

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

**GCA SERVICES GROUP, INC.**

**and**

**Case 28-CA-023513**

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

**ACTING GENERAL COUNSEL'S MOTION FOR RECONSIDERATION  
OF THE BOARD'S ORDER GRANTING RESPONDENT'S REQUEST TO  
RESCHEDULE HEARING**

On August 24, 2011, the Board issued an Order (the Board's Order) in this matter granting Respondent's Special Appeal of the Regional Director's Order Denying Its Request to Postpone Hearing (Respondent's Special Appeal). Counsel for the Acting General Counsel (the General Counsel) respectfully requests that the Board reconsider the issuance of its Order granting the Special Appeal and instead reject Respondent's request to delay the administrative hearing in this matter. As set forth below, the procedural confusion caused by Respondent's filings, and the risk of delay which will result should the Board not reconsider its Order, especially in light of the serious and myriad unfair labor practice allegations in this case, provide good cause for the Board's reconsideration and the rejection of Respondent's efforts to delay the hearing.

1. Background

The Complaint and Notice of Hearing in the captioned matter alleges scores of serious and significant unfair labor practices occurring during Respondent's employees' nascent organizing campaign. The coercive and negative impact of Respondent's conduct persists in the workplace. The General Counsel submits that by delaying the underlying administrative

hearing, there is an increased risk of delay in securing an appropriate and effective remedy in this matter. This case presents unfair labor practices of the type and severity that warrant consideration of Section 10(j) relief. It is respectfully submitted that Respondent has failed to show good cause for a postponement. In essence, Respondent is asking the Board to conclude that Respondent's counsel's scheduled vacation in Scotland and Ireland outweighs the warrant for a prompt hearing in this matter. To the contrary, the risk of delay in securing appropriate remedies for over 300 of Respondent's employees far outweighs any inconvenience to Respondent's counsel resulting from maintaining the October 4 hearing date.

2. Procedural Issues

It does not appear that the Board is aware of the fact that after Respondent filed with the Board its August 16, 2011, Special Appeal seeking a postponement, Respondent then filed, on August 22, 2011, a separate motion for postponement with the Associate Chief Administrative Law Judge (ACALJ). In response, the ACALJ issued an Order to Show Cause directing the parties to respond, on or before noon August 26, 2011 (today), as to why Respondent's Motion should not be granted. Earlier today, the General Counsel filed its Response to that Order to Show Cause, a copy of which is attached hereto and marked as Attachment A. In that Response, the General Counsel advised the ACALJ of the Board's August 24 Order, though also asked that the ACALJ reject Respondent's motion to postpone the hearing. Thereafter, earlier today, the ACALJ issued an Order advising the parties that, given the Board's Order, Respondent's motion for postponement before the Division of Judges was now moot.<sup>1</sup> As a result, because the Board had issued its Order without knowing

---

<sup>1</sup> In addition, apparently thereafter on today's date, perhaps not yet being aware of the ACALJ's Order, Respondent filed with the ACALJ a Notice of Withdrawal of its Motion to Postpone Hearing.

that Respondent had also filed a motion with the ACALJ, the ACALJ refrained from addressing the warrant for or substantive issues presented by Respondent's motion.

It is respectfully submitted that the Board's Rules contemplate and favor that parties seeking to reschedule unfair labor practice hearings follow the procedural dictates of Section 102.24 of the Board's Rules, and that parties exhaust such procedures before filing a special appeal with the Board. The Board did not know, at the time it issued its Order, that Respondent had also filed with the ACALJ a separate motion to postpone under Section 102.24. As a result, the Board was denied the opportunity to defer ruling on Respondent's Special Appeal until after the ACALJ considered the substance and relative merits of Respondent's motion to postpone. The General Counsel submits that this, standing alone, provides more than adequate basis for reconsideration by the Board of its Order.

3. Respondent's Request to Postpone is Not Supported by Good Cause

Moreover, at the time the Board granted Respondent's Special Appeal, the Board was likely unaware that this case presents scores of serious and significant unfair labor practices occurring during an initial organizing campaign, or that the matter of seeking authorization to seek Section 10(j) relief is currently under active consideration by the Acting General Counsel. Both are present in this case.

The procedural "ships passing in the night" scenario in this case has resulted not only in the thwarting of the procedural safeguards provided by Section 102.24, but an absence of action to correct the likely harm caused by granting Respondent's request to delay the hearing in this case will result in a failure to give this case the priority it warrants.

Moreover, the absence of good cause for a postponement, in the facts of this case, is palpable. In essence, Respondent is asking that its counsel's scheduled vacation to Europe

take priority over the General Counsel's efforts to secure an appropriate and timely remedy for over 300 of Respondent's employees. Moreover, any unwarranted delay in the underlying administrative hearing exposes the Regional Director, and the Board, to asserted defenses of delay that, it can be anticipated, will be made by Respondent in any Section 10(j) district court proceedings that may be authorized in this matter.

Finally, the General Counsel submits that her arguments submitted to the ACALJ this morning, which are set forth in Attachment A, further establish the absence of good cause in support of Respondent's Special Appeal.

4. Conclusion

Based on the foregoing, it is respectfully submitted that the Board should reconsider its Order, vacate its Order, and instead, issue an order denying Respondent's Special Appeal for the reasons stated above and in General Counsel's attached pleading previously submitted to the ACALJ.

Dated at Phoenix, Arizona, this 26<sup>th</sup> day of August 2011.

/s/Eva Shih Herrera

Eva Shih Herrera  
Counsel for the Acting General Counsel  
National Labor Relations Board - Region 28  
2600 North Central Ave. Suite 1800  
Phoenix, Arizona 85004-3099  
Telephone: 602-640-2135  
Facsimile: 602-640-2178

## CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S MOTION FOR RECONSIDERATION OF THE BOARD'S ORDER GRANTING RESPONDENT'S REQUEST TO RESCHEDULE HEARING in GCA Services Group, Inc., Case 28-CA-023513, was served by E-Gov, E-Filing, E-Mail, and facsimile this 26<sup>th</sup> day of August 2011, on the following:

***Via E-Gov, E-Filing:***

Lester A. Heltzer, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570

***Via E-Mail:***

Ann E. Knuth, Attorney at Law  
Jeffrey M. Embleton, Attorney at Law  
Mansour, Gavin, Gerlack & Manos, Co., LPA  
55 Public Square, Suite 2150  
Cleveland, OH 44113-1976  
E-Mail: aknuth@mggmlpa.com  
jembleton@mggmlpa.com

Eric B. Myers, Attorney at Law  
Davis, Cowell & Bowe, LLP  
595 Market Street, Suite 1400  
San Francisco, CA 94105-2821  
E-Mail: ebm@dcbsf.com

***Via Facsimile:***

GCA Services Group, Inc.  
2620 West Broadway Road, Suite 9  
Mesa, AZ 85202-1071  
Facsimile: (480) 966-3960

United Food and Commercial Workers  
Union, Local 99  
2401 North Central Avenue, 2<sup>nd</sup> Floor  
Phoenix, AZ 85004-1331  
Facsimile: (602)251-0459

/s/Eva Shih Herrera

Eva Shih Herrera  
Counsel for the Acting General Counsel  
National Labor Relations Board - Region 28  
2600 North Central Ave. Suite 1800  
Phoenix, Arizona 85004-3099  
Telephone: 602-640-2135  
Facsimile: 602-640-2178

**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**

**ACTING GENERAL COUNSEL'S RESPONSE TO  
ORDER TO SHOW CAUSE**

On August 23, 2011, Associate Chief Judge Mary Miller Cracraft issued an Order to Show Cause advising the parties to show cause as to why Respondent's motion to postpone the hearing (Respondent's Motion) in the captioned matter should not be granted.

Respondent's Motion, which was filed on August 22, 2011,<sup>1</sup> requests an indefinite postponement of the October 4, 2011, hearing. For the reasons discussed below, the Acting General Counsel opposes Respondent's Motion and requests that it be denied.

**I. BACKGROUND**

On July 27, 2011, a Complaint and Notice of Hearing (Complaint) issued in this matter alleging that GCA Services Group, Inc. (Respondent), committed scores of violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). As will be shown at hearing, Respondent's egregious unfair labor practices were in direct response to, and for the purpose of, crushing its employees' efforts to organize on behalf of the Charging Party (the

---

<sup>1</sup> In addition to its Motion, Respondent also filed, on August 16, 2011, a 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 (Respondent's Special Appeal), which is pending before the Board. On August 26, 2011, the undersigned received notice that the Board, by Order dated August 24, 2011, granted Respondent's Special Appeal. A copy of the Board's Order is attached. The General Counsel will be filing, today, a motion with the Board requesting reconsideration of its Order pending the Associate Chief Administrative Law Judge's ruling on Respondent's instant Motion.

Union) and to select a bargaining representative. This case presents significant and serious alleged unfair labor practices impacting on over 300 employees. Respondent's efforts to further delay the hearing in this matter should be rejected. Respondent's stated reasons for seeking a postponement are trivial when compared to the ongoing assault on its employees' Section 7 rights.

By way of procedural background, Respondent's efforts to delay this hearing have already been rejected by the Regional Director for Region 28. Specifically, on August 3, 2011, Respondent filed with the Regional Director its initial request for a four-week postponement. In that request, Respondent asserted that a postponement of the hearing is necessary because its lead counsel, Jeffrey Embleton, Esq., will be out of the country on vacation from September 30, 2011, through October 12, 2011. Respondent argued that if the hearing proceeded as scheduled, Respondent would either be without its lead counsel or counsel will be required to cancel his vacation and will incur financial losses as a result.

On August 10, 2011, the Regional Director issued an Order Denying Respondent's Request to Postpone Hearing, citing the fact that the trial in this matter was approximately eight weeks away, providing adequate time for Respondent to make necessary adjustments; that Respondent is represented by co-counsel, and that other attorneys in the firm are likely available; this matter involves serious hallmark alleged violations; and that this case clearly presents consideration in terms of the warrant for Section 10(j) relief.

In its current Motion, having had its principal basis for seeking a postponement rejected by the Regional Director, Respondent propounds a legally baseless argument as its principal ground for postponement, apparently hoping to buttress the driving force behind its request Motion, i.e., Respondent's counsel's vacation to Scotland and Ireland.

More specifically, in addition to repeating that one of its attorneys has a planned vacation that conflicts with the October 4 hearing date, Respondent now argues that subsequent unfair labor practice charges filed against it may result in duplicative proceedings if the hearing in the instant matter is not postponed. Thus, Respondent requests to have the hearing in this matter postponed until the investigations of the subsequent charges (Cases 28-CA-060620 and 28-CA-062481) are completed and, if complaint issues in either or both of those matters, until Respondent has been afforded an opportunity to answer those complaints. As discussed below, Respondent's purported concerns are already addressed by extant and long-standing Board precedent and policies. The Charging Party, United Food and Commercial Workers Union, Local 99, AFL-CIO (Union), opposes the postponement.<sup>2</sup> For the reasons stated below, Respondent's Motion should be denied in its entirety.

## **II. RESPONDENT'S MOTION SHOULD BE DENIED**

This matter involves serious and significant allegations that warrant as prompt a resolution and remedy as possible. Moreover, due to the severity and impact of Respondent's conduct,<sup>3</sup> the warrant for injunctive relief is being actively considered and evaluated.

1. Respondent's Counsel's Vacation Should Not Be Allowed to Delay The Board's Procedures and the Securing of a Remedy Impacting on Over 300 Employees

As to the matter of Respondent's counsel being unavailable for the October 4 trial because of his vacation, Respondent has been aware of the unfair labor practices alleged in

---

<sup>2</sup> Respondent asserts that the Union initially took the position that it did not object to Respondent's request to postpone, and subsequently opposed the request. The Union has communicated to the Region that it opposes Respondent's request to postpone the hearing in this matter.

<sup>3</sup> The pending Complaint alleges hallmark violations of the Act. A prompt hearing is of particular importance in this case due to the sheer number, nature, and pervasiveness of Respondent's alleged unfair labor practices, which include the discriminatory discharges of at least three Union supporters during an organizing campaign, threats of discharge and grants to benefits to discourage support for the Union, Section 8(a)(3) allegations impacting on more than 40 individual alleged discriminatees, other violations of Section 8(a)(3), and hundreds of independent violations of Section 8(a)(1) of the Act.

the Complaint since on or about May 17, 2011, the date on which the charge in this matter was filed. Respondent's counsel already knew about his trip at that time and when the Complaint was issued. Respondent has had more than ample time to arrange for another attorney to join its remaining co-counsel, should Respondent's counsel be unwilling to adjust his travel arrangements. In fact, throughout the investigation of the charge, Respondent has been represented by two able and experienced counsel, only one of whom presents the scheduling conflict that is one of the bases for Respondent's Motion.

Specifically, Respondent's other co-counsel, Ann Knuth, appeared on behalf of Respondent during the investigation and participated when numerous agents of Respondent were presented as witnesses during the investigation of the instant charge. Ms. Knuth was also directly involved in the presentation of documentary evidence in support of Respondent's position and throughout Respondent's defense in this matter. There has been no showing that Ms. Knuth is unavailable or unable to represent Respondent during the hearing in this matter or that, if necessary, other counsel from the firm cannot appear on Respondent's behalf. Respondent's counsel's firm is comprised of over 20 attorneys, many of whom specialize in labor and employment law. The fact that the hearing is six weeks away provides ample time for other counsel to prepare for the hearing in Mr. Embleton's absence.

Furthermore, the allegations set forth in the Complaint include Respondent's discharge of at least three discriminatees in retaliation for their Union activities, the unlawful grant of benefits to scores more, and myriad independent Section 8(a)(1) violations. The three discharged discriminatees have suffered, and continue to suffer, significant financial harm. Moreover, the impact of Respondent's massive unfair labor practice campaign continues to interfere with and restrain employees in their exercise of Section 7 rights, including their

efforts to obtain representation. Any financial loss to Respondent's co-counsel as a result of his having to cancel his European vacation must be weighed against the economic harm suffered by the alleged discriminatees and the impact on employees' Section 7 rights that will result if Respondent is allowed to delay the Board in securing an appropriate remedy in this matter. While Respondent's counsel may be inconvenienced by having to reschedule his vacation, Respondent's 300+ employees continue to suffer in an environment of serious, unremedied unfair labor practices, and at least three employees have been discharged as a result of Respondent's alleged unlawful conduct.

2. Respondent's Assertions Regarding Other Pending Charges Are Baseless Distractions Inasmuch as Extant Board Law and Policy Amply Address Respondent's Concerns

As to Respondent's assertion that related unfair labor practice charges are pending and, therefore, the hearing must be postponed, Respondent's assertion is entirely baseless. Before addressing the substance of Respondent's assertion, it should be noted that even though a subsequent charge was already pending at the time Respondent filed its initial request to postpone with the Regional Director, Respondent made no mention of the pending charge as a basis for postponement. It is only now, after its postponement request has already been denied, that it trots out this argument to buttress its request to delay the hearing. In any event, despite Respondent's suggestions to the contrary, there is sufficient time before the trial to allow the Region to investigate and, if warranted, consolidate cases for trial with the Complaint in the instant case.

More to the point, however, as to Respondent's suggestion that the prosecution and litigation of the pending case should be postponed pending investigation of other charges in the interest of efficiency and cost savings, one would presume that Respondent is aware of the

Board's policies regarding piecemeal litigation (e.g., *Peyton Packing*, 129 NLRB 1358 (1961); *Jefferson Chemical*, 200 NLRB 992 (1972); *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB 774 (1997)). These policies have long been in place and specifically address the concerns raised by Respondent. The Acting General Counsel and the Regional Director are well aware of the policies. Respondent's suggestion that the instant hearing must be postponed because of the pending charges simply ignores the fact that the Board's policies provide for -- if not require in most cases -- the consolidation of cases to avoid piecemeal litigation. Respondent fails to establish, or even suggest, that the instant situation requires more than what the Board's policies already provide.

Moreover, there is ample time for the Regional Director to complete the investigation of the charge that is pending, affording Respondent its full due process rights; to issue complaint, should one be authorized; and to provide Respondent time to file an answer between now and the October 4 hearing. The charges that remain in the investigative stage allege, inter alia, the discharge of yet another outspoken Union supporter and other Section 8(a)(3) discrimination. Respondent will have had sufficient notice and an opportunity to respond to such allegations prior to the disposition of those cases. If complaint is authorized, it will be consolidated with the extant Complaint in accordance with standard Board procedures, which provide Respondent full and fair due process considerations.

3. This Case Involves Unfair Labor Practices That Prompt Consideration Of Section 10(j) Relief and, as a Result, Should be Afforded Priority

Finally, inasmuch as this case involves the possibility of the Regional Director seeking Section 10(j) relief, the Complaint in this matter should be afforded due priority as it proceeds through the Board's processes. Moreover, should the Regional Director be authorized to seek injunctive relief in this case, any delay in the underlying administrative proceedings may be

argued by Respondent to the District Court in opposition to a petition for Section 10(j) relief in this case. Respondent's Motion fails to show cause as to why Respondent's counsel's vacation should be given priority over the effective, efficient, and prompt litigation of this important case.

Accordingly, based on the foregoing, the Acting General Counsel respectfully requests that Respondent's Motion be denied and that the hearing commence as scheduled on October 4, 2011.

Dated at Phoenix, Arizona, this 26<sup>th</sup> day of August 2011.

/s/Eva Shih Herrera

Eva Shih Herrera

Counsel for the Acting General Counsel

National Labor Relations Board - Region 28

2600 North Central Ave. Suite 1800

Phoenix, Arizona 85004-3099

Telephone: 602-640-2135

Facsimile: 602-640-2178

## CERTIFICATE OF SERVICE

I hereby certify that a copy of ACTING GENERAL COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE in this matter was served by E-Gov, E-Filing, E-Mail, and facsimile this 26<sup>th</sup> day of August 2011, on the following:

***Via E-Gov, E-Filing:***

Honorable Mary M. Cracraft  
Associate Chief Administrative Law Judge  
National Labor Relations Board  
Administrative Law Judge Division  
901 Market Street, Suite 300  
San Francisco, CA 94103-1779

***Via E-Mail:***

Ann E. Knuth, Attorney at Law  
Jeffrey M. Embleton, Attorney at Law  
Mansour, Gavin, Gerlack & Manos, Co., LPA  
55 Public Square, Suite 2150  
Cleveland, OH 44113-1976  
E-Mail: [aknuth@mggmlpa.com](mailto:aknuth@mggmlpa.com)  
[jembleton@mggmlpa.com](mailto:jembleton@mggmlpa.com)

Eric B. Myers, Attorney at Law  
Davis, Cowell & Bowe, LLP  
595 Market Street, Suite 1400  
San Francisco, CA 94105-2821  
E-Mail: [ebm@dcbsf.com](mailto:ebm@dcbsf.com)

***Via Facsimile:***

GCA Services Group, Inc.  
2620 West Broadway Road, Suite 9  
Mesa, AZ 85202-1071  
Facsimile: (480) 966-3960

United Food and Commercial Workers  
Union, Local 99  
2401 North Central Avenue, 2<sup>nd</sup> Floor  
Phoenix, AZ 85004-1331  
Facsimile: (602)251-0459

/s/Eva Shih Herrera

Eva Shih Herrera  
Counsel for the Acting General Counsel  
National Labor Relations Board - Region 28  
2600 North Central Ave. Suite 1800  
Phoenix, Arizona 85004-3099  
Telephone: 602-640-2135  
Facsimile: 602-640-2178