

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

E.A. SWEEN CO.

and

CASE 13-CA-45563

**TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT ON AMENDED COMPLAINT**

Pursuant to the Board's Decision, Certification of Representative, and Notice to Show Cause in this case dated August 13, 2010, Counsel for the General Counsel submits this brief in support of its Motion for Summary Judgment on an Amended Complaint issued August 20, 2010. Respondent E.A. Sween Company continues to refuse to bargain with Teamsters Local Union No. 754 (the "Union") in order to test the Board's August 13, 2010, certification of that Union as the exclusive collective bargaining representative of Respondent's drivers. Thus, the case presents no genuine issues of material fact and the General Counsel is entitled to judgment as a matter of law.

In support of the Motion, Counsel for the General Counsel incorporates the facts and arguments set forth in its original Motion for Summary Judgment dated November 10, 2009, attached hereto as Exhibit A, and adds the following:

1. On August 13, 2010, the Board reissued its certification of the Union as the exclusive collective bargaining representative of Respondent's drivers, in light of the

U.S. Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635 (June 17, 2010). A copy of the Board's decision is attached as Exhibit B.

2. On August 20, 2010, Counsel for the General Counsel issued an Amended Complaint in this case, which updated the date of the Board's Certification of the Union as the exclusive collective bargaining representative of Respondent's drivers, attached hereto as Exhibit C.

3. On September 3, 2010, Respondent filed its Answer to the Complaint, attached hereto as Exhibit D. (Respondent failed to serve its Answer on Counsel for the General Counsel. Rather, Counsel for the General Counsel received a copy of Respondent's Answer from the Union on September 9.) In its Answer, Respondent continues to deny that the Board properly certified the Union and that it has any duty to meet and bargain with the Union, in particular in its responses to the complaint allegations contained in Paragraphs V and VI. Respondent also makes clear in its Third Affirmative Defense that it wishes to press on with its test of the Board's certification.

4. As a result, no material facts are in dispute. Thus, Counsel for the General Counsel respectfully requests that the Board grant the Motion for Summary Judgment, find all of the allegations of the Amended Complaint to be true, and issue an appropriate Decision and Order requiring Respondent to bargain in good faith with the Union, upon request, for the period required by *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized collective bargaining representative in the certified Unit.

DATED at Chicago, Illinois, this 10th day of September, 2010.

/s Charles J. Muhl

Charles J. Muhl

Counsel for the General Counsel

National Labor Relations Board

Region 13

209 S. LaSalle St., Suite 900

Chicago, IL 60604

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

E.A. SWEEN CO.

and

CASE 13-CA-45563

**TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

**COUNSEL FOR THE GENERAL COUNSEL'S
MOTION TO TRANSFER PROCEEDINGS
TO THE BOARD AND MOTION FOR SUMMARY JUDGMENT**

Pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel moves to transfer this case to the Board and moves for summary judgment. Respondent E.A. Sween Company has refused to bargain with Teamsters Local Union No. 754 (the "Union") in order to test the Board's recent certification of that Union as the exclusive collective bargaining representative of Respondent's drivers. Thus, the case presents no genuine issues as to any material fact and the General Counsel is entitled to judgment as a matter of law.

In support of this Motion, Counsel for the General Counsel states the following:

1. On July 21, 2008, in Case 13-RC-21777, the Union filed a Petition pursuant to Section 9(c) of the Act seeking to represent drivers employed by Respondent at its facility in Woodridge, Illinois. A copy of the Petition is attached as Exhibit 1.
2. Pursuant to the parties' Stipulated Election Agreement, an election was conducted on August 29, 2008. The Tally of Ballots for the election showed 27 votes for



the Union, 6 votes against the Union, and 1 challenged ballot, a number insufficient to alter the outcome. A copy of the Tally of Ballots is attached as Exhibit 2.

3. On September 4, 2008, Respondent timely filed Objections to certain conduct of the Union preceding the election. As a result of the issues raised in the Objections, the Regional Director issued a Report on Objections and Notice of Hearing on September 10, 2008. A copy of the Report on Objections and Notice of Hearing is attached as Exhibit 3.

4. Pursuant to the Regional Director's Report on Objections, a hearing was conducted on September 25, 2008, to allow the parties to submit evidence regarding the Respondent's Objections.

5. On December 2, 2008, the Hearing Officer issued a report, a copy of which is attached as Exhibit 4, recommending that all of the Respondent's objections be overruled and the results of the election be certified by the Board.

6. On August 17, 2009, the Board issued a Decision and Certification of Representative, overruling the Respondent's Objections and certifying the Union as the exclusive collective bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time drivers employed by the Employer out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois; but excluding all lead drivers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

A copy of the Board's certification is attached as Exhibit 5.¹

7. Pursuant to the Board's certification, the Union requested to meet and bargain with Respondent over the terms and conditions of employment for the Unit employees in a letter dated September 10, 2009. A copy of this written request is attached as Exhibit 6.

8. In a letter dated October 6, 2009, Respondent refused to recognize and bargain with the Union because "the National Labor Relations Board erred when it failed to set aside the election as your Union clearly engaged in improper, unlawful conduct that had a material affect on the election." A copy of this letter is attached as Exhibit 7.

9. Pursuant to an unfair labor practice charge filed by the Union on October 7, 2009, the Regional Director issued a Complaint and Notice of Hearing on October 20, 2009, alleging Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union. Copies of the unfair labor practice charge, the Complaint and Notice of Hearing, and affidavits of service for those documents are attached as Exhibits 8-11.

10. On November 2, 2009, Respondent filed an Answer to the Complaint, a copy of which is attached hereto as Exhibit 12.

11. In its Answer, Respondent admits all the allegations of the Complaint except those concerning the certification of the Union as the exclusive collective bargaining representative contained in Paragraph V of the Complaint. Respondent also

¹ The Board initially certified the Union in an order dated January 9, 2009, in the absence of exceptions from Respondent to the Hearing Officer's Report. On January 19, 2009, Respondent moved to revoke the certification on the basis that it was not served with the Hearing Officer's Report. The Board revoked the initial certification on March 3, 2009, and Respondent filed exceptions to the Hearing Officer's Report on March 17, 2009.

admits in its Answer to Paragraphs VI (b) and VI (d) that it has refused to meet and bargain with the Union because it believes the Union has not been properly certified by the Board. Finally, Respondent repeats in its second Affirmative Defense that the Union has not been properly certified.

12. Accordingly, because Respondent seeks to test the Board's certification of the Union, no genuine issues of fact are present in this case and summary judgment as a matter of law for the General Counsel is appropriate.

WHEREFORE, Counsel for the General Counsel respectfully moves that the Board grant the Motion to Transfer Proceedings to the Board and Motion for Summary Judgment, find all of the allegations of the Complaint to be true, and issue an appropriate Decision and an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized collective bargaining representative in the certified Unit.

DATED at Chicago, Illinois, this 10th day of November, 2009.



Charles J. Muhl
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E-mail: charles.muhl@nrlb.gov

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD PETITION

DO NOT WRITE IN THIS SPACE

Case No. 13-RC-21777

Date Filed 7/21/08

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

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.
AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No.

2. Name of Employer: E.A. Sween, Co. Employer Representative to contact: Robert Forte Telephone Number: 630-783-9166

3. Address(es) of Establishment(s) Involved: 10350 Argonne Drive, Suite 500, Woodridge, IL 60517 Telecopier Number (Fax): 630-783-0992

4a. Type of Establishment: Distribution, manufacturing, warehouse 4b. Identify principal product or service: food and related product distribution

5. Unit involved: All regular full time and part time drivers. 6a. Number of Employees in Unit: Present 46, Proposed (By UC/AC) 6b. Is this petition supported by 30% or more of the employees in the unit? Yes

7a. Request for recognition as Bargaining Representative was made on (Date) upon service of the 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: None Affiliation: None Address, Telephone No. and Telecopier No. (Fax): Date of Recognition or Certification:

9. Expiration Date of Current Contract: 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 X 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, of (Insert Address) Since (Month, Day, Year)

Table with 4 columns: Name, Affiliation, Address, Date of Claim. Row 1: None, None, None, None

13. Full name of party filing petition (If labor organization, give full name, including local name and number) Teamsters Local Union No. 754

14a. Address: 188 Industrial Drive, Suite 112, Elmhurst, IL 60126 14b. Telephone No. 630-833-0754 14c. Telecopier No. (Fax) 630-833-0964

15. Full name of national or international labor organization of which it is an affiliate or constituent unit: 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): Ramon Williams Signature: [Handwritten Signature] Title (if any): Organizer Address: Joint Council No. 25, 1645 W. Jackson Blvd. Room 600, Chicago, IL 60612 Telephone No. 312-421-2600 Telecopier No. (Fax) 312-421-1227

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



DOCKETED

E.A. SWEEN COMPANY

EMPLOYER

AND

**TEAMSTERS LOCAL UNION NO. 754, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

PETITIONER

DATE FILED
07/21/2008

Case No. **13-RC-21777**

Date Issued **08/29/2008**

Type of Election:
(Check one:)

- Stipulation
 - Board Direction
 - Consent Agreement
 - RD Direction
- Incumbent Union (Code)

(If applicable check either or both:)

- 8(b) (7)
- Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

- | | | |
|---|----|----|
| 1. Approximate number of eligible voters | 38 | |
| 2. Number of Void ballots | 0 | |
| 3. Number of Votes cast for PETITIONER | | 27 |
| 4. Number of Votes cast for | | |
| 5. Number of Votes cast for | | |
| 6. Number of Votes cast against participating labor organization(s) | | 6 |
| 7. Number of Valid votes counted (sum of 3, 4, 5, and 6) | | 33 |
| 8. Number of Challenged ballots | | 1 |
| 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) | | 34 |
| 10. Challenges are ^{NOT} (not) sufficient in number to affect the results of the election. | | |
| 11. A majority of the valid votes counted plus challenged ballots (Item 9) has not been cast for PETITIONER | | |

For the Regional Director
REGION 13

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For **EMPLOYER**

For **PETITIONER**

For

For

Blumberg No. 5118
EXHIBIT
2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN COMPANY

Employer

and

Case 13-RC-21777
Stipulation

TEAMSTERS LOCAL UNION NO.754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

REPORT ON OBJECTIONS AND NOTICE OF HEARING

This report contains my findings and recommendations regarding the Employer's objections to conduct affecting the results¹ conducted under the direction of the Regional Director for Region 13 of the National Labor Relations Board on August 29, 2008, among the Employees in the Stipulated Unit². The Employer, on September 5, 2008, filed timely objections to conduct affecting the results of the Election, a copy of which was served on the Union, and a copy of which is attached hereto as Exhibit 1.

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, after reasonable notice to all parties to present relevant evidence, the undersigned conducted an investigation of the Objections, has carefully considered the relevant evidence, and hereby issues this Report on Objections and Notice of Hearing.

Inasmuch as substantial and material credibility issues have been raised in the investigation of the objections, it is the opinion of the undersigned that those issues can best be resolved on the basis of record testimony and/or other evidence developed at a hearing.

IT IS HEREBY ORDERED, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, that a hearing be held before a duly designated Hearing Officer to resolve the issues raised by the Objections.

¹ The tally of ballots for the election shows that there were approximately 38 eligible voters. Twenty-seven ballots were cast in favor of Petitioner. Six ballots were cast against participating labor organization. There was one challenged ballot which was not sufficient in number to affect the results of the election. Thus, a majority of valid votes counted plus challenged ballots were cast for Petitioner.

² Those eligible to vote are: all full-time and regular part-time drivers employed by the Employer out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois, during the payroll period ending July 25, 2008; but excluding all lead drivers, office clerical employees and guards, professional employees and supervisors as defined in the Act.



IT IS FURTHER ORDERED, that the designated Hearing Officer, at the conclusion of the hearing, shall prepare and cause to be served on the parties, a report containing resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the Objections.

IT IS FURTHER ORDERED that, thereafter, this case be transferred to and continued before the Board in Washington, D.C., and that the provisions of Sections 102.69(i) and (f) of the Board's Rules and Regulations shall govern the filing of any exceptions to the Hearing Officer's Report.

YOU ARE HEREBY NOTIFIED that, pursuant to Section 9(c) of the National Labor Relations Act, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board at 9:00 a.m. on September 25, 2008, and on consecutive days thereafter until completed at 209 South LaSalle Street, Suite 900, Chicago, Illinois, at which time and place the parties will have the right to appear in person, or otherwise, and submit testimony and/or other evidence with respect to the issues raised by the parties.

Dated at Chicago, Illinois, this 15th day of September, 2008.

/s/ Joseph A. Barker
Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

Offit | Kurman
Attorneys At Law

Scott V. Kamins
Direct Dial: (301) 575-0347
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E-mail: skamins@offitkurman.com
8171 Maple Lawn Boulevard, Suite 200
Fulton, Maryland 20759

September 4, 2008

VIA FACSIMILE AND OVERNIGHT MAIL

(Fax # 312-886-1341)

Mr. Joseph A. Barker
Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street - 9th Floor
Chicago, Illinois 60604

Re: E.A. Sween Company - Case 13-RC-21777, Objections to Election

Dear Mr. Barker:

This Firm and the undersigned are counsel for E.A. Sween Company ("Company") in the above-referenced matter. Please forward all communications and materials in this matter to me.

The Company objects to the conduct of the election and to conduct affecting the results of the election for the reasons set forth below:

1. The Union used forged and misrepresented documents and quotes, including a quote on critical matters falsely attributed to the United States Supreme Court, the deceptive nature of which rendered the voters unable to recognize the propaganda for what it was.
2. A member of the Company's management team engaged in organizing activities on behalf of the Union which tainted the election, including coercing employees into supporting the Union out of fear of retaliation, and making them believe the Company supported the Union's organizing efforts.

Please contact me with any questions.

Sincerely,



Scott Kamins
SKS

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN COMPANY

Employer

and

Case 13-RC-21777
Stipulation

TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

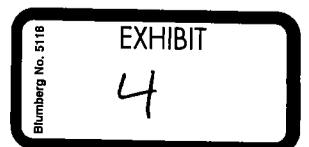
This report contains my findings and recommendations regarding the Petitioner's objections to conduct affecting the results¹ of the election² conducted under the direction of the Regional Director for Region 13 of the National Labor Relations Board on August 29, 2008, among the Employees in the Stipulated Unit³. The Employer, on September 5, 2008, filed timely objections to conduct affecting the results of the Election, a copy of which was served on the Employer and Union, and a copy of which is attached hereto as Exhibit 1.

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, after reasonable notice to all parties, a hearing was conducted in Chicago, Illinois on September 25, 2008, before the undersigned Hearing Officer. During the hearing the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to produce all relevant evidence bearing on the objections. After careful consideration of the entire record, I make the following credibility resolutions, finding of facts, and recommendations to the Board.

¹ The tally of ballots for the election shows that there were approximately 38 eligible voters. Twenty-seven ballots were cast in favor of Petitioner. Six ballots were cast against participating labor organization. There was one challenged ballot which was not sufficient in number to affect the results of the election. Thus, a majority of valid votes counted plus challenged ballots were cast for Petitioner.

² The election was conducted pursuant to a petition filed on July 21, 2008, and a Stipulated Election Agreement approved on August 4, 2008. The payroll period eligibility date for the election was July 25, 2008.

³ All full-time and regular part-time drivers employed by the Employer out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois,; but excluding all lead drivers, office clerical employees and guards, professional employees and supervisors as defined in the Act.



Introduction

The Employer filed an objection alleging that the Union used forged and misrepresented documents and quotes, including, a quote on critical matters falsely attributed to the United States Supreme Court, the deceptive nature of which rendered the voters unable to recognize the propaganda for what it was.⁴ Based on the evidence as presented I recommend that the Objection be overruled in their entirety and that a Certification of Representative issue.

It is well-settled that representation elections are not lightly set aside. *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000). The party raising objections bears the burden of proving that an election should be set aside because of objectionable conduct. *NLRB v. Mattison Machine Works*, 365 U.S. 123, 124 (1961). The Board will interfere only when the registration of free choice is shown, by all the circumstances, to have been unlikely. *The Liberal Market, Inc.*, 108 NLRB 1481, 1482 (1954). Further, if the conduct of either party creates an atmosphere which renders improbable a free choice, it will warrant invalidating an election even if the conduct does not constitute an unfair labor practice. *General Shoe Corp.*, 77 NLRB 124 (1978).

The findings of fact, credibility resolutions, and recommendations to the Board contained herein are based upon my review and evaluation of all testimony in light of the demeanor of the witnesses, the logical probability of testimony, and the record as a whole. My observations of the witnesses include, but are not limited to, their demeanor, partisan interest, guarded or indirect answers, conflicting testimony, conclusory statements as distinguished from facts, power of recall, apparent candor or lack thereof, argumentative or self-serving answers, and responses to leading questions. Where any witness has testified in contradiction to the findings herein, his or her testimony has been discredited as being in and of itself not worthy of credence or because it conflicted with the weight of other credible evidence.⁵

Objection

The Employer's objection is that the Union used forged and misrepresented documents and quotes, including, a quote on critical matters falsely attributed to the United States Supreme Court, the deceptive nature of which rendered the voters unable to recognize the propaganda for what it was.

The evidence presented by the Employer is insufficient to support his Objection. Accordingly, it is recommended that the Employer's objection be overruled. This recommendation is based on the Board's long standing position that it will not probe into the truth or falsity of the parties' campaign statements, and that it will not set elections aside on the basis of misleading campaign statements. *Midland National Life Insurance Co.*, 263 NLRB 127

⁴ At the opening of the hearing, the Employer withdrew its objection regarding a member of the Company's management team engaging in organizing activities on behalf of the Union which tainted the election, including coercing employees into supporting the Union out of fear of retaliation, and making them believe the Company supported the union's organizing efforts.

⁵ Accordingly any failure to completely detail all conflict in evidence does not mean conflicting evidence was not considered. *Bishop and Malco, Inc. d/b/a Walker's* 159 NLRB 1159 (1966).

(1982). In *Midland*, the Board noted that it will intervene where a party has used forged documents which render the voters unable to recognize propaganda for what it is, and that they will continue to protect against other campaign conduct such as threats and promises, which interfere with employee free choice. The Board will also set aside an election where an official Board document has been altered in such a way as to indicate an endorsement by the Board of a party to the election. *Allied Electric Prod. Inc.*, 109 NLRB 1270 (1954). The Union's flyer in the instant case does not fall into the category of a forgery, as it was clearly issued by the Union and there is no evidence that the Union attempted to deceive employees into believing that the flyer was issued by the government.⁶

The Employer presented Human Resources Manager, Denise Forte who testified that in the days prior to the election, she had spoken with at least 19 employees that testified that they would be voting "no" at the election. However, on the evening before the day of the election, just as the drivers were leaving on their deliveries, about 14 employees questioned Forte as to a flyer that they had received by the Union stating the following: "The U.S. Supreme [Court] has held that all existing terms and conditions of employment by law must remain the same until and during contract negotiations or approved by employees". ER. 2 However, the Employer failed to produce any employee witnesses in support of their position that the flyer influenced their decision to vote for or against the Union. Although Forte and Operations Manager Chris Nevels testified that employees questioned them concerning the flyer, their testimony of what these employees may have said to them is clearly unsubstantiated hearsay which cannot be given dispositive weight.

The Employer argues that because the employees were concerned with their past experience with another Teamster Local a few years prior and a wage freeze that occurred during negotiations, the flyer caused employees who were voting "no" to change their minds. However, the Union's flyer in the instant case contained no threats or promises that may have interfered with the free choice of the voters and the Employer failed to present any employees to substantiate its contentions regarding their motivations. In *United Steel Service, Inc.*, 340 NLRB 199, 200 (2003), an election was not set aside where the union had stated to employees that under Board law the Employer was required to begin collective bargaining negotiations at the employees' current level of wages and benefits and that wages and benefits could only improve as a result of bargaining. In the instant case, the Union distributed a flyer to employees that contained misleading information concerning the U.S. Supreme Court's holdings on the terms and conditions of employment during contract negotiations. As decided in *Midland National Life Insurance Co.*, 263 NLRB 127, 130 (1982), the Board will not probe into the truth or falsity of the parties' campaign statements. Therefore, upon consideration of the evidence that was presented and Board law, the Union's misrepresentation of the Supreme Court's holdings does not warrant setting aside this election.

⁶ The flyer shows the name of the Union in large bold letters on the top of the flyer.

⁷ Under the provisions of Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, exceptions to this report may be filed with the Board in Washington, D.C. within fourteen (14) days from the date of issuance of this report. Immediately upon filing such exceptions, the party filing same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director of Region 13. If no exceptions are filed, the Board may adopt the recommendations of the Hearing officer.

CONCLUSIONS AND RECOMMENDATIONS

Based upon the findings and conclusions above, it is my recommendation that the Employer's Objection be overruled in its entirety and that a Certification of Representative issue.⁷

Dated at Chicago, Illinois this 2nd day of December, 2008.



Elizabeth S. Cortez, Hearing Officer
National Labor Relations Board
Region 13
209 South La Salle Street, Suite 900
Chicago, Illinois 60604



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 13
209 South LaSalle Street – 9th Floor
Chicago, Illinois 60604
Telephone (312) 353-7570 Fax (312) 886-1341

CERTIFICATE OF SERVICE

I hereby certify that a copy of this HEARING OFFICER'S REPORT ON OBJECTIONS was served by regular mail this 2nd day of December, 2008 on the following:

International Brotherhood of Teamsters, Local 754
188 Industrial Drive, Suite 112
Elmhurst, IL 60126

Mr. Ramon Williams
IBT Joint Council No. 25
1645 W. Jackson Blvd.
Room 600
Chicago, IL 60612

Mr. Robert Forte
E. A. Sween
10350 Argonne Drive #500
Woodridge, IL 60517

Mr. Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd
Suite 200
Maple Lawn, MD 20759

Lester Heltzer
Executive Secretary
1099 14th Street, NW
Room 11600
Washington, DC 20570



Elizabeth Cortez
Counsel for the General Counsel
National Labor Relations Board
Region 13
209 South LaSalle Street, Suite 900
Chicago, Illinois 60604

NOT TO BE INCLUDED
IN BOUND VOLUMES

LS
Woodridge, IL

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

E.A. Sween Company

Employer

and

Case 13-RC-21777

TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board¹ has considered an objection to an election held on August 29, 2008, and the Hearing Officer's report recommending disposition of the objection. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 27 for and 6 against the Petitioner, with one challenged ballot, an insufficient number to affect the results of the election.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).



The Board has reviewed the record in light of the exceptions and brief, has adopted the Hearing Officer's findings and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters Local Union No. 754, affiliated with the International Brotherhood of Teamsters, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time drivers employed by the Employer out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois, but excluding all lead drivers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

Dated, Washington, D.C., August 17, 2009.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

RECEIVED
NATIONAL LABOR
RELATIONS BOARD
2009 AUG 20 PM 2:49
REGION 13
CHICAGO, IL

TEAMSTERS LOCAL UNION NO. 754*Affiliated with the International Brotherhood of Teamsters*

FLOYD F PRUSINSKI
Secretary-Treasurer

JAMES KORBA, *President & B.A.*
 ROBERT GOAD, *Vice President*
 STEVE LUTH, *Recording Secretary*



188 INDUSTRIAL DRIVE • SUITE 112
 ELMHURST, ILLINOIS 60126

ORLANDO FULLER, *Trustee*
 RAYMOND GASSMANN, *Trustee*
 WILLIAM FEELEY, *Trustee*

TEL 630-833-0754
 FAX 630-833-0964

September 10, 2009

Mr. Robert Forte
 E. A. Sween Co.
 10350 Argonne Drive Suite 500
 Woodridge, IL 60517

Dear Mr. Forte,

The NLRB has again certified Teamster Local 754 as the exclusive bargaining representative for all full time and regular part-time drivers employed out of the company's facility currently located at 10350 Argonne Drive; Woodridge, IL 60517.

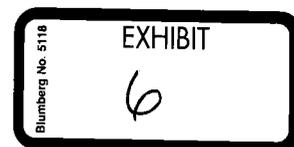
Accordingly, please contact me, or have your representative contact me, in order to schedule negotiations at our earliest mutually convenient opportunity.

Sincerely,

Floyd F. Prusinski
 Secretary/Treasurer
 Teamster Local 754

FFP/pmh

Certified mail #7001 1940 0001 4250 3494



Offit | Kurman
Attorneys At Law

Scott Kamins
Direct Dial: (301) 575-0347
Email: skamins@offitkurman.com
8171 Maple Lawn Boulevard
Suite 200
Fulton, Maryland 20759

October 6, 2009

VIA FACSIMILE & FIRST CLASS MAIL

Mr. Floyd F. Prusinski
Teamster Local 754
188 Industrial Drive, Suite 112
Elmhurst, IL 60126

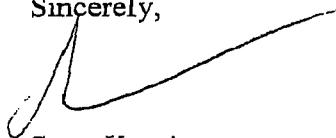
Re: E.A. Sween Company

Dear Mr. Prusinski:

This Firm is counsel for EA Sween Company. We are in receipt of your letter to the Company requesting dates to meet to engage in negotiations with your Union. Please forward all communications and materials in this matter to me.

The National Labor Relations Board erred when it failed to set aside the election as your Union clearly engaged in improper, unlawful conduct that had a material effect on the election. As such, we respectfully decline your request to meet.

Sincerely,



Scott Kamins

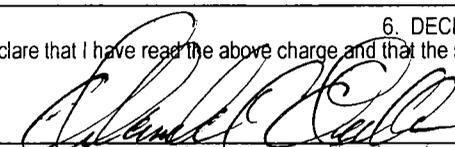


UNITED STATES AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 131CA45563	Date Filed // 10/7/09

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT			
a. Name of Employer E.A. Sween Company		b. Tel. No. (630)783-9166	
		c. Cell No. () -	
		f. Fax No. () -	
d. Address (Street, city, state, and ZIP code) 10350 Argonne Drive #500 Woodridge IL 60517-		e. Employer Representative Robert Forte	
		g. e-Mail	
		h. Number of workers employed	
i. Type of Establishment (factory, mine, wholesaler, etc.) Warehouse		j. Identify principal product or service Food distribution	
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) (5) _____ of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) On or about October 6, 2009, the above-named employer, through its officers, agents, and representatives, refused to bargain with Teamsters Local Union No. 754, the certified exclusive collective bargaining representative of the employer's drivers.			
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Teamsters Local Union No. 754			
4c. Address (Street and number, city, state, and ZIP code) 188 Industrial Drive Suite 112 Elmhurst IL 60126-		4a. Tel. No. (630)833-0754	
		4b. Cell No. () -	
		4d. Fax No. (630)833-0964	
		4e. e-Mail	
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Brotherhood of Teamsters			
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No. () -	
By  Orlando Fuller (signature of representative or person making charge) (Print/type name and title or office, if any)		Office, if any, Cell No. () -	
		Fax No. () -	
Address Same as above		e-Mail	
		10/07/2009 (date)	

Blumberg No. 5110
EXHIBIT
8

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

PRIVACY ACT STATEMENT

13-2009-1800

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 NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 13
209 South LaSalle Street – 9th Floor
Chicago, Illinois 60604
Telephone (312) 353-7570 Fax (312) 886-1341

October 8, 2009

Mr. Robert Forte
E.A. Sween Company
10350 Argonne Drive, #500
Woodridge, IL 60517

Re E.A. Sween Company
Case 13-CA-45563

Board Agent Charles J. Muhl
Telephone (312)353-7600
E-Mail Charles.Muhl@nlrb.gov
Supervisor - Jessica T. Muth

Gentlemen:

This is to inform you that a charge, a true copy of which is enclosed, was filed in the above-entitled matter. Also enclosed is a statement (Form NLRB-4541) briefly setting forth our investigation and voluntary adjustment procedures.

I would appreciate receiving from you by October 21, 2009, a full and complete written account of the facts and a statement of your position with respect to the allegations of the charge. Also, please complete and return one copy of the enclosed questionnaire regarding commerce information (Form NLRB-5081). Please be aware that a failure to provide this information promptly may result in the issuance of an investigative subpoena for this information without prior notice.

The case has been assigned to the above-listed Board agent. When the Board agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: <http://www.nlrb.gov>. (See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

Blumberg No. 5119

EXHIBIT

9

Board agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board agent, does not constitute full and complete cooperation. Further, please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Thus, any claim of confidentiality cannot be honored except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. In this regard, we are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. Further, we may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the foregoing laws, regulations, and policies. Please state the case name and number on all correspondence.

If you or witnesses that you wish to present during the investigation have limited English proficiency, you may request translation assistance. Any such request should be made to the assigned Board agent as early in the investigation as possible.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. In the event that you choose to have a representative appear on your behalf, please have your representative complete Form NLRB-4701, "Notice of Appearance," and forward it promptly to this office.

Please be advised that, under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

The office of the National Labor Relations Board is located on property of the United States government. Accordingly, visitors to the NLRB office are required to exhibit appropriate behavior. In particular, Federal law prohibits visitors to the NLRB office from carrying firearms or other dangerous weapons; any violation is subject to a fine and/or imprisonment for a period of up to five years. 41 CFR § 102.74.440. Prohibited weapons include but are not limited to guns and any gun parts or accessories; ammunition; and knives or other razor blades. Federal law also prohibits visitors to the NLRB office from exhibiting disorderly conduct or loitering where the conduct disrupts the work of NLRB employees or prevents members of the public from receiving NLRB services. 41 CFR § 102.74-390. Finally, federal law prohibits visitors to the NLRB office from creating any hazard on property to persons or things, and stealing any property of the United States government. 41 CFR §102.74.380. In the event a person violates these or other applicable provisions, he or she will be removed from the Chicago Regional Office; may be banned from visiting the Regional office in the future; and the NLRB or law enforcement agencies may pursue any and all of the other applicable penalties as provided by Federal law.

E.A. Sween Company
13-CA-45563

- 3 -

October 8, 2009

Customer service standards concerning the processing of unfair labor practice cases have been published by the Agency and are available from the Agency's website at www.nlr.gov. Your cooperation in this matter is invited so that all facts of the case may be considered.

Sincerely,


Joseph A. Barker
Regional Director

Enclosures
rd

I CERTIFY THAT I served the above-referenced charge on October 8, 2009, by postpaid regular first class mail on the addresses named together with a transmittal letter of which this is a true copy.

Denise Gatsoudis

(Signature)

Subscribed and sworn to before me on October 8, 2009.

Roberta Davis

(Designated Agent)

ORIGINAL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN CO.

and

CASE 13-CA-45563

TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

COMPLAINT

Teamsters Local Union No. 754, affiliated with the International Brotherhood of Teamsters, herein called the Union, has charged that E.A. Sween Co., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board issues this Complaint and alleges as follows:

I

The charge in this proceeding was filed by the Union on October 7, 2009, and a copy was served by regular mail on Respondent on October 8, 2009.

II

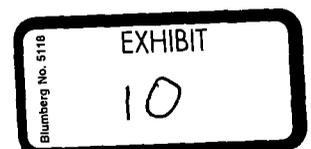
(a) At all material times, Respondent, a Minnesota corporation with an office and place of business in Woodridge, Illinois, herein called Respondent's facility, has been engaged in the business of food distribution.

(b) During the past calendar year, a representative period, Respondent, in conducting its business operations described above in paragraph II(a), purchased and received at its facility goods and materials valued in excess of \$50,000 directly from points outside the State of Illinois.

(c) 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.

III

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



IV

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Robert Forte	District Manager
Denise Forte	Human Resources Manager
Chris Nevels	Operations Manager

V

(a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by Respondent out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois; but excluding all lead drivers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

(b) On August 29, 2008, pursuant to a petition that was filed in Case 13-RC-21777, a representation election was conducted among the employees in the Unit, and a majority of the Unit designated and selected the Union as their exclusive representative for purposes of collective bargaining with Respondent.

(c) On August 17, 2009, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(d) At all times since August 29, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

VI

(a) On September 10, 2009, the Union, by Floyd F. Prusinski, requested that Respondent meet to bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(b) By letter dated October 6, 2009, Respondent declined the Union's request to meet and bargain.

(c) Since on or about October 6, 2009, and continuing to date, Respondent has refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

(d) Respondent's purpose in refusing to bargain is to test the certification the Board issued in Case 13-RC-21777.

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged in paragraphs VI and VII, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request for the period required by *Mar Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The General Counsel 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 complaint. The answer must be **received by this office on or before November 3, 2009 or postmarked on or before November 2, 2009**. Unless filed electronically in a pdf format, 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 by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 document 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 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 be accomplished in conformance with the requirements of Section 102.114 of 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 Motion for Default Judgment, that the allegations in the complaint are true.

Dated at Chicago, Illinois, this 20th day of October, 2009.



Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

Attachments

H:\R13\COM\Region 13 C Cases\13-CA-45563\Regional Determination\CPT 13-CA-45563 Complaint and Notice of Hearing.doc October 16, 2009

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case: 13-CA-45563

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the General Counsel, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the General Counsel and with the Chief Administrative Law Judge in Washington, D.C.
- (2) Grounds must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

***Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd.
Suite 200
Maple Lawn, MD 20759***

***E.A. Company
10350 Argonne Dr.
Suite 500
Woodridge, IL 60517
Attn: Robert Forte***

***Teamsters Local Union No. 754.
188 Industrial Drive, Suite 112
Elmhurst, IL 60126
Attn: Orlando Fuller***

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN CO.

and

TEAMSTERS LOCAL UNION NO. 754, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

CASE NO. 13-CA-45563

DATE OF MAILING OCTOBER 20, 2009

AFFIDAVIT OF SERVICE OF COMPLAINT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd.
Suite 200
Maple Lawn, MD 20759

E.A. Company
10350 Argonne Dr.
Suite 500
Woodridge, IL 60517
Attn: Robert Forte

Teamsters Local Union No. 754
188 Industrial Drive, Suite 112
Elmhurst, IL 60126
Attn: Orlando Fuller

Subscribed and sworn to before me this 20 th day of OCTOBER, 2009	DESIGNATED AGENT <u>/s/Roberta Davis</u> NATIONAL LABOR RELATIONS BOARD
---	---



**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

E.A. SWEEN CO.

and

Cases 13-CA-45563

TEAMSTERS LOCAL UNION NO. 754

**RESPONDENT E.A. SWEEN CO.'S ANSWERS AND AFFIRMATIVE DEFENSES TO
COMPLAINT**

Respondent, E.A. Sween Co. ("Respondent"), by its undersigned counsel, hereby submits its Answers and Affirmative Defenses in response to the Complaint in the above-referenced case, and says as follows:

1. Respondent admits that the Charge was filed and served, but denies knowledge of the filing and service dates.
- 2(a). Respondent admits that it has a facility in Woodridge, and that it distributes food.
- 2(b). Respondent admits the allegations in paragraph 2(b).
- 2(c). Respondent admits the allegations in paragraph 2(c).
3. Respondent admits the allegations in paragraph 3.
4. Respondent admits that the listed individuals qualify as supervisors under the NLRA, and that they are part of Respondent's management team.
- 5(a). Respondent denies the allegations in paragraph 5(a).
- 5(b). Respondent denies the allegations in paragraph 5(b).
- 5(c). Respondent denies the allegations in paragraph 5(c).
- 5(d). Respondent denies the allegations in paragraph 5(d).



6(a). Respondent admits that the Union sent a letter requesting to meet.

6(b). Respondent admits that it declined to meet because the Union was not properly certified.

6(c). Respondent admits the allegations in paragraph 6(c).

6(d). Respondent admits that the Union was not properly certified.

7. Respondent denies the allegations in paragraph 7.

In further answer, Respondent denies each and every allegation in the Complaint, without exception, except such allegations that are expressly admitted herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

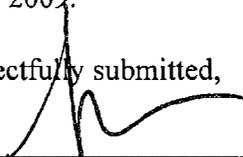
The Union was not properly certified as the representative of the purported bargaining unit specified in the Complaint.

Respondent reserves the right to raise and assert additional affirmative defenses as they become known to Respondent.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed with prejudice, and that Respondent be granted judgment for costs and attorneys' fees, and any other relief this Court deems appropriate.

DATED this 2nd day of November, 2009.

Respectfully submitted,

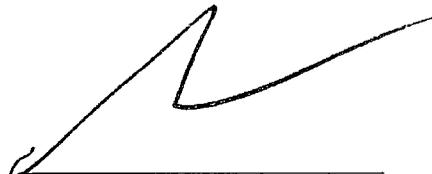


Scott Kamins
Offit Kurman
8171 Maple Lawn Blvd., Suite 200
Maple Lawn, MD 20759
(301) 575-0347 (phone)
(301) 575-0335 (facsimile)
skamins@offitkurman.com

CERTIFICATE OF SERVICE

This is to certify that on this 2nd day of November, 2009, a copy of the foregoing Answer was served by facsimile (Mr. Williams' office wont accept packages sent via Federal Express) upon the following:

Mr. Ramon D. Williams, Sr.
Joint Council 25, IBT
1645 W. Jackson, Suite 600
Chicago, Illinois 60612



Scott Kamins, Esq.

CERTIFICATE OF SERVICE

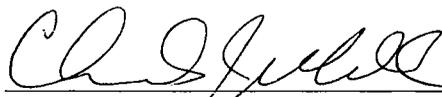
The undersigned hereby certifies that a true and correct copy of the foregoing **Counsel for the General Counsel's Motion to Transfer Proceedings to the Board and Motion for Summary Judgment** was electronically filed with the Executive Secretary of the National Labor Relations Board on November 10, 2009, and that, pursuant to Section 102.114 of the Board's Rules and Regulations as revised January 23, 2009, a true and correct copy of that document was served to the parties listed below via the method listed below on that same date.

E-Mail

Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd.
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Maple Lawn, MD 20759
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Fax (with telephone notification and consent)

Orlando Fuller
Teamsters Local 754
188 Industrial Drive
Suite 112
Elmhurst, IL 60126



Charles J. Muhl
Counsel for the General Counsel
National Labor Relations Board, Region 13
209 S. LaSalle St., Suite 900
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Phone: 312-353-7600
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E-mail: charles.muhl@nrlrb.gov

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, DC 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

E.A. Sween Company and Teamsters Local Union No. 754, affiliated with International Brotherhood of Teamsters. Cases 13-CA-45563 and 13-RC-21777

August 13, 2010

DECISION, CERTIFICATION OF REPRESENTATIVE, AND NOTICE TO SHOW CAUSE

BY CHAIRMAN LIEBMAN AND MEMBERS
SCHAUMBER AND PEARCE

On December 24, 2009, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 354 NLRB No. 117.¹ Thereafter, the General Counsel filed an application for enforcement in the United States Court of Appeals for the Seventh Circuit. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, LP v NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegatee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has consolidated these proceedings and delegated its authority in both proceedings to a three-member panel.²

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. The Board's December 24, 2009 decision states that the Respondent is precluded from litigating any representation issues because, in relevant part, they were or could have been litigated in the prior representation proceeding. The prior proceeding, however, was also a two-member decision and we do not give it preclusive effect.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² Consistent with the Board's general practice in cases remanded from the Courts of Appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case prior to the issuance of this decision.

We have considered the postelection representation issues raised by the Respondent. The Board has reviewed the record in light of the exceptions and brief, and has adopted the Hearing Officer's findings and recommendations to the extent and for the reasons stated in the August 17, 2009 Decision and Certification of Representative, which is incorporated herein by reference.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Teamsters Local Union No. 754, affiliated with the International Brotherhood of Teamsters, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full time and regular part time drivers employed by the Employer out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois, but excluding all lead drivers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

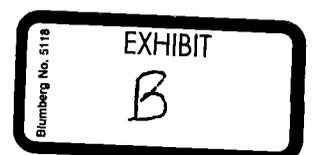
Notice to Show Cause

As noted above, the Respondent has refused to bargain for the purpose of testing the validity of the certification of representative in the U.S. Courts of Appeals. Although Respondent's legal position may remain unchanged, it is possible that the Respondent has or intends to commence bargaining at this time. It is also possible that other events may have occurred during the pendency of this litigation that the parties may wish to bring to our attention.

Having duly considered the matter,

1. The General Counsel is granted leave to amend the complaint on or before August 23 to conform with the current state of the evidence;

2. The Respondent's answer to the amended complaint is due on or before September 7; and



3. NOTICE IS HEREBY GIVEN that cause be shown, in writing, on or before September 14 (with affidavit of service on the parties to this proceeding), as to why the Board should not grant the General Counsel's motion for summary judgment. Any briefs or statements in support of the motion shall be filed by the same date.

Dated, Washington, D.C. August 13, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

**FOR
FORMAL FILE**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

E.A. SWEEN CO.

and

CASE 13-CA-45563

**TEAMSTERS LOCAL UNION NO. 754,
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

AMENDED COMPLAINT

Teamsters Local Union No. 754, affiliated with the International Brotherhood of Teamsters, herein called the Union, has charged that E.A. Sween Co., herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board issued a Complaint on October 20, 2009.

On August 13, 2010, the Board issued its Decision, Certification of Representative, and Notice to Show Cause (355 NLRB No. 87) granting leave to the Counsel for the Acting General Counsel to file an Amended Complaint in the above captioned matter to conform with the current state of evidence.

IT IS ORDERED, pursuant to 102.17 and 102.45 of the Board's Rules and Regulations that the Complaint is amended as follows:

I

The charge in this proceeding was filed by the Union on October 7, 2009, and a copy was served by regular mail on Respondent on October 8, 2009.

II

(a) At all material times, Respondent, a Minnesota corporation with an office and place of business in Woodridge, Illinois, herein called Respondent's facility, has been engaged in the business of food distribution.

(b) During the past calendar year, a representative period, Respondent, in conducting its business operations described above in paragraph II(a), purchased and received at its facility goods and materials valued in excess of \$50,000 directly from points outside the State of Illinois.



(c) 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.

III

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

IV

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Robert Forte	District Manager
Denise Forte	Human Resources Manager
Chris Nevels	Operations Manager

V

(a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by Respondent out of its facility currently located at 10350 Argonne Drive, #500, Woodridge, Illinois; but excluding all lead drivers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

(b) On August 29, 2008, pursuant to a petition that was filed in Case 13-RC-21777, a representation election was conducted among the employees in the Unit, and a majority of the Unit designated and selected the Union as their exclusive representative for purposes of collective bargaining with Respondent.

(c) On August 13, 2010, the Union was certified by the Board (355 NLRB No. 87) as the exclusive collective-bargaining representative of the Unit.

(d) At all times since August 29, 2008, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

VI

(a) On September 10, 2009, the Union, by Floyd F. Prusinski, requested that Respondent meet to bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(b) By letter dated October 6, 2009, Respondent declined the Union's request to meet and bargain.

(c) Since on or about October 6, 2009, and continuing to date, Respondent has refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

(d) Respondent's purpose in refusing to bargain is to test the certification the Board issued in Case 13-RC-21777.

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged in paragraphs VI and VII, the Acting General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request for the period required by *Mar Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

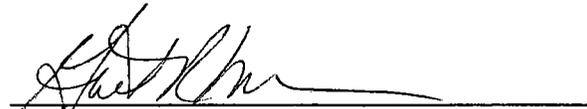
Respondent is notified that, pursuant to the terms of the Board's Decision (355 NLRB No. 87) and Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before September 7, 2010 or postmarked on or before September 6, 2010**. Unless filed electronically in a pdf format, 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 by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. 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 document 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 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 be accomplished in conformance with the requirements of Section 102.114 of 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 Motion for Default Judgment, that the allegations in the complaint are true.

Dated at Chicago, Illinois, this 20th day of August, 2010.



Gail Moran, Acting Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

Attachments

H:\R13COM\Region 13 C Cases\13-CA-45563\Regional Determination\CPT.13-CA-45563.AMENDED Complaint.doc August 19, 2010

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN CO.

and

TEAMSTERS LOCAL UNION NO. 754, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Case 13-CA-45563

DATE OF MAILING 08/20/2010

AFFIDAVIT OF SERVICE OF AMENDED COMPLAINT

I, the undersigned employee of the National Labor Relations Board, certify that on the date indicated above I served the above-entitled document(s) by post-paid **Certified** mail upon the following persons, addressed to them at the following addresses:

Mr. Robert Forte
E.A. Sween Company
10350 Argonne Drive, #500
Woodridge, IL 60517

Mr. Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd, Suite 200
Maple Lawn, MD 20759

Mr. Orlando Fuller
Teamsters Local Union No. 754
188 Industrial Drive, Suite 112
Elmhurst, IL 60126

August 20, 2010

Date

/s/ Denise Gatsoudis

Print Name

Title

Signature

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case: 13-CA-45563

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the General Counsel, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the General Counsel and with the Chief Administrative Law Judge in Washington, D.C.

(2) Grounds must be set forth in **detail**;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**

(5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Mr. Robert Forte
E.A. Sween Company
10350 Argonne Drive, #500
Woodridge, IL 60517

Mr. Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd, Suite 200
Maple Lawn, MD 20759

Mr. Orlando Fuller
Teamsters Local Union No. 754
188 Industrial Drive, Suite 112
Elmhurst, IL 60126

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

E.A. SWEEN CO.

and

Cases 13-CA-445563

TEAMSTERS LOCAL UNION NO. 754

**RESPONDENT E.A. SWEEN CO.'S ANSWERS AND AFFIRMATIVE DEFENSES TO
AMENDED COMPLAINT**

Respondent, E.A. Sween Co. ("Respondent"), by its undersigned counsel, hereby submits its Answers and Affirmative Defenses in response to the Complaint in the above-referenced case, and says as follows:

1. Respondent admits that the Charge was filed and served, but denies knowledge of the filing and service dates.

2(a). Respondent admits that it has a facility in Woodridge, and that it distributes food.

2(b). Respondent admits the allegations in paragraph 2(b).

2(c). Respondent admits the allegations in paragraph 2(c).

3. Respondent admits the allegations in paragraph 3.

4. Respondent admits that Forte, Forte and Nevels are supervisors and agents of Respondent.

5(a). Respondent denies the allegations in paragraph 5(a).

5(b). Respondent denies the allegations in paragraph 5(b).

5(c). Respondent denies the allegations in paragraph 5(c).

5(d). Respondent denies the allegations in paragraph 5(d).



- 6(a). Respondent admits that it has no duty to meet and bargain.
- 6(b). Respondent admits that it has no duty to meet and bargain.
- 6(c). Respondent admits that it has no duty to meet and bargain.
- 6(d). Respondent admits that it has no duty to meet and bargain.
- 7. Respondent denies the allegations in paragraph 7(b).

In further answer, Respondent denies each and every allegation in the Complaint, without exception, except such allegations that are expressly admitted herein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Respondent upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Complaint is barred by waiver, estoppel, settlement and release and unclean hands.

THIRD AFFIRMATIVE DEFENSE

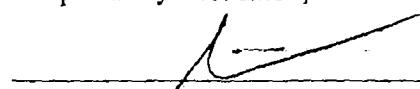
The Union has not been properly certified as the representative of the purported bargaining unit specified in the Complaint.

Respondent reserves the right to raise and assert additional affirmative defenses as they become known to Respondent.

WHEREFORE, Respondent respectfully requests that the Complaint be dismissed with prejudice, and that Respondent be granted judgment for costs and attorneys' fees, and any other relief this Court deems appropriate.

DATED this 3rd day of September, 2010.

Respectfully submitted,



Scott Kamins
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8171 Maple Lawn Blvd., Suite 200
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(301) 575-0347 (phone)
(301) 575-0335 (facsimile)
skamins@offitkurman.com

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of September, 2010, a copy of the foregoing Answer was served upon the following:

Mr. Orlando Fuller
Teamsters Local 754
188 Industrial Drive, Suite 112
Elmhurst, Illinois 60126



Scott Kamins, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Counsel for the General Counsel's Brief in Support of Motion for Summary Judgment on Amended Complaint** was electronically filed with the Executive Secretary of the National Labor Relations Board on September 10, 2010, and that, pursuant to Section 102.114 of the Board's Rules and Regulations as revised January 23, 2009, a true and correct copy of that document was served to the parties listed below via the method listed below on that same date.

E-Mail

Scott Kamins, Esq.
Offit Kurman
8171 Maple Lawn Blvd.
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Maple Lawn, MD 20759
E-mail: skamins@offitkurman.com

Fax (with telephone notification and consent)

Orlando Fuller
Teamsters Local 754
188 Industrial Drive
Suite 112
Elmhurst, IL 60126

/s Charles J. Muhl

Charles J. Muhl
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National Labor Relations Board, Region 13
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