

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

ST. LOUIS CARDINALS, LLC

and

Case 14-CA-213219

JOE BELL, an individual

RESPONDENT'S SUPPLEMENTAL BRIEF TO ADMINISTRATIVE LAW JUDGE

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Pursuant to the Supplemental Briefing Order issued on January 6, 2020 by Administrative Law Judge Arthur J. Amchan (“the ALJ”), St. Louis Cardinals, LLC (“Respondent”) files the following Post-Hearing Brief and respectfully requests dismissal of the portions of the above-captioned charge related to Respondent’s failure to recall James Maxwell and Eugene Kramer.¹ In the event the ALJ does not dismiss the allegation regarding Kramer, Respondent respectfully requests the ALJ to grant the General Counsel and Respondent’s Joint Joint Motion for Administrative Law Judge to Approve Settlement Agreement.

I. STATEMENT OF THE CASE

Charging Party Joe Bell filed the instant Charge on January 18, 2018 on behalf of himself and fellow painters James Maxwell, Thomas Maxwell, and Eugene Kramer (collectively, the “Charging Parties”), alleging the Employer violated Section 8(a)(1) and (3) of the Act by refusing

¹ The Board’s January 3, 2020 Decision and Order addressed the portions of the Consolidated Complaint relating to refusals to recall Thomas Maxwell and Joe Bell, as well as alleged Section 8(a)(1) statements. 369 NLRB No. 3. The Board dismissed the allegation regarding Thomas Maxwell, and found merit to the allegations regarding Joe Bell and the alleged Section 8(a)(1) statement. Respondent has fully complied with the resulting remedial Order.

to recall them in retaliation for internal union activities. (GC-1(a)).² On April 26, 2018, the General Counsel issued a Complaint on those allegations, as well as a single allegation of a Section 8(a)(1) statement.³

The parties participated in a Hearing in this matter on August 21 and 22, 2018, with the ALJ presiding. Each of the parties presented evidence and witness testimony at Hearing. On October 17, 2018, the ALJ issued a Recommended Decision and Order finding merit to the General Counsel's allegations. Following Respondent's timely Exceptions, the Board issued a Decision, Order, and Order Remanding on January 3, 2020. 369 NLRB No. 3.

The portion of the Board's Decision regarding severance of the James Maxwell and Eugene Kramer allegations and remand to the ALJ specifically concerns Respondent's ability to satisfy its *Wright Line* rebuttal defense burden.

Regarding James Maxwell, the Board noted: “[Painting Foreman Patrick] Barrett testified that he did not make an offer to James Maxwell because, among other reasons, James Maxwell performed sloppy and unprofessional work, slept on the job, and smoked marijuana on lunch breaks.” D. 2. The Board further observed, “Barrett also testified that another reason for his decision was that James Maxwell said he could not work for Barrett.” D. 2, n. 6.⁴

² This Brief will utilize the following record citation conventions: “(Tr. __)” refers to page numbers of the Transcript of Hearing; “(GC-__)” refers to General Counsel Exhibits offered and admitted into the record; and “D. __” refers to page numbers of the slip opinion of the Board's Decision at 369 NLRB No. 3 (Jan. 3, 2020), including its incorporation of the ALJ's October 17, 2018 Recommended Decision and Order (“ALJD”).

³ The General Counsel subsequently amended the Complaint on July 26, 2018 to add an additional allegation of agency status. (GC-1(k)). All subsequent references to the “Complaint” refer to the Amended Complaint.

⁴ Consistent with the Board's Order and the ALJ's Supplemental Briefing Order, this Brief addresses only Respondent's *Wright Line* rebuttal defenses with respect to James Maxwell and Eugene Kramer, as well as post-discharge threats of violence made by Kramer. By filing this Brief, Respondent does not waive, but rather expressly preserves, all other legal arguments, including but not limited to the loss of protection under Section 8(b)(1)(B) of the Act and the General Counsel's *prima facie Wright Line* burden.

The Board further explained, “[a]s to Kramer, Barrett testified that he did not make an offer to Kramer because he had worked with Kramer and personally knew that Kramer performed poor work and smoked marijuana on lunch breaks. (Robert Shamel, the owner of Shamel Construction, corroborated Barrett’s testimony regarding the poor quality of Kramer’s work.)” D. 2. Additionally, “Shamel testified that he employed Kramer as a painter once, and Kramer dripped paint onto newly finished floors to such an extent that the floors had to be refinished.” D. 2, n. 7.

Following remand, on February 6, 2020, Kramer advanced threats of physical violence against Barrett and Counsel for Respondent during a telephone call with an NLRB agent. Consequently, the General Counsel and Respondent agreed Kramer’s backpay should be tolled as of February 6, 2020, and that Kramer became ineligible for reinstatement upon that date. The General Counsel and Respondent therefore entered into a Settlement Agreement providing for payment of all backpay owed through February 6, 2020, and all other necessary remedial measures. On March 27, 2020, the General Counsel and Respondent filed a Joint Motion for Administrative Law Judge to Approve Settlement Agreement and Request for Order to Show Cause. The ALJ issued an Order Rejecting Settlement Agreement on April 8, 2020, citing concerns about Kramer’s opportunity to respond to the allegation that he made threats. On April 16, 2020, Respondent filed a Motion for Reconsideration of the Order Rejecting Settlement, attaching a Federal Protective Services (“FPS”) Report detailing the threats. (Exhibit A). The ALJ denied the Motion for Reconsideration that same day. (Exhibit B).

Respondent respectfully requests the ALJ to closely scrutinize these issues, make appropriate findings based upon the (largely un rebutted and undisputed) evidence, and correctly recommend dismissal of the James Maxwell and Eugene Kramer allegations. Additionally, assuming *arguendo* the ALJ incorrectly rejects Respondent’s *Wright Line* rebuttal defense

regarding Kramer, the ALJ should approve the Settlement Agreement that was submitted to the ALJ for approval pursuant to the General Counsel and Respondent's Joint Motion.

II. FACTUAL BACKGROUND

A. Respondent's Operations and the Painting Foreman Position

Respondent owns and operates a Major League Baseball team that plays its home games at Busch Stadium (the "Stadium") in St. Louis, Missouri. (Tr. 283). As part of its Stadium maintenance operations, Respondent employs crews of painters each season. Painters' District Council #58 ("Union") represents those painters, and Respondent is a signatory to a multi-employer collective bargaining agreement ("CBA") with the Union. (GC-2). Over the decades, Respondent and the Union have enjoyed a history of peaceful and amicable relations. (Tr. 55).

Respondent hires a separate crew for each baseball season. (Tr. 311-12). The CBA does not require Respondent to retain painters from season to season, but instead Section 6 - "Union Security" - only requires Respondent to employ Union members in good standing to perform unit work. (GC-2).

Respondent's Painting Foreman holds the only full-time painting position at the Stadium. (Tr. 282). The Foreman hires the crew each season, assigns and oversees all work, manages the Painting Department budget, and is generally responsible for the interior and exterior aesthetics of the Stadium. (Tr. 279, 373). Due to the prominence of the team within St. Louis, and the nature of the Foreman position, area painters view the job as Painting Foreman for Respondent as a highly prestigious position. (Tr. 298-99).

Former Foreman Billy Martin held the position for approximately 35 years before retiring at the end of the 2017 season. (Tr. 283). At that time, Respondent interviewed painters Patrick

Barrett (“Barrett”), James Maxwell, and Thomas Maxwell (James’ brother)⁵ to potentially succeed Martin in the Painting Foreman position. (Tr. 254, 299-300). At the time, James Maxwell expressed to Barrett that Maxwell “assumed that he was going to get [the job] because he was next in line.” (Tr. 299). Maxwell added, “If I don’t get it . . . I am going to get a lawyer and sue [Respondent] for age discrimination.” (Tr. 300). However, Respondent’s Director of Facility, Security and Stadium Operations, Hosei Maruyama (“Maruyama”), informed the candidates at the end of November 2017 that Respondent would award Barrett the position. (Tr. 300-01).

As the ALJ’s October 17, 2018 Decision noted, “J[ames] Maxwell, Thomas Maxwell, and Eugene Kramer were unhappy with this selection.” (D. 2:37-38). Immediately upon receiving news of Respondent’s decision to hire Barrett as the new Painting Foreman, James Maxwell informed Maruyama he intended to pursue internal Union charges against Barrett. (Tr. 256-57). He also “adamant[ly] and passionate[ly]” told Maruyama, “I can’t work for [Barrett].” (*Id.*).

C. The 2018 Painting Crew Hiring Process and Decision Not to Offer Work to James Maxwell or Eugene Kramer.

In early 2018, Barrett began the hiring process by obtaining a copy of the hiring hall’s out-of-work list from the Union. (R-11) (Tr. 314). Respondent, through Barrett, then filled six 2018 season crew spots, plus an apprentice position, with the following painters: Mark Ochs; Michael Burns; Tim O’Neil; Bruce Noss; Dave Sobkoviak; Duane Oehman; and Angie Ramshaw (apprentice). (Tr. 315-17).

As noted in the Board’s Decision, Respondent also offered a position to Thomas Maxwell, who did not return two voicemails left for him. D. 2. When asked why he made Thomas Maxwell an offer, Barrett testified, “Tom is a good painter.” (Tr. 321). Similarly, all of the other regular

⁵ Unless otherwise noted, subsequent references to “Maxwell” refer to James Maxwell.

painters to whom Barrett tendered offers had demonstrated strong work abilities, either to Barrett directly or to others whom Barrett trusted. (Tr. 319-21).

Barrett quite candidly explained on direct testimony that internal Union charges filed by the Charging Parties may have contributed “a little bit” to his decisions not to offer work to James Maxwell, Eugene Kramer, and Joe Bell. (Tr. 311). However, as the offer to Thomas Maxwell demonstrates, the other considerations described below predominated in Barrett’s decisions. D. 2 (noting that Barrett called Thomas Maxwell on February 5 and 7, 2018, third amongst eight painters, for work that did not commence until March 2018). These differences between Thomas Maxwell on one hand, and James Maxwell and Eugene Kramer on the other, ultimately controlled Barrett’s final decisions.

1. Barrett Decided Not to Offer Work to James Maxwell Because Maxwell Demonstrated Poor Work Ethic, Poor Work Performance, Smoked Marijuana on Lunch Breaks, and Stated He Could Not Work for Barrett.

In contrast to Thomas Maxwell, Barrett did not offer work to Thomas’ brother, James Maxwell. One reason for this difference was that, as opposed to his assessment of Thomas Maxwell as a “good painter,” Barrett viewed James Maxwell’s work ethic and work performance as poor. Specifically, James Maxwell went “missing quite a bit,” unprofessionally sat while painting, was “sloppy,” and slept while on the clock. (R-6(a)) (Tr. 321-23). Barrett also observed James Maxwell on multiple occasions smoking marijuana during lunch breaks. (Tr. 323-24). Despite attending the entirety of the Hearing as the General Counsel’s Charging Party representative (Tr. 12), the General Counsel did not call him to rebut Respondent’s evidence on these matters.

In addition to Barrett’s prior experiences working with James Maxwell, Maxwell’s statement immediately following Respondent’s selection of Barrett as the new Painting Foreman that he could not work for Barrett was also a substantial factor in Barrett’s decision not to include

James Maxwell on his new painting crew. Specifically, during the call in which Maruyama informed him of Barrett's selection, James Maxwell "very adamant[ly] and passionate[ly]" told Maruyama he could not work with Barrett. (Tr. 256-57, 324-25). During his own testimony, James Maxwell even admitted that he told Maruyama he could not work with Barrett. (Tr. 32, 57-59). When Maxwell later made a weak attempt to revoke his initial comment by saying he would "bite his lip and try to make it work[.]" Barrett, naturally, found that statement insufficient and disingenuous. (Tr. 257-58, 325). Although Barrett failed to pinpoint the exact date on which he was made aware of James Maxwell's meek attempted retraction of his earlier emphatic statement, his failure to recollect the exact date on which he learned of the attempted retraction does not diminish the importance of the unmistakable initial comment made by James Maxwell. Based on these undisputed statements made by James Maxwell, Barrett believed as a matter of common sense that, had he included James Maxwell as part of his new painting crew, James Maxwell would have inevitably undermined Barrett's authority as foreman and would have negatively impacted the working environment for the crew as a whole. As discussed in further detail below, the fact that James Maxwell expressed an unwillingness to work for Barrett, and subsequently only marginally mitigated that statement with a great deal of reluctance, was yet another key factor that supports Respondent's satisfaction of its *Wright Line* rebuttal burden.

Consequently, Barrett decided for a number of reasons, including poor work ethic, poor work performance, drug use during lunch breaks, and James Maxwell's stated unwillingness to work for Barrett, that he did not wish to include Maxwell on his first painting crew.

2. Barrett Decided Not to Offer Work to Eugene Kramer Because Kramer Demonstrated Poor Work Performance and Smoked Marijuana on Lunch Breaks.

As the Board noted, Eugene Kramer also performed poor work and smoked marijuana on lunch breaks. (D. 2) (Tr. 295-96, 326-27). Barrett explained he repeatedly witnessed Kramer

performing substandard work, both at the Stadium and on a job for Shamel Construction. (Tr. 295-96, 326). Barrett specifically testified that one of the problems with Kramer's work was his uneven painting resulting from working too quickly, a problem commonly described as "skippers." (Tr. 295-96). In fact, Kramer's work for Shamel was so deficient, it required Barrett and Shamel to spend "more time cleaning up and redoing that [than] had we just done it ourselves originally." (Tr. 326). Shamel himself confirmed the need to "redo everything," and even refinish the building's hardwood floors due to Kramer's deficient work. (Tr. 250-51). Also like James Maxwell, Barrett witnessed Kramer using marijuana during the work day, with detrimental impacts on his work performance. (Tr. 327). Conversely, Barrett never witnessed any of the individuals who worked for Respondent during 2018 using marijuana during the work day or otherwise. (*Id.*).

D. Respondent Requests Specific Factual Findings Based on Uncontradicted and Unrebutted Evidence about James Maxwell, Eugene Kramer, and Barrett's Superior Options.

1. The Unrebutted and Uncontradicted Nature of the Evidence Regarding James Maxwell, Eugene Kramer, and Barrett's Superior Options.

Importantly, the General Counsel presented no evidence contradicting Barrett's assessments of James Maxwell's work ethic, work performance, or illegal drug use during the work day, nor any evidence contradicting Barrett's assessment of Kramer's poor work performance or illegal drug use during the work day. James Maxwell attended the entirety of the Hearing as the General Counsel's Charging Party representative (Tr. 12), but the General Counsel *never* called him to rebut Respondent's evidence on these matters. The General Counsel likewise failed to call any of the other Charging Parties – Thomas Maxwell, Eugene Kramer, or Joe Bell,

or anyone else, to refute Barrett's testimony regarding these issues.⁶ Similarly, the General Counsel did not challenge Barrett's testimony regarding his favorable assessments of the painters he did hire to the 2018 painting crew. As a result, all of this evidence stands unrebutted.

2. Respondent Requests Seven Specific Factual Findings Regarding James Maxwell's Poor Work Ethic, Poor Work Performance, Drug Use, and Statement that Maxwell Could Not Work for Barrett.

Based upon the evidence summarized above and in accordance with the Board's Order Remanding, Respondent respectfully requests the ALJ to make the following seven specific factual findings regarding James Maxwell:

1. Prior to making offers of work, Patrick Barrett personally observed that James Maxwell went "missing quite a bit" at work. (Tr. 322) (unrebutted).
2. Prior to making offers of work, Patrick Barrett personally observed that James Maxwell sometimes slept on the clock. (*Id.*) (recalling a specific example) (unrebutted).
3. Prior to making offers of work, Patrick Barrett personally observed that James Maxwell sometimes painted while sitting in a chair. (Tr. 51-52, 322) (R-6(a)) (photograph of Maxwell painting while sitting on a folding chair) (unrebutted).
4. At the time of Patrick Barrett's offers of work, he viewed painting while sitting down in a chair as "very unprofessional." (Tr. 322) (unrebutted).
5. Prior to making offers of work, Patrick Barrett personally observed work by James Maxwell that Barrett viewed as "sloppy." (*Id.*) (unrebutted).
6. Prior to making offers of work, Patrick Barrett personally observed James Maxwell smoking marijuana during the work day. (Tr. 323-24) (unrebutted).
7. At the time of Patrick Barrett's offers of work, he knew James Maxwell had expressed unwillingness to work for Barrett upon learning that Barrett was named foreman. (Tr. 32, 57-59, 256-58, 324-25) (statement admitted by Maxwell at Tr. 32, 57-59, Maruyama confirms conveyance of statement to Barrett at Tr. 256-57, and Barrett confirms his knowledge at Tr. 324-25).

⁶ The failure to recall Kramer regarding drug use is particularly noteworthy due to Barrett's testimony that Kramer and James Maxwell smoked marijuana together. (Tr. 323-24, 327). In other words, Barrett testified to events in which all three individuals were present, and the record contains only Barrett's testimony of those events.

3. Respondent Requests Four Specific Factual Findings Regarding Eugene Kramer's Poor Work Performance, and Drug Use.

Additionally, based upon the evidence summarized above and in accordance with the Board's Order Remanding, Respondent respectfully requests the ALJ to make the following four factual findings regarding Eugene Kramer:

1. Prior to making offers of work, Patrick Barrett personally observed that Eugene Kramer performed poorly, both at the Stadium and for Shamel Construction. (Tr. 295-96, 326) (unrebutted). (See also Tr. 250-51) (corroborating testimony from Shamel Construction's owner describing need to refinish hardwood floors due to Kramer's deficient work) (also unrebutted).
2. Prior to making offers of work, Patrick Barrett personally observed Eugene Kramer's deficient work for Shamel Construction required a large amount of time to fix. (Tr. 326) (unrebutted).
3. Prior to making offers of work, Patrick Barrett personally observed that Eugene Kramer's work resulted in evidence of uneven paint, colloquially known as, "skippers." (Tr. 295-96) (unrebutted).
4. Prior to making offers of work, Patrick Barrett personally observed Eugene Kramer smoking marijuana during the work day. (Tr. 323-24) (unrebutted).

4. Respondent Requests Three Specific Factual Findings Regarding Barrett's Superior Options for His 2018 Painting Crew.

1. At the time of Patrick Barrett's offers of work, he knew Mark Ochs, Michael Burns, Tim O'Neil, Bruce Noss, Dave Sobkoviak, and Duane Oehman had demonstrated strong work abilities, either to Barrett directly or to others whom Barrett trusted. (Tr. 319-21) (unrebutted).
2. Respondent hired Angie Ramshaw to its 2018 painting crew pursuant to an apprenticeship program with the Union. (Tr. 280, 321) (unrebutted).
3. Barrett never witnessed any of the individuals hired to the 2018 painting crew using marijuana during the work day. (Tr. 327) (unrebutted).

E. Eugene Kramer's February 6, 2020 Threats of Physical Violence Against Barrett and Respondent's Counsel.

As described in Respondent's April 16, 2020 Motion for Reconsideration (Exhibit A), including the FPS Report (Exhibit 3 to Exhibit A), Kramer, on February 6, 2020, made very serious threats of physical violence against Barrett and Respondent's Counsel. His statements regarding

Barrett, in particular, warrant heightened concern. Kramer’s threat that, “[h]im and his boys would take Pat Barrett to the top of the stadium and make him fall off[,]” constitutes an expressed intention to commit homicide. (*Id.*). Apparently unsatisfied with threatening only one individual, Kramer further added, regarding Respondent’s Counsel, that he “would fuck him up.” (*Id.*). As discussed in further detail below, these statements render Kramer ineligible for reinstatement under well-established Board standards.

III. ARGUMENT REGARDING RESPONDENT’S AFFIRMATIVE DEFENSE

A. The *Wright Line* Rebuttal Defense Standard.

Under *Wright Line*, 251 NLRB 1083 (1980), *enf’d* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982) even if (as Respondent assumes here, without waiver of its position) the General Counsel could establish a *prima facie* case, Respondent nevertheless prevails by showing it would have treated James Maxwell and Kramer the same regardless of any protected activities. *NLRB v. Transportation Corp.*, 462 U.S. 393, 399–403 (1983). As the Board explained in its Decision, Respondent possesses this rebuttal defense opportunity notwithstanding Barrett’s candid acknowledgement that the internal union charges factored “a little bit” into his decision not to offer James Maxwell and Kramer work. D. 1-2, (Tr. 321). *See also Oakes Machine Corp.*, 288 NLRB 456, 458 (1988) (explaining where both lawful and unlawful grounds motivated a charged party, it can prevail if it shows that the lawful reason alone would have prompted its actions), *enf. granted in part, denied in part on other grounds* 897 F.2d 84 (2d Cir. 1990).

As the Board acknowledged here, Barrett’s views on multiple factors bear on the *Wright Line* rebuttal defense analysis. D. 2. Specifically, the Board identified a need to evaluate this defense in light of undisputed evidence regarding Maxwell’s:

- (1) Poor work ethic;
- (2) Poor work performance;

- (3) Illegal drug use during the work day; and
- (4) Expressed unwillingness to work for Barrett.

Id.

Similarly, the Board also asked the ALJ to evaluate Respondent's affirmative defense in light of undisputed evidence regarding Kramer's:

- (1) Poor work performance; and
- (2) Illegal drug use during the work day.

If the ALJ finds Barrett would have declined to offer James Maxwell and/or Kramer work due to any one of these issues independently, or any combination of them collectively, then Respondent has met its *Wright Line* rebuttal burden.

Additionally, in assessing what Barrett would have decided in the absence of any purportedly protected activities, the ALJ must also consider the other options available to Barrett. Specifically, the availability of other well-qualified painters (including Thomas Maxwell, to whom an offer was made by Barrett), none of whom possessed the same deficiencies as James Maxwell and Kramer (including Thomas Maxwell), illustrates the common sense nature of Barrett's decision not to offer Maxwell and Kramer positions. Consequently, Respondent's *Wright Line* rebuttal defense burden was established by both (i) the undisputed evidence of the numerous concerns Barrett had regarding Maxwell and Kramer, and (ii) the availability of superior options Barrett had to select.

B. The 2018 Season Provided Barrett's First Opportunity to Assemble His New Painting Crew, and No Prior Practices or Contractual Obligations Constrained His Discretion.

The unique nature of the year 2018 in Respondent's painting crew selection process warrants particular emphasis. The ALJD refers to prior Painting Foreman Billy Martin's hiring

practices. (D. 5-6). Martin's practices and crew preferences, however, did not apply to Barrett's assembly of the first crew of his tenure. To wit, Barrett testified:

Q: Now, who made the hiring decisions for the 2018 season?

A: I did.

Q: In making those decisions, were you bound in any way by decisions that Billy Martin had made in the past?

A: No, sir.

Q: Is this the first time you've ever hired painters for the Stadium?

A: Yes, sir.

(Tr. 313).

In other words, Barrett worked from a clean slate. Any attempt to view his decisions as continuations of Martin's tenure fails to account for the unique circumstances of 2018. That year represented the first time in *35 years* in which someone other than Martin possessed the opportunity to apply his preferences to his own crew. (Tr. 283). Consequently, any deviation from Martin's practices represents merely the natural implication of Barrett's new tenure.

The Board consistently recognizes, even in the Section 8(a)(5) unilateral change context, that new members of management may legitimately apply their own practices. *See, e.g., Wabash Transformer Corp.*, 215 NLRB 546 (1974) (dismissing Section 8(a)(5) allegation where new management instituted interviews of employees in default on productivity standards and discharged employees under those standards); *The Trading Port, Inc.*, 224 NLRB 980, 982-83 (1976) (dismissing Section 8(a)(5) allegation based on more stringent enforcement of standards by new management); *Service Spring Co.*, 263 NLRB 812, 812-13 (1982) (same).

The ALJD also refers to two other factors that should not be viewed as constraining Barrett's discretion. First, it observes, "[o]nly one of these [painters Barrett hired], Duane

Oehman, was hired through the Union’s hiring hall.” D. 6. In fact, although Barrett consulted the Union’s out-of-work list, the CBA only requires signatory employers to hire Union members in good standing. (GC-2, Sec. 7) (Tr. 100). Thus, the CBA did not require Barrett to use the hall, and did not constrain his discretion beyond the need to hire Union members.

The ALJD also refers to letters (GC-10, 11, 12) received by the Maxwell brothers and Eugene Kramer on November 2, 2017 (well prior to Barrett’s appointment as Painting Foreman), implicitly suggesting the letters serve as evidence that Barrett held an obligation to hire them. D. 5. Barrett explained, however, that the painters received the letters only because Respondent must receive releases for Annual Criminal Background Checks pursuant to Department of Homeland Security requirements. (Tr. 331-32). He further testified:

Q: Are those documents only given to painters?

A: No, everybody gets one.

Q: When you say “everybody,” who(m) do you mean?

A: All of the Cardinals employees.

Q: Did those letters factor into your decision at all regarding who(m) to make offers to in 2018?

A: Oh, no.

(*Id.*).

The record leaves no doubt that Barrett, as the new Painting Foreman, could hire whomever he felt comfortable hiring onto the Spring 2018 crew. Barrett’s promotion, for the first time in decades, brought a clean slate to the Painting Department at Busch Stadium. As a result, the ALJ must reject any implication that his hiring decisions were constrained by past practices, the Union’s out-of-work list, or standard form background check documents distributed to all 2017 part-time and seasonal Cardinals employees.

C. The Undisputed Facts Establish Respondent's *Wright Line* Rebuttal Defense Based on Barrett's View of Maxwell's Work Ethic, Maxwell and Kramer's Work Performances, Maxwell and Kramer's Illegal Drug Use During the Work Day, Maxwell's Unwillingness to Work for Barrett, and Superior Options.

Each of Barrett's individual concerns about James Maxwell and Kramer, none of which the General Counsel has presented any evidence to contradict, serves as an independently sufficient basis to find Respondent satisfied its *Wright Line* rebuttal burden. Collectively, the conclusion that Barrett would have made the same decision absent any animus against purportedly protected activities is even more apparent.

1. Barrett's Observations of James Maxwell's Poor Work Ethic and Poor Work Performance by Both Maxwell and Kramer.

Regarding Barrett's undisputed testimony that James Maxwell exhibited a poor work ethic, and both Maxwell and Kramer performed poorly during their years working together, the case of *West Covina Disposal*, 315 NLRB 47 (1994) is directly on-point and highly instructive. There, the ALJ (Decision adopted without comment on this issue by the Board), dismissed an allegation that the employer discriminatorily selected seven union supporters for layoff. *Id.* at 64-66. The ALJ concluded the General Counsel established a *prima facie* case regarding those individuals. *Id.* at 65. However, he went on to observe, "inasmuch as not one of the seven alleged discriminatees testified as a rebuttal witness to deny or explain what [a supervisor] said about him, the supervisor's assessment of each alleged discriminatee's employment history and work ethic was uncontroverted." *Id.* at 65. Thus, based on the supervisor's testimony about the employees' poor work ethics and performance issues, the employer "met its burden of proof and established that it would have laid off the above seven alleged discriminatees notwithstanding their activities and support for the Union." *Id.* at 66.

West Covina Disposal is indistinguishable from the facts here, where Barrett provided un rebutted testimony regarding James Maxwell’s poor work ethic and Maxwell and Kramer’s performance issues. Additionally, whereas the *West Covina Disposal* ALJ (and ultimately the Board) applied the un rebutted testimony to a group of *seven* employees, the facts here require its application only to two specific individuals – James Maxwell and Kramer. No basis exists for assessing Respondent’s *Wright Line* rebuttal defense here any differently than the employer’s defense in *West Covina Disposal*. See also *Bliss Clearing Niagara, Inc.*, 344 NLRB 296, 313-14 (2005) (ALJ, adopted by the Board without comment, dismissing unlawful suspension allegation because employer testimony regarding “poor work ethic and productivity,” including employee’s lack of “the requisite ‘enthusiasm and zeal’ for his work[,]” established *Wright Line* rebuttal defense).

Barrett’s testimony regarding James Maxwell’s poor work ethic and performance is specific and convincing. He explained Maxwell “would go missing quite a bit,” would unprofessionally sit down while painting, and performed “sloppy” work. (Tr. 322-23). Respondent Exhibit 6(a) shows Maxwell painting while sitting down at the Stadium. (R-6(a)) (Tr. 52). Barrett also testified James Maxwell would sleep on the clock, and described a specific incident of Maxwell sleeping on the job. (*Id.*).

The testimony regarding Kramer’s poor performance is equally specific and persuasive. Barrett described uneven painting by Kramer resulting in poor performance as a whole. Additionally, both Barrett and Shamel Construction Owner Bob Shamel recounted very significant problems with Kramer’s work for Shamel Construction. These problems required Shamel and Barrett to spend “more time cleaning up and redoing [Kramer’s work than] had we just done it

ourselves originally.” (Tr. 250-51, 326). Kramer’s poor performance further resulted in the need to refinish hardwood floors at the job site. (Tr. 250-51).

Just as in *West Covina Disposal*, the General Counsel failed to dispute this evidence. Consequently, as in that case, un rebutted testimony regarding poor work ethic and poor work performance constitutes an independently sufficient basis to establish Respondent’s *Wright Line* rebuttal defense.

2. Barrett’s Observations of Illegal Drug Use During the Work Day by James Maxwell and Kramer.

Similarly, Barrett testified regarding specific incidents of marijuana use by James Maxwell and Kramer during lunch breaks. (Tr. 323-24, 327). He explained, “[James Maxwell] normally carried it [the marijuana] with him or it was in his car.” (Tr. 324). Barrett also believed that the marijuana use affected both painters’ job performances. (Tr. 324, 327). Again, the General Counsel offered no evidence in dispute of this testimony, even though James Maxwell attended the entirety of the hearing as the General Counsel’s Charging Party representative, and it could have recalled any Charging Party at any time. (Tr. 12).

Cases abound in which the Board finds drug use sufficient to establish employers’ *Wright Line* rebuttal defenses. *See, e.g., Mariposa Press*, 273 NLRB 528, 546 (1984) (finding *Wright Line* rebuttal defense established for smoking marijuana during a lunch break); *Camvac International*, 288 NLRB 816, 821-22 (1988) (Board reversing ALJ to find *Wright Line* rebuttal defense established for possession of marijuana); *DTR Industries, Inc.*, 350 NLRB 1132, 1137-38 (2007). No reason exists to treat the un rebutted evidence of James Maxwell and Kramer’s marijuana use during the work day any differently than the Board has treated such evidence in its prior *Wright Line* determinations. As a result, this evidence constitutes a further independently sufficient reason to find Respondent established its *Wright Line* rebuttal defense.

3. James Maxwell's Stated Unwillingness to Work for Barrett.

As explained above, the parties do not appear to dispute that James Maxwell told Maruyama he would not work for Barrett, and Maxwell even admitted making this statement in his testimony. (Tr. 32, 57-59, 256-58). Additionally, the record is clear that Maruyama relayed this statement to Barrett prior to Barrett's Spring 2018 hiring decisions. (Tr. 256-57, 324-25).

The conclusion that Barrett would not wish to hire someone who expressed unwillingness to work for him stands as a matter of common sense. Accordingly, the Board has previously treated such a statement as the basis for a valid *Wright Line* rebuttal defense. In *Williamson Piggly Wiggly*, 280 NLRB 1160, 1171 (1986), the ALJ (adopted by the Board without comment on this allegation) found a *prima facie* case rebutted where the alleged discriminatee, who resented her supervisor's selection for his position over her, said she "would not let him boss her around." Similarly, in *Smoke House Restaurant*, 347 NLRB 192, 206 (2006), the Board affirmed an ALJ's finding of a *Wright Line* rebuttal defense where the employer rescinded an offer of employment to an alleged discriminatee who said she would not work the posted schedule.

Furthermore, nothing about James Maxwell's subsequent half-hearted statement that he would "bite his lip" and try to work for Barrett mitigates the impact of his initial candid statement. (Tr. 257-58, 325). At best, Maxwell's uncontradicted comments show that he had a great deal of reluctance to work for Barrett, and suggests a high probability of day-to-day jealousy. Barrett, like any rational supervisor, did not wish to have such sentiments undermining his authority and the entire crew's working environment. Moreover, such reluctance only reinforces the "adamant and passionate" nature of James Maxwell's initial statement. (Tr. 256-57). Barrett, in composing the first crew of his tenure as Painting Foreman, possessed no reason to believe James Maxwell would advance the work of his crew while "bit[ing] his lip" every day. As the vast history of business,

sports, and other fields attests, a single malcontent can hold any team back. Thus, once again, James Maxwell's statement was yet another substantial factor contributing to Barrett's decision not to hire him (as well as Maxwell's poor work ethic, work performance, and illegal drug use on lunch breaks). Barrett thus would have made the same decision absent any purported unlawful animus.

4. Barrett's Superior Alternatives to Offering James Maxwell and Kramer Positions on His Crew.

Finally, taking all the circumstances into account, the fact that Barrett possessed strong alternatives to James Maxwell and Kramer also sheds light on his decision. On one hand, he had James Maxwell, a painter whose work ethic and work performance he viewed unfavorably, who smoked marijuana on lunch breaks, and who had expressed unwillingness to work for him, as well as Kramer, who shared performance and drug use issues. On the other hand, Barrett had the opportunity to hire six painters who possessed sterling reputations (plus an apprentice). (Tr. 318-21). In fact, one of the superior options Barrett attempted to include on his crew was James' brother Thomas, because he viewed Thomas as "a good painter." (Tr. 321). Barrett provided specific testimony regarding his knowledge of the others painters' abilities, obtained directly or through other industry members he trusted. (Tr. 318-21). The General Counsel offered no testimony (including from the four Charging Party painters) or evidence disputing those individuals' abilities or reputations.

None of these considerations bear any relationship whatsoever to the purportedly unlawful animus. To the contrary, Barrett's decisions to hire Ochs, Burns, O'Neil, Noss, Sobkoviak, and Oehman (as well as apprentice Ramshaw), and to offer a position to Thomas Maxwell, instead of James Maxwell and Kramer, accord with sound and rational business practices. The undisputed

evidence regarding the quality of painters to whom Respondent actually offered work thus further supports its *Wright Line* rebuttal defense.

5. Respondent's *Wright Line* Rebuttal Defense under All the Circumstances.

Any single one of the factors discussed above – poor work ethic, poor performance, illegal drug use during the work day, stated unwillingness to work for Barrett, or superior options – would be sufficient on its own to establish Respondent's *Wright Line* rebuttal defense. Taken together, they form a veritable avalanche of legitimate reasons for Barrett to offer work to painters other than James Maxwell and Kramer.

Separate and apart from any purported animus regarding internal union charges, why would Barrett use his first hiring opportunity, and his virtually unbounded discretion, to hire someone: (1) whom he had personally witnessed demonstrating a poor work ethic and performing substandard work; (2) who had indicated unwillingness to work for Barrett; and/or (3) who smoked marijuana on lunch breaks? No rational actor would do so, particularly when other well-regarded options exist.

Importantly, the facts here contain a ready-made answer to the fundamental *Wright Line* rebuttal question: what would Respondent have done absent any alleged anti-union animus? The evidence regarding James' brother Thomas provides the answer. **Thomas Maxwell engaged in precisely the same purportedly protected activities as James Maxwell and Kramer.** No evidence suggests Barrett or anyone else viewed James Maxwell's or Kramer's participation in the internal union charges as any more objectionable than Thomas Maxwell's participation. Nonetheless, Barrett offered Thomas Maxwell a position on the crew.

Furthermore, although the ALJD inferred that the filing of the instant charge motivated Respondent's offer to Thomas Maxwell (D. 7), the Board rejected that inference by pointing out

that Thomas Maxwell received the third offer out of eight total offers, at the normal time when offers occur, for work that would not commence for another month. D. 2. Absent the inference rejected by the Board, only one viable conclusion remains regarding James Maxwell: James Maxwell did not receive the same offer as Thomas Maxwell because Barrett viewed James Maxwell's work ethic and performance as poor, had witnessed him smoking marijuana on lunch breaks, knew James Maxwell had expressed unwillingness to work for him, and possessed superior options (including Thomas Maxwell). The same conclusion, as a matter of course, applies to Barrett's views on Kramer's poor performance and illegal drug use during lunch breaks.

For all of these reasons, Respondent has rebutted the General Counsel's purported *prima facie* case.

IV. Assuming *Arguendo* the ALJ Incorrectly Rejects Respondent's *Wright Line* Rebuttal Defense Regarding Kramer, the ALJ Should Approve the Settlement Agreement with the NLRB Regarding Kramer's Claims.

The serious threats issued by Kramer to cause Barrett to fall off the Stadium roof, and to "fuck up" Respondent's Counsel, render him highly unfit for reinstatement. Any Order requiring Respondent to allow Kramer back at the Stadium would force Barrett to work every day without knowing whether he will be subjected to a life-threatening attack. The Board cannot and does not countenance such circumstances.

"[T]he Board has held that it may deny remedial reinstatement if the employer can prove the alleged discriminatee engaged in misconduct so flagrant as to render the employee unfit for further service, or a threat to efficiency in the workplace." *Aerotek, Inc.*, 365 NLRB No. 2, slip op. at 3 (2016) (citing *Hawaii Tribune-Herald*, 356 NLRB 661, 662 (2011)) (internal emphasis and quotations omitted). Well-established Board precedent holds that threats of physical violence establish ineligibility for reinstatement. *See, e.g., Clear Pine Mouldings, Inc.*, 268 NLRB 1044, 1045-48 (1984), *enfd.* 765 F.2d 148 (9th Cir. 1985), *cert. denied* 474 U.S. 1105 (1986).

For example, in *Alto-Shaam, Inc.*, 307 NLRB 1466 (1992), the Board found a post-discharge statement that a fellow employee should join a strike “if you value your life” disqualified a discriminatee from reinstatement. More recently, the Board, in *Universal Truss, Inc.*, 348 NLRB 733, 737-38 (2006), found that statements very similar to Kramer’s here – “When you come out, we're gonna get you all alone ... And we're gonna fuck you up.” – met the *Clear Pine Mouldings* standard.

Additionally, in *CF Taffe Plumbing Co., Inc.*, JD-64-10, 13-CA-45890, 2010 WL 5099881 (NLRB Div. of Judges 2010), Your Honor found post-discharge text messages to a supervisor stating “Keep talking your shit and see what I do” and “Your days are over starting tomorrow” rendered a discriminatee ineligible for reinstatement. Your Honor reasoned:

While there is no evidence that Respondent had a preexisting policy regarding conduct such as [the] text message, I conclude that this message, which on its face appears to threaten physical violence, is the type of conduct for which any employer would discharge an employee.⁷

Here, there can be no genuine question as to whether Kramer made these threats. The threats were reported to FPS by a Board agent, and Respondent has provided all parties, including Kramer, with a copy of the FPS Report. (Exhibit 3 to Exhibit A of this Brief). As an evidentiary matter, the Report constitutes a Government Record under Federal Rule of Evidence 803(8), in that it: (1) is a statement of the FPS; (2) under Rule 803(8)(A), sets out the FPS’s investigatory activities, sets out a matter under which it possessed a legal duty to report, and/or describes factual findings from a legally authorized investigation; and (3) under Rule 803(8)(B), none of the circumstances indicate a lack of trustworthiness. Furthermore, Kramer has received multiple opportunities to respond to the information contained in the Report, and Kramer has not disputed

⁷ The Board subsequently remanded the case in light of new evidence presented by the discriminatee showing he did not, in fact, send the text messages in question. 2011 WL 3898011.

any of such information about the threats of physical violence he made towards Barrett and Respondent's counsel.

Assuming both: (1) the ALJ incorrectly rejects Respondent's affirmative defense; and (2) Kramer is no longer eligible for reinstatement, then the Settlement Agreement would fully remedy and resolve the allegations regarding Kramer. Thus, under no circumstances should proceedings regarding Kramer occur beyond this stage. Instead, the ALJ should find no merit to the Kramer allegation as a whole, and absent such a determination, should approve the Settlement Agreement.

V. CONCLUSION

Respondent has established a *Wright Line* rebuttal defense based on multiple factors identified by the Board. Specifically, it would not have offered Spring 2018 work to James Maxwell and Kramer even in the absence of their internal Union charges because Painting Foreman Patrick Barrett: (1) assessed Maxwell's work ethic as poor; (2) assessed Maxwell and Kramer's work performances as poor; (3) witnessed Maxwell and Kramer using illegal drugs during the work day; (4) knew Maxwell expressed unwillingness to work for him; and (5) possessed superior options for painting crew members. Most notably, the evidence supporting these factors stands undisputed on the record. For all of these reasons, Respondent respectfully requests dismissal of the portions of the Complaint related to James Maxwell and Kramer. Absent dismissal with regard to Kramer, the ALJ should grant the General Counsel and Respondent's Joint Motion for Administrative Law Judge to Approve Settlement Agreement.

Respectfully submitted this 1st day of May, 2020.

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

/s/ Robert W. Stewart

Robert W. Stewart

Harrison C. Kuntz

7700 Bonhomme Avenue, Suite 650

St. Louis, MO 63105

Telephone: (314) 802-3935

Facsimile: (314) 802-3936

Robert.Stewart@ogletree.com

Harrison.Kuntz@ogletree.com

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2020 I filed the foregoing RESPONDENT'S SUPPLEMENTAL BRIEF TO ADMINISTRATIVE LAW JUDGE via the National Labor Relations Board's E-File system and served via electronic mail on the following parties:

Joe Bell, Charging Party
1327 Spring Dr.
Herculaneum, MO 63048-1544
Joebell4646@gmail.com

Charging Party

Lauren Fletcher, Field Attorney
National Labor Relations Board
Region 14
8600 Farley Street
Suite 100
Overland Park, KS 66212-4677
Lauren.Fletcher@nlrb.gov

Counsel for the General Counsel

Eugene Kramer
7 Southwinds Drive
St. Peters, MO 63376
1969genekramer@gmail.com

Alleged Discriminatee

James Maxwell
3151 Flatboat Station
St. Charles, MO 63301
Jtmaxwell2001@hotmail.com

Alleged Discriminatee

/s/ Harrison C. Kuntz

Harrison C. Kuntz

EXHIBIT A

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

ST. LOUIS CARDINALS, LLC

and

Case 14-CA-213219

JOE BELL, an individual

**RESPONDENT'S MOTION FOR RECONSIDERATION OF ORDER REJECTING
SETTLEMENT AND REQUEST TO POSTPONE SUPPLEMENTAL BRIEFING
DEADLINE**

Pursuant to §102.24(a) of the Rules and Regulations of the National Labor Relations Board, Respondent files this MOTION FOR RECONSIDERATION OF ORDER REJECTING SETTLEMENT AND REQUEST TO POSTPONE SUPPLEMENTAL BRIEFING DEADLINE, and respectfully requests:

1. Issuance of an Order Granting Respondent and the General Counsel's March 27, 2020 Joint Motion for Administrative Law Judge to Approve Settlement Agreement ("Joint Motion"); and
2. Indefinite postponement of the parties' current May 1, 2020 deadline for Supplemental Briefs, pending resolution of this Motion and subsequent proceedings related to the aforementioned Settlement Agreement.

And in support thereof, Respondent hereby states:

3. On January 3, 2020, the Board issued a Decision and Order remanding to the Administrative Law Judge ("ALJ") the portion of the instant case related to Respondent's failure

to offer alleged discriminatees James Maxwell and Eugene Kramer positions on its Spring 2018 painting crew. 369 NLRB No. 3.

4. On January 6, 2020, the ALJ issued a Supplemental Briefing Order setting an initial deadline of February 7, 2020 for the parties' Supplemental Briefs on the issues pending on remand.

5. Following prior extensions, on March 30, 2020, the ALJ granted a joint request of the parties to extend the deadline for Supplemental Briefs until May 1, 2020. (Exhibit 1).

6. On February 6, 2020, Counsel for the General Counsel informed Counsel for Respondent that, earlier that day, Eugene Kramer advanced threats of physical violence against Counsel for Respondent during a telephone call. (Exhibit 2).

7. In subsequent telephone conversations, representatives for the Federal Protective Service ("FPS") and the Federal Bureau of Investigation ("FBI") informed Counsel for Respondent that Kramer's February 6, 2020 threats also included threats of physical violence against Respondent's Painting Foreman, Patrick Barrett.

8. Respondent has received a Report from FPS summarizing the threats made by Kramer, including statements that "Him and his boys would take Pat Barrett to the top of the stadium and make him fall off[.]" and regarding Respondent's counsel, Kramer "would fuck him up." (Exhibit 3).

9. The Report contained in Exhibit 3 constitutes a Government Record under Federal Rule of Evidence 803(8), in that it: (1) is a statement of the FPS; (2) under Rule 803(8)(A), sets out the FPS's investigatory activities, sets out a matter under which it possessed a legal duty to report, and/or describes factual findings from a legally authorized investigation; and (3) under Rule 803(8)(B), none of the circumstances indicate a lack of trustworthiness.

10. On April 8, 2020, the ALJ issued his Order Rejecting Settlement, stating Kramer “is entitled to know the basis upon which his reinstatement rights and backpay are being tolled” and suggesting an evidentiary hearing may be held at a later stage of these proceedings.

11. “[T]he Board has held that it may deny remedial reinstatement if the employer can prove the alleged discriminatee engaged in misconduct so flagrant as to render the employee unfit for further service, or a threat to efficiency in the workplace.” *Aerotek, Inc.*, 365 NLRB No. 2, slip op. at 3 (2016) (citing *Hawaii Tribune-Herald*, 356 NLRB 661, 662 (2011)) (internal emphasis and quotations omitted).

12. Well-established Board precedent holds that threats of physical violence establish ineligibility for reinstatement. *See, e.g., Clear Pine Mouldings, Inc.*, 268 NLRB 1044, 1045-48 (1984), *enfd.* 765 F.2d 148 (9th Cir. 1985), *cert. denied* 474 U.S. 1105 (1986).

13. Kramer’s threats of physical violence clearly establish ineligibility for reinstatement under the above-cited Board precedent.

14. If backpay is properly tolled as of February 6, 2020, then the Compliance Agreement subject to the Joint Motion would fully remedy the alleged unfair labor practice with regard to Kramer.

15. The issue of Kramer’s eligibility or ineligibility for reinstatement (and full resolution of the allegations pertaining to him, if declared ineligible) should not be deferred until later stages of these proceedings. Such a delay would result in the unnecessary expenditure of time and resources by all parties, and would impose unnecessary uncertainty on both Respondent and Kramer, including uncertainty regarding whether potential backpay continues to accrue.

16. ALJs and the Board routinely address issues of eligibility or ineligibility for reinstatement prior to the compliance stage of proceedings, alongside other substantive merits

issues. See, e.g., *Aerotek, Inc.*, 365 NLRB No. 2 (2016); *Staffing Network Holdings, LLC*, 362 NLRB 67, 76 (2015); *American Medical Response of Connecticut, Inc.*, 359 NLRB 1301, 1306 (2013); *Teen Triumph*, 358 NLRB 11 (2012); *Allied Mechanical Services, Inc.*, 341 NLRB 1084 (2004); *Diamond Walnut Growers, Inc.*, 340 NLRB 1129, 1145 (2003); *USF Red Star, Inc.*, 330 NLRB 53, 59 (1999).

17. Respondent does not object to any means necessary to expeditiously provide Kramer with an opportunity to respond to these allegations of threats of physical violence, including issuance of an additional Order to Show Cause.¹

18. Because the subject of this Motion concerns one of the subjects of the parties' Supplemental Briefs, the deadline for all parties' Supplemental Briefs should be postponed indefinitely, pending resolution of this Motion.

19. Counsel for the General Counsel has informed Respondent that the General Counsel and the Charging Party oppose Respondent's Motion for Reconsideration and Request to Postpone Supplemental Briefing Deadline.

Respectfully submitted this 16th day of April, 2020.

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

/s/ Robert W. Stewart

¹ Accordingly, Respondent would not object to a prompt evidentiary hearing at this stage of the proceedings if the ALJ deems such a hearing necessary. In the event the ALJ finds such a hearing appropriate, the hearing should occur in the near future, rather than left for potential compliance proceedings, to minimize the potential for witnesses' memories of events to fade over time.

Nonetheless, Respondent believes Exhibit 3 speaks for itself, and provides Kramer with adequate notice of the allegations against him. Thus, Kramer's rights would be adequately vindicated through the opportunity to respond in writing.

Robert W. Stewart
Harrison C. Kuntz
7700 Bonhomme Avenue, Suite 650
St. Louis, MO 63105
Telephone: (314) 802-3935
Facsimile: (314) 802-3936
Robert.Stewart@ogletree.com
Harrison.Kuntz@ogletree.com

EXHIBIT 1

From: Amchan, Arthur <Arthur.Amchan@nlrb.gov>
Sent: Monday, March 30, 2020 12:28 PM
To: Kuntz, Harrison C.; Fletcher, Lauren; joebell4646@gmail.com
Subject: RE: St. Louis Cardinals, LLC, 14-CA-213219

I am ok with waiting until May 1

From: Kuntz, Harrison C. <harrison.kuntz@ogletree.com>
Sent: Monday, March 30, 2020 12:52 PM
To: Amchan, Arthur <Arthur.Amchan@nlrb.gov>; Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>; joebell4646@gmail.com
Subject: RE: St. Louis Cardinals, LLC, 14-CA-213219

Your Honor,

May 1 works for Respondent.

I do not believe any party contends that Mr. Kramer's response to the Settlement would have a *direct* impact on the merits of the Maxwell allegation. Rather, I think the parties would prefer for the procedural posture of the case to be clear when we submit our Briefs. Part of the reason for that is, if settlement of the Kramer allegation hypothetically were not approved, then the parties may also need to brief the underlying merits of the Kramer allegation. In that scenario, there are some underlying facts and issues regarding Maxwell and Kramer that overlap, and some that do not.

The other parties should please feel free to clarify if I have misstated our shared understanding.

Thank you,

Harrison C. Kuntz (he/him/his) | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
7700 Bonhomme Avenue, Suite 650 | St. Louis, MO 63105 | Telephone: 314-898-4074 | Mobile: 310-597-1559
harrison.kuntz@ogletree.com | www.ogletree.com | [Bio](#)

From: Amchan, Arthur <Arthur.Amchan@nlrb.gov>
Sent: Monday, March 30, 2020 11:39 AM
To: Kuntz, Harrison C. <Harrison.Kuntz@ogletreedekins.com>; Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>; joebell4646@gmail.com
Subject: RE: St. Louis Cardinals, LLC, 14-CA-213219

How about May 1 with the possibility that the date will be extended further if circumstances warrant. Although I wonder how Mr. Kramer's response would affect my decision regarding Maxwell.

From: Kuntz, Harrison C. <harrison.kuntz@ogletree.com>
Sent: Monday, March 30, 2020 11:59 AM
To: Amchan, Arthur <Arthur.Amchan@nlrb.gov>; Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>; joebell4646@gmail.com
Subject: RE: St. Louis Cardinals, LLC, 14-CA-213219

All,

Respondent would join the General Counsel's request for an extension of the briefing deadline. Either a date certain, or an indefinite extension until after Judge Amchan reviews the Compliance Agreement/Joint Motion and any response by Mr. Kramer, would both be acceptable.

Thank you,

Harrison C. Kuntz (he/him/his) | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

7700 Bonhomme Avenue, Suite 650 | St. Louis, MO 63105 | Telephone: 314-898-4074 | Mobile: 310-597-1559
harrison.kuntz@ogletree.com | www.ogletree.com | [Bio](#)

From: Amchan, Arthur <Arthur.Amchan@nlrb.gov>

Sent: Monday, March 30, 2020 10:49 AM

To: Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>; Kuntz, Harrison C. <Harrison.Kuntz@ogletreedekins.com>; joebell4646@gmail.com

Subject: RE: St. Louis Cardinals, LLC, 14-CA-213219

#1 I think Mr. Kramer should efile his response to the show cause order—otherwise I am not sure I can consider them. I am o.k. with extending the briefing date if all the parties think that is a good idea.

From: Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>

Sent: Monday, March 30, 2020 11:45 AM

To: Amchan, Arthur <Arthur.Amchan@nlrb.gov>; Kuntz, Harrison C. <harrison.kuntz@ogletree.com>; joebell4646@gmail.com

Subject: FW: St. Louis Cardinals, LLC, 14-CA-213219

Good morning everyone,

I have forwarded the Order to Show Cause to Mr. Kramer. Also, I received the email below from Mr. Kramer and wanted to forward it to all of the parties. I responded to Mr. Kramer and wrote that I would forward his email; however, to be cautious, he may want to e-file his e-mail and any other response using the NLRB's E-Filing feature at www.nlrb.gov by the date set forth in the Show Cause Order.

Also, the parties currently have briefs due on April 1, 2020. Since Mr. Kramer has until April 13, 2020 to provide a response, would it be possible to extend the deadline for briefing until Judge Amchan has a chance to review responses to the Order to Show Cause? Do any of the other parties have an objection?

Thanks,

Lauren M. Fletcher
Field Attorney
National Labor Relations Board - Subregion 17
8600 Farley Street, Ste. 100
Overland Park, KS 66212
Tel: 913-275-6521
Fax: 913-967-3010
Email: lauren.fletcher@nlrb.gov

EXHIBIT 2

From: Fink, Bradley A. [mailto:Bradley.Fink@nrlb.gov]
Sent: Thursday, February 06, 2020 2:28 PM
To: Kuntz, Harrison C.
Cc: Stewart, Robert W. (Bob)
Subject: Gene Kramer Threats

Harrison & Bob,

I spoke to Gene Kramer by phone on 2/6/20. We were discussing settlement. Kramer became upset about the settlement offer on the table. I spoke about what "the Cardinals' attorney" had told me. Kramer told me to give him the attorney's phone number and said "I'll handle this myself. I will fuck him up." I said that I thought it best that I speak to the attorney. Kramer again demanded the attorney's phone number and said "I will fuck him up."

Later in the call, Kramer said in reference to the "Cardinals attorney," "You get me mad, you get my boys mad, we will come down there and take care of you."

Near the end of the conversation, Kramer again asked for a phone number for the attorney. I declined to provide it. Kramer said, "I'll find him. I have all of the documents."

Neither Kramer nor I referred to any of the Cardinals' attorneys by name during this phone call. I have reported Kramer's threats to the Federal Protective Service. They provided the following picture of Kramer.

Brad Fink

314.449.7481 (w)

202.674.4058 (c)

EXHIBIT 3

From: Stone, Kenneth S <Kenneth.S.Stone@fps.dhs.gov>
Sent: Tuesday, February 18, 2020 12:25 PM
To: Philip Melcher <pmelcher@cardinals.com>
Subject: RE: Eugene Kramer

This message originated from outside your organization

Phil,

I provided a copy to SA Tucker Vanderbunt last week. Since the FBI is a Law Enforcement agency I can justify bypassing the FOIA request. If he hasn't provided you a copy yet, here is the synopsis of the report.

On Thursday, February 6, 2020, at approximately 1158 hours, I was dispatched to the National Labor Relations Board, located at 1222 Spruce Street, Suite 8.302, St Louis, MO 63103. Attorney Bradley A. Fink, contacted the Battle Creek Mega Center (BCMC) of a telephonic threat that was made by Eugene Kramer (DOB 1/26/1969).

At approximately 1200 hours, I made contact with Mr. Fink and Rochelle Balentine. They provided me to following information:

Kramer is in the middle of a law suit against the Cardinals Baseball team, he was employed as a painter there and in the fall of 2018 he won a law suit against them. The Cardinals appealed and are in the process of trying to settle with Kramer. The Cardinals are offering a low money amount and that made Kramer upset. While he was on the phone with Fink, Kramer stated that, "Him and his boys would take Pat Barrett (Cardinals foreman) to the top of the stadium and make him fall off". Kramer also told Fink that in regard to the Cardinals Attorney, Harrison Kuntz, "He would fuck him up".

Mrs. Balentine is a field Attorney for NLRB and is married to Kuntz. Mrs. Balentine is in the process of finding out through their lawyers if she can relay the information given to her by Kramer.

Kramer did not threaten his Attorney Fink. I asked Fink if he thought that Kramer would follow up on the threat and he said he did not, but he was not sure if he would because Kramer is known for having a bad temper. Fink stated that Kramer threatened someone approximately two years ago. Fink recorded part of the conversation and is going to provide it along with a statement. (Attached)

At approximately, 1215 hours, I requested for BCMC run a wants and warrants check along with criminal history on Kramer. I also requested a photo of Kramer. Kramer was clear NCIC wants and warrants but he did have some criminal history of assault 1st degree in 1989, a charge of property damage 2nd degree in 1996 and a charge of knowingly burn in 2000. (Attached)

I will make contact with St Louis Police Department and Clayton Police Department. This case is going to be referred to the listed above Police Department for follow up. Area Commander Stone reached out to the Cardinal Security Department twice to notify them of the incident with no return phone call.

On Friday, February 7, 2020, at approximately 1145 hours, Kuntz made contact with me via telephone to notify me that he was notified by the Clayton PD of the threat that was made against him. Kuntz stated that he was told by Clayton PD to report the incident to St Louis PD if he wanted to file charges. Kuntz stated that he was in contact with the Cardinals security team that that they are aware of the situation and conducting an investigation. Kuntz stated that he will be in contact if there is anything further that we can assist with. ///End of Report///

Please let me know if you need anything else.

Ken Stone
Area Commander
R6, St. Louis District
Federal Protective Service
Department of Homeland Security
TP: (314) 539-3659
CP: (314) 486-6759





**Homeland
Security**

Privacy Office, Mail Stop 0655

February 25, 2020

SENT VIA EMAIL TO: PMELCHER@CARDINALS.COM

Phil Melcher
Director of Security
St. Louis Cardinals, LLC
700 Clark Street
St. Louis, MO 63102

RE: FPS Case Number 2020-FPFO-00118

Dear Mr. Melcher:

This is the final response to your February 7, 2020, Freedom of Information Act (FOIA) request to the U.S. Department of Homeland Security (DHS). You are seeking a copy of incident report case control number F20060052894.

To provide you with the greatest degree of access authorized by law, DHS has considered your request under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. In this case, a search of DHS's Federal Protective Service for documents responsive to your request produced a total of five pages. I have determined that one page is withheld in its entirety and four pages are partially releasable pursuant to 5 U.S.C. § 552 (b)(6), (b)(7)(C), FOIA Exemptions 6, 7C, and 7E

Enclosed are four pages with certain information withheld as described below:

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that

identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

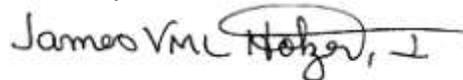
If you are not satisfied with the response to this request, you may administratively appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655 or email to foia@hq.dhs.gov, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

Provisions of the FOIA allow DHS to recover part of the cost of complying with your request. In this instance, because the cost is below the \$25.00 minimum, there is no charge.

You may contact the DHS FOIA Public Liaison at 202-343-1743 or toll free 1-866-431-0486 for any further assistance and to discuss any aspect of your request. Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you need to contact our office again about this matter, please refer to **2020-FPFO-00118**. This office can be reached at FOIA@HQ.DHS.GOV or call 202-343-1743 or toll free 1-866-431-0486.

Sincerely,



James Holzer
Deputy Chief FOIA Officer

FEDERAL PROTECTIVE SERVICE

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CASE NUMBER F20060052894 / 20002483B		Occur Date Span 02/06/2020 thru 02/06/2020	Occur Time Span 11:50 thru 11:50	Report Date 02/06/2020	Report Time 11:50														
<input type="checkbox"/> Follow – Up Report																			
A	Code	Type of Offense or Incident Threat: Telephonic, Verbal or Written	Arrive Date 02/06/2020	Arrive Time 12:00															
	Building No. (b)(7)(E)	Address 1222 SPRUCE STREET, ST. LOUIS, MO 63103	Rtn to Svc Dt 02/06/2020	Rtn to Svc Tm 14:00															
	Incident Location	Agency Name NATIONAL LABOR RELATIONS BOARD	Agency Code (b)(7)(E)																
<table border="1"> <tr> <td>Est Num Dem</td> <td>1-10</td> <td>11-50</td> <td>51-100</td> <td>101-300</td> <td>301-500</td> <td>500+</td> <td>Est Num Evc</td> <td>1-10</td> <td>11-50</td> <td>51-100</td> <td>101-300</td> <td>301-500</td> <td>500+</td> </tr> </table>						Est Num Dem	1-10	11-50	51-100	101-300	301-500	500+	Est Num Evc	1-10	11-50	51-100	101-300	301-500	500+
Est Num Dem	1-10	11-50	51-100	101-300	301-500	500+	Est Num Evc	1-10	11-50	51-100	101-300	301-500	500+						
NARRATIVE SEE NARRATIVE CONTINUATION																			

INVOLVED PERSON	<input checked="" type="checkbox"/>	Victim	<input type="checkbox"/>	Witness	<input type="checkbox"/>	Suspect	<input type="checkbox"/>	Subject	<input type="checkbox"/>	Report Person	<input type="checkbox"/>	Govt' Empl	<input type="checkbox"/>	Govt' Cont	<input type="checkbox"/>	Other	<input type="checkbox"/>	Missing Person	<input type="checkbox"/>
B	No.	Name (last, first, middle) (b)(6); (b)(7)(C)			Alias			Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair					
	Address				City				State	Zip Code		Country							
	Driver's License Number		State	Social Security #		Nationality		Country of Birth		Home Phone									
	Scars, Marks, Tattoos / Other				Arrested	Citation Number			NCIC Number		Work Phone								
	Employer				Employer City				State	Employer Zip	Employer Country								

INVOLVED PERSON	<input checked="" type="checkbox"/>	Victim	<input type="checkbox"/>	Witness	<input type="checkbox"/>	Suspect	<input type="checkbox"/>	Subject	<input type="checkbox"/>	Report Person	<input type="checkbox"/>	Govt' Empl	<input type="checkbox"/>	Govt' Cont	<input type="checkbox"/>	Other	<input type="checkbox"/>	Missing Person	<input type="checkbox"/>
B	No.	Name (last, first, middle) (b)(6); (b)(7)(C)			Alias			Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair					
	Address (b)(6); (b)(7)(C)				City St Louis				State MO	Zip Code 63112		Country United States of America							
	Driver's License Number		State	Social Security #		Nationality		Country of Birth		Home Phone									
	Scars, Marks, Tattoos / Other				Arrested	Citation Number			NCIC Number		Work Phone								
	Employer Ogletree & Deakins Law Firm				Employer City Clayton				State MO	Employer Zip 63105	Employer Country								

VEHICLE	<input type="checkbox"/>	Stolen	<input type="checkbox"/>	Damaged	<input type="checkbox"/>	Recovered	<input type="checkbox"/>	Suspect	<input type="checkbox"/>	Other	<input type="checkbox"/>	Govt	<input type="checkbox"/>	Evidence	<input type="checkbox"/>
C	No.	License No		State	Reg Yr	Make		Model			Veh Yr	Value			
	R/O Name (last, first, middle)				Color			VIN		NCIC Number					
	R/O Address				City				State	Zip Code	Country				

PROPERTY	<input type="checkbox"/>	Stolen	<input type="checkbox"/>	Damaged	<input type="checkbox"/>	Recovered	<input type="checkbox"/>	Suspect	<input type="checkbox"/>	Found	<input type="checkbox"/>	Other	<input type="checkbox"/>	Govt	<input type="checkbox"/>	Evidence	<input type="checkbox"/>	Weapon	<input type="checkbox"/>
D	No.	Type			Make			Model			Color								
	Owner Name (first, last, middle)				Serial Number			Value			NCIC Number								
	Address				City				State	Zip Code	Country								

Officer Names/Signature / ID# (b)(6); (b)(7)(C)	Date 02/06/2020 15:18	Supervisor (b)(6); (b)(7)(C)	Date Approved 02/07/2020 15:25
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Distribution: Investigations AUSA Local Prosecutor RO Other
 Case Status: Open Closed Unfounded ~~** FOR OFFICIAL USE ONLY **~~

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Additional Report

INVOLVED PERSON	Victim	X	Witness	Suspect	Subject	Report Person	Govt' Empl	Govt' Cont	Other	Missing Person		
No. 3	Name (last, first, middle)			Alias		Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair
(b)(6); (b)(7)(C)												
Address				City			State	Zip Code	Country			
(b)(6); (b)(7)(C)				St Louis			MO	63112	United States of America			
Driver's License Number		State	Social Security #		Nationality		Country of Birth		Home Phone			
			(b)(6); (b)(7)(C)						(b)(6); (b)(7)(C)			
Scars, Marks, Tattoos / Other				Arrested	Citation Number			NCIC Number	Work Phone			
				No					(b)(6); (b)(7)(C)			
Employer			Employer City			State	Employer Zip	Employer Country				
NLRB			St Louis			MO	63301					

INVOLVED PERSON	Victim	Witness	Suspect	X	Subject	Report Person	Govt' Empl	Govt' Cont	Other	Missing Person		
No. 4	Name (last, first, middle)			Alias		Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair
(b)(6); (b)(7)(C)												
Address				City			State	Zip Code	Country			
(b)(6); (b)(7)(C)				O'Fallon			MO	63368	United States of America			
Driver's License Number		State	Social Security #		Nationality		Country of Birth		Home Phone			
			(b)(6); (b)(7)(C)						(b)(6); (b)(7)(C)			
Scars, Marks, Tattoos / Other				Arrested	Citation Number			NCIC Number	Work Phone			
				No								
Employer			Employer City			State	Employer Zip	Employer Country				

INVOLVED PERSON	Victim	Witness	Suspect	Subject	X	Report Person	Govt' Empl	Govt' Cont	Other	Missing Person		
No. 5	Name (last, first, middle)			Alias		Date of Birth/Age	Sex	Race	Height	Weight	Eyes	Hair
(b)(6); (b)(7)(C)												
Address				City			State	Zip Code	Country			
									United States of America			
Driver's License Number		State	Social Security #		Nationality		Country of Birth		Home Phone			
Scars, Marks, Tattoos / Other				Arrested	Citation Number			NCIC Number	Work Phone			
									(b)(6); (b)(7)(C)			
Employer			Employer City			State	Employer Zip	Employer Country				
NLRB			St Louis			MO	63301					

Narrative Continuation

On Thursday, February 6, 2020, at approximately 1158 hours, I was dispatched to the National Labor Relations Board, located at 1222 Spruce Street, Suite (b)(6); (b)(7)(C) St Louis, MO 63103. Attorney (b)(6); (b)(7)(C) contacted the Battle Creek Mega Center (BCMC) of a telephonic threat that was made by (b)(6); (b)(7)(C)

At approximately 1200 hours, I made contact with (b)(6); (b)(7)(C). They provided me to following information:

(b)(6); (b)(7)(C) is in the middle of a law suit against the Cardinals Baseball team, he was employed as a painter there and in the fall of 2018 he won a law suit against them. The Cardinals appealed and are in the process of trying to settle with (b)(6); (b)(7)(C). The Cardinals are offering a low money amount and that made (b)(6); (b)(7)(C) upset. While he was on the phone with (b)(6); (b)(7)(C) stated that, " Him and his boys would take (b)(6); (b)(7)(C) to the top of the stadium and make him fall off". (b)(6); (b)(7)(C) also told (b)(6); (b)(7)(C) that in regard to the Cardinals (b)(6); (b)(7)(C) "He would fuck

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Officer (b)(6); (b)(7)(C)

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Additional Report

him up”.

(b)(6); (b)(7)(C) is a field Attorney for NLRB and is married to (b)(6); (b)(7)(C) is in the process of finding out through their lawyers if she can relay the information given to her by (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) did not threaten his Attorney (b)(6); (b)(7)(C) I asked (b)(6); (b)(7)(C) if he thought that (b)(6); (b)(7)(C) would follow up on the threat and he said he did not, but he was not sure if he would because (b)(6); (b)(7)(C) is known for having a bad temper. (b)(6); (b)(7)(C) stated that (b)(6); (b)(7)(C) threatened someone approximately two years ago. (b)(6); (b)(7)(C) recorded part of the conversation and is going to provide it along with a statement. (Attached)

(b)(6); (b)(7)(C); (b)(7)(E)

I will make contact with St Louis Police Department and Clayton Police Department. This case is going to be referred to the listed above Police Department for follow up. Area Commander (b)(6); (b)(7)(C) reached out to the Cardinal Security Department twice to notify them of the incident with no return phone call.

On Friday, February 7, 2020, at approximately 1145 hours (b)(6); (b)(7)(C) made contact with me via telephone to notify me that he was notified by the Clayton PD of the threat that was made against him. (b)(6); (b)(7)(C) stated that he was told by Clayton PD to report the incident to St Louis PD if he wanted to file charges. (b)(6); (b)(7)(C) stated that he was in contact with the Cardinals security team that that they are aware of the situation and conducting an investigation. (b)(6); (b)(7)(C) stated that he will be in contact if there is anything further that we can assist with. ///End of Report///

Subject: (b)(6); (b)(7)(C)

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3155 Report

Officer (b)(6); (b)(7)(C)

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Additional Report

Reporting Person:

(b)(6); (b)(7)(C)

Witness:

(b)(6); (b)(7)(C)

Victim:

(b)(6); (b)(7)(C)

Victim:

(b)(6); (b)(7)(C)

CASE NUMBER F20060052894
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3155 Report

Officer (b)(6); (b)(7)(C)

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of April, 2020 I filed the foregoing MOTION FOR RECONSIDERATION OF ORDER REJECTING SETTLEMENT AND REQUEST TO POSTPONE SUPPLEMENTAL BRIEFING DEADLINE via the National Labor Relations Board's E-File system and served via electronic mail on the following parties:

Joe Bell
1327 Spring Dr.
Herculaneum, MO 63048-1544
Joebell4646@gmail.com

Charging Party

Lauren M. Fletcher, Field Attorney
National Labor Relations Board
Region 14
1222 Spruce Street, Room 8.302
Lauren.Fletcher@nlrb.gov

Counsel for the General Counsel

Eugene Kramer
7 Southwinds Drive
St. Peters, MO 63376
1969genekramer@gmail.com

Alleged Discriminatee

/s/ Harrison C. Kuntz
Harrison C. Kuntz

EXHIBIT B

From: Amchan, Arthur <Arthur.Amchan@nlrb.gov>
Sent: Thursday, April 16, 2020 4:19 PM
To: Fletcher, Lauren; Kuntz, Harrison C.; '1969genekramer@gmail.com'; 'Joebell4646@gmail.com'
Cc: Stewart, Robert W. (Bob); Giannasi, Robert (ALJ)
Subject: RE: 14-CA-213219 - St. Louis Cardinals, LLC - Respondent's Motion for Reconsideration of Order Rejecting Settlement and Request to Postpone Supplemental Briefing Deadline [ODNSS-OGL.FID5099427]

As far as I am concerned briefs are due May 1. If the parties want me to issue an order denying the motion to reconsider my rejection of the settlement and postponement of the briefs, I can do so. The General Counsel's email below is sufficient for an opposition.

From: Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>
Sent: Thursday, April 16, 2020 5:16 PM
To: Amchan, Arthur <Arthur.Amchan@nlrb.gov>; Kuntz, Harrison C. <harrison.kuntz@ogletree.com>; '1969genekramer@gmail.com' <1969genekramer@gmail.com>; 'Joebell4646@gmail.com' <Joebell4646@gmail.com>
Cc: Stewart, Robert W. (Bob) <Robert.Stewart@ogletreedeakins.com>; Giannasi, Robert (ALJ) <Robert.Giannasi@nlrb.gov>
Subject: RE: 14-CA-213219 - St. Louis Cardinals, LLC - Respondent's Motion for Reconsideration of Order Rejecting Settlement and Request to Postpone Supplemental Briefing Deadline [ODNSS-OGL.FID5099427]

Dear Judge Amchan,

As Respondent indicated, the Region opposes Respondent's *Motion for Reconsideration of Order Rejecting and Request to Postpone Supplemental Briefing Deadline*. I spoke with Mr. Bell this afternoon and he indicated that he opposes the *Motion* as well. Since it appears that you are not inclined to grant the *Motion*, unless you would like us to file a formal response, the Region will not waste the court's time with a motion in opposition.

Please let us know how you would like us to proceed.

Sincerely,

Lauren M. Fletcher
Field Attorney
National Labor Relations Board - Subregion 17
8600 Farley Street, Ste. 100
Overland Park, KS 66212
Tel: 913-275-6521
Fax: 913-967-3010
Email: lauren.fletcher@nlrb.gov



Effective immediately, the NLRB is switching to mandatory electronic filing of all case documents. See [GC 20-01](#). Below is information to assist you with this requirement.

Written instructions for using the Agency's E-filing system and the Agency's Electronic Filing Terms and Conditions have been posted on the Agency's website. See <https://apps.nlr.gov/myAccount/assets/E-Filing-System-User-Guide.pdf>

The Agency's website also contains a video demonstration which provides step-by-step instructions. See https://apps.nlr.gov/myAccount/assets/My%20Account%20Portal%20Overview/story_html5.html

For Frequently Asked Questions, please see <https://apps.nlr.gov/myAccount/#/FileCaseDocument/FAQ>

From: Amchan, Arthur <Arthur.Amchan@nlrb.gov>

Sent: Thursday, April 16, 2020 3:57 PM

To: Kuntz, Harrison C. <harrison.kuntz@ogletree.com>; '1969genekramer@gmail.com' <1969genekramer@gmail.com>; 'Joebell4646@gmail.com' <Joebell4646@gmail.com>; Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>

Cc: Stewart, Robert W. (Bob) <Robert.Stewart@ogletreedekins.com>; Giannasi, Robert (ALJ) <Robert.Giannasi@nlrb.gov>

Subject: RE: 14-CA-213219 - St. Louis Cardinals, LLC - Respondent's Motion for Reconsideration of Order Rejecting Settlement and Request to Postpone Supplemental Briefing Deadline [ODNSS-OGL.FID5099427]

Unfortunately, when I reply Microsoft Outlook does not include your motion. I can wait for a response from the parties and then issue an order but I am not inclined to postpone the briefing schedule. First of all, I don't think that is fair to Joseph Maxwell. Second of all, the first step in the Board's remand order is for me to determine (initially) whether Joseph Maxwell and Eugene Kramer are entitled to reinstatement and backpay. If the answer is negative, that is the end of the matter. If the answer is affirmative, one issue is how much are they owed.

I am not inclined to approve the settlement on basis on the FPS report. My first question is whether anyone is pressing charges against Mr. Kramer. At some point, I think Board attorney Bradley Fink would have to testify under oath as to what Kramer said to him and Kramer would have the opportunity to contradict him under oath. Then I would determine who I credit.

From: Kuntz, Harrison C. <harrison.kuntz@ogletree.com>

Sent: Thursday, April 16, 2020 3:52 PM

To: '1969genekramer@gmail.com' <1969genekramer@gmail.com>; 'Joebell4646@gmail.com' <Joebell4646@gmail.com>; Fletcher, Lauren <Lauren.Fletcher@nlrb.gov>; Amchan, Arthur <Arthur.Amchan@nlrb.gov>

Cc: Stewart, Robert W. (Bob) <Robert.Stewart@ogletreedekins.com>

Subject: 14-CA-213219 - St. Louis Cardinals, LLC - Respondent's Motion for Reconsideration of Order Rejecting Settlement and Request to Postpone Supplemental Briefing Deadline [ODNSS-OGL.FID5099427]

Judge Amchan, Ms. Fletcher, Mr. Kramer, and Mr. Bell:

Please see attached Respondent's Motion for Reconsideration of Order Rejecting Settlement and Request to Postpone Supplemental Briefing Deadline. This document is also being E-Filed.

Thank you,

Harrison C. Kuntz (he/him/his) | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

7700 Bonhomme Avenue, Suite 650 | St. Louis, MO 63105 | Telephone: 314-898-4074 | Mobile: 310-597-1559

harrison.kuntz@ogletree.com | www.ogletree.com | [Bio](#)

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