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May 30, 2019

Ronald K. Hooks, Regional Director
NLRB Region 10
915 Second Avenue
Seattle, WA 98174-1078

Re: *Chanticleer Holdings, LLC - 19-RM-242193*
Little Big Union - Request for 2-day Postponement of Hearing

Dear Mr. Hooks:

On behalf of Little Big Union I am requesting a two-day postponement of the hearing scheduled in the above-referenced matter, from Wednesday, June 5, to Friday, June 7. This motion is opposed by Little Big Burger, the employer that filed the RM petition at issue.

Little Big Union is a small, independent union created earlier this year by employees of the Employer. It has not been represented by counsel previously in any hearings or charges to my knowledge. On the Friday before Memorial Day weekend it received notice from the Employer that the Employer had filed an election petition with the Region. Members of Little Big Union attempted researched the matter and determined that they would need assistance of counsel.

Bear in mind that the instant petition is a rarity to begin with - the NLRB's website notes that just 50 were filed in FY 2018 (30 of which were subsequently withdrawn or dismissed) - and ordinarily such petitions are filed where an incumbent union's majority support is at issue - i.e., where there is a history of bargaining, an established collective bargaining relationship, and a clear and pre-existing bargaining unit. Here the Employer has filed a petition for an election across thirteen different sites, including one or more sites where LBU has never claimed to represent any employee for the purposes of collective bargaining. There is no agreed-upon or established bargaining unit and certainly no history of collective bargaining between these parties. Thus this petition raises novel issues that even counsel with prior NLRB experience would not have encountered.

The first meeting with legal counsel that Little Big Union members could arrange was on Wednesday, May 29. I was asked to join that meeting because the counsel contacted by Little Big Union did not have experience with NLRB elections or procedures. Between the time that meeting was arranged and the time the meeting actually took place the Region had decided to proceed with an election. As a result of our meeting on Wednesday morning, the undersigned agreed to represent Little Big Union after 1:30 p.m. and entered an appearance just before 3:00 p.m.

I then spoke with counsel for the Employer. I advised him that Little Big Burger had just retained me as counsel, that I am presently scheduled to represent another Union in an arbitration for a discharge case on June 5 and June 6, and that I would like an extension of time until Friday. I noted as well that it would benefit the parties and proceedings for Little Big Union to have a representative familiar with the NLRB and its policies and procedures. Counsel for the Employer stated that he would check with his client, and after doing so, via email this morning he advised me that the Employer opposes the requested extension.

Little Big Union has no standing attorney-client relationship with any other firm or person. I am the sole attorney with any NLRB experience it has approached and worked with to date. To expect it to find another attorney on short notice that has any experience in the field and ability to prepare for a hearing on such short notice is unreasonable and unfair.

The June 5 and 6 arbitration challenges a termination. The hearing was scheduled by Arbitrator Rita Siegel on March 1 - before Little Big Union even publicly announced its existence - and cannot be reset at this time. I have been the sole attorney representing the Union in that matter from its inception; it could not be handled by other counsel at this time without considerable expense and hardship to the grievant and the Union.

Bear in mind as well that the RM petition came to Little Big Union without advance notice of any kind, formal or informal. In the context of an RC petition rarely if ever would an employer be unaware of an ongoing effort to organize its workforce and thus of the prospect of a representation petition. Similarly in the context of an RD petition rare would be the instance when a Union would have some advance knowledge that one or more employees wishes to decertify it in advance of the petition itself. Finally, in the majority of RM petitions either the Union and employer have a relationship such that a loss of majority status, or at least a claim thereof, would raise the specter of a petition. In the remainder the Union would itself be actively engaged in activity and presently claiming to be the bargaining agent of the employees at issue.


To my knowledge the one time Little Big Union clearly demanded to be recognized by the Employer as the bargaining agent of its employees was via letter in late March. Within a matter of days the Employer declined to recognize it voluntarily. Little Big Union has not since engaged in recognitional picketing or otherwise demanded of the Employer that it be recognized as the bargaining agent of Little Big Burger employees; to the contrary, it instead has requested - unsuccessfully - that the Employer enter into a card check neutrality agreement. Requests for card checks along with other run of the mill organizational activity do not amount to a present demand for recognition. As a practical matter there was nothing to suggest that the Employer would be filing an election petition in late May based on a demand made two months' prior or to put Little Big Union on notice that it would be required to proceed to an evidentiary hearing in short order. This further militates in favor of the requested, brief continuance.

Finally the balance of equities favors the postponement. The Employer is a publicly-traded company based in North Carolina with brands such as the Hooters restaurant chain in its portfolio. Little Big Union is an independent union formed by Little Big Burger employees themselves here in Portland. In striking a balance between the inconvenience of rescheduling one or more Employer witnesses from a Wednesday to a Friday hearing versus allowing those employees the chance to have a voice through counsel of their choosing in whether, where, and when they will have the opportunity to exercise their Section 7 rights to choose to be represented by a labor union, one would hope the equities favor the latter and the brief extension requested by Little Big Union.

Accordingly, for the foregoing reasons, Little Big Union requests that the hearing on the petition be postponed from Wednesday, June 5, to Friday, June 7, with all other details - time, location, and so forth - unchanged.

Very truly yours,

MCKANNA BISHOP JOFFE, LLP

A handwritten signature in black ink, appearing to read "Noah S. Warman", followed by a long horizontal flourish.

Noah S. Warman

cc: Kristen White
Kent Pearson, counsel for Employer
Little Big Union

Letterhead - NSW format.wpd

Certificate of Service

I hereby certify that I have served a copy of the foregoing request for postponement on Kent Pearson, counsel for petitioner Chanticleer Holdings, LLC, via email to kpearson@bullardlaw.com this 30th day of May, 2019.



Noah Scott Warman
Attorney for Little Big Union