UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

STEPHENS MEDIA GROUP -- MASSENA, Charging Party, --and-- NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS - COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, Respondent.	NLRB Case No. 03-CB-256179 Before Elizabeth Tafe, ALJ

RESPONDENT'S BRIEF

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I. Introduction

The Complaint in this matter, alleging a single violation of §8(b)(3) of the National Labor Relations Act ("Act"), 29 U.S.C. §151 *et seq.* against Respondent National Association of Broadcast Employees & Technicians – Communications Workers of America, AFL-CIO ("NABET-CWA" or "the Union") must be dismissed. There is no dispute that Charging Party Stephens Media Group – Massena ("SMG") violated §8(a)(5) of the Act as alleged in the Consolidated Complaint in 03-CA-226225; 227924; and 227946, by refusing to meet and bargain in good faith with NABET-CWA for a successor collective bargaining agreement ("CBA") for the Massena unit.[1] (Joint Motion, Ex. E, p. 48). There is equally no question that SMG unlawfully terminated the employment of David Romigh, a Local Steward and the only SMG Massena employee on the Union's bargaining team. (Joint Motion, Ex. E, p.48). The Administrative Law Judge ("ALJ") in his January 24, 2020 Decision ordered SMG to reinstate Romigh with a make-whole remedy, and further ordered SMG Massena to "**on request** bargain in good faith and at reasonable times with the Union." (Joint Motion, Ex. E, pp. 49 and 52, *emphasis added*). The Union has not made any such request since the ALJ's Decision.

SMG filed exceptions on the §8(a)(3) and §8(a)(5) conclusions, and the issues are pending before the National Labor Relations Board ("Board"). (Joint Motion, Ex. J, Aff. Defense 3). SMG's serious unfair labor practices in Massena have not been remedied.

[1] The Consolidated Complaint alleged violations of the Act by SMG Massena and SMG Watertown. Both unit locations are in upstate New York.

SMG and NABET-CWA have not bargained for a successor CBA since October 2018.[2] (Joint Motion, Stip. Fact (r)). NABET-CWA advised SMG that it would not return to the bargaining table until SMG rescinded the unlawful unilateral changes, to include reinstatement of the bargaining team. (Joint Motion, Ex. C, Ex, G; Ex. E, p. 20). SMG filed exceptions to the ALJ's "failure to find" that NABET-CWA did not bargain in good faith, and the issue is pending before the Board. (Joint Motion, Ex. J, Aff. Defense 1). NABET-CWA unequivocally put SMG on notice of its insistence that SMG rescind the unlawful unilateral changes before the Union would return to the bargaining table well outside the six-month limitations period found in §10(b) of the Act. The General Counsel was well aware of the Union's refusal to bargain while the §§8(a)(1), (3) and (5) allegations were unremedied, as the Union's July 2019 letter to SMG (Joint Motion, Ex. C) was an exhibit in the 2019 trial before ALJ Muhl.[3] (Joint Motion, Ex. E, p. 20).

SMG insisted that the Massena unit and the unit for employees in Watertown, NY had been merged, allowing it to bargain for a single contract. The ALJ found no evidence of a clear and unequivocal intent to merge separate bargaining units. (Joint Motion, Ex. E, pp. 5-6 and 35-36). SMG filed exceptions to the ALJ's conclusion that the parties did not agree to merge the Massena and Watertown bargaining units, and the issue is pending before the Board. (Joint Motion, Ex. J, Aff. Defense 4).

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[2] At all times material to this dispute, SMG has insisted on bargaining jointly for an agreement to replace both the Massena and Watertown CBAs. (Joint Motion, Ex. E, pp. 34-35). NABET-CWA has refused to merge the separate bargaining units. Id. Even after ALJ Muhl issued his Decision, SMG continues to insist that the parties bargain for both the Massena and Watertown CBAs together. (Joint Motion, Ex. F).

[3] The Union's July 2019 letter (Ex. C) was sent to Michael King, its attorney. King was a witness in the August 2019 trial before ALJ Muhl, (Ex. E) and filed the instant Charge (Ex. A) with Region 3.

With the instant Complaint, the Regional Director seeks to deprive NABET-CWA of the remedies ordered by the ALJ. This is unprecedented. The ALJ ordered SMG Massena to reinstate with back pay David Romigh, the only SMG Massena employee on the Union's bargaining team. This has not occurred. The ALJ, to remedy SMG Massena's §8(a)(5) refusal to bargain violation, ordered SMG Massena to bargain in good faith, "on request" of the Union. ALJ Muhl also ordered the standard notice posting, which has not been published to the Massena bargaining unit. The Union will not make a request to bargain until SMG complies with the ALJ's remedial order on the Massena allegations. As long as SMG Massena's serious unfair labor practices remain unremedied, the Union is under no obligation to bargain.

Moreover, SMG has insisted that it is permitted to merge, or bargain a single contract to cover the separate bargaining units. (Joint Motion, Ex. E, pp. 34-35). It demanded bargaining for both the Watertown and Massena units in its January 31, 2020 letter. (Joint Motion, Ex. F). At no time before or since the ALJ's Decision has SMG Massena offered dates to bargain solely for the Massena bargaining unit.

The instant Complaint asks this ALJ to decide issues pending before the Board via the exceptions filed by SMG. The instant Complaint asks this ALJ to decide an alleged violation of §8(b)(3) that was known to the General Counsel prior to the August 2019 trial before ALJ Muhl. The instant Complaint, with a single alleged violation, complains of conduct that was admittedly known by SMG Massena well outside the §10(b) period.

Simply, the instant Complaint against NABET-CWA must be dismissed.

II. Facts

The facts in this matter are not in dispute. In his January 24, 2020 Decision on the Consolidated Complaint issued in 03-CA-226225, 227924, and 227946, ALJ Muhl found that SMG Massena violated §8(a)(5) and (1) by refusing to meet at reasonable times with NABET-CWA and bargain for a successor CBA for the Massena bargaining unit. (Joint Motion, Ex. E, pp. 2-3). NABET-CWA sent its bargaining proposals for the Massena CBA to SMG in May 2018. (Joint Motion, Ex. E, p. 4). SMG ***never responded*** to the Union's bargaining proposals for the Massena unit. (Joint Motion, Ex. E, pp. 17 and 20). Instead, through its counsel, SMG insisted that the separate CBA for the Watertown, NY unit would apply to the Massena unit. (Joint Motion, Ex. E, p. 5). ALJ Muhl found:

> The parties never held a session to bargain a successor contract for SMG Massena. The reason for this was King's desire to utilize the SMG Watertown contract as the baseline for the SMG Massena agreement. However, the Union never agreed to do so.
>
> Murray rightly told King that combining the contracts was a permissive subject of bargaining.

(Joint Motion, Ex. E, p. 35). On two separate dates in September 2018, NABET-CWA asked for dates to begin bargaining for the Massena CBA, the ALJ noted, and "King never responded to either of those specific requests. (Joint Ex. E, p. 36). SMG Massena has never offered to bargain solely for the Massena unit, despite the Union's requests. (Joint Motion, Ex. E., pp. 34-35).

After two and one-half days of bargaining (for a merged CBA) with NABET-CWA in August 2018, SMG unlawfully declared impasse and unlawfully changed

terms and conditions of employment. (Joint Motion, Ex. E, pp. 2, 13, 14). The changes included the layoff of several Watertown full-time unit employees out of seniority, the elimination of shifts performed by part-rime employees, and the transfer of work to non-unit individuals. (Joint Motion, Ex. E, p. 14).

ALJ Muhl also concluded that SMG Massena unlawfully terminated the employment of the sole employee in the Massena unit on the bargaining team, David Romigh. (Joint Motion, Ex. E, p. 3).

NABET-CWA asked SMG for dates to bargain for the Massena CBA after the layoffs and termination of Romigh. (Joint Motion, Ex. E, p. 17). SMG ***refused to bargain for the Massena unit until the Union "broke the impasse" SMG declared in Watertown.*** (Joint Motion, Ex. E, pp. 17 and 36). SMG Massena never met with the Union to bargain solely for the Massena CBA. (Joint Motion, Ex. E, pp. 35-36).

NABET-CWA filed unfair labor practice charges against SMG, and a Consolidated Complaint and Notice of Hearing issued on December 11, 2018. (Joint Motion, Ex. E, p. 2). The Consolidated Complaint alleged SMG Massena violated §8(a)(3) by terminating Romigh, and §8(a)(5) and (1) by refusing to meet and bargain with the Union for the Massena unit.

After the issuance of the Complaint and prior to the trial, SMG asked NABET-CWA to return to the bargaining table to negotiate (jointly) for the Massena and Watertown CBA. (Joint Motion, Ex. E, p. 20; Ex. B). In a letter to SMG's counsel from NABET-CWA staff representative Ron Gabalski, the Union on July 16, 2019 advised SMG that it would not return to the bargaining table until the unlawful unilateral

changes had been rescinded. (Joint Motion, Ex. C). At this time, SMG insisted it would bargain only one agreement to cover the two separate bargaining units. (Joint Motion, Ex. E, pp. 34-35). The July 16, 2019 letter was an exhibit in the August 2019 trial before ALJ Muhl.

SMG again demanded joint negotiations by letter dated January 31, 2020 – one week after ALJ Muhl's decision on the Consolidated Complaint – for ***both*** the Watertown and Massena units. (Joint Motion, Ex. F). SMG at no point offered to bargain solely for the Massena CBA: every request insisted that the Union bargain jointly for the Massena and Watertown units. (Joint Motion, Ex. E, pp. 35-36). There is no record evidence to establish that SMG rescinded its demand to bargain a single agreement to cover both bargaining units. The Union responded by letter dated February 4, 2020, that NABET-CWA would bargain after SMG rescinded the unlawful unilateral changes, consistent with ALJ Muhl's remedial order. (Joint Motion, Ex. G).

In his Conclusions of Law, ALJ Muhl found:

> Respondent SMG Massena violated Section 8(a)(5) and (1) since on or about September 10, 2018 by refusing to meet at reasonable times with the Union for the purpose of negotiating a successor collective bargaining agreement.
>
> Respondent SMG Massena violated Section 8(a)(3) and (1) on June 8, 2018, by discharging David Romigh due to his union activities.

(Joint Motion, Ex. E, pp. 47-48). To remedy the statutory violations, ALJ Muhl ordered SMG Massena to reinstate Romigh with full back pay, and:

> **On request**, bargain in good faith and at reasonable times with the Union as the exclusive collective bargaining

> representative of employees…employed by Respondent SMG Massena.

(Joint Motion, Ex. E., p. 52, *emphasis added*). SMG did not comply with the ALJ's remedial order.

SMG instead filed exceptions with the Board. SMG Massena in its Exception No. 20 challenged the ALJ's:

> …failure to find that King and Gabalski's communications after May 2, 2019 did not demonstrate bad faith by the Union for the Union failing to meet and negotiate successor agreements with SMG.

(Joint Motion, Ex. J, Aff. Defense 1). SMG Massena filed exceptions to the ALJ's conclusion that it violated §8(a)(5) and (1) by failing to meet and bargain with the Union for the Massena unit. (Joint Motion, Ex. J, Aff. Defense 2, 3). SMG Massena challenged the ALJ's conclusion that the parties did not agree to merge the Watertown and Massena units. (Joint Motion, Ex. J, Aff. Defense 4). SMG Massena filed exceptions to the ALJ's conclusion that it unlawfully terminated Romigh, the sole Massena employee on the Union's bargaining team. (Joint Motion, Ex. J, Aff. Defense 2, 3). SMG also challenged the ALJ's conclusion that the parties did not reach a tentative agreement in October 2018, as argued by SMG. (Joint Motion, Ex. J, Aff. Defense 5). SMG's exceptions to the ALJ's Decision are pending before the Board.

SMG Massena did not comply with the notice requirements in Section 8(d) of the Act, nor did it notify the Union or the Federal Mediation and Conciliation Service ("FMCS") of its desire to modify the Massena CBA in 2018. (Joint Motion, Ex. J, Aff. Defense 6).

III. Argument

A. SMG's Unfair Labor Practices Suspended NABET-CWA's Obligation to Bargain

It is well-settled that a party's commission of unfair labor practices may suspend the other party's duty to bargain in good faith. *County Concrete Corp.*, 366 NLRB No. 64 (2018); *Chicago Tribune Co.*, 304 NLRB 259 (1991); *Nassau Ins. Co.*, 280 NLRB 878 (1986); *AAA Motor Lines, Inc.*, 215 NLRB 793 (1974)(Respondent's defense that Charging Party violated its bargaining obligation warranted dismissal of the §8(a)(5) allegation); *Shell Oil Co.*, 194 NLRB 988 (1972) *enf'd* 486 F.2d 1266 (D.C. Cir. 1973). In *Chicago Tribune* the Board held the ALJ erred by rejecting the Respondent's defense (to a §8(a)(5) allegation) that the Charging Party union had engaged in bad faith bargaining. This was so even though the General Counsel had dismissed the Respondent's §8(b)(3) charge against the Charging Party. The Board explained:

> ...the Board stated long ago that a union's refusal to bargain in good faith may remove the possibility of negotiations and thus preclude existence of a situation in which the employer's own good faith can be tested. If it cannot be tested, its absence can hardly be found.

304 NLRB at 260, *citing Times Publishing Co.*, 72 NLRB 676, 683 (1947). While the Board in *Chicago Tribune* recognized the defense as valid even where the charge against the Charging Party had been dismissed, the Board recently held the defense is valid even when the Respondent had not previously filed a charge against the other party. *County Concrete, fn 1* (Respondent may defend its refusal to bargain with evidence of the Charging Party's bad faith, even absent a filed charge).

In *Nassau Ins. Co.* the Board dismissed a refusal to bargain charge against the Respondent, which demonstrated that at the time of its refusal, the Charging Party had violated §8(b)(3) by insisting to impasse over permissive subjects of bargaining. Such misconduct by the Charging Party, held the Board, suspended the Respondent's obligation to bargain. 280 NLRB at *fn. 3*. The Board in *Shell Oil* likewise dismissed a §8(a)(5) refusal to bargain charge against the Respondent, where the Charging Party union had insisted on bargaining multiple agreements at one time.

In the present matter, NABET-CWA filed a Charge against SMG Massena, the Regional Director issued a Complaint, and a trial was held by ALJ Muhl. The ALJ concluded in January 2020 that SMG Massena violated §8(a)(5) by refusing to meet and bargain with NABET-CWA. SMG never responded to NABET-CWA's proposals for the Massena CBA. SMG refused to meet to bargain only for the Massena CBA: it tied bargaining for Massena to bargaining for the Watertown unit, even after ALJ Muhl issued his decision. SMG insisted on bargaining a single CBA for both units, a permissive subject of bargaining.

The ALJ further concluded SMG Massena violated §8(a)(3) by terminating the employment of Romigh, the only employee in the Massena bargaining unit on the Union's negotiations team.

SMG Massena filed exceptions to the ALJ's findings and conclusions, which are pending before the Board. SMG Massena took exception to the ALJ's conclusion that it was not free to merge the Massena and Watertown Agreements. SMG Massena excepted to the ALJ's findings that it refused to respond to the Union's bargaining

proposals, and that it failed to meet solely to bargain for the Massena CBA. Indeed, the letter sent by SMG to NABET-CWA ***after*** the ALJ issued his decision continues to insist upon joint negotiations.

In *Chicago Tribune* the Respondent was able to defend against the refusal to bargain charge by relying upon a dismissed §8(b)(3) charge it had filed against the Charging Party. In *County Concrete* the Board held the Respondent could escape liability for its refusal to bargain by demonstrating the Charging Party had violated §8(b)(3), even though the Respondent never filed a charge. Here, NABET-CWA filed a Charge, Region Three issued a Complaint, and the ALJ found SMG Massena to have violated §8(a)(1), (3), and (5) of the Act. SMG Massena's exceptions are pending before the Board. The Complaint must be dismissed.

The Complaint must be dismissed as well for it seeks to deprive the Union of the remedy ordered by ALJ Muhl, namely that SMG Massena must bargain in good faith ***on the request of NABET-CWA***. The ALJ ordered the typical notice posting, necessary in this matter where SMG Massena steadfastly refused to respond to proposals, meet, and bargain with NABET-CWA for more than two years now. The ALJ ordered the reinstatement of David Romigh, the only SMG Massena employee on the Union's bargaining team. The Union is entitled to these remedies before it makes the request to bargain. There is absolutely no legal support for the proposition that a Union violates §8(b)(3) by refusing to meet and bargain until the Employer's serious unfair labor practices have been remedied as ordered by an ALJ.

B. SMG and Counsel for the General Counsel Were On Notice of NABET-CWA's Refusal to Bargain More Than Six Months Prior to the Charge and the Unfair Labor Practice Trial Before ALJ Muhl

1. NABET-CWA Refused to Bargain Outside the §10(b) Period

SMG Massena knew that NABET-CWA was not willing to bargain while the serious unfair labor practice Charges it filed were litigated. Indeed, SMG Massena argued that the Union was acting in bad faith by refusing to bargain at the trial, prompting the ALJ to find that in early 2019, the parties "bickered back and forth" over when they would next meet. (Joint Motion, Ex. E, pp. 19-20). The ALJ found:

> In July 2019, Gabalski informed King the Union would not meet to bargain unless the Company restored the laid-off employees to their jobs and rescinded the unilateral changes it made following the impasse declaration. The Union never received counterproposals from King to its initial contract proposals for SMG Massena, save for the proposed wage increases which would apply at both Watertown and Massena.

(Joint Motion, Ex. E, p. 20). NABET-CWA's letter to SMG Massena's attorney was sent by email on July 16, 2019. (Joint Motion, Ex. C). SMG Massena filed the instant Charge on February 11, 2020, outside the six-month limitations period in §10(b).

In plain terms, the Act prohibits the issuance of a Complaint based upon any unfair labor practice occurring more than six months prior to the filing of the Charge. 29 U.S.C. §10(b). The §10(b) period commences when a party has clear and unequivocal notice of the alleged violation of the Act. *Chinese American Planning Council*, 307 NLRB 410 (1992); *Chemung Contracting Corp.*, 291 NLRB 773 (1988); *American Commercial Lines, Inc.*, 291 NLRB 1066 (1988). In a refusal to bargain case, the §10(b) period begins to run

when the party clearly put the other on notice it will not bargain. *St. Barnabas Medical Center*, 343 NLRB 1125 (2004)(§8(a)(5) allegation dismissed where Charging Party had clear notice of the Respondent's refusal to bargain outside the §10(b) period); *Leach Corp.*, 312 NLRB 990 (1993).

In this case, SMG Massena had clear and unequivocal knowledge of the Union's refusal to bargain in July 2019. In a letter to SMG's counsel – the same person who filed the instant Charge -- NABET-CWA staff representative Ron Gabalski on July 16, 2019 advised SMG that it would not return to the bargaining table until the unlawful unilateral changes had been rescinded. (Joint Motion, Ex. C). The letter was in response to SMG's request for continued joint negotiations. This letter was an exhibit in the August 2019 trial before ALJ Muhl. Counsel for the General Counsel in this matter was the trial attorney for the Board in the August 2019 trial against SMG.

SMG argued forcefully to the ALJ that NABET-CWA engaged in bad faith by refusing to meet with it since October 2018. As noted above, the ALJ refused to make such a finding, prompting SMG Massena to file exceptions on this issue.

Clearly, SMG Massena knew in no uncertain terms that the Union would not bargain in July 2019. The Union's staff representative sent his letter to SMG Massena's attorney: SMG offered the letter as an exhibit at the August 2019 trial. NABET-CWA has remained constant in its position. Counsel for the General Counsel may argue that the Union's February 4, 2020 response SMG Massena's January 31, 2020 letter is a new violation of §8(b)(3), but there is no support for this contention. SMG Massena's renewed request for joint bargaining did not restart the §10(b) clock. *Ohio Vicinity*

Regional Council of Carpenters, 344 NLRB 366 (2005)(Charging Party's efforts to revive a time-barred Charge cannot resuscitate an alleged violation of the Act that occurred outside the §10(b) period). The sole §8(b)(3) allegation in the Complaint must be dismissed as untimely.

2. The §8(b)(3) Allegation Must Be Dismissed Under *Jefferson Chemical*

Generally, the Board will not permit the General Counsel to relitigate the lawfulness of specific conduct in separate proceedings by asserting the conduct violates different sections of the Act. *Jefferson Chemical Co.*, 200 NLRB 992 (1972). In this matter, Counsel for the General Counsel knew prior to the August 2019 trial before ALJ Muhl that NABET-CWA was refusing to bargain with SMG Massena. Indeed, the Union's letter to SMG Massena's attorney was a trial exhibit. The facts as they were in July 2019 are the same as they are now, with the exception of ALJ Muhl's conclusions that SMG Massena violated §§8(a)(1), (3) and (5) of the Act. It bears repeating that even after ALJ Muhl issued his Decision, SMG Massena continued to insist on joint bargaining with SMG Watertown, a permissive subject of bargaining. (Joint Motion, Ex. F; Ex. E, p. 35).

The §8(b)(3) allegation against the Union must be dismissed.

C. SMG Massena's Failure to Comply With the Notice Requirements in §8(d) Warrant Dismissal of the Complaint

There is no record evidence that SMG Massena complied with the notice requirements of §8(d) of the Act. Where a CBA is in effect, §8(d) requires the party seeking to modify or terminate the CBA to provide 1) written notice to the other party; and 2) written notice to the FMCS and any State or Territorial agency. 29 U.S.C. §8(d)(1) and (3). The Board has long held that the public interest is best served by strictly enforcing the requirements of §8(d), even if to do so would cause in a harsh result. *Boghosian Raisin Packing Co.*, 342 NLRB 383 (2004)(Union's failure to comply with the §8(d) notice requirements allowed Respondent to refuse reinstatement to striking employees).

In this matter, SMG Massena is seeking to modify the terms of the Massena CBA, which expired May 1, 2018. It was obligated to comply with the §8(d) notice requirements, which it failed to do. SMG Massena's failure to comply with the strict mandates in §8(d) requires dismissal of the Complaint.

IV. Proposed Findings of Fact

1. SMG Massena is an employer within §2(2) of the Act;

2. NABET-CWA is a labor organization within §2(5) of the Act;

3. At all times material to this dispute, NABET-CWA has been the exclusive collective bargaining representative for employees in the Massena unit;

4. The parties collective bargaining agreement expired May 1, 2018;

5. SMG Massena did not send written notice of its desire to modify the Massena CBA to NABET-CWA, the FMCS, and the State agency as required by §8(d) of the Act;

6. SMG Massena refused to meet and bargain with NABET-CWA for a successor collective bargaining agreement in violations of §8(a)(5) of the Act;

7. To remedy the §8(a)(5) violation committed by SMG Massena, ALJ Charles Muhl directed SMG Massena to bargain with NABET-CWA on request of the Union:

8. SMG Massena violated §8(a)(3) of the Act when it terminated the employment of David Romigh, the only SMG Massena employee on the Union's bargaining team;

9. To remedy the §8(a)(3) violation, ALJ Muhl ordered SMG Massena to reinstate Romigh and make him whole for any losses;

10. ALJ Muhl further ordered SMG Massena to post a Notice to Employees;

11. The Union has not requested SMG Massena to bargain;

12. SMG Massena has not complied with ALJ Muhl's Order;

13. On January 31, 2020 SMG Massena sent a letter to the Union asking to resume collective bargaining between SMG and the Union regarding the Massena and Watertown agreements;

14. On February 4, 2020, NABET-CWA refused to resume bargaining for the Watertown and Massena units as requested by SMG in its January 31, 2020 letter, until SMG rescinded the unlawful unilateral changes and reinstated the bargaining unit members;

15. The Union first advised SMG that it would not bargain for the Watertown and Massena units until SMG rescinded the unlawful unilateral changes and reinstated the laid off employees by letter dated July 16, 2019;

16. Counsel for the General Counsel was aware of NABET-CWA refusal to bargain in July 2019, but did not take the position that it was a violation of §8(b)(3) of the Act during the August 2019 unfair labor practice trial.

V. Proposed Conclusions of Law

1. The allegation in the Complaint is untimely and barred by §10(b) of the Act where SMG Massena knew NABET-CWA would not bargain until the unlawful unilateral changes were rescinded and the laid off employees were reinstated since July 16, 2019;

2. SMG Massena's failure to comply with the notice requirements in §8(d) of the Act, where it seeks to modify the expired Massena CBA, warrants dismissal of the §8(b)(3) allegation in the Complaint;

3. NABET-CWA's obligation to bargain in good faith was suspended by SMG Massena's serious unfair labor practice conduct;

4. NABET-CWA has not violated §8(b)(3) by refusing to bargain in good faith with SMG Massena, where ALJ Muhl ordered SMG Massena to bargain with NABET-CWA "on request" and the Union has not yet made that request.

VI. Conclusion

For the reasons set forth herein, the Complaint must be dismissed.

Respectfully submitted,

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General Counsel, NABET-CWA

Dated: August 21, 2020

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Certification

I hereby certify that on this 21st day of August, 2020, I filed the within Brief on behalf of Respondent NABET-CWA with the Division of Judges using the Agency's e-filing system.

I further certify that on this day I served a copy of the within Brief via electronic mail upon:

Alicia Pender	Alicia.Pender@nlrb.gov
Michael King	mking@wintersking.com

Judiann Chartier

August 21, 2020