

**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	)	
	)	

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

The Acting General Counsel requests that the Board reconsider its Order dated August 24, 2011 (the "Board's Order") granting the request of Respondent GCA Services Group, Inc. ("GCA Services Group") to reschedule the hearing currently scheduled for October 4, 2011. Pursuant to Section 102.65(e)(1) of the Board's Rules, a showing of "extraordinary circumstances" is necessary to support a motion for reconsideration. No extraordinary circumstances have been established by the Acting General Counsel, nor has the Acting General Counsel pointed to any material error made by the Board in its decision. As a result, the Acting General Counsel's request for reconsideration of the Board's Order should be denied.<sup>1</sup>

**A. The Order of the Regional Director, From Which GCA Services Group Appealed, Fully Informed the Board**

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<sup>1</sup> Pursuant to Section 102.65(e)(3) of the Board's Rules, the filing and pendency of the Acting General Counsel's motion for reconsideration does not stay the effectiveness of the remand of this proceeding to the Regional Director. GCA Services Group anticipates that the Regional Director will take prompt and appropriate action in response to the Board's Order and will reschedule the hearing forthwith.

In the Acting General Counsel's Motion For Reconsideration Of the Board's Order Granting Respondent's Request To Reschedule Hearing (the "Motion for Reconsideration"), the Acting General Counsel contends that the Board was "likely unaware" of the circumstances of this case when it issued the Board' Order. The Acting General Counsel ignores, however, the multi-page Order Denying Request To Postpone Hearing of the Regional Director (the "Regional Director's Order"), which was the basis of GCA Services Group's appeal and which it included with its Request For Special Permission To Appeal. The Regional Director's Order fully informed the Board of the circumstances of this case. The Motion for Reconsideration fails to suggest that the Board made any error, let alone a material error, in considering the Regional Director's Order.

The Motion for Reconsideration contains no material information regarding the allegations of this case that were not contained in the Regional Director's Order. In the Regional Director's Order, the Regional Director stated that this case involves "hallmark violations of the National Labor Relations Act," impacts "well over 35 alleged individual discriminatees," and includes "scores of independent violations of Section 8(a)(3) of the Act." In rendering his decision, the Regional Director also discussed the possible warrant of Section 10(j) relief.

Although GCA Services Group denies that the evidence supports the reasons given by the Regional Director in the Regional Director's Order, it does not dispute that the Regional Director's Order made the Board fully aware of the allegations in this case. Contrary to the Acting General Counsel, GCA Services Group is confident that the Board took all of these circumstances into account, including the possible pursuant of Section 10(j) relief, in making its decision.

The Acting General Counsel also contends that rescheduling the October 4 hearing risks delay in securing an appropriate and effective remedy. While this might be true if the hearing is rescheduled several months to a year later, there is no evidence that a remedy will be unavailable, if

one is ordered, if the hearing is delayed for a few weeks. Furthermore, in rescheduling the hearing, the Regional Director could schedule the hearing to begin prior to the week of October 31, 2011, the time period suggested by GCA Services Group and originally agreed to by counsel for the Union. GCA Services Group suggested the week of October 31, 2011 because it accommodated both the schedule of counsel for Union, who indicated he was unavailable the week of October 24, and the vacation of its lead counsel.

Finally, the Acting General Counsel contends that if the hearing is rescheduled and a Section 10(j) district court proceeding is warranted and pursued, then GCA Services could assert the defense of delay in the proceeding. Yet, it is the delay of the Board, not GCA Services Group, that is relevant in a court's determination of whether Section 10(j) relief is truly necessary. *See, e.g., Miller ex rel. NLRB v. California Pac. Medical Ctr.*, 99 F.2d 523, 543-544 (9th Cir.1993). Moreover, the Board's Order protects against further postponement by any party, absent extraordinary circumstances.

In the absence of extraordinary circumstances and the lack of any error by the Board, the Board's Order should stand and the Acting General Counsel's Motion for Reconsideration should be denied.

#### **B. GCA Services Group Followed Procedural Rules**

In the Motion for Reconsideration, the Acting General Counsel suggests that GCA Services Group failed to follow procedural rules and that this failure provides an adequate basis for reconsideration of the Board's Order. GCA Services Group followed procedural rules; but even if it did not, a failure would not constitute extraordinary circumstances for reconsideration as the Board and the Acting General Counsel were fully aware of the basis for GCA Services Group's request for special permission to appeal and its appeal.

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"). Mr. Myers, on behalf of the Union, replied that he and the Union would not oppose a request for continuance provided that the Region can schedule the hearing for the earliest dates available. Because no party objected to an extension of the date of the hearing, GCA Services Group was required to direct its request to reschedule the hearing to the Regional Director consistent with Section 102.16(a) of the Board's Rules.

Several days after GCA Services Group filed its request with the Regional Director, the Union and its counsel reneged on their agreement. On the same day and almost contemporaneously upon learning that the Union and its counsel reneged, the Regional Director issued the August 10, 2011 Order Denying Respondent's Request to Postpone Hearing.

Section 102.26 of the Board's Rules does not allow for the direct appeal of a ruling by the Regional Director to the Board. Rather, pursuant to Section 102.26, a party must request special permission of the Board to appeal, and concurrently file and serve the appeal with the request for special permission. GCA Services Group complied with Section 102.26: it received an order of the Regional Director; it filed with the Board a request for special permission to appeal; and it concurrently filed its appeal with its request for special permission to appeal. Section 102.26 does not require an intermediate step, as suggested by the Acting General Counsel.

Following a conversation with Counsel for the Acting General Counsel, GCA Services Group noted an additional justification for postponing the October 4 hearing date - two other cases filed by the Union against GCA Services Group involving many of the same employees, managers and circumstances as this case remain under investigation by the Region and should complaints be issued in those cases, the hearings on all cases should be combined. Knowing that the Union and its

counsel object to a postponement of the hearing and upon the suggestion of Counsel for the Acting General Counsel, GCA Services Group made a request with the Division of Judges pursuant to Section 102.16(a) that the hearing be postponed pending completion of the investigations of the pending cases and the filing of its answers to the additional complaints. A copy of GCA Services Group's motion and brief in support are attached as Exhibit A. GCA Services Group fully disclosed to the Division of Judges that (i) its lead counsel had previously scheduled pre-paid vacation plans which included the October 4 hearing date; (ii) the Regional Director had denied GCA Services Group's request to reschedule the hearing date on account of the vacation of its lead counsel; (iii) it had requested permission of the Board to appeal the decision of the Regional Director; and (iv) granting its motion to postpone on account of other pending cases would accommodate lead counsel's previously scheduled vacation. With all of this information, the Associate Chief Administrative Law Judge issued an Order to Show Cause as to why GCA Services Group's motion should not be granted. On August 26, 2011, the Associate Chief Administrative Law Judge issued an Order advising the parties that GCA Services Group's motion was moot as a result of the Board's Order. This Order and the Order to Show Cause seem to indicate that the Associate Chief Administrative Law Judge also favored rescheduling the October 4, 2011.

In summary, GCA Services Group did not "thwart" Section 102.24, as alleged by the Acting General Counsel. Rather, it followed the procedure required of it when the Union and its counsel reneged, after GCA Services Group filed its request with the Regional Director, on their agreement not to object to a request for continuance and when more than one basis exists to reschedule the hearing. Although perhaps a unique procedural circumstance, the circumstance is not extraordinary nor does it demonstrate a material error by the Board to support granting Acting General Counsel's Motion for Reconsideration.

**C. Conclusion**

For the foregoing reasons, GCA Services Group requests that the Motion for Reconsideration of the Acting General Counsel be denied.

Dated August 29, 2011

Respectfully submitted,



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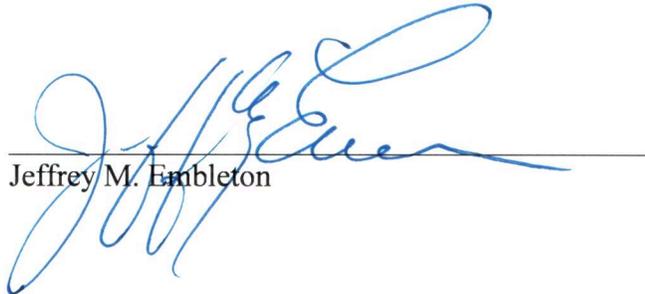
**PROOF OF SERVICE**

A copy of the foregoing Opposition Of Respondent To Acting General Counsel's Motion For Reconsideration Of The Board's Order Granting Respondent's Request To Reschedule Hearing was filed electronically through the E-Filing system and has been served electronically or by facsimile this 29th day of August, 2011 upon the following:

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Cornele A. Overstreet, Regional Director  
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Jeffrey M. Embleton

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**MOTION OF RESPONDENT TO POSTPONE HEARING**

Pursuant to Rules 102.16 and 102.24(a) of the Rules and Regulations of the National Labor Relations Board, Respondent GCA Services Group, Inc. ("GCA Services Group"), by and through counsel, requests that the hearing in this case be postponed from the currently scheduled date of October 4, 2011. The basis for GCA Services Group's request is twofold: (i) two cases filed after the above-referenced case involving many of the same employees, managers and circumstances as this case are under investigation by Region 28 and the hearings on all three cases should be combined; and (ii) lead counsel for GCA Services Group has previously scheduled travel plans which include the current hearing date.

The charging party, United Food and Commercial Workers Union, Local 99 (the "Union"), objects to an extension of the date of the hearing. The Regional Director for Region 28 denied GCA Services Group's request to reschedule the hearing due to its lead counsel's scheduled and paid for vacation. GCA Services Group has requested permission of the National Labor Relations Board to appeal the decision of the Regional Director.

The basis for this Motion is more fully set forth in GCA Services Group's brief in support which in contemporaneously filed with this Motion and incorporated herein.

Dated August 22, 2011

Respectfully submitted,

*Jeffrey M. Embleton*

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**PROOF OF SERVICE**

A copy of foregoing Motion of Respondent to Postpone Hearing and Brief in Support thereof was filed electronically through the E-Filing system and has been served electronically or by overnight delivery this 22<sup>nd</sup> day of August, 2011 upon the following:

Cornele A. Overstreet, Regional Director  
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*Jeffrey M. Embleton*  
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**BRIEF IN SUPPORT OF MOTION OF RESPONDENT  
TO POSTPONE HEARING**

Two compelling reasons exist to postpone the hearing currently scheduled in this case to begin on October 4, 2011: two subsequently filed charges which involve several of the same employees, managers and circumstances as this case are under investigation by the Regional Director and should be consolidated with this case, and the hearing date conflicts with the previously scheduled vacation of lead counsel for GCA Services Group, Inc. ("GCA Services Group"). Either of these reasons standing alone provides adequate justification to postpone the hearing. Together, these reasons constitute compelling justification to postpone the hearing.

**Procedural Background**

The charge in the above captioned case, filed by United Food and Commercial Workers Union, Local 99 (the "Union"), was received by GCA Services Group, Inc. ("GCA Services Group") on or about May 19, 2011 (the "First Charge"). The First Charge alleged various violations of Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (the "Act") dating back to February 2011. GCA Services Group fully cooperated in the investigation of the First Charge.

On or about July 6, 2011, GCA Services Group received a copy of a charge filed by the Union designated as Case 28-CA-60620 (the "Second Charge"). The Second Charge alleges that

GCA Services Group violated Sections 8(a)(1), (3) and (4) of the Act by issuing employee Gilbert Rodriguez a write up and reducing the hours of work of employee Aaron Rhodes. GCA Services Group has filed its position statement in response to the Second Charge and been informed that the Second Charge is not being dismissed or withdrawn in its entirety. Thus, GCA Services Group anticipates that a second complaint against it is forth coming.

On or about August 11, 2011, GCA Services Group received a copy of a charged filed by the Union designated as Case 28-CA-062481 (the "Third Charge"). The Third Charge alleges that GCA Services Group violated Sections 8(a)(1) and (3) of the Act by threatening to terminate the employment of Geoffrey Kachiolwa and then terminating Mr. Kachiolwa's employment. GCA Services Group has not yet filed its position statement in response to the Third Charge but expects to do so shortly.

On or about July 28, 2011, GCA Services Group received copies of an amended First Charge and a Complaint. The Complaint relates only to allegations of the amended First Charge, although it is presumed that when a second complaint is issued the cases will be consolidated. Allegations relating to GCA Services Group's treatment of Mr. Rhodes are contained in paragraphs 6(a), 6(b) and 6(i) of the Complaint, as well as the Second Charge. Allegations relating to GCA treatment of Mr. Kachiolwa are contained in paragraph 6(k) of the Complaint, as well as the Third Charge. Several other allegations of the Complaint in which no employee is identified by name relate to GCA Services Group's alleged interactions with Mr. Rhodes and Mr. Kachiolwa.

The Complaint contains a Notice of Hearing, setting the hearing for October 4, 2011 and on consecutive days thereafter until concluded. GCA Services Group made a request to the Regional Director to reschedule the unilaterally selected October 4, 2011 hearing date. This request was made solely on account of the previously scheduled paid for vacation to Europe of its lead counsel, Jeffrey

Embleton, from September 30, 2011 through October 12, 2011. After securing the consent of counsel for the Union and filing an opposed request to reschedule the hearing with the Regional Director, the Union apparently reneged on its consent on or about August 10, 2011. On the same date, GCA Services Group was notified that its request was denied in part because the Union and its counsel reneged on their position that they had no objection to short postponement of the hearing date. GCA Services Group has filed a request for special permission to appeal the Regional Director's decision and its appeal.

### **Argument In Support Of Postponing The Hearing**

#### **A. Postponing The Hearing Will Decrease The Burden And Expense Of All Parties**

Each of the charges filed by the Union relate to circumstances which occurred during the Union's attempt to organize GCA Services Group's employees at Sky Harbor International Airport. The allegations are inextricably intertwined. Much of the same evidence presented in the hearing on the amended First Charge will be required to decide the issues of the Second Charge and the Third Charge, should a complaint be issued. This duplication of the presentation of evidence can be avoided by postponing the October 4, 2011 hearing date until the cases can be consolidated and a new hearing date scheduled.

Litigation of the allegations of the Union separately is inefficient and will result in unnecessary costs and burden for the individual employees, the Union, counsel for the Acting General Counsel, the Administrative Law Judge(s) and GCA Services Group. Indeed, it is clear from the face of the allegations alone that Mr. Rhodes and Mr. Kachiolwa will need to appear for two different hearings if the cases are not consolidated. Since GCA Services Group's treatment of Mr. Rhodes and Mr. Kachiolwa arises out of a continuum of circumstances, it is guaranteed that duplicative evidence will include testimony of at least six managers or supervisors of GCA Services

Group, as well as several third party witnesses. GCA Services Group anticipates that this will also be true of many of the other allegations to be contained in the forthcoming complaint on the Second Charge as well as a third complaint on the Third Charge, should one be issued. Recalling multiple witnesses in several cases will needlessly increase the length of the hearings in subsequent cases and be a senseless use of government resources.

**B. Postponement Of The Hearing Also Accommodates Lead Counsel's Previously Scheduled Vacation**

In addition to the efficiency gained and costs saved by postponing the hearing scheduled to begin on October 4, 2011, it will also allow Mr. Embleton to proceed with his scheduled and paid for vacation. Mr. Embleton is scheduled to travel on September 30, 2011 to Edinburgh, Scotland and is leaving from Shannon, Ireland to return to the United States on the evening of October 12, 2011. The airline tickets of Mr. Embleton and his spouse are non-refundable. In addition, Mr. Embleton has also booked lodging at various locations in Scotland and Ireland throughout the period from October 1<sup>st</sup> through October 11<sup>th</sup> and will incur financial penalties for cancelling the lodging at this late date.

Initially when asked its position on rescheduling the October 4, 2011, counsel for the Union indicated that the Union would not oppose a request for continuance provided that the Region can schedule the hearing for the earliest dates available. Counsel for the Union also informed Counsel for GCA Services Group that he was unavailable during the week of October 24, 2011. To accommodate the schedules of both counsel, GCA Services Group filed on August 3, 2011 an unopposed request to reschedule the hearing to October 31, 2011. On August 10, 2011, one of the attorneys for the Union telephoned Mr. Embleton to advise him that the Union now decided to oppose GCA Services Group's request. After the Union and its counsel belatedly reneged on their agreement, GCA Services Group's request to the Regional Director was denied on the same day.

Mr. Embleton has represented GCA Services Group throughout this case as well as in other matters before the Board. Although Mr. Embleton has been assisted from time to time by other members of his law firm, Mr. Embleton has been, and continues to be, primarily responsible for the representation of GCA Services Group. Unless the hearing date is postponed until after October 12, 2011, GCA Services Group is faced with either proceeding without its lead counsel or requiring that Mr. Embleton cancel his vacation and incur the financial consequences of doing so.

**Conclusion**

For the foregoing reasons, GCA Services Group requests that the hearing in the above-captioned case be postponed pending completion of the investigations of Case Nos. 28-CA-060620 and 28-CA-062481 and the filing of GCA Services Group's answers to the additional complaints.

Dated August 22, 2011

Respectfully submitted,

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