

**Nos. 19-1321, 19-1549**

---

**UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

**CONSTELLATION BRANDS, U.S. OPERATIONS, INC.  
d/b/a WOODBRIDGE WINERY**

**Petitioner/Cross-Respondent**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

**Respondent/Cross-Petitioner**

---

**ON PETITION FOR REVIEW AND  
CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

---

**SUPPLEMENTAL APPENDIX FOR  
THE NATIONAL LABOR RELATIONS BOARD**

---

**PETER B. ROBB**  
*General Counsel*

**ALICE B. STOCK**  
*Deputy General Counsel*

**RUTH E. BURDICK**  
*Acting Deputy Associate  
General Counsel*

**DAVID HABENSTREIT**  
*Assistant General Counsel*

**National Labor Relations Board**

**KIRA DELLINGER VOL**  
*Supervisory Attorney*

**ERIC WEITZ**  
*Attorney*

**National Labor Relations Board  
1015 Half Street, SE  
Washington, DC 20570  
(202) 273-0656  
(202) 273-3757**

---

**TABLE OF CONTENTS**

<b>TRANSCRIPT &amp; HEARING EXHIBITS</b>	<b>Page(s)</b>
Excerpts from Transcript of Unfair-Labor-Practice Hearing, Case Nos. 32-CA-186238 et al. (May 3-4, 2017).....	Supp. A. 1
Joint Stipulation of Facts, Joint Exhibit 1 .....	Supp. A. 72
September 2014 Representation Petition, Case No. 32-RC-135779, Joint Exhibit 2(a).....	Supp. A. 75
March 2015 Certification of Representative, Case No. 32-RC-135779, Joint Exhibit 2(c).....	Supp. A. 76
July 2015 Board Decision and Order, Case No. 32-CA-148431, Joint Exhibit 3(b) .....	Supp. A. 78
November 2016 Court Opinion, 2d Cir. Nos. 15-2442 & 15-4106, Joint Exhibit 3(c).....	Supp. A. 81
Excerpts from Employer Handbook, Joint Exhibit 5 (excerpts).....	Supp. A. 104
January 2017 Consolidated Complaint and Notice of Hearing, General Counsel Exhibit 1(e).....	Supp. A. 110
Photograph of Chavez Wearing “Cellar Lives Matter” Vest, General Counsel Exhibit 2 .....	Supp. A. 117
Photographs of Employer Safety Day T-Shirt, General Counsel Exhibits 3(a)-(b).....	Supp. A. 118
January 2011 New Hire Letter to Chavez, Respondent Exhibit 1 .....	Supp. A. 120

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 32

In the Matter of:

Constellation Brands,  
U.S. Operations, Inc.  
d/b/a Woodbridge Winery,

Case Nos. 32-CA-186238  
32-CA-186265

Respondent,

and

Cannery, Warehouseman, Food  
Processors, Drivers and  
Helpers, Local Union No. 601,  
International Brotherhood of  
Teamsters,

Union.

---

---

Place: Oakland, CA

Dates: May 3, 2017

Pages: 1 through 245

Volume: 1

OFFICIAL REPORTERS

AVTranz

E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
Phoenix, AZ 85020  
(602) 263-0885

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

In the Matter of:

CONSTELLATION BRANDS,  
U.S. OPERATIONS, INC.  
D/B/A WOODBRIDGE WINERY,

Respondent,

and

CANNERY, WAREHOUSEMAN, FOOD  
PROCESSORS, DRIVERS AND  
HELPERS, LOCAL UNION NO. 601,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Union.

Case Nos. 32-CA-186238  
32-CA-186265

The above-entitled matter came on for hearing, pursuant to notice, before **ARIEL L. SOTOLONGO**, Administrative Law Judge, at the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA 94612, on **Wednesday, May 3, 2017, 9:36 a.m.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

**On behalf of the General Counsel:**

**LELIA GOMEZ, ESQ.**  
**KEN KO, ESQ.**  
NATIONAL LABOR RELATIONS BOARD, REGION 32  
1301 Clay Street  
Suite 300N  
Oakland, CA 94612-5224  
Tel. 510-637-3300  
Fax. 510-637-3315

**On behalf of the Respondent:**

**BRANDON KAHOSH, ESQ.**  
**MICHAEL A. KAUFMAN, ESQ.**  
KAUFMAN DOLOWICH & VOLUCK, LLP  
135 Crossways Park Drive  
Suite 201  
Woodbury, NY 11797  
Tel. 516-283-8716  
Fax. 516-681-1101

**On behalf of the Charging Party:**

**ROBERT BONSTALL, ESQ.**  
**STEPHANIE PLATENCAMP, ESQ.**  
BEESON, TAYER & BODINE  
520 Capitol Mall  
Suite 300  
Sacramento, CA 95814  
Tel. 916-325.2100  
Fax. 916-325-2120

1 Whereupon,

2 **MANUEL JESSE CHAVEZ**

3 having been duly sworn, was called as a witness herein and was  
4 examined and testified as follows:

5 JUDGE SOTOLONGO: Thank you. Please take a chair. And  
6 spell out your name for us and give us your address, please.

7 THE WITNESS: First name Manuel, M-A-N-U-E-L. Middle  
8 name, Jesse, J-E-S-S-E. Last name Chavez, C-H-A-V-E-Z. My  
9 residence is 7303 Southfield Way, Stockton, California 95207.

10 JUDGE SOTOLONGO: All right. Thank you. Please proceed,  
11 Ms. Gomez.

12 **DIRECT EXAMINATION**

13 Q BY MS. GOMEZ: Good morning, Mr. Chavez. As you know, My  
14 name's Lelia Gomez and I'm an attorney with the National Labor  
15 Relations Board. We'll be asking you a series of questions  
16 today. If at any point you don't understand the question, let  
17 me know. If you do not hear the question, let me know and I  
18 will rephrase it.

19 A Okay.

20 Q Could you please state the name of your employer?

21 A Constellation Brands.

22 Q And does this employer also go by a different name?

23 A I work at the facility at Woodbridge Winery.

24 Q And where is that facility located?

25 A On Woodbridge Road in Acampo, California.

1 JUDGE SOTOLONGO: And that's near Lodi, right? Is that  
2 correct?

3 THE WITNESS: Yes, it's just on the other side of the  
4 river, Mokelumne River, which is --

5 JUDGE SOTOLONGO: All right.

6 THE WITNESS: -- used to be a mine.

7 JUDGE SOTOLONGO: All right. Go ahead.

8 Q BY MS. GOMEZ: And can you describe what the Employer  
9 does?

10 A We produce wine.

11 Q And how long have you been working for the Employer?

12 A I was hired February 7th, 2011, so over six years.

13 Q What department do you work in?

14 A Cellar department.

15 Q And what is the cellar department responsible for?

16 A We receive the raw fruit and the grapes. We receive wine  
17 coming on tankers and overseas containers. We transfer our  
18 product, which would be wine, from tank to tank around. We do  
19 additions to the wine. We do filtration on wine. We export  
20 wine via tankers and containers overseas. Our final filtrated  
21 wine, we hand it over to the bottling department, bottle-ready  
22 wine.

23 Q And what is your job title?

24 A I'm a senior operator.

25 Q And can you describe your job duties?

1 A Yes, handling tanker trucks, exporting and importing,  
2 moving wine around, transferring it, doing additions to wine,  
3 filtering wine, washing tanks, keeping the department clean,  
4 upkeep.

5 Q And what is your work schedule?

6 A If I'm working day shift I start at 6 a.m. and I would get  
7 off at 2:30 p.m. unless there's a -- that would be Monday  
8 through Friday. If there's overtime I could work Saturday or  
9 Sunday, also on overtime on day shift. I could be asked to  
10 come in four hours early. So therefore, I would come in at 2  
11 a.m. and get off at 2:30 p.m. Or I could be asked to stay four  
12 hours late. So I would come in at 6 a.m. and get off at 6:30  
13 p.m.

14 If I'm working swing shift I would work Monday through  
15 Friday starting at 2 p.m., getting off at 10:30 p.m. It's  
16 possible to work overtime on Saturday and Sunday. And it's  
17 also possible to be asked to come in four hours early. So I  
18 would come in at 10 a.m. and get off at 10:30 p.m. Or if I'm  
19 asked to stay four hours late I would come in at 2 p.m. and I  
20 would get off at 2:30 a.m. the following morning.

21 Q And what shift are you currently working?

22 A Swing shift.

23 Q What shift were you working in July and August of 2016?

24 A I was working the swing shift.

25 Q Who is your supervisor?

1 at the Acampo facility?

2 A About 300.

3 Q Are the Employer's employees represented by a Union at the  
4 Acampo facility?

5 A Yes.

6 Q And what is the name of that Union?

7 A Teamsters 601.

8 Q Approximately how many employees does the Union represent?

9 A 46.

10 Q What department do those employees belong to?

11 A Cellar department.

12 Q Do you know when the Union became the representative of  
13 these employees?

14 A March of 2015.

15 Q Is there a collective bargaining agreement in place  
16 between the Union and the Employer?

17 A No.

18 Q Are you a member of the Union?

19 A Yes.

20 Q When did you first become involved with the Union?

21 A Early, of 2014.

22 Q Can you please describe your involvement?

23 A Yasmin (phonetic), a coworker, called unions on the phone  
24 and talked to them about representation of the cellar  
25 department. And then ultimately we had some face-to-face

1 meetings with unions about being represented. We decided on  
2 Teamsters 601 to be our representative.

3 Q And after you and your fellow coworker decided to invite  
4 the Union to represent the cellar department did the Union host  
5 meetings with employees?

6 A Yes.

7 Q Did you attend those meetings?

8 A Yes.

9 Q Approximately how many of those meetings did you attend?

10 A About six.

11 Q And do you recall when those meetings were held?

12 A Yeah, we had them in spring 2014 to the fall.

13 Q And where were those meetings held?

14 A The very first meeting was held at Hutchins Street Park in  
15 Lodi. After that we started meeting at Salas Park in Lodi.

16 Q And approximately how far those are those parks located  
17 from the Employer's facility?

18 A Hutchins Street Park is within five miles I would say.  
19 Salas Park a little further. I would say it's within seven  
20 miles.

21 Q And did anyone from management ever attend those meetings?

22 A No.

23 Q In addition to attending these union-sponsored meetings  
24 between the spring and fall of 2014 did you engage in any other  
25 activities related to the Union?

1 A Yes.

2 Q Can you please describe those?

3 A Me and my coworker would meet at the union hall weekly. I  
4 would have phone conversations with my coworkers about Union.  
5 I passed out flyers about pro-union things. I text messaged my  
6 coworkers. I had small meetings. Me and my coworker would  
7 have small meetings with employees from our department,  
8 anywhere between one to five people.

9 JUDGE SOTOLONGO: And these meetings were to discuss  
10 work-related things --

11 THE WITNESS: Correct.

12 JUDGE SOTOLONGO: -- correct? Okay. In those you weren't  
13 talking about the Oakland A's or the San Francisco Giants or  
14 the 49'ers. You were talking about --

15 THE WITNESS: We were talking about --

16 JUDGE SOTOLONGO: -- important things?

17 THE WITNESS: -- we were talking about wages, benefits,  
18 working conditions --

19 JUDGE SOTOLONGO: Okay. All right.

20 THE WITNESS: -- representation.

21 Q BY MS. GOMEZ: Do you know if the Union filed a  
22 representation petition to have an election?

23 A Yes.

24 Q Do you know when they filed that petition?

25 A Yes, I do.

1 Q And when was that?

2 A That was the 2nd of September, 2014.

3 Q And after the Union filed this petition did you continue  
4 to remain involved with the Union?

5 A Yes.

6 Q Can you describe your involvement?

7 A Immediately after that there was a hearing here in Region  
8 32. There was a five-day hearing. I attended all five days of  
9 that hearing and I was a witness for the Union on three of  
10 those calendar days. I continued to --

11 Q I'm sorry. I don't mean --

12 A yeah.

13 Q -- to interrupt you, but --

14 A No problem.

15 Q -- remaining on this hearing that you testified at, was  
16 Mr. Schulze also present at that hearing?

17 A Yes, he was.

18 Q Was he present while you provided your testimony on those  
19 three calendar days?

20 A Yes.

21 Q Okay. I'm sorry. I don't mean to interrupt you.

22 Continue with the other activities that you were describing?

23 A I continued to have small meetings with my coworkers. I  
24 continued to talk on the phone about pro-union things with my  
25 coworkers. I texted my coworkers frequently. I answered their

1 questions. They would always ask me things. I had them on a  
2 group. I had a group text thing set up so I could let them  
3 know when the next thing, Union meetings were. I continued to  
4 meet with the union rep at the union hall, 601.

5 Q And during this time did the Employer also host meetings  
6 with employees concerning the petition that had been filed by  
7 the Union?

8 A Yes.

9 Q And approximately how many of those meetings did the  
10 Employer have?

11 A On the days I was working there at least ten.

12 Q And did you attend those meetings?

13 A Yes.

14 Q And can you recall the timeframe of when those meetings  
15 were had?

16 A Yeah, after September 2nd all the way up to the election.

17 Q And the election was held when?

18 A February of 2015.

19 Q And during these Employer-held meetings that you attended  
20 did you ever participate in them?

21 A Yes.

22 Q Can you describe your participation?

23 A I would counter any anti-union propaganda by management.  
24 I was always vocal. I would speak up. I would say pro-union  
25 facts.

1 Q Was management ever present at any of these meetings?

2 A Yes.

3 Q Can you name the people that you saw in attendance at  
4 these meetings?

5 A Depending on which meetings there were there would be one  
6 to all of them. It'd be the supervisors. My supervisor on  
7 that shift at the time was C.J. His name is Chris Sauer. The  
8 other supervisor that might be present would be Ben Sutton.  
9 The cellar master at the time was Lynn Jobe. The director of  
10 cellar operations at the time was Paul Poretti. The general  
11 manager was Josh Schulze and there was another gentleman. They  
12 had a new position. I can't remember what the title they gave  
13 him, but he was part of management. His name was Gejeet Mahil.

14 Q And do you recall when exactly the election was held?

15 A I voted early in the morning. I believe it was a Friday.  
16 I'm not sure on that, but it was in February 2015.

17 Q And who won the election?

18 A The Union did.

19 Q Has the Employer recognized the Union since then?

20 A No.

21 Q Has the Employer done anything to challenge the Union's  
22 certification?

23 A Yes.

24 Q Can you please describe what they've done?

25 A They appealed at the regional level here --

1 JUDGE SOTOLONGO: Well I think -- I think if I may  
2 interrupt, I think this is part of the stipulated facts.  
3 Obviously, it's already in the record that Employer tested  
4 (phonetic) the certification. The Board approves  
5 certification. The circuit apparently refused to enforce the  
6 Board order and remanded the case to the Board. So I don't  
7 think we -- he needs to get into those details. I think those  
8 are already a part of the record.

9 MS. GOMEZ: I understand that, Your Honor, but my concern  
10 is that I want to know if the witness is aware of those  
11 litigation proceedings.

12 JUDGE SOTOLONGO: Okay. You can ask him directly that  
13 then.

14 MS. GOMEZ: Okay.

15 Q BY MS. GOMEZ: Mr. Chavez, are you aware that the Employer  
16 challenged the Union's certification at the regional level?

17 A Yes, I am.

18 Q Are you aware that the Employer challenged the Union's  
19 certification at the Board level?

20 A Yes, I am.

21 Q And are you aware that the Employer challenged the Union's  
22 certification at the circuit level?

23 A Yes.

24 JUDGE SOTOLONGO: And if you know, are other employees  
25 also aware of these facts?

1 THE WITNESS: Yes.

2 JUDGE SOTOLONGO: Is that because you (indiscernible)  
3 among yourselves?

4 THE WITNESS: Excuse me?

5 JUDGE SOTOLONGO: Is this because you have this -- caused  
6 these things among yourselves?

7 THE WITNESS: Yes.

8 JUDGE SOTOLONGO: Okay.

9 Q BY MS. GOMEZ: To your knowledge, is litigation still  
10 ongoing?

11 A At the circuit level, yes.

12 Q Thank you. Does the Employer currently recognize the  
13 Union as the employees' bargaining representative?

14 A No.

15 Q Since the Union was certified have you continued to remain  
16 involved with the Union?

17 A Yes.

18 Q So I want to break this down by year since it's been a  
19 couple. So following the Union's confirmation in March of 2015  
20 can you describe your involvement for the remainder of 2015  
21 with the Union?

22 A Yes, I attended Union meetings, big. And I still  
23 continued to go to the union hall and meet with the  
24 representative. I would still pass out flyers. I stayed in  
25 contact on updates of -- with my coworkers. We still text. We

1 still talked on the phone.

2 Q And approximately how many Union meetings did you attend  
3 in the remainder of 2015?

4 A Around four.

5 Q And these communications that you were having with  
6 employees, can you recall exactly what you discussed?

7 A We discussed a lot about wages, benefits, what we planned  
8 to negotiate, working conditions, representation from  
9 discipline.

10 Q And would any of these employees ask you about the status  
11 of the Union?

12 A Frequently.

13 Q And what would they ask?

14 A I'm always asked what's the latest word, what's going on,  
15 when's the Union coming in, how long is this going to take,  
16 what's next, where are we at now with the court, et cetera, et  
17 cetera.

18 Q Okay. And what would you tell them in response?

19 A It's going on still; the Union's still there; management's  
20 appealing. Sooner or later things will be set. It will come  
21 to a conclusion. I don't know when, but we will.

22 Q Okay. Now between January and August of 2016 did you  
23 continue to remain involved with the Union?

24 A Yes.

25 Q And can you describe your involvement with them?

1 A I still meet with my representative. I'm in contact with  
2 an attorney, Union attorney. I still have conversations with  
3 my coworkers. We still text.

4 Q And how often were you meeting with the Union  
5 representative?

6 A In 2016, a couple times a month.

7 Q And where were those meetings held?

8 A In the Local 601.

9 Q And these conversations that you were having with  
10 employees, what were they about?

11 A Where we're at in court, why is it taking so long, still  
12 things -- when we get to negotiations what we want to bring to  
13 the table, what we want to talk about, what our interests are.

14 Q And when employees would ask you what's going on, how  
15 would you respond?

16 A It's still ongoing in court, I'm not in charge of how long  
17 it takes, the Union's not in charge of how long it takes,  
18 however long the -- it takes for the court to make their  
19 decision we have to wait to see what the outcome is, take it  
20 from there.

21 Q And now often would you have these conversations with  
22 employees?

23 A This happens weekly.

24 Q During this time was there any communication from the  
25 Union to employees about the status of the Union's

1 certification?

2 A Say that again?

3 Q During this time, so we're talking between January and  
4 August of 2016 --

5 A Yeah.

6 Q -- was there any communication from the Union to the  
7 employees in the cellar department about the status of the  
8 Union certification?

9 A Yeah, we had a meeting.

10 Q And do you recall when that meeting was had?

11 A I don't remember the date of the last meeting, but it was  
12 in Starbucks at Lodi.

13 Q Okay. And that was a meeting between who?

14 A Pablo, the Union attorney, and employees from the cellar  
15 department.

16 Q Okay. And I'm sorry. And who is Pablo?

17 A Pablo is a Union representative for Teamsters 601.

18 Q And his last name is?

19 A I believe it's Barrera, but there might be a I in front of  
20 it.

21 Q Okay. Thank you. Great.

22 MS. GOMEZ: So, Your Honor, at this point we'd like to  
23 introduce Joint Exhibit 5. 4 will be the subpoena. Mr. Ko is  
24 still trying to make the appropriate photocopies of them. But  
25 just because I'd like to move on with the testimony -- so in

1 Q BY MS. GOMEZ: Mr. Chavez, I'm going to show you what's  
2 been marked for identification as Joint Exhibit 5. Do you  
3 recognize that document?

4 A Yes.

5 Q And can you state what that document is?

6 A This is a revised handbook that was given to me in May  
7 2016.

8 Q And who gave this document to you?

9 A Normalinda Cantu.

10 Q And Ms. Cantu is?

11 A She's a HR representative.

12 Q Okay. And since you received this document in May of 2016  
13 have you received any other employee handbook?

14 A No.

15 Q To your knowledge, are you aware of there being any other  
16 employee handbook in effect at the Employer's Acampo facility?

17 A No.

18 Q Okay. So, Mr. Chavez, as you previously testified, you  
19 are a cellar department employee. Are cellar department  
20 employees required to wear a uniform to work?

21 A No.

22 Q What do employees in the cellar department normally wear  
23 to work?

24 A We have to wear pants, either jeans or work pant material;  
25 rubber boots that are provided by the company or leather boots

1 with nonslip resistant footing, bottoms; shirts; no tank tops;  
2 no low cut; high-visibility vest which is provided by the  
3 Employer.

4 JUDGE SOTOLONGO: And by high visibility you mean it's a  
5 certain color?

6 THE WITNESS: Yeah, the -- it's bright yellow and it has  
7 some -- it's a high-vis bright yellow and it has some high-vis  
8 orange on it. And it has reflective tape on it so you can be  
9 seen at night.

10 JUDGE SOTOLONGO: Okay. And I assume that is because you  
11 have equipment moving inside the cellar and --

12 THE WITNESS: Yeah.

13 JUDGE SOTOLONGO: -- obviously you don't want to run over  
14 an employee that you can't see?

15 THE WITNESS: That's --

16 JUDGE SOTOLONGO: Would that be a fair assessment?

17 THE WITNESS: -- yeah, the cellar is outside and it's  
18 huge. It's -- if I were to compare it it's like a huge high  
19 school. So there's a lot of ground we cover. We ride bikes.  
20 There's a lot of walking. There's cars and trucks coming  
21 through the facility.

22 JUDGE SOTOLONGO: Okay. Very good. Please proceed.

23 Q BY MS. GOMEZ: Any --

24 A Also, when it's raining we wear rain gear. If you don't  
25 have high-vis rain gear, if you have like black, we could wear

1 a water resistant like a belt strap that goes around the  
2 shoulders and around the waist. And that's high-vis.

3 JUDGE SOTOLONGO: Let me -- if I understood you correctly,  
4 so that the cellar employees, cellar department is actually  
5 outside of work?

6 THE WITNESS: Correct.

7 JUDGE SOTOLONGO: Normally you'd think of a cellar as  
8 being in a cave or as -- in a like a warehouse, inside a  
9 warehouse someplace. But it's actually outside of work?

10 THE WITNESS: It's outside, correct.

11 JUDGE SOTOLONGO: Very well. Okay.

12 THE WITNESS: So when it's raining we wear rain gear. And  
13 then we'll wear the high-vis belt around the shoulders, around  
14 the waist. That's for -- just per the Employer.

15 JUDGE SOTOLONGO: All right. So -- understood. Please  
16 proceed.

17 Q BY MS. GOMEZ: And are you responsible for buying all of  
18 these items?

19 A The rubber boots were provided by the Employer. The  
20 high-vis vest is provided by the Employer. The high-vis strap  
21 belt that goes around the shoulders and the waist, if we're  
22 wearing dark rain gear, is provided by the Employer. The  
23 Employer used to give us a hundred dollars a year for leather  
24 boots. But they -- that policy is changed. Now we get \$200 a  
25 year and it's a boot slash clothing allowance. That's about

1 that.

2 Q And are you aware of a rule prohibiting employees from  
3 writing messages on their high-visibility safety vest?

4 A No.

5 Q Have you ever seen any employees wearing high-visibility  
6 safety vests with messages written on them?

7 A Yes.

8 Q How many?

9 A One.

10 Q When?

11 A Prior to the election that we had in February of 2015.

12 Q And what was this employee wearing?

13 A He was wearing a high-vis vest that had Sharpie written  
14 on, Vote No, on his vest.

15 Q And wear was that Vote No message displayed?

16 A He had it on the front and the back.

17 Q Okay. And did you ever see this employee wear this vest  
18 with the words written, Vote No, on the front and the back, in  
19 the presence of a supervisor or a manager?

20 A Yes, I did.

21 Q And to your knowledge do you know if the Employer ever  
22 asked that employee to remove his vest?

23 A No.

24 Q And do you recall how many days you saw this employee  
25 wearing this vest?

1 A He wore it for about four weeks prior to the election, up  
2 to the election, on a weekly basis.

3 JUDGE SOTOLONGO: Weekly? Or is it was he wearing every  
4 day or once a week or --

5 THE WITNESS: Mostly every day, majority of the days.

6 JUDGE SOTOLONGO: And this was written with a like a --  
7 was it like a black Sharpie on a yellow vest?

8 THE WITNESS: Yes, black Sharpie, Vote No.

9 JUDGE SOTOLONGO: Okay. How big would you say the letters  
10 were? How many inches, for example, would you say the  
11 lettering was? Is it something you could see from a distance  
12 or something you had to get up close the person to see?

13 THE WITNESS: You could read it from here to that board  
14 easily.

15 JUDGE SOTOLONGO: To that? So --

16 THE WITNESS: Yeah.

17 JUDGE SOTOLONGO: -- that would be about 20 feet away?

18 THE WITNESS: Yeah, it's -- it was about a couple inches.

19 JUDGE SOTOLONGO: So the lettering was a couple of inches  
20 high. So you could see it from a distance?

21 THE WITNESS: Yes.

22 JUDGE SOTOLONGO: Okay. Please proceed.

23 Q BY MS. GOMEZ: Mr. Chavez, have you ever worn a  
24 high-visibility safety vest with a written message on the back  
25 of it?

1 A Yes.

2 Q When?

3 A July 20th, 2016.

4 Q And how long did you wear your vest with the written  
5 message on the back of it for?

6 A I wore that vest every day that I was scheduled to go to  
7 work until August 4th, 2016.

8 Q And what did the back of your vest say?

9 A It said Cellar Lives Matter.

10 Q And how big was the message on the back of your vest?

11 A About two and a half to three inches.

12 Q And did someone ask you to write that message?

13 A No.

14 Q Did you write the message yourself?

15 A Yes.

16 Q Did anyone from the Union ask you to write that message?

17 A No.

18 JUDGE SOTOLONGO: All right. And this you wrote also,  
19 like, with a Sharpie?

20 THE WITNESS: It was a Sharpie.

21 JUDGE SOTOLONGO: Okay. And was it also the front and the  
22 back or just --

23 THE WITNESS: I just wrote it on the back.

24 JUDGE SOTOLONGO: On the back, okay. So the back --

25 MS. GOMEZ: Okay.

1 message, Cellar Lives Matter, on the back of your vest?

2 A The day before, on July 19th, 2016.

3 Q And what happened on July 19, 2016?

4 A I came back to work after safety day.

5 Q And what is safety day?

6 A Safety day is a annual day that the whole facility comes  
7 together. No matter what department or what shift you work on  
8 everybody goes on day shift that day to the old barrel  
9 warehouse and they have lunch and attend workshops.

10 Q And did you attend safety day on July 18th, 2016?

11 A No.

12 Q And why not?

13 A I was sick.

14 Q And so what happened when you returned to work the next  
15 day, on July 19, 2016?

16 A When I got to the locker room I seen my coworkers wearing  
17 t-shirts that were given out the day before on safety day.

18 Q Okay. And after you left that locker room did you have a  
19 conversation with your supervisor about safety day?

20 A When I got to Taco Bell, which is -- that's our  
21 headquarters for the cellar department. That's where we pick  
22 up our work orders. That's where we get designated our work.  
23 That's where we document our work orders. Outside Taco Bell we  
24 do a routine warmup stretch before the shift. My supervisor,  
25 one of my supervisors gave me the shirt that was handed out on

1 since seen employees wear that t-shirt to work?

2 A Yes.

3 Q When have you seen employees wear that t-shirt to work?

4 A It's possible to see that shirt every day since they gave  
5 out so many of them.

6 Q And after you received your t-shirt with the words,  
7 Straight Outta Woodbridge, written on it did you have other  
8 conversations with employees about topics not relating directly  
9 to the message, Straight Outta Woodbridge, but about this t-  
10 shirt?

11 A Yes.

12 Q And who did you speak with?

13 A My coworkers from the cellar department.

14 Q And when did you speak to them?

15 A The day after safety day, the 19th of July.

16 Q And what did you discuss with them?

17 A We discussed making our own shirts with a pro-union  
18 slogan.

19 Q And why did you want to create your own shirt with a  
20 pro-union slogan?

21 A We wanted to be heard because we had an election and we  
22 won our election on a landslide. And the Employer is not  
23 recognizing our representation by Teamsters 601 and they're not  
24 respecting our certification. So we wanted to have something  
25 on our shirt. We wanted to have our own shirt that said

1 something pro-union.

2 Q Okay. And were you the person who came up with the  
3 message that should be displayed on that shirt?

4 A I had came up with two, two messages.

5 Q And can you describe what those two messages were?

6 A Yeah, at the time it was when you turned on the news it  
7 was very popular on the news broadcast to hear about Black  
8 Lives Matter. And it was also Trump's campaign was going on  
9 and you would always hear his slogan, Let's Make America Great  
10 Again. So I wanted something catchy and something that was  
11 popular. So I came out with Cellar Lives Matter, and I came  
12 out with Let's Make the Cellar Great Again.

13 Q And so how did you decide on the slogan, Cellar Lives  
14 Matter, over Let's Make the Cellar Great Again?

15 A Well, I wanted to wear it right away, like the next day.  
16 And I knew it was realistic that we weren't going to have any  
17 shirts made by the next day I went to work. So I had already  
18 seen another employee with Vote No written on his vest. So I  
19 decided I was going to get a Sharpie pen and write a slogan on  
20 the back of my vest. So I started thinking about my two  
21 slogans. I liked them both. Cellar Lives Matter was a lot  
22 shorter. It was only three words, than to write Let's Make the  
23 Cellar Great Again. So I decided on Cellar Lives Matter.

24 Q And what did your coworker who you were discussing this  
25 with say about your slogan, Cellar Lives Matter?

1 A They liked the phrase. It was catchy. It was a good  
2 phrase.

3 Q Did this person tell you that they thought that the  
4 slogan, Cellar Lives Matter, was offensive?

5 A Nobody told me that Cellar Lives Matter was offensive.

6 Q Did they tell you that they thought that the slogan was  
7 incite -- would incite violence?

8 A No.

9 Q So after you came up with this slogan, Cellar Lives  
10 Matter, what else did you tell your coworker?

11 A I said I was going to wear it tomorrow and maybe they  
12 could too. One person said he was going to, but he never did.

13 Q And do you know why that person decided not to write that  
14 slogan on the back of their vest and wear it to work the next  
15 day?

16 A I suspect that he was nervous.

17 MR. KAUFMAN: Objection, Your Honor.

18 JUDGE SOTOLONGO: Don't tell us what you suspected. You  
19 can tell/told me why he didn't wear it. That's fine.

20 Although, that would also be hearsay. So I don't I think  
21 you --

22 MS. GOMEZ: It's fine. We'll --

23 JUDGE SOTOLONGO: -- you don't need to go there.

24 MS. GOMEZ: I'll refrain from the question. We'll move  
25 on.

1 Q BY MS. GOMEZ: So what -- so going back to your vest, what  
2 was your expectation in wearing your vest with the words,  
3 Cellar Lives Matter, written on the back of it?

4 A I wanted it to be seen. I wanted people to notice it.  
5 And if they were going to ask me about it I was going to tell  
6 them why, why I wrote that and why I was wearing it.

7 Q And what did you plan on telling employees about the vest  
8 if they were to ask you about it?

9 A I wanted to tell them that we did win our election by a  
10 landslide and the Employer is still not recognizing our  
11 representation. The Employer still is not respecting our  
12 certification. I wanted to tell them that the cellar  
13 department, we do a lot at that facility. We're the department  
14 that gets the raw grapes. We move all that wine around. We do  
15 the additions. We filter the wine.

16 We work around the clock. That facility goes 24 hours a  
17 day. We have to rotate shifts. Rotating shifts is hard on our  
18 body. At harvest time we have to work six days a week. A lot  
19 of those days can be 12-hour days.

20 We work in the elements. We work in the rain. It's hot  
21 in the valley. We work when there's heatwaves. We work when  
22 it's freezing. We work at night. We work in the wind. We  
23 work up high and we work with a lot of chemicals. As a  
24 department and as individuals we put -- we do everything that  
25 we have to do to make sure that wine is ready for bottle ready.

1 So therefore, Cellar Lives Matter.

2 Q And how long did you wear your vest with the message,  
3 Cellar Lives Matter, written on the back of it?

4 A The first day I wore it was July 20th, 2016, and the last  
5 day I wore it was August 4th, 2016.

6 Q And during that time did employees come up to you and ask  
7 about your vest?

8 A Yes.

9 Q And what did they tell you?

10 A They told me, I like -- they like my vest. And I had  
11 courage to wear that vest and cellar lives, we do matter.

12 Q During that time did any employees ever tell you that they  
13 found your vest offensive?

14 A No.

15 Q During that time did any employees tell you that they  
16 thought that your vest would be a call to violence?

17 A No.

18 Q During that time did any employees ever tell you that they  
19 had any problems with your vest?

20 A No.

21 Q During that time did anyone from management ever comment  
22 on your vest?

23 A Yes.

24 Q When?

25 A It was on the beginning of my shift one day. I'm not sure

1 what day it was, at Taco Bell during our warmup and our  
2 stretches.

3 Q And who from management commented on your vest?

4 A Jeff Moeckly.

5 Q And what did Mr. Moeckly say to you?

6 A He said in a nice way, in a positive way he said, like,  
7 cool or right -- he said cool, right on, something like that.

8 Q Did you take his comment to be a negative one?

9 A No.

10 Q You noted that you wore your vest from July 20th until  
11 August 4th. During that time did your supervisor see you  
12 wearing that vest?

13 A Yes.

14 Q Do you see your supervisor every day that you go to work?

15 A If I'm scheduled to be at work that day and he's scheduled  
16 yes, I do.

17 Q And who was your supervisor at that time?

18 A John Shehorn.

19 Q And did Mr. Shehorn ever say anything to you about your  
20 vest during that time?

21 A No.

22 Q Did management eventually ask you to take off your vest?

23 A Yes.

24 Q When was that?

25 A The 4th of August, 2016.

1 Q And can you describe what happened that day?

2 A I got called on my radio by my supervisor, John Shehorn,  
3 to come to his office.

4 Q And did you go to Mr. Shehorn's office?

5 A Yes.

6 Q And can you describe what happened when you got to Mr.  
7 Shehorn's office?

8 A When I got there he told me that the general manager, Josh  
9 Schulze, and the HR manager, Angela Schultz, wanted to see me  
10 up in Josh's office.

11 Q Did you go to Mr. Schulze's office?

12 A Yes.

13 Q Can you describe what happened when you got to his office?

14 A When I got to his office Josh was sitting at his desk.  
15 And Angela was sitting to his left, which would be my right.  
16 And there was a empty chair in front of Josh's desk. So I sat  
17 down.

18 Q Did Mr. Schulze say anything to you when you arrived?

19 A Yes, he did.

20 Q What did he say to you?

21 A He said numerous people found my vest offensive. He said  
22 people were getting shot all over the country. He said he knew  
23 what it meant and that I know what it means, and that police  
24 were getting shot over the country (sic) over this.

25 Q Did you say anything in response?

- 1 A Yeah, I said, "Over my vest?"
- 2 Q Did he answer your question?
- 3 A No.
- 4 Q Did he say anything in response?
- 5 A He said I can't wear it anymore.
- 6 Q Did you say anything in response?
- 7 A Yeah, I asked him. I said, for clarification, "Are you  
8 requesting that I take it off, that I can't wear it? Or are  
9 you demanding it?"
- 10 Q And what was Mr. Schulze's response?
- 11 A He said demanding it.
- 12 Q Did you say anything in response to that?
- 13 A I told him I had no intentions of police being shot. My  
14 vest wasn't about Black Lives Matter or about police. It was  
15 simply about Cellar Lives Matter. I told him in fact that my  
16 son is pursuing a career in law enforcement and I would never  
17 condone to any violence towards police.
- 18 Q Did Mr. Schulze respond to that?
- 19 A He said it was great that my son was pursuing a career in  
20 law enforcement.
- 21 Q Did you explain to Mr. Schulze what you meant by Cellar  
22 Lives Matter?
- 23 A No.
- 24 Q After that meeting did you continue to wear your vest?
- 25 A No, I did not.

1 office to walk back to Taco Bell which is, might be like two  
2 small city blocks away, I asked him if it was okay to go  
3 vest-less on the way to Taco Bell. He said that they would buy  
4 me a new vest. So I took my vest off and I walked back without  
5 a vest.

6 Q And just to clarify, he said that it -- was okay for you  
7 to walk vest-less back to Taco Bell?

8 A Yes, he did.

9 Q Okay. And since then have you stopped wearing your vest?

10 A I stopped wearing it.

11 Q Did the Employer ever discipline you for wearing your  
12 vest?

13 A No.

14 Q When you decided to write the message, Cellar Lives  
15 Matter, on the back of your vest were you aware that there had  
16 been police shootings around the country?

17 A I knew. I knew some police had gotten. Five police had  
18 got shot in Dallas by a lone gunman.

19 Q Do you know when that happened?

20 A I don't know exactly when, but I know it was before  
21 because it was on the news.

22 Q And in writing the message, Cellar Lives Matter, on your  
23 vest was it your intention to incite violence against police?

24 A Never.

25 Q In writing the message, Cellar Lives Matter, on your vest

1 was it your intention to suggest that you were anti-police?

2 A Never.

3 Q In writing the message, Cellar Lives Matter, on your vest  
4 was it your intention to incite violence of any form?

5 A Never.

6 Q And in writing the message, Cellar Lives Matter, on the  
7 back of your vest was it your intention to offend anyone?

8 A Never.

9 Q And lastly, in writing the message, Cellar Lives Matter,  
10 what was the message that you were hoping to convey?

11 A That the cellar department matters at that facility and  
12 ultimately we wanted to get to the negotiation table. We  
13 wanted to be able to negotiate better pay, working conditions,  
14 benefits, and we wanted to be able to have representation  
15 available when we're disciplined.

16 Q Okay. Thank you.

17 JUDGE SOTOLONGO: Mr. Chavez, I have a question. If I  
18 understood your testimony, you wore this vest with this  
19 message, Cellar Lives Matter, in response to what's a result of  
20 the t-shirts that the Company, the Employer, distributed  
21 saying, Straight Outta Woodbridge. Is that correct?

22 THE WITNESS: Yeah, when we seen the Straight Outta  
23 Woodbridge t-shirts we wanted our -- we wanted to have our own  
24 shirts --

25 JUDGE SOTOLONGO: How long did the employees wear those

1 produced. They are a part of a current investigation anyway  
2 so -- all right. So --

3 MR. KAUFMAN: Your Honor, may we off the record for one  
4 second?

5 JUDGE SOTOLONGO: Sure.

6 (Off the record at 1:17 p.m.)

7 JUDGE SOTOLONGO: Mr. Chavez, will you please --

8 All right. Mr. Kaufman is going to now start his cross  
9 examination of Mr. Chavez.

10 MS. GOMEZ: Your Honor, I'm sorry --

11 JUDGE SOTOLONGO: Excuse me?

12 MS. GOMEZ: Can we wait for Mr. Ko to return to the table?

13 JUDGE SOTOLONGO: Does he need to be here?

14 MS. GOMEZ: I would like for him to be here but I guess in  
15 the interest --

16 JUDGE SOTOLONGO: I think you can handle it.

17 Proceed.

18 **CROSS-EXAMINATION**

19 Q BY MR. KAUFMAN: Mr. Chavez, my name is Michael Kaufman.  
20 I represent Woodbridge. I'm going to ask you just some  
21 preliminary questions.

22 Is there anything that would affect your ability -- are  
23 you on any medication or have you taken any drugs or alcohol  
24 that might affect your ability to testify today?

25 A No.

1 Q Okay. And usually you're in the, where the time clock is  
2 which is in the break room so you're right there to just punch  
3 out when your shift ends.

4 A Yes.

5 Q Okay. And prior to your shift ending, you work in the  
6 Cellar area, the Outside Cellar area; is that correct?

7 A Yes.

8 Q And do you know how large that area is? You mentioned a  
9 big high school but I don't that that really shows on the  
10 record what that means, but. How many tanks are in that area?

11 A Well --

12 Q Approximately.

13 A I'd have to go by tank farm to tank farm to kind of  
14 calculate. The 100's which we call the Lower Cellar could be  
15 up to 30 tanks, I'm not sure. They don't go all the way to the  
16 end. In the Lower Cellar is also square tanks -- old ones, we  
17 don't use them that much; the last time they used them was to  
18 pump dirty pond water in there -- could be 20 of those.

19 Is somebody going to add this up or do I got to add it up?

20 Q Well, that's 50 so I'll help you.

21 A Okay. So the 200's, which would be east of the burning  
22 bush, I want to say it goes to 208, roughly eight.

23 Three hundreds --

24 JUDGE SOTOLONGO: Okay. Let me sort of interrupt if I  
25 may.

1 If you're trying to gauge or put into the record the  
2 approximate size of the Cellar, the Cellar area where everybody  
3 works, is that your point. Maybe we can use an approximation.

4 I mean how many football fields are we talking about here  
5 as far as --

6 THE WITNESS: Okay. Well, he asked me the number of  
7 tanks.

8 JUDGE SOTOLONGO: Well, because he was trying to measure a  
9 distance. I don't think he -- he was trying -- he was trying  
10 to use tanks as a measure of distance to explain, to show how  
11 big this area is where you work on Sundays. So using, say, a  
12 football field as reference, how many football fields would you  
13 say the Cellar area where you work and your co-workers work,  
14 how many is that?

15 THE WITNESS: That's hard, too. The 1200's I know is  
16 bigger than one football field. The 1200's could be a football  
17 and a half. I could be off by half a football field. The  
18 1100's from 1101 -- the 1100's are connected to the 13's and  
19 the 14's -- from 1101 all the way to 1140-some, to the lower  
20 13's and lower '14's, could be a couple of football fields.  
21 The 11-B (phonetic) area, from 1150-something to the 14's,  
22 could be another couple of football fields. Again, I could be  
23 off.

24 JUDGE SOTOLONGO: You were right, Mr. Kaufman, this is not  
25 a small winery.

1 THE WITNESS: The 15 -- do you want me to continue or?

2 JUDGE SOTOLONGO: Well, okay. So overall, give us just a  
3 ballpark figure as how large? I mean like 10-12 football  
4 fields or larger, the whole area where you work at, at least?

5 THE WITNESS: Ten-12 stacked side by side and everything?  
6 Yeah. Yeah, at least --

7 JUDGE SOTOLONGO: Was that satisfactory or?

8 MR. KAUFMAN: So 10 to 12; is that the response?

9 JUDGE SOTOLONGO: He said -- yeah, ballpark figure.

10 MR. KAUFMAN: That's fair.

11 JUDGE SOTOLONGO: So that's all side by side, I mean,  
12 lengthwise or a square? I mean is it kind of a rectangular  
13 area?

14 THE WITNESS: It's sprawled out.

15 JUDGE SOTOLONGO: Sprawled out.

16 THE WITNESS: We got rows in-between and we got aisles in-  
17 between there.

18 JUDGE SOTOLONGO: All right.

19 MR. KAUFMAN: So it might be bigger than 12 football  
20 fields.

21 JUDGE SOTOLONGO: Yes, that's the -- I think it suggests  
22 in the testimony we can all agree.

23 THE WITNESS: We travel on bicycle, it's that big. We got  
24 our own bikes.

25 Q BY MR. KAUFMAN: Do you also use golf carts sometimes?

1 A Sometimes. A golf cart is not issued to me. I have a  
2 bike issued to me. The Cellar Department has one golf cart  
3 that says Cellar Department on it. For the most part that's  
4 the foreman's and supervisor's but I do use it sometimes.

5 Q And if you're using other ingredients where you've gone to  
6 the ingredients room, you would transport that with some form  
7 of motor transportation.

8 A Yes, most likely a forklift.

9 Q Okay. And if you're working in this field, the tank farm,  
10 you usually work with a partner; is that correct?

11 A We're teamed up with partners.

12 Q Okay. But it's possible you might not see another person  
13 from your department your entire shift.

14 A No, that's not possible.

15 Q Well, is it possible that you would not see people from --  
16 would hours -- is it possible for hours to go by where you're  
17 not seeing other people from your department if you're in  
18 certain areas of the tank farm?

19 A If I was inside a tank.

20 Q Okay. And if you were working with, I'll call it your  
21 partner, the two of you are engaged in whatever you're doing  
22 whether it's pumping wine or moving wine; is that accurate?

23 A We'd always work side by side. We'll split up and do  
24 tasks and meet.

25 Q Yeah. So it's possible you could start your shift and you

1 MS. GOMEZ: Objection.

2 JUDGE SOTOLONGO: Sustained. Unless he told you another  
3 reason. Did he tell you?

4 THE WITNESS: No.

5 JUDGE SOTOLONGO: Okay. So it would be speculation.

6 Q BY MR. KAUFMAN: Did any employees from other departments  
7 ask you about the vest?

8 A A woman came into the break room one day and said she  
9 liked it, but I'm not sure who she was.

10 Q I believe you testified that your job in the cellar was  
11 very hard and that was one of the reasons you wanted to wear  
12 this vest?

13 A I testified that we do hard work.

14 Q Harder than other people in the facility?

15 A I testified that we work outside, we work in the rain, we  
16 work in the heat. We work when it's over 100 degrees. We  
17 climb stairs 45 feet in the air. I can climb stairs six times  
18 a day. We work with chemicals and we work with a lot of  
19 ingredients.

20 We have to get inside tanks that we have to do a confined  
21 space precautions to prevent bodily harm or death even.  
22 There's a lot of heavy equipment. Our hoses could be 50 feet  
23 long, they're 3 inches, comparable to a fire hose, but very  
24 durable, heavy material, not like the light weight fire hoses  
25 that collapse up. These we have to put over our shoulder, lean

1 forward, and drag two people at a time.

2 Our pumps are very heavy. I want to compare them to a  
3 wheelbarrow that's almost full. A lot of times these hoses are  
4 on the ground. We have to maneuver these pumps over these  
5 hoses. We have to ride our bikes, there's forklift traffic,  
6 there's tanker trucks coming in all the time. It's nighttime,  
7 we're riding our bikes, it's raining. Sometimes it's so windy,  
8 if you take a u-turn you could be pushed over on your bike with  
9 wind gusts.

10 There's a lot of hard work in the cellar department and a  
11 lot of hazards, that's what I testified to.

12 Q How often do tanker trucks come to the facility?

13 A They come every day.

14 Q And other people unload the tanker trucks other than  
15 outside cellar, also. Isn't that correct?

16 A Cellar department unloads the tanker trucks.

17 Q So barrel never unloads the tanker trucks?

18 A During the -- the only time I know a barrel ever unloading  
19 tanker trucks is when we were in the hearing and then I  
20 testified that the cellar department exclusively unloads the  
21 tanker trucks. I can't remember if I testified that on a  
22 Wednesday or Thursday, but you yourself asked that we have a  
23 day off on Friday and so Friday we didn't come back to the  
24 hearing and that Friday when I went back to work on swing  
25 shift, that morning, all of the sudden, a couple of barrel guys

1 were unloading some tanker trucks. And in fact, they didn't  
2 fill out their paperwork all the way correctly. When you  
3 brought the paperwork here the next week to show that other  
4 departments unloaded the tanker trucks. Other than that, at  
5 Woodbridge Winery in the cellar department is the one that  
6 unloads the tanker trucks and loads them.

7 Q So your work day starts at 4:00 or 3:00, I'm sorry?

8 A As of last week, my work day starts at 2:00, but the two  
9 months prior to that, my work day was starting at 6:00 and in  
10 fact I was on tankers during that two month interval loading  
11 and unloading tankers at approximately nine different stations.

12 Q okay. And prior to the election, you were on the swing  
13 shift and graveyard shift, correct?

14 A Yes.

15 Q So you had no idea what occurred during the day shift;  
16 isn't that correct?

17 A I know that when I was on graveyard shift, sometimes I  
18 would be assigned to set up the tanker lines, so I knew where  
19 all the stations were going to be and I was setting them up for  
20 the cellar department.

21 Q But you don't know that for a fact, you didn't stay around  
22 to see who's unloading the truck?

23 MS. GOMEZ: Objection. What's the relevance of this line  
24 of questioning?

25 JUDGE SOTOLONGO: Yeah, we're going -- we're going back to

1 is clear that there's no violation here.

2 MR. KAUFMAN: If I could just ask for a quick two minute  
3 break, Your Honor. We'll be right back. Thank you.

4 JUDGE SOTOLONGO: Sure. Let's go off the record.

5 (Off the record at 3:30 p.m.)

6 JUDGE SOTOLONGO: Okay. Let's go back on the record.

7 All right. Mr. Kaufman.

8 MR. KAUFMAN: Your Honor, Woodbridge calls Josh Schulze.

9 JUDGE SOTOLONGO: Mr. Schulze, can you please come to the  
10 stand?

11 Would you please raise your right hand?

12 Whereupon,

13 **JOSH SCHULZE**

14 having been duly sworn, was called as a witness herein and was  
15 examined and testified as follows:

16 JUDGE SOTOLONGO: Thank you. Please spell your name for us  
17 and give us your address. Your business address will suffice.

18 THE WITNESS: My name is Josh Schulze. It's spelled J-O-S-  
19 H, S-C-H-U-L-Z-E. The address at Woodbridge I believe is 3450  
20 Woodbridge Road, Acampo, California.

21 JUDGE SOTOLONGO: All right. Please go ahead. Thank you.

22 **DIRECT EXAMINATION**

23 Q BY MR. KAUFMAN: Mr. Schulze, how long have you work at  
24 Woodbridge?

25 A It's going on four years now.

1 JUDGE SOTOLONGO: Yeah. Again, Mr. Schulze --

2 THE WITNESS: Okay.

3 JUDGE SOTOLONGO: -- just -- just, you know, what was said  
4 and by whom --

5 THE WITNESS: Yeah.

6 JUDGE SOTOLONGO: -- rather than summarize.

7 THE WITNESS: Okay. I said, "The Dallas shootings that  
8 happened three weeks prior on July 7th was pretty critical and  
9 it's creating a lot of just bad publicity. And the term Black  
10 Lives Matter is really not a good term as it relates to  
11 translating it to Cellar Lives Matter."

12 I -- I told him that the term can be and is becoming  
13 offensive. I let him know that there is others that have found  
14 it offensive. I told him that as well as others finding it  
15 offensive, it can be perceived as offensive to those that are  
16 afraid to speak up.

17 Q BY MR. KAUFMAN: And did Angela say anything?

18 A Angela -- so we got into this -- he asked the question --  
19 Manuel specifically asked the question, he goes, "Do you" --  
20 "Are you guys telling me that this is racially motivated?"

21 And I instinctively said, "No."

22 And Angela instinctively said, "Yes."

23 And there was this five-second pause of all three of us  
24 looking at each other, because there was different answers.  
25 And then I let Angela speak and Angela specifically spoke about

1 the Black Lives Matter where she -- she says, "The current  
2 situation of Black Lives Matter and the injustice on the black  
3 people as it relates to law enforcement is a racially charged  
4 situation in this country and it's creating violent undertones  
5 throughout this country with protesting and police officers  
6 being shot."

7 So she was very descriptive in why she felt it was racially  
8 motive -- motivated, and the words Black Lives Matter is coming  
9 from that.

10 JUDGE SOTOLONGO: Let me ask you briefly, is Angela  
11 African-American?

12 THE WITNESS: No.

13 JUDGE SOTOLONGO: Okay. Go ahead.

14 Q BY MR. KAUFMAN: You said that initially said no. What  
15 did you mean by the no?

16 A I don't know if I would have made the connection that she  
17 did. You know, I know what Black Lives Matter, I know the  
18 sensitivity around it. The Cellar Lives Matter was, in my  
19 opinion, a poor timed, insensitive, offensive statement and I  
20 would not have considered it racial.

21 Q Just so that we understand, so you didn't think Manuel  
22 meant it in a racial way?

23 A No.

24 Q Okay. But you understand how that's a racial --

25 A Yes, I do.

1 Q -- statement?

2 A Yeah.

3 Q Did Manuel have any response during this conversation?

4 A Yeah. I mean at that moment, you know, it was -- it was  
5 really interesting to watch. So at that moment he felt more  
6 relaxed. He was very nervous through most of that  
7 conversation. He -- he apologized. He said he did not intend  
8 the words to mean what he -- what we were describing as they  
9 mean. He said he was intending it to be funny and a joke.  
10 Using those terms specifically. And he -- he went down the  
11 path of telling us about his son and law enforcement. So he  
12 said, "My son wants to be a police officer and I would never  
13 want anything bad to happen to him as a police officer, and I  
14 have a lot of respect for law enforcement."

15 Q Was there a discussion, and, if so, who mentioned the  
16 harassment policy or any other policy of Constellation in that  
17 meeting?

18 A Angela did bring up the harassment policy as far as how  
19 it's the obligation of all us of to not only protect against  
20 harassment but as well as to protect against the potential of  
21 harassment and how others can perceive the phrase on the back  
22 of the vest. So she went specifically into the policy.

23 Q And were any other policies discussed during this -- part  
24 of the discussion on Black Lives Matter?

25 A About Black Lives Matter, no.

1 JUDGE SOTOLONGO: Okay. That -- that is a little leading,  
2 yeah.

3 Q BY MR. KAUFMAN: Did Manuel -- after you and Angela  
4 explained the black lives -- the definition -- the -- your  
5 understandings of the Black Lives Matter movement, did he say  
6 anything?

7 A Yeah. He specifically said, "I understand and did not  
8 mean that" -- "or have those intentions with that phrase."

9 Q Did you then talk about replacing -- did -- strike that.  
10 After he stated he understood, what happened next?

11 A At that point he -- he asked what does he do with his  
12 vest. And I said he can go down to the Fastenal machine and  
13 have the vest replaced. And then there was a pause and he  
14 said, "So you are" -- "are okay with me walking down to the  
15 Fastenal machine without my vest on?" And I said, "Yes, I'm  
16 okay." Throughout wipe winery we have very safe paths for  
17 everybody to walk and there's also a Fastenal machine right  
18 down below my office in the maintenance shop. So there was an  
19 easy, safe place for him to get to and from either one of those  
20 Fastenal machines to get himself another vest.

21 Q Did he mention that he wanted to -- did he mention  
22 anything -- strike that.

23 Did he ask you if he could write anything else on the vest?

24 A Yes, he did.

25 Q What did he ask you?

1 A He asked -- he said, "Hey, before I leave, I have" -- "I  
2 want to run a few other phrases that I want to write on the  
3 vest. Can I run them by you" and I said, "No. We're not going  
4 to be writing any more phrases on vests. You can write" -- I  
5 let him know, "You can write your name on your pocket, as a lot  
6 of people just to identify the vest is theirs. Or you can  
7 write, "Win Your Day" on the pocket, which is a good phrase for  
8 us. That connects safety, quality, efficiency, productivity,  
9 all the different things that help us connect who we are from a  
10 culture standpoint. You can write "Win Your Day" on your  
11 pocket. But at that point that's the extent of what we'll  
12 allow to be written on the vest."

13 JUDGE SOTOLONGO: Win Your Day; is that --

14 THE WITNESS: Yeah, Win --

15 JUDGE SOTOLONGO: -- correct?

16 THE WITNESS: -- Your Day.

17 JUDGE SOTOLONGO: Yeah.

18 Q BY MR. KAUFMAN: Were there other discussions that  
19 occurred after you talked about the Black Lives Matter in your  
20 office?

21 A Yeah. The second subject we spoke specifically about was  
22 safety day and I just -- we talked to Manuel specifically about  
23 how important safety day is. It is a day to where we shut --

24 MR. BONSALL: Objection. Once again, I think he has a  
25 tendency --

1 not have this benefit?

2 A It was not negotiated in their CBA as well as based on my  
3 experience with sites like this, bonuses are typically not  
4 something they would like to negotiate and they're looking for  
5 things that drive wage increases.

6 Q Maybe you could clarify what -- because you said, "sites  
7 like this." I'm not sure what you meant by that?

8 A The two sites; Mission Bell and Dunnewood.

9 Q And those are unionized sites?

10 A They're -- they are both union sites.

11 Q So they don't have something based on performance?

12 A No.

13 MR. KAUFMAN: I have no further questions at this time,  
14 Your Honor.

15 JUDGE SOTOLONGO: All right. Mr. -- Ms. Gomez, or, Mr. Ko?

16 MR. KO: I think it's going to me, Judge.

17 JUDGE SOTOLONGO: All right. Very well. Mr. Ko.

18 MR. KO: Just a couple of preliminary questions.

19 **CROSS-EXAMINATION**

20 Q BY MR. KO: I couldn't help but notice during the course  
21 of -- of the hearing earlier that you were looking at a  
22 notebook, reading materials --

23 A Uh-huh.

24 Q -- when you were sitting at the counsel table. Any of  
25 those materials involve the testimony that you just gave?

1 Q And -- and you kind of indicated that this plan has a  
2 different application or a non-application in -- in Union  
3 facilities; is that right?

4 A That is correct.

5 Q And I take it that means that this handbook applies to  
6 facilities other than Woodbridge?

7 A This handbook in this format with this language, the  
8 answer is it applies to all facilities except the two Union  
9 facilities.

10 Q Okay. Which means it applies to all nonunion  
11 Constellation facilities in the United States?

12 A You are correct.

13 Q Now, on page 22 -- do you have a -- a copy the handbook  
14 with you?

15 A Yes, I do.

16 Q Page 22 of the handbook, there's a very short paragraph.  
17 It's on the left-hand column of the page that's captioned,  
18 "Work Attire."

19 A Yeah.

20 Q Okay. And I assume that that applies to --

21 MR. KAUFMAN: Your Honor, objection. This is beyond the  
22 scope of direct. Work attire?

23 JUDGE SOTOLONGO: That is correct.

24 MR. KO: Well, no, it -- I'll -- it will -- it will relate  
25 to -- to I guess the issue of whether Mr. Chavez improperly

1 concerned by what I've heard," end quote or words to that  
2 effect?

3 A Yes.

4 Q Okay. Now, did she explain to you what she heard?

5 A Yes. She explained to me that she had been told that on  
6 the back of Manuel's vest was the term Cellar Lives Matter.

7 Q Okay. Did -- did she tell you who told her that?

8 A Yes, she did.

9 Q And -- and who did she say told her that?

10 A Normalinda.

11 Q Normalinda. Okay. Did she tell you when Normalinda told  
12 her that?

13 A That day.

14 Q Oh. So it's -- the sequence is that Normalinda tells  
15 Angela Schultz that she saw Mr. Chavez's vest with that slogan  
16 on it?

17 A Yes.

18 Q And that she was -- did she simply report that or did  
19 Normalinda through Angela indicate that she was offended by  
20 that slogan?

21 A The exact testimony on behalf of Normalinda, I'm not clear  
22 on. I could only --

23 Q Okay.

24 A -- tell you what Angela said in my office.

25 Q And tell me again what Angela told you what Normalinda

1 told her?

2 A Normalinda said she saw the vest on Manuel as they were  
3 having a meeting in the Taco Bell area, that as --

4 Q Okay.

5 A -- stood up and walked out and got out of the chair, that  
6 she noticed the writing on the back of the vest.

7 Q And I assume that this observation by Ms. Linda also  
8 happened on August 1st?

9 A Normalinda's her full name -- I mean, her first name.

10 Q Oh, that's her first name. What's her --

11 A Yeah.

12 Q -- last name?

13 A Cantu.

14 Q Okay. All right. I'm sorry.

15 A Yeah.

16 Q So I assume that Ms. Cantu's observation of that vest  
17 being worn by Mr. Chavez also happened on August 1st?

18 A I'm not aware of any other sightings of the vest --

19 Q Okay.

20 A -- only the conversation that Angela had on --

21 Q Okay.

22 A -- August 1st.

23 Q And the sense I got from your testimony when Angela  
24 reported this to you was that she was personally offended by  
25 the use of that slogan?

1 Q And you had not, prior to Ms. Schultz telling you about  
2 her conversation with Mr. Moeckly, that he had raised any  
3 complaints or issues of concerns about that?

4 A That is accurate.

5 Q Okay. And then you ended up having this meeting involving  
6 Mr. Chavez on August 4. Okay. Now, prior to that meeting, and  
7 again, if we're not counting any issue or complaint or  
8 statement made by Ms. Cantu, were you aware of any other person  
9 raising any issues about Manuel Chavez wearing that vest with  
10 that slogan on it?

11 A The only awareness I had was Jeff Moeckly's comments and  
12 Normalinda Cantu's comments.

13 Q Okay. But okay. Just those two. Okay. So if you use  
14 those words that numerous persons complained or were offended  
15 by the vest, two people would not constitute numerous people;  
16 would you agree with that?

17 A It depends on how you look at "numerous."

18 Q And how do you look at "numerous"?

19 A More than one.

20 Q Okay. It's pretty broad. Okay. Well, all right. Now,  
21 you indicated that at that August 4th meeting where you and Ms.  
22 Schultz met with Mr. Chavez that at some point you noticed that  
23 there was a cell phone peeking out, a quarter of it peeking out  
24 of his shirt pocket, and you had a concern that the meeting  
25 might be recorded?

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 32

In the Matter of:

Constellation Brands,  
U.S. Operations, Inc.  
d/b/a Woodbridge Winery,

Case Nos. 32-CA-186238  
32-CA-186265

Respondent,

and

Cannery, Warehouseman, Food  
Processors, Drivers and  
Helpers, Local Union No. 601,  
International Brotherhood of  
Teamsters,

Union.

---

---

Place: Oakland, CA

Dates: May 4, 2017

Pages: 246 through 318

Volume: 2

OFFICIAL REPORTERS

AVTranz  
E-Reporting and E-Transcription  
7227 North 16th Street, Suite 207  
Phoenix, AZ 85020  
(602) 263-0885

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 32

In the Matter of:

CONSTELLATION BRANDS,  
U.S. OPERATIONS, INC.  
D/B/A WOODBRIDGE WINERY,

Respondent,

and

CANNERY, WAREHOUSEMAN, FOOD  
PROCESSORS, DRIVERS AND  
HELPERS, LOCAL UNION NO. 601,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Union.

Case Nos. 32-CA-186238  
32-CA-186265

The above-entitled matter came on for hearing, pursuant to notice, before **ARIEL L. SOTOLONGO**, Administrative Law Judge, at the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA 94612, on **Thursday, May 4, 2017, 9:08 a.m.**

1 A P P E A R A N C E S

2 **On behalf of the General Counsel:**

3 **LELIA GOMEZ, ESQ.**  
4 **KEN KO, ESQ.**  
5 NATIONAL LABOR RELATIONS BOARD, REGION 32  
6 1301 Clay Street  
7 Suite 300N  
Oakland, CA 94612-5224  
Tel. 510-637-3300  
Fax. 510-637-3315

8 **On behalf of the Respondent:**

9 **BRANDON KAHOUSH, ESQ.**  
10 **MICHAEL A. KAUFMAN, ESQ.**  
11 KAUFMAN DOLOWICH & VOLUCK, LLP  
12 135 Crossways Park Drive  
Suite 201  
Woodbury, NY 11797  
Tel. 516-283-8716  
Fax. 516-681-1101

13 **On behalf of the Charging Party:**

14 **STEPHANIE PLATENCAMP, ESQ.**  
15 **ROBERT BONSALE, ESQ.**  
16 BEESON, TAYER & BODINE  
17 520 Capitol Mall  
Suite 300  
18 Sacramento, CA 95814  
Tel. 916-325.2100  
19 Fax. 916-325-2120  
20  
21  
22  
23  
24  
25

1 P R O C E E D I N G S

2 JUDGE SOTOLONGO: All right. It is now Thursday, May the  
3 4th, and we're ready to proceed this morning.

4 And, Mr. Kaufman, are you ready to call your next witness?

5 MR. KAUFMAN: Yes, Your Honor.

6 JUDGE SOTOLONGO: Please do so.

7 MR. KAUFMAN: Jeff Moeckly.

8 JUDGE SOTOLONGO: All right. Mr. Moeckly, if you would  
9 please step over here.

10 Will you please raise your right hand?

11 Whereupon,

12 JEFFERY MOECKLY

13 having been duly sworn, was called as a witness herein and was  
14 examined and testified as follows:

15 JUDGE SOTOLONGO: Thank you. Please take that chair and  
16 spell out your name for us, please.

17 THE WITNESS: First and last?

18 JUDGE SOTOLONGO: Yes.

19 THE WITNESS: First name is Jeffery, J-E-F-F-E-R-Y; last  
20 name's Moeckly, M-O-E-C-K-L-Y.

21 JUDGE SOTOLONGO: All right. And your -- and your business  
22 address, Mr. Moeckly?

23 THE WITNESS: My business address?

24 JUDGE SOTOLONGO: Yes.

25 THE WITNESS: 5950 East Woodbridge Road, Acampo, California

1 Q And is there a particular reason you decided not to say  
2 anything to Mr. Chavez when you saw him wearing his vest?

3 A Again, I was quite busy and I had to -- I was going around  
4 gathering information from our yield improvement at the tank  
5 press areas, so I had to quickly go there and then I had to  
6 hustle home to take care of the affairs with my mother.

7 Q And that week you didn't see him any other day except for  
8 that day that you saw him?

9 A That was the only day, yes.

10 MS. GOMEZ: I don't have any further questions.

11 MS. PLATENCAMP: Okay.

12 JUDGE SOTOLONGO: Ms. Platencamp?

13 MS. PLATENCAMP: Yes, Your Honor. Just a minute.

14 **CROSS-EXAMINATION**

15 Q BY MS. PLATENCAMP: So good morning. Thank you for --

16 A Good morning.

17 Q -- coming in. I'm Stephanie Platencamp, the attorney for  
18 Local 601.

19 So, just to clarify, you just stated that you didn't hear  
20 complaints from Mr. Shehorn or from any other employees about  
21 the vest; is that correct?

22 A Did I? No, they did not come to me about it. Again, I  
23 was very, very busy, so I was not in and out of the cellar that  
24 often at the beginning of harvest.

25 Q Okay. Can you tell us how often you do exercises with the

1 employees?

2 A How often? I do it whenever I can. Usually not the swing  
3 shift folks, but with the day shift folks, as often as I'm out  
4 there. So if they're exercising, I will join them.

5 Q And is that one of your duties?

6 A I want them to exercise, so, again, yeah. If I don't  
7 participate, then, you know, it doesn't show, you know, that  
8 it's something they need to. So I feel it's pretty important.

9 Q Okay. And you said that you were very busy during this  
10 time?

11 A That's correct.

12 Q And is doing exercises a priority when you're busy?

13 A No. It's -- I went to -- like I said, I had to go out  
14 there and speak with the folks, so, you know, they were in the  
15 middle of the exercises at the time. So I didn't interrupt the  
16 person I wanted to speak with. So, yes.

17 Q Okay. And --

18 A It's a five-minute operation.

19 Q Oh. Thank you. Did you hear any other comments about the  
20 vest from any employees in the outside cellar department?

21 A No, I did not.

22 Q And then when you spoke with Mr. Shehorn about reporting,  
23 I believe you said, these kinds of things immediately, can you  
24 clarify what you meant by, "these kinds of things?"

25 A Just where something -- something is obviously out of the

1 normal that could raise a flag and obviously, you know, bother  
2 someone else.

3 Q Okay. But no employees have told you that they were  
4 bothered by it?

5 A No. Nobody told me personally, no.

6 Q Okay. And then can you clarify what -- what you mean by,  
7 "out of the normal?"

8 A What I mean by out of --

9 Q In reference to -- when I asked you about what are "these  
10 kinds of things" --

11 A Well, you know, we have -- we're there to do a job. Okay?  
12 And someone wearing a vest like this, someone -- you know,  
13 inappropriate comments, behavior, something like to that fact.

14 Q Okay. And then when you hear something inappropriate or  
15 something that you've just described, what is your -- what is  
16 the protocol then? What are you to do?

17 A The protocol would be to speak to the person involved and,  
18 you know, if so, involve the folks HR.

19 Q Okay.

20 MS. PLATENCAMP: That's all I have.

21 JUDGE SOTOLONGO: All right.

22 MR. KAUFMAN: Just one question.

23 **REDIRECT EXAMINATION**

24 Q BY MR. KAUFMAN: Do you know when Mr. Shehorn was made a  
25 supervisor?

1 assured since we don't know if any rebuttal witnesses are going  
2 to be called and whether then, in turn, some rebuttal witnesses  
3 may -- may have to be called.

4 Just, just to be on the safe side, we asked Mr. Moeckly to  
5 leave the room in order to comply with the sequestration order.

6 Very well. Mr. Kaufman, are you ready to call your next  
7 witness?

8 MR. KAUFMAN: Yes, Your Honor. We call Angela Schultz.

9 JUDGE SOTOLONGO: Hi, Ms. Schultz. Can you please raise  
10 your right hand?

11 Whereupon,

12 **ANGELA SCHULTZ**

13 having been duly sworn, was called as a witness herein and was  
14 examined and testified as follows:

15 JUDGE SOTOLONGO: Okay. Thank you. Please -- please spell  
16 your name for us and give us your address. Your business  
17 address will suffice.

18 THE WITNESS: Okay. So Angela Schultz, S-C-H-U-L-T-Z. And  
19 I am at our San Francisco office; 1255 Battery Street,  
20 Suite 300, San Francisco, California 94111.

21 JUDGE SOTOLONGO: S -- S-C -- what was it again?

22 THE WITNESS: Yeah. Sorry. S-C-H-U-L-T-Z.

23 JUDGE SOTOLONGO: Okay. Very well. Thank you very much.  
24 Please proceed, Mr. Kaufman.

25 //

1 DIRECT EXAMINATION

2 Q BY MR. KAUFMAN: Ms. Schultz, what's your current  
3 position?

4 A Human Resources Manager.

5 Q And in July and August of 2016, what was your position  
6 then?

7 A Human Resources Manager.

8 Q And where were you located during that July and August of  
9 '16?

10 A At our Woodbridge Winery in Lodi, California.

11 Q Okay. And did you have more of a title other than VP of  
12 Human Sources when you were at Woodbridge or do you have one  
13 now or --

14 A My title is still Human Resources Manager. At the time I  
15 supported the Woodbridge Winery facility on our procurement  
16 team within U.S. Wine and Spirits Operations and now I'm Human  
17 Resources Manager supporting our growth organization.

18 Q Okay. In simpler vernacular, were you head of human  
19 resources at Woodbridge at that time?

20 A Yes.

21 Q Okay. I'm going to show you what has been marked as GC  
22 Exhibit 2?

23 MR. KAUFMAN: Your Honor, do you have Exhibit 2?

24 JUDGE SOTOLONGO: Yes. Got it. Let the record show that I  
25 have handed Ms. Schultz a copy of General Counsel's Number 2.

1 Could you just --

2 Q BY MR. KAUFMAN: Have you ever seen this vest?

3 A Yes.

4 Q When did you see this vest?

5 A I saw it on August 4th when I brought Manuel Chavez into  
6 Josh Schulze's office to speak to him and ask him to remove the  
7 vest.

8 Q Okay. Did you ever receive any reports about this vest  
9 prior to August 4th?

10 A Yes. August 1st. My employee, Normalinda Cantu came, to  
11 me and said that she had just seen Manuel walking away from a  
12 meeting she said with him wearing it.

13 JUDGE SOTOLONGO: Yeah. Ms. Schultz, I'm going to ask  
14 you -- I see some of the counsel leaning over. He's  
15 microphones do not amplify your voice; it simply records.

16 THE WITNESS: Okay.

17 JUDGE SOTOLONGO: So you need to project your voice enough  
18 so that not only these folks in the table here --

19 THE WITNESS: Uh-huh.

20 JUDGE SOTOLONGO: -- here, but the attorneys --

21 THE WITNESS: Okay.

22 JUDGE SOTOLONGO: -- in the other table way back there can  
23 hear you. So if you can just project your voice a little more.  
24 I think that some people are having -- having a tough time  
25 hearing you. So --

1 THE WITNESS: Okay.

2 JUDGE SOTOLONGO: All right.

3 THE WITNESS: Thank you.

4 Do you want me to repeat that? Okay.

5 MR. KAUFMAN: Did you -- were you able to get that?

6 THE COURT REPORTER: No audible response.

7 MR. KAUFMAN: Yes. Okay.

8 JUDGE SOTOLONGO: Okay.

9 THE WITNESS: Okay.

10 Q BY MR. KAUFMAN: You stated that -- what -- what was  
11 Normalinda Cantu's position at that point in time?

12 A She was the Human Resources Generalist, and she reported  
13 to me.

14 Q Okay. And you said she reported this to you on  
15 November 1st -- I'm sorry -- August 1st?

16 A August 1st, yep.

17 Q Of 2016?

18 A Correct.

19 Q And where were you when she reported this to you?

20 A In my office.

21 Q Okay. And did she have an appointment to see you?

22 A No.

23 Q So she just came straight to your office --

24 A Yeah.

25 Q -- if you know?

1 A Yeah.

2 Q Okay.

3 A No, she did. So she went and -- and -- Normalinda had a  
4 meeting with Manuel to talk to him about some pay stub  
5 questions that he had. And so she noticed the vest at that  
6 time and then she came right to my office to say that she saw  
7 it and she was concerned about it and wanted to talk to me  
8 about that.

9 Q And did she start the conversation or did you start the  
10 conversation?

11 A She did. She came in and said that she just had this  
12 conversation with Manuel and Jerry Ramos, the cellar  
13 supervisor, and going through his, again, payroll questions.  
14 And then at the time when Manuel got up to leave Jerry's  
15 office, she saw him walking away with it on. And -- and then  
16 she shared with me that she had a conversation with Jerry in  
17 his office asking Jerry if he saw the vest. She said he had  
18 not seen the vest yet, didn't know about it.

19 MS. GOMEZ: Objection; hearsay.

20 THE WITNESS: Okay. Sorry. She said -- she's -- that what  
21 she shared with me that she saw.

22 So she said to me that she saw -- that she asked Jerry if  
23 he saw and it Jerry told her no, that he hadn't. And then she  
24 said that, you know, Jerry -- her and Jerry were both offended  
25 by it and concerned because of the sensitivity of the topic in

1 A Josh said that we -- you know, he said, "Manuel, we  
2 brought you up here to talk to you about your vest. We heard  
3 that you're wearing the vest that says Cellar Lives Matter on  
4 the back and we wanted to have a conversation with you about  
5 that." He explained -- Josh explained that, again, due to the  
6 sensitive that of what that means and where that slogan was a  
7 play from and that he was concerned that we could have a  
8 situation at work where people felt uncomfortable or people  
9 felt harassed or intimidated or upset by it and we didn't  
10 honest like violence.

11 And I then added in our policies that we have in our  
12 employee handbook explaining our prevention of harassment  
13 policy, our workplace violence policy. I did not have the  
14 actually handbook and show it to him, I just mentioned it to  
15 him. And it was at the point where -- throughout this  
16 discussion, it was -- I mean this is a 30- or 40-minute  
17 discussion. But we -- and Josh and I are going back and forth.  
18 So part of it I don't specifically remember who exactly was  
19 saying what between the two of you.

20 But at the point when I mentioned the -- the Dallas police  
21 shootings, that's when I felt it really resonated with Manuel  
22 and that's when he shared -- he first asked if I -- if we  
23 thought that it was racially motivated. And Josh said no and I  
24 said yes at the same time. And then both Josh and Manuel  
25 looked at me and paused. And -- and I said I felt, yes, it

1 was -- not racially motivated in the sense that I felt that  
2 Manuel had any ill intent behind it but that I thought it was a  
3 playoff of Black Lives Matter, which is a racially driven  
4 movement throughout the United States. And that I felt that  
5 was where my concern was.

6 And then I again explained my -- the anti-harassment policy  
7 and about not inviting violence in the workplace, making sure  
8 that people are protected from -- you know, protected classes  
9 and whatnot.

10 And -- I'm trying to think of what else we -- Manuel did  
11 ask -- so at the point where I -- I brought up the Dallas  
12 police shootings, Manuel explained, you know, he didn't mean it  
13 racially, he did not mean ill intent. He said that he was  
14 joking. He just thought it was funny. It was a play on words.  
15 He said that he pull it from Black Lives Matter; that is where  
16 he got it from.

17 And -- and at the -- he said now that I mentioned police,  
18 that really hits home. That his son wanted to join the police  
19 force in Stockton, which in particular is a somewhat dangerous  
20 area that's known for police. And so he absolutely does not  
21 want to bring ill intent or harm to police officers. That's  
22 the point where what we were saying really resonated with him.  
23 His body language changed. And -- and he said he absolutely  
24 understood. He felt -- again, he thought it was funny, he  
25 thought it was -- you know, he -- he just thought he was being

1 A We explained -- we didn't explain what the movement was.  
2 We talked about that Black Lives Matter was a large topic in  
3 the United States at that point, that there were protests  
4 across the country, that civilians and the police were losing  
5 their lives over it. So it was really sensitive and it -- you  
6 know, when you look at the protests across the nation, they're  
7 pretty violent protests. And we just were concerned and did  
8 not want to invite that kind of violence at work.

9 JUDGE SOTOLONGO: And this is something you said to him --

10 THE WITNESS: Yes.

11 JUDGE SOTOLONGO: -- during the meeting?

12 THE WITNESS: Yes. That's what I said to him.

13 Q BY MR. KAUFMAN: Did you have any other conversation after  
14 this conversation about the Cellar Lives Matter with Manuel  
15 that day?

16 A Yeah. And we talked to him about safety day. So safety  
17 day is a day where we shut down the winery and have a full day  
18 of training to focus on safety. And some of it are annual  
19 updates, and other trainings. It's a mandatory day for  
20 everyone. And Manuel was out sick that day for it. And there  
21 was only two employees that were out sick that day for it and  
22 Manuel was one of two employees.

23 And so we -- we brought that up to him to ask him why and  
24 explain the importance of what safety day was. Josh was  
25 driving --

1 Q Well, I -- what does that mean? "About the lunch that was  
2 served?"

3 A So they talked about tri-tip. I don't know. And I'm a  
4 vegetarian. And they were trying to explain to me that that's  
5 not fish. So they went into a long conversation about tri-tip  
6 and I was not following, but they -- they went into a  
7 conversation that was served -- that was the lunch that was  
8 served at safety. And Josh brought that up.

9 MS. PLATENCAMP: Objection. She's providing a narrative.

10 THE WITNESS: So Josh explained to him that he also missed  
11 the tri-tip, which was really good. And then I was not paying  
12 attention. I was sort of disgusted by the animal talk.

13 Q BY MR. KAUFMAN: Were there any other topics that were  
14 discussed that day?

15 A Yep. And then Manuel asked if he could speak to us while  
16 he was there. And, actually, two things. One, he asked and  
17 said that he had other slogans that he wanted to write on his  
18 vest that he felt wouldn't be hurt -- offensive to anyone, and  
19 he wanted to run them by us and see if he would be allowed to  
20 write those on his vest. And Josh again explained that again,  
21 "No. If it's your name or 'Win Your Day' or something else  
22 that represents safety, you can do that but you can't write  
23 other slogans. We don't invite that. We have our vests there  
24 for safety and for the high visibility."

25 And -- and then Manuel wanted to speak about holidays.

1 Q What was the discussion?

2 A Well, as soon as Josh told me, I said I was absolutely  
3 dumfounded and shocked because -- and I said, again, we went  
4 through all the trouble of meeting with lawyers, having lots of  
5 conversations over a few day period before we met with Manuel  
6 to ask him to take the vest off where -- and I said, again, if  
7 it had been any other employee, I would have just gone out  
8 there and had them take the vest off without even having a  
9 conversation with anyone else about it.

10 And so I was just shocked that we -- I thought we had a  
11 great -- I said, "I thought we had a great conversation with  
12 Manuel. I thought it was really friendly and amicable." And I  
13 was surprised. And I said again, that I was surprised,  
14 "because he understood why we were asking him to take it off.  
15 He genuinely was concerned" -- "Manuel was genuinely concerned  
16 himself about not bringing harm to police." So I just said  
17 that I was shocked. And Josh agreed.

18 MR. KAUFMAN: I have no further questions at this point,  
19 Your Honor.

20 JUDGE SOTOLONGO: All right. Ms. Gomez?

21 **CROSS-EXAMINATION**

22 Q BY MS. GOMEZ: Good morning, Ms. Schultz. My name --

23 A Hi.

24 Q -- is Lelia Gomez. I'm an attorney with the General  
25 Counsel. I just have a few questions for you this morning.

1 A Cantu.

2 Q Cantu. Thank you.

3 -- on the 1st. She came to you after she had met with  
4 Mr. Chavez and Mr. Ramos concerning some payroll matters. And  
5 you noted that when she came and spoke with you, she informed  
6 you that she had seen Mr. Chavez wear his vest and that she was  
7 concerned about it.

8 Did she specify exactly what her concern was during that  
9 meeting?

10 A Yes. She shared that she was concerned again because of  
11 what was happening in the nation with all of the protests, and  
12 she said in particular, "The Dallas shootings, police shootings  
13 having just happened."

14 Q Okay. And those were her exact words?

15 A Yes.

16 Q Okay. And, to your knowledge, has there been any  
17 complaint from an employee regarding Mr. Chavez' vest?

18 A Well, Normalinda is an employee. But -- and then Jeff  
19 Moeckly said that he was also concerned. I do not know of any  
20 cellar employees --

21 Q Okay.

22 A -- coming forward.

23 Q But just to clarify, Ms. Cantu is HR Manager; is that  
24 correct?

25 A A generalist.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**CONSTELLATION BRANDS, U.S. OPERATIONS,  
INC. D/B/A WOODBRIDGE WINERY**

**and**

**Cases: 32-CA-186238  
32-CA-186265**

**CANNERY, WAREHOUSEMEN, FOOD PROCESSORS,  
DRIVERS AND HELPERS, LOCAL UNION NO. 601,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**STIPULATIONS**

1. The below parties agree and stipulate that the Employer involved in Cases 32-CA-186238 and 32-CA-186265 is Constellations Brands, U.S. Operations Inc. d/b/a Woodbridge Winery (hereinafter Respondent) and in conducting its operations during the 12-month period ending December 31, 2016, Respondent has directly purchased and received products values in excess of \$50,000 from suppliers located outside the State of California
2. The below parties agree and stipulate that the Cannery, Warehousemen, Food Processors, Drivers, and Helpers, Local Union No. 601, International Brotherhood of Teamsters (hereinafter Union) has been a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (hereinafter Act).
3. The below parties agree and stipulate that at all material times, Joshua Schulze has held the position of General Manager and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.
4. The below parties agree and stipulate that since at least June 14, 2016, and continuing to date, Respondent has maintained a Constellation Brands, Inc. Handbook (Handbook) in effect for its employees ~~working throughout the United States, including those working at~~ Respondent's facility located at 5950 E. Woodbridge Road in Acampo, California 95220, that contains the following provisions (the Handbook Provisions):

- (1) At page 14, under Section 5: "Terms of Employment," the Handbook states:

**USE OF RECORDING DEVICES**

We value open and honest communication. To support this value and respect the interests of employees, the Company prohibits the secret use of recording devices at all times. Out of respect for others, employees are requested to use sensitivity and good judgment if using recording devices, cameras or camera phones in the workplace. Use of cameras or camera phones in restrooms, locker rooms and changing rooms is strictly prohibited.

- (2) At page 27, under Section 11: "Company Short-Term Incentive (Bonus) Plan," the Handbook states:

ELIGIBILITY

"All non-union, regular full-time and part-time employees of the Company are eligible for the incentive plan."

- (3) At page 13, under Section 5: "Terms of Employment" in the "Use of Social Media" policy, the Handbook states:

Employee "Endorsements" - Required Disclaimers:

Employees must use appropriate disclaimers when using social media. Federal law has strict requirements concerning "testimonials" and "endorsements." If you use social media and you: (1) identify yourself as a Company employee, and (2) contribute content about or relating to the Company or its products, you should include a disclaimer to make it clear that you are not speaking on behalf of the Company.

Testimonials or endorsements about the Company or its products should be avoided. In the event that you use social media for any testimonials or endorsements of the Company or its products, you should clearly and conspicuously disclose your relationship to the Company to users and readers of the social media site or post.

For Constellations Brands, U.S. Operations Inc. d/b/a Woodbridge Winery



Michael Kaufman, Attorney

5/3/17

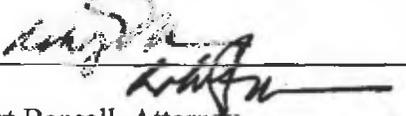
Dated

EXHIBIT NO. 5-1 RECEIVED  REJECTED

32-CA-186238  
CASE NO. \_\_\_\_\_ CASE NAME: Constellation Brands

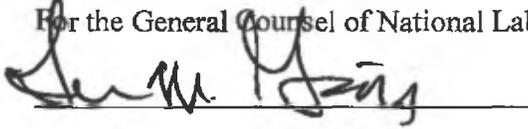
NO. OF PAGES: 3 DATE: 5/3/17 REPORTER: BLAST

For the Cannery, Warehousemen, Food Processors, Drivers, and Helpers, Local  
Union No. 601, International Brotherhood of Teamsters

  
\_\_\_\_\_  
Robert Bonsall, Attorney

5/1/17  
5/2/17  
Dated

For the General Counsel of National Labor Relations Board

  
\_\_\_\_\_  
Lelia M. Gomez, Attorney

5/2/17  
Dated

INTERNET  
FORM NLRB 602  
(2-08)

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
PETITION

FORM EXEMPT UNDER 4 U.S.C.

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed
32-RC-135779	9/02/2014

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees

RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner

RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees (Check one)  In unit not previously certified  In unit previously certified in Case No. \_\_\_\_\_

AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. \_\_\_\_\_ Attach statement describing the specific amendment sought

2. Name of Employer: Constellation Brands, Woodbridge Winery  
 Employer Representative to contact: John Schulze, GM  
 Tel No: (209) 369-5861

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): 5950 E. Woodbridge Road, Acampo, CA 95220  
 Fax No: (209) 365-8036

4a. Type of Establishment (Factory, mine, wholesaler, etc.): Winery  
 4b. Identify principal product or service: Wine  
 Cell No:  
 e-Mail:

5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification):  
 Included: All full-time and regular part-time General Operators, Master Operators, Senior Operators and Working Foremen in the Employer's Cellar Operation in Acampo, California.  
 Excluded: All managers, supervisors, office clerical employees, guards, and temporary workers as defined by the Act.  
 6a. Number of Employees in Unit:  
 Present: Approximately 45  
 Proposed (By UC/AC):  
 6b. Is this petition supported by 30% or more of the employees in the unit?  Yes  No  
 \*Not applicable to RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a.  Request for recognition as Bargaining Representative was made on (Date) (By this Petition) and Employer declined recognition on or about (Date) (If no reply received, so state).

7b.  Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state):  
 Affiliation:  
 Address:  
 Tel. No:  
 Cell No:  
 Date of Recognition or Certification:  
 Fax No:  
 e-Mail:

9. Expiration Date of Current Contract, if any (Month, Day, Year):  
 10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year):

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes  No   
 11b. If so, approximately how many employees are participating?  
 11c. The Employer has been picketed by or on behalf of (insert Name) \_\_\_\_\_, a labor organization, at (insert Address) \_\_\_\_\_ Since (Month, Day, Year) \_\_\_\_\_

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above (If none, so state):  
 Name: None  
 Address:  
 Tel. No:  
 Fax No:  
 Cell No:  
 e-Mail:

13. Full name of party filing petition (If labor organization, give full name, including local name and number):  
 Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601

14a. Address (street and number, city, state, and ZIP code): 745 East Miner Avenue, Stockton, CA 95202  
 14b. Tel. No: (209) 948-2800 EX1  
 14c. Fax No: (209) 948-2876  
 14d. Cell No:  
 14e. e-Mail:

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization):  
 International Brotherhood of Teamsters

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.  
 Name (Print): Robert Bonsall  
 Signature: [Signature]  
 Title (if any): Attorney at Law  
 Address (street and number, city, state, and ZIP code): Beeson Tayer & Bodine, APC, 520 Capitol Mall, Suite 300, Sacramento, CA 95814  
 Tel. No: (916) 325-2100  
 Fax No: (916) 325-2120  
 Cell No: (916) 425-4699  
 e-Mail: rbonsall@beesonayer.com

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the public is prohibited; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Supp. A 075  
77 Wm 7(a)

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

CONSTELLATIONS BRANDS, U.S. OPERATIONS,  
INC. D/B/A WOODBRIDGE WINERY

Employer

and

CANNERY, WAREHOUSEMEN, FOOD  
PROCESSORS, DRIVERS AND HELPERS, LOCAL  
UNION NO 601, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

Petitioner

Case 32-RC-135779

TYPE OF ELECTION: STIPULATED

**CERTIFICATION OF REPRESENTATIVE**

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

**CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND  
HELPERS, LOCAL UNION NO 601, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

**UNIT:** All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California Facility, excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, and managers and supervisors as defined in the Act.



March 12, 2015

/s/ George Velastegui

George Velastegui  
Regional Director, Region 32  
National Labor Relations Board

Constellation Brands, U.S. Operations, Inc.  
d/b/a Woodbridge Winery  
Case 32-RC-135779

**NOTICE OF BARGAINING OBLIGATION**

In the recent representation election, a labor organization received a majority of the valid votes cast. Except in unusual circumstances, unless the results of the election are subsequently set aside in a post-election proceeding, the employer's legal obligation to refrain from unilaterally changing bargaining unit employees' terms and conditions of employment begins on the date of the election.

The employer is not precluded from changing bargaining unit employees' terms and conditions during the pendency of post-election proceedings, **as long as** the employer (a) gives sufficient notice to the labor organization concerning the proposed change(s); (b) negotiates in good faith with the labor organization, upon request; and (c) good faith bargaining between the employer and the labor organization leads to agreement or overall lawful impasse.

This is so even if the employer, or some other party, files objections to the election pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board (the Board). If the objections are later overruled and the labor organization is certified as the employees' collective-bargaining representative, the employer's obligation to refrain from making unilateral changes to bargaining unit employees' terms and conditions of employment begins on the date of the election, not on the date of the subsequent decision by the Board or court. Specifically, the Board has held that, absent exceptional circumstances,<sup>1</sup> an employer acts at its peril in making changes in wages, hours, or other terms and conditions of employment during the period while objections are pending and the final determination about certification of the labor organization has not yet been made.

It is important that all parties be aware of the potential liabilities if the employer unilaterally alters bargaining unit employees' terms and conditions of employment during the pendency of post-election proceedings. Thus, typically, if an employer makes post-election changes in employees' wages, hours, or other terms and conditions of employment without notice to or consultation with the labor organization that is ultimately certified as the employees' collective-bargaining representative, it violates Section 8(a)(1) and (5) of the National Labor Relations Act since such changes have the effect of undermining the labor organization's status as the statutory representative of the employees. This is so even if the changes were motivated by sound business considerations and not for the purpose of undermining the labor organization. As a remedy, the employer could be required to: 1) restore the status quo ante; 2) bargain, upon request, with the labor organization with respect to these changes; and 3) compensate employees, with interest, for monetary losses resulting from the unilateral implementation of these changes, until the employer bargains in good faith with the labor organization, upon request, or bargains to overall lawful impasse.

<sup>1</sup> Exceptions may include the presence of a longstanding past practice, discrete event, or exigent economic circumstance requiring an immediate response.

EXHIBIT NO. Ex(c) RECEIVED  REJECTED

32-CA-186238  
CASE NO. \_\_\_\_\_ CASE NAME: Constellation Brands

NO. OF PAGES: 2 DATE: 5/31/17 REPORTER: BLAST

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery and Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters. Case 32-CA-148431**

July 29, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters (the Union) on March 18, 2015, the General Counsel issued the complaint on May 13, 2015, alleging that Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery (the Respondent) has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 32-RC-135779. (Official notice is taken of the record in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 4, 2015, the General Counsel filed a Motion for Summary Judgment. On June 8, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of its position that the petitioned-for unit is inappropriate. In addition, the Respondent contends that necessary credibility resolutions were not made in the prior representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special cir-

cumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a New York corporation with an office and place of business in Acampo, California (the facility), has been engaged in the business of producing wine.

During the 12-month period ending March 18, 2015, the Respondent, in conducting its operations described above, purchased and received at the facility goods valued in excess of \$50,000 directly from points outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on March 4, 2015, the Union was certified on March 12, 2015, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

The Union continues to be the exclusive collective-bargaining representative of the unit employees under Section 9(a) of the Act.

B. *Refusal to Bargain*

By letters dated March 5 and 13, 2015, the Union requested that the Respondent bargain with it as the exclusive collective-bargaining representative of the unit employees and, since March 25, 2015, the Respondent has refused to do so.

We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing since March 25, 2015, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (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).

#### ORDER

The National Labor Relations Board orders that the Respondent, Constellation Brands, U.S. Operations, Inc. d/b/a Woodbridge Winery, Acampo, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by the Employer at its Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Acampo, California, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 25, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 29, 2015

Mark Gaston Pearce,

Chairman

Kent Y. Hirozawa,

Member

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WOODBIDGE WINERY

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Cannery, Warehousemen, Food Processors, Drivers and Helpers, Local Union No. 601, International Brotherhood of Teamsters as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time operator I, operator II, senior operator, and foremen employees working in the outside cellar department and employed by us at our Acampo, California, facility; excluding all other employees, office clerical employees, temporary workers, employees working in the following departments: barrel, cellar services, recycling, wine info, facilities maintenance, engineering, bottling, bottling sanitation, bottling maintenance, quality control, laboratories, warehouse, and winemaking, guards, managers, and supervisors as defined in the Act.

CONSTELLATION BRANDS, U.S. OPERATIONS, INC. D/B/A WOODBRIDGE WINERY

The Board's decision can be found at www.nlr.gov/case/32-CA-148431 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



15-2442-ag, 15-4106-ag

*Constellation Brands, U.S. Operations, Inc. v. NLRB*

In the  
United States Court of Appeals  
for the Second Circuit

---

AUGUST TERM 2016

Nos. 15-2442-ag, 15-4106-ag

CONSTELLATION BRANDS, U.S. OPERATIONS, INC., DBA WOODBRIDGE  
WINERY,  
*Petitioner–Cross-Respondent,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent–Cross-Petitioner,*

TEAMSTERS LOCAL UNION 601,  
*Intervenor.*

---

Petitions for review and enforcement of orders of the National Labor  
Relations Board

---

ARGUED: AUGUST 24, 2016  
DECIDED: NOVEMBER 21, 2016

---

Before: WALKER, CABRANES, and LOHIER, Circuit Judges.

This case presents two questions. The first is whether the framework for evaluating proposed bargaining units set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. 934 (2011), is unlawful. Under this framework, the National Labor Relations Board (the “Board”) uses a two-step analysis to determine whether a union’s proposed bargaining unit consists of employees who share a “community of interests” and does not arbitrarily exclude other employees. Several sister circuits recently approved this standard, but we have yet to opine on this question. The second question is whether the Board properly applied the *Specialty Healthcare* framework in its order at issue in this case.

We hold the *Specialty Healthcare* framework to be valid, as our sister circuits have, and to be consistent with this Court’s precedent. We conclude that the Board did not properly apply the *Specialty Healthcare* framework, however, in its decision and order against Constellation Brands, U.S. Operations, Inc., d/b/a Woodbridge Winery. In approving the petitioned-for collective bargaining unit, the Board did not analyze at step one of the *Specialty Healthcare* framework whether the excluded employees had meaningfully distinct interests from members of the petitioned-for unit in the context of collective bargaining that outweigh similarities with unit members.

EXHIBIT NO. ST-3(c) RECEIVED  REJECTED   
CASE NO. 32-CA-186238 CASE NAME: Constellation Brands  
NO. OF PAGES: 23 DATE: 5/3/17 REPORTER: B/AST

Accordingly, we **GRANT** the petition for review, **DENY** the Board's cross-petition for enforcement, and **REMAND** the cause to the Board for further proceedings consistent with the record of this matter and this opinion.

---

SHAY DVORETZKY (David Raimer, Willis J. Goldsmith, *on the brief*) Jones Day, Washington, DC, *for Petitioner–Cross-Respondent*.

GREG P. LAURO, Attorney (Jennifer Abruzzo, Deputy General Counsel; John H. Ferguson, Associate General Counsel; Linda Dreeben, Deputy Associate General Counsel; Julie B. Broido, Supervisory Attorney, *on the brief*), *for* Richard F. Griffin, Jr., General Counsel, National Labor Relations Board, Washington, DC, *for Respondent–Cross-Petitioner*.

MATTHEW J. GINSBURG, AFL-CIO, Washington, DC (James B. Coppess, AFL-CIO, Washington, DC; Robert Bonsall, Beeson, Tayer & Bodine, Sacramento, CA, *on the brief*), *for Intervenor*.

---

JOSÉ A. CABRANES, *Circuit Judge*:

This case presents two questions. The first is whether the framework for evaluating proposed bargaining units set forth in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 N.L.R.B. 934 (2011), is unlawful. Under this framework, the National Labor Relations Board (the “Board”) uses a two-step analysis to determine whether a union’s proposed bargaining unit consists of employees who share a “community of interests” and does not arbitrarily exclude other employees. Several sister circuits recently approved this standard, but we have yet to opine on this question.<sup>1</sup> The second question is whether the Board properly applied the *Specialty Healthcare* framework in its order at issue in this case.

We hold the *Specialty Healthcare* framework to be valid, as our sister circuits have, and to be consistent with this Court’s precedent. We conclude, however, that the Board did not properly apply the *Specialty Healthcare* framework in its decision and order against Constellation Brands, U.S. Operations, Inc., d/b/a Woodbridge Winery (“Constellation”). In approving the petitioned-for collective bargaining unit, the Board did not analyze at step one of the *Specialty*

---

<sup>1</sup> See *Kindred Nursing Ctrs. E., LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013) (enforcing the original *Specialty Healthcare* case); accord *FedEx Freight, Inc. v. NLRB*, ---F.3d---, 2016 WL 5929822 (7th Cir. Oct. 12, 2016); *NLRB v. FedEx Freight, Inc.*, 832 F.3d 432 (3d Cir. 2016); *Nestle Dreyer’s Ice Cream Co. v. NLRB*, 821 F.3d 489 (4th Cir. 2016) (rejecting challenge under the National Labor Relations Act and the Administrative Procedure Act); *Macy’s, Inc. v. NLRB*, 824 F.3d 557 (5th Cir. 2016); *FedEx Freight, Inc. v. NLRB*, 816 F.3d 515 (8th Cir. 2016).

*Healthcare* framework whether the excluded employees had meaningfully distinct interests from members of the petitioned-for unit in the context of collective bargaining that outweigh similarities with unit members.

Accordingly, we **GRANT** the petition for review, **DENY** the Board's cross-petition for enforcement, and **REMAND** the cause to the Board for further proceedings consistent with the record of this matter and this opinion.

## BACKGROUND

Constellation owns and operates Woodbridge Winery in California, which employs about 100 managers and 200 production and maintenance employees. Its employees are divided into various departments. This case concerns the cellar operations department, which is organized into two subgroups: "outsider cellar" with 46 employees and "barrel" with 18 employees. The parties dispute whether the "outside cellar" employees form a group that is sufficiently distinct from the "barrel" employees (as well as from Constellation's other employees) that they may be treated separately for collective bargaining purposes under Section 9 of the National Labor Relations Act ("NLRA").<sup>2</sup>

---

<sup>2</sup> 29 U.S.C. § 159 (laying out the procedures by which the Board resolves a question of representation and directs an election).

The certification of a bargaining unit falls largely to the Board's Regional Directors ("RDs"), who are appointed by the General Counsel and approved by the Board, and to hearing officers in the regional offices, who report to the RDs.<sup>3</sup> Parties seeking to determine whether a particular labor organization has majority support in a workplace submit a petition for an election to the Board's regional office.<sup>4</sup> Where the parties do not agree on an appropriate bargaining unit, a hearing officer will conduct a representation hearing to "determine the unit appropriate for the purposes of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot . . . and certify the results thereof."<sup>5</sup> Based on the hearing officer's report, the RD will decide on the petition and, if warranted, direct an election and prescribe its procedures. Although

---

<sup>3</sup> *See id.* § 153(b) ("The Board is . . . authorized to delegate to its regional directors its powers . . . to determine the unit appropriate for the purpose of collective bargaining . . ."); 29 C.F.R. § 102.64 (2015) (describing the conduct of hearings before hearing officers); *id.* § 102.67 (concerning proceedings before RDs).

While substantial power has been delegated to the RDs, the Board's General Counsel, a Presidential appointee whose nomination is subject to the advice and consent of the Senate, retains the ultimate authority with respect to "the investigation of charges and issuance of complaints" under the NLRA. *See* 29 U.S.C. § 153(d).

<sup>4</sup> *See id.* § 159(c) (requiring a petition be filed to seek Board approval of a proposed bargaining unit).

<sup>5</sup> *Id.* § 153(b).

parties have the right to appeal the RD's decision to a three-member panel of the Board, the Board's review is discretionary and granted only in limited circumstance.<sup>6</sup> Following the Board's review, elections are held and the RD may certify the results.

On September 2, 2014, the Teamsters Local Union 601 (the "Union") filed a petition seeking to represent Constellation's outside cellar employees as a bargaining unit. Constellation objected, arguing that an appropriate unit should encompass all production and maintenance employees or, at a minimum, all cellar operations employees. Following a hearing, the RD decided in favor of the Union and directed that an election be held. In determining that the Union's proposed bargaining unit of outside cellar employees was appropriate, the RD applied the *Specialty Healthcare* standard. On February 26, 2015, a three-member panel of the Board (Chairman Pearce, Member Hirozawa, and Member McFerran) denied Constellation's request to review the RD's decision, stating that

---

<sup>6</sup> See 29 C.F.R. § 102.67(d) (2015) ("The Board will grant a request for review only where compelling reasons exist therefor. . . . [R]eview may be granted only upon one or more of the following grounds: (1) That a substantial question of law or policy is raised because of: (i) [t]he absence of; or (ii) [a] departure from, officially reported Board precedent. (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party. (3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error. (4) That there are compelling reasons for reconsideration of an important Board rule or policy.").

Constellation had “raise[d] no substantial issues warranting review.”  
Special App. 4.

In the Board-ordered election, the outside cellar employees voted 31–13 to unionize and the RD certified the Union as the collective-bargaining representative of those employees. Following the usual procedure for contesting the validity of a union election, Constellation refused to bargain with the Union, which then filed an unfair-labor-practice charge.<sup>7</sup> On July 29, 2015, a three-member Board panel granted the General Counsel’s motion for summary judgment and concluded that Constellation had violated the NLRA by refusing to bargain.<sup>8</sup> Constellation subsequently petitioned for review of that decision, and the Board filed a cross-petition for enforcement.

## JURISDICTION

While both parties agree that we have jurisdiction, we nonetheless consider the issue independently.<sup>9</sup> The Board had

---

<sup>7</sup> The well-settled practice for challenging the appropriateness of a bargaining unit is refusing to bargain with the proposed unit and then defending against an unfair labor practice charge on the ground that the unit is inappropriate. *See, e.g., NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 709 (2001) (“Because direct judicial review of representation determinations is unavailable, . . . the respondent sought indirect review by refusing to bargain with the union, thereby inducing the General Counsel of the Board to file an unfair labor practice complaint under §§ 8(a)(1) and 8(a)(5) [of the NLRA].” (citation omitted)).

<sup>8</sup> *See Constellation Brands*, 362 N.L.R.B. No. 151 (2015).

<sup>9</sup> *See, e.g., Taylor v. Rogich*, 781 F.3d 647, 648 n.2 (2d Cir. 2015).

jurisdiction over the original petition under 29 U.S.C. § 160(a)–(c), which empowers the Board to prevent unfair labor practices.<sup>10</sup> Since Constellation is a New York corporation and transacts business within this Circuit, we have jurisdiction over the petition for review and the cross-petition for enforcement under 29 U.S.C. § 160(f).<sup>11</sup>

---

<sup>10</sup> 29 U.S.C. § 160(a)–(c) provides, in relevant part: “The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158 of this title) affecting commerce. . . . If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter . . . .”

<sup>11</sup> 29 U.S.C. § 160(f) provides: “Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business . . . by filing in such a court a written petition praying that the order of the Board be modified or set aside.”; see also *Boire v. Greyhound Corp.*, 376 U.S. 473, 476–79 (1964).

In addition, 29 U.S.C. § 159(d) stipulates that the record and findings made in the underlying representation proceeding is part of the record before this Court. It provides: “Whenever an order of the Board . . . is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection (e) or (f) of section 160 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be

## DISCUSSION

### A. The Legality of the *Specialty Healthcare* Framework

The threshold question presented is whether we, along with six of our sister circuits,<sup>12</sup> should also adopt the *Specialty Healthcare* framework. “[W]e review the Board’s legal conclusions to ensure that they have a reasonable basis in law.”<sup>13</sup>

When considering a petition for a proposed bargaining unit, an RD has discretion to approve *any* appropriate unit, not just “*the* single most appropriate unit.”<sup>14</sup> To guide its discretion, the RD has traditionally asked whether the members of the proposed unit share a “community of interests distinct from their interests as employees of the whole institution.”<sup>15</sup> In *Specialty Healthcare*, the Board clarified this traditional approach by introducing a new, two-step analysis.

---

made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.”

<sup>12</sup> See *ante* note 1.

<sup>13</sup> *NLRB v. Special Touch Home Care Servs., Inc.*, 566 F.3d 292, 296–97 (2d Cir. 2009) (quotation marks omitted).

<sup>14</sup> *Am. Hosp. Ass’n v. NLRB*, 499 U.S. 606, 610 (1991). This discretion is derived from 29 U.S.C. § 159(b) that states, in relevant part: “The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining . . . .” *Id.*

<sup>15</sup> *Staten Island Univ. Hosp. v. NLRB*, 24 F.3d 450, 454 (2d Cir. 1994).

“[I]n step one, the Board [*i.e.*, the RD] performs a community-of-interest analysis to determine whether the proposed unit is appropriate; if the unit is found appropriate, in step two [the party opposing certification] must demonstrate that the excluded employees it wishes to include share an ‘overwhelming community of interest’ with the included employees.”<sup>16</sup>

While the RD’s discretion in determining the appropriateness of a bargaining unit is broad, it is not unlimited. Section 9(c) of the NLRA explicitly states that “[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling.”<sup>17</sup> The Board has long disfavored fractured units that may arbitrarily exclude certain groups of employees or could invite “gerrymandering” of interests among employees.<sup>18</sup>

---

<sup>16</sup> *Nestle Dreyer’s*, 821 F.3d at 496 (emphasis omitted) (quoting *Specialty Healthcare*, 357 N.L.R.B. at 944).

<sup>17</sup> 29 U.S.C. § 159(c)(5).

<sup>18</sup> Francis Biddle, an architect of the NLRA, the second Chairman of the National Labor Board (the predecessor of the Board), and later, Attorney General of the United States, was a vocal opponent of fractured units during the Senate committee hearings prior to the passage of the NLRA: “If the employees themselves could make the decision without proper consideration of the elements which should constitute the appropriate units they could in any given instance defeat the practical significance of the majority rule; and, by breaking off into small groups, could make it impossible for the employer to run his plant.” See *Hearings of S. 1958 Before the S. Comm. On Educ. & Lab.*, 74th Cong. 82 (1935), (statement of Francis Biddle), reprinted in 1 NLRA LEGISLATIVE HISTORY 1458–59. He further recognized then that there was always the risk “of your Board gerrymandering and not carrying out the purposes of the Board,” but noted that

Today, it is well established under Board precedent that “the Board does not approve fractured units, *i.e.*, combinations of employees that are too narrow in scope or that have no rational basis.”<sup>19</sup>

---

“any arbitrary act of the Board in selecting the unit is subject to check on review by the court.” *Id.*

For many years, the Board presumed store-wide or plant-wide units to be appropriate over multiple representation units within an employer. *See, e.g., Laurel Assocs., Inc., d/b/a Jersey Shore Nursing & Rehab. Ctr.*, 325 N.L.R.B. 603 (1998) (service and maintenance unit in nursing home is presumptively appropriate); *Gourmet, Inc., d/b/a Jackson’s Liquors*, 208 N.L.R.B. 807, 808 (1974) (“The employerwide unit . . . is presumptively appropriate.”); *Kalamazoo Paper Box Corp.*, 136 N.L.R.B. 134, 136 (1962) (“A plantwide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.”); *May Dep’t Stores, Co.*, 97 N.L.R.B. 1007, 1008 (1952) (declaring a “store-wide unit” to be “the optimum unit for the purpose of collective bargaining” in the retail industry).

This Circuit has long held a preference for consolidating bargaining units. *See, e.g., Staten Island Univ. Hosp.*, 24 F.3d at 456 (“We regard the single-facility presumption as the kind of rebuttable presumption that was beyond dispute in *American Hospital.*”); accord *NLRB v. Phoenix Programs of N.Y., Inc.*, 2 F. App’x 166, 168–69 (2d Cir. 2001) (summary order) (affirming the Board’s determination that the employer failed to rebut the “single-facility presumption”).

<sup>19</sup> *Seaboard Marine, Ltd.*, 327 N.L.R.B. 556 (1999).

The Board has maintained this governing approach following the *Specialty Healthcare* decision in 2011. *See, e.g., A.S.V., Inc.*, 360 N.L.R.B. No. 138 (2014) (applying *Specialty Healthcare* and rejecting the proposed unit as “fractured” and thus inappropriate); *Odwalla, Inc.*, 357 N.L.R.B. 1608, 1612-13 (2011) (applying *Specialty Healthcare* to find that the recommended unit was an inappropriate “fractured unit” and to further suggest that, even if a smaller constituent part of a proposed unit would constitute an appropriate free-standing unit, the unit may

Certain interested groups argue that the *Specialty Healthcare* test essentially creates a presumption in favor of “micro” unions, causing the undue proliferation of bargaining units that make it difficult for employers to settle labor disputes and that arbitrarily exclude certain employees.<sup>20</sup> In addition to the increased costs to employers of administering multiple contracts and benefit plans or reconciling conflicting demands from separate units, “micro” unions may also, the interested groups argue, diminish the rights of employees.<sup>21</sup> These groups argue that the proliferation of units can allow one bargaining unit to disrupt the operations of an enterprise with unique demands not shared by other employees. “Micro” unions can also make it more difficult for employees to access new opportunities across units and may diminish the overall power of

---

nevertheless become inappropriate if additional employees are proposed for inclusion who have less community of interest with one another than do the excluded employees).

<sup>20</sup> See Brief for Amici Curiae Coalition for a Democratic Workplace, Chamber of Commerce of the United States of America, National Association of Manufacturers, National Retail Federation, and Retail Litigation Center, Inc., at 22-24, *Constellation Brands v. NLRB*, No. 15-2442-ag (2d Cir. Dec. 16, 2015), ECF No. 46.

<sup>21</sup> See *Cont'l Web Press, Inc. v. NLRB*, 742 F.2d 1087, 1090 (7th Cir. 1984) (“[B]reaking up a work force into many small units creates a danger that some of them will be so small and powerless that it will be worth no one’s while to organize them, in which event the members of these units will be left out of the collective bargaining process.”).

labor by creating units so small that they lack influence.<sup>22</sup> Outside groups also echo Constellation's objections that the *Specialty Healthcare* framework is a departure from decades of Board cases<sup>23</sup> and inconsistent with the NLRA.<sup>24</sup>

In the present case, Constellation asserts two objections to the *Specialty Healthcare* test. First, it argues that this test impermissibly gives controlling weight to the extent to which employees have already been organized, thereby departing from past precedent of the Board and contravening the statutory language of the NLRA. Under the prior framework, Constellation argues, the RD had to determine whether the petitioned-for unit had interests "sufficiently distinct from" those of excluded employees as part of the "community of interest" analysis.<sup>25</sup> Under *Specialty Healthcare*, in contrast, that determination of "sufficiently distinct interests" is postponed until

---

<sup>22</sup> See *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153, 1156 (5th Cir. 1980) ("[T]he designation of . . . small unit[s] that exclude[] employees with common skills, attitudes, and economic interests may unnecessarily curtail the union's bargaining power and may generate destructive factionalization and in-fighting among employees.").

<sup>23</sup> See, e.g., *ante* notes 18 and 19 (discussing the Board's historical preference for employer-wide units and opposition to fractured units); *but see, e.g., Montgomery Ward & Co.*, 150 N.L.R.B. 598, 601 (1964) ("[T]he Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.").

<sup>24</sup> 29 U.S.C. § 159(b), (c)(5).

<sup>25</sup> See, e.g., *Wheeling Island Gaming, Inc.*, 355 N.L.R.B. 637, 638 (2010).

step two, at which point the employer must show that excluded employees shared an “*overwhelming* community of interest” with the *presumptively* appropriate petitioned-for group.<sup>26</sup> This heightened showing, Constellation argues, makes it nearly impossible for an employer to resist unions’ efforts to gerrymander bargaining units.

This concern is misplaced. Step one of *Specialty Healthcare* expressly requires the RD to evaluate several factors relevant to “whether the interests of the group sought were sufficiently distinct from those of other employees to warrant the establishment of a separate unit.”<sup>27</sup> For instance, the Board must consider “[w]hether the employees are organized into a *separate* department; have *distinct* skills and training; have *distinct* job functions and perform *distinct* work . . . ; are functionally integrated with the Employer’s other employees; . . . have *distinct* terms and conditions of employment; and are *separately* supervised.”<sup>28</sup> Accordingly, it seems to us that *Specialty Healthcare* does not significantly redefine the showing required of a party seeking Board approval in establishing a bargaining unit. Nor does it contravene Section 9(c) of the NLRA by giving union organizers an inappropriate degree of control.

---

<sup>26</sup> *Nestle Dreyer’s*, 821 F.3d at 496 (quoting *Specialty Healthcare*, 357 N.L.R.B. at 944).

<sup>27</sup> *Id.* at 500 (brackets and internal quotation marks omitted).

<sup>28</sup> *Specialty Healthcare*, 357 N.L.R.B. at 942 (emphases added) (internal quotation marks omitted).

Constellation's second argument against adoption of the rule of *Specialty Healthcare* is that the Board failed to provide a reasoned explanation for the new standard.<sup>29</sup> This argument is also unpersuasive. Step one of *Specialty Healthcare* adopts verbatim the "community of interest" test on which the Board has long relied.<sup>30</sup> Step two is a novel formulation called the "overwhelming community of interest" test, but its substance is consistent with earlier Board precedents that imposed a heightened burden on a party who urges the Board to add employees to a unit that has otherwise been deemed appropriate. Moreover, the phrase "overwhelming community of interest" was taken from a decision of the United States Court of Appeals for the District of Columbia Circuit, which itself purported to summarize relevant Board precedents.<sup>31</sup> One might question the desirability of the Board's approach. Yet it seems implausible to claim that a Board decision, announced in a 14-page opinion (exclusive of the dissent) that borrows heavily from Board and appellate precedent, is invalid because it failed to explain itself.

---

<sup>29</sup> See *Serv. Emps. Int'l Union, Local 32BJ v. NLRB*, 647 F.3d 435, 442 (2d Cir. 2011) ("Where the Board departs from prior interpretations of the Act without explaining why that departure is necessary or appropriate, the Board will have exceeded the bounds of its discretion." (internal quotation marks omitted)).

<sup>30</sup> See *Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157, 172-73 (1971); *Kalamazoo Paper Box Corp.*, 136 N.L.R.B. at 137.

<sup>31</sup> See *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417, 421-23 (D.C. Cir. 2008).

In sum, Constellation has failed to meet its burden of showing that the *Specialty Healthcare* framework is inconsistent with the NLRA or meaningfully departs from the Board's past precedents.

### **B. Did the Board Correctly Apply *Specialty Healthcare*?**

We now turn to the application of the *Specialty Healthcare* framework in this case. In reviewing the Board's decision of unit appropriateness, we are mindful that our task is not to substitute our judgment for that of the Board.<sup>32</sup> The Board is empowered to determine whether a unit is appropriate for the purposes of collective bargaining<sup>33</sup> and "select from those possible arrangements in reaching its unit determination."<sup>34</sup> Although the Board's determination that a bargaining unit is appropriate "will stand unless arbitrary and unreasonable,"<sup>35</sup> we conclude that the RD misapplied the *Specialty Healthcare* framework at step one.

---

<sup>32</sup> See *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951) ("Congress has merely made it clear that a reviewing court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial . . . ."); see also *Banknote Corp. of Am. v. NLRB*, 84 F.3d 637, 651 (2d Cir. 1996).

<sup>33</sup> 29 U.S.C. § 159(b).

<sup>34</sup> *Staten Island Univ. Hosp.*, 24 F.3d at 455.; see also *Universal Camera Corp.*, 340 U.S. at 488.

<sup>35</sup> *Staten Island Univ. Hosp.*, 24 F.3d at 455.

## 1. Step One: “Community of Interest”

Constellation argues that the *Specialty Healthcare* standard improperly rubber stamps a union’s organizing efforts by presumptively approving the petitioned-for unit and creating too high a burden for the objecting party.<sup>36</sup> We rejected that argument above precisely because *Specialty Healthcare* indeed requires the Board to consider, at step one, whether members of the proposed unit have an interest that is “separate and distinct” from all other employees.<sup>37</sup> But merely reciting or repeating the standard cannot substitute for the analysis that *Specialty Healthcare* demands.

The RD (whose decision the Board declined to review) did not make the step-one determination required by *Specialty Healthcare*. Although he appropriately recited the community of interest standard, and declared that “employees in the petitioned-for unit share distinct characteristics,” Special App. 34, the RD did not explain *why* those employees had interests “sufficiently distinct from

---

<sup>36</sup> Constellation argues that the *Specialty Healthcare* test created a new legal standard. By deferring analysis of whether other employees were unjustifiably excluded until step two, the opposing party must now show excluded employees share an “overwhelming community of interests” (not merely a “community of interests”). This higher showing, Constellation contends, violates Section 9(c) of the NLRA by giving controlling weight to the extent to which employees have already been organized. The Board counters that the *Specialty Healthcare* framework “clarified—rather than overhauled—its unit-determination analysis.” See *Nestle Dreyer’s*, 821 F.3d at 500.

<sup>37</sup> *Specialty Healthcare*, 357 N.L.R.B. at 942.

those of other employees to warrant the establishment of a separate unit.”<sup>38</sup> Rather, the RD based his step-one determination on his finding “that the employees in that unit are a readily identifiable group, such that there is a rational basis for grouping them together in a bargaining unit.”<sup>39</sup> Special App. 32. Reciting the legal framework does not substitute for analysis of differences between unit-members and other employees, as required by *Specialty Healthcare*. Indeed, as one of our sister circuits has stated, the very purpose of step one is “to guard against arbitrary exclusions” that have no purchase in the context of collective bargaining.<sup>40</sup>

To be sure, the RD made a number of *factual* findings that tend to show that outside cellar employees had interests distinct from other employees. But he never explained the weight or relevance of those findings. For instance, the RD did not explain why some factual findings, which seemed to indicate the presence of distinct interests,

---

<sup>38</sup> *Nestle Dreyer’s*, 821 F.3d at 500 (internal quotation marks omitted).

<sup>39</sup> While the RD purported to identify differences between members of the petitioned-for unit and other employees at step one, the language was little more than boilerplate. It seems highly unlikely, for example, that only employees of the petitioned-for cellar unit “unlike the unit of employees sought by the Employer . . . must demonstrate skills of lower-level job classifications before moving up to higher-level job classifications within the department,” as the RD claims. Special App. 32-33. It seems implausible that non-cellar employees need not “demonstrate skills” before being promoted. The RD’s remaining findings of differences are similarly conclusory.

<sup>40</sup> *Nestle Dreyer’s*, 821 F.3d at 499.

e.g., “physically separate locations” or “separate front-line [and] immediate supervisors,” should have outweighed other findings of similarities, e.g., similar “job functions and duties,” evidence of “interchange” and “work[ing] together,” and “identical skills and training requirements.” Special App. 44 n.20. To the extent that the RD did provide such explanations, it did so only at step two, *i.e.*, only to rebut a heightened showing that the excluded employees share an “overwhelming community of interest” with the presumptively appropriate petitioned-for unit. This misapplication of *Specialty Healthcare* requires us to deny the Board’s petition for enforcement.<sup>41</sup>

Our sister circuits have accepted the *Specialty Healthcare* framework based on the understanding that it requires the Board to ensure, at step one, that employees are not inappropriately “excluded [from a bargaining unit] on the basis of meager differences.”<sup>42</sup> To properly apply this framework, the Board must *analyze* at step one

---

<sup>41</sup> The Board cannot recite the legal standard and summarize the factual record without any intervening explanation to demonstrate that it has performed the analysis demanded by its own caselaw. *See, e.g., Long Island Head Start Child Dev. Servs. v. NLRB*, 460 F.3d 254, 257–58 (2d Cir. 2006) (“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)); *see also New England Health Care Emps. Union v. N.L.R.B.*, 448 F.3d 189, 194 (2d Cir. 2006) (“[W]e may not supply a reasoned basis for the agency’s action that the agency itself has not given . . . .” (internal quotation marks omitted)).

<sup>42</sup> *Nestle Dreyer’s*, 821 F.3d at 500 (internal quotation marks omitted); *accord FedEx Freight*, 832 F.3d at 442–43.

the facts presented to: (a) identify shared interests among members of the petitioned-for unit, *and* (b) explain why excluded employees have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.<sup>43</sup> Merely recording similarities or differences between employees does not substitute for an explanation of how and why these collective-bargaining interests are relevant and support the conclusion. Explaining why the excluded employees have distinct interests in the context of collective bargaining is necessary to avoid arbitrary lines of demarcation and to avoid making step one of the *Specialty Healthcare* framework a mere rubber stamp.

While the RD has discretion to approve of “*an* appropriate unit, not the *most* appropriate unit,”<sup>44</sup> he may exercise that discretion only after finding, upon analysis, that a petitioner has met its “prima facie” burden under the *Specialty Healthcare* framework. The RD failed to do so here. Nor did the Board exercise its power of review to ensure that the new framework was being appropriately applied. Without this critical first step of the *Specialty Healthcare* framework,

---

<sup>43</sup> Cf. *FedEx Freight*, 832 F.3d at 443 (requiring analysis of “similarities between the employees in the petitioned-for unit and whether their interests were sufficiently distinct from other employees”); *Staten Island Univ. Hosp.*, 24 F.3d at 454 (describing the unit-determination as turning on a finding of “the degree to which employees . . . share a community of interests distinct from their interests as employees of the whole institution”).

<sup>44</sup> *Staten Island Univ. Hosp.*, 24 F.3d at 455 (citation omitted).

the burden would be exclusively on the employer to prove the absence of distinctions. Such a burden is inconsistent with the NLRA and the Board's past precedent.

## 2. Step Two: "Overwhelming Community of Interests"

Constellation argues that it should also prevail at step two of the *Specialty Healthcare* framework, known as the "overwhelming community of interests" test, which requires that Constellation show "that there is no legitimate basis upon which to exclude" barrel employees from that unit.<sup>45</sup> We need not reach this question. Since the Board failed to perform the requisite analysis at step one, its decision and order dated July 29, 2015 against Constellation cannot stand.

## CONCLUSION

To summarize, we hold as follows:

- (1) The Board's framework set forth in *Specialty Healthcare* for determining a bargaining unit's appropriateness is consistent with the NLRA and the Board's past precedent. Constellation failed to show that the *Specialty Healthcare* framework essentially creates a presumption in favor of "micro" unions by inappropriately placing the burden on

---

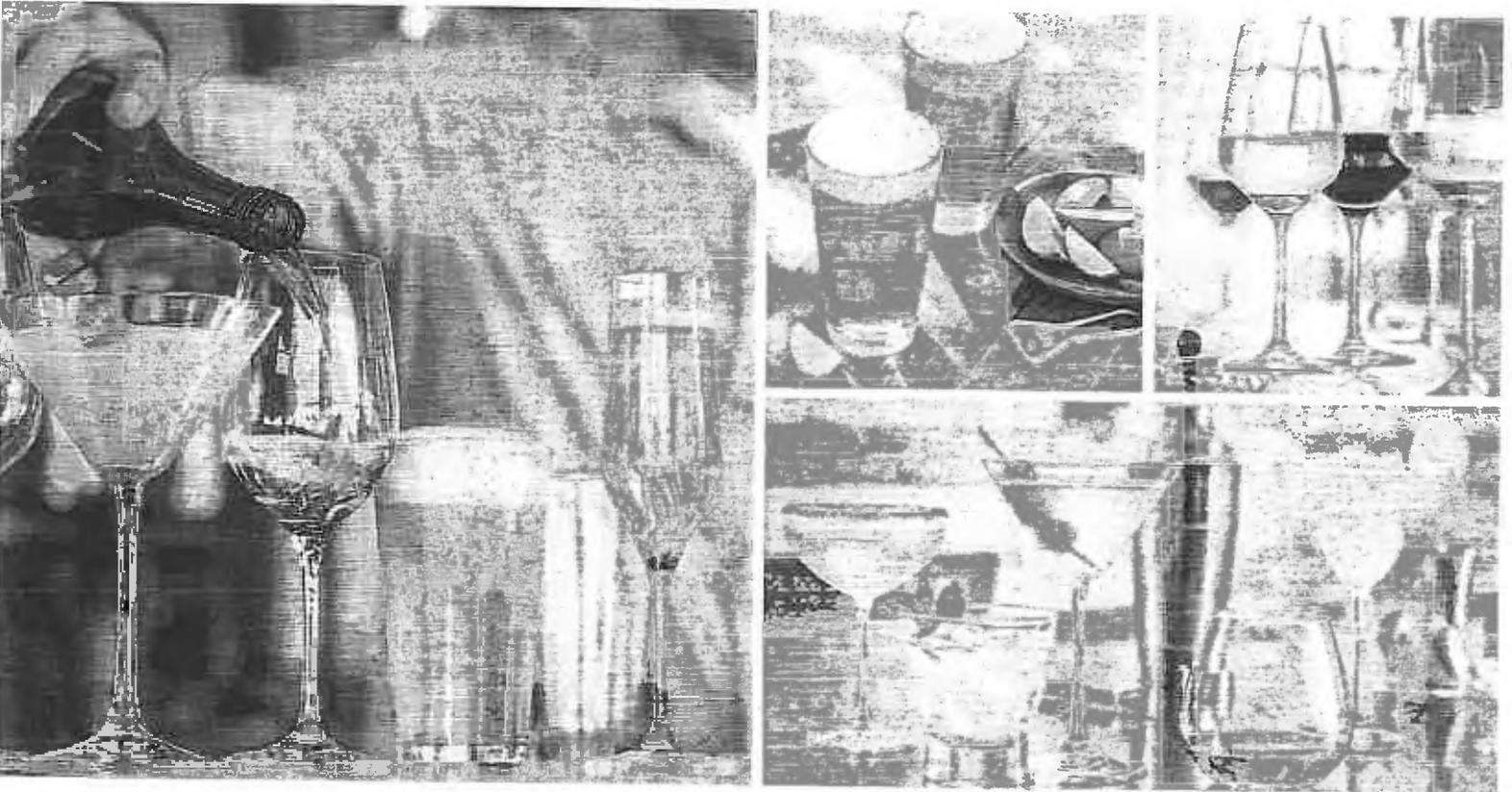
<sup>45</sup> See *Specialty Healthcare*, 357 N.L.R.B. at 944 (internal quotation marks omitted).

the opposing party to prove the absence of distinction—which, if true, would have been a departure from past precedent and inconsistent with the NLRA.

- (2) Adopting the *Specialty Healthcare* framework, we conclude that the Board misapplied step one of that framework. It failed to require that the proponent of a proposed bargaining unit meet its “prima facie” burden of showing why the excluded employees had distinct interests from employees of the petitioned-for unit in the context of collective bargaining, that is, (a) identifying shared interests among employees of the petitioned-for unit *and* (b) explaining why excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members.

Accordingly, we **GRANT** the petition for review, **DENY** the Board’s cross-petition for enforcement, and **REMAND** the cause to the Board for further proceedings consistent with the record of this matter and this opinion.

# *handbook*



Constellation Brands

**1** INTRODUCTION FROM THE HUMAN RESOURCES DEPARTMENT 5

**2** ABOUT THIS HANDBOOK . 5

**3** OUR CODE OF BUSINESS CONDUCT AND ETHICS . 7

**4** EMPLOYEE SUSTAINABILITY COMMITMENT 8

**5** TERMS OF EMPLOYMENT 9

    DRUG-FREE WORKPLACE . 9

    SMOKE-FREE WORKPLACE 10

    CONSUMING COMPANY PRODUCTS AT WORK . . . . . 10

    POLICY STATEMENT ON UNIONS . . . . . 10

    SECURITY INSPECTIONS . . . . . 10

    SOLICITATION/DISTRIBUTION . . . . . 10

    VIOLENCE IN THE WORKPLACE . . . . . 11

    USE OF SOCIAL MEDIA . . . . . 12

    USE OF RECORDING DEVICES . . . . . 14

    SAFETY POLICY FOR CELL PHONES AND OTHER WIRELESS DEVICES 15

**6** PREVENTION OF HARASSMENT . . . . . 16

    PROVISIONS . . . . . 16

    DEFINITIONS . . . . . 17

    RESPONSIBILITY OF MANAGERS AND SUPERVISORS . . . . . 18

**7** COMPLAINT/DISPUTE RESOLUTION PROCEDURE . . . . . 19

    COMPLAINT REPORTING PROCEDURE . . . . . 19

    INVESTIGATION/DISPUTE RESOLUTION PROCEDURES . . . . . 19

    MALICIOUSLY FALSE COMPLAINTS . . . . . 20

**8** WORK ENVIRONMENT 21

    WORK HOURS 21

    PAY DAYS . . . . . 21

    REPORTING ABSENCES . . . . . 21

    THREE-DAY NO CALL/NO SHOW 22

    WORK ATTIRE . . . . . 22

    INFORMATION CHANGES TO YOUR PERSONNEL FILE 22

    ACCESS TO YOUR PERSONNEL FILE 22

NON JOB RELATED LAW ENFORCEMENT INQUIRIES ... 22

PERSONAL PROPERTY—CAREFULLY CONSIDER WHAT YOU BRING TO WORK ... 22

LACTATION POLICY ... 22

RECORDING YOUR WORK TIME ... 23

OVERTIME ... 23

**9** INTERNAL EMPLOYEE COMMUNICATIONS ... 23

**10** COMPENSATION ... 24

OUR COMPENSATION PHILOSOPHY ... 24

EMPLOYMENT CLASSIFICATIONS ... 24

FAIR LABOR STANDARDS ACT (FLSA) CLASSIFICATIONS ... 25

SALARY BASIS POLICY ... 25

MANAGING YOUR PERFORMANCE ... 26

**11** COMPANY SHORT-TERM INCENTIVE (BONUS) PLAN ... 27

OBJECTIVE OF THE PLAN ... 27

ELIGIBILITY ... 27

BONUS AS PERCENT OF PAY ... 28

BONUS MEASUREMENTS ... 28

BONUS RESULTS AND PAYMENT ... 28

BONUS PAYMENT ... 28

**12** CAREER DEVELOPMENT ... 29

TRAINING AND DEVELOPMENT ... 29

TUITION REIMBURSEMENT PROGRAM ... 29

INTERNAL JOB OPPORTUNITIES ... 30

**13** EMPLOYEE REFERRAL PROGRAM ... 30

**14** EMPLOYMENT OF RELATIVES ... 30

**15** PAID HOLIDAYS ... 31

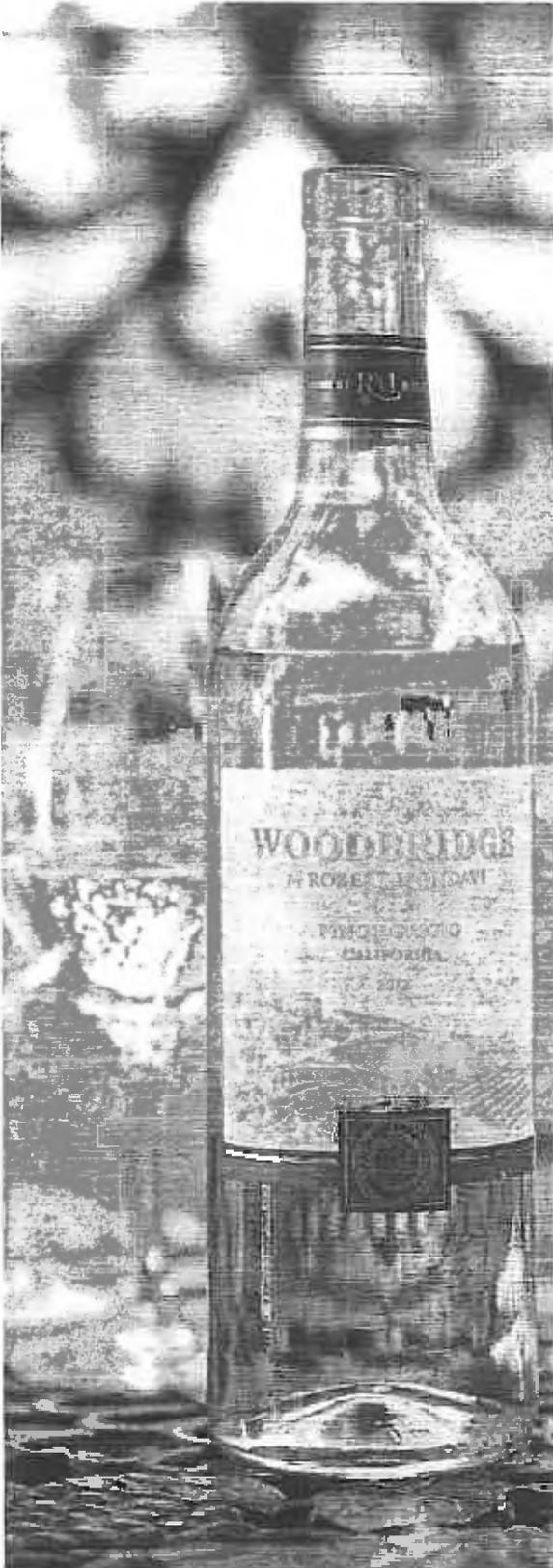
**16** PAID TIME OFF (PTO) ... 32

ELIGIBILITY ... 32

USE OF PTO ... 33

SCHEDULING PTO ... 33

	REPORTING PTO	33
	PTO DURING A LEAVE OF ABSENCE	33
	PTO CARRY-OVER	34
	PTO PAY AT TERMINATION	34
<b>17</b>	<b>BENEFITS</b>	35
<b>18</b>	<b>LEAVES OF ABSENCE</b>	36
	JURY DUTY	36
	TIME OFF TO VOTE	36
	BEREAVEMENT—FUNERAL LEAVE	36
	LEAVES OF ABSENCE	37
	FAMILY AND MEDICAL LEAVE ACT (FMLA)	37
	MILITARY CAREGIVER LEAVE (Also known as Service Member Leave)	38
	MEDICAL LEAVE OF ABSENCE	42
	PERSONAL LEAVE OF ABSENCE	43
	MILITARY LEAVE OF ABSENCE	43
	REQUESTING FMLA, MEDICAL, PERSONAL OR MILITARY LEAVE OF ABSENCE	43
<b>19</b>	<b>ACCOMMODATION OF DISABLED INDIVIDUALS</b>	44
<b>20</b>	<b>WORKERS' COMPENSATION</b>	45
	REPORTING WORK-RELATED INJURIES/ILLNESS	45
	PAY DURING LEAVE	45
	BENEFITS DURING LEAVE	46
	FRAUDULENT CLAIMS	46
<b>21</b>	<b>OTHER BENEFITS</b>	46
	ENJOY OUR PRODUCTS AND MERCHANDISE AT A DISCOUNT	46
	SERVICE ANNIVERSARY RECOGNITION	46
<b>22</b>	<b>LEAVING THE COMPANY</b>	47
	RESIGNATION AND TERMINATION	47
	RESIGNATION AND TERMINATION--WHAT ELSE YOU NEED TO KNOW	47
<b>23</b>	<b>ACKNOWLEDGMENT OF RECEIPT OF EMPLOYEE HANDBOOK</b>	48



# 11

## COMPANY SHORT-TERM INCENTIVE (BONUS) PLAN

### OBJECTIVE OF THE PLAN

The objectives of the Company bonus plan are to:

- Support the Company's annual planning, budget and strategic plan
- Provide compensation opportunities that are competitive with other beverage alcohol or related industry companies in order to attract and retain key talent
- Motivate and reward employees to achieve profit and other key goals of the Company

### ELIGIBILITY

All non-union, regular full-time and regular part-time employees of the Company are eligible for the incentive plan. An employee must be on the payroll prior to December 1 of the fiscal year in order to be eligible for any bonus payment in that fiscal year.

An employee must be employed on the last day of the fiscal year in order to be eligible for bonus for that fiscal year. Employees terminated due to voluntary retirement, position elimination, disability or death are eligible for a prorated bonus. In the case of retirement, the employee must have at least sixty years of age and ten or more years of service at the time of termination to qualify for the prorated bonus. Our fiscal year runs from March 1 to February 28. Employees do not need to be employed on the date the bonus is paid.

The Company bonus plan is subject to review and change by the executives of the Company or Constellation Brands, Inc. at any time.

**BONUS AS PERCENT OF PAY**

Each position held by an employee has a designated "target" bonus percentage. If you are eligible for a bonus, this information was communicated to you in your offer letter and is available in Workday. If you change position and your bonus percentage changes, you will receive a notification from Human Resources and your manager.

Your target bonus percentage is multiplied by your eligible earnings for the fiscal year to determine your target bonus dollars. The eligible earnings used to calculate the bonus are all wages paid in the fiscal year. Overtime pay for non-exempt employees is included in eligible earnings for the calculation of bonus payments.

**BONUS MEASUREMENTS**

Every employee has specific bonus plan measurements for the bonus plan. These measurements vary by department and position and will be presented by your manager around the beginning of each fiscal year. This plan information also is available in Workday.

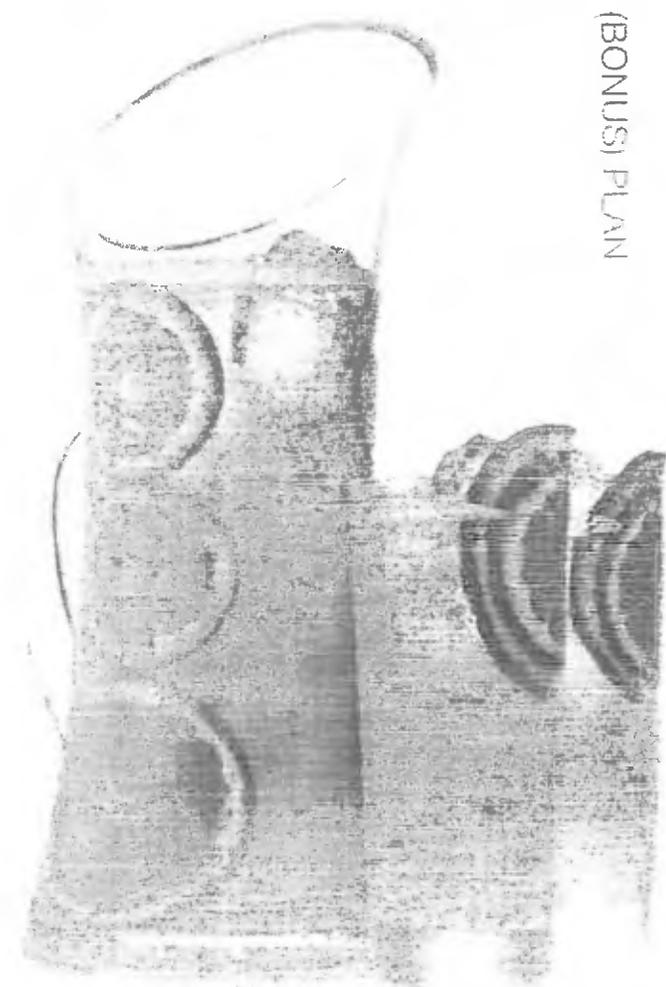
**BONUS RESULTS AND PAYMENT**

We pay a bonus based on achieving specific measurement results with respect to "Plan" performance and personal performance objectives. "Plan" can be a specific business measurement such as Earnings Before Interest and Taxes (EBIT), Net Sales, Free Cash Flow, Depletions, or other measurements. The measurements are determined by the Company at the beginning of each fiscal year.

**BONUS PAYMENT**

Bonus payments, if any, usually are made in April after Constellation Brands announces its earnings for the preceding fiscal year. Your manager will review with you the Plan results and the amount of any bonus and will notify you if you will not be receiving a bonus, if the bonus program has been altered or canceled, or if your particular bonus amount has been changed.

The bonus payment is processed by our Payroll Department and paid to an employee in the same method as a regular paycheck. Tax laws require that we apply a supplemental tax withholding rate to the bonus payment.



**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**CONSTELLATION BRANDS, U.S. OPERATIONS,  
INC. D/B/A WOODBRIDGE WINERY**

**and**

**Cases: 32-CA-186238  
32-CA-186265**

**CANNERY, WAREHOUSEMEN, FOOD PROCESSORS,  
DRIVERS AND HELPERS, LOCAL UNION NO. 601,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Cases 32-CA-186238 and 32-CA-186265, which are based on charges filed by CANNERY, WAREHOUSEMEN, FOOD PROCESSORS, DRIVERS AND HELPERS, LOCAL UNION NO. 601, INTERNATIONAL BROTHERHOOD OF TEAMSTERS (Union) against CONSTELLATION BRANDS, U.S. OPERATIONS, INC. D/B/A WOODBRIDGE WINERY (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below.

1.

(a) The charge in Case 32-CA-186238 was filed by the Union on October 14, 2016, and a copy was served on Respondent by regular mail on October 17, 2016.

(b) The charge in Case 32-CA-186265 was filed by the Union on October 14, 2016, and a copy was served on Respondent by regular mail on October 17, 2016.

2.

(a) At all material times, Respondent, a New York corporation, has been engaged in the business of producing wine at locations throughout the United States, including its facility located at 5950 E. Woodbridge Road in Acampo, California (Respondent's Facility).

(b) In conducting its operations during the 12-month period ending December 31, 2016, Respondent has directly purchased and received products valued in excess of \$50,000 from suppliers located outside the State of California.

3.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

EXHIBIT NO. 32-CA-186238 RECEIVED  REJECTED   
CASE NO. 32-CA-186238 CASE NAME: Constellation Brands  
NO. OF PAGES: 7 DATE: 5/3/17 REPORTER: BRAST

5.

At all material times, Joshua Schulze has held the position of General Manager and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

6.

On or about August 4, 2016, Respondent, at Respondent's facility, acting through Joshua Schulze, told an employee assigned to work in Respondent's Cellar Department, that he could not display or otherwise disseminate the message "Cellar Lives Matter" on his clothing while working in Respondent's facility and ordered that the employee take off the clothing that displayed that message.

7.

Since at least June 14, 2016, and continuing to date, Respondent has maintained a Constellation Brands, Inc. Handbook (Handbook) in effect for its employees working throughout the United States, including those working at Respondent's Facility, that contains the following provisions (the Handbook Provisions):

- (1) At page 14, under Section 5: "Terms of Employment," the Handbook states:

**USE OF RECORDING DEVICES**

We value open and honest communication. To support this value and respect the interests of employees, the Company prohibits the secret use of recording devices at all times. Out of respect for others, employees are requested to use sensitivity and good judgment if using recording devices, cameras or camera phones in the workplace. Use of cameras or camera phones in restrooms, locker rooms and changing rooms is strictly prohibited.

- (2) At page 27, under Section 11: “Company Short-Term Incentive (Bonus) Plan,” the Handbook states:

ELIGIBILITY

“All non-union, regular full-time and part-time employees of the Company are eligible for the incentive plan.”

- (3) At page 13, under Section 5: “Terms of Employment” in the “Use of Social Media” policy, the Handbook states:

*Employee “Endorsements” – Required Disclaimers:*

Employees must use appropriate disclaimers when using social media. Federal law has strict requirements concerning “testimonials” and “endorsements.” If you use social media and you: (1) identify yourself as a Company employee, and (2) contribute content about or relating to the Company or its products, you should include a disclaimer to make it clear that you are not speaking on behalf of the Company.

Testimonials or endorsements about the Company or its products should be avoided. In the event that you use social media for any testimonials or endorsements of the Company or its products, you should clearly and conspicuously disclose your relationship to the Company to users and readers of the social media site or post.

8.

By the conduct described above in paragraphs 6 and 7, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

9.

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

**WHEREFORE**, as a part of the remedy for the unfair labor practices alleged in paragraph 7, Respondent should be ordered to rescind the Handbook Provisions on a nationwide basis. In addition, Respondent should be ordered to notify all employees working for Respondent in the United States that the Handbook Provisions have been rescinded or revised, and if revised, provide them with a copy of the revised provisions. Further, in view of the fact that Respondent has maintained these provisions on a nationwide basis, the General Counsel seeks an order that Respondent be required to post at its facility in Acampo, California, and at all of its other facilities in the United States; any Notice to Employees that may issue in this proceeding.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before February 14, 2017, or postmarked on or before February 13, 2017.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is

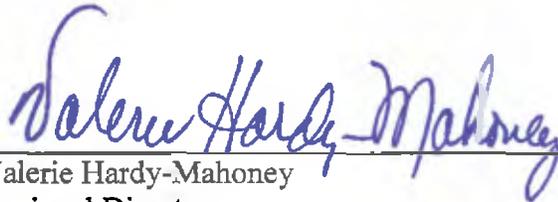
unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

### NOTICE OF HEARING

**PLEASE TAKE NOTICE THAT** on April 18, 2017, at 9:00 a.m., in the Oakland, Regional Office of the Board, located at 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are

described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

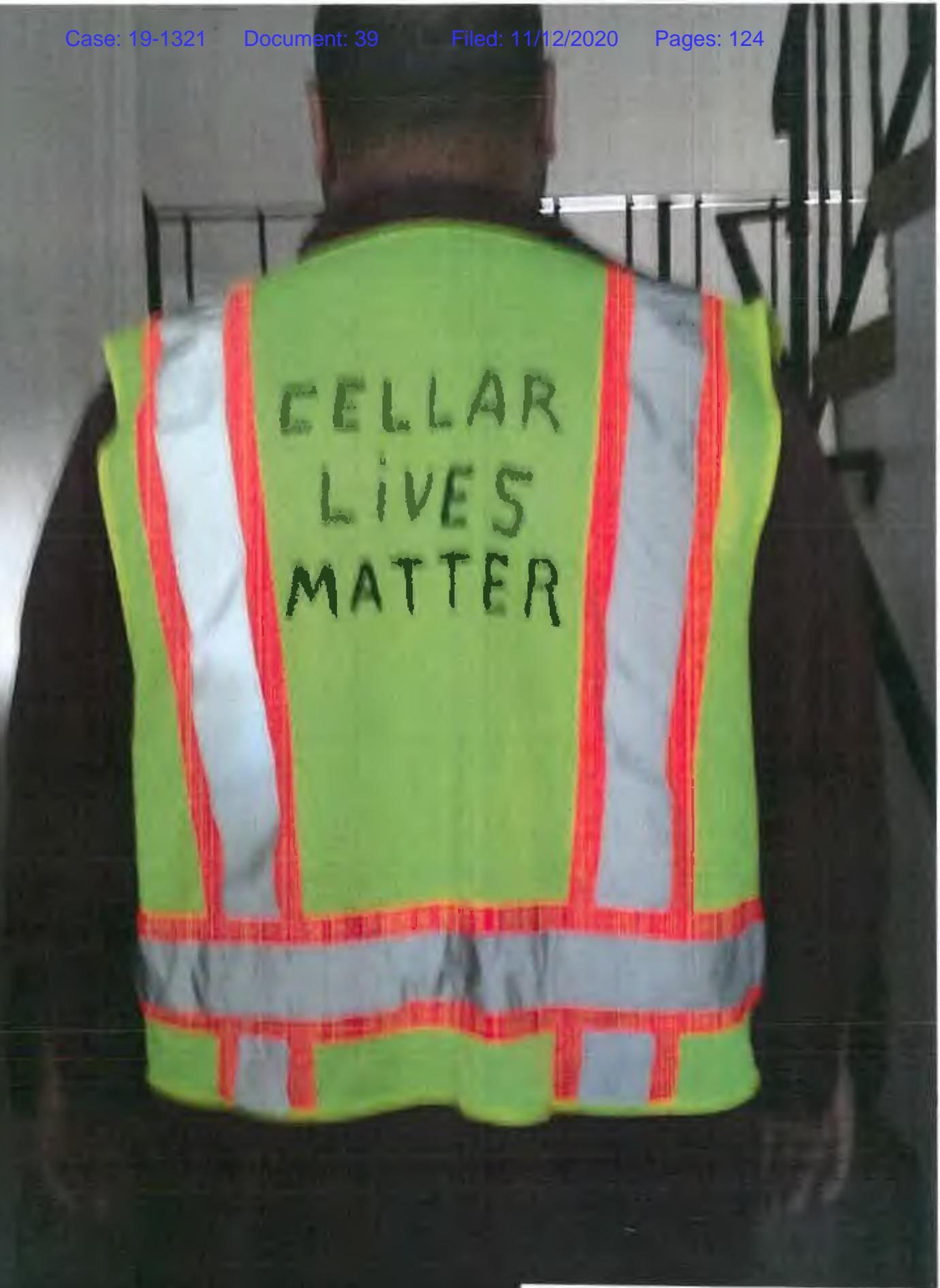
**DATED AT** Oakland, California on the 31<sup>st</sup> day of January 2017.



---

Valerie Hardy-Mahoney  
Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224

Attachments







**GC Exhibit # 3(b)**  
Supp. A. 119



**Constellation Wines U.S.**  
A CONSTELLATION COMPANY

January 19, 2011

Manuel Chavez  
[REDACTED]  
[REDACTED]

Dear Manuel:

We are pleased to have you join Woodbridge Winery, an operating division of Constellation Wines U.S. ("Company"), as a Cellar Operator I, reporting to Dan Hansen. Your hire date will be February 7, 2011.

The following describes your compensation and benefits:

- a. Your base compensation will be \$15.00 per hour, subject to all deductions and withholdings required by law. This position will be classified as non-exempt meaning that you will be paid for overtime worked. You will be in Compensation Band H12 of the CWUS compensation structure. Your first performance and compensation review will be effective March 2012.
- b. You will be eligible to participate in the Constellation Wines U.S. bonus program. As a participant, you receive a discretionary bonus with a target of 5% and a maximum of 7.5% of your base compensation earned in the fiscal year beginning March 1, 2011 and ending February 28, 2012. The amount and specific terms of the bonus for which you may be eligible may be modified by the Company from time to time in its sole discretion, and its application to you shall be determined by authorized officers of the Company.
- c. You are eligible for Paid Time Off (PTO) accruals beginning on the first of the month coinciding with or following your hire date. Your PTO during this calendar year, 2011, will be 100 hours. In each subsequent calendar year you will receive 120 hours, until such time as you become eligible for more paid time off under the PTO program.
- d. Other benefits which the Company offers are outlined in the attached Summary of Benefits, which also defines the eligibility for participation.

The offer described above is contingent upon the satisfactory completion of a post-offer drug screening and/or physical examination. Details as to how to make an appointment

to complete this requirement will be provided to you following the receipt of this signed offer. The drug screening and/or physical examination must be completed at least 5 days before employment commences.

Should you accept our offer, you will receive a "New Hire" packet of materials to complete. It is extremely important that all documents are completed, signed and returned to the Human Resources department on your first day of work. On your first day of employment, you must provide a social security card for payroll purposes. It is a condition of employment to have a valid social security number. In addition, you must also provide proof of eligibility to work in the United States.

All employment with Constellation Wines U.S. is at-will. In other words each employee, as well as Constellation Wines U.S., is free to end the employment relationship at any time, with or without notice, with or without "cause" for any reason or no reason at all.

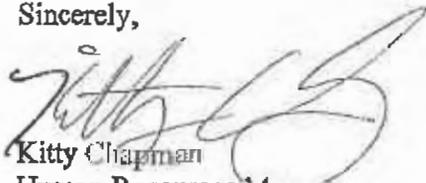
If you accept our offer please sign in the space provided below and return the signed copy to me at your earliest convenience.

We look forward to receiving your acceptance of this job offer and beginning a mutually rewarding employment relationship.

Please call me at (209) 365-8115, if I may answer any questions regarding this offer of employment, or any other aspect of employment at Constellation Wines U.S.

We look forward to having you join us.

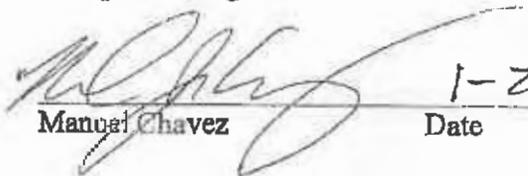
Sincerely,



Kitty Chapman  
Human Resources Manager  
Constellation Wines U.S.

cc: Dan Hansen

Accepted and agreed to:



Manuel Chavez

1-28-11  
Date

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

<hr/>		)	
CONSTELLATION BRANDS, U.S. OPERATIONS,		)	
INCORPORATED d/b/a WOODBRIDGE WINERY		)	No. 19-1321
		)	19-1549
Petitioner/Cross-Respondent		)	
		)	
v.		)	
		)	Board Case Nos.
NATIONAL LABOR RELATIONS BOARD,		)	32-CA-186238
		)	32-CA-186265
Respondent/Cross-Petitioner		)	
<hr/>		)	

**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

Dated at Washington, D.C.,  
this 12th day of November, 2020

/s/ David Habenstreit  
David Habenstreit  
Assistant General Counsel  
National Labor Relations Board  
1015 Half Street, SE  
Washington, D.C. 20570  
(202) 273-2960