

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 28**

GCA SERVICES GROUP, INC.)	
)	CASE No.: 28-CA-23513
and)	
)	
UNITED FOOD AND COMMERCIAL)	
WORKERS UNION, LOCAL 99, AFL-CIO)	
)	

**RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL
AND ITS APPEAL OF THE REGIONAL DIRECTOR'S ORDER DENYING
ITS REQUEST TO POSTPONE HEARING UNTIL OCTOBER 31, 2011**

Pursuant to Rule 102.26, Respondent GCA Services Group, Inc. ("GCA Services Group"), by and through counsel, requests special permission of the National Labor Relations Board (the "Board") to appeal from the August 10, 2011 Order of the Regional Director denying its request to postpone the hearing in this case from October 4, 2011 until October 31, 2011 and submits its appeal thereon. The Regional Director has inappropriately disregarded the schedule of GCA Services Group's counsel and unfairly prejudiced GCA Services Group without adequate justification. GCA Services Group therefore requests that the Board direct the Regional Director to reschedule the hearing for the week of October 31, 2011 and consecutive dates thereafter until concluded, dates on which the parties and counsel are mutually available.

Procedural Background

The Charge, received by GCA Services Group on or about May 19, 2011, alleges various violations of Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (the "Act"). On or about July 28, 2011, GCA Services Group received copies of the Amended Charge and the Complaint. The Complaint contained a Notice of Hearing, setting the hearing for October 4, 2011

and on consecutive days thereafter until concluded. As GCA Services Group's lead counsel, Jeffrey Embleton, has plans to travel to Scotland and Ireland from September 30, 2011 through October 12, 2011, GCA Services Group promptly filed with the Regional Director a Request To Change Date Of Hearing. On August 10, 2011, GCA Services Group was notified that its request was denied. A true and correct copy of the Order Denying Respondent's Request To Postpone Hearing (the "Order") is attached as Exhibit A. It is from this Order that GCA Services Group requests special permission to appeal.

BASIS FOR THE APPEAL

A. The Requirements To File A Request With The Regional Director Were Met

Prior to filing the request to reschedule the hearing, counsel for GCA Services Group contacted Eric Myers, counsel for United Food and Commercial Workers Union, Local 99 (the "Union") regarding the scheduling conflict. Mr. Myers, on behalf of the Union, replied that he and the Union will not oppose a request for continuance provided that the Region can schedule the hearing for the earliest dates available. So as not to interfere with Mr. Myers' schedule, GCA Services Group requested that the hearing be rescheduled for October 31, 2011, and not earlier on October 24, 2011.

There is no dispute that the Union and its counsel reneged on their agreement, communicating their decision to counsel for GCA Services Group after GCA Services Group filed its request with the Regional Director and only hours before the Order was conveyed, thus preventing GCA Services Group from filing a request to change the hearing date with the Division of Judges pursuant to Section 102.16. The timing of the "change of heart" of the Union and its counsel is

suspect at best.¹

B. The Reasoning Of The Regional Director Is Without Adequate Justification

The Order contains three reasons for the denial of GCA Services Group's request: (1) the unfair labor practice charge situation has been known since on or about May 17, 2011; (2) other attorneys from Mr. Embleton's firm could handle the hearing in his absence; and (3) Section 10(j) relief is being considered.

The date on which GCA Services Group learned of the unfair labor practice charge is not relevant to GCA Services Group's request to reschedule the hearing on account of a conflict between the hearing date noticed in the Complaint and the schedule of its lead counsel. On or about May 17, 2011, no one could have known if a complaint would be issued or when it would be issued, let alone the date on which a hearing would be scheduled to begin. Thus, on May 17, 2011, neither the parties nor their counsel could have known to reserve the week of October 4, 2011. Indeed, Mr. Embleton could not have known to reserve the week of October 4, 2011 when scheduling his vacation as he scheduled his vacation before the unfair labor practice charge was even filed.

As to the selection of counsel, as noted in the Order, Mr. Embleton has represented GCA Services Group throughout this matter. Section 102.38 grants GCA Services Group the right to appear at the hearing by counsel. The Regional Director's suggestion that other members of Mr. Embleton's firm are qualified to represent GCA Services Group at the hearing, regardless of whether the suggestion is accurate, is immaterial. The right to select counsel is reserved to GCA Services Group and GCA Services Group selected Mr. Embleton. It is not for the Regional Director to

¹ Ironically, in conveying to counsel for GCA Services Group the basis for reneging on his prior representation of no objection to the request to reschedule the hearing, counsel for the Union cited to the fact that *he was on vacation* during the communications.

determine that GCA Services Group must change lead counsel. Rather, the Regional Director was required to articulate a legitimate reason why Mr. Embleton's pre-scheduled vacation did not constitute adequate justification for a three week delay. The Regional Director failed to do so.

The final reason for denial set forth in the Order is that this case possibly warrants Section 10(j) relief. The Order neglects to mention, however, that as of the date of the Order, Section 10(j) relief had not been recommended nor had the Regional Director even informed GCA Services Group that Section 10(j) relief was being considered. Moreover, the Order fails to articulate any reason why Section 10(j) interim relief would be appropriate. At this late date, Section 10(j) relief is stale, and even if it were not, rescheduling the hearing on the Complaint to start on October 31 rather than October 4, 2011, would have no impact on a request for Section 10(j) relief.

C. Postponement Will Not Prejudice Any Party

A brief postponement will not prejudice any party. The claims asserted in the Complaint relate to past events and other than three policies contained in a lengthy employee handbook, do not involve alleged ongoing violations. Moreover, because the hearing is not scheduled for approximately eight additional weeks, it is highly unlikely that any party has invested any time or resources into preparing for the October hearing date.

By contrast, proceeding with the hearing on October 4, 2011 will prejudice GCA Services Group and its lead counsel. GCA Services Group is faced with either proceeding without its lead counsel, who has provided overall direction on this matter and represented GCA Services Group in other matters before the Board, or requiring that Mr. Embleton cancel his vacation and incur the financial consequences of doing so.

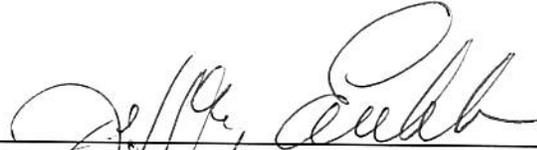
CONCLUSION

For the reasons set forth above, GCA Services Group respectfully requests that special

permission of the Board be granted to appeal from the August 10, 2011 Order of the Regional Director and that the hearing be continued until October 31, 2011.

Dated August 16 2011

Respectfully submitted,



JEFFREY M. EMBLETON (OH-#0006480)
ANN E. KNUTH (OH-#0061566)
MANSOUR, GAVIN, GERLACK & MANOS Co., L.P.A.
55 Public Square, Suite 2150
Cleveland, Ohio 44113
Phone: 216-523-1500; Fax: 216-523-1700
E-Mail: jembleton@mggmlpa.com
aknuth@mggmlpa.com

PROOF OF SERVICE

A copy of foregoing Respondent's Request For Special Permission To Appeal And Its Appeal Of The Regional Director's Order Denying Its Request To Postpone Hearing Until October 31, 2011 was filed electronically through the E-Filing system and has been served electronically or by overnight delivery this 16th day of August, 2011 upon the following:

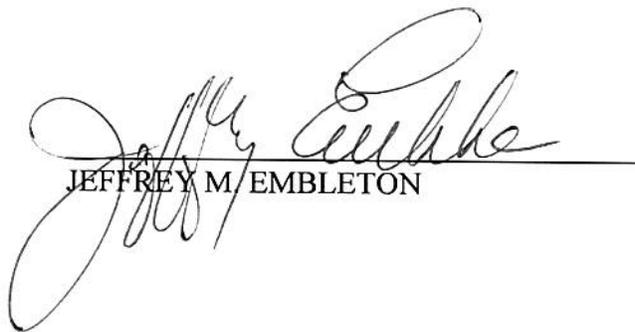
Cornele A. Overstreet, Regional Director
National Labor Relations Board – Region 28
2600 N. Central Ave, Suite 1800
Phoenix, AZ 85004-3099

Eric B. Myers
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105-2821

United Food and Commercial Workers
International Union
1775 K Street NW
Washington, DC 20006-1502

United Food and Commercial Workers
International Union
3200 Inland Empire Boulevard, Suite 160
Ontario, CA 91764-5575

United Food and Commercial Workers Union
UFCW Region 5-Southcentral
1705 West Northwest Highway, Suite 150
Grapevine, TX 76051-8123



JEFFREY M. EMBLETON

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

GCA SERVICES GROUP, INC.

and

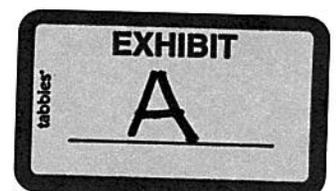
Case 28-CA-023513

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 99, AFL-CIO**

**ORDER DENYING RESPONDENT'S REQUEST
TO POSTPONE HEARING**

On July 27, 2011, a Complaint and Notice of Hearing issued in this matter, noticing a hearing to commence on October 4, 2011. On August 8, 2011, Respondent filed a Request to Change Date of Hearing (Respondent's Motion), seeking to reschedule the hearing to the week of October 31, 2011. In support of its Motion, Respondent states that one of its attorneys is unavailable for trial during the week of October 4, 2011, because he will be out of the country from September 30, 2011, to October 12, 2011, on a previously scheduled trip. Respondent states that counsel will incur a significant financial penalty should he have to cancel his travel plans and that he cannot identify a similar time period in the near future during which he will be able to be absent from his office and the United States (for the purpose of rescheduling his trip). Respondent states that it is available for hearing during the week of October 31, 2011.

Respondent's Motion states that the Charging Party does not object to Respondent's request to change the trial date. Though accurate at the time Respondent filed its Motion, counsel for the Charging Party has since notified the Region that the Charging Party opposes Respondent's Motion and has since communicated same to Respondent's



counsel. As set forth more fully below, in light of the serious and significant allegations set forth in the Complaint, and the possible warrant for injunctive relief in this matter, Respondent's Motion is denied. Respondent has failed to show sufficient cause to postpone the hearing in this matter.

Respondent has been aware of this unfair labor practice situation since on or about May 17, 2011, the date on which the charge in this matter was filed. Throughout the investigation of the charge, Respondent was represented by two able and experienced counsel, only one of whom presents the scheduling conflict which is the stated basis for Respondent's Motion. Throughout the investigation, Respondent's remaining counsel was specifically informed of the scores of serious allegations against Respondent, presented evidence and witnesses on behalf of Respondent, and was requested to submit Respondent's position on the warrant for Section 10(j) injunctive relief in this matter. There has been no showing that Respondent's remaining counsel is unavailable or unable to represent Respondent during the unfair labor practice proceeding, or that, if necessary, other counsel from the firm may act as her co-counsel. The fact that the trial is approximately eight weeks away provides ample time for another attorney in the firm to prepare as co-counsel in this case.

Moreover, this case involves allegations of hallmark violations of the National Labor Relations Act which warrant a prompt hearing. Such warrant is particularly strong here due to the nature, number, and pervasiveness of Respondent's alleged unfair labor practices, which include the discriminatory discharges of union supporters during an organizing campaign, threats of discharge, grants of benefits, Section 8(a)(3) allegations impacting on well over 35 alleged individual discriminatees, other violations of Section 8(a)(3), and scores of independent violations of Section 8(a)(1) of the Act. Absent a prompt remedy in this

matter, the alleged discriminatees will continue to suffer the economic effects of Respondent's conduct. Left unchecked, Respondent's conduct will also continue to interfere with employees' exercise of rights guaranteed by the Act, including those associated with the selection of a bargaining representative.

Finally, as mentioned above, this case presents the very real and pressing warrant for consideration of Section 10(j) relief. As a result, the processing of this case is entitled to the priority afforded it under the Act and pursuant to the policies and procedures of the Board. The Region is processing this case under established policies for cases presenting a warrant for Section 10(j) relief, and should the undersigned be authorized to seek Section 10(j) relief, any further delay in the instant administrative proceedings may be proffered by Respondent to the district court as an argument against the warrant for Section 10(j) relief. Accordingly, based on the foregoing and in the absence of good cause shown,

IT IS HEREBY ORDERED that Respondent's Motion be, and the same hereby is, denied.

Dated at Phoenix, Arizona, this 10th day of August 2011.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director