C. Circuit Court of Appeals on May 1, 2015.

The allegations in the consolidated complaints for Cases 26-CA-023497 and 26-CA-023675 were also the subject of a Section 10(j) injunction granted by U.S. District Judge Samuel H. Mays, Jr. on April 5, 2011, which ordered the reinstatement of the discharged employees, the rescission of a suspension and a cease and desist order prohibiting further unlawful conduct by OHL.

The second representation election, held after the parties agreed to set aside the results of the first election, was conducted on July 27, 2011, in Case 26-RC-8635. The results of this election were 165 ballots cast for the Union, and 164 votes cast for OHL with determinative challenged ballots. Both parties filed objections to the election and challenges to certain voters. The objections and challenges filed by the parties to the second election were heard by ALJ Robert Ringler during the third unfair labor practice proceeding, consolidated under Case 26-CA-024057, held in October and November 2011 (OHL III). The consolidated complaint alleged OHL had committed multiple unfair labor practices in the months leading up to the second election, including discharging one union activist, disciplining another union activist, and other serious 8(a)(1) violations. ALJ Ringler found OHL committed the violations as alleged in the complaint, dismissed OHL's election objections, and found four of the six challenged voters to be ineligible. ALJ Ringler's decision was upheld by the Board in 359 NLRB 1025 (2013). The Board later set aside this decision as a result of the Supreme Court's decision in *NLRB v. Noel Canning*, 573 U.S. 513 (2014), but issued a decision at 361 NLRB 921 (2014) reaffirming the Board's prior decision. This decision was later enforced by the D.C. Circuit Court of Appeals in its decision at *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, 833 F.3d 210 (D.C. Cir., Aug. 19, 2016). The Circuit Court consolidated for review the Board's decision in *Ozburn-Hessey Logistics, LLC*, 362 NLRB 977 (2015) where the Board found that Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union as the certified representative of the bargaining-unit employees. The Court rejected Respondent's defenses and granted the General Counsel's cross-application for enforcement of the Board order.

On May 14, 2013, Region 15 conducted a ballot count for the election in Case 26-RC-8635, which showed the Union had prevailed in the election with 169 votes for the Union and 166 votes against the Union. On May 24, 2013, Region 15 issued a certification of representative, certifying the Union as the collective bargaining representative for the unit. The Board, in its decision at 361 NLRB 921 (2014), issued a new certification of representative, confirming the Union as the collective bargaining representative of the unit.

The fourth unfair labor practice proceeding, consolidated under Case 26-CA-070471, was heard before an Administrative Law Judge in October and November 2012. (OHL IV). The consolidated complaint alleged OHL, in the 10 months following the July 2011 election, unlawfully disciplined one union activist, suspended one union activist and discharged five other union activists. The Administrative Law Judge found the suspension of one employee and discharges of three other employees to be unlawful. The Board, at 362 NLRB 1532 (2015), later overruled the Administrative Law Judge's findings concerning two of the discharged employees but upheld her findings concerning the other two employees. The Board decision was enforced by the D.C. Circuit Court of Appeals on December 30, 2016.

The fifth unfair labor practice proceeding, consolidated under Case 26-CA-092192, was heard by an Administrative Law Judge in June and July 2014. (OHL V). The consolidated complaint in this case alleged OHL unlawfully discharged nine union activists, suspended one union activist prior to his discharge, disciplined two union activists, and assigned more onerous working conditions to one union activist. The complaint further alleged OHL made thirteen separate unlawful unilateral changes to employee terms and conditions of employment and fifteen separate 8(a)(1) violations. The Administrative Law Judge found the discharge of one employee to be unlawful along with several of the 8(a)(1) and 8(a)(5) violations. The Board, at 366 NLRB No. 177 (August 27, 2018), upheld many of the Administrative Law Judge's findings but also determined three additional employees were unlawfully discharged, and OHL committed several other 8(a)(1) and 8(a)(5) violations. On March 12, 2020, the Sixth Circuit, in an unpublished order, reversed the Board's findings concerning two of the discharged employees and one alleged

representative, certifying the Union as the representative for the unit. In November 2015, Geodis purchased OHL with notice of OHL's actual or potential liability in the five complaints and continued the operation of the business in unchanged form. The Memphis operations of Geodis continued to be overseen by many of the same individuals responsible for the unfair labor practices found to be unlawful by the Board in the prior complaints, including the Director of Operations, the Vice-President, and the Regional Human Resources Manager.

On March 27, 2018, a decertification petition was filed in Case 15-RD-217294. On October 31, 2018, the Regional Director for Region 15 issued a complaint, including allegations that Geodis violated the Act by providing more than ministerial assistance to employees in the collection of signatures in support of the March 27, 2018 decertification petition.³ On October 9, 2019, the Acting Regional Director for Region 15 issued a Second Consolidated Complaint.⁴

unilateral change but ordered enforcement of the remaining unfair labor practices and the extraordinary remedies as directed by the Board. The unfair labor practices alleged in the complaint for Case 26-CA-092192 were also the subject of a Section 10(j) injunction granted by U.S. District Judge John T. Fowlkes, Jr. on January 29, 2015, which ordered the reinstatement of all discharged employees, the rescission of the suspension and discipline issued to employees, and a cease and desist order prohibiting further unlawful conduct by OHL.

The sixth unfair labor practice proceeding, in Case 15-CA-165554, was heard by an Administrative Law Judge in July 2016 (OHL VI). The complaint in this case alleged OHL made unlawful unilateral changes to its attendance policy and discharged one employee as a result of this unilateral change. The Administrative Law Judge found OHL had made only one unlawful unilateral change to its attendance policy and the employee discharge was not a result of this specific change. The Board, at 366 NLRB No. 173 (August 24, 2018) upheld the unilateral change found by the Administrative Law Judge, and also found OHL had made an additional unilateral change and unlawfully discharged an employee as a result of this change. The Board's decision was enforced by the Sixth Circuit Court of Appeals in its decision at *Ozburn-Hessey Logistics, LLC v. National Labor Relations Board*, 939 F.3d 777 (6th Cir., Sept. 14, 2019).

³ This complaint, Case 15-CA-218543, alleges Geodis, in February and March 2018, provided more than ministerial assistance to employees seeking to remove the Union as the unit's collective bargaining representative; transferred a Union bargaining committee person to a position with more onerous working conditions in late February 2018; in meetings conducted with employees following the filing of the decertification petition told employees it was losing customers and/or clients because of the Union; told employees it was losing business because its employees are represented by the Union; told employees it was unable to attract new business because of the Union; told employees its customers and/or clients were unwilling to do business with Geodis because its employees were represented by a Union; told employees they could be required to pay Union dues even if they were not members of the Union or had not signed a dues check-off authorization, and Geodis allowed employees to use its photocopier to produce anti-union materials in contravention of its policies.

⁴ This complaint, Case 15-CA-218543, in addition to the allegations in the original complaint, added allegations that Geodis unlawfully discharged one union activist; unlawfully disciplined four union activists; told employees they were not represented by a Union; told employees not to join the Union; told employees it would be futile to join the Union, and threatened employees with unspecified reprisals if they joined or supported the Union.

Based on the merit determination regarding the collection of signatures for the Showing of Interest, it was determined that the Showing of Interest was tainted and that it was against Board policy to process the March 27, 2018 petition. Subsequently, on November 29, 2018, the Petitioner filed a second decertification petition, Case 15-RD-231857.⁵ The Showing of Interest for the second petition was collected while there were unremedied unfair labor practices, which included the aforementioned alleged unlawful assistance in collecting the prior Showing of Interest. On January 2, 2020, both decertification petitions (collectively Petitions) were dismissed. Case 15-RD-217294 was dismissed because the Showing of Interest was tainted by the above described unfair labor practices. Case 15-RD-231857 was dismissed because at the time it was filed on November 29, 2018, the above listed unfair labor practice charges alleging, among other things, that Geodis violated the Act by providing more than ministerial assistance to employees seeking to decertify the Union, were still unremedied and therefore, a fair and neutral election could not be conducted.

On January 16, 2020, the Union, relying on the fact the Petitions had been dismissed, agreed to the Settlement including, inter alia, a non-admissions clause. On January 16, 2020, Geodis, filed a Request for Review of the Dismissal of the Petitions with the Board. On January 17, 2020, Geodis signed the Settlement. On January 22, 2020, although there was a long history of unfair labor practices at this facility, the Regional Director for Region 15 approved the Settlement based on the Union's representation that this settlement would finally allow the Union to enter into a new and stable relationship with Geodis. On January 25, 2020, relying on the non-admissions clause in the Settlement, Geodis filed with the Region a Request to Reinstate the Petitions.

⁵ The RD Petitioner has subsequently been promoted and is no longer a part of the bargaining unit.

On February 5, 2020, the Union filed a request to withdraw from the Settlement because it did not represent a meeting of the minds. On February 6, 2020, the Region advised Geodis of the Union's request to withdraw from the Settlement and instructed Geodis to immediately cease taking any actions required by the Settlement. As of February 6, 2020, the only action taken by Geodis in compliance with the Settlement was forwarding backpay checks to the Region, which the Region has retained.

Decision and Order

Considering all of the foregoing, and particularly noting: the unfair labor practice investigations revealed evidence in support of the Union's assertion that the Showing of Interest in support of the March 27, 2018 decertification petition was collected in violation of the Act and therefore tainted; the same Petitioner gathered the Showing of Interest for both Petitions; the Showing of Interest for the November 29, 2018 decertification petition was gathered while there were unremedied meritorious unfair labor practices, including the allegation regarding the Petitioner having previously received more than mere ministerial assistance from Geodis; both Petitions had been dismissed on January 2, 2020; the Union's belief that the Settlement represented the conclusion of all outstanding issues at the facility covered by the Act and causing industrial unrest; the Union's mistaken belief the Region could not reinstate and process the dismissed Petitions; the fact Geodis only asked to reinstate the Petitions subsequent to the Settlement; the long and recidivist nature of the unfair labor practices at this facility; the Union's position that there was not a meeting of the minds when entering into the Settlement; the Union's quick notification that the Settlement was not acceptable; Geodis' limited and easily reversible action in furtherance of the Settlement, and finally, and perhaps most significantly, revoking the Settlement is in the best interest of the Act and the Agency's interest in protecting the election process and

not processing petitions where the Showing of Interest has been tainted by an employer's unfair labor practices, I am revoking my approval of the Settlement and reinstating the Second Consolidated Complaint.

In reaching this conclusion, I note Geodis is not prejudiced by this Order. Geodis has taken minimal steps in reliance on the Settlement - simply forwarding the backpay check to the Region. Moreover, should the Board determine the unfair labor practice allegations lack merit, the Petitions can always be reinstated. The Union has at all times acted forthrightly and timely in the processing of the above-captioned cases, including its immediate request to set the Settlement aside. The Union by entering into the Settlement, did rely to its detriment on the Petitions being dismissed. Finally, it is long standing Board policy not to conduct elections based on a tainted Showing of Interest.

ACCORDINGLY, IT IS HEREBY ORDERED that the approval of the Settlement be revoked and the Second Consolidated Complaint be reissued.

Dated: March 27, 2020

/s/ M. Kathleen McKinney
M. KATHLEEN McKINNEY
REGIONAL DIRECTOR, REGION 15
NATIONAL LABOR RELATIONS BOARD,
600 S. MAESTRI PLACE, 7TH FLOOR
NEW ORLEANS, LOUISIANA 70130-3408

Exhibit 5

