UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AMAZON.COM SERVICES, LLC

Respondent

and — **Case Nos. 29-CA-277198**
29-CA-278982

CONNOR VINCENT SPENCE, an Individual

and

NATALIE MONARREZ, an Individual — **Case No. 29-CA-277598**

and

DERRICK PALMER, an Individual — **Case No. 29-CA-278701**

and

AMAZON LABOR UNION — **Case Nos. 29-CA-285445**
29-CA-286272

COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO SEVER 8(A)(1) ALLEGATIONS AND CONSOLIDATE WITH CASE NOS. 29-CA-280153 ET AL

Pursuant to Sections 102.33(d), 102.24, and 102.35 of the NLRB Rules and Regulations, the undersigned Counsel for the General Counsel hereby opposes Respondent's Motion to Sever Case Nos. 29-CA-277198, 29-CA-278982, 29-CA-277598, 29-CA-278701, and 29-CA-285445 from the instant cases and to consolidate those severed cased with the allegations in the Consolidated Complaint in Case Nos. 29-CA-280153 et al. For the reasons more fully described below, Respondent's Motion should be denied as Respondent has failed to establish valid grounds for warranting severance and consolidation.

I. Procedural History:

On February 18, 2022, the Regional Director for Region 29 of the National Labor Relations Board issued an Order Further Consolidating Cases, Amended Consolidated Complaint, and Notice of Hearing, ("the February 18 Consolidated Complaint"), alleging that Respondent engaged in the following unlawful conduct in violation of Section 8(a)(1) of the Act:

- through labor consultant Bradley Moss, threatening employees with futility,
- disparaging the Union by calling them "thugs,"
- interrogating employees about their Union and protected concerted activities,
- soliciting grievances from employees with a promise to remedy them;
- through labor consultant David Acosta, threatening employees that voting for the Union would lead to strikes, and interrogating employees about their Union support;
- through security guard John Hill, prohibiting employees from distributing Union literature while on break times in nonwork areas, and surveilling employees' Union activities;
- by security guard Elena Koplevich, surveilling employees' Union activities; through HR Assistant Luke Wojahn and Operations Manager Ariana Ovadia, prohibiting employees from distributing Union literature on nonwork time and in nonwork areas, and confiscating Union literature from employees, and surveilling employees' Union activities; and
- by HR Business Partner Christina Stone, prohibiting employees from distributing Union literature in breakrooms on nonwork time.

In its Answer, Respondent denied all substantive allegations in the February 18 Consolidated Complaint. The Hearing in these cases opened on June 6, 2022.

On May 31, 2022, the Regional Director for Region 29 issued a Consolidated Complaint in Case Nos. 29-CA-280153, 29-CA-286577, 29-CA-287614, 29-CA-290880, 29-CA-292392, alleging that Respondent committed additional, but factually distinct unfair labor practices, including:

- disparately enforcing it's No Solicitation Policy against employee Dana Miller;
- through HR Business Partner Mike Tanelli, threatening Dana Miller for engaging in protected activities on Respondent's "Voice of the Associates Board" (VOA), and then revoking Miller's authorization to use the VOA board;

- requiring employees to attend various “captive audience” meetings to expose employees to Respondent’s anti-Union message; and that during those meetings through agents “Unidentified Male Employee Relations Agent,” Ron Edison, Charlotte Bowers, and Eric Warrior, threatening employees with various forms of retaliation and solicitations of grievances if employees supported the Union.

Respondent’s Answer to the May 31 Consolidated Complaint is due on June 13, 2022. The Hearing for these cases is currently scheduled for September 19, 2022.

On June 3, 2022, Respondent filed a Motion to Sever certain Section 8(a)(1) allegations from the February 18 Consolidated Complaint and to consolidate those allegations into the May 31 Consolidated Complaint. Respondent asserts that severance and consolidation is necessary simply because the allegations in both Consolidated Complaints involve the same employer, the same location, the same union election campaign, and allegedly involve similar issues. Respondent further asserts – incorrectly – that the failure to sever the cases will result in duplication of witnesses and evidence in both proceedings and will cause Respondent to incur unnecessary time and expense and result in the unnecessary harassment of Respondent.

Respondent’s arguments should be rejected because the allegations in the February 18 Consolidated Complaint and the May 31 Consolidated Complaint are factually distinct and will not require the duplication of witnesses or evidence. Moreover, consolidation of the February 18 allegations with the allegations in the May 31 Consolidated Complaint, currently scheduled for trial on September 19, will result in unnecessary delay in effectuating the Act.

II. **Board Law Provides that the General Counsel is Not Required to Litigate all Section 8(a)(1) Allegation in One Proceeding**

Board law is clear that the General Counsel is not required to consolidate all charges brought against the same employer. In this regard, the Board has noted that there is no “blanket rule” that requires consolidation into one proceeding of all charges filed against the same

respondent that arise during the pendency of that proceeding. See e.g. *Affinity Medical Center,* 364 NLRB No. 66 (2016); *Service Employees Local 87,* 324 NLRB 774 (1997). The requirement to consolidated allegations only applies if the same unlawful conduct will be re-litigated in both proceedings. Such is not the case here since the two proceedings involve factually distinct violations committed by different agents of Respondent. Therefore, Respondent's Motion to Sever and Consolidate should be denied.

Board law is clear that the General Counsel may not re-litigate the same conduct as separate violations in different proceedings. See *Peyton Packing Co.*, 129 NLRB 1358, 1360 (1961) (where the General Counsel had alleged and litigated certain conduct as an 8(a)(1) violation in an earlier proceeding, that same conduct could not be alleged and litigated as an 8(a)(5) violation in a separate proceeding); and *Jefferson Chemical Co., Inc.*, 200 NLRB 992 n. 3 (1972) (where, notwithstanding a broad 8(a)(5) refusal-to-bargain charge, the General Counsel had alleged only a narrow unilateral change violation in an earlier proceeding and disavowed any allegation of general bad-faith bargaining, the GC could not subsequently allege and litigate in a separate proceeding a surface bargaining violation based on events occurring before the hearing had opened in the earlier proceeding). These cases plainly establish that the Board's concern is whether the *same conduct* will be litigated in different proceedings. The Board has narrowly construed this prohibition.

In *Affinity Medical Center,* 364 NLRB No. 66 (2016), the Board held that, "*Jefferson Chemical* and *Peyton Packing* have been narrowly limited to their factual situations," and "only apply to cases involving the re-litigation *of the same conduct*." Slip op. at 2 (citations omitted). In that case, the Board found no bar to litigating the allegations in three new consolidated complaints separately as they were "factually independent" of those in the ongoing consolidated

proceeding. See also *Napleton Cadillac of Libertyville*, 369 NLRB No. 56, slip op. at 10 (2020) (finding no bar to litigating allegations where the alleged unlawful conduct began 3 months after the last alleged unlawful conduct in the earlier proceeding, the General Counsel did not issue the consolidated complaint on the charges until over 9 months after the hearing in the earlier proceeding, and the respective allegations were factually independent); *Frontier Hotel and Casino*, 324 NLRB 1225 (1997) (finding no bar to litigating an allegation where it involved a "discreet act" that did not occur until well after the lengthy hearing in the earlier proceeding opened); *Harrison Steel Castings Co.*, 255 NLRB 1426, 1426–1427 (1981) (finding no bar to litigating an allegation where the underlying charge was not filed until after the hearing in the earlier proceeding closed, the allegation was "not intertwined with" those in the earlier proceeding, and there was no evidence that the General Counsel knew about or should have discovered the alleged violation during the earlier proceeding).

Thus, Board law is clear that there is no mandate to consolidate all allegations brought against the same respondent. Rather, when considering consolidation, the Board will analyze whether the same conduct will be litigated in both proceedings. In the instant cases, the same conduct will not be re-litigated in the pending proceedings.

III. None of Respondent's Alleged Unlawful Conduct Will be Relitigated in Seperate Proceedings.

With respect to the instant proceedings, none of Respondent's alleged unlawful conduct will be re-litigated at the hearing on the allegations plead in the May 31 Consolidated Complaint. As detailed above, the 8(a)(1) allegations in the February 18 Consolidated Complaint involve threats, interrogations, solicitation of grievances, surveillance, and confiscation of Union literature engaged in by labor consultants Moss and Acosta, security guards Hill and Koplevich,

HR Employees Wojahn and Stone, and Operations Manager Ovadia. In contrast, the 8(a)(1) allegations in the May 31 Consolidated Complaint involve threats and solicitations of grievances engaged in by *different agents* of Respondent—HR Business Partner Mike Tanelli, Unidentified Male Employee Relations Agent, Ron Edison, Charlotte Bowers, and Eric Warrior. Thus, it is clear that the separate litigation of the two Complaints will not require the re-litigation of any specific conduct nor require the duplication of witnesses, since each Complaint alleges violations committed by different Respondent agents.

Moreover, apart from Case No. 29-CA-280153 involving employee Dana Miller's post on Respondent's VOA Board, and a few threats lodged against workers via Respondent's messaging platforms in May 2021[1], all allegations in the May 31 Complaint occurred *after* the 8(a)(1) conduct alleged in the February 18 Consolidated Complaint, some of the more recent allegation occurring as recently as a few months ago. (The mandatory captive audience meetings occurred on November 10, 2021, November 11, 2021, February 16, 2022, and March 15, 2022.) The fact that the majority of the violations set forth in the May 31 Consolidated Complaint took place after the violations in the February 18 Consolidated Complaint weighs heavily against consolidation since it further highlights that the cases are factually distinct.

With respect to the unfair labor practices involving employee Dana Miller, contrary to Respondent's claim that the Region offered no explanation for the delay in the processing of Miller's charge, that case presented issues that had to be submitted to the Division of Advice, which delayed a final determination by the Region. Once the case was returned from Advice, the Region made its final determination and prepared the case for consolidation with the captive

[1] See Case No. 29-CA-286577

audience allegations. While the unlawful conduct in the Dana Miller case involving her post on the VOA board occurred in July of 2021, the facts of that conduct are entirely distinguishable from and unrelated to any of the unlawful conduct alleged in the instant litigation. It is clearly more efficient to include the VOA board allegations with the allegations in the May 31 Complaint, since that Complaint also alleges the disparate enforcement of Respondent's Solicitation Policy against Miller. By contrast, the February 18 Complaint does not involve any allegation regarding employee Miller or the enforcement of Respondent's no-solicitation policy. Rather, the Complaint alleges that Respondent violated 8(a)(1) by not allowing the distribution of Union literature on nonwork time and in nonwork areas as permitted by Section 7 of the Act and Board law, regardless of Respondent's Solicitation Policy. Consequently, the conduct alleged in the Miller charge is factually distinct and does not require consolidation since the same conduct is not being re-litigated.

IV. Consolidation Will Lead to Unnecessary Delay in Vindicating Employee Section 7 Rights and Remedying Current Violations of the Act

Respondent's Motion seeking to sever and consolidate certain allegations currently pending before your Honor with cases scheduled for hearing in September 2022 will result in an unnecessary delay and deprive employees of vindication of their rights. Moreover, the Region is currently investigating ten (10) additional unfair labor practices charges filed by the Amazon Labor Union and/or other employees, alleging that Respondent violated the Act in myriad ways at Staten Island locations, including Section 8(a)(1) of the Act.[2] If the Region finds merit to any of the new charges, the parties will be faced with another motion to consolidate since the charges

[2] The Region is also investigating four (4) additional unfair labor practice charges filed by employees working at other locations in Queens, New York.

involve the same Respondent, Union, and the same section of the Act. Ongoing motions to consolidate would indefinitely delay adjudication of the current and any future litigation involving Respondent, an indefinite delay to remedying unfair labor practices, an outcome that the Board has found to be unacceptable as described below.

In *DHSC d/b/a Affinity Medical Center,* 364 NLRB No. 68 (2016), the Board denied respondent's motion for summary judgment arguing that certain charges were completely barred by *Jefferson Chemical.* The Board held that:

> "The Hospitals' expansive interpretation of *Jefferson Chemical* would present the Board with two unacceptable alternatives: either to delay the adjudication of previous allegations and the potential remedies owed to employees based on them in order to permit the inclusion of new allegations that may arise, or to disregard the alleged unfair labor practices raised in subsequently filed charges and permanently deprive the affected employees of any possible remedy at all. Both of these choices would hinder the Board's performance of its statutory duties and deprive employees of the protections afforded to them by the Act. Moreover, "[t]o accept the Respondent's argument . . . [would] allow a respondent to delay indefinitely the ultimate litigation of any charges by simply engaging in further unlawful conduct. Such a result is completely at odds with the purposes and policies of the Act." *Harrison Steel Castings Co.*, 255 NLRB 1426, 1427 (1981). See also *Service Employees Local 87 (Cresleigh Mgmt.)*, supra at 775-776. *DHSC, LLC Affinity Medical Center*, 364 NLRB No. 68 (2016).

Similarly, Your Honor should not permit Respondent to indefinitely delay these proceedings by granting motions to consolidate cases that are factually distinct and do not involve the re-litigation of any specific. This will result in an unacceptable delay in remedying any potential violations of the Act.

CONCLUSION

Based on the foregoing, Respondent's Motion to Sever the Section 8(1) allegations from the February 18 Consolidated Complaint should be denied. Respondent has not established that the allegations in the February 18 and the May 31 Complaint are related such as to warrant a consolidated. Rather as noted above, the allegations in the February 18 Complaint are completely unrelated to the May 31 Complaint. Moreover, consolidation of the Complaint will only result in an unnecessary and unacceptable delay. Accordingly, Respondent's Motion must be denied.

Respectfully submitted,

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