

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

BREAD OF LIFE, LLC

Respondent/Employer

CASE 07-CA-088519

and

LOCAL 70, BAKERY, CONFECTIONARY,
TOBACCO WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC

Charging Union/Petitioner

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Respondent/Employer, Bread of Life, LLC (“Respondent”), pursuant to the Board’s October 24, 2012, Notice to Show Cause, submits this Opposition to Counsel for the Acting General Counsel’s Motion for Summary Judgment.

Respondent acknowledges that it has refused to bargain with Local 70, Bakery, Confectionery, Tobacco Workers and Grain Millers International Union (“Union”), but denies that it is required to do so under the National Labor Relations Act (“Act”). As stated fully in Respondent’s Request for Review of Acting Regional Director’s Decision and Direction of Election (attached as Exhibit H to Counsel for the Acting General Counsel’s Motion for Summary Judgment), filed with the Board on March 9, 2012, and incorporated herein by reference, the certified unit of Bakers is not an appropriate unit for bargaining because it includes only Bakers from six of Respondent’s cafes instead of all seventeen cafes in its West Michigan Market.

In determining that the petitioned-for unit was appropriate, the Acting Regional Director relied on the Board's decision in *Specialty Healthcare*, 357 NLRB No. 83 (Aug. 26, 2011), and held there was no "overwhelming community of interest" with the excluded employees that would justify inclusion of Bakers from all seventeen cafes. However, in denying Respondent's Request for Review, the Board did not adopt the Acting Regional Director's analysis and instead indicated in a footnote that the Bakers in the petitioned-for unit share a community of interest that is distinct from the excluded Bakers at other cafes, citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986). (See Board's March 21, 2012, Order denying Respondent's Request for Review, at fn. 1.)

The Board's Order includes no explanation or analysis of how the community of interest of the Bakers at six of Respondent's cafes is distinct from the interests of the Bakers at its other facilities. As the Acting Regional Director's Decision acknowledged, Bakers at all of Respondent's West Michigan Market cafes share the same job duties, terms and conditions of employment, and bonus plan. (See Acting Regional Director's Decision at p. 8, attached as Exhibit G to Counsel for the Acting General Counsel's Motion for Summary Judgment.) Furthermore, all of the bakery operations within the West Michigan Market are functionally integrated because they are overseen by one manager; there is central control over labor relations policies for all Bakers within the Market; there is interchange of bakers across the Market, and the six cafes in the bargaining unit are not geographically distinct from the remainder of the Market. All of these factors weigh in favor of a finding that the certified unit is not appropriate under the Act, despite the Board's unsupported decision to the contrary.

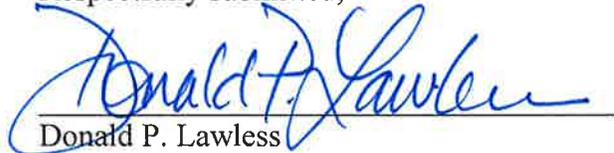
Respondent's only option to obtain judicial review of the erroneous certification was to refuse to bargain with the Union. Accordingly, the purpose of this responsive pleading is to

foreclose any claim that Respondent did not properly preserve the issues that it will raise on appeal. Respondent relies upon the entire record in the related representation case, 07-RC-072022, in support of its claim that the bargaining unit designated by the Board does not constitute an appropriate unit for bargaining.

Since the bargaining unit certified by the Board is not an appropriate unit, Respondent has not violated the Act by refusing to recognize or bargain with the Union. Accordingly, it is Respondent's position that Counsel for the Acting General Counsel's Motion for Summary Judgment should be denied, the Complaint in this case should be dismissed, and judgment should be entered that the appropriate unit for bargaining is as requested by the Respondent in Case No. 07-RC-072022.

Dated: November 6, 2012

Respectfully submitted,

A handwritten signature in blue ink that reads "Donald P. Lawless". The signature is written in a cursive style and is positioned above a horizontal line.

Donald P. Lawless

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the following by electronic mail and depositing same in the United States mail, first class, postage prepaid, this 6th day of November, 2012:

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