

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

**GADECATUR SNF LLC D/B/A EAST LAKE
ARBOR**

and

Case 10-CA-262818

**RETAIL, WHOLESALE & DEPARTMENT
STORE UNION – SOUTHEAST COUNCIL**

**COUNSEL FOR THE GENERAL COUNSEL’S REPLY TO RESPONDENT’S
RESPONSE TO THE BOARD’S NOTICE TO SHOW CAUSE**

This case is a test of the Certification of Representative issued by the National Labor Relations Board (the Board) to Retail, Wholesale & Department Store Union – Southeast Counsel (Charging Party) as the exclusive collective-bargaining representative of a unit of certain employees employed by GADecatur SNF LLC d/b/a East Lake Arbor (Respondent). On August 3, 2020,¹ the undersigned Counsel for the General Counsel filed a Motion to Transfer Proceedings to the Board for Summary Judgment and Issuance of a Decision and Order, as Respondent is attempting to relitigate case 10-RC-249998. The Board granted Counsel for the General Counsel’s Motion to Transfer Proceedings to the Board on August 5 and issued a Notice to Show Cause as to why the Motion for Summary Judgment should not be granted.

On August 19, Respondent filed its response to the Board’s Notice to Show Cause. In its response, Respondent attempts to relitigate case 10-RC-249998 by simply restating its arguments from its Request for Review of Acting Regional Director’s Decision and Certification of Representative in that case. (R. Brf.; Cf. GC Mot., Exh. 8). The Board denied Respondent’s Request for Review of the Acting Regional Director’s Decision and Certification of Representative on June 2, 2020. (GC Mot., Exh. 9).

¹ All dates hereafter are in 2020 unless otherwise specified.

Counsel for the General Counsel incorporates by reference all arguments and exhibits contained in his Motion to Transfer Proceedings to the Board for Summary Judgment and Issuance of a Decision and Board Order. The Board and the courts have consistently held that issues that were raised and determined by the Board in a prior representation proceeding cannot be relitigated in a subsequent unfair labor practice proceeding, absent newly discovered evidence, previously unavailable evidence, or special circumstances. Respondent has not presented any newly discovered or previously unavailable evidence, nor has it alleged that any special circumstances exist in this case. Therefore, it is not entitled to relitigate issues that were or could have been raised in case 10-RC-249998. See *National Hot Rod Assn. (NHRA)*, 369 NLRB No. 60 (April 17, 2020), citing *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); see also, e.g., *LTV Electrosystems, Inc.*, 166 NLRB 938, 939-40 (1967), *enfd.* 388 F.2d 683 (4th. Cir. 1968); *Warren Unilube, Inc.*, 357 NLRB 44 (2011); Sections 102.67 and 102.69(c) of the Board's Rules and Regulations.

For the foregoing reasons, including the reasons stated in the undersigned Counsel for the General Counsel's Motion to Transfer Proceedings to the Board for Summary Judgment and Issuance of a Decision and Order, Counsel for the General Counsel respectfully renews his request that the Board make its findings of fact based on the allegations in the complaint and Respondent's admissions thereto, and conclude that, as a matter of law, Respondent has violated Section 8(a)(1) and (5) of the Act by failing to bargain with Charging Party, the duly certified exclusive collective-bargaining representative of the instant bargaining unit (the Unit). See, e.g., *Randalls Food & Drug, LP*, 369 NLRB No. 100, fn. 1 (June 9, 2020), citing *Biewer Wisconsin Sawmill, Inc.*, 306 NLRB 732 (1992); *Machine Maintenance, Inc. d/b/a Machine Maintenance and Equipment Company*, 303 NLRB No. 21 (1991); *Beverly California Corporation*, 303 NLRB No. 20 (1991).

Counsel for the General Counsel also respectfully renews his request that the Board order an appropriate remedy, including an order that the initial certification year shall be deemed to begin on the date Respondent commences to bargain in good faith with the Charging Party as the certified bargaining representative of the employees in the Unit. See, e.g., *NHRA*, 369 NLRB No. 60 (2020), citing *Mar-Jac Poultry Co.*, 136 NLRB 786 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); see also *Randalls Food & Drug LP*, 369 NLRB No. 100 (2020) (citing same).

Respectfully submitted this, the 21st day of August, 2020,



Joseph W. Webb
Counsel for the General Counsel
National Labor Relations Board, Region 10
Birmingham Resident Office
1130 22nd Street South
Ridge Park Place Suite 3400
Birmingham, Alabama 35205
(205) 518-7518
(205) 933-3017 (FAX)
joseph.webb@nlrb.gov

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENT'S RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE by electronic transmission on this date, August 21, 2020, to:

Jonathan J. Spitz, Esq.
Counsel for Respondent
Jackson Lewis P.C.
171 17th Street NW, Suite 1200
Atlanta, GA 30363
E-mail: SpitzJ@JacksonLewis.com

Edward M. Cherof, Esq.
Counsel for Respondent
Jackson Lewis P.C.
171 17th Street NW, Suite 1200
Atlanta, GA 30363
E-mail: Cherofe@JacksonLewis.com

Greg Scandrett, Local Secretary Treasurer
Retail Wholesale Department Store
Union Southeast Council
1838 Metropolitan Parkway
Atlanta, GA 30315
E-mail: rwdusec@aol.com



Joseph W. Webb, Counsel for the General Counsel